LICENSING and REGISTRATION ARE COMMERCIAL ONLY
ANY ARREST FOR ANY OTHER USE IS UNCONSTITUTIONAL

The more laws that they create to control shows that they are losing control.

"The more corrupt the state, the more numerous the laws." - Cornelius Tacitus (55-117 A.D.)

Why is defense in a traffic matter requires the defendant to prove a negative? The officers is almost always correct even if he makes a mistake!

> CGC[1] 100. (a) The **sovereignty** of the state **resides in the people** thereof, and all writs and processes shall issue in their name.

This is from the Government Code. I did not say it. I am just repeating what it says in the law books. (See *Billings v. Hall*, 7 Cal. 1 (1850) in which it tells what the Legislature can and cannot do).

> Article I § 2 of California Constitution 1849:
> "All **political power** is **inherent in the people**. Government is instituted for the **protection**, security, and benefit of the **people**; and they have the right to alter or reform the same, whenever the public good may require it."

> Article II § 1 of the California Constitution 1879:
> "All **political power** is **inherent in the people**. Government is instituted for their **protection**, **security**, and **benefit** . . ."

The purpose of government agencies: "**governments . . . are established to protect and maintain individual rights**."

The purpose of the court: ". . . to protect and maintain individual rights."

1879 California Constitution Article Three Sec. 3.5.
SEC. 3.5. An **administrative agency**, including an administrative agency created by the Constitution or an initiative statute, has no power:

> **(a)** To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an **appellate court has made a determination that such statute is unconstitutional**;
> (b) To declare a statute unconstitutional;
> **(c)** To declare a statute unenforceable, or to refuse to enforce a statute on

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[1] California Government Code.

the basis that federal law or federal regulations prohibit the enforcement of such statute unless **an appellate court has made a determination** that the enforcement of such statute is prohibited by federal law or federal regulations.

> "This word 'person' and its scope and bearing in the law, involving, as it does, legal fictions and also apparently natural beings, it is difficult to understand; but it is absolutely necessary to grasp, at whatever cost, a true and proper understanding to the word in all the phases of its proper use . . . A person is here not a physical or individual person, but the status or condition with which he is invested . . . not an individual or physical person, but the status, condition or character borne by physical persons . . . The law of persons is the law of status or condition." -- American Law and Procedure, Vol. 13, page 137, 1910.

1) TWO WITNESSES STAND HIGHER THAN NOTARY:

1 Greenl. Ev. 260. This is a maxim of the civil law, where everything must be proved by two witnesses:

Witness: _____

Witness: _____

2) THE ACT OF "APPEARANCE":

Also, through appearance you have agreed to all the terms and condition of the ***presumptive due process hearing***, which is nothing more than an *administrative procedure*. Nothing can change the fact that you're already **guilty** *by reason of appearance*. (See *Frisbie v. United States*, 157 U.S. 160, 165 (1894), "Where the very act of pleading to it [an indictment] admitted its genuineness as a record."

Municipal [or Superior] Court [acting a legislative court] – No Authority

Agency, or party sitting for the agency, (which would be the magistrate of a municipal court or commissioner [one under dictates of legislature]) "has no authority to" enforce as to any "license unless he is ***acting for compensation***. Such an act is ***highly penal in nature***, and should not be constructed to include anything, which is not embraced within its terms." "[Where] there is no charge within a complaint that the accused was ***employed for compensation*** to do the act complained of, or that the act constituted part of a contract" *Schomig v. Kaiser*, 189 Cal. 596 (1922).

"Ministerial officers are ***incompetent*** to receive grants of ***judicial power*** from the legislature, their acts in attempting to exercise such powers are ***necessarily nullities***" *Burns v. Sup. Ct., SF*, 140 Cal. 1 (1903).

"The Law" according to the Courts:

> "A statute does not trump the Constitution." *People v. Ortiz*, (1995) 32 Cal.App.4th at p. 292, fn. 2, 38 Cal.Rptr.2d 59; *Conway v. Pasadena Humane Society*, (1996) 45 Cal.App.4th 163
>
> A statutory privilege cannot override a defendant's constitutional right. *People v. Reber*, (1986) 177 Cal.App.3d. 523 [223 Cal.Rptr. 139}; *Vela v. Superior Court*, 208 Cal.App.3d. 141 [255 Cal.Rptr. 921], however, "the judiciary has a solemn obligation to insure that the constitutional right of an accused to a fair trial is realized. If that right would be thwarted by enforcement of a statute, the state . . . must yield." *Vela v. Superior Court,* 208 Cal.App.3d. 141 [255 Cal.Rptr. 921]
>
> "An offense created by [an unconstitutional law] is not a crime." *Ex parte Siebold*, 100 US 371, 376 (1880). . . "A conviction under [such a law] is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. Id., at 376-77. If a law is invalid as applied to the criminal defendant's conduct, the defendant is entitled to go free . . . [A] court has no 'prudential' license to decline to consider whether the statute under which the defendant has been charged lacks constitutional application to [his] conduct . . . In short, a law 'beyond the power of Congress [or Legislature],' for any reason, is 'no law at all.'" (See *Bond v. U.S.*, No. 09-1227 U.S. Supreme Court slip opinion June 16, 2011).
>
> "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." (See *Bordenkircher v. Hayes*, 434 US 357, 363 (1978); *U.S. v. Goodwin*, 457 US 368, 372 (1982)).
>
> "Every citizen has the right to know what the state commands or forbids." (See *Lanzetta v. New Jersey*, 306 US 451 (1939). (See also *Chambers v. NASCO, Inc.*, 501 US 32 (1991); *Hynes v. Mayor of Oradell*, 425 US 610, 620 (1976); *Smith v. Goguen*, 415 US 566, 574 (1974); *Bouie v. Columbia*, 378 US 347, 350-51, 352 (1964), citing *U.S. v. Harriss*, 347 US 612, 617,74 S.Ct. 808, 98 L.Ed. 989 (1954); *Connally v. General Const. Co.*, 269 US 385, 391 (1926); *U.S. v. Cardiff*, 344 US 174, 176 (1952)).
>
> Obviously, administrative agencies, like police officers must obey the Constitution and may not deprive persons of constitutional rights. *Southern Pac. Transportation Co. v. Public Utilities Com.,* 18 Cal.3d 308 [S.F. No. 23217. Supreme Court of California. November 23, 1976.]
>
> If evidence of a fact is clear, positive, uncontradicted and of such nature it cannot rationally be disbelieved, the court must instruct that fact has been established as a matter of law. *Roberts v. Del Monte Properties Co.*, 111 CA2d. 69 (1952)

> **Public Agents Must Be Liable To The Law**, unless they are to be put above the law. For how can the principles of individual liberty and right be maintained if, when violated, the judicial tribunals are forbidden to visit penalties upon individual defendants . . . whenever they interpose the shield of the State. . . . The whole frame and scheme of the political institutions of this country, state and Federal, protest against extending to any agent the **sovereign's exemption from legal process**. *Poindexter v. Greenhow*, 114 U.S. 270, 291. *Hopkins v. Clemson*, 221 U.S. 636, 642-3 (1911).
>
> "The rights of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government." *City of Dallas v Mitchell*, 245 S.W. 944 (1922). (Need to look up the case that states the people cannot give up their Unalienable Rights even with their signature)
>
> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation is to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." (See *Berger v. U.S.*, 295 US 78, 88 (1935)).

This area is the unalienable Rights of the people as far as agencies are concerned. The rest of this document is more unalienable Rights in other areas.

> "If they can get you asking the wrong questions, they don't have to worry about answers." Thomas Pynchon
>
> "They will do whatever we let them get away with." Joseph Heller

Actually, the LICENSING & REGISTRATION statutes I am aware of here in California are for the COMMERCIAL usage of the roads and California Vehicle Code §2:

> **Continuation of Existing Law**
> 2. *The provisions of this code, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments*

The above statement has existed on each revision since the vehicle code started in 1905.

How the code are to be read (Look to the Statute for the real meaning):

> "[4] 'Pursuant to established principles, our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute

themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]' (*Dyna-Med, Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 [241 Cal.Rptr. 67, 743 P.2d 1323].)" ***Wolitarsky v. Blue Cross of California* (1997) 53 Cal.App.4th 338**

http://login.findlaw.com/scripts/callaw?dest=ca/caapp4th/53/338.html

"[1] 'It is a well established principle of statutory law that, where a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time [32 Cal.2d 59] of the reference and not as subsequently modified, and that the repeal of the provisions referred to does not affect the adopting statute, in the absence of a clearly expressed intention to the contrary.' (*Rancho Santa Anita v. City of Arcadia* [1942], 20 Cal.2d 319, 322 [125 P.2d 475]; *Brock v. Superior Court* [1937], 9 Cal.2d 291, 297-298 [71 P.2d 209, 114 A.L.R. 127]; *In re Burke* [1923], 190 Cal. 326, 327-328 [212 P. 193]; *Don v. Pfister* [1916], 172 Cal. 25, 28, 31 [155 P. 60]; *Ramish v. Hartwell* [1899], 126 Cal. 443, 447 [58 P. 920]; *Ventura County v. Clay* [1896], 112 Cal. 65, 72 [44 P. 488]; *People v. Clunie* [1886], 70 Cal. 504, 506 [11 P. 775]; *People v. Whipple* [1874], 47 Cal. 592, 593-594; *Spring Valley Water Works v. San Francisco* [1863], 22 Cal. 434, 439; 59 C.J. § 548, p. 937.)" ***Palermo v. Stockton Theatres, Inc.* , 32 Cal.2d 53 (1948)**

http://login.findlaw.com/scripts/callaw?dest=ca/cal2d/32/53.html

The three essential parts of every bill or law are : (1) the title (2) the enacting clause, and (3) the body.

California Constitution 1849 (Same for 1879):

Article IV §25. "Every law enacted by the Legislature shall **embrace but one object**, and that shall be expressed in the title; and **no law** shall be revised, or amended, by reference to its title; but in such case, the act revised, or section amended shall be re-enacted and published at length."

(see STATUTES OF CALIFORNIA 1925 below).

CHAPTER 412.
An act to impose a license fee for the transportation of persons or property for hire or compensation upon public streets, roadways and highways in the State of California by motor vehicle; to provide for certain exemptions; to provide for the enforcement of the provisions thereof and for the disposition of the amounts collected on account of such licenses; to make an appropriation for the purpose of this act; and to repeal all acts or parts of acts in conflict herewith.

[Approved by the Governor May 28, 1925.]

The people of the State of California do enact as follows:

Section 1. The words and phrases used in this act shall for the purposes of this act, unless the same be contrary to or inconsistent with the context, be construed as follows:
…
(b) The word "operator" shall include all persons, firms, associations and corporations who operate motor vehicles upon any public highway in this state and thereby engage in the transportation of persons or property for hire or compensation, but shall not include any person, firm, association or corporation who solely transports by motor vehicle persons to and from or to or from attendance upon any public school or who solely transports his or its own property, or employees, or both, and who transports no persons or property for hire or compensation, but all persons operating freight carrying so exempted shall be required to obtain from the state board of equalization and to display exempt emblems in the manner herein provided. (rest omitted) STATUTES OF CALIFORNIA 1925, CHAPTER 412, pages 833

The above expresses this was done through the Railroad Commission through a "certificate" and "Motor Vehicle" is modified by "Gross Receipts"[see CHAPTER 412 page 834]. Strictly making one who could read the statute and realize that Motor Vehicles are only commercial aspects. In 1941 and 1959 the California Revenue & Taxation statute states:

...
9603. "Operator" includes:

(a) Any person engaging in the transportation of persons or property for hire or compensation by or upon a motor vehicle upon any public highway in this State, either directly or indirectly.

(b) Any person who furnishes any motor vehicle for the transportation of persons or property under a lease or rental agreement when pursuant to the terms thereof the

person operates the motor vehicle furnished or exercises any control of, or assumes any responsibility for, or engages either in whole or in part in, the transportation of persons or property in the motor vehicle furnished.

"Operator" **does not** include any of the following:

(a) **Any person transporting his own property in a motor vehicle owned or operated by him unless he makes a specific charge for the transportation. This subdivision does not in any way limit any other exemption granted by this section.**

(b) Any farmer . . .

(c) Any nonprofit . . .

(d) Any person . . transports . . school . .

(e) Any person . . . hearse . . .

(f) **Any registered owner of a pleasure vehicle who, while operating the vehicle, transports persons to his work, or to a place through which he passes on the way to his work, whether for or without compensation, if he is not in the business of furnishing such transportation.** STATUTES OF CALIFORNIA 1941, California Revenue & Taxation Code, Chapter 39, pg 590-591

9605. "Motor vehicle" includes any automobile, truck, tractor, or other self-propelled vehicle used for the transportation of persons or property upon the public highways, otherwise than upon fixed rails or tracks, and any trailer, semi-trailer, dolly, or other vehicle drawn thereby, not exempt from registration fees under the laws of this State. STATUTES OF CALIFORNIA 1941, REVENUE & TAXATION CODE, Chapter 39, pg 591

9726. After obtaining the required license the operator shall obtain from the department number plates or emblems for each motor vehicle operated by him indicating, in such manner as the department may determine, that the license has been obtained. STATUTES OF CALIFORNIA 1941, REVENUE & TAXATION CODE, Chapter 39, pg 593.

9727. The number plates or emblems shall be attached to and conspicuously displayed upon each of the motor vehicles authorized to be operated by the license in such a manner as the department may require. STATUTES OF CALIFORNIA 1941, REVENUE & TAXATION CODE, Chapter 39, pg 593.

10751. A license fee is hereby imposed for the privilege of operating upon the public

highways in this State any vehicle of a type subject to registration under the Vehicle Code. STATUTES OF CALIFORNIA 1941, REVENUE & TAXATION CODE, Chapter 40, pg. 605

250. A "chauffeur" is a person who is employed by another for the principal purpose of driving a motor vehicle on the highways and receives compensation therefor. STATUTES OF CALIFORNIA 1959, Chapter 3, Vehicle Code, page 1530.

310. "Drivers' License" includes both an operator's and a chauffeur's license. STATUTES OF CALIFORNIA 1959, Chapter 3, Vehicle Code, page 1531

450. An "operator" is a driver of a motor vehicle other than a chauffeur. STATUTES OF CALIFORNIA 1959, Chapter 3, Vehicle Code, page.1535.

HOW much clearer can they make it that the LICENSE was for the COMMERCIAL usage of the roads? (See ***HENDRICK v. STATE OF MARYLAND*** cited below)

"Only those whose rights are directly affected can properly question the constitutionality of a state statute, and invoke our jurisdiction in respect thereto. *New York ex rel. Hatch v. Reardon*, 204 U.S. 152, 161 , 51 S. L. ed. 415, 422, 27 Sup. Ct. Rep. 188, 9 Ann. Cas. 736; *Williams v. Walsh*, 222 U.S. 415, 423 , 56 S. L. ed. 253, 256, 32 Sup. Ct. Rep. 137; *Collins v. Texas*, 223 U.S. 288, 295 , 296 S., 56 L. ed. 439, 443, 444 32 Sup. Ct. Rep. 286; Missouri, [235 U.S. 610, 622] *K. & T. R. Co. v. Cade*, 233 U.S. 642, 648 , 58 S. L. ed. 1135, 1137, 34 Sup. Ct. Rep. 678, and cases cited.

The movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves. Their success depends on good roads, the construction and maintenance of which are exceedingly expensive; and in recent years insistent demands have been made upon the states for better facilities, especially by the ever-increasing number of those who own such vehicles. As is well known, in order to meet this demand and accommodate the growing traffic the state of Maryland has built and is maintaining a system of improved roadways. Primarily for the enforcement of good order and the protection of those within its own jurisdiction the state put into effect the above described general regulations, including requirements for registration and licenses. A further evident purpose was to secure some compensation for the use of facilities provided at great cost from the class for whose needs they are essential, and whose operations over them are peculiarly injurious.

In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles,-those moving in interstate commerce as well as others. And to this end it may require the registration of such

vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horse-power of the engines,-a practical measure of size, speed, and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce. The reasonableness of the state's action is always subject to [235 U.S. 610, 623] inquiry in so far as it affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress. *Barbier v. Connolly*, 113 U.S. 27, 30 , 31 S., 28 L. ed. 923-925, 5 Sup. Ct. Rep. 357; *Smith v. Alabama*, 124 U.S. 465, 480 , 31 S. L. ed. 508, 513, 1 Inters. Com. Rep. 804, 8 Sup. Ct. Rep. 564; *Lawton v. Steele*, 152 U.S. 133, 136 , 38 S. L. ed. 385, 388, 14 Sup. Ct. Rep. 499; *New York, N. H. & H. R. Co. v. New York*, 165 U.S. 628, 631 , 41 S. L. ed. 853, 854, 17 Sup. Ct. Rep. 418; *Holden v. Hardy*, 169 U.S. 366, 392 , 42 S. L. ed. 780, 791, 18 Sup. Ct. Rep. 383; *Lake Shore & M. S. R. Co. v. Ohio*, 173 U.S. 285, 298 , 43 S. L. ed. 702, 707, 19 Sup. Ct. Rep. 465; *Chicago, B. & Q. R. Co. v. McGuire*, 219 U.S. 549, 568 , 55 S. L. ed. 328, 338, 31 Sup. Ct. Rep. 259; *Atlantic Coast Line R. Co. v. Georgia*, 234 U.S. 280, 291 , 58 S. L. ed. 1312, 1317, 34 Sup. Ct. Rep. 829.

In *Smith v. Alabama*, 124 U.S. 465, 480 , 31 S. L. ed. 508, 513, 1 Inters. Com. Rep. 804, 8 Sup. Ct. Rep. 564, consideration was given to the validity of an Alabama statute forbidding any engineer to operate a railroad train, without first undergoing an examination touching his fitness, and obtaining a license, for which a fee was charged. The language of the court, speaking through Mr. Justice Matthews, in reply to the suggestion that the statute unduly burdened interstate commerce and was therefore void, aptly declares the doctrine which is applicable here. He said:

> 'But the provisions on the subject contained in the statute of Alabama under consideration are not regulations of interstate commerce. It is a misnomer to call them such. Considered in themselves, they are parts of that body of the local law which, as we have already seen, properly governs the relation between carriers of passengers and merchandise and the public who employ them, which are not displaced until they come in conflict with express enactments of Congress in the exercise of its power over commerce, and which, until so displaced, according to the evident intention of Congress, remain as the law governing carriers in the discharge of their obligations, whether engaged in the purely internal commerce of the state or in commerce among the states.'

The prescribed regulations upon their face do not appear to be either unnecessary or unreasonable.

In view of the many decisions of this court there can be [235 U.S. 610, 624] no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact

compensation therefor. The amount of the charges and the method of collection are primarily for determination by the state itself; and so long as they are reasonable and are fixed according to some uniform, fair, and practical standard, they constitute no burden on interstate commerce. *Parkersburg & O. River Transp. Co. v. Parkersburg*, 107 U.S. 691, 699 , 27 S. L. ed. 584, 587, 2 Sup. Ct. Rep. 732; *Huse v. Glover*, 119 U.S. 543, 548 , 549 S., 30 L. ed. 487, 490, 7 Sup. Ct. Rep. 313; *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 329 , 330 S., 37 L. ed. 463, 469, 13 Sup. Ct. Rep. 622; Minnesota Rate Cases (*Simpson v. Shepard*) 230 U.S. 352, 405 , 57 S. L. ed. 1511, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729, and authorities cited. The action of the state must be treated as correct unless the contrary is made to appear. In the instant case there is no evidence concerning the value of the facilities supplied by the state, the cost of maintaining them, or the fairness of the methods adopted for collecting the charges imposed; and we cannot say from a mere inspection of the statute that its provisions are arbitrary or unreasonable."

HENDRICK v. STATE OF MARYLAND, (1915) 235 U.S. 610

http://laws.findlaw.com/us/235/610.html

Correct me if I'm wrong, but didn't the U.S. SUPREME COURT discuss the "uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles", "the registration of such vehicles and the licensing of their drivers", and the "exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens" as "parts of that body of the local law which, as we have already seen, properly governs the relation between carriers of passengers and merchandise and the public who employ them"?

And didn't the U.S. SUPREME COURT also say that THOSE REGULATIONS "are not displaced until they come in conflict with express enactments of Congress in the exercise of its power over commerce, and which, until so displaced, according to the evident intention of Congress, remain as the law governing carriers in the discharge of their obligations, whether engaged in the purely internal commerce of the state or in commerce among the states?"

Is it any wonder WHY that case is cited in the ANNOTATIONS for the REQUIREMENTS **for a "driver's license"** in California?

This is ONLY ONE of the different types of LICENSES.

NOTICE that the DEFINITION from BLACK'S 4TH edition also defines a LICENSE as "**A permit granted by an appropriate governmental body, generally for a consideration**, to a person, firm or corporation to **pursue some occupation** or **to carry on some business subject to regulation under the police power**. A license is not a contract between the state and the licensee, but is a mere personal permit."

A DEFINITION that is much more APPLICABLE given the nature of the "driver's license."

And ISN'T it very interesting that the **ONLY "vehicles"** that are SPECIFICALLY DESIGNATED as being **"REQUIRED to be REGISTERED"** under the California VEHICLE CODE are "commercial vehicles"?

In the CALIFORNIA STATUTES OF 1955 the precursor of CVC §260 is as follows:

Ch.1270 PAGE 2309

1955 REGULAR SESSION

CHAPTER 1270

An act to amend Section 34 of the Vehicle Code, relating to vehicles.

[Approved by Governor June 23, 1955. Filed with Secretary of State June 24, 1955]

The people of the State of California do enact as follows:

SECTION 1. Section 34 of the Vehicle Code is amended to read:

34. "Commercial Vehicle." A "commercial vehicle" is vehicle of a type required to be registered hereunder used or maintained for the transportation of persons for hire, compensation or profit or designed, used or maintained primari1y for the transportation of property. Passenger vehicles which are ***NOT*** used for the transportation of persons for hire, compensation or profit are not commercial vehicles.

In the above section it is easy to see that Passenger vehicles are not commercial vehicles and not required to be registered under the code. BUT the following leave you guess as the District Attorney (and their associates) or attorneys will tell you that the following still requires you to register your vehicles. This is fraud!

VEHICLE CODE §260. (a) A "commercial vehicle" is a motor vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(b) Passenger vehicles and house cars that are not used for the transportation of persons for hire, compensation, or profit are **not commercial vehicles**. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

(c) Any vanpool vehicle is **not a commercial vehicle**.

(d) The definition of a commercial vehicle in this section does not apply to Chapter 7 (commencing with Section 15200) of Division 6.)

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=veh &group=00001- 01000&file= 100-680

CVC § 21100 Local authorities may adopt rules and regulations by ordinance or resolution regarding the following matters: (b) "Licensing and regulation of the operation of vehicles ***for hire*** and drivers of passenger vehicles ***for hire***." is part of Division 11. **Rules of the Road** Article 3. Local Regulation. **Rules and Regulations: Subject Matter** telling enforcement officers these are the only people they can ticket unless there is a tort, trespass/breach of peace or violation of contract.

"A **carriage** is peculiarly a **family or household article**. It ***contributes*** in a large degree the ***health, convenience, comfort***, and *welfare of the householder* or ***of the family***." *Arthur v Morgan*, 113 U.S. 495, 500, 5 S.Ct. 241, 243 (S.D. NY 1884).

"The Supreme Court, in Arthur v. Morgan, 395 U.S. 495, 5 S.Ct. 241, 28 L.Ed. 825, held that carriages were properly classified as household effects, and we see no reason that automobile should not be similarly disposed of." *Hillhouse v United States*, 152 F. 163, 164 (2nd Cir. 1907).

> **"We conclude that the lower court's construction of Vehicle Code section 260 more reasonably conforms to the legislative intent and that the term "for hire" modifies the word "transportation," so that a commercial vehicle is one in which persons or property are transported for hire. Thus, "commercial vehicles" are of two types: (1) those put to the use of transporting persons for hire, and (2) those designed, used or maintained primarily for the transportation of property. In other words, vehicles used for the traditional purposes of public livery or conveyance, such as buses, taxicabs or other vehicles functioning as common carriers or otherwise, operate for a profit." *Government Employees Ins. Co. v. Carrier Ins. Co.* [GEICO] (1975), 45 Cal.App.3d 223**

http://login. findlaw.com/ scripts/callaw? dest=ca/calapp3d /45/223.html

Could it be a coincidence that Texas ADMITS that the COMMERCIAL use of the roads is the basis of the LAWFUL AUTHORITY for SPEED SIGNS?

> § 201.904. SPEED SIGNS. The department shall erect and maintain on the highways and roads of this state appropriate signs that show the maximum lawful speed for commercial motor vehicles, truck tractors, truck trailers, truck semitrailers, and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses). Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

http://tlo2.tlc.state.tx.us/statutes/docs/TN/content/htm/tn.006.00.000201.00.htm#201.904. 00

Ask yourself, HOW can you LAWFULLY be required to have a LICENSE (which can be SUSPENDED or even REVOKED) in order to use the roads for PURPOSES OF VEHICULAR TRAVEL when that usage is SUPPOSED to be a CONSTITUTIONALLY SECURED MATTER OF RIGHT?

81. “Street” or “Highway.” “Street” or “highway” is a way or place of whatever nature open to the use of the public as a **matter of right for purposes of vehicular travel**. STATUTES OF CALIFORNIA 1935, Vehicle Code, Chapter 27, page 98.

VEHICLE CODE 360. “Highway” is a way or place of whatever nature, publicly maintained and **open to the use of the public for purposes of vehicular travel**. Highway includes street.

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=veh&group=00001- 01000&file= 100-680

“Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by **horsedrawn carriage, wagon, or automobile**, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct.” 11 American Jurisprudence 1st. Constitutional Law, Sect.329, p 1135.

‘(1) Fundamentally it must be recognized that in this country “Highways are for the use of the traveling public, and all have ... the right to use them in a reasonable and proper manner, and subject to proper regulations as to the manner of use.” (13 Cal.Jur. 371, sec. 59) “The streets of a city belong to the people of the state, and the use thereof is an *inalienable right* of every citizen, subject to legislative control or such reasonable regulations as to the traffic thereon or the manner of using them as the legislature may deem wise or proper to adopt and impose.” (19 Cal.Jur. 54, sec. 407) “Streets and highways are established and maintained primarily for purposes of travel and transportation by the public, and uses incidental thereto. Such travel may be for either business or pleasure ... The use of highways for purposes of travel and transportation is not a mere privilege, but a *common and fundamental right*, of which the public and individuals cannot rightfully be deprived ...[A]ll persons have an equal right to use them for purposes of travel by proper means, and with due regard for the corresponding rights of others.” (25 Am.Jur. 456-457, sec. 163; see, also, 40 C.J.S. 244-247, sec. 233.)’ *Escobedo v. State of California* (1950), 35 Cal.2d 870, 875-876. [overruled on other issues]

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“But it does not appear that those who were and are so operating and are so exempted do not fall **within the classification of those who are lawfully exempted.** It also appears in the stipulation that the type of motor vehicles used by the exempted classes is similar to the type

used by licensed operators. This fact we deem immaterial. It is not the type of vehicle, but the peculiar nature ***48** of the business conducted upon and over the public highways, that justifies the classification of the statute for licensing purposes. . . . but they would not necessarily compel their inclusion in the classification singled out by the statute of those engaged in the business of using the public highways for the transportation of persons or property for hire." *Ex parte Schmolke*, 199 Cal. 42, 248 P. 244 (1926) pp.47-48.

"[264 U.S. 140, 144] The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and, generally at least, may be prohibited or conditioned as the Legislature deems proper. . . . It is asserted that the requirements of the statute are so burdensome as to amount to confiscation, and therefore to result in depriving appellant of his property without due process of law. . . . a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance or permission." ***Packard vs. Banton***, 44 S.Ct. 256 (1924).

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."[EN[2]] ***Miranda vs. Arizona***, 384 US 436, 491 [this was a multi-case which included *California v Stewart*]

"The claim and exercise of a constitutional Right cannot be converted into a crime." *Miller vs. U.S.*, 230 F. 486, 489; [see ***Miranda vs. Arizona***, 384 US 436]

"A statute [or code] **does not trump the Constitution."** *People v. Ortiz*, (1995) 32 Cal.App.4th at p. 292, fn. 2, 38 Cal.Rptr.2d 59; *Conway v. Pasadena Humane Society*, (1996) 45 Cal.App.4th 163; *United States of America, v. Jerry Arbert Pool, C.A.* No. 09-10303 p. 14059 of the Opinion (dissenting), In the United States Court of Appeals for the Ninth Circuit (Opinion filed September 14, 2010), On Appeal From The United States District Court For The Eastern District of California (An order dismissing this case on September 19, 2011). (see the court case which states "Codes are not law, only evidence of law.")

A statutory privilege cannot override a defendant's constitutional right. *People v. Reber*, (1986) 177 Cal.App.3d. 523 [223 Cal.Rptr. 139]; *Vela v. Superior Ct*, 208 Cal.App.3d. 141 [255 Cal.Rptr. 921], however, "the judiciary has a solemn obligation to insure that the constitutional right of an accused to a fair trial is realized. If that right would be thwarted by enforcement of a statute, the state ... must yield." *Vela v. Superior Ct.*, 208 Cal.App.3d. 141 [255 Cal.Rptr. 921]

Obviously, administrative agencies, like police officers must obey the Constitution and may

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[2] "These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of Chief Justice Marshall, they were secured 'for ages to come, and * * * designed to approach immortality as nearly as human institutions can approach it,'" *Cohens v. Commonwealth of Virginia*, 6 Wheat. 264, 387, 5 L.Ed. 257 (1821).

not deprive persons of constitutional rights. *Southern Pac. Transportation Co. v. Public Utilities Com*., 18 Cal.3d 308 [S.F. No. 23217. Supreme Court of California. November 23, 1976.]

If evidence of a fact is clear, positive, uncontradicted and of such nature it cannot rationally be disbelieved, the court must instruct that fact has been established as a matter of law. *Roberts v. Del Monte Properties Co*., 111 CA2d. 69 (1952)

In LAW there is a MAJOR DISTINCTION between privileges & RIGHTS.

PRIVILEGE. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law. (rest omitted) BLACK'S LAW DICTIONARY, 2nd EDITION, page 942 "A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others." (rest omitted) BLACK'S LAW DICTIONARY, 6TH ED., PAGE 1197 "A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty." (rest omitted) BLACK'S LAW DICTIONARY, 7TH ED., PAGE 1215

California Constitution (1879), Article 1 § 7...(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.

Privileges or immunities granted by the Legislature may be altered or revoked.

http://www.leginfo.ca.gov/.const/.article_1

"Where rights secured by the constitution are involved, there can be no rule-making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436, 491.

http://laws.findlaw.com/us/384/436.html

"It is well settled that, quite apart from the guarantee of equal protection, if a law 'impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.' *Mobile v. Bolden*, 446 U.S. 55, 76 (plurality opinion)." *HARRIS v. McRAE*, (1980) 448 U.S. 297 p. 312

http://caselaw.lp.findlaw.com/scripts/printerfriendly.pl?page=us/448/297.html

"That a constitutional right may be subject to reasonable rules and regulations for the enforcement or protection thereof is elementary. A recent decision of this court in the case of *Chesney v. Byram*, 15 Cal.2d 460 [101 PaCal.2d 1106], which cites the Crescent Wharf case, has held that a right granted by a constitutional provision may

be subject to reasonable regulation and control by the state legislature and at the same time such provision may be self-executing.

[7] It will be noted, however, that in neither of said cases did the court in any way imply that by state legislation or a lack thereof a ***constitutional right might be taken away or denied altogether***, for it is likewise elementary that the legislature by statutory enactment ***may not abrogate or deny a right granted by the Constitution***. *Potter v. Ames*, 43 Cal. 75; *Wilcox v. Engebretsen*, 160 Cal. 288 [116 P. 750]; *Sievers v. Root*, 10 Cal.App. 337 [101 P. 925]. And it follows as a logical conclusion that a right constitutionally granted cannot be taken away by the failure of the legislature to act."

...

"**To hold otherwise would be to say that the Constitution itself gives a right which the legislature may deny by failing or refusing to provide a remedy. Such a construction would indeed make the constitutional provision a hollow mockery instead of a safeguard for the rights of citizens**."

Rose v. State of California ,19 Cal.2d 713

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And people should be AWARE that only CERTAIN RIGHTS are PROTECTED via the DUE PROCESS & EQUAL PROTECTION clause of the Bill of Rights or of the 14th Amendment, and UNDERSTAND that in many cases their STATE CONSTITUTIONS provide EQUAL or GREATER PROTECTION of their RIGHTS.

"Thus in [13 Cal.3d 551] determining that California citizens are entitled to greater protection under the **California** Constitution against unreasonable searches and seizures than that required by the United States Constitution, we are embarking on no revolutionary course. Rather we are simply reaffirming a basic principle of federalism -- that the nation as a whole is composed of distinct geographical and political entities bound together by a fundamental federal law but nonetheless **independently responsible for safeguarding the rights of their citizens**.

The ultimate confirmation of our conclusion occurred, finally, when the people adopted article I, section 24, of the California Constitution at the November 1974 election, declaring that 'Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.' Of course this declaration of constitutional independence did not originate at that recent election; indeed the voters were told the provision was a mere reaffirmation of existing law. fn. 19" *People v. Brisendine* , 13 Cal.3d 528 [Crim. No. 16520. Supreme Court of California. February 20, 1975.]

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Our God-given RIGHTS such as our RIGHT to PERSONAL LIBERTY are PRIVATE, NOT "public".

> CODE OF CIVIL PROCEDURES 1898. Statutes are public or private. A private statute is one which concerns only ***certain designated*** individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=ccp& group=01001- 02000& file=1895-1917

And according to the U.S. SUPREME COURT & other legal authorities, it is the COMMERICAL use of the public roads that is a PRIVILEGE.

> "[1] First. It is **well established law** that the highways of the state are public property; that their primary and preferred use is for **private purposes**; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit. *Packard v. Banton*, 264 U.S. 140, 144 , 44 S.Ct. 257, and cases cited; *Frost & Frost Trucking Co. v. R.R. Comm.*, 271 U.S. 583, 592 , 593 S., 46 S.Ct. 605, 47 A.L.R. 457; *Hodge Drive-It-Yourself Co. v. Cincinnati*, 284 U.S. 335, 337 , 52 S.Ct. 144; *Johnson Transfer & Freight Lines v. Perry* (D.C.) 47 F.(2d) 900, 902; *Southern Motorways v. Perry* (D.C.) 39 F.(2d) 145, 147; *People's Transit Co. v. Henshaw* (C.C.A.) 20 F.(2d) 87, 89; *Weksler v. Collins*, 317 Ill. 132, 138, 139, 147 N.E. 797; *Maine Motor Coaches v. Public Utilities*, 125 Me. 63, 65, 130 A. 866. [287 U.S. 251, 265]" *STEPHENSON v. BINFORD*, (1932) 287 U.S. 251

http://laws.findlaw.com/us/287/251.html

> "The statute is framed upon the premise that the operation of a motor vehicle upon the public highways is the exercise **122 of a mere privilege, which may be denied, rather than a right. See, *People v. Rosenheimer*, 209 N.Y. 115, 120, 121, 102 N.E. 530, 532, 46 L.R.A.,N.S., 977; *Heart v. Fletcher*, 184 Misc. 659, 53 N.Y.S.2d 369.
> …
> 'The essence of the right to equal protection of the laws is that all persons ***similarly situated*** be treated alike.' *Myer v. Myer*, 271 App.Div. 465, 472, 66 N.Y.S.2d 83, 90, affirmed 296 N.Y. 979, 73 N.E.2d 562, citing *Frost v. Corporation Commission*, 278 U.S. 515, 522, 49 S.Ct. 235, 73 L.Ed. 483; *Atchison, T. & S. F. R. Co. v. Matthews*, 174 U.S. 96, 19 S.Ct. 609, 43 L.Ed. 909. The statute in question does affect alike all persons ***similarly situated***, i. e., persons licensed to operate motor vehicles upon the highways of this state. The **fact that it does not apply with equal force** *51 **to unlicensed operators is immaterial from the constitutional standpoint**. The constitution does not require that a vehicle and traffic law shall apply equally in all respects to **licensed and unlicensed** operators of vehicles. The licensed operator *possesses a qualified right* granted by the state. He stands in a ***class different*** from an ***unlicensed operator*** of a vehicle and is *subject to legislation*

specially applying to those persons in his class." *SCHUTT v. MAC DUFF* (1954), 127 N.Y.S. 2d 116

And as such that PRIVILEGE is SUBJECT to LICENSING & REGULATION under the state's POLICE POWER, (see *Bacon v. Huss*, (1926) 248 P. 235 – *it says it is a revenue measure only*) just like any other BUSINESS, PROFESSION or OCCUPATION that is "affected with a public interest".

> "§ 104. Power of the state to license and tax use of automobiles. The state has the power to license as a means of regulation all business and employments which impose a burden on the public, or when the public interests or welfare require that the business or occupation should be regulated.[fn]24
>
> The licensing of automobiles is a valid exercise of the police power,[fn]25 and is unaffected by the fourteenth amendment to the Federal constitution. [fn] 26 Such law is not in violation of the Federal constitution because it "infringes on the constitutional rights of a class of citizens by denying to the owners of automobiles within the state the equal protection of the law."[fn] 27
>
> "That a reasonable fee may be imposed as an incident to the exercise of the police power of regulation is too well settled to require citation of authorities."[fn]28
>
> On the other hand, it has been held that an ordinance which requires one who uses his automobile for his private business and pleasure to submit to an examination and to take out a license (if the examining board see fit to grant it) is imposing a burden on one class of citizens in the use of the streets not imposed upon, others, and is invalid.[fn]29"

Berry Automobiles, Sixth edition (1929), page 86.

MOTOR TRANSPORTATION 34 Cal Jur 2d II. REGULATION, GENERALLY

> …
> § 2. In General.—An adequate transportation system is essential to the welfare of the state, and an important part of that system is the service rendered by highway carriers.[fn] 8 Among the purposes of regulation are the preservation of the highways [fn] 9 for the public benefit and use, consistent with the needs of commerce, without unnecessary congestion or wear and tear; maintenance of a full and unrestricted flow of traffic by auto carriers over the highways;[fn] 10 maintenance of adequate, regular, and reliable service by such carriers at reasonable rates and charges:[fn]11 and prevention of discrimination among shippers.[fn] 12 To these ends it is necessary to regulate the use of the highways by those transporting property thereon for ***commercial purposes***.[fn] 13
>
> § 3. Basis of Authority.—It is a recognized principle that the use of the public

highways for the purpose of ***transacting business*** thereon is a privilege the state may grant or withhold in its discretion, and on which it may impose such conditions as it sees fit.[fn] 14 The right of a common carrier to use the public highways is not a vested or natural right. It is a mere privilege or license, and the principle applies equally to private carriers who propose to use the highways for their private business.[fn] 15

CALIFORNIA JURISPRUDENCE, 2nd EDITION, VOLUME 34, MOTOR TRANSPORTATION, pages 544-545

The Kenneally court reasoned: "[T]here is no fundamental constitutional right to work for, or to have continued employment with, a particular public or private employer.' [(*Graham v. Kirkwood Meadows Pub. Util. Dist.* (1994) 21 Cal.App.4th 1631, 1643-1644, 26 Cal.Rptr.2d 793 [residence requirements for public utility employees]; *Rittenband v. Cory, supra,* 159 Cal.App.3d 410, 205 Cal.Rptr. 576 [mandatory retirement age for judge]; *Kubik v. Scripps College* (1981) 118 Cal.App.3d 544, 549, 173 Cal.Rptr. 539 [mandatory retirement age for college professor]; ***497***Hetherington v. State Personnel Bd. (1978) 82 Cal.App.3d 582, 589, 147 Cal.Rptr. 300 [prohibition against employment of ex-felons as peace officers].) FN6]" (*Kenneally v. Medical Board*, (1994) 27 Cal.App.4th 489 at p. 496.)

"Nor is there a distinction for equal protection purposes between the obtaining of a professional license and the maintaining of that license. [Citation.] 'No person can acquire a vested right to continue, when once licensed, in a business, trade or occupation which is subject to legislative control under the police powers.' [Citation.] '[T]o the extent the license is subject to the state's police power, it is not vested.' [Citations.]" (*Kenneally v. Medical Board*, (1994) 27 Cal.App.4th 489 at p. 497.)

…

"States are granted the power to regulate professions. [Citation.] The state may regulate different professions differently. It may resolve identical problems with respect to different professions at the same time and in the same manner, or determine to regulate different professions differently. [Citation.] In evaluating professional disciplinary systems an appellate court does not sit as a super-legislature. [Citation.] Great deference to legislative judgment should be accorded. [Citation.]. (*Kenneally v. Medical Board*, 27 Cal.App.4th 489, 499.)" *Landau v. Superior Court* (Medical Bd. of Cal.) (2000) 81 Cal.App.4th 191 , 71 Cal.Rptr.2d 54

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Frost v. Railroad Commission of State of California, (1926) 271 U.S. 583, 46 S.Ct. 605, 47 A.L.R. 457, 70 L.Ed. 1101 addresses this issue of a private motor carrier of passengers:

"It is very clear that the act, as thus applied, is in no real sense a regulation of the use of the public highways. It is a regulation of the business of those who are engaged in using them. Its primary purpose evidently is to protect the business of those who are common carriers in fact by controlling competitive conditions. Protection or conservation of the highways is not involved. This, in effect, ***592*** is the view of the

court below plainly expressed. 240 P. 26.

[1] Thus, it will be seen that, under the act as construed by the state court, whose construction is binding upon us, a private carrier may avail himself of the use of the highways only upon condition that he dedicate his property to the business of public transportation and subject himself to all the duties and burdens imposed by the act upon common carriers. In other words, the case presented is not that of a private carrier, who, in order to have the privilege of using the highways, is required merely to secure a certificate of public convenience and become subject to regulations appropriate to that kind ****607** of a carrier, but it is that of a private carrier, who, in order to enjoy the use of the highways, must submit to the condition of becoming a common carrier and of being regulated as such by the Railroad Commission. The certificate of public convenience, required by section 5, is exacted of a common carrier, and is purely incidental to that status. The requirement does not apply to a private carrier ***qua private carrier***, but to him only in his imposed statutory character of common carrier. Apart from that signification, so far as he is concerned, it does not exist.

[2] That, consistently with the due process clause of the Fourteenth Amendment, a private carrier cannot be converted against his will into a common carrier by mere legislative command, is a rule not open to doubt, and is not brought into question here. It was expressly so decided in Michigan Commission v. Duke, 266 U. S. 570, 577,578, 45 v. Duke, 266 U. S. 570, 577, 578, 45 also, Hissem v. Guran, 112 Ohio St. 59, 146 N. E. 808;State v. Nelson, 65 Utah, 457, 462, 238 P. 237. The naked question which we have to determine, therefore, is whether the state may bring about the same result by imposing the unconstitutional requirement as a condition precedent to the enjoyment of a privilege, which, without so deciding, we shall assume to be within the power of the state altogether to ***593** withhold if it sees fit to do so. Upon the answer to this question, the constitutionality of the statute now under review will depend."

CFR §391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

(a) Section 391.11(b)(1),(b)(6), and (b)(8), (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);

(c) So much of §§391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person; and

(d) Subpart F (relating to maintenance of files and records).

[60 FR 38746, July 28, 1995; 63 FR 33278, June 18, 1998]

People might want to do some RESEARCH on DENIALS, PRESUMPTIONS, the BURDEN OF EVIDENCE & PROVING A NEGATIVE.

MAXIMS OF LAW

1. He who does not deny, admits.
2. Where truth is, fiction of law does not exist.
3. It is immaterial whether a man gives his assent by words or by acts and deeds.
4. Fraud lies hid in general expressions.
5. A concealed fault is equal to a deceit.
6. He who does not prevent what he can prevent, is viewed as assenting.
7. The truth that is not sufficiently defended is frequently overpowered; and he who does not disapprove, approves.
8. Suppression of the truth is equivalent to the expression of what is false.
9. Ignorance of facts excuses, ignorance of law does not excuse.
10. The multitude of those who err is no excuse for error.
11. An error not resisted is approved.
12. Suppression of fact, which should be disclosed, is the same in effect as willful misrepresentation.
13. Time runs against the slothful and those who neglect their rights.
14. Remove the foundation, the structure or work fall.
15. Ignorance of the Law does not excuse misconduct in anyone, least of all a sworn officer of the law.
16. Remove the cause and the effect will cease.
17. The presumption is always in favor of the one who denies.
18. All things are presumed to be lawfully done and duly performed until the contrary is proved.
19. It is in the nature of things, that he who denies a fact is not bound to prove it.
20. What is not proved and what does not exist are the same; it is not a defect of the law, but

of proof.

To me it is NOT the “license plates”, “registration” , the “driver's license” or even “proof of insurance” that makes us subject to various provisions of the VEHICLE CODES, it is the PRESUMPTION that at the time we were using the roads for COMMERCIAL purposes (which is a PRIVILEGE) that REQUIRES us HAVE them.

VEHICLE CODE §14607.4. The Legislature finds and declares all of the following:

> (a) Driving a motor vehicle on the public streets and highways is a privilege, not a right. [rest omitted]

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=veh&group=14001- 15000&file= 14600-14611

PENAL CODE §961. Neither presumptions of law, nor matters of which judicial notice is authorized or required to be taken, need be stated in an accusatory pleading.

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=pen&group=00001- 01000&file= 948-973

EVIDENCE CODE §550. (a) The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence. (b) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact.

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=evid&group=00001- 01000&file= 550

EVIDENCE CODE §601. A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof.

EVIDENCE CODE §602. A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption.

EVIDENCE CODE §603. A presumption affecting the burden of producing evidence is a presumption established to implement no public policy other than to facilitate the determination of the particular action in which the presumption is applied.

EVIDENCE CODE §604. The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate.

http://www.leginfo. ca.gov/cgi- bin/displaycode? section=evid&group=00001- 01000&file= 600-607

That is WHY people find out the “rescinding” of SUPPOSED “contracts” with the GOVERNMENT (which are NON-EXISTENT & have NOTHING to do with the issue) are INEFFECTIVE & usually end up causing MORE PROBLEMS.

Especially since I have NO EVIDENCE that having a DRIVER'S LICENSE prohibits any legal means of fighting charges of violations of the VEHICLE CODES via motions to dismiss for lack of personal jurisdiction, motions to dismiss for lack of subject matter jurisdiction, demurrers and/or on the basis that the statute/code is VAGUE, OVERBROAD and/or UNCONSTITUTIONAL as applied in the instant case.

Title 5 U.S.C. §556(d)
"When jurisdiction is challenged the burden of proof is on the government."

"No sanction can be imposed absent proof of jurisdiction."

"Once challenged, jurisdiction cannot be 'assumed', it must be proved to exist!"
Stanard v. Olesen, 74 S.Ct. 768 (1954).

"The law requires PROOF OF JURISDICTION to appear on the Record of the administrative agency and all administrative proceedings." *Hagans v. Lavine*, 415 U.S. 533 (1974)

It appears to me that people are FAILING to make a CRITICAL DISTINCTION between "regulation" & "prohibition."

Stop signs, traffic lights, speed limits, crosswalks & so on are all forms of REGULATION, aren't they?

> "The streets and highways belong to the public. They are built and maintained at public expense for the use of the general public in the ordinary and customary manner. The state, and the city as an arm of the state, has absolute control of the streets in the interest of the public. No private individual or corporation has a right to the use of the streets in the prosecution of the business of a common carrier for private gain without the consent of the state, nor except upon the terms and conditions prescribed by the state or municipality, as the case may be. The use of the streets as a place of business or as a main instrumentality of business is accorded as a mere privilege, and not as a matter of natural right.
>
> ...
>
> See, also, to the same effect, *Memphis Street Ry. Co. v. Rapid Transit Co.*, 133 Tenn. 99, 179 S. W. 635, L. R. A. 1916B, 1143, Ann. Cas. 1917C, 1045; *Memphis v. State ex rel. Ryals*, 133 Tenn. 83, 179 S. W. 631, L. R. A. 1916B, 1151-1156, Ann. Cas. 1917C, 1056; *Ex parte Dickey*, 76 W. Va. 576, 85 S. E. 781, L. R. A. 1915F, 840; *Ex parte Lee*, 28 Cal. App. 719, 153 Pac. 992; *Lutz v. New Orleans* (D. C.) 235 Fed. 978. [2] [3] These cases, though involving regulatory statutes or ordinances, all recognize and are based upon the fundamental ground that the sovereign state has plenary control of the streets and highways, and, in the exercise of its police power, may absolutely prohibit the use of the streets as a place for the **518 *662 prosecution of a private business for gain. They all recognise the fundamental

distinction between the ordinary right of a citizen to use the streets in the usual way and the use of the streets as a place of business or main instrumentality of a business for private gain. The former is a common right, the latter an extraordinary use. As to the former the legislative power is confined to regulation, as to the latter it is plenary and extends even to absolute prohibition.

...

In *Ex parte Dickey*, supra, the Supreme Court of West Virginia used the following language: '**The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stagecoach or omnibus. The former is the usual and ordinary right of a citizen, a common right, a right common to all, while the latter is special, unusual, and extraordinary.** As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader. The right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all the authorities.' See, also, *People v. Rosenheimer*, 209 N. Y. 115, 102 N. E. 530; *Memphis v. State ex rel. Ryals, supra; Fifth Ave. Coach Co. v. City of New York*, 194 N. Y. 19, 86 N. E. 824, 21 L. R. A. (N. S.) 744, 16 Ann. Cas. 695. The regulation here involved, even considered as a prohibition, does not contravene the Fourteenth Amendment of the federal Constitution." *HADFIELD v. LUNDIN* (1917), L.R.A. 1918B,909, 98 Wash. 657, 168 P. 516

" **167 [7] Nothing in this opinion should be construed as intimating that the common carrier has any right superior to that of the citizen to appropriate the use of the highways. The right of a citizen to use the highways, including the streets of the city or town, for travel and to transport his goods, is an inherent right which cannot be taken from him, but it is subject to reasonable regulation in the interest of the public good. In degree this right of the citizen is superior to that of the common carrier by motorbus, dray, coach, taxi, or other device, the latter being controlled by legislative grant, or franchise which may be regulated or denied, and may be given to some and denied to others. *1112 *State ex rel. Pennington v. Quigg*, 94 Fla. 1056, 114 So. 859, and cases cited." *FLORIDA MOTOR LINES, Inc. v. WARD*, (1931) 102 Fla. 1105

REGULATION does NOT mean PROHIBIT, does it?

"**Even the Legislature has no power to deny to a citizen the right to travel** upon the highway and transport his property in the ordinary course of his business or pleasure, though this right may be regulated in accordance with the public interest *207 and convenience. Where one undertakes, however, to make a greater use of the public highways for his own private gain, as by the operation of a stagecoach, an omnibus, a truck, or a motorbus, the state may not only regulate the use of the vehicles on the highway, but may prohibit it. A municipality can do so only under a

power expressly granted by the state. *Ex parte Dickey*, 76 W. Va. 576, 85 S. E. 781, L. R. A. 1915F, 840." *CHICAGO MOTOR COACH CO. et al. v. CITY OF CHICAGO et al.*,(1929) 337 Ill. 200 pp. 206-207, 169 N.E. 22

WOULDN'T that mean that those LAWS dealing with the PRIVILEGE of "driving a motor vehicle" have NO lawful APPLICATION to those using the public roads as a MATTER OF RIGHT?

"[5][6] 2. Nor does it violate section 3 or section 14 of article 3 of the state Constitution, nor the Fourteenth Amendment to the Constitution of the United States, securing to the people the right of acquiring, possessing, and enjoying property, and prohibiting the taking of private property for public use or without due process of law, for, while a citizen has the right to travel upon the public highways and to transport his property thereon, that right does not extend to the use of the highways, either in whole or in part, as a place of business for private gain. For the latter purpose no person has a vested right in the use of the highways of the state, but is a privilege or license which the Legislature may grant or withhold in its discretion, or which it may grant upon such conditions as it may see fit to impose, provided the imposition applies impartially. *Hadfield v. Lundin*, 169 P. 516, 98 Wash. 657, L. R. A. 1918B, 909, Ann. Cas. 1918C, 942; *Gizzardelli v. Presbrey*, 117 A. 359, 44 R. I. 333; *Cummins v. Jones*, 155 P. 171, 79 Or. 276; *Memphis St. Ry. Co. v. Rapid Transit Co.*, 139 S. W. 635, 133 Tenn. 99, L. R. A. 1916B, 1143, Ann. Cas. 1917C, 1045; *Packard v. Banton*, 44 S. Ct. 257, 264 U. S. 140, 68 L. Ed. 598.

....

It is clearly the express intention of the Legislature to include within the prohibition of the act every person operating a vehicle of the nature described for hire and as a regular business, on a commercial basis, between fixed termini, and to exclude from its operation those residing in rural communities who may occasionally carry either passengers or freight, with or without compensation, but not "on a commercial basis," and not as a regular business. As to this exemption, no doubt those persons included in the exemption would not be subject to the provisions of the act had the Legislature been silent on the subject. Having *1079 spoken, no discretion as to those persons is lodged in the commission. The performance of the act required, i. e., the exemption of those falling within the proviso, affects the rights of third persons, and therefore the proviso is to be construed as though it read "must exempt" instead of "may exempt." *State ex rel. Stiefel v. District Court*, 96 P. 337, 37 Mont. 298; *State v. Dotson*, 67 P. 938, 26 Mont. 311; *State ex rel. Interstate Lumber Co. v. District Court*, 172 P. 1030, 54 Mont. 604; *Dryer v. Director General, etc.*, 213 P. 210, 66 Mont. 299. The exemption, then, is of a distinct class, and all persons falling within that class are exempted by the act from its operation." *STATE v.JOHNSON*, (1926) 75 Mont. 240, 243 P. 1073

So how can people continue to "believe" that a DRIVERS' LICENSE which can be REVOKED or SUSPENDED really pertains to the PEOPLE'S RIGHT to use the roads for purposes of VEHICULAR TRAVEL, when the LEGISLATURE has already

ACKNOWLEDGED that usage as a MATTER OF RIGHT and according to the COURTS "**Even the Legislature has no power to deny to a citizen the right to travel upon the highway and transport his property in the ordinary course of his business or pleasure**"?

Arrest:

"A seizure within the meaning of the fourth amendment occurs only when the officer by means of physical force or show of authority has in some way restricted the liberty of a person." *State v. Trujillo*, (Utah Ct.App. 1987) 739 P.2d 85, 87.

Law directory http://groups.yahoo.com/group/law-discuss/links/?prop=eupdate

Seizure as prohibited by the Fourth Amendment Police conduct can give rise to a false arrest action in a number of ways, including:

"(Fourth Amendment prohibits warrantless arrest in home, absent exigent circumstances, even if statute authorizes action and probable cause exists)." (*Howard v. Dickerson*, (10th Cir. 1994) 34 F.3d 978)

"(1) trooper who allegedly caused plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and supporting affidavit which failed to establish probable cause was not entitled to absolute immunity, . . ." (Case summary); "The *Harlow* 'objective reasonableness' standard, which gives ample room for mistaken judgments, will not deter an officer from submitting an affidavit when there is probable cause to make an arrest, and defines the qualified immunity ***336** accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest. P. 1096." (*Malley v. Briggs*, (1986) 475 U.S. 335 p. 336)

"(1) seizure and detention of plaintiff without probable cause violated Fourth Amendment, and (2) plaintiff's right to be free from such warrantless seizure and detention was clearly established." (*Centanni v. Eight Unknown Officers*, (6th Cir. 1994) 15 F.3d 587 (Case summary))

"The Court ruled as a matter of law that the plaintiffs had been subjected to an arrest and that the defendants did not have probable cause for the arrest. The Court further ruled as a matter of law that the police officers were not entitled to qualified immunity because no reasonable officer could have believed that the defendants' actions were lawful." (*Oliveira v. Mayer*, (2d Cir. 1994) 23 F.3d 642 p. 645)

... holding an arrested person for an undue length of time before bringing him or her before a judge for arraignment; arrest was 1982 (*Hallstrom v. City of Garden City*, (9th Cir. 1993) 991 F.2d 1473)

Jailing a person on a minor charge that does not justify incarceration: "Probable cause determination made on-the-scene by arresting officer and constitutionally mandated probable cause of assessment made by independent judicial officer are different, so that while judicial officer's independent assessment of probable cause can be delayed, suspect is entitled to probable cause determination by independent, neutral and detached judicial officer. U.S.C.A. Const.Amend. 4." (*Doulin v. City of Chicago*, (N.D. Ill 1987) 662 F. Supp. 318)

". . . constituted unconstitutional imprisonment for failure to pay debt." (*In re Rinehart*, Ohio App. 1983) 462 N.E.2d 448 ()

Arresting a person for violating a law where that law is later declared by a court to be invalid or unconstitutional: "prior to any arrest, to allow a person an opportunity to identify himself and explain his presence and conduct is unconstitutionally vague on its face, in violation of due process, for failure to provide a standard by which a police officer can test adequacy of any identification a person provides" (*Fields v. City of Omaha*,(8th Cir. 1987) 810 F.2d 830 Headnotes)

Private automobiles' confiscation:

Miranda v. City of Cornelius, 429 F.3d 858 (C.A.9 [Or.] 2005 - ***impoundment; no license***) citing *Soldal v. Cook County*, 506 U.S. 56, 61, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992) it states:

> *Miranda v. City of Cornelius*, supra, (pages P. 858 below) states in the Background, Holding, and headnotes:
>
> **Holding:** "(1) impoundment was not justified by community caretaking doctrine, and . . ."
>
> **P.862 [2], [3], [4] Searches and Seizures 349 18** 349 Searches and Seizures 349k13 What Constitutes Search or Seizure"Impoundment of automobile" is "seizure" within meaning of Fourth Amendment. U.S.C.A. Const.Amend. 4.
>
> 349k23 k. Fourth Amendment and Reasonableness in General. "Fourth Amendment protects against unreasonable interferences in property interests regardless of whether there is invasion of privacy. U.S.C.A. Const.Amend. 4."
>
> 349k192 Presumptions and Burden of Proof 349k192.1 k. In General. "***Burden is on government*** to persuade district court that seizure comes under one of few specifically established exceptions to Fourth Amendment warrant requirement. U.S.C.A. Const.Amend. 4."
>
> **P.862 [5] Automobiles 48A key 349.5(12)** 48A Automobiles 48AVII Offenses 48AVII(B) Prosecution 48Ak349.5 Search or Seizure Consequent to Arrest, Stop or Inquiry 48Ak349.5(5) Object, Product, Scope, and Conduct of Search or Inspection 48Ak349.5(12) k. Time and Place; Impoundment, Inventory, or Booking Search. "Probable cause to believe that **driver committed traffic violation is not sufficient justification** by itself to make impoundment of vehicle reasonable under Fourth Amendment. U.S.C.A. Const.Amend. 4."
>
> **P.864 [6] Automobiles 48A key 349.5(12)** 349k66 k. Inventory and Impoundment; Time and Place of Search. "Whether impoundment is warranted under 'community caretaking doctrine' ***depends on location*** of vehicle and police officers' duty to prevent it from creating **hazard to other drivers or being target for vandalism or theft**."

P.864 [7] Automobiles 48A 349.5(12) 349k66 k. Inventory and Impoundment; Time and Place of Search. "Generally, 'community caretaking doctrine' allows police to impound vehicles that **jeopardize public safety and efficient movement of vehicular traffic**."

P.865 [10] Automobiles 48A 349.5(12) 48Ak349.5(5) Object, Product, Scope, and Conduct of Search or Inspection 48Ak349.5(12) k. Time and Place; Impoundment, Inventory, or Booking Search. "Violation of traffic regulation justifies impoundment of vehicle, under 'community caretaking doctrine,' if driver is unable to remove vehicle from **public location** without continuing its illegal operation." [and only if it is a hazard]

P.866 [11] Automobiles 48A 349.5(12) 48Ak349.5(12) k. Time and Place; Impoundment, Inventory, or Booking Search. **Searches and Seizures 349 66** 349 Searches and Seizures 349I In General 349k60 Motor Vehicles 349k66 k. Inventory and Impoundment; Time and Place of Search. "Need to deter driver's unlawful conduct is by itself **insufficient** to justify impoundment of vehicle, under 'community caretaking doctrine.'" (emphasis added)

The California Vehicle Code §22953(d) the legislature states "(d) It is the intent of the Legislature in the adoption of subdivision (a) to avoid causing the unnecessary ***stranding of motorists*** and placing them in *dangerous situations*, when traffic citations and other civil remedies are available, thereby promoting the safety of the general public."

CONCLUSION:

The DMV and the traffic laws were all designed to regulate commercial drivers. This includes anyone who uses the highways or roads for profit or commerce. Like bus and taxi drivers, limo drivers, truck drivers. If you get paid to drive, you are legally required to have a driver's license.

CVC § 21100 Local authorities may adopt rules and regulations by ordinance or resolution regarding the following matters: (b) "Licensing and regulation of the operation of vehicles ***for hire*** and drivers of passenger vehicles ***for hire***." is part of Division 11. **Rules of the Road** Article 3. Local Regulation. **Rules and Regulations: Subject Matter** telling enforcement officers these are the only people they can ticket unless there is a tort, trespass/breach of peace or violation of contract.

"A **carriage** is peculiarly a **family or household article**. It ***contributes*** in a large degree the ***health, convenience, comfort***, and *welfare of the householder* or ***of the family***." *Arthur v Morgan*, 113 U.S. 495, 500, 5 S.Ct. 241, 243 (S.D. NY 1884).

"The Supreme Court, in Arthur v. Morgan, U.S. 495, 5 S.Ct. 241, 28 L.Ed. 825, held that carriages were properly classified as household effects, and we see no reason that an automobile

should not be similarly disposed of." *Hillhouse v United States*, 152 F. 163, 164 (2nd Cir. 1907).

"Under UCC 9-109 there is a real ***distinction*** between goods purchased for ***personal use*** and those purchased for *business use*. The two mutually exclusive and the principal use to which the property is put should be considered as determinative." *James Talcott, Inc. v Gee,* 5 UCC Rep Serv 1028; 266 Cal.App.2d 384, Cal.Rptr. 168 (1968).

Let's start out with the basic "tricks" they are using to steal your money and your freedom. All the government agencies you are involved with have a nasty habit of changing the meanings of words to fit into their "code" or "regulations." Then they can charge you fees and issue licenses for that particular activity . . . An activity you had the right to participate in. Let's take a look at some LEGAL definitions of some of these terms…

From the United States Code:

USC Title 18, § 31 – Definition of "Motor Vehicle"…

(6) "Motor Vehicle":

The term "motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

USC Title 18, § 31 defines "Commercial Purposes":

(10) "Commercial Purposes"

"Used for commercial purposes. - The term "used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit."

> From McKinney's Digest: "Motor vehicle," as used in the Motor Vehicle Transportation License Tax Law, includes any automobile, truck, tractor, or other self-propelled vehicle used for the transportation of persons or property upon the public highways, otherwise semi-trailer, dolly or other vehicle drawn thereby. Rev & Tax C sec. 9605.

Is your car, pickup, or motorcycle a "commercial vehicle?" Do you get paid to drive on the roads? If you only use it to go to and from work, the store, school or any other private reason, your car/pickup/motorcycle IS NOT A "MOTOR VEHICLE."

Undisputable Fact Number 1: Your car is ***not*** a "**Motor Vehicle**".

Now the term "**Driver**":

"Driver -- One employed in conducting a coach, carriage, wagon, or other vehicle . . ." Bouvier's Law Dictionary, 1914 ed., p. 940.

A person is "Driving" when employed to "Drive" a "Motor Vehicle" for "Commercial Purposes."

And the term "**Traveler**".

"The **term** `***travel***' and `***traveler***' are usually construed in their broad and general sense . . . so as to include all those who rightfully use the **highways by Right**, and who have occasion to pass over them for the purpose of business, convenience, or pleasure." [emphasis added] 25 Am.Jur. (1st) Highways, Sect.427, p.717.

"***Traveler*** -- One who passes from place to place, whether for pleasure, instruction, business, or health." *Locket vs. State*, 47 Ala. 45; Bouvier's Law Dictionary, 1914 ed., p. 3309.

"***Travel*** -- To journey or to pass through or over; as a country district, road, etc. To go from one place to another, whether on foot, or horseback, or in any conveyance as a train, an automobile, carriage, ship, or aircraft; Make a journey." Century Dictionary, p.2034.

Therefore, the term "***travel***" or "***traveler***" refers to one who uses a conveyance to go from one place to another, and included all those who use the highways as a **matter of Right**.

Notice that in all these definitions the phrase "for hire" never occurs. This term "***travel***" or "***traveler***" implies, by definition, one who uses the road as a means to move from one place to another.

Therefore, one who uses the road in the ordinary course of life and business for the purpose of travel and transportation is a traveler.

Undisputable Fact Number 2: You are a "Driver", driving a "Motor Vehicle" when you are being ***paid*** to carry passengers, goods, or cargo for a profit or for pay. You are a "***Traveler***" when you are traveling in your car for personal purposes; You are "***Traveling***." The government has tried to change the meaning of car or automobile to "Motor Vehicle", and they have changed the term ***travel*** or ***traveling***, to "Driver" or "Driving". Can they do this? "No" says the United States Supreme Court:

The **state cannot change** the meaning of "motor vehicle" and "driver" to fit their own needs:

> "Is the proposition to be maintained, that the constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief which is expressly forbidden by words most appropriate for its description; maybe performed by the substitution of a name? That the constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so." *Craig v Missouri*, 4 Pet. (29 U.S.) 410 (1830). **[…The State] cannot change the name of a thing to avoid the mandates of the Constitution.**"

U S Supreme Court in *Shapiro v Thompson* 394 US 618 (1968):

> All citizens must be free to travel throughout the United States ***uninhibited by statutes, rules, and regulations***, *which unreasonably*

> *burden or restrict this movement*. If a law has no other purpose than to chill assertions of constitutional rights by penalizing those who choose to exercise them, it is patently unconstitutional. The equal protection clause prohibits apportionment of state services according to par tax contributions of its citizens. Any classification that serves to penalize the exercise of the right of interstate travel unless shown to be necessary to promote a compelling government interest is unconstitutional.
>
> That a right so elementary was conceived from the beginning to be necessary concomitant of the stronger union the constitution created in any event, freedom to travel throughout the United States has long been recognized as a basic right under the constitution.

And *Thompson v Smith*, 155 Va 367 (1935):

"The RIGHT of the citizen TO TRAVEL UPON THE PUBLIC HIGHWAYS and to transport his property thereon, either by horse-drawn carriage OR BY AUTOMOBILE, IS NOT A MERE PRIVILEGE which the city may prohibit or permit at will, BUT IS A **COMMON RIGHT** which he has under the **Right to life, liberty, and the pursuit of happiness**.

And 11 American Jurisprudence 1st. Constitutional Law, Sect.329, p 1135:

> "Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horsedrawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct."

Also see: *Chicago Motor Coach v. Chicago*, 169 NE 221, 66 ALR 834 (1929).

> "The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived." "The constitution of these United States is the supreme law of the land. Any in conflict is null and void of law." *Marbury v. Madison*, 5 U.S. 137 (1803)

ARTICLE VI OF THE U S CONSTITUTION

> "This constitution, and the laws of the united States which shall be

> made in pursuance thereof, and all treaties made, or which shall be made under the authority of the united States, shall be the supreme law of the land, and the judges in every state shall be bound thereby..." "The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution…"

A. Can the State of California or California state arbitrarily convert a secured liberty, in this case the right to travel freely and unencumbered, into a privilege, and issue a license and a fee for it? NO:

Murdock v. Pennslyvania 319 US 105 (1943) says: "No state may convert a secured liberty into a privilege, and issue a license and fee for it".

B. If a state does attempt to convert the right into a privilege and attempts to issue a license and fee for the exercise of that privilege; can it be enforced as law? *Schuttlesworth v. Birmingham, Alabama*, 373 us 262 tells us: "If the state does convert your right into a privilege and issue a license and charge a fee for it, you can ignore the license and fee and engage in the right with impunity."

C. Did the defendant willfully and with intent violate the law? NO:

US v. Bishop, 412 US 346 (1973) tells us: "Willfulness is one of the major elements, which is required to be proven in any criminal element. You have to prove (1) that you are the party (2) that you had a method or opportunity to do the thing, and (3) that you did so with willful intent. Willful is defined as an evil motive or intent to avoid a known duty or task under the law."

May the State of California (California state) change the definition of a word or term (MOTOR VEHICLE) from the original meaning (USC Title 18, § 31 (6) to another definition (CVC 12500) to fit their own needs? NO:

The state cannot change the meaning of "motor vehicle" and "driver" to fit their own needs:

> "Is the proposition to be maintained, that the constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief which is expressly forbidden by words most appropriate for its description; maybe performed by the substitution of a name? That the constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so. . ." *Craig v Missouri*, 4 Pet. (29 U.S.) 410 (1830) [The State cannot change the name of a thing to avoid the mandates of the Constitution.]

What the United States Supreme Court, the highest court in the land, says here is that the state cannot change the meaning of "person traveling" to "driver", and they cannot change the name or term of "private car," "pickup" or "motorcycle" to "Motor Vehicle".

I. ADDITIONAL RESEARCH on 09/13/2011

1. Upon researching the California Vehicle Code, several items above and specially the items below, made it obvious the Legislature attempted to have **Division 11: Rules of the Road** apply primarily to non-commercial statutes for the citizens or the public. [only an personal opinion based upon items below]

2. Poway v. City of San Diego (2005), 229 Cal.App.3d 847, 280 Cal.Rptr. 368

3. The following case from the California Appellate Court in 2005 denies the following:

> "In support, he [Spence] cites *Wysock v. Borchers Bros.* (1951) 104 Cal.App.2d 571, 582, 232 P.2d 531.[15] In *Wysock,* the defendants in a civil suit who had been adjudged to be at fault in a traffic accident claimed that the trial court erred in allowing the solicitation of evidence that their driver had not been licensed. (*Id.* at p. 580, 232 P.2d 531.) The appellate court held, "The nonpossession of a[¶] . . . license is not of itself proof that a person is an incompetent or a careless driver. He may be exceedingly competent and careful but may have neglected for a few days or weeks to renew his license. Or, he may be a person of whom a license is not required [under the provisions of the Vehicle Code]. . . . [¶] Indeed, the refusal, suspension, or revocation of a license does not necessarily token an administrative determination that the [driver] is negligent or incompetent. . . . [¶] . . . [¶] Nothing that we have found in the statutory law indicates an intent upon the part of the Legislature to establish the possession of a[¶] . . . license as a minimum standard of care in the operation of a motor vehicle or to create a presumption of negligence if one drives without such a license or to make unlicensed driving evidence of negligent operation of a vehicle. . . . The reasonable inference is that *this licensing feature while designed to promote safe driving* upon the highways, *is a device for the more efficient enforcement of the many and varied police regulations* that govern the use of the highways." (*Id*. at pp. 582-583, italics added.)" *People v. Spence* (2005) 125 Cal.App.4th 710, 101 [23 Cal.Rptr.3d 92] This court denied the *Wysock* court opinion in *Spence*. (See *People v. Spence* (2005) 125 Cal.App.4th 710, 720 [penalty for violating section 12500 "is not substantial" and statute "has no recidivist provisions"].) (Conflict of Law)

4. The above coupled with California Vehicle Code § 21100(b) stating the local regulations are only for vehicles and drivers "**for hire.**"

5. No indication that one is engaged in any activities which can be considered "**for hire**" or "employed" or "for compensation" or "for profit" or anything similar to those terms and, therefore, not within the application of the CVC.

6. "The reasonable inference is that *this licensing feature while designed to promote safe driving* upon the highways, *is a device for the more efficient enforcement of the many and varied police regulations* that govern the use of the highways." From *Spence* does not express why the legislature could apply this to "Deadbeat Dads." It states "govern the use of the highways." What part of the "Deadbeat Dads" "govern the use of the highways?"

7. According to the California Constitution (1849) Article IV, section 25:

> "Every law enacted by the Legislature shall **embrace but one object**, and that shall be expressed in the title; and **no law** shall be revised, or amended, by reference to its title; but in such case, the act revised, or section amended shall be re-enacted and published at length."

And the California Statutes 1925, Chapter 412, page 833, **Vehicle Code §§ 260 (a)** and 21100 (b), explain how the Vehicle Code can address Commercial and Non-Commercial, and how the CVC §§ 260 (a) and 21100 (b) makes CVC §260 (b) and (c) a requirement for registration of vehicles?

8. It is presumed if one registers their vehicle then one must have a driver's license to match the registration. In this circumstance, to go without registration on an automobile or a light truck cause's constant harassment by local and state police. Absolute knowing that a license is not required, though a certificate of competency might be, one has made a choice to return the license to Department of Motor Vehicles as they claim ownership of the license.

9. Upon OFFICERS knowing the distinction of CVC §260 (a) and §21100 (b), in distinction of §260 (b) or (c), one would have continued to maintain a license which now costs $31(2011) plus all major penalties bestowed upon him even though he is not in an activity which the legislature can rule (grant or prohibit) and regulate.

10. The legislature can regulate all people on the road and highways, but they do not have the authority to prohibit as per *Escobedo v. State of California* (1950), 35 Cal.2d 870, 875-876.[see above on page 11 and 12]

11. *People v. Spence*, supra, in the DISCUSSION area the court told the basic story of legislative history of the Vehicle codes and how in 1959 the title went from the Statutes of 1923 & 1925 [starting on page 4] with a major title translated to a basic title of "This act shall be known as the Vehicle Code." This does not tell who it applies to as does the one from 1925. This is also conflict of law and Fraud!

12. See OPINION OF BILL LOCKYER, California Attorney General, No. 42-1202, February 8, 2006. Though this was about Indians and Indian land, the *People v. Spence*, supra, was cited on page 5 and page 8 in this OPINION. This OPINION can be retrieved from the internet under California Attorney General OPINIONS.

13. Article 6.1. Administrative Adjudication

§ 440.00. **Administrative Adjudication Proceedings**.

In all administrative adjudication proceedings conducted by or on behalf of the Department of Motor Vehicles, the following provisions shall control:

(a) Alternative dispute resolution proceedings, to include mediation and arbitration, shall not be used.

(b) The hearing officer, administrative law judge or other presiding officer shall not be subject to peremptory challenge.

(c) Declaratory decisions shall not be issued.

(d) No order for monetary sanctions or the payment of expenses, including attorney's fees, incurred by another party, shall be effective until the order is adopted or entered by the Director of Motor Vehicles or his or her designee.

NOTE: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 11420.10, et seq., 11425.40(d), 11455.10, et seq. and 11465.20(b), Government Code. HISTORY 1. New article 6.1 (sections 440.00-440.04) and section filed 6-27-97; operative 6-27-97 (Register 97, No. 26). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 ofChapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 1]400.20 and 11400.2] and will expire on December 3], 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act. 2. Permanent section transmitted to OAL 8-20-98 pursuant to Government Code section 1]400.21 and filed 10-1-98; operative 10-1-98 (Register 98, No. 40). Government Code section] 1400.21 exempts this regulation from OAL review for Necessity.

14. California Code of Regulations Title 13 § 440.2

§ 440.02. Occupational License Definition. (See **Operator** on Page 6 above)

For purposes of administrative adjudication proceedings and disciplinary actions an occupational license includes the following: (a) A business license issued by the department to any of the following categories: Dealer, lessor-retailer, dismantler, manufacturer, remanufacturer, distributor, driving school, traffic violator school, registration service, all-terrain vehicle safety training organization, or transporter. (b) An individual license issued by the department to any of the following individuals: salesperson, driving school operator or instructor; traffic violator school administrator, ***operator***, or instructor; vehicle verifier, all-terrain vehicle safety instructor, or a representative.

NOTE: Authority cited: Section 1651, Vehicle Code. Reference: Sections 11100, 11200, 11300, 11400,11500,11600,11700, 11800 and 11900, Vehicle Code; and Section 11400.20, Government Code.

HISTORY

1. New section filed 6-27-97; operative 6-27-97 (Register 97, No. 26). This interim regulation is exempt from most of the procedural requirements ofthe Administrative Procedure Act (specifically, from Articles 5 and 6 ofChapler 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and 11400.2] and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.

2. Permanent section transmitted to OAL 8-20....98 pursuant to Government Code section 11400.21 and tiled 10-]-98; operative 10-1-98 (Register 98, No. 40). Government Code section 11400.21 exempts this regulation from OAL review for Necessity

15. CVC § **12801.5**. Proof of applicant's authorized presence in United States required; Detention or arrest as unlicensed driver precluded; Exception for underage driver; Legal requirement to obey motor vehicle laws regardless of licensing status

((a) through (d) omitted)

(e) Notwithstanding Section 40300 or any other provision of law, **a peace officer may not detain or arrest a person solely on the belief** that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under the age of 16 years.

(f) The **inability** to **obtain a driver's license** pursuant to this section **does not abrogate** or **diminish** in any respect the legal requirement of every driver in this state to obey the motor vehicle laws of this state, including laws with respect to licensing, motor vehicle registration, and financial

responsibility. [If you are **required** by **260 (a)** or **21100 (b)** to have a license and registration]

CODE APPLICABLE TO STATE EMPLOYEES

Veh. Code §**21052**. The provisions of this code applicable to the drivers of vehicles upon the highways apply to the drivers of all vehicles while engaged in the course of ***employment*** by this State, any political subdivision thereof, any municipal corporation, or any district, including authorized emergency vehicles subject to those exemptions granted such authorized emergency vehicles in this code.

The following section 54, shows the general public as well as those with disabilities have full and free use of the streets, highways, sidewalks, walkways, public buildings, etc.:

CIVIL CODE SECTIONS 54:

CCC § 54. (a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

A PERSON WHO WILLFULLY DECEIVES ANOTHER IS LIABLE

CCC § 1709. One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

§ 1710. A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise, made without any intention of performing it.

PRACTICING DECEIT WITH INTENT TO DEFRAUD

§ 1711. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

1. I believe that California Vehicle Code, CVC Divisions 1, especially § 260, and Division 3, especially § 4000(a), are in violation of the 10th Amendment, *Bond v. US,* 564 U.S. _____(2011) on appeal and my common and natural law rights.

2. I am of the opinion that all Statutory Regulations (Statutes of California) are in violation of my common and natural law rights.

3. I am **not** a public servant and any claim to the contrary must be proved by payroll records and Appellant's alleged public servant title and sworn under the penalty of perjury and full commercial liability.

4. I do not operate a "for profit business" using the highways, roads or streets for any city, county and/or State of California using a "commercial motor vehicle."

5. I claim common law jurisdiction.

OBTAINING WITHOUT CONSENT OF OWNER

§ 1712. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

§ 1713. The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

§ 1714. (a) Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. The extent of liability in these cases is defined by the Title on Compensatory Relief.

CALIFORNIA CODE OF REGULATIONS

Title 13 Motor Vehicles

Division 1 Department of Motor Vehicles

Chapter 2 Department of Motor Vehicles

§ 440.02. **Occupational License Definition**.

For purposes of administrative adjudication proceedings and disciplinary actions an occupational license includes the following:

(a) A business license issued by the department to any of the following categories: Dealer, lessor-retailer, dismantler, manufacturer, remanufacturer, distributor, driving school, traffic violator school, registration service, all-terrain vehicle safety training organization, or transporter.

(b) An individual license issued by the department to any of the following individuals: salesperson, driving school operator or instructor; traffic violator school administrator, operator, or instructor; vehicle verifier, all-terrain vehicle safety instructor, or a representative.

Penal Code: **145**. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

146. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, does any of the following, without a regular process or other lawful authority, is guilty of a misdemeanor: (a) Arrests any person or detains that person against his or her will. (b) Seizes or levies upon any property. (c) Dispossesses any one of any lands or tenements.

149. Every public officer- (Update this)

CALIFORNIA CIVIL CODE 3527. The law helps the vigilant, before those who sleep on their rights.

"A statute does not trump the Constitution."
People v. Ortiz, (1995) 32 Cal.App.4th at p. 292, fn. 2
Conway v. Pasadena Humane Society (1996) 45 Cal.App.4th 163
United States of America, v. Jerry Arbert Pool, C.A. No. 09-10303, In the United States Court of Appeals for the Ninth Circuit (Opinion filed September 19, 2011), On Appeal From The United States District Court For The Eastern District of California

"A statutory privilege cannot override a defendant's constitutional right."
People v. Reber, (1986) 177 Cal.App.3d. 523 [223 Cal.Rptr. 139};
Vela v. Superior Ct, 208 Cal.App.3d. 141 [255 Cal.Rptr. 921], however, "the judiciary has a solemn obligation to insure that the constitutional right of an accused to a fair trial is realized. If that right would be thwarted by enforcement of a statute, the state ... must yield."

"Obviously, administrative agencies, like police officers must obey

the Constitution and may not deprive persons of constitutional rights."
Southern Pac. Transportation Co. v. Public Utilities Com., 18 Cal.3d 308
[S.F. No. 23217. Supreme Court of California. November 23, 1976.]

"If evidence of a fact is clear, positive, uncontradicted and
of such nature it cannot rationally be disbelieved, the court
must instruct that fact has been established as a matter of law."
Roberts v. Del Monte Properties Co., 111 CA2d. 69 (1952)

"...there is a citizenship of the United States and citizenship of a state,..."
Tashiro v. Jordan, 201 Cal. 236 (1927)

"We have in our political system a Government of the United States and
a government of each of the several states. Each is distinct from the other
and each has citizens of its own..."
U.S. v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588

One of the People is NOT an attorney and therefore his pleadings must be read and construed liberally. See *Haines v. Kerner*, 404 US at 519 (1972); and *Hughes v. Rowe*, 449 U.S. 5, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980). Further Plaintiff believes that this court has a responsibility and legal duty to protect any and all of the Plaintiff's constitutional and statutory rights. See *United States v. Lee*, 106 US 196,220 [1882] Courts duty is "***to protect and maintain individual rights***."; *Platsky v. CIA,* 953 F. 2d 26 (1991); "*Litigants are to be held to less stringent pleading standards" Anastasoff v. US,* 223 F. 3d 898 (2000)*;*; "A document filed pro se is to be liberally construed citation], and a pro se complaint, however, in-artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 127 S. Ct. 2197 at 2200 (2007) (citations omitted). ***Rand v. Rowland,*** 154 F3d (9th Cir. 1998), which states: *"Pro Se [pro per] litigants must be ensured meaningful access to the courts."*

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" ... conduct anticipated by Justice Louis Brandies when he expressed the following over 80 years ago in his dissent in *Olmsted v. United States* 277 U.S. 438, 485 (1928).

> 'Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself;

> it invites anarchy. To declare that in the administration of the criminal law the end justifies the means-to declare that the government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.'"

AUTHORITY TO PRACTICE LAW . . . "WITHOUT ADMISSION" . . . The Judiciary Act of 1789, section 35 - September 24, 1789, 1 Stat. 73, CHAP. XX Sec. 35; The Act for Admission of California into the union of the several states; California Constitution (1849), Article I, section 8; 28 U.S.C. 1654, the First and Sixth Amendments to the U.S. Constitution (1791); 18 U.S.C. § 1154, 18 U.S.C. § 1161, 18 U.S.C. §2265, 25 U.S.C. §1301, 25 U.S.C. §1903(4), 25 U.S.C.§1903(8), 25 U.S.C. §1911 (a)(b)(c), 25 U.S.C. §1901 -1963 ("ICWA"), 25 U.S.C. § 3631, 43 U.S.C. 1602, 44 Fed. Reg. 67584 to 67595 (1979), 26 CFR § 305.7871-1 (a), 26 U.S.C. §7701 (a)(40)(A), 28 U.S.C. §1333, 28 U.S.C. §1652, FRCP Rule 64, 31 CFR Subtitle A, § 10.3, 8 CFR Ch. 1,§ 292.1, 8 U.S.C. §1401 (b), 25 U.S.C. §465, by the WASHINGTON STATE SUPREME COURT: RCW 2.48.190, RCW 38.38.256, 5 U.S.C. 500(b), RCW 26.25.010, RCW 26.21.005 (19)(a), RCW 26.21A.005 (21)(a), RCW 26.26.011 (19), RCW 26.27.021 (16), RCW 26.27.041, RCW 2.48.170, RCW 2.48.180(7), APR 1.1 (a), GR 24 (b)(8), Sections 3275 &3276 of the Territorial Code of 1881, RCW 4.04.010, RCW 1.12.030, RCW 9.81.120, RCW 10.14.020 (1), RCW 10.14.020(2), RCW 9A.50.060 and article 1, section's 1, 2, 22, 29 and 30 of the Washington State Constitution, CrR 1.1, CrRLJ 1.1, CrR 1.3 (a) and ARLJ No. 7. See also CR 82.5(a) & RCW 13.34.240.