

1 Party without attorney
Rik W. Munson
2 218 Landana Street
3 American Canyon, CA 94503
Accused in Pro per
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8 **In the Superior Court of California**
9 **County of Contra Costa**
10 **Traffic Division**
11

12 Rik W Munson) Docket Number W 956953-4 1
Accused, in Pro per)
13) Memorandum in Support of
14) Special Plea in Bar
California Highway Patrol)
15 Complainant)
16)

17 **MEMORANDUM IN SUPPORT OF SPECIAL PLEA IN BAR**

18 COMES NOW, Accused hereto, propounding this Memorandum in support of his Special
19 Plea in Bar and to dismiss the complaint/traffic citation against him. Accused has supported his
20 claims with prominent authorities and has presented questions that shall aid the Court in focusing
21 on the issues at hand. Accused 's Special Plea in Bar is incorporated by this reference as if fully
22 restated herein.

23 This Court will find that the Plaintiff has, in error, applied to the Accused provisions
24 applicable only to those engaged in commerce upon the highways. Accused was not so engaged
25 during the times complained of, and therefore, Plaintiff has failed to state a claim upon which
26 relief may be granted.

27 Upon due consideration of the issues presented herein, this Court will find that legislative
28 history, the Constitution for California state, and existing legislation, all share in forming

1 guidelines for the regulation of transportation companies only, and that said authorities do not
2 provide for the jurisdiction asserted by the Plaintiff, the jurisdiction to regulate noncommercial
3 use of the highways.

4 As used herein, "highways" shall include any and all surfaces upon which the operation of a
5 motor vehicle is a privilege granted by the State of California. *Any and all emphasis* employed
6 herein may be construed to have been added.

7
8 **I. NATURE OF ACTION**

9 **DUE PROCESS AND ABSENCE OF LAW RAISING A FEDERAL QUESTION**

10 The law is of two parts one substantive and the other procedural. However, infractions appear to
11 proceed according to neither.

12
13 Penal Code section 19d outlines infraction procedures as follows:

14 "Except as otherwise provided by law, all provisions of law relating to
15 misdemeanors shall apply to infractions, including but not limited to powers of
16 peace officers, jurisdiction of courts, periods for commencing action and for
bringing a case to trial and burden of proof."

17
18 There is no law exempting infractions from these procedures. In *People v. Mathews*
19 (1983)¹, the Court of appeals ruled that Penal Code section 19.7 extends all protection through
20 case law to misdemeanors to include infractions. The required procedural elements leading to
21 misdemeanor actions do not appear in the record of this intended action.

22 Further, as to the substantive area according to People v. Battle²

23
24 "Section 16 of the Penal Code declares that "crimes and public offenses" include
25 not only felonies and misdemeanors but also infractions. Sections 19c and 1042.5
26 of the Penal Code deprive a person accused of an infraction of the right to jury
trial. Yet, section 689 of the Penal Code declares that "[n]o person can be

27
28 ¹ 139 Cal. App. 3d. 537. 188 Cal. Rptr. 796

² People v. Battle , 50 Cal.App.3d Supp. 1

1 convicted of a public offense unless by verdict of a jury." (Italics added.) (The
2 1968 amendment of section 16 of the Penal Code substituted the words "crimes
3 and public offenses include:" for the words "crimes, how defined. Crimes are
4 divided into.")

4 If the Legislature intended to treat infractions as public offenses and if the
5 charging of a public offense invokes the right to trial by jury, sections 19c and
6 1042.5, which deny a jury to one who commits an infraction, conflict with section
7 689. However, the same (1968) Legislature enacted section 19c, the pertinent
8 amendment of section 16 and section 1042.5. Construing these sections in
9 accordance with the precepts laid down in *In re Kay*, supra, we must conclude that
10 it was not the intent of the Legislature to enact inconsistent statutes and, further,
11 that when it added the term "public offense" to section 16 it was not so
12 categorizing infractions because if it did so, it would have caused inconsistency
13 between sections 19c and 689 of the Penal Code. Support for this interpretation is
14 found in the language of section 1042.5, which states that an accused "charged
15 with an infraction and with a public offense for which there is a right to jury trial"
16 (italics added) may be accorded a jury trial. Had the Legislature intended that an
17 infraction be treated as a public offense, it would have worded the statute
18 differently, for example, "an infraction and with some other public offense."

