David Jonathan Tulis	)	
Petitioner	)	
	)	
V.	)	Docket no. 23-004
	)	
David Gerregano	)	
Commissioner of revenue	)	
Respondent	)	

Motion for temporary injunction

> *Bonum judex secundum aequum et bonum judicat, et aequitatem stricto juri praefert.* A good judge decides according to justice and right, and prefers equity to strict law.
>
> *Co. Litt. 24.*

This motion asks that petitioner's motor vehicle registration suspension/revocation be temporarily rescinded pending outcome of these proceedings, giving the department a chance to act in good faith amid a conflict in which petitioner insists that T.C.A. §§ 55-12-104 and 105 dictate whether he is subject to the law, that he is made liable for performance at the front end of the statute and not via the technical protocols established under its amendment at Atwood.

Respondent denies these provisions in the infrastructure of the law apply, that it has authority from other parts of the statute that allow it to be reconstituted as against petitioner's interests and right. It insists (1) absent proof of business contract with a state-approved insurance company, or (2) absent evidence that petitioner sent the commissioner of safety a $65,000 check, or (3) absent a certificate of surety bond for $65000, or, (4) absent affidavits of settlement between parties involved in a qualifying accident — absent any one of these four proofs of financial responsibility in § 55-12-105,

that petitioner's car cannot be remain registered as a motor vehicle with the department for tax, regulatory or safety purposes.

The sum of this conflict is that petitioner demands restoration of his registration and ultimately a ruling upholding the financial responsibility law as written, overturning the entire policy operating today effectively converting the Tennessee financial responsibility law of 1977 into the Tennessee mandatory insurance law of 2017 enforced promiscuously upon all registrants. His filings make clear that he is seeking a ruling against, or a scrapping of, the entire program as a fraud — fruit of official misconduct and official oppression knowing and intentional, pursuant to administrative notice.

In this motion, however, more narrowly, petitioner moves the administrative officer for a lesser relief, that of a temporary injunction pending outcome of proceedings.

I. Introduction

The removal of the car's motor vehicle status brings two harms. (1) It prevents petitioner from using the car for commerce, for hire, for private gain, for any revenue-producing purposes where the contract for service is for paying passengers or cargo as common or private carrier. (2) Revoking registration means the metal registration proof-of-tax-paid "license plate" will draw notice of police and deputies upholding the commissioner's policy that no car, automobile, or motor vehicle can use the public roads if not insured prior to any qualifying accident or, more dangerously to petitioner, *that no car of any description can use the public road if not for commercial or taxable purposes*, effectively, that automobiles and cars do not exist or cannot be used for private liberty locomotion except that they be converted into motor vehicles under Title 55, motor and other vehicles.

The filings in the case indicate petitioner seeks **permanent restoration** of his motor vehicle registration on the grounds that, absent a qualifying accident, he is not subject to TFRL and that none of its provisions put him in status of facing a known legal duty to purchase a motor vehicle insurance policy or perform any of the three other options for proof of financial security as listed in the law's liability provisions at § 55-12-105.

Demands in this motion are of record already. In Amended notice of appeal, petitioner "[d]emands stay of execution on revocation of registration until this challenge is concluded. Absent a stay of execution, petitioner asks the administrative judge to issue an injunction that temporarily rescinds the suspension during proceedings in this action, subject to any fees petitioner might ordinarily pay to renew for a year the tag and registration, which is said to have expired Aug. 31, 2023."

This motion for temporary injunction empowers the hearing officer to consider petitioner's claims before getting his case in chief and determining the likelihood of its prevailing, and to therein grant temporary relief from the harms alleged by complainant that already have been imposed without an opportunity to be heard. Petitioner's request does not fit precisely the requirement for the motion for temporary injunction the hearing officer allows in his Nov. 22, 2023, order. Petitioner's request, given proceedings thus far, more precisely, is that —

(1) The administrative judge consider the revocation of July 21, 2023, and

(2) That he **rescind** the act of the automated suspension under the commissioner's authority, and,

(3) That he order the registration be **conditionally and provisionally restored** until proceedings reach conclusion in any judicial review.

II. Injunction

Under TRCP Rule 65, "Every restraining order or injunction shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act restrained or enjoined." Tenn. R. Civ. P. 65.02. "A temporary injunction may be granted during the pendency of an action if it is clearly shown *** that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual." Tenn. R. Civ. P. 65.04

Four factors Tennessee courts use in determining whether to issue a temporary injunction: "(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest." *Fisher v. Hargett,* 604 S.W.3d 381, 394 (Tenn. 2020). Newsom v. Tennessee Republican Party, 647 S.W.3d 382, 385 (Tenn. 2022), appeal granted (June 9, 2022). If a plaintiff cannot show a likelihood of success on the merits, that factor is typically determinative.

Irreparable harm threat

Petitioner uses his car for private purposes, for protectable 1st amendment personal liberty and Tenn. const. art. 1, sect. 19, press rights, among other rights. Secondarily, he uses his car under Gibbons v. Ogden, 22 U.S. 1, 6 L. Ed. 23 (1824), and under Booher

to exercise the right of commerce at liberty under the federal congress and the regulatory apparatus of state of Tennessee.

Concerned for his personal safety from police violence *ultra vires* while using the people's right of way, he asks the commissioner in a July 26, 2023, certified-mail inquiry if DOR will protect his person from abuse pending outcome of the contested case.

> I am a radio journalist, with my occupation, calling, trade, vocation and living entirely in a studio and at city locations where news occurs. I use the automobile purely for private necessities, private business (not transportation) and do not carry goods or people for hire, private profit or gain in a way that affects the public interest and would require me to obtain permission from the departments of revenue and safety to participate in taxable activities under privilege, and am thus a *nontaxpayer* insofar as the driving privilege goes in Tennessee law pertaining to taxable activities, occupations, callings, vocations or trades.
>
> Kindly tell me if the department will by document recognize my status as a private party on the road apart from the taxable, regulable activities otherwise under your purview.

DOR does not respond to this request.

Because police authorities statewide disregard the distinction between the personal liberty of travel on one hand and commercial use of the roads under state privilege on the other, petitioner avers continuing irreparable harm and threat of irreparable harm directed at him from police officers, deputies, troopers and others. Enforcement policies of long custom and usage in Hamilton County and Chattanooga **reject this distinction**, and so are bound to injure petitioner in the private use of the car, still bearing as it does the metal tax plate on the back, revoked by the commissioner and now expired, a motor vehicle without portfolio, as it were, without protections the privilege gives in face of local police custom. **EXHIBIT No. 1**, letter Chattanooga police department on prosecutions under

TFRL pursuant to policy. **EXHIBIT No. 2**, letter Vince Dean, clerk of criminal court, Hamilton County, prosecutions under TFRL pursuant to policy. **EXHIBIT No. 3** Revenue department letter citing 408,821 criminal convictions under TFRL in the past five years

His van is personal family chattel and property, and as an object typical of those of the day, as an automobile, is best suited for the exercise of rights to maintain life, limb, obligations and property.

> Most obviously, being unable to drive in Tennessee limits the jobs available to a person and makes holding a job difficult once the person has it. "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, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). Some jobs require a person to drive as part of his duties, and even those jobs that do not themselves involve driving generally require the employee to be somewhere, reliably, on time. *** Based on its judicial notice of these aforementioned facts, the court concludes that it is beyond dispute that, at least as a general proposition, the cities, towns, and communities of Tennessee are pervasively *527 structured around the use of motor vehicles. Anyone who doubts that premise is welcome to attempt to run a day's worth of errands in a rural Tennessee county with no car and very little money. The centrality of motor vehicle travel is, moreover, not solely a rural problem. Even the relatively dense city of Nashville, where the court sits, is deeply reliant on motor vehicle transport. If any city in this jurisdiction could be expected to be reasonably navigable without driving, it would be Nashville—and the court takes judicial notice that, to the contrary, Nashville is a city where motor vehicle travel is an essential part of ordinary life, particularly for anyone seeking to maintain or build economic self-sufficiency.

Thomas v. Haslam, 329 F. Supp. 3d 475, 520, 526–27 (M.D. Tenn. 2018), vacated and remanded sub nom on other grounds. Thomas v. Lee, 776 F. App'x 910 (6th Cir. 2019)

Ban on use of the motor vehicle constitutes a ban on the minivan's use as a car.

Denial of the use of petitioner's car infringes on his property rights in his occupation as press member because all law enforcement officers statewide believe that no one may use the public roads apart from proofs of commerce – starting with a "valid" tag. The harm threatened by these actors such as Hamilton County sheriff Austin Garrett and deputy Brandon Bennett serving respondent policy, and other policies operating in Tennessee, is of ***false imprisonment and false arrest***. They operate against people such as petitioner as if there had been passed by the general assembly a bill of pains and penalties. However, no such bill of attainder, as they are called at law, has been passed. These parties operate as if one such bill had been passed, which would be facially unconstitutional as petitioner has right of protection at Tenn. const. Art. 1, sect. 7, on warrantless arrest, and equivalent protections in the federal constitution. Local law enforcement agencies (LEAs) **prosecute private use of cars upon the entire class of people, again apart from warrant or indictment, as if bills of attainder, or bills of pains and punishments**, had indeed been passed by the general assembly. But such bills are prohibited under the U.S. const. Art. 1, sect. 9 and art. 1 sect. 10.

Press member petitioner has devoted much of his career to reporting how police, deputies and others arrest people for the exercise of their rights apart from commerce privilege. Meaning, the arrest of people whose motor vehicle status is flagged with expired, suspended or revoked plates, or their persons flagged for expired, suspended or revoked driver licenses – all criminally prosecuted. Many of these people are in fact and as a matter of law not involved in the state privilege grant because they carry on no business under the authority of privilege. This authority is described in the key 1877 case, Phillips v. Lewis, 3 Shannon's cases 230. [1] **EXHIBIT No. 4**

[1] Police power and regulatory authority under the UAPA are exercisable upon those "on the privilege" of driving or operating a motor vehicle. Phillips describes a privilege as an occupation, trade or calling such as the raising of bitches or jackasses for private profit and gain.

> This pursuit or occupation is taxed, not as property, but as an occupation. Another element in this occupation is, that its object and pursuit is directed

Petitioner puts his finger on this problem in an initial filing in this case. That is his affidavit of mistake in which he says he is a victim of deceit and fraud that is attributable not to any one person or department of state, but one enculturated across society, its claims pressed by schooling, media, social relations and public expectation and belief about what is required of a citizen or inhabitant in the use of an automobile, and how its use is entirely tied up in state commercial privilege. [2] In the affidavit the petitioner states that if it is true that private travel and communication is entirely banned in Tennessee if not under privilege administered by DOSHS, the department of revenue and all law enforcement agencies in all cities and counties, that he rescinds his signature on any and all state forms connected with the privilege — renounces said privileges — in preference of the exercise of his rights private. He is, thusly, if he cannot exercise both rights, willing to sacrifice commerce under privilege and retain enjoyment of his travel, communication, self-propulsion rights under the constitution. **SEE APPENDIX No. 1.**

> to a profit to be made off the general public, the merchant having a relation, by reason of his occupation, to the whole community in which he may do business, by reason of which he reaps, or is assumed to reap, the larger profit by drawing upon or getting the benefit of the resources of those surrounding him. The same idea is involved in the case of the peddler, who may range over a whole county by virtue of his license. His is an occupation of like character, a peculiar use of his capital varied only in some of its incidents.

Phillips at 240

[2] Affiant insists he will not waive one right to exercise another, but as belligerent claimant in person asserts firstly the fundamental right of communication and personal liberty of movement. His statement of rescission of authority of signature is conditional:

> 18. If these employees succeed with colorable claims that affiant's right to drive and operate a registered motor vehicle is simultaneously an admission that he yields, waives and surrenders enjoyment of the underlying federal right to communicate and travel freely, then affiant declares this affidavit operative, and all signatures of application void and null, as they are obtained under mistake and fraud.

The matter of privilege enforcement cannot be failed to be addressed in this contested case. If the hearing officer takes administrative, or judicial, notice of this important fact of law enforcement's oppressing a right, it requires him to accept there is such a thing as private travel, dividing out by a solid white line the distinction between privileged use (transportation, traffic, *taxpayers* on the go) and private or free use (***nontaxpayers*** pressing the gas pedal). If he denies that such a thing as private travel exists, then there must be a finding of fact and law that no distinction exists between taxpayer and nontaxpayer in the use of the roads. (Petitioner's Affidavit of mistake indicates he will not yield the right of communication under the constitution to be able to exercise the privilege of driving and operating a motor vehicle.)

