



THE NATIONAL JUDICIAL COLLEGE

Tennessee Commercial Motor Vehicle Masking

November 3, 2023
Franklin, TN

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Tennessee Commercial Motor Vehicle Masking

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Faculty Biography

HONORABLE THOMAS FOWLER

Judge Tommy Fowler is a judge on the Craighead County District Court in Arkansas. He was elected to this position on March 1, 2016 and had served as a circuit judge since August, 2015 after being appointed by Governor Asa Hutchinson. Prior to taking the bench, he had been in private practice for 17 years and had served as the deputy prosecuting attorney for Craighead County for 15 years. While in the private practice of law, Judge Fowler focused in the areas of bankruptcy, domestic relations, and litigation. He received his undergraduate degree from Arkansas State University and his J.D. at the University of Arkansas School of Law. He is an active member of the following organizations: Arkansas Judicial Discipline and Disability Commission; the American Bar Association, National Conference of State Trial Judges' Executive Committee; Arkansas Bar Association; the Craighead County Bar Association and the Delta Symphony Orchestra. He has recently retired as the director of the American Legion Arkansas Boys State program after 31 years of service. He has recently been selected as an Arkansas State University Distinguished Alumni. In 2017, he was named a Visionary Arkansan by the Arkansas Times and selected as one of the 12 Who Make it Happen by the Jonesboro Sun for the innovative changes implemented in his court. In 2013, he received the Volunteer Attorney of the Year for the Second Judicial District. In 1993, he received the R.E. Lee Wilson Award from Arkansas State University. He joined the faculty of The National Judicial College in 2019.

Learning Objectives

After this webinar, you will be better able to:

- (1) Identify the problem of CDL Masking;
- (2) Understand the different levels of CMV offenses
- (3) Observe several different types of masking you may see in courts; and
- (4) Appreciate the impact of Autonomous CMVs.

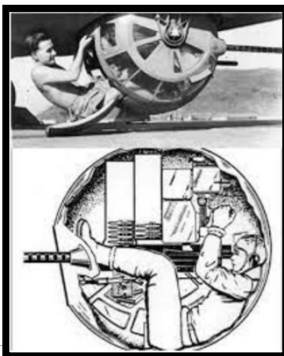
Tennessee Commercial Motor Vehicle Masking

Hon. Tommy Fowler
November 3rd, 2023



Thank You Veterans





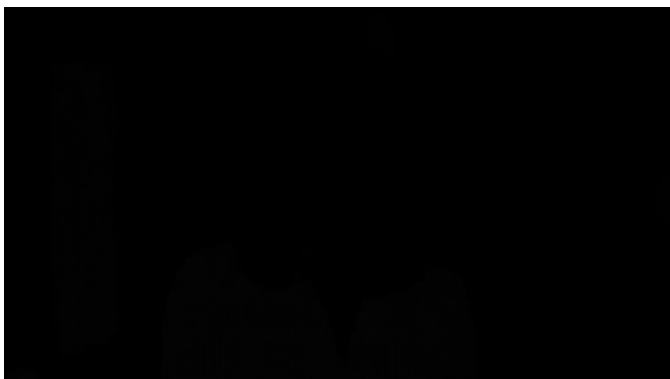
Learning Objectives

After this presentation, you will be able to:

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2. Understand the different levels of CMV offenses;
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4. Appreciate the impact of Autonomous CMVs.

4

CDL Wreck Video



CDL Wreck Video





Why This Matters

- In 2019, the US Bureau of Labor projected there were 2,029,900 heavy-duty truck and tractor-trailer drivers.
- Most of these drivers are required to possess a CDL and, for a significant number, their duties require them to operate in multiple states and drive through several jurisdictions.

Why This Matters

- Commercial motor vehicles, their carriers, and their drivers are extensively regulated to help ensure safety. The public is trusting both the government and the industry to uphold those regulations in furtherance of their safety objectives.