13 Furthermore, this court has previously held in *People v. Oppenheimer* (1974) 42
14 Cal.App.3d Supp. 4, 7, fn. 2 [116 Cal.Rptr. 795], that inasmuch as section 689 of
15 the Penal Code was originally enacted in 1872 and last amended in 1951, and
16 sections 19c and 1042.5 of the Penal Code were enacted in 1968, we must read all
17 the sections together and, in case of conflict, give effect to the latest enacted
18 sections -- sections 19c and 1042.5. We therefore have declared in *People v.*
19 *Oppenheimer*, supra, that sections 19c and 1042.5 qualify section 689 insofar as
20 infractions are concerned. Hence, even though we were to treat an infraction as a
21 public offense under section 16, we must nevertheless excise infractions from
22 section 689 in order to effect the objective of the Legislature. (Pen. Code, § 4.)

20 The appellate court in *People v. Oppenheimer*³ declares that an infraction is a
21 petty offense stating. "An accused was not historically accorded the right to a jury
22 in trials of petty offenses. Whether an **infraction is characterized as a petty
offense or a noncriminal offense,...**"

23 This analysis however is not entirely correct as the United States Supreme Court in
24 *ARGERSINGER v. HAMLIN*, 407 U.S. 25 (1972) clearly stated:

25 "The Sixth Amendment thus extended the right to counsel beyond its common-
26 law dimensions. But there is nothing in the language of the Amendment, its
27 history, or in the decisions of this Court, to indicate that it was intended to

28 ³ *People v. Oppenheimer* (1974) 42 Cal.App.3d Supp. 4 [116 Cal.Rptr. 795]

1 embody a retraction of the right in petty offenses wherein the common law
2 previously did require that counsel be provided. See James v. Headley, 410 F.2d
3 325, 331-332, n. 9.”

4 The body of things private is much greater than those that can be said to be public. The more one
5 looks into definitions of terms used to explain infractions as other than public offenses the more
6 difficult it becomes to address the elements leading to subject matter jurisdiction. As we examine
7 terms such as violation, regulatory offense, welfare offense, and contravention we eliminate
8 these terms by their own definitions one by one. If not penal offenses and not public offenses
9 then how can Infractions be said to be offenses at all? The question of the source of legal
10 obligation looms very large here.

11 **III. FEDERAL COMMERCE POWER VS STATE POLICE POWER**

12 **3.1 Jurisdiction over interstate commerce is reserved to Congress, and must be** 13 **delegated to the State.**

14 49 CFR 390.5

15 **Interstate commerce means** trade, traffic, or transportation in the United States--

16 (1) Between a place in a State and a place outside of such State (including a place
17 outside of the United States);

18 (2) Between two places in a State through another State or a place outside of the
19 United States; or

(3) Between two places in a State as part of trade, traffic, or transportation
originating or terminating outside the State or the United States.

20 **Intrastate commerce means** any trade, traffic, or transportation in any State,
21 which is not described in the term "interstate commerce."

22 **3.2 All state vehicle code definitions yield to federal definitions⁴**

23 "Congress may pass all laws which are necessary and proper for giving the most
24 complete effect to this power. Still, the general jurisdiction over the place, subject
25 to this grant of power, adheres to the territory, as a portion of sovereignty not yet
26 given away." *Bevans, supra ld*, at 389

27
28 ⁴ California Vehicle Code Section 15210 (P) 7

1 "Consistent with this structure, *we have identified three broad categories of*
2 *activity that congress may regulate under its commerce power. (Cites omitted)*
3 *First, Congress may regulate the use of the channels of interstate commerce.*
4 *(Cites omitted) C'[T]he authority of Congress to keep the channels of interstate*
5 *commerce free from immoral and injurious uses has been frequently sustained,*
6 *and is no longer open to question."* (quoting *Carminetti v. United States*, 242 U.S.
7 470,491,37 S.Ct. 192, 197,61 L.Ed. 442 (1917)) *Second, Congress is empowered*
8 *to regulate and protect the instrumentalities of interstate commerce, or persons or*
9 *things in interstate commerce, even though the threat may come only from*
10 *intrastate activities. (Cites omitted) Finally, Congress' commerce authority*
11 *includes the power to regulate those activities having a substantial relation to*
12 *interstate commerce, (Cites omitted) those activities that substantially affect*
13 *interstate commerce. (Cite omitted)" u.s. v. Lopez, supra, at 1629.*