If he has a right of travel, unaffected by the state's regulatory structure (see State v. Booher, 978 S.W.2d 953, 955–56 (Tenn. Crim. App. 1997)), there is no need for a temporary injunction, for petitioner can simply remove the plate from the back of the car and use the minivan as a car without a plate. [3] But that *guarantees* his arrest for

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[3] We agree with the appellant that he enjoys a fundamental right to freedom of travel. *** Travel, in the constitutional sense, however, **means more than locomotion**; it means migration with the intent to settle and abide. *Id.* Thus, any American is free to travel from state to state, and to change his state of residence or employment whenever he desires, unrestricted by unreasonable government interference or regulation. *See* 16A C.J.S. *Constitutional Law* § 478 (1969). Whether a specific type of travel is protected by one's constitutional right to travel depends upon the intent which motivates the movement. *Id.*

2 In the present case, the appellant asserts that the State of Tennessee has unduly infringed upon his "right to travel" by requiring licensing and registration of his motor vehicles prior to operation on the public roadways of this state. However, contrary to his assertions, **at no time did the State of Tennessee place constraints upon the appellant's exercise of this right.** His right to **travel within this state or to points beyond its boundaries remains unimpede**d. 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.

exercising his rights of ingress and egress, based on the land itself on which petitioner has abode.

Petitioner has indicated he does not use the disputed car as a carrier. But he has a right to do so, and is suing for the reinstatement of this right – this privilege to which he has a right. He is suing to have the tag restored (1) to avoid police activity that implicates ingress and egress rights to abuse them under presumption he is in commerce, and, (2) to be free to pursue the occupation, trade or calling as driver or operator of a motor vehicle.

Without a temporary reinstatement, he is subject to criminal charge that would be an irreparable injury to him and a knowing and intentional tort.

Harm to DOR

The grant of a temporary registration for petitioner does no harm to the department, no person working in the department. It does not harm the state of Tennessee, its corporate personae, no person in its employment, none of its properties. It imposes no harm to any remnant of Tennessee government as originally conceived by the drafters of the 1796 constitution nor that remaining under the latter 1870 revision. The grant of such a temporary registration does not disturb any part of the peace or tranquility of the state, or its property interest in police power exercisable for the public health, safety or welfare. None of its corporate functions is in any way impeded by petitioner's having a valid tag on the back bumper of the disputed car.

> *956 3 The ability to drive a motor vehicle on a public highway is *not* a fundamental "right." *** (citations omitted). Instead, it is a revocable "privilege" that is granted upon compliance with statutory licensing procedures.

State v. Booher, 978 S.W.2d 953, 955–56 (Tenn. Crim. App. 1997) (emphasis added)

Given that petitioner is in court with respondent to challenge the policy in defense of the law and the right to have a privilege restored, it would appear equitable for the administrative hearing officer to recognize that petitioner in no way deserves further injury beyond the denial of due process he has already suffered at respondent's hand, that being condemned without a chance to be heard prior to taking by revocation, which right is recognized in TFRL at T.C.A. §55-12-103 and 104. [4]

The administrative hearing officer might rest assured on two points regarding fender-mounted tags. Traveling on an expired tag offends no one under the public offense standard of arrestable misdemeanors under TCA 40-7-103, warrantless arrest by officer. A tag on display that happens to be temporary causes no greater response, no consternation. The public offense standard for arrestable misdemeanor offense, the offense must be in the nature of a breach of the peace, one in which there is the element of riot, affray, disorder, chaos, with witnesses or nearby members of the public feeling uneasy or personally threatened. A tag, whether expired or temporary, causes no such effect, and *no public concern whatsoever.* [5]

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[4] The Tennessee constitution protects the right to be heard at art. 1, sect. 8, Section 8. "That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land."

Petitioner has right to be heard on his suspension before it takes place.

> Notices of the suspension of the operator's license and the **motor vehicle's registration** shall be sent by United States mail not less than twenty (20) days **prior to the effective date** of suspension. Each notice shall state that the vehicle's operator or owner, or both, are entitled to an **administrative hearing held by the commissioner of safety**, or the commissioner's delegate, pursuant to a request under § 55-12-103(a).

T.C.A. §55-12-103 (emphasis added)

[5] The warrantless arrest by officer law is as follows:

(a) An officer may, without a warrant, arrest a person:

Petitioner sues for relief in agency to bring home to the commissioner that policy misreading the law and voiding many elements of TFRL is a negative equity, which already has injured petitioner in his property interest in the privilege of commerce and in his rights under law to due process, denied by respondent.

Probability of success

The probability of success of this petition is strong because petitioner is defending the law itself as written, with support of numerous court cases that deny Tennessee runs an extortion racket upon the public and instead runs a properly legal and lawful financial responsibility regime for licensed drivers and operators using the people's roads for commercial purposes as registrants with the department for their taxable and regulable activities for profit and gain under privilege.

From 1949 to the present, court cases describe TFRL as after-accident financial responsibility.

> ***Mandatory Suspension for Violation of Financial Responsibility Law*** Tennessee's "Financial Responsibility Law requires motorists

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> (1) For a public offense committed or a breach of the peace threatened in the officer's presence;

Tenn. Code Ann. § 40-7-103

> "The term, 'breach of the peace' is generic, and includes riotous and unlawful assemblies, riots, forcible entry and detainer, the sending of challenges and provoking to fight, going around in public, without lawful occasion, in such manner as to alarm the public, the wanton discharge of firearms in the public streets, engaging in an affray or assault, using profane, indecent, and abusive language by one toward another, on a street and in the presence of others, or being intoxicated and yelling on the public streets in such a manner as to disturb the good order and tranquillity of the neighborhood." 8 Ruling Case Law, p. 285.

State ex rel. Thompson v. Reichman, 135 Tenn. 653, 188 S.W. 225, 229 (1916)

> who have been involved in an accident where anyone is killed or injured, or an accident resulting in more than $400 in damage to the property of any one person, to show **proof of financial responsibility" — most commonly through proof of insurance**. Purkey v. Am. Home Assur. Co., 173 S.W.3d 703, 706 (Tenn. 2005) (citing Tenn. Code Ann. § § 55-12-105,-139). A driver is also required to show proof of financial responsibility "[a]t the time the driver of a motor vehicle is charged with any violation under [the state's motor vehicle safety laws or] any other local ordinance regulating traffic." Tenn. Code Ann. § 55-12-139(b)(1)(A). Violation of the financial responsibility law is a Class C misdemeanor. Am. Home Assur. Co., 173 S.W.3d at 706 (citing § 55-12-139(c)). By statute, the TDSHS "shall suspend the driver license of the TDSHS "shall suspend the driver license of the person convicted of" a violation of the law "[u]pon receipt by the commissioner of a record of conviction of failing to show evidence of financial responsibility." Tenn. Code Ann. § 55-12-115(a). A driver seeking reinstatement of a license that was suspended for violation of the Financial Responsibility Law must submit evidence of financial responsibility, in addition to paying required fees. Tenn. Code Ann. § 55-12-115(b).

Robinson v. Purkey, 326 F.R.D. 105 (M.D. Tenn. 2018), p. 9 (emphasis added; section title emphasis original)

Numerous state cases agree with the federal court. Petitioner cites two rulings in Administrative notice on Tennessee law requiring proof of financial responsibility after roadway accident, submitted into the record and putting the commissioner on awares about TFRL's duties imposed upon a limited segment of Tennessee's motoring public.

> 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 "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 (emphasis added)

> "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

The case Freddie J. Cook et al v. Mark Hughes, Case 3:05-cv-00439-HBG, filed Jan. 8, 2009, in U.S. district court in Knoxville, notes that, "Judge Koch, writing on behalf on the court, included an excellent discussion of the role of the Tennessee Financial Responsibility Act," quoting *for more than a page* from *Burress v. Sanders,* 31 S.W.3d 259, 263 (Tenn. Ct. App. 2000).

An earlier case describes a longstanding 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) (emphasis added)

As recently as 2018 Tennessee court of appeals says Tennessee is an after-accident state.

Tennessee law requires automobile drivers to maintain acceptable proof of financial responsibility as defined by the Tennessee Financial Responsibility Law of 1977. *See* Tenn. Code Ann. § 55-12-101, *et seq.* (2017). "Although the Financial Responsibility Law **does not, by its express terms, require drivers to obtain liability insurance in order to comply, the Law clearly contemplates that most drivers will comply** by purchasing liability insurance." *Purkey v. Am. Home Assur. Co.*, 173 S.W.3d 703, 706-07 (Tenn. 2005); *see* Tenn. Code Ann. § 55-12-102(12) (2017) (defining "proof of financial responsibility" as proof of liability insurance, self insurance, or deposit of cash or post of bond in the amount of $60,000). As our Supreme Court has explained:

> The purpose of Tennessee's Financial Responsibility Law is to protect innocent members of the public from the negligence of motorists on the roads and highways. Specifically, "[t]he financial responsibility laws of this State are concerned with the ability of an automobile driver to pay for bodily injury and property damage for which he may be legally liable."

Tennessee Farmers Mut. Ins. Co. v. Debruce, No. E201702078COAR3CV, 2018 WL 3773912, at *6 (Tenn. Ct. App. Aug. 9, 2018), rev'd on other grounds, 586 S.W.3d 901 (Tenn. 2019) (emphasis added)

The provision DOR enforces, § 55-12-139, considered in *pari materia*, does not give the authority exercised by respondent. Neither does § 55-12-210, giving DOR its marching orders on sending notices of registration revocation, give respondent independent authority. Under the rules of statutory construction, particularly that of *ejusdem generis*, "where general words follow special words, which limit the scope of a statute, these general words will be construed ordinarily as applying to things of the same kind or class as those indicated by the preceding special words. *State v. Wheeler,* 127 Tenn. 58, 152 S. W. 1037. This rule is one of frequent application, and is a valuable aid in the construction of statutes." State v. Grosvenor, 149 Tenn. 158, 258 S.W. 140 (1924).

When general statements in section 139 – "This part shall apply to every vehicle subject to the registration and certificate of title provisions," or "It is an offense to fail to provide evidence of financial responsibility pursuant to this section" – seem to create broad authority over parties not previously subject, the matter must come under control of earlier, narrow provisions in sections 101 *et seq* that are the heart and soul of the law.

It is fair to foresee that petitioner – his case riding upon the law – is likely to prevail as against DOR policy.

The law makes parties exercising the driving privilege subject to obedience after a wreck. 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 mishap 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 financial responsibility

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 proof of financial responsibility. "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).

The EIVS system lets officers verify whether a person involved in an accident has met his or her financial responsibility obligation with an insurance policy. T.C.A. § 55-12-202 says the system exists "to verify whether the financial responsibility requirements of this chapter have been met with a motor vehicle liability insurance policy" on part of a driver under a duty to show proof of financial responsibility. 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 to verify the motor vehicle insurance policy.

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.

The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) says in a white paper, "An individual may need a Certificate of Financial Responsibility due to unsatisfied judgments, driving without insurance, certain moving violation convictions or the inability to provide evidence of financial responsibility after involvement in a crash. Certificates of Financial Responsibility are typically referred to as an SR-22, FR-44 or similar designation depending on the jurisdiction and reason for the filing."

The SR-22 is a certificate of insurance. This form provides evidence of insurance when an insured is required to furnish proof of financial responsibility for the future. Because of the added costs and reasons involved in filing an SR-22 form, many states allow an additional charge to the insured. States handle via either electronic files or paper forms.

STATE OVERVIEW

Automobile Financial Responsibility Laws (Property Casualty Insurers Association of America Compilation) ***

TENNESSEE

I. General

A. Future proof of insurance certificates (SR22) is required in the following situations:

1. Unsatisfied judgment.
2. Driver license suspension as a result of a major conviction.

3. Conviction point system suspension.
4. Failure to establish financial responsibility after an accident.

(Source: Financial Responsibility Programs and Procedures Guide, January 2015, Compiled by Insurance Industry Committee on Motor Vehicle Administration (IICMVA). Excerpts. https://www.iicmva.com/FRguide2015Final.pdf **EXHIBIT No. 6**

SR-22 **FINANCIAL RESPONSIBILITY FORM**

Insured { Name _____ (Last / First / Middle)
Address _____

Case Number	Driver's License Number	Birth Date	Social Security Number

Current Policy Number _____ Effective from _____

This certification is effective from _____ and continues until cancelled or terminated in accordance with the financial responsibility laws and regulations of this State.

The insurance hereby certified is provided by an:

☐ **OWNER'S POLICY:** Applicable to (a) the following described vehicle(s), (b) any replacement(s) thereof by similar classification, and (c) any additionally acquired vehicles of similar classification for a period of at least 30 days from the date of acquisition.

Model Year	Trade Name	Identification No.	

☐ **OPERATOR'S POLICY:** Applicable to any non-owned vehicle.

_____ **FINANCIAL RESPONSIBILITY INSURANCE CERTIFICATE**
(State)

The company signatory hereto hereby certifies that it has issued to the above named insured a motor vehicle liability policy as required by the financial responsibility laws of this State, which policy is in effect on the effective date of this certificate.

Name of Insurance Company _____ NAIC Code _____

Date _____ By _____ Kathleen M. Cerny
Signature of Authorized Representative

8123 (01/07)

Forms such as this one exist for SR-22 high-risk motor vehicle insurance policies, though many agencies such as Ramsey Insurance in Chattanooga have entirely automated forms online populated by keyboard strokes.

Offenses under financial responsibility

A driver or operator whom by a roadway accident is made subject to the financial responsibility statute if, after the expiry of the 20-day deadline 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.

For a person already subject to the statute because he failed to show financial responsibility in an earlier case involving a judgment or safety department suspension, failure in a subsequent accident to meet the 20-day deadline to inform the commissioner of safety about the 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 are those under court verdict or order or privilege suspension by either safety or revenue departments, terms of which after-accident supervision require insurance policy coverage under the SR-22 insurance industry standard form 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." Further exempted from any duty to report to the safety commissioner is "The requirements of security and revocation contained in this part shall not apply to *** (13) An owner or operator of any vehicle where there is no physical contact with another vehicle or object or person, unless a judgment has been obtained." § 55-12-106. Exceptions. Accident reports are not required of "The owner or operator of any vehicle where there is no physical contact with another vehicle or object or person" § 55-12-104.

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 post-accident subject insured motorists by state agencies and insurance company partners. "Nothing in this part *shall alter the existing financial responsibility requirements* in this chapter" (emphasis added). A provision outlines how safety and revenue 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.

The commissioner of safety is the lead in suspensions; revenue *responds to requests* from safety to revoke registration of a party that is convicted by a court or who fails to show financial responsibility in an accident, or in a second or third accident in which the owner or operator continues to fail to show financial responsibility. Generally, the TFRL gives

initiatory regulatory power to safety, with revenue having responsive powers following safety's lead. It is "unlawful" for DOR even to reregister a tag without safety's nod. § 55-12-130. Reregistration; approval of commissioner

Public interest

Temporary injunction should issue because this case is set before the commission as a matter of public concern and benefit, with petitioner having standing to sue against the policy in the public interest. Though not judicially declared a class action case by nature of the venue, the evidence of the public intent include petitioner's references to people "in like station" and his insistence in one hearing — that over subject matter jurisdiction on Oct. 24, 2023 — that he is not interested in any sort of exception, exemption or special relief not given to everyone in the state if he gets his registration restored. Specifically, petitioner states:

> But I have as a representative of the public – I have larger things than just my personal interest. It's important for me that this issue can be fought, OK, that this issue can be settled, and I have no, I do not want to just have my registration restored. That would not be proper, absent a finding about the law. I don't want an exemption, I **don't want exception**, Mr. Buchanan and Miss Cline. I **don't want any kind of favor** to me. If I get it — if I get my registration restored, **that's because the department is being forced to understand what the statute says, and everybody will have benefit.** I do not – since revocation has happened, and I've been injured — I have to have that in place [standing]. I will not give that up. I will not accept. And I would **challenge any effort to give me back my registration absent a finding in the court, or the courts, that this is a barbaric abuse of the people** in Tennessee *** that there is a recognition that that's what the law really says. [emphasis added]

Tennessee's great master of equity, Chancellor Robert Gibson, speaks of a plaintiff's purpose and intent in making a claim. "Equity heeds not forms, but strives to reach the substance of things; and to ascertain, uphold and enforce rights and duties which spring

from the real relations and the actual transactions of the parties" (*Gibson's* § 52, Equity Looks to the Intent rather than to the Form.) [6] The form in present case is petitioner's registration, the dispute over it empowering the judge to dig to the foundation of the alleged abuses.

The public interest here is protected just as it is in a federal court challenge to a section of TFRL in a 1976 ruling.

> In construing section 1212 as it did, the Attorney General's Opinion sought to alter the very substance of the section's scheme, completely eliminating an exemption that the legislature had articulated in clear and precise terms. Thus our analysis of the deficiencies of the Department's Regulation No. 2, discussed above, is applicable with equal force to the Attorney General's 1962 Opinion. The Opinion represents an attempt to amend a legislative enactment by administrative fiat, and as such can be given no operative effect.

Beazley v. Armour, 420 F. Supp. 503, 509 (M.D. Tenn. 1976)

In that case, as in this one, the public interest is served by challenge to *ultra vires* activity, and so petitioner as a right to immediate relief to avoid further harm to himself in pursuing these proceedings on behalf of the general public.

III. Conclusion, relief requested

The department of revenue is charged with administering suspensions of motor vehicle registrations "upon request by" the commissioner of safety. § 55-12-104. Nowhere in the law does respondent play an initiatory or leading role in dealing with a member of the traveling public over financial responsibility. Commissioner Jeff Long at DOSHS is the

---

[6] Gibson, Robert, *Gibson's Suits in Chancery* (Charlottesville, Va.: Michie, 1955)

head, Commissioner David Gerregano in revenue **is the tail.** Always, revenue responds to directives from the outward- and public-facing agency of the department of safety. Together, the departments secure the state's interest in financial responsibility among those owners, drivers or operators involved in a qualifying accident with $1,500 in property damages, or bodily injury or death.

State law is about financial security, not mandatory insurance. The law is "about" "financial responsibility;" the name reflects its essential nature as **duty after mishap** under state supervision for the public welfare. Responsibility is "the obligation to *answer for an act done*, and to repair any injury it may have caused," *Black's Law Dictionary*, rev. 4th ed. (emphasis added). The law requires those subject to it after a wreck to respond to facts of the accident. It presupposes facts for which a party must show *financial security*. "Financial security" is a synonym of financial responsibility in definitions, § 55-12-102. They are distinct, however, in that security describes a status or condition of being — it's descriptive of a wealth condition of a party able to make good or to pay, a concept independent of any particular claim. Financial responsibility operates upon facts post-accident, as Burris and Erwin courts explain. Financial security stands apart, ready and able to help.

Petitioner does not fall under the provisions requiring financial responsibility because of a qualifying accident, nor under T.C.A. § 55-12-139. Petitioner has not been "charged with 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 department has authority to "verify" insurance, but only upon those liable for performance and under duty to obey TFRL, this party required to have a motor vehicle policy or other proof. Atwood's 55-12-202 creates an online portal so DOR can "verify whether the **financial responsibility requirements of this chapter** have been met with a motor vehicle liability insurance policy" (emphasis added). The commissioner errs badly

to ignore this crucial provision in Atwood: ***"Nothing in this part shall alter the existing financial responsibility requirements in this chapter."*** T.C.A. § 55-12-214 (emphasis added).

The "insurance verification program" runs on a filter targeting those under duty, because of an accident or judgment to have proof of financial responsibility.

If a person is liable to have proof of financial responsibility by having financial security – insurance is an option creating that financial security – financial responsibility is required and no insurance can be verified, the department of revenue shall give notice that proof of financial "security" or an exemption is required. T.C.A. § 55-12-210. Security is required after a qualifying accident or suspension. T.C.A. § 55-12-105 to 112 . **See APPENDIX No. 2.**

The courts say Tennessee is an after-accident financial responsibility state. The accident parties required to obey § 55-12-104 bring to bear proof of financial security so that they might show financial responsibility. Those fulfilling their duty come clear of the law's claims and are subject to none of its other provisions. They are free to buy insurance if they want to – or if they can afford it.

Those failing their duty to show financial responsibility come under state correctives directed by the commissioner of safety, and consequently are liable to show continually for three or five years proof of financial responsibility in encounters with an officer, whose verification is supposed to check for high-risk insureds under the industry's SR-22 certificate.

Rules of statutory construction that petitioner will brief later keep the three branches of government in their lanes. No one can create a program or administration by reinterpreting a law's penalty provision at 139, or claiming new technology allows for a

new body of citizens to be made subject to a law when, previously to the new tech, they weren't. No agency can supply a perceived defect in law. Neither can a court.

> "Where the State has, in the exercise of its police power, undertaken by appropriate legislation to regulate traffic upon streets and highways, providing penalties and remedies to promote the safety of the traveling public, it is not within the prerogative of the judiciary to provide additional remedies and safeguards.
>
> 'The general rule is that nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the act itself, and that a statute should not be construed any more broadly or given any greater effect than its terms require. Where the language of the statute is clear in limiting its application to a particular class of cases and leaves no room for doubt as to the intention of the legislature, there is no authority to transcend or add to the statute which may not be enlarged, *664 stretched, or expanded, or extended to cognate or related cases not falling within its provisions.' 50 Am.Jur., Section 229.
>
> '* * * where the statute creates a new right and prescribes the remedy for its enforcement, the remedy prescribed is exclusive.' Sutherland on Statutory Construction, Vol. 3, Section 5812. See also 82 C.J.S., Statutes, § 374, p. 869.

Turner v. Harris, 198 Tenn. 654, 663–64, 281 S.W.2d 661, 665 (1955)

In light of petitioner's pleadings on behalf of the financial responsibility statute, he requests relief of a temporary injunction commanding the department to issue a valid updated sticker or tag, on whatever fee basis the hearing officer believes equitable, provisionally, until proceedings are concluded and the last deadline passes for any notice of appeal beyond a final ruling in judicial review.

Respectfully submitted,

David Jonathan Tulis

CERTIFICATE OF SERVICE

A digital copy of this document is being emailed this 1st day of December 2023, to the party representing the respondent, as follows:
Camille Cline, Department of Revenue
Camille.Cline@tn.gov

Exhibits

EXHIBIT No. 1, letter Chattanooga police department

EXHIBIT No. 2 Letter Vince Dean, clerk of criminal court, Hamilton County (criminal prosecutions against the general public)

EXHIBIT No. 3 Revenue department letter citing 408,821 criminal convictions under TFRL in the past five years

EXHIBIT No. 4, Phillips v. Lewis, 3 Shannon's cases 230

EXHIBIT No. 5, Financial Responsibility Programs and Procedures Guide, January 2015, Compiled by Insurance Industry Committee on Motor Vehicle Administration (IICMVA). Excerpts

Appendix No. 1

These are helpful and oft-noted reminders about constitutionally guaranteed rights and built-in limits upon the state and its agencies.

➤ Miller v. United States, 230 F.2d 486, 490 (5th Cir. 1956) "The claim and exercise of a constitutional right cannot *** be converted into a crime."

➤ Miranda v. Arizona, 384 U.S. 436, 491, 86 S. Ct. 1602, 1636, 16 L. Ed. 2d 694 (1966) "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

➤ Murdock v. Com. of Pennsylvania, 319 U.S. 105, 114, 63 S. Ct. 870, 875, 87 L. Ed. 1292 (1943) "[A] person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution."

➤ Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147, 151, 89 S. Ct. 935, 939, 22 L. Ed. 2d 162 (1969) "And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license."

➤ Simmons v. United States, 390 U.S. 377, 394, 88 S. Ct. 967, 976, 19 L. Ed. 2d 1247 (1968) "[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another."

➤ Sherar v. Cullen, 481 F.2d 945, 947 (9th Cir. 1973) "[T]here be no sanction or penalty imposed upon one because of his exercise of constitutional rights."

➤ Thompson v. Smith, 155 Va. 367, 377–78, 154 S.E. 579, 583 (1930) "The right of a 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 his 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 purposes of life and business. It is not a mere privilege, like the privilege of moving a house in the street, operating a business stand in the street, or transporting persons or property for hire along the street, which a city may permit or prohibit at will. 9 The exercise of such a common right the city may, under its police power, regulate in the interest of the public safety and welfare; but it may not arbitrarily or unreasonably prohibit or restrict it, nor may it permit one to exercise it and refuse to permit another of like qualifications, *378 under like conditions and circumstances, to exercise it."

Appendix No. 2

These citations from § 55, chapter 12, highlight that the law intends to be administered as a financial responsibility law, with the Atwood amendment in section 2 intended as means to verify that high-risk drivers have the requisite insurance as a condition of their license and motor vehicle registration.

T.C.A. § 55-12-202

The purpose of this part is to develop and implement an efficient insurance **verification** program that utilizes the online **verification** system and data transfer standards for transmitting a full book of business specifications, model, and guide of the Insurance Industry Committee on Motor Vehicle Administration in order to **verify** whether the **financial responsibility requirements** of this chapter have been met with a motor

vehicle liability insurance policy, and to provide the commissioner of revenue with the authority to develop, implement, and administer the program.

T.C.A. § 55-12-210

a.

1. 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, or shall direct its designated agent to, provide notice to the owner of the motor vehicle that the owner has thirty (30) days from the date of the notice to provide to the department of revenue:

A. The owner or operator's **proof of financial security** in a form approved by the department of revenue;

B. Proof of exemption from the owner or operator's **financial security requirements** under this chapter;

55-12-105. Security Deposit Following Accident — Acceptable Proof of Financial Security — Revocation of Registration or Operating Privileges for Failure to Deposit Security — Notice — Appeal

Universal Citation: TN Code § 55-12-105

a. The commissioner shall, upon receiving an accident report of an accident occurring in this state that has resulted in bodily injury, or death, or damage to the property of any one (1) person in excess of one thousand five hundred dollars ($1,500), and upon determining that there is a reasonable possibility of a judgment against the owner, operator, or both, and upon receiving notice of a claim filed against the owner, operator, or both, revoke the license and shall request the commissioner of revenue to immediately revoke all registrations of the owner, operator, or both, of a motor vehicle involved in the accident, and in case of a nonresident, the privilege of operating a motor vehicle within this state and of the use within this state of any motor vehicle owned by the nonresident, unless the operator, owner, or both, deposits security in a sum that shall be sufficient in the judgment of the commissioner, and in no event less than one thousand five hundred dollars ($1,500), to satisfy any judgment or judgments resulting from the accident that may be recovered against the operator, owner, or both.

b. The following, and only the following, shall be acceptable proof of financial security:

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, subject to a minimum deposit of one thousand five hundred dollars ($1,500);

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.

c. Any notice of revocation issued under this section shall be sent by United States mail to the last known address of the operator and owner not less than twenty (20) days prior to the effective date of revocation, and **shall state the amount required as security**, and that the operator, owner, or both are entitled to an administrative hearing conducted by the commissioner of safety or the commissioner's delegate pursuant to a request under § 55-12-103(a). Any request for an administrative hearing must be submitted in writing on or before the effective date of the proposed revocation.

d. Notwithstanding this section to the contrary, if an accident results in damage to state or local government property in excess of four hundred dollars ($400), then this section shall apply, and if a deposit of cash or an execution and filing of a bond is made as proof of financial security, then the minimum security deposit or bond is five hundred dollars ($500).

§ 55-12-106. Exceptions to Requirement of Security and Revocation — Additional Acceptable Proof of Financial Security

The requirements of security and revocation contained in this part shall not apply to:

****

13. An owner or operator of any vehicle where there is no physical contact with another vehicle or object or person, unless a judgment has been obtained;

NOTE: Most other numbered subparts involve accidents. Security is established as proof of financial responsibility after an accident.

§ 55-12-108. Duration of Suspension or Revocation for Failure to Report Accident or Deposit Security — Restoration — Determination of Fault Inadmissible in Court of Law
§ 55-12-110. Proof of Damages Sustained — Determination of Amount of Financial Security Required
§ 55-12-112. Custody of Security — Payment of Judgments — Return of Deposit

Gmail Da Exhibit 1 om>

Question for Jerry Sutton on financial responsibility law

4 messages

David Tulis <davidtuliseditor@gmail.com> Thu, Jun 29, 2023 at 4:19 PM
To: cpdcommunications@chattanooga.gov

Dear Jerri,

I have questions regarding Tenn. Code Ann. 55, chapter 12, the financial responsibility law that the police department enforces.

1. Do officers charge people under this statute in traffic stops, traffic arrests and traffic encounters even though no accident has occurred?

2. What is the statutory authority for these arrests apart from an accident?

3. Is there an agreement to make officers or city employees agents of the department of safety and homeland security, which administers this title? Any kind of covenant, contract, accord, memorandum of understanding?

If I could get a statement about how the city administers this law, I would much appreciate it. Do people have to show financial responsibility at all times that they are on the road?

Respectfully yours,

David

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate
(423) 316-2680 c

Jerri Sutton <jsutton@chattanooga.gov> Thu, Jun 29, 2023 at 5:08 PM
To: David Tulis <davidtuliseditor@gmail.com>

Mr. Tulis,

I'm out of the office/ city. I'll refer your questions to working staff.

Assistant Chief Jerri Sutton

[Quoted text hidden]

[Quoted text hidden]

David Tulis <davidtuliseditor@gmail.com> Thu, Jun 29, 2023 at 5:19 PM
To: Jerri Sutton <jsutton@chattanooga.gov>

Yes, Jerri, thank you. This inquiry is not under a hard deadline. So, just work me in as you can. David
[Quoted text hidden]

Glenn Scruggs <gscruggs@chattanooga.gov> Tue, Jul 11, 2023 at 5:42 PM
To: davidtuliseditor@gmail.com

Mr Tulis,

These are the responses to the questions you presented. Thank you for your inquiry. Have a great day.

Chief Scruggs

---------- Forwarded message ---------
From: **David Tulis** <davidtuliseditor@gmail.com>
Date: Thu, Jun 29, 2023, 4:20 PM
Subject: [cpdcommunications] Question for Jerry Sutton on financial responsibility law
To: <cpdcommunications@chattanooga.gov>

Dear Jerri,

I have questions regarding Tenn. Code Ann. 55, chapter 12, the financial responsibility law that the police department enforces.

1. Do officers charge people under this statute in traffic stops, traffic arrests and traffic encounters even though no accident has occurred?
Chattanooga Police Department officers have the ability to issue a citaion to a person for failing to have vehicle insurance.

2. What is the statutory authority for these arrests apart from an accident?
Drivers in Tennessee are required to have vehicle insurance.

3. Is there an agreement to make officers or city employees agents of the department of safety and homeland security, which administers this title? Any kind of covenant, contract, accord, memorandum of understanding? **No**

If I could get a statement about how the city administers this law, I would much appreciate it. Do people have to show financial responsibility at all times that they are on the road? **If a person is operating a motor vehicle (car, motorcycle, truck, etc) in Tennessee, they are required to have insurance and proof of insurance (current insurance card, electronic proof, etc.).**

Respectfully yours,

David

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate
(423) 316-2680 c

--
[Quoted text hidden]

--
Executive Chief G. Scruggs #814
Neighborhood Policing & Community Services Division
City of Chattanooga
Chattanooga Police Department
O: 423-643-5350
P: 423-400-0612
E: gscruggs@chattanooga.gov
W: https://chattanooga.gov/police-department

ONE CHATTANOOGA

Gmail David Tu Exhibit 2

Financial responsibility law cases in county query

4 messages

David Tulis <davidtuliseditor@gmail.com> Tue, Nov 21, 2023 at 11:40 AM
To: vinced@hamiltontn.gov

Dear Mr. Dean, I'm reporting on and researching the Tennessee financial responsibility law of 1977 and its enforcement in Hamilton County

Might you assist me with data about the number of TFRL cases filed in sessions and criminal court?

I am looking for a breakdown of cases. The gross number of cases. The gross number of charges filed by officers or the grand jury. Numbers of cases plea bargained. Numbers of convictions on the charge.

Cases for a year's period, say all of 2022. Or, say August 2022 to August 2023 – a year.

The misdemeanor criminal charge is prosecuted under TCA 55-12-139, or other provision in that chapter.

If this is a document with this data, what is the name of it, so I might request it under open records? If there is no document, is there a way to request you to count the cases?

Respectfully,

David

David Tulis
96.9 FM
NoogaRadio
(423) 316-2680
Davidtuliseditor@gmail.com
USA Radio Network

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate

(423) 316-2680 c

Dean, Vince <VinceD@hamiltontn.gov> Tue, Nov 21, 2023 at 1:17 PM
To: David Tulis <davidtuliseditor@gmail.com>
Cc: "Clark, Jason" <JasonC@hamiltontn.gov>

Mr. Tulis,

I am forwarding your request to Jason Clark, our Chief of Staff. He will assist in pulling together these numbers for you. Please give us a few days, as we are closed some this week for the Holiday. This email request will be sufficient for me. Unless you just enjoy filling out paperwork, there is no need for an open records request. Again, feel free to do so, if you are so inclined. However, our office is happy to fulfill this request, without one.

I hope this helps,

Vince Dean

Criminal Court Clerk

Hamilton County

Courts Building Suite 102

600 Market St.

Chattanooga, TN 37402

(423)209-7500

[Quoted text hidden]

Clark, Jason <JasonC@hamiltontn.gov> Tue, Nov 21, 2023 at 2:11 PM
To: David Tulis <davidtuliseditor@gmail.com>
Cc: "Dean, Vince" <VinceD@hamiltontn.gov>

Good afternoon.

Mr. Tulis,

Below you will find the requested case information in reference to TCA 59-12-139 Violation of Financial Responsibility:

- Total cases 08/01/2022 – 08/01/2023 – 1,474 (All filed by Officers)
- Guilty by Plea - 711
- Dismissed by DA – 761
- Guilty by Trial – 2

I hope this satisfies your request.

I hope you and your family have a Happy Thanksgiving.

Respectfully,

Jason E. Clark

Chief of Staff

Hamilton County Criminal Court Clerk's Office

600 Market St.

Courts Building Suite 102

Chattanooga, TN 37402

(423) 209-7500 (o)

jasonc@hamiltontn.gov

[Quoted text hidden]

David Tulis <davidtuliseditor@gmail.com> Wed, Nov 22, 2023 at 4:35 AM
To: "Clark, Jason" <JasonC@hamiltontn.gov>
Cc: "Dean, Vince" <VinceD@hamiltontn.gov>

Dear Mr. Dean, and Mr. Clark,

Yes, thank you for your correspondence. This reply is helpful.

Respectfully,

David
[Quoted text hidden]

Gmail David T >

Exhibit 3

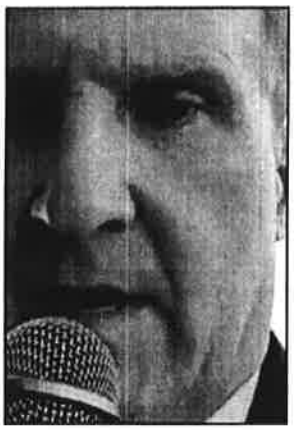
Financial responsibility enforcement query

6 messages

David Tulis <davidtuliseditor@gmail.com> Thu, Jun 29, 2023 at 10:35 AM
To: "kelly.cortesi@tn.gov" <kelly.cortesi@tn.gov>

Dear Mrs. Cortesi, if you could assist me with my questions, I would appreciate it.
David Tulis

David Tulis
96.9 FM
NoogaRadio
(423) 316-2680
Davidtuliseditor@gmail.com
USA Radio Network



Dear Commissioner Gerregano,

I am developing coverage about the TN auto insurance law and its effects on the people of Tennessee.

Please assist me as follows or suggest the party in your department who can help me get details.I'm glad to make petition under open records if you identify which records might be helpful so I can request them under that law.

– Number of registered cars in Tennessee
– Number of auto insurance policies under the Financial Responsibility law at T.C.A. § Title 55, chapter 12
– Total amount of premiums received in the last 5 years among insurance companies
– Does the state collect a percentage of these premiums? What is the percentage?
– Any dollar figures of percentages coming into state coffers?
– Number of criminal cases filed in all the counties upon people alleged to have violated financial responsibility in the past year? Past 5 years?
– Number of people you estimate who are on the roads without an active insurance policy for their car, truck or motorbike.

– Exact citation of the law the department and LEAs enforce requiring people to carry insurance?
– Has the constitutionality of the law, or its enforcement, been challenged?
– Your opinion on whether such a law is constitutional, given it forces people to enter into contract with businesses (equal protection issue).

I would appreciate your time and attention to this line of inquiry.

Respectfully yours,

David Tulis

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate
(423) 316-2680 c

Kelly Cortesi <Kelly.Cortesi@tn.gov> Thu, Jun 29, 2023 at 10:39 AM
To: David Tulis <davidtuliseditor@gmail.com>

Thanks for your email and questions. I will look into answers for these questions for you, and respond as soon as I have more information.

From: David Tulis <davidtuliseditor@gmail.com>
Sent: Thursday, June 29, 2023 9:36 AM
To: Kelly Cortesi <Kelly.Cortesi@tn.gov>
Subject: [EXTERNAL] Financial responsibility enforcement query

Dear Mrs. Cortesi, if you could assist me with my questions, I would appreciate it.
David Tulis

David Tulis
96.9 FM
NoogaRadio
(423) 316-2680
Davidtuliseditor@gmail.com

[Quoted text hidden]

David Tulis <davidtuliseditor@gmail.com> Thu, Jun 29, 2023 at 10:57 AM
To: Kelly Cortesi <Kelly.Cortesi@tn.gov>

Dear Mrs. Cortesi, thanks for noting my email. I don't have a hard deadline for your response, so I appreciate your working me in.

Respectfully,

David
[Quoted text hidden]

David Tulis <davidtuliseditor@gmail.com> Thu, Jul 27, 2023 at 11:23 AM
To: Kelly Cortesi <Kelly.Cortesi@tn.gov>

Dear Mrs. Cortesi, Please respond to my inquiry of June 29.

Respectfully yours,

David Tulis
[Quoted text hidden]

Kelly Cortesi <Kelly.Cortesi@tn.gov> Thu, Jul 27, 2023 at 3:38 PM
To: David Tulis <davidtuliseditor@gmail.com>

Hi Mr. Tulis-

I apologize for the delay. Please see the attached document for responses to your questions. If you have any other questions concerning the Insurance Verification

program, you can send them to me. Information concerning other agencies should be directed to the relevant communications person for that department.

Thank you!

[Quoted text hidden]

EIVS Questions Mr Tulis.pdf
57K

David Tulis <davidtuliseditor@gmail.com> Thu, Jul 27, 2023 at 7:04 PM
To: Kelly Cortesi <Kelly.Cortesi@tn.gov>

Dear Mrs. Cortesi, thank you so much for gathering this information to answer my questions. They will help me tell the story. I trust I can feel free to contact you if other questions arise.

Respectfully,

David
[Quoted text hidden]

-The number of people who work in the financial responsibility section of the department.
18 people

- Number of registered cars in Tennessee
6,340,546 standard passenger vehicle plates

- Number of auto insurance policies under the Financial Responsibility law at T.C.A. § Title 55, chapter 12
5,117,030

- Total amount of premiums received in the last 5 years among insurance companies

According to the Department of Commerce and Insurance, the amount of private passenger auto liability written in Tennessee for the past five years is as follows:

2018 - $2,380,770,332
2019 - $2,443,635,510
2020 - $2,459,366,705
2021 - $2,550,344,437
2022 - $2,677,063,051

- Does the state collect a percentage of these premiums? What is the percentage?

The Department of Commerce and Insurance does not receive any portion of premiums paid by insureds.

- Any dollar figures of percentages coming into state coffers?

The Department of Commerce and Insurance does not receive any portion of premiums paid by insureds.

- Number of criminal cases filed in all the counties upon people alleged to have violated financial responsibility in the past year? Past 5 years?

Per the Department of Safety and Homeland Security, below are the number of people convicted per year for the last 5 years for failing to show evidence of financial responsibility pursuant to Tenn. § 55-12-139:

Year	Convicted Drivers
2018	50,795
2019	57,913
2020	27,074
2021	24,870

408,821
Crim. convictions

2022 24,338

- Number of people you estimate who are on the roads without an active insurance policy for their car, truck or motorbike..

Through June 2023, the number of unconfirmed registrants stands at 1,025,631. This does not necessarily mean that these registrants do not have insurance; it just means we have not been able to confirm that a policy is in place.

- Exact citation of the law the department and LEAs enforce requiring people to carry insurance?

Title 55, Chapter 12, Part 1 is the financial responsibility law which law enforcement officers enforce for vehicles not carrying a form of financial responsibility, and Part 2 is the James Lee Atwood law implementing the Department of Revenue's Electronic Insurance Verification (EIVS) program.

- Has the constitutionality of the law, or its enforcement, been challenged?

The Department of Revenue has received some administrative hearing requests related to the EIVS program. Of the EIVS APAs that have gone to dispositive motions, we are not aware of any that challenged the law under equal protection.

- Your opinion on whether such a law is constitutional, given it forces people to enter into contract with businesses (equal protection issue)

Please see the above statement. It is not the Department of Revenue's purview to opine on the constitutionality of laws.

phillips v Lewis 1877

TENNESSEE CASES

—WITH—

Notes and Annotations

BEING REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF TENNESSEE, NOT HERETOFORE REPORTED, AND ALSO THE CASES CONTAINED IN THOMPSON'S CASES AND THE LEGAL REPORTERS NOT REPORTED IN THE REGULAR SERIES OF TENNESSEE REPORTS

—BY—
ROBERT T. SHANNON
Of the Nashville Bar

IN THREE VOLUMES

VOLUME III

PUBLISHERS
THE BALDWIN LAW BOOK COMPANY
Incorporated
LOUISVILLE, KENTUCKY
1916

Exhibit 4

with the law. The testator might have used the words, "home tract," or "home place," or "the tract of land on which he resides"—or words of boundary or other words designating more certainly his intention.

But the will speaks from his death—and he does not use the words, my homestead—but "my wife's homestead," which we think indicates his intention to let the law carve out the homestead for his wife, and that he used the words, "my wife's homestead" in their technical sense, meaning the land, mansion, and its appurtenances which the law secures to her.

We therefore hold that the chancellor erred in his construction of this clause of the will, or so much thereof as undertakes to declare what the testator meant by the use of the word homestead.

In all other respects than as herein indicated the decree will be affirmed. The costs will be paid by complainant out of the trust fund in his hands.

DISSENTING OPINION.

Turney, J., delivered a dissenting opinion, saying: I dissent from so much of the opinion as disposes of the question of homestead.

JOHN W. PHILLIPS v. W. G. LEWIS, TAX COLLECTOR, ETC.

Nashville, January Term, 1877.

1. CONSTITUTIONAL LAW. Constitution supreme law of the land, and constitutional questions demand grave consideration.

Constitutional questions in a republican form of government like ours, always demand grave consideration. The constitution of our state is not to be lightly esteemed, but must be held, both in great and small matters, to be the supreme law of the land. (Pp. 237, 251.)

2. SAME. Freedom guaranteed, and limitations imposed.

Our constitutions, state and federal, embody the great guarantees for freedom of the citizen that have been wisely wrought out by the experience of ages past. Not only this, but they contain the limitations which the people have imposed upon their official agents as well as upon themselves through their representatives in our legislature, which cannot be disregarded. (P. 237.)

3. SAME. Legislative power unlimited except as forbidden by the constitution; limitations imposed are imperative, and acts violative thereof are void.

It is true, as an axiom admitted everywhere by the courts of the United States, that the legislature of a state may exercise all legitimate powers appertaining to the government of a free people representing as it does the sovereign will of such a people, except what is expressly or by fair implication forbidden by the constitution of such state, yet limitations therein imposed must always be held as imperative, the supreme law of the land, which no legislature can disregard. If it should be done, then it is the duty of any or every court in the land to declare such act void as beyond the power of the legislature and in violation of the embodied will of the people as expressed in their constitution of government. (P. 237.)

4. SAME. All laws to be constitutionally tested, and if forbidden by the constitution, to be held void.

Every act of the legislature, when before our courts for interpretation or application, must be brought to the test as to whether its provisions are in accord with the requirements of the constitution. If the law be forbidden by that instrument, the enactment must be held void, regardless of all other considerations. (P. 238.)

5. SAME. Ownership of property cannot be taxed as a privilege, but the business in which it is used may be taxed as a privilege.

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. (P. 245.)

6. SAME. Same. Dogs may be taxed as other property, but the ownership of them cannot be taxed as a privilege.

Dogs are property, and under the constitutional provision that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state," dogs may be taxed as such, if taxed according to value as other property, but they cannot be taxed at so much per head for the privilege of keeping them, regardless of value. A dog is property, notwithstanding the fact he is not property of general use, or has no market value. (Pp. 245, 246.) [In the case of the State v. Brown, 9 Bax., 53, 56, it was held that a dog, if he have

an owner, is personal property, and if of any value, is the subject of larceny. See Wheatley v. Harris, 4 Sneed, 468; Citizens' Rapid Transit Co. v. Dew, 16 Pickle, 322, 325; Sentell v. Railroad, 166 U. S., 698 (L. ed., Book 41, p. 1169.]

7. SAME. Same. Same. An enactment taxing dogs for the privilege of keeping them is unconstitutional and void.

A revenue act declaring the keeping of dogs a privilege, and taxing the owner or harborer of dogs so much per head for the privilege of keeping or harboring them, is a tax on the simple ownership of property, or the harboring of it, as a privilege regardless of value, and not a tax upon any peculiar use of it for profit to be derived from the general public, nor a tax upon a vocation, calling, or pursuit as a privilege, and is therefore unconstitutional and void. (Pp. 238, 239.)

Cited and held unconstitutional: Act 1875, ch. 67 [repealed by act 1877, ch. 8].

8. STATUTES. Body of act may show one of two objects in title thereof to be the leading object and the other the incident or result.

Where the title of an act is "An act to increase the revenue of the state, and to encourage wool growing," it indicates two objects, namely, the increase of state revenue and the encouragement of wool growing; but where the body of the said act shows that the leading object is the increase of the revenue of the state, and that the encouragement of wool growing is only an incident or probable result of the leading object of the enactment, the act must be treated as a revenue act, one in which the legislature intended and has exercised the taxing power, and not an act in the appropriate exercise of the police power of the State. (Pp. 237, 250.)

Cited and construed: Acts 1875, ch. 67 [repealed by act 1877, ch. 8].

9. PRIVILEGES. Definition of the term "privilege" as used in the state constitution.

The settled judicial construction, interpretation, and definition of the term "privilege" at the time of the adoption of our constitution in 1870, in which sense the term was used in that instrument, was, "the exercise of an occupation or business, which requires a license from some proper authority, designated by a general law, and not open to all, or any one, without such license." The essential element of the definition 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. (Pp. 242, 243.)

Cited with approval: Mabry v. Tarver, 1 Hum., 94; Cate v. State, 3 Sneed, 121; State v. Schiller, 3 Heis., 283; French v. Baker, 4 Sneed, 193 [see Robertson v. Heneger, 5 Sneed, 256; Columbia v. Guest, 3 Head, 414; Jenkins v. Ewin, 8 Heis., 475; Clarke v. Montague, 3 Lea, 277; Dun v. Cullen, 13 Lea, 204; Railroad v. Harris, 15 Pickle, 702].

Cited and construed: Code (1858 and T. & S.), secs. 550; M. & V. Code, secs. 604, 617; Shannon's Code, secs. 692, 712.

10. SAME. Same. Legislature cannot declare anything else not included in the definition a privilege and tax it as such, and destroy ad valorem and uniformity of taxation.

To assume as correct the proposition argued, that whatever the legislature shall so declare is a privilege, is to make the clause of the constitution, providing that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state" (const., art. 2, sec. 28) as conferring a power, or limiting or defining a power in the legislature, useless, inoperative, and absurd. If the power conferred to tax in this mode is only equivalent to the will or discretion of the legislature, then this clause of the constitution is practically a nullity, ceases to be any rule, or to operate at all over the subject, but only the will of the legislative body would be supreme over the question so that in fact anything and all property could be taxed exclusively in this way, and thus the rule of taxation according to value be annulled. This cannot be the proper construction of the said clause under consideration. (Pp. 244, 245.)

11. SAME. Actually issued license or tax receipt only evidence of the grant of the privilege, and not an essential feature of it.

It seems that it is not an essential feature of a privilege that an actual license be issued to the party, for it is only the evidence of the grant of the right to follow the occupation or business, and while the usual and perhaps universal incident to such grant, yet a tax receipt even is or may be the evidence of the grant; still the thing declared to be a privilege is the occupation or business, the license but the incident to its engagement, prescribed by statute, assuming, however, that the license in one form or the other is to be had. (P. 243.)

12. POLICE POWERS OF THE STATE. Different from taxing power, though taxes may tend to reach same end in some cases.

The police power of the state is a very different one from the taxing power, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases. (P. 246.)

13. SAME. Same. Privilege and license laws not an exercise of police powers, when.

Where revenue is the leading object of the privilege and license laws, though they may, as a mere incident or result thereof, to some extent, in some cases, as in that of the sale of intoxicating liquors, check or prevent the business, it does not follow that because this effect may in some

degree follow, that it is the end of the law, nor that it is done in the exercise of the police power of the state. (Pp. 250, 251.)

14. SAME. Based on certain maxims.

The police power of the state is based on the maxims that a man must so use his own as not to do wrong to another, that the individual citizen shall so enjoy his own rights as not thereby to infringe upon the rights of others, that the interest and rights of the individuals or a class of individuals is to be made subservient to the higher interest of the whole or a majority of the people of the state, whenever the minor interest shall conflict in the judgment of the legislature with that of the greater. (Pp. 246, 247.)

15. SAME. Same. Principle on which founded.

The police power of the state is a principle growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. (P. 247.)

Cited with approval: Commonwealth v. Alger, 7 Cush., 53, 84, 85.

16. SAME. May be exercised in the suppression, repression, and regulation of dogs, and in other instances.

In the exercise of the police power of the state, the legislature may, by a proper enactment, declare the keeping of dogs a nuisance, or limit the number to be kept, or particular species of them with known tendencies to do injury by devouring sheep; it may impose penalties for keeping such animals, to be enforced by fine or otherwise, on conviction; it may regulate the manner in which such animals shall be kept, as by forbidding them to be allowed to go at large except when in use and under control of competent persons, or require them to be kept muzzled or collared so as to be incapable of doing mischief, and, in fact, may make whatever kind of regulation or requirement in this direction that may be adequate to the end to be attained: for instance, the protection of that valuable and increasing industry, wool growing, in our state. Several instances of the exercise of the police power are given in the text and authorities cited. (Pp. 247, 249, 251.) [Our statues against sheep killing dogs. See Shannon's Code, secs. 2871-2873, 6527, 6528.]

Cited and construed: Acts 1875, ch. 67, sec. 4; acts 1865-66, ch. 3, sec. 1; T. & S. Code, sec. 4665a; Shannon's Code, sec. 6527; M. & V. Code, sec. 5428.

Cited with approval: Cooley's Const. Lim., 572 et seq., 594, 595 (6th ed., 704 et seq., 712 et seq., 739-741); 100 Mass., 136.

17. SAME. No destruction of property without a previous adjudication.

Except in the well known cases, recognized at common law, of great emergencies, such as the demolition of a house in a city to check the progress of a fire, etc., neither dogs nor any other property shall be destroyed without a previous adjudication to that effect. In the case of the destruction of any property, with the exception stated, the rule of the constitution of our state must be followed, which is that "no man shall be . . . deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land." (Pp. 243, 249, 250.)

Cited and construed: Const., art. 1, sec. 8 [see art. 1, sec. 21, and art. 11, sec. 8].

Cited and disapproved as to destruction of dogs without previous adjudication: 100 Mass., 136.

18. SAME. Same. "The law of the land" and "due process of law" defined.

The phrase "the law of the land," as used in the constitution, is equivalent to the phrase "due process of law," and does not mean a statute passed for the purpose of working wrong, for such construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense, and would but be to say to the legislature, "You shall not do the wrong, unless you choose to do it;" but the meaning is, that no member of the state shall be disfranchised or deprived of any of his rights and privileges, unless the matter shall be adjudged against him upon trial had according to the course of the common law. It must be ascertained judicially that he has forfeited his rights, before he can be deprived of them. It cannot be done by mere legislation, but only by adjudication, with the well known exception mentioned and referred to in the last syllabus. (Pp. 243, 249, 250.) [See Const., art. 1, sec. 8, and notes, and Henley v. State, 14 Pickle, 667.]

Cited with approval: Taylor v. Porter, 4 Hill (N. Y.), 140; Sedgw. on Const. and Stat. Law, 478 et seq.

FREEMAN, J., delivered the opinion of the court:

This suit is brought to recover from the tax collector of Giles county, two dollars paid as a tax on two dogs, one by the agreed case is the property of Phillips, the other is a "stray dog" of no value, which was on the plaintiff's premises, and harbored by plaintiff. The tax was paid under protest, and this suit brought, no doubt, for the purpose of testing the question of the constitutionality of the act of the legislature on this subject.

The act of the legislature of March 22d, 1875 [Acts 1875, ch. 67], is as follows: Section 1. "That hereafter the keeping of dogs shall be a privilege, which shall be taxed as follows: Every owner or harborer of a dog or dogs shall pay one dollar on each dog; for the privilege of keeping a bitch the owner or harborer of the same shall pay a tax of five dollars for each bitch so kept except spayed bitches, which shall be taxed as other dogs, to be collected and paid into the treasury as other moneys by the revenue collector."

Section 2 provides for the enumeration and assessment by the tax assessor of the dogs and bitches in their districts at the time he assesses other property, and that the revenue collector shall collect the taxes so assessed. Each person is requested to state on oath to the assessor the number and kind of dogs owned by himself.

The third section of the act makes it a misdemeanor to fail to pay the taxes so assessed within ten days after demand made by the tax collector or his deputy, and on conviction, he is to be fined not less than five dollars and costs for each dog or bitch not paid for, with a proviso that the party may be relieved from payment of the tax by immediately killing the dog upon demand made for the tax. These are all the provisions bearing on the question before us.

It might seem at first glance that this is a case of small importance, involving, as it does, but the paltry sum of two dollars, but upon consideration it will be readily seen that it involves not only large interest to the state, but also to the people who pay the tax. It is stated by the attorney-general that an assessment of $266,000 has been made on the dogs of the state, from which has already been derived to the treasury the sum of $120,000. These figures show the gravity of the questions presented in this aspect. In addition, the case presents several grave constitutional questions as to the powers of the legislature

that (to say the least of them) are not of ready solution. Constitutional questions in a republican form of government like ours, always demand grave consideration. Our constitutions, state and federal, embody the great guarantees for freedom of the citizen that have been wisely wrought out by the experience of ages past. Not only this, but they contain the limitations which the people have imposed upon their official agents, as well as upon themselves, through their representatives in our legislature, which cannot be disregarded. It is true as an axiom admitted everywhere by the courts of the United States, that the legislature of a state may exercise all legitimate powers appertaining to the government of a free people, representing, as it does, the sovereign will of such a people, except what is expressly, or by fair implication, forbidden by the constitution of such state, yet limitations therein imposed must always be held as imperative, the supreme law of the land which no legislature can disregard. If it should be done, then it is the duty of any or every court in the land to declare such act void as beyond the power of the legislature, and in violation of the embodied will of the people, as expressed in their constitution of governments. With these views of the gravity of the questions before us, we proceed to their solution.

It is obvious from the sections we have quoted that this act must be treated as a revenue bill, one in which the legislature intended and has exercised the taxing power. The title of the act is, "An act to increase the revenue of the state, and to encourage wool growing," thus indicating so far as this goes, two objects, the leading one, however, the increase of the revenue of the state. The body of the act shows the other object was deemed but an incident or probable result of the leading object of the enactment. The first section emphatically declares the keeping of dogs a privilege, and then proceeds to prescribe the amount of tax to be paid on this privilege, and the money should be

paid into the treasury as other revenue collected by the revenue collector.

In each of the sections it is spoken of as a tax, and the mode of payment provided for. It is true the fourth section provides for another and different end—that is, the punishment of persons who knowingly keep sheep-killing dogs, but this does not and could not change the entire character and purpose of the main body of the act. This being the undoubted character of the law before us, the question is whether its provisions are in accord with the requirements of the constitution. If forbidden by that instrument, the enactment must be held void regardless of all other considerations. To this test, every act of the legislature must be brought when it is before our courts for interpretation or application.

We need not say that it does not purport to be a tax on the dog as property, for in that case the rule of the constitution is plain, that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state." [Const., art. 2, sec. 28.] We have held that a dog was property in our state, and we must treat the case in this view. [See State v. Brown, 9 Bax., 53; Wheatley v. Harris, 4 Sneed, 468.] The tax is what it purports to be, a privilege tax—that is, a grant of a right of certain conditions to do what is otherwise prohibited, and we must decide the question at present on that aspect of it.

The language is that hereafter the keeping of dogs shall be a privilege which shall be taxed as follows, etc. In this view of the question, the real point presented is whether the simple ownership of property of any kind can be declared by the legislature a privilege, and taxed as such, for if it can be done in the case of a dog it may be done in the case of a horse, or any other species of property. It is clear this is what is done by this statute, except that

it has even gone further, and taxed a party who shall harbor or give shelter to a cur on his premises. This latter privilege, we take it, is one that will not be much sought after. But to the main question.

It is evident the words, "keeping of dogs," in the statute mean simply ownership, especially when taken in connection with the other provision making harboring them taxable, likewise showing definitely the purpose of the legislature to tax in the one case the ownership, in the other case a dog that was not owned but only harbored on the premises. We turn to the constitution, art. 2, sec. 28, for such limitations on the taxing power of the legislature as have been imposed by the people. After providing for uniformity and equality of taxation upon all property, according to its value, that value to be ascertained as the legislature may direct, it is provided: "But the legislature shall have power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct." It would seem clear that this was intended to fix definitely two different and distinct objects of taxation as well as modes. The first is property, which is to be taxed according to value. The second, merchants, peddlers, and privileges. These are different objects of taxation, evidently, and are to be taxed by a different rule—that is, in such manner as the legislature may direct. The ad valorem principle is excluded here and the manner of taxation left to the legislative will. It must be these two clauses have reference to different objects and prescribe for different subjects, or else the constitution has laid down a definite rule as to taxation of property in the first case, and then in the same clause has enabled and empowered the legislature to reject and utterly disregard that rule, by simply changing the name of the tax to a privilege tax, or tax on a privilege, and then taxing it in its own way, regardless of value. We take it, this is too clear to need further discussion.

This being so, we inquire what is the peculiar element or elements in the latter class of objects of taxation distinguishing them from property, the subject of regulation contained in the first clause of the section. We first take the language of the constitution, and then examine our decisions on the question for the solution of this question.

"Merchants, peddlers, and privileges," are the defined objects of taxation in the latter clause of the section. It is certain the merchant is not taxed except by reason of his occupation, and in order to follow or pursue this occupation—one of profit—in which it may be generally assumed capital, skill, labor, and talent are the elements of success, and are called into play by its pursuit. This pursuit or occupation is taxed, not as property, but as an occupation. Another element in this occupation is, that its object and pursuit is directed to a profit to be made off the general public, the merchant having a relation, by reason of his occupation, to the whole community in which he may do business, by reason of which he reaps, or is assumed to reap, the larger profit by drawing upon or getting the benefit of the resources of those surrounding him. The same idea is involved in the case of the peddler, who may range over a whole county by virtue of his license. His is an occupation of like character, a peculiar use of his capital varied only in some of its incidents.

These occupations are taxed as such, and not on the ad valorem principle. So we take it the word privilege was intended to designate a larger, perhaps an indefinite class of objects, having the same or similar elements in them distinguishing them from property, and these objects were to be defined by the legislature and taxed in like manner as might be deemed proper. But the essential element distinguishing the two modes of taxation was intended to be kept up. That is the difference between property and occupation or business dealing with and reaping profit from the general public, or peculiar and public uses of

property by which a profit is derived from the community. If this distinction does not exist, then, as we have said, the constitution has fixed the rule of taxation with precision in the first clause imperatively, and that it shall be ad valorem, and in the subsequent and secondary clause and class of objects of taxation, have left the legislature free to utterly avoid the first by taxing the ownership of all property as a privilege. This cannot be the true interpretation of so solemn an instrument as the constitution of a state.

We now examine for a moment the leading cases decided by this court, to ascertain whether the principles we have stated do not underlie them, and whether they do not really sustain the views expressed. There may be and is found sometimes in the loose use of language or generality of terms apparent conflict with these ideas, but when taken in connection with the cases in judgment, and limited to the facts before the court, we think there will be found no real conflict in any of the cases with the view we have taken. The case of Mabry v. Tarver, 1 Hum., 94, was under the act of 1835 [Acts 1835–6, ch. 13, sec. 4], prohibiting the keeping, or rather, using the jackass for profit in the propagation of stock. Here it is clear it was the keeping of the animal, and using him for profit to be derived from the public in a particular manner, that was declared to be a privilege and taxed as such. It is not a tax on the jack, or for owning him or harboring him as the case before us, but a tax upon the particular public use to which he is put, that makes the element of privilege in that case. Judge Reese, in his opinion, keeps this idea steadily in his mind, for he says it is contended that this avocation is not in itself and its nature a privilege, and then goes on to say that it becomes one when declared by the legislature and forbidden to be exercised without license. He then replies to the argument that the legislature might declare farming a privilege and tax this class of

"pursuits and avocation," by saying the danger was remote, and the remedy to be applied by the people in the exercise of the elective franchise, and we may add no such danger can ever exist while we continue to be an agricultural people unless there should be a most imperative demand for it, and then the people would impose the privilege tax upon themselves through their representatives, and they may very safely be trusted not to tax themselves unnecessarily in this direction. But the point to be noticed is that the idea of a privilege in this case is attached to the avocation, the pursuit, and not the ownership simply of the land on which the avocation may be pursued. It would equally apply to the avocation, if followed on lands owned by another. The idea that the legislature should say that a man should not keep or own a farm without a license would be a reduction of the question at once to an absurdity. The citizen could at once point to the constitution and say it was his property, of which he could not be deprived except by due process of law, and that he held it by right, and could not be compelled to hold it by a license from any authority in the state, or from any department of its government.

The case of Cate v. The State, 3 Sneed, 121, arose under the same act of 1835, and the same idea runs through the case, the language used being less accurate and the reasoning less carefully expressed by Judge Caruthers, than in the case where the opinion was by Judge Reese. The State v. Schlier, 3 Heis., 283, was the case of a party engaged in the avocation of photographing. In this case Chief Justice Nicholson cites the definition given a privilege from various preceding cases, as follows:

"The exercise of an occupation or business which requires a license from some proper authority, designated by a general law, and not open to all, or any one, without such license," and says this was the settled judicial construction of the term privilege at the date of the adoption

of our constitution in 1870, and in this sense the term was used in that instrument. It is seen that the essential element of the definition is occupation and business, not the ownership simply of property, or its possession or keeping it. We may concede, as we understand the argument of the attorney-general to do, that an actual license issued to the party is not an essential feature of a privilege, but is only the evidence of the grant of the right to follow the "occupation or pursuit," and the usual and perhaps universal incident to such grant, or that a tax receipt is, or even may be the evidence of the grant. Still, the thing declared to be a privilege is the occupation, the license but the incident to its engagement, prescribed by statute, assuming, however, the license in one form or the other is to be had. We think it would be impossible to hold, in any accurate sense, that a man could only be entitled to hold and possess his property, paid for with his money or earned by his labor, upon the condition of obtaining a license, either from the county court clerk, or a tax collector. His right is indefeasible under the constitution of the state. He can only be deprived of it by due process of law, or the law of the land as hereinafter explained. It is true his property may be sold if he fails to pay his taxes properly imposed, but this must be done under regular proceedings provided by law in such cases, and is in the nature of a sale under execution for the payment of a debt. The case of French v. Baker, 4 Sneed, 195, the question as stated by Judge Caruthers, page 196, was whether the occupation of a wholesale grocer was a privilege subject to taxation. It was held that it was. It is true in this case we have language used somewhat wanting in precision, and the reasoning not precisely accurate in assuming the test of privilege to be a declaration of that fact by the legislature, or the requirements of a license as an essential element, but when we look to the case before the court, and limit the generality of the

language to its facts, the same idea underlies this, as all the other cases in our state, that the tax is on the occupation, avocation, or calling, it being one in which a profit is supposed to be derived, by its exercise, from the general public. We need not go through the list of cases in our state on this question. It suffices to say that none of them vary the principles announced herein or found involved in the cases cited. When fairly construed in connection with their facts, all go on the idea of declaring the privilege to be in the exercise of the occupation, or in allowing something to be done, not in the enjoyment, possession, or ownership of property as such. We might go into a more elaborate discussion of this question, and meet the exceedingly able and acute argument of the attorney-general in detail, but we do not deem this necessary on this branch of the case, as it would swell this opinion beyond a reasonable length. The principle we have announced, based, as we think, on the true meaning of the constitution as understood by its framers, as well as the expositions given by our courts from 1835 down to the present time, abundantly demonstrate the incorrectness of his positions. We need but add that to assume as correct his main proposition, that whatever the legislature shall so declare is a privilege, is to make this clause of the constitution as conferring a power, or limiting or defining a power in the legislature, useless, inoperative, and absurd. If the power conferred to tax in this mode is only equivalent to the will or discretion of the legislature, then the constitution, or this clause, is practically a nullity, ceases to be any rule, or to operate at all over the subject, but only the will of the legislative body would be supreme over the question, so that, in fact, anything and all property could be taxed exclusively in this way, and thus the rule of taxation according to value be annulled. This cannot be the proper construction of the clause under consideration.

We are aware that the distinction may be said to be somewhat refined between taxing the occupation, avocation, or calling of a party by reason of his using his property in that calling or occupation, and taxing the property itself, as property, but the distinction is made in our constitution in very plain and emphatic language, repeatedly adopted as its proper interpretation by our courts, and we feel bound to maintain it as the supreme law of the land, which we cannot alter and dare not disregard. In support of the view we have taken of this bill as a revenue measure in its purpose, we may add here that it is so treated by all the parties to this case by paying the taxes, first, under protest, and second, bringing the suit for the amount so paid under the provisions of the act of 1873, and if these provisions had not been strictly pursued, we have no doubt but that the watchful attorney, who always sedulously and zealously guards the interest of the state, would have promptly interposed the bar of that statute against the right of the taxpayer to sue at all.

So much for this aspect of the case, in which we hold this law by its terms to be a revenue law, and a tax upon the simple ownership of property, by declaring it to be a privilege and not a tax upon any peculiar use of it for profit to be derived from the general public, nor a tax upon an avocation, calling, or pursuit, all of which may be declared and have been so held privileges under our constitution.

The dog being property, may be taxed as a matter of course, under our view, as all other property, ad valorem, such value to be ascertained in such manner as the legislature may direct. We omitted to notice the fact, and add it here, that the language of our statutes creating privileges, as well as their subjects, is based on the view we have taken. For instance, the code, sec. 550, says: "The occupations and transactions that shall be deemed privileges, and be taxed, and not pursued or done without license, are the following, etc. [See Shannon's Code, secs.

692, 712], then enumerating the various occupations, business, and callings that are made subject to the tax thus imposed, all of them involving the elements, in whole or in part, we have given in this opinion as the distinctive features of a privilege.

As to the objection that the dog is not a property of general use or having a market value, we may say that the particular use to which property may be put, or its value, or what may make the elements of its value, cannot change or affect the principle on which it is protected as such by the constitution. If it be property, whatever may be its uses or elements of value, or however small that value may be, it is still under the protection given by that instrument. Many articles might have no market value, yet no one would hesitate to claim they were not so protected, such as family pictures and many articles of like kind that might have no practical use and no market value, and therefore, not be real sources of revenue, on the principle of ad valorem taxation.

We now proceed shortly to notice the other aspect in which this case has been pressed upon our attention by the attorney-general and counsel who argued the case—that is, that the law is sustainable under the police power of the state.

This power is a very different one from the taxing power, as we think, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases. This power in the state is based on the maxims that a man must so use his own as not to do wrong to another, that the individual citizen shall so enjoy his own rights as not thereby to infringe upon the rights of others, that the interest and rights of the individual, or a class of individuals, is to be made subservient to the higher interest of the whole or majority of the people of the state whenever the minor interest shall conflict, in the judgment of the legislature, with that of the greater. It is well defined by Chief Justice Shaw, in Commonwealth v. Alger, 7 Cushing, 53, 84, 85, to be "principle growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it [may be so regulated that it] shall not be injurious to the equal [enjoyment of others having an equal] right to the enjoyment of their property, nor injurious to the rights of the community. . . . . Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment [as shall prevent them from being injurious and to such reasonable restraint and regulations], established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." This was said in a case where parties had the right, by reason of ownership of uplands near the sea, and to the fee in adjoining flats, to erect wharves and other buildings thereon. The legislature fixed lines in the harbor of Boston, beyond which no wharf should extend, and declared any wharf extended beyond this point to be a nuisance. The party was indicted, however, for the nuisance and the conviction sustained, and the law held to be constitutional.

We need not go minutely into the various cases on this question. They all stand on the principle announced, though the particular circumstances of each case are variant the one from the other. Instances of the exercise of this power may be found in regulations requiring railroads to fence in their tracks to prevent destruction of stock, making them liable on failure for the value of all stock killed by their cars. See Cooley Const. Limt., 572 et seq. [6th ed., 704, et seq.; 712 et seq.]

As said by Mr. Cooley, Const. Limt., 594 [6th ed., 738, 739], "it would be quite impossible to enumerate all the instances in which the power is, or may be exercised, be-

Nuisance could

cause the various cases in which the exercise by one individual, of his rights, may conflict with a similar exercise by others, or may be detrimental to the public order or safety, are infinite in number and in variety."

We will, however, from the cases before us, indicate some of the means which have been held constitutional and within the power of the legislature in other states, by which the ownership of property may be regulated, and restraints fixed upon such ownership so as to prevent injury to others, or detriment to great public interests to which such ownership must always be held subordinate. Numerous instances will be found in Cooley's Const. Limt., p. 595 [6th ed., 739–741], for the proper exercise of this power, and are familiar to our own jurisprudence. Such cases, too, as in themselves are not wrong, but are declared to be public nuisances because endangering the public health, public safety, and we may add, the same principle applies to that which is deemed injurious to any great public interest, and this to be judged of by the legislature. Mill dams may be abated or destroyed, church yards found detrimental to the public health, or in danger of becoming so, the keeping of gunpowder in cities or villages, the sale of poisonous drugs, allowing unmuzzled dogs to be at large when danger is apprehended from hydrophobia, and we may say, the same regulation might be applied in case of danger to any great public interest, such as sheep raising in our state. The author adds, "and, generally, it may be said that each state has complete authority to provide for the abatement of nuisances, whether they exist by the party's fault or not."

In Massachusetts, it has been held that a law [Act of 1867, ch. 130, sec. 7], was valid providing "that any person may, and every police officer [and constable], shall kill, or cause to be killed, all dogs [whenever or] wherever found, not licensed and collared according to the requirements of a statute, and this without previous adjudication,

and that an officer with a warrant for this purpose from proper authority, might even enter upon the close of an owner for this purpose. See 100 Mass. R., 136. We may say that this decision goes too far in one aspect, and there ought to be a judgment of a court of competent jurisdiction as to the improper possession of the property before it could rightfully be destroyed.

At any rate, from a brief summary of their results, it is clear from them all that the state may declare the keeping of this species of property a nuisance, or limit the number to be kept, or particular species of it, with known tendencies to do injury by devouring sheep; that it may impose penalties for keeping such animals, to be enforced by fine or otherwise, on conviction; that it may regulate the manner in which such animals shall be kept, as by forbidding them to be allowed to go at large except when in use and under the control of competent persons, or require them to be kept muzzled or collared so as to be incapable of doing mischief, and, in fact, may make whatever [character] of regulation or requirement in this direction [that may be] adequate to the end to be attained, the protection of that valuable and increasing industry, wool growing in our state.

To devise proper means in this direction is confided to the wisdom of the legislature representing the people and familiar with their wants. But in case of destruction of this or any other property, except in the well-known cases, recognized at common law, of great emergencies, such as the destruction of a house in a city to check the progress of a fire, etc., and under these limitations, the rule of the constitution of our state must be followed—that is, no man shall be deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land. [Const., art. 1, secs. 8, 21, and art. 11, sec. 8.]

This last phrase is but equivalent to "due process of

law," and is well defined in this respect by the supreme court of New York, as follows:

"The law of the land, as used in the constitution, does not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense." It would but be to say to the legislature, you shall not do the wrong unless you choose to do it. The meaning is, that no member of the state shall be disfranchised or deprived of any of his right and privileges, unless the matter shall be adjudged against him upon trial, had according to the course of the common law. It must be ascertained judicially that he has forfeited his rights before he can be deprived of them. It cannot be done by mere legislation, but we add, only by adjudication, with the well-known exceptions referred to. Taylor v. Porter, 4 Hill, 140; Sedg. on Const. and Stat. Law, p. 478, et seq.

It is proper to say that another section of the act, not germain, however, to the main body of it, contains an apt illustration of an appropriate exercise of this power, by making it a misdemeanor, knowingly to keep a sheep-killing dog, and upon conviction upon presentment or indictment, imposed a fine of twenty-five dollars on the person so convicted.

The act of 1865–6, ch. 3, sec. 1, had provided a similar remedy which was in force when the law under discussion was passed, but we suppose was not observed by the legislature at the time. See T. & S. Code, sec. 4665a [Shannon's Code, sec. 6527].

It will readily be seen from this review of the principles that underlie the police power, as well as the cases on the subject, that this statute is not in accord with them, so far as the provisions for taxation are concerned. In fact the law was not framed with that view, but purely as a revenue measure, no doubt intending as one of the results, however, to be secondary to the first, to lessen the number of dogs

dog law

in this state, but this secondary end which might or might not be the result, cannot bring the tax imposed within the requirements of the constitution, and the means used are not the appropriate ones to that end.

It is proper, perhaps, before we close, to refer to one other argument presented. That is, that our license laws in some cases, as in that of selling spirituous liquors, were intended to check its sale. This may be, and is no doubt, to some extent, a secondary result of the law, but the leading one [object] is revenue.

But it is clear, this is only an incident to such a law. We have but to look at the list of occupations made privileges to see that this is not the general object of such laws. For instance, merchants, telegraph companies, artists, and photographers. These occupations were certainly not intended to be checked or lessened by declaring them a privilege, and taxing them as such. It does not follow that because this effect may, in some degree follow, that it is the end of the law, nor that it is done in the exercise of the police power of the state, especiallly when we see the leading object to be revenue. But we need not further pursue this discussion. The result is, that the law before us must be held void as a revenue measure or tax imposed in violation of the limitations of our constitution, and not sustainable under the police power of the state, because not so purposed in the first place, and, second, because not using the appropriate remedies for the exercise of such power. However lightly we may esteem the animal subject to this tax, the constituion of our state is not thus lightly to be esteemed, and must be held, both in great and small matters, to be the supreme law of the land.

Let the judgment be reversed, and proper judgment be entered here.

Exhibit 5

FINANCIAL RESPONSIBILITY PROGRAMS AND PROCEDURES GUIDE

January 2015

COMPILED BY INSURANCE INDUSTRY COMMITTEE ON MOTOR VEHICLE ADMINISTRATION (IICMVA)

IICMVA was formally organized in January 1968. Prior to this time, industry ad hoc committees were assembled as needed by each jurisdiction to assist with the implementation of compulsory insurance and financial responsibility laws.

Ad hoc committees, which operated at the individual state level, were restrictive and inconsistent in function and composition. IICMVA was formed to provide consistent, industry-wide exchange between the insurance industry and all jurisdictions.

IICMVA's basic organization is built around insurers and insurance trade associations. Property Casualty Insurers Association of America (PCI), the American Insurance Association (AIA), and the National Association of Mutual Insurance companies (NAMIC) comprise the three major trades. Non-affiliated insurers round out the IICMVA roster.

IICMVA is not a lobbying organization. Instead, the Committee serves as a liaison between the insurance industry and state motor vehicle departments in the following subject areas: drivers licensing, vehicle titling/registration, motor vehicle records, compulsory insurance laws, and financial responsibility programs. IICMVA also maintains a close working relationship with the American Association of Motor Vehicle Administrators.

This compilation was developed solely as a resource that might serve as a starting point for research regarding the subjects addressed. It should not be relied upon for any legal or business decisions. This compilation relies upon reported practices of the states and relevant agencies. Actual practices within the states and relevant agencies may vary from what they have reported. While efforts have been made to provide accurate and authoritative information, this compilation does not apply to all lines of business, is only updated periodically, and should not form the sole basis for compliance decisions.

FINANCIAL RESPONSIBLITY
An Overview

Financial Responsibility statutes require owners of motor vehicles to produce proof of financial accountability as a condition to acquiring a license and registration so that judgments rendered against them arising out of the operation of the vehicles may be satisfied. It is generally accepted, as a condition for operating on a state's roadways, a driver has agreed to be financially responsible for any harm or damage caused through the operation of his or her vehicle. A driver

may comply with this duty by purchasing "adequate" motor vehicle insurance as defined by a minimum amount identified in a state's statute. A driver who fails to comply with this duty by not having insurance (or an adequate amount of insurance) or who has demonstrated a traffic safety and financial accountability concern to other roadway users through some other action (i.e., accumulation of convictions and/or accident involvement), may be required to satisfy a state's financial responsibility law in order to maintain a driver license.

Following are four circumstances which may require a driver to show future proof of financial responsibility by filing an SR22 or FR44 certificate with the state motor vehicle department in order to maintain a valid driver license:

1. Convictions
Some states will require a driver convicted of a specific driving offense, such as driving under the influence of alcohol or drugs, reckless driving, or another major driving violation, to comply with that state's financial responsibility requirements. The driver may be required to file a proof of financial responsibility in the form of insurance, securities, cash, or bond for a time period defined by state statute. A driver's failure to submit a valid SR22 Financial Responsibility filing may result in the suspension of the person's driver license and/or registration plates.

2. Crash or Accident Involvement
A driver who is involved in a crash and who is unable to demonstrate financial accountability (through either insurance or other financial assets), may be required to comply with that state's financial responsibility requirements. The driver may be required to file a proof of financial responsibility in the form of insurance, securities, cash, or bond for a time period defined by state statute. A driver's failure to submit a valid SR22 Financial Responsibility filing may result in the suspension of the person's driver license and/or registration plates.

3. Operation of Uninsured Motor Vehicle
In some states when a driver is convicted of driving while uninsured, the driver must comply with the state's financial responsibility requirements. The driver may be required to file a proof of financial responsibility in the form of insurance, securities, cash, or bond, depending on a state's law for a time period defined by state statute. A driver's failure to submit a valid SR22 Financial Responsibility filing may result in the suspension of the person's driver license and/or registration plates.

4. Unsatisfied Judgment
When a driver is involved in a motor vehicle crash for which he or she is determined to be at fault and for which the driver is either underinsured or uninsured, a court having jurisdiction over the matter may render a judgment to the other party (plaintiff) against the driver (defendant) for the cost of damages. The judgment against a driver will state the amount of damages (including in some cases interest), and specify the time period in which the amount must be paid. Should the driver not pay (i.e., satisfy) the judgment within the time specified, the plaintiff can ask the court to request the licensing authority to suspend the defendant's driver license and/or registration plates.

The defendant will have two options in seeking the restoration of their driver license:
1) Pay the judgment in full.
2) Enter into a Partial Payment Agreement (PPA) with the plaintiff AND comply with the state's financial responsibility law, which may include:
a) Regularly scheduled payments made to the plaintiff, AND
b) File proof of financial responsibility (in the form of insurance, securities, cash, or bond, depending on a state's law) with the licensing authority.

Note: Financial Responsibility overview originally compiled and authored by Richard J. Borucki, Michigan Department of State. Amended by IICMVA November 2014.

Certification of liability insurance coverage for the future is a basic element in all financial responsibility laws. In order to reinstate a driving privilege after a driver license suspension, an insurance company is called upon to certify liability coverage for the future, usually three years, for the affected individual. While the basic certification concept is for the most part rather uniform among the states having financial responsibility laws, there are a number of procedural variations.

The Financial Responsibility Programs and Procedures guide has been compiled by the IICMVA with assistance from the motor vehicle department financial responsibility administrators of the states.

The National Committee on Uniform Traffic Laws and Ordinances created the Uniform Vehicle Code and Model Traffic Ordinances to address governing vehicles on roadways. Although this committee suspended operations in 2008, many current state financial responsibility laws adopted, in whole or in part, provisions from Chapter 7 Financial Responsibility Laws of the model code.

Future proof of insurance is a critical feature in the enforcement of the sanctions contained in financial responsibility laws. When an insurer files certification of insurance with a state, it is, in effect, guaranteeing liability coverage for the named individual for a specified period of time. State statutes commonly contain a provision providing the act of certification creates a "motor vehicle liability policy" under which:

"The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy."

Whenever an insurer files a financial responsibility certification, it is essentially "on the risk" for the state's minimum financial responsibility limits until it files a cancellation notice with the state. Most state statutes commonly read similar to the following:

"An insurer may not terminate a motor vehicle liability policy unless the insurer files with the department a notice of termination within 10 days after the effective date of termination. A motor vehicle liability policy subsequently procured shall on the effective date of its certification terminate the insurance previously certified."

More commonly, the state will require advance notice of termination of the financial responsibility filing. Failure by an insurer to file a cancellation notice, as required, can result in an indefinite extension of the coverage so certified.

In order to administer the above quoted provisions of the financial responsibility law, standard procedures and forms were developed many years ago for use by the states and insurers. The Procedures Guide covers all types of future proof filings regardless of the forms terminology that may be in effect in any given state. It also highlights any individual state variations both as to forms and procedures.

While the most common certificate in use is the AAMVA Uniform Financial Responsibility Form SR22, there are two basic variations on the use of this form (or electronic file.) The most commonly used is the specified vehicle version in which one or more motor vehicles are described on the SR22. The other approach is the so-called all-inclusive in which the form applies to all owned vehicles. There is also a semi-all-inclusive version which differs from the all-inclusive in that it certifies coverage for all vehicles insured by the filing company as opposed to all vehicles owned by the individual in the case of the all-inclusive filing.

The most commonly used forms are the SR22 certificate and the SR26 termination notice. The SR23 is used when a fleet risk is involved. The SR24 was originally designed to be a notice of change of motor vehicle. In recent years the use of the SR24 has almost disappeared. When notification of a change of vehicle is required by the state, a replacement SR22 is generally utilized. In a few jurisdictions, a change of vehicle requires an SR26 and SR22.

Electronic transmission of SR22 certificates is gradually replacing paper processes. Further information detailing electronic transmission availability (mandatory or optional) is provided in each state section of this guide.

Finally, special note should be made of the situation in which an individual certified for future proof in one state moves to another state. A person needs a future proof financial responsibility certificate because of either an actual or pending driver license suspension. The suspension action is lifted upon receipt of the certificate by the state agency and is re-imposed if the filing is terminated by the insurer during the filing requirement period. If a person changes state of residence while a certificate is in effect, the insurer may terminate coverage (termination is required if an automobile insurance plan policy (assigned risk) is involved or the company does not do business in the new state) when notified of the change of address. This results in the reimposition of the driver license suspension. Depending on the states involved, a new certificate may have to be filed in the old state, new state, both states or neither one. When called upon to make a filing in a state other than the current residence state in which the policy is issued, an insurer, if it is continuing the policy in effect, should respond with a filing in that state provided it is licensed to write automobile insurance in that state. A policy does not necessarily have to be

written in the same state where a filing is required. In any specific instance of a filing problem involving an interstate change of residence, the Financial Responsibility administrators in each state should be contacted to determine the appropriate handling necessary to resolve the problem.

The Procedures Guide contains for each state a separate complete description of the future proof program. General instructions include preparation of forms, filing of forms and electronic filings by insurers. Special state variations are noted.

Notices Used
The following notices are used as proof of insurance. Not all states use each of the notices.

SR-21 - Notice of Policy
This form shows that the Company has issued an automobile policy with limits of liability at least equal to the limits required by the financial responsibility laws of the state, and is commonly required after an accident or a traffic stop. States handle via either electronic files or paper forms. This process will not be explained further in this document, however it will be addressed in a separate compilation.

SR-22 - Certificate of Insurance
This form provides evidence of insurance when an insured is required to furnish proof of financial responsibility for the future. Because of the added costs and reasons involved in filing an SR-22 form, many states allow an additional charge to the insured. States handle via either electronic files or paper forms.

SR-22A - Certificate of Insurance
This form is used in place of or in addition to the uniform SR-22 when future proof of financial responsibility is needed because of an accident in Georgia, Florida, and Texas.

SR-23 - Notice for Fleets
This form is filed at the inception date of a policy insuring multiple automobiles, usually 5 or more, however this varies by state. It shows that a policy with limits of liability at least equal to the limits required by state law has been issued. If an accident report form indicates that an SR-23 is on file, the insurance information does not have to be completed. Determine if the SR-23 applies in your state for fleet FR filings.

SR-24 - Notice of Change of Vehicle – Rarely used, as a state may accept another method such as an amended SR22.
This form is filed to indicate a transfer of coverage when the insured replaces a vehicle for which an SR-22 form was previously filed. This form is completed the same way as the SR-22 form.

SR-26 - Notice of Cancellation or Termination
This form provides notice of cancellation or termination of the SR-22 and SR-23 forms previously filed with the state. The effective date of cancellation or termination is shown on the

SR-26. This form is filed before or after the cancellation or termination date depending on the requirements of the financial responsibility laws or regulations of the state.

> **Important**
> It is critical that this form be filed when the policy is terminated. Insurer may continue to have exposure under the policy for the vehicle listed on the SR-22 or similar notice until the SR-26 form is submitted, even if insurer has sent a termination notice on the policy.

FR-44 - Financial Responsibility for Major Driving Convictions
This form provides evidence of insurance when an insured is required to furnish proof of financial responsibility with higher minimum liability limits. The FR-44 is required when the owner or driver of a car is convicted of certain DUI-related offenses. The FR-44 filing is currently only used in Florida and Virginia.

FR-46 - Notice of Cancellation or Termination of FR-44 Filing
This form provides notice of cancellation or termination of the FR-46 form previously filed with the state. An FR-46 form must be filed with the state when the FR-44 form is no longer effective.

> **Important**
> It is critical that this form be filed when the policy is terminated. Insurer may continue to have exposure under the policy for the vehicle listed on the FR-44 or similar notice until the FR-46 form is submitted, even if insurer has sent a termination notice on the policy. The FR-46 filing is currently only used in Florida and Virginia.

COMPLETION INSTRUCTIONS FOR SR-22, SR-24, FR44, SR26, AND FR46
The driver information fields are critical for matching the financial responsibility filing to the correct driver at the state agency.

INSURED NAME
· Complete name of driver requiring the financial responsibility filing.

INSURED ADDRESS
· Complete address of driver requiring the financial responsibility filing.

DRIVERS LICENSE NUMBER
· Complete the driver's license number issued from the state requiring the financial responsibility filing.

BIRTHDATE
· Complete if birthdate is available.

SOCIAL SECURITY NUMBER
· Do not complete unless field on hardcopy forms. Only use social security number if indicated by special state instructions in compliance with the law.

OWNER'S POLICY (SR-22 ONLY)
· Mark this block if applicable.

MODEL YEAR, TRADE NAME, IDENTIFICATION NUMBER
· Complete appropriately.

UNCAPTIONED AREA AFTER IDENTIFICATION NUMBER
• Complete if required by special state instructions used for miscellaneous information.

OPERATOR'S POLICY (SR-22 ONLY)
· Mark this block if applicable.

STATE
· Enter the name of the state where the filing is to be made.

COMPANY CODE
• Enter the company code before the name of the insurance company, if required. This number may be the NAIC or another state assigned code, and may be obtained from the Administrator.

STATE OVERVIEW

Automobile Financial Responsibility Laws (Property Casualty Insurers Association of America Compilation)

Autobile_Financial_Resp_Laws_Compli.pdf

ALABAMA

I. General

A. Future proof of insurance certificates (SR22) is required in cases of unsatisfied judgment and driver license suspension as a result of a major conviction.

B. The filing requirement period is three years.

II. Forms

AAMVA Uniform Financial Responsibility Forms SR22 (initial) and SR26 (cancellation) are used.

Faxed filings are accepted: 605-773-3018.

IV. Electronic Filing

Electronic filing program was not available at the time of preparation of this guide.

TENNESSEE

I. General

A. Future proof of insurance certificates (SR22) is required in the following situations:
1. Unsatisfied judgment.
2. Driver license suspension as a result of a major conviction.
3. Conviction point system suspension.
4. Failure to establish financial responsibility after an accident.

B. A SR-22 can be required for a total of 5 years from the date of suspension. If the SR-22 is filed for a total of 3 years (36 months) within the 5-year period, the SR-22 may be cancelled provided it is not required on any other suspension. If 5 years pass from the date of suspension before driver reinstates privileges, then the SR-22 would not be required. If the SR-22 is cancelled before the required time and a new form not filed, driving privileges will be suspended.

II. Forms

AAMVA Uniform Financial Responsibility Forms SR22 (initial) and SR26 (cancellation) are used.

III. Filing Procedures

A. A single copy of the certificate is required.

B. Authorized preparer signatures are required. Not required to file signatures with state.

C. Facsimile signatures are acceptable.

D. A filing may be made for an insured other than a named insured (on behalf of).

E. There is no provision for fleet filings.

F. The SR26 cancellation form must be filed not less than 10 days prior to the termination of coverage. Certificates remain on file until terminated by an SR26.
G. Insurers must enter their NAIC number on the SR22/26 certificates.

H. Tennessee does utilize a JR-22. The JR-22 is for individuals under the age of 18 (juvenile) whose parent or guardian does not sign the affidavit of financial responsibility in order for the juvenile to obtain their driver's license. The JR-22 filing needs to be maintained until the driver turns 18.

The SR22 form can be amended to accommodate by placing the policyholder's name in the appropriate "Insured" field at the top of the form and then manually inserting a line underneath to add the verbiage "Filed on Behalf of (minor's name)."
I. Filings are to be mailed to:

Tennessee Department of Safety
Financial Responsibility Division
P.O. Box 945
Nashville, Tennessee 37202

IV. Electronic Filing

The Tennessee Department of Safety and Homeland Security is in the process of replacing their driver license computer system, and the new system will go live on February 17, 2015. At that time, they will be able to receive electronic files of SR-22/SR-26 records. They would like to receive the file via SFTP with PGP encryption. They are on schedule to begin testing this file interface with our new system in November 2014.

Tennessee Department of Safety contact: Suzanne Shelton - Suzanne.Shelton@tn.gov.
Implementation Consultant Rachel Greer - 615-253-8463 - Rachel.Greer2@tn.gov.

TEXAS

I. General

A. Future proof of insurance certificates (SR22) are required in the following situations:
1. Unsatisfied judgment.
2. Driver license suspension as a result of major conviction.
3. Uninsured accident.

B. The filing requirement period is two years.

An SR-22 insurance certificate on file more than 2 years will not be valid for any new conviction that requires the filing of an SR-22 insurance certificate. To comply with the new action, the licensee will be required to file a subsequent SR-22 insurance certificate or provide documentation from the insurance company that the previous filing is still valid.