Why This Matters

- Inaccurate data, delays in process, or “cutting someone a break” at any step can have serious implications in the future.

1986—Congress Adopts Commercial Motor Vehicle Safety Act

Faced with ever-increasing number of fatalities from large truck crashes, Congress held hearings and made several significant findings:

- No classified driver licensing system existed in 18 states;
- Of the remaining 32 states, only 12 required a skills test;
- Widespread use of multiple CDL licenses; and
- No network to track serious violations.

Goals of CMVSA of 1986

- Prevent CMV drivers from concealing unsafe driving records by carrying licenses from more than one state;
- Ensure that all CMV drivers demonstrate minimum levels of knowledge and skills needed to safely operate CMVs before licensing; and
- Subject CMV drivers to new uniform sanctions for certain unsafe driving practices.

Who is Responsible for Keeping Dangerous Commercial Drivers Off the Road?

To ensure dangerous drivers are kept off the roads, a network of agencies and organizations must work together to share timely and accurate information.



Law
Enforcement



Prosecutors



Courts



Judges



Driver License
Agencies

How Do You Define Masking?



49 CFR § 384.226

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL holders conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing

49 CFR § 384.226

On the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the drive is licensed or another state.

Break It Down

1. State
2. Must not mask, defer imposition of judgment or enter into a diversion program
3. Prevent a CDL holder's conviction
4. For any violation
5. In any type of motor vehicle

Break It Down

6. State or local traffic control law
7. Excludes parking, vehicle weight, or vehicle defect violation
8. From appearing on the CDLIS driver record
9. No matter where the driver is licensed

Break It Down



- Masking is any act that would prevent a conviction from appearing on a CDL holders driving record.

What Is the CDLIS?

Commercial Driver's License Information System (CDLIS) was established by the FHWA (Federal Highway Administration) pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

CDLIS In a Snapshot

The screenshot shows the CDLIS system interface. At the top, there are tabs for 'Carrier', 'Vehicle', 'Driver (data)', and 'Reports'. Below these are sub-tabs for 'Status', 'Convictions', 'Accidents', and 'Withdrawals'. A search bar is present with fields for 'State', 'CDL', 'Name', 'Birth Date', and 'SSN'. The driver information displayed is 'Driver: DODD, ROBERT'. Under the 'Convictions' section, there is a table with the following data:

Conviction Details			
ACD: SEAT BELT NOT USED PROPERLY REQ	Date: 09/24/2008		
CodeJur: TX	CodeOffense: NO	CitationDate: 08/30/2008	
CommVehicleOff: YES	OffLor: 212317000000009359	OffRef: F04	
OffDetail: JUSTICE OF PEACE CRT	CourtType: JUSTICE OF PEACE CRT		
HashMaterialOff: NOT CARRYING HAZARDOUS MATERIALS			

Tennessee Reporting Requirements

Commercial Driver License Citation Reporting Requirements

Effective October 1, 2008, the Federal reporting requirement for commercial vehicle convictions was changed from 30 days to 10 days (FMCSA Part 384: State Compliance with Commercial Driver's License Program, §384.209 Notification of Traffic Violations).

Effective January 1, 2011, the State reporting requirement for commercial vehicle convictions was changed from 10 days to 5 days (Tenn. Code Ann. §55-50-409).

This page contains helpful information for the judiciary and court clerks on processing the citations. An example of a [uniform citation](#) for officers is included.

■ <https://www.tn.gov/safety/driver-services/commercial-driver-license/cdlcitation.html>

Tennessee Reporting Requirements



Court Disposition Reporting

Email:

Password:

[Frequently Asked Questions!](#)

[Print Access Form!](#)



Department of Safety
1100 Forest of Safety
Nashville, TN 37203

■ <https://courtreport.safety.tn.gov/>

“Masking” Convictions

Since “masking” is prohibited to ensure all “convictions” appear on CDL history/record, one cannot comply with the masking prohibition unless the definition of “conviction” under 49 CFR 383.5 is understood.

What is a Conviction?

T.C.A. § 5-50-102

An unvacated adjudication of guilt

A determination that the person violated or failed to comply with the law in a court of jurisdiction

An unvacated forfeiture of bail (money) deposited to secured a person’s appearance in court

What is a Conviction?

T.C.A. § 5-50-102

A plea of guilty or nolo contendere

Payment of fine or court cost

Violation of a condition of release without bail, regardless of whether penalty is rebated, suspended or probated

QUIZ!

Reckless Case Study

- Defendant (CDL holder) charged with reckless driving in personal vehicle
- Defendant asks court for a “deferral” (or “withheld adjudication”)
- Court grants deferral



Reckless Case Study

Is this a masking violation?

✓ Yes

✗ No



Is This Masking?



- CMV operator is charged with Speeding alleging 80 mph in a 60mph zone, along with a logbook violation.
- At the arraignment, the Prosecutor motions to amend the speeding charge to a parking violation and dismissal of the logbook charge. No explanation is provided

Is This Masking?



- Motion to amend is accepted and receives a fine of \$350.
- Is this "Masking?"

Is This Masking?



- CMV operator is charged with "Driving Under Suspension/Revoked"
- CMV operator is ultimately convicted of the same charge (unamended)
- Sixty days later, Defendant files a Motion to withdraw the original plea and conviction

Is This Masking?



- Court grants the motion, vacates the original conviction, and enters a conviction to "Improper CDL Class/ Endorsement."
- Is this "Masking?"

Examples of Court Actions Constituting "Masking" Violations

- Changing CMV to non-CMV
- Removing a Hazmat indicator
- Ordering a CDL suspension NOT be imposed – where required



Examples of Court Actions Constituting "Masking" Violations (Cont.)

- Changing Offense from moving violation to non-moving violation
- Ordering participation in diversion programs
- Failing to submit felony convictions to SDLA
- Using a CMV or non-CMV (while holding a license) to distribute, manufacture, or traffic drugs



But Judge, I am going to lose my job!



Masking Depends on Conviction Type

- Serious
- Major
- Railroad
- Out of Service
- Falsity/Fraud



Causes for Disqualification

- Serious Offenses: 60 – 120 days
- Major Offenses: 1 year – Lifetime
- Out of Service: 180 days – 5 years
- Railroad Crossings: 60 days – 1 year
- Fraud/Falsity:

Serious CDL Offenses 3 Year Lookback

- 1st conviction: No Disqualification
- 2nd conviction: Disqualified for 60 days
- 3rd conviction: Disqualified for 120 days

Serious CDL Offenses 3 Year Lookback

- Speeding 15 mph or more over the limit.
- Following too close.
- Improper or erratic lane change.
- Driving a commercial motor vehicle without obtaining a CDL.
- Driving a commercial motor vehicle without a CDL in the driver's possession.

Serious CDL Offenses
3 Year Lookback

- Driving a commercial motor vehicle without the proper class of CDL and/or endorsement.
- Violating a State or local law or ordinance prohibiting texting while driving a CMV. (2010)
- Violating prohibition on using a hand-held mobile telephone or other electronic mobile device while driving or operating a motor vehicle. (2012)
- Violating state or local traffic law arising in connection with a fatal accident.

Major CDL Offenses

- Operating a vehicle under the influence of alcohol or controlled substance.
- Having an alcohol concentration of 0.04 or greater while operating a commercial motor vehicle.
- Refusing to take an alcohol test under implied consent specified in 49CFR 383.72.
- Leaving the scene of an accident.

Major CDL Offenses

- A felony involving the use of any motor vehicle.
- Driving a commercial motor vehicle while suspended, revoked, cancelled or disqualified from operating a commercial motor vehicle as a result of prior violations committed operating a CMV.
- A felony involving the manufacturing, distribution or dispensing a controlled substance involving the use of any motor vehicle.

Major CDL Offenses

- Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular manslaughter, homicide by motor vehicle and negligent homicide.

Railroad CDL Offenses (CMV)

- **1st** conviction is disqualification for no less than **60 days**.
- **2nd** conviction within 3 years disqualification for no less than **120 days**.
- **3rd** conviction within 3 years is disqualification for no less than **1 year**.

Railroad CDL Offenses (CMV)

- The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train
- The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear
- The driver is always required to stop, but fails to stop before driving onto the crossing

Railroad CDL Offenses (CMV)

- The driver fails to have sufficient space to drive completely through the crossing without stopping
- The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing
- The driver fails to negotiate a crossing because of insufficient undercarriage clearance

Out of Service

- A declaration by an authorized enforcement officer of a federal, state, or local jurisdiction that a driver is temporarily prohibited from operating a commercial motor vehicle pursuant to § 27-23-113 or compatible laws, or that a commercial motor vehicle may not be operated.

Out of Service

- 1st conviction is disqualified for no less than 180 days or more than 1 year.
- 1st conviction with hazmat or in vehicle designed to transport 16 or more passenger is disqualified no less than 180 days or more than 2 years.

Out of Service

- 2nd conviction within 10 years: not less than 2 years nor more than 5 yrs.
- 2nd conviction w/hazmat or in vehicle designed to transport 16+ passenger: not less than 3 years nor more than 5 years

Out of Service

- 3rd conviction w/in 10 year (no distinction for hazmat or number of passengers): not less than 3 years nor more than 5 years

Falsify/Fraud Offenses

- Each conviction of Misrepresentation of identity or other facts on application: disqualification not less than 60 days
- Each conviction of fraud related to the issuance of a CLP or CDL: disqualification not less than 1 year



Infraction Amendment

When the prosecuting authority decides to “amend” or change the charge on the ticket.

What should the judge do?

Why This Matters

Implications for Noncompliance

- Federal Highway funding can be diminished by 4% to 8% annually, along with the suspension of State privileges to issue CDL's based upon the court's failure to comply with federal Masking provisions.

TENNESSEE GENERAL ASSEMBLY
 FISCAL REVIEW COMMITTEE
 SB 393 - HB 1149
 February 19, 2023

SUMMARY OF BILL: Requires a random, certified Board of Parole (BOP), or other correction authority, upon releasing a person who has been convicted of a misdemeanor or Class D or E felony from custody upon completion of sentence or granting a certificate of final discharge, to advise the court that signed the sentence that the person has completed the sentence.

Requires the court to issue an order of expunction upon completion of a person's sentence for a misdemeanor or Class D or E felony that did not involve the use, attempted use, or threatened use of physical force against another person on the use or possession of a deadly weapon and to use a neutral offense or violent sexual offense. Requires the order of expunction to be issued without cost to the person.

FISCAL IMPACT:
Decrease State Expenditures - Exceeds \$3,295,200 FY23-24
Exceeds \$3,295,200 FY24-25 and Subsequent Years
Decrease Local Revenue - \$5,760,000 FY23-24 and Subsequent Years
Increase Local Expenditures - Exceeds \$5,235,000 FY23-24 and Subsequent Years
Other Fiscal Impact - Passage of the proposed legislation could jeopardize Federal Highway Administration funds to the Tennessee Department of Transportation's Highway Fund.

Accomplishes:
- Pursuant to Tenn. Code Ann. § 8-7-1(a)(1)(4)(5), a court is authorized to charge a \$100 fee to preserve petitions for expunction.
- The proposed legislation requires the expungement to petition the expunction and then, the potential requirement to pay a \$100 fee for any person that has completed a sentence for a misdemeanor or Class D or E felony conviction that meets the criteria of this legislation.
- Based on information previously provided by the Tennessee Bureau of Investigation (TBI), it is estimated that there are approximately 77,000 petitions for expunction filed each year. It is not known precisely how many, or what percentage of those petitions, will

SB 393 - HB 1149

LEGISLATORSLEGISLATIONVIDEOSCHEDULES & CALENDARScommitteesDIRECTORYFIND MY LEGISLATORMY BILLS

SB 0393

by "Lamar"

Direct Co-Phone Sponsor

(HB 1149)

by "White"

Direct Caption Text

Expunction - An introduced, requires a court to issue an order of expunction after a person completes the sentence imposed for any misdemeanor or Class D or E felony that was nonviolent and was not a sexual offense. - Amends TCA Title 39 and Title 40.

Bill HistoryAmendmentsVideoSummaryFiscal NoteVotes

SB0393 - actions

DATE

Revd. from S. held on H. desk.

03/06/2023

Engrossed, ready for transmission to House

03/02/2023

Sponsor(s) Added:

03/02/2023

Passed Senate as amended, Ayes 21, Nays 9, PNV 1

03/02/2023

Senate adopted Amendment (Amendment 1) SA00017

03/02/2023

Placed on Senate Regular Calendar for 3/2/2023

02/28/2023

Recommended for passage with amendment/s, refer to Senate Calendar Committee Ayes 5, Nays 4 PNV 0

02/21/2023

Recommended for passage, refer to Senate Calendar Committee

02/15/2023

Placed on Senate Judiciary Committee calendar for 2/21/2023

01/26/2023

Passed on Second Consideration, refer to Senate Judiciary Committee

01/25/2023

Introduced, Passed on First Consideration

01/24/2023

Filed for introduction

HB1149 - actions

DATE

Action Def. in s/c Criminal Justice Subcommittee to First Calendar of 2024

04/04/2023

Placed on s/c cal Criminal Justice Subcommittee for 4/4/2023

03/29/2023

Action Def. in s/c Criminal Justice Subcommittee to 4/4/2023

03/28/2023

Placed on s/c cal Criminal Justice Subcommittee for 3/28/2023

03/23/2023

Action Def. in s/c Criminal Justice Subcommittee to 3/28/2023

03/21/2023

Placed on s/c cal Criminal Justice Subcommittee for 3/21/2023

03/15/2023

Action Def. in s/c Criminal Justice Subcommittee to 3/21/2023

03/14/2023

Placed on s/c cal Criminal Justice Subcommittee for 3/14/2023

03/08/2023

Assigned to s/c Criminal Justice Subcommittee

02/07/2023

PJC, ref. to Criminal Justice Committee

02/02/2023

Intro., PJC

02/01/2023

Filed for introduction

01/31/2023

22

12/5

Case: J05BR-23-083 SBU

Judge: 19TH STATE DISTRICT COURT DIV 2

Defendant: [REDACTED]

Violation: 168RXRD0011-22 V-CITY OF BROOKLAND - INATTENTIVE DRIVING

Citation: 6A3A088819

Violation Date: 06/27/23

Amount: \$ 165.00

OFFICER: Whitley, Joshua

Notes: COJ HAZ DR-10/22/21

Balance for all Pay

Pay Plans:

CWDOCT_SUM Page 31 of 49 CMPETERS2

Summary Court Docket

CRAIGHEAD COUNTY DISTRICT COURT

Cases Scheduled to be heard on 08/29/2023 at 09:00:00

PLEA & ARRAIGNMENT

12/5

Case: J05-22-849

Judge: 19TH STATE DISTRICT COURT DIV 2

Defendant: [REDACTED]

Violation: 49 CFR 392.42 V. USING A HAND-HELD MOBILE TELEPHONE IN CMV

Citation: 5006275185

Violation Date: 03/21/22

Amount: \$ 360.00

OFFICER: COOPER, JAMES O

Notes: [REDACTED]

Balance for all Pay

Pay Plans:

12/19

Case: J05-23-1077

Judge: 19TH STATE DISTRICT COURT DIV 2

Defendant: [REDACTED]

Violation: 22-16-303 MAY DRIVING ON SUSPENDED LICENSE

Citation: 600A0796155

Violation Date: 07/04/23

Amount: \$ 400.00

OFFICER: [REDACTED]

Notes: [REDACTED]

Balance for all Pay

Pay Plans:

In this case, the original conviction was speeding 68 in a 55 mph zone.

Licensee appealed and offense was amended to county ordinance to keep offense off the commercial record.

IN THE CIRCUIT COURT OF THE STATE OF ARIZONA

Case No. [REDACTED]

FILED

ORDERED UNDER DEPOSITION

CONES NICH, the Defendant, [REDACTED] by and through his attorneys, [REDACTED] of the [REDACTED] County District Court to JENO, ORDER, AGRIDOR and DICKER the following agreement by the parties:

- [REDACTED] is referred to appear in the Court on February 1, 2023.
- The State originally charged [REDACTED] with one count of speeding, 68 mph in a 55 mph zone, with a fine of \$165.
- As part of this appeal, [REDACTED] has already paid the fine of \$165 to the [REDACTED] District Court.
- Consent has been given with representation from the State and the following agreement has been reached:
 - [REDACTED] shall plead no contest to the amended charge of the county ordinance regarding operating a vehicle in negligent manner, statute 600A0796155.
 - The State shall impose a fine of \$400 relating to the above mentioned plea, representing the appeal bond already paid to the [REDACTED] District Court.
 - The State shall not press the original charge of speeding.
- The State of Arizona agrees to waive the appearance requirement for [REDACTED] in this matter.

Record Type: Add ORIGINAL

DLN: [REDACTED] State: MS Name: [REDACTED]

DOB: 7/14/1989 Race: 2 Sex: 1

Address: [REDACTED] MS 38676 Delete Reason:

ACD: 592 Court Code: [REDACTED] Case ID: [REDACTED] Offense Date: 4/29/2021 HasMat: N CMV: Y

ACD Detail: 1 Speed Zone: 55 Speed: 70 BAC: 0 Conviction Date: 6/24/2021 CDL: Y

Court Name: [REDACTED] Court Address: [REDACTED] Court Type: DIS

RECEIVED
JUN 9 8 2021
DRIVER CONTROL SECTION

Record Type: Delete DATE FROM: 07-15-2021 DATE TO: 07-16-2021

DLN: [REDACTED] State: MS Name: [REDACTED]

DOB: 7/14/1989 Race: 2 Sex: 1

Address: [REDACTED] MS 38676 Delete Reason: AMENDED INFORMATION

ACD: 592 Court Code: [REDACTED] Case ID: [REDACTED] Offense Date: 4/29/2021 HasMat: N CMV: Y

ACD Detail: 1 Speed Zone: 55 Speed: 59 BAC: 0 Conviction Date: 6/24/2021 CDL: Y

Court Name: [REDACTED] Court Address: [REDACTED] Court Type: DIS

RECEIVED
JUL 15 2021
DRIVER CONTROL SECTION

AMENDED INFORMATION



Volvo's Self-Driving Electric Semi



Tyson



Walmart



E/NRIDE



Remote Operation of Commercial Motor Vehicle



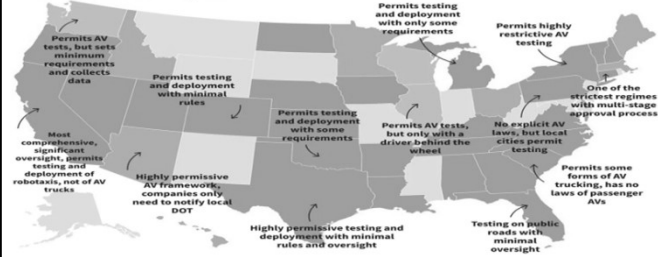
AR Code § 5-65-208 (2020)

- (a) When the driver of a motor vehicle or operator of a motorboat on the waters of this state is involved in an accident resulting in loss of human life, when there is reason to believe death may result, or when a person sustains serious physical injury, a chemical test of the driver's or operator's breath, saliva, or urine shall be administered to the driver or operator, even if he or she is fatally injured, to determine the presence of and percentage of alcohol concentration or the presence of a controlled substance, or both, in the driver's or operator's body.

Autonomous Vehicle Regulation across the U.S.

Most U.S. states have passed AV regulation, but what form of self-driving is allowed on public roads differs widely, with some states only allowing limited tests, others full deployment of the technology

● Both ● Executive Order ● Legislation



Note: Regulatory state as of June 16, 2022; at least a dozen AV bills are pending across the country
Source: National Conference of State Legislators, Dentons, Reuters research

Pilot opens first self-driving truck terminal in Georgia

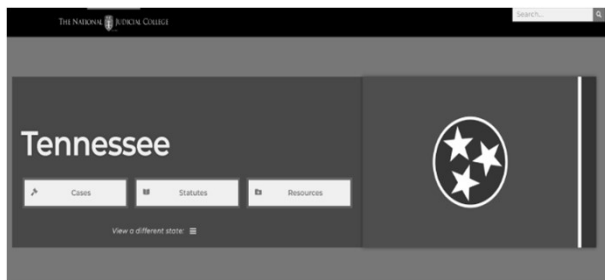


Resources



■ <https://truckingresearch.org/2022/10/predicting-truck-crash-involvement-2022-update/>

<https://cdlresources.org/>



<https://cdlresources.org/>

Statutes

Adoption of Federal Regulations

- Tenn. Code Ann. § 55-50-203
- 49 CFR § 395 - Federal standards for state compliance with CDL mandate

What Constitutes a CMV

- Tenn. Code Ann. § 55-50-302
- 49 CFR § 393.5 - Definitions

Major Disqualifying Offenses

- Tenn. Code Ann. § 55-50-405
- 49 CFR § 393.53 - Disqualification of Drivers

Major Disqualifying Offenses (Alcohol)

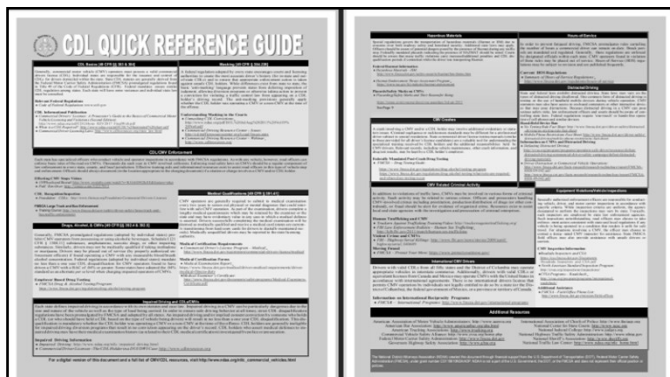
- Tenn. Code Ann. § 55-50-406
 - 49 CFR § 393.53 - Disqualification of Drivers
- 49 CFR § 393.53 - Required consent to alcohol testing
- Tenn. Code Ann. § 55-50-407
 - 49 CFR § 393.53 - Alcohol prohibition
 - 49 CFR § 393.53 - Alcohol prohibition "Out of Service"

Serious Traffic Offenses

- Tenn. Code Ann. § 55-50-408
 - 49 CFR § 393.53 - Disqualification of Drivers
- Tenn. Code Ann. § 55-50-409
 - 49 CFR § 393.53 - Disqualification for serious traffic violations

Identification of conviction

- Tenn. Code Ann. § 55-50-102
- 49 CFR § 393.5 - Definitions



One Last Thought



Questions?