14 "We do not say that a case may not arise in which it will be found that a State,
15 under the form of regulating its own affairs, has encroached upon *the exclusive*
16 *domain of Congress in respect to interstate commerce..." Wabash &c., Railway*
17 *Co. v. Illinois*, 118 U.S. 557, 567 (1886). "But we think it may safely be said that
18 State legislation which seeks to impose a direct burden upon interstate commerce,
19 or *to interfere directly with its freedom, does encroach upon the exclusive power*
20 *of Congress."* *Id*, at 571

21 "It is impossible to see any distinction in its effect upon commerce of either class,
22 between a statute which regulates the charges for *transportation*, and *a statute*
23 *which levies a tax for the benefit of the State upon the same transportation;* and,
24 in fact, the
25 judgment of the court in the *State Freight Tax Case*, 15 Wall. 232, rested upon the
26 ground that the tax was always added to the cost of transportation, and thus *was a*
27 *tax upon the privilege of carrying the goods through the State."* *Id*, at 570

28 "It is not the railroads themselves that are regulated by this act of the Illinois
Legislature so much as *the charge for transportation*, and, in the language just
cited, of each one of the States through whose territories these goods are
transported can fix its own rules for prices, for modes of transit, for times and
modes of delivery, and all the other incidents of *transportation* to which the word
"regulation" can be applied, *it is readily seen that the embarrassments upon*
interstate transportation, as an element of interstate commerce, might be too
oppressive to be submitted to. "It was," in the language of the court cited above,
"to meet just such a case that the commerce clause of the Constitution was
adopted." *Id*, at 572

"As such, so far as it operates on private messages sent out of the State, it is a
regulation of foreign and interstate commerce and beyond the power of the State.
That is fully established by the cases already cited." *Id*, at 574, quoting *State*
Freight Tax Case, 15 Wall 232 *Commerce with foreign countries and among the*
States, strictly considered, *consists in* intercourse and traffic, including in these

1 terms navigation and *the transportation and transit of persons and property, as*
2 *well as the purchase, sale, and exchange of commodities.* For the regulation of
3 commerce as thus *defined there can be only one system of rules, applicable alike*
4 *to the whole country; and the authority that can act for the whole country can*
5 *alone adopt such a system. Action upon it by separate States is not, therefore,*
6 *permissible. Language confirming the exclusiveness of the grant of power over*
7 *commerce as thus defined may not be inaccurate, when it would be so applied to*
8 *legislation upon subjects which are merely auxiliary to commerce."* *Id.*, at 575-76,
9 quoting *County of Mobile v. Kimball*, 102 U.S. 691, 702

7 "And if it be a regulation of commerce, ...*it must be of that national character,*
8 *and the regulation can only appropriately exist by general rules and principles,*
9 *which demand that it should be done by the Congress of the United States under*
10 *the commerce clause of the Constitution."* *Id.*, at 577

10 "The Commercial Motor Vehicle Safety Act of 1986 *requires all States to meet*
11 *the same minimum standards for testing and licensing commercial drivers. All*
12 *commercial drivers throughout the United States are required to have a*
13 *Commercial Driver's License(CDL)."*

13 In *Guest, supra*, Accused s' activities, the private use of the highways, is said to
14 be the fundamental and federally protected right of the Accused, with
15 accompanying criminal sanctions for any interference or impedance of one's
16 enjoyment or exercise of such. In *Lopez and Wabash, exclusive jurisdiction of*
17 **Congress over the channels of interstate commerce is proclaimed. In *Edwards***
18 ***v. California*, 314 U.S. 160 (1941)**, this power is likewise reserved to Congress as
19 Federal commerce power.

18 "... *the grant [the commerce clause] established the immunity of interstate*
19 *commerce*
20 *from the control of the States respecting all those subjects embraced within the*
21 *grant which are of such a nature as to demand that, if regulated at all, their*
22 *regulation must be prescribed by a single authority."* *Milk Control Board v.*
23 *Eisenberg Farm Products*, 306 U.S. 346,351." *Id.*, at 176

22 "The right to move freely from State to State is an *incident of national citizenship*
23 *protected by the privileges and immunities clause of the Fourteenth Amendment*
24 *against state interference. Mr. Justice Moody in *Twining v. New Jersey*, 211 U.S.*
25 *78, 97, stated, "Privileges and Immunities of citizens of the United States... are*
26 *only such as arise out of the nature and essential character of the National*
27 *Government, or are specifically granted or secured to all citizens or persons by the*
28 *Constitution of the United States."* And went on to state that one of those rights of
national citizenship was «the right to pass freely from State 'to State." *Id.* P.9?" *Id.*
at 178

1 "...But [Mr. Justice Miller in *Crandall v. Nevada*, 6 Wall. 35 (1867)] failure to
2 classify that right as one of state citizenship underscores his view that the *free*
3 *movement of persons throughout this nation was a right of national citizenship.*"
Id., at 180

4 "... *Thus it is plain that the right of free ingress and egress rises to a higher*
5 *constitutional dignity than that afforded by state citizenship.*" *Id.*, at 181

6 While it is clear that the Accused 's enjoyment of the highways for *private travel* is held
7 by the Supreme Court to be a fundamental right, secured under the Constitution for the United
8 States as an incident of Accused national citizenship, the State of California holds, the same to be
9 a privilege granted by the State, an activity that is within the licensing authority of the State, but
10 attaches such authority only to the operation of "motor vehicles."

11
12 Black's Law Dictionary, 6th Edition:

13 "Privilege. *A particular and peculiar benefit or advantage enjoyed by a person,*
14 *company, or class, beyond the common advantages of other citizens. An*
15 *exceptional or extraordinary power or exemption. A peculiar right, advantage,*
exemption, power, franchise, or immunity held by a person or class, not generally
possessed by others."

16 "License. *A personal privilege to do some particular act or series of acts on land*
17 *without possessing any estate or interest therein, and is ordinarily revocable at the*
18 *will of the licensor and is not assignable. (Cite omitted) The permission by*
19 *competent authority to do an act which, without such permission, would be*
illegal, a trespass, a tort, or otherwise not allowable. "

20 "A license is in the general nature of a special privilege, entitling the licensee to
21 do something that he would not be entitled to do without the license". 51 Am.
22 Jur.2d., LICENSES AND PERMITS, PART ONE, GENERAL PRINCIPLES, I.
23 GENERAL, §1. Generally, p. 7.

24 "Easement. *A right of use over the property of another.*"

25 "*Private or public easements.* A private easement is one in which the enjoyment
26 is restricted to one or a few individuals, while a *public easement is one the right*
27 *to enjoyment of which is vested in the public generally or in an entire community;*
28 *such as an easement of passage on the public streets and highways or of*
navigation on a stream. "

1 The states use of the terms "license" and "privilege" clearly contradicts the language of
2 the Supreme Court, that an individual's use of the highways for private travel is a fundamental
3 and a federally protected right. Under the posture of the Plaintiff, this fundamental right born of
4 national citizenship is regulated as if it were the State's original domain that the State is in
5 control of one's access to federally protected rights. Under this mode of policy enforcement, a
6 means of travel often necessary to secure a livelihood *Bell v. Burson*, 402 U.S. 535 (1971); *Frost*
7 *v. Rail Road Commission*, 271 U.S. 583, 46 S.Ct. 605 (1925) is treated as a forbidden activity
8 unless the Plaintiff's permission is first acquired. The Plaintiff's mode of enforcement clearly
9 makes the Accused pursuit of a livelihood dependent upon a privilege granted by the State.

10 "Having regard to form alone, the act here is an offer to the private carrier of a
11 privilege, which the state may grant or deny, upon a condition which the carrier is
12 free to accept or reject. *In reality, the carrier is given no choice, except a choice*
13 *between an option to forgo a privilege, which may be vital to his livelihood or*
submit to a requirement, which may constitute an intolerable burden. " See *Frost*,
Id, at 593

14 Congress' exclusive authority and original jurisdiction over the Accused use of the
15 highways, and the Plaintiff's lack of original jurisdiction over the Accused 's private travel upon
16 the highways now having been firmly established, Accused will proceed.

18 **3.3 Delegation of Authority from Congress to" the State of California.**

19 Congress, with original and exclusive jurisdiction over the highways and
20 instrumentalities of interstate commerce reserved exclusively to it, has chosen to delegate
21 degrees of regulatory authority to State legislatures, upon approval of proposed State regulations
22 by the Secretary of Transportation. This delegation of authority to regulate the use of the
23 highways, made from Congress to the States, is found in 49 USC Subtitle VI "MOTOR
24 VEHICLE AND DRIVER PROGRAMS," and in no other place.

25 Congressional cession of authority to license the use of the highways (make prohibited
26 without requisite documents, to proclaim and deem such use a *privilege*) can be found in 49 USC
27 Chapter 313, and in no other place. Said chapter reads, in pertinent part:
28

1 SUBTITLE VI - MOTOR VEHICLE AND DRIVER PROGRAMS PART B -
2 COMMERCIAL CHAPTER 313 - COMMERCIAL MOTOR VEHICLE
3 OPERATORS

4 § 31301. Definitions. In this chapter

5 (3) "commercial driver's license" means a license issued by a State to an
6 individual authorizing the individual to operate a class of commercial motor
7 vehicles.

8 (6) "driver's license" means a license issued by a State to an individual
9 authorizing the individual to operate a motor vehicle on highways.

10 (11) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer
11 propelled or drawn by mechanical power and used on public streets, roads, or
12 highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer
13 operated only on a rail line or custom harvesting farm machinery.

14 § 31308. Commercial driver's license.

15 After consultation with the States, *the Secretary of Transportation shall*
16 *prescribe regulations on minimum uniform standards for the issuance of*
17 *commercial drivers' licenses by the States and for information to be contained on*
18 *each of the licenses. The standards shall require at a minimum that*

19 (1) an individual issued a commercial driver's license pass written and driving
20 tests for the operation of a commercial motor vehicle that comply with the
21 minimum standards prescribed by the Secretary under section 31305(a) of this
22 title;

23 (2) the license be tamper proof to the maximum extent practicable; and

24 (3) the license contain

25 . (A) the name and address of the individual issued the license and a
26 physical description of the individual;

27 (B) the social security account number or other number or information the
28 Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is .
authorized to operate under the license;

(D) the name of the State that issued the license; and

(E) the dates between which the license is valid.

49 CFR 398.1(d) 4

(d) **Motor vehicle**. "Motor vehicle" means any vehicle, machine, tractor, trailer,
or semitrailer propelled or drawn by mechanical power and used upon the
highways in the transportation of passengers or property, or any combination
thereof, determined by the Administration, **but does not include a passenger
automobile or station wagon**, any vehicle, locomotive, or car operated
exclusively on a rail or rails, or a trolley bus operated by electric power derived
from a fixed overhead wire, furnishing local passenger transportation in street-
railway service.

18 USC (United States Code) Sec. 31. Definitions

1 When used in this chapter the term -
2 "Motor vehicle" means every description of carriage or other contrivance
3 propelled or drawn by mechanical power and used for commercial purposes on
4 the highways in the transportation of passengers, passengers and property, or
5 property or cargo;

6 AUTOMOBILE LAW AND PRACTICE 3d Ed (1998):

7 " 465.4 Classification as Pleasure Cars or Commercial Vehicles

8 "A classification of motor vehicles, based on whether they are used for business
9 or commercial purposes, or merely kept for pleasure or family use, a license being
10 imposed in one case and not in the other, is a proper one. [27. La.--Gulf States
11 Utilities v. Traigle, 1975, 310 So.2d. 78. Ohio.--Fisher Bros. Co. v. Brown, 146
12 N.E. 100, 111 Ohio St. 602. Or.--Kellaher v. City of Portland, 110 P. 492, 112 P.
13 1076, 57 Or. 575. Tenn.--Ogilvie v. Hailey, 210 S.W. 645, 141 Tenn. 392. Vt.--
14 State v. Caplan, 135 A. 705, 100 Vt. 140.]

15 "Thus a county ordinance levying a tax for the privilege of using the county roads,
16 and fixing no license tax on an automobile used by the owner or his family for
17 other than commercial purposes is not unreasonable and arbitrary in the
18 imposition of the tax on vehicles used for commercial purposes. [28 Ala.--Hill v.
19 Moody, 93 So. 422, 207 Ala. 325.]" Blashfield, AUTOMOBILE LAW AND
20 PRACTICE 3d Ed (1998): Ch. 465 CLASSIFICATION OF MOTOR
21 VEHICLES

22 It is clear that what the legislative body with the exclusive authority to legislate for the
23 use of the highways (Congress) has delegated to the State licensing authority pertinent and,
24 applicable only to one's *commercial* use of the highways, for the "*transportation*" of goods and
25 persons.

26 When one considers the terminology used in definitions enacted by Congress, a strong
27 indication that only *commercial activities* are the object of this legislation is starkly apparent. If
28 the Court cannot provide and cite to other and contrary authorities to those relied upon herein,
can the State be said to be within its authority when enforcing upon the Accused. State law said
to apply only to "*motor vehicles*"?

In two places (49 USC; and 18 USC 31) Congress has defined the term "*motor vehicle*" in
commercial terms, and therefore, the proper reflection of this superior intent is that the term
"Motor Vehicles" is inapplicable to Accused's *private* travel upon the highways.

1 A motor vehicle is an automobile used in commerce.

2 "The term 'automobile' is the generic name which has been adopted by popular
3 approval for all forms of self-propelled vehicles for use upon the highways and
4 streets for general freight and passenger service." Vol.1-2, Huddy, Cyclopedia of
5 Automobile Law (1932), p. 140.

6 It is clear that the definition of the term "driver's license" enacted by Congress varies
7 widely from the mode of enforcement undertaken by the Plaintiff. While the State deems the
8 term "*motor vehicle*" to be that which implies *private* use of the highways, Congress sees the
9 term' as one describing only *commercial* use of the highways. The definitions above are found in
10 Chapter 313 of 49 USC called "Commercial Motor Vehicle Operators."

11
12 **3.4 Driving is an activity that is commercial in nature:**

13
14 49 CFR 382.107 Definitions.

15 **Driver means** any person who operates a commercial motor vehicle. This includes, but is not
16 limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers;
17 leased drivers and independent owner-operator contractors.

18
19 49 CFR Sec. 390.5 Definitions

20 **Driver means** any person who operates any commercial motor vehicle.

21
22 Corpus Juris Secundum §151. –Chauffeur or Operator

23 A distinction is recognized between an operator and a chauffeur under some licensing

24 regulations, "chauffeur" referring to one who is paid for driving an automobile. 60 C.J.S.

25 MOTOR VEHICLES §§ 150 - 151, p. 797 (also see "Tests"(1) and (2))

26
27 DRIVER. One employed...

28 Bouvier's Law Dictionary, 1856

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DRIVER-- one employed in conducting a coach, carriage, wagon, or other vehicle..."
BOUVIER'S LAW DICTIONARY, (1914) p. 940.

DRIVER. One employed...
Black's Law Dictionary, 4th Ed, 1951

The California Appellate Court in 1948 defined what types of licensing is required to operate a "motor vehicle: "Section 250 . . . "(a) It is a misdemeanor for any person to drive a motor vehicle upon a highway unless he then holds a valid operator's or chauffeur's license" . . . driving privileges--of which the license is but evidence (People v. Noggle (1935), 7 Cal.App.2d 14, 17, [45 P.2d 430, 432]) People v. Higgins (1948) 97 Cal.App.2d Supp. 938, 939, 941; 197 P.2d 417.

The foregoing court citations clearly shows that the "operator's license" permits engagement in commercial activity and that a license is not required when a vehicle is used by the owner or his family for other than commercial purposes.

Accused is not engaged in the activities regulated by the Department of Transportation or the activities regulated by the states Departments of Motor Vehicles. The license merely being evidence that one is privileged to do so is an accrued right.

Vehicle Code (1935),

"Section 4.: Pending Proceedings and Accrued Rights. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible."

CALIFORNIA VEHICLE CODE (1998)

Pending Proceeding and Accrued Rights

1 No action or proceeding commenced before this code takes effect, and no right accrued, is
2 affected by the provisions of this code, but all procedure thereafter taken therein shall conform to
3 the provisions of this code so far as possible.

4
5 **3.5 Legislative History of California State's Motor Vehicle Code, as well as its**
6 **construction, supports Accused 's claim that the term "motor vehicle" is a commercial**
7 **term.**

8 Accused is neither driver, operator nor carrier.

9
10 The Vehicle Code of 1935.

11 "An act to establish a Vehicle Code, thereby consolidating and revising the law
12 relating to vehicles and vehicular traffic, and to repeal certain acts and parts of
13 acts specified herein." (Stats. 1935, Ch.27, p. 93, in effect September 15, 1935).

14 Section 1. (b) The word "**operator**" shall include **all persons, firms,**
15 **associations and corporations** who **operate motor vehicles** upon any public
16 highway in this state and thereby **engage in the transportation of persons or**
17 **property for hire or compensation**, but shall not include any person, firm,
18 association or corporation who solely transports by motor vehicle persons to and
19 from or to and from attendance upon any public school or who solely transports
20 his or its own property, or employees, or both, and who transports no persons or
21 property for hire or compensation...

22 Section 2. Each **operator** of a **motor vehicle** within this state who **transports** or
23 desires to **transport for compensation or hire persons or property** upon or
24 over any public highway within this state shall apply to and secure from the board
25 of equalization of the State of California a **license to operate** each and all of the
26 **motor vehicles** which such **operator** desires to **operate** or which such **operator**
27 from time to time may **operate.**"
28 Stats. 1925, ch 412, p. 833. Approved by the Governor May 23, 1925.

23 "In para materia. Upon the *same matter or subject. Statutes* ", in *para materia*"
24 *are those relating to the same person or thing or having a common purpose.*
25 *Under cofler v. L. C. Robinson & Sons, Inc.*, 111 Ga. App. 411, 141 S.E.2d 847,
26 849. This rule of statutory construction, that statutes that relate to the same subject
27 matter should be read, construed and applied together so that the legislature's
28 intention can be gathered from the whole of the enactments, applies only when the
particular statute is ambiguous. *Kimes v. Bechtold*, W.Va., 324 S.E.2d 147, 150."
Black's, 6th Edition, "In para materia

1 "Transportation: *The movement of goods or persons from one place to another, by a carrier.*
2 *Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047."

3
4 49 usc § 31301. Definitions. In this chapter

5 (2) "*commerce*" means *trade, traffic, and transportation*

6 (A) in the jurisdiction of the United States between a place in a State and a
7 place outside that State (including a place outside the United States)_ or

8 (B) *in the United States that affects trade, traffic, and transportation*
9 described in subclause (A) of this clause.

10 Highways "*used by the public*," as mentioned above, is not the "*transportation of*
11 *persons*," and such is set apart as "*used by the public*." Also, the term "*motor vehicle*" is assigned
12 and reserved. to *commercial* use of the highways, and it is only "*to that end*" to which State
13 regulatory authority extends. Also separated from "*transportation of persons*" is the phrase "*as a*
14 *place of travel or communication between different localities or communities*," the State
15 legislature clearly intending to distinguish such from "*transportation of persons*." Under the
16 authorities cited, there is no room to deem the term "motor vehicle" as applicable to anything' but
17 "transportation"; commercial enterprise upon the public highways.

18 "There is a maxim of statutory interpretation meaning that the *expression of one thing is the*
19 *exclusion of another*. See *Black's*, 6th Edition, definition of "*expressio unius est exc/usio*
20 *alterius*." also See *State v. Taylor*, 30 Wash.App. 89, 632 P.2d 892 (1981).

21 *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325_ *Newblock v. Bowles*, 170
22 Okl. 487,40 P.2d 1097, 1100. *Mention of one thing implies the exclusion of*
23 *another*. When certain persons or things are specified in law, contract, or will, *an*
24 *intention to exclude all others from its operation may be inferred*. Under this
25 maxim, if statute specifies one exception to a general rule or assumes to specify
26 the effects of a certain provision, *other exceptions or effects are excluded*."

27 "*Definitions are integral to statutory scheme and of highest value in determining*
28 *legislative intent. ... To ignore definition section is to refuse to give legal effect to*
part of statutory law of state." See *State v. Taylor*, 30 Wash.App. 89, 632 P.2d
892 (1981). "When legislative body provides definition for statutory terms, *it is*
that definition to which a person must conform his conduct."

1 Of the three reasons the highways are said to exist, the term "motor vehicle" clearly
2 applies to only one of said reasons, that being *transportation* of goods, commodities, or persons.
3 This echo of the obvious limitations placed upon the State's licensing authority is found in 49
4 USC.

5 49 USC Subtitle VI, and the intent and language of 18 USC 31, cannot be ignored; direct
6 and fluent correlation is starkly apparent.

7 "An examination of the statutory context, the text of the relevant provisions, *and*
8 *the legislative history convinces us that the construction that is "most harmonious*
9 *with its scheme and with the general purposes that Congress manifested."* (Cite
10 omitted) Moreover, because the application of [the provision] to these loans is
11 ambiguous, we follow the venerable rule that "[i]n the interpretation of statutes
12 levying taxes ...[courts must not] enlarge their operation so as to embrace matters
13 not specifically pointed out *See Security Bank of Minnesota v. C.I.R.*, 994 F.2d
14 432, 441 (CA81993).

15 Accused contends that the "California Motor Vehicle Codes," applied by the State of
16 California to the Accused's *private travel* upon the highways, is not applicable to the "*public*
17 *use*" of the highways of California State. Accused contends that the State's "*motor vehicle*" code
18 is' applicable only to the *commercial* use of the highways or "*transportation of persons*," as the
19 term "*motor vehicle*" is defined in 49 CFR 390.5 and 398.1 (d) 4 and at 18 USC 31, and that said
20 term is different from "*use of the public*."

21 The activity licensed by state DMVs and in connection with which individuals
22 must submit personal information to the DMV- the operation of motor vehicles-is
23 itself integrally related to interstate commerce.

24 ...state activities integrally related to commerce, and acted within its sphere of
25 power to afford "security * * * to the rights of the people" by preventing the
26 States from releasing personal information that they require individuals to submit
27 as a condition of engaging in activity-owning and operating a motor vehicle-that
28 is integrally related to commerce generally... JANET RENO, ATTORNEY
GENERAL OF THE UNITED STATES, ET AL., PETITIONERS v. CHARLIE
CONDON, ATTORNEY GENERAL FOR THE STATE OF SOUTH
CAROLINA, ET AL., In the Supreme Court of the United States, (Jan. 12, 2000)
No. 98-1464 [Emphasis added]

"A state cannot impose restrictions on the acceptance of a license that will deprive
the licensee of his constitutional rights". *Ruckenbrod v. Mullins*, 102 Utah 548,
133 P.2d. 325, 144 ALR 839

1 **TRAFFIC. Commerce;** trade; **sale** or exchange of merchandise, bills, money,
2 and the like. The passing of goods or commodities from one person to another for
3 an equivalent in goods or money. *Senior v. Ratterman*, 44 Ohio St. 673, 11 N.E.
4 321; *Fine v. Moran*, 74 Fla. 417, 77 So. 533, 538; *Bruno v. U.S.*, C.C.A.Mass.,
5 289 F. 649, 655; *Kroger Grocery and Baking Co. V. Schwer*, 36 Ohio App. 512,
6 173 N.E. 633. The subjects of **transportation** on a route, as persons or goods;
7 the passing to and fro of persons, animals, vehicles, or vessels, along a route of
8 **transportation**, as a long a street, canal etc. *United States v. Golden Gate Bridge*
9 and *Highway Dist. of California* , D.C.Cal., 37 F. Supp. 505, 512. *Black's Law*
10 *Dictionary*. 4th Ed., p. 1667

11 **TRANSPORTATION.** The removal of goods or persons from one place to
12 another, by a **carrier**. *Railroad Co. v. Pratt*, 22 Wall. 133, 22 L.Ed. 827;
13 **Interstate Commerce Com'n v. Brimson, 14 S.Ct. 1125, 154 U.S. 447, 38 L.Ed.
14 1047; *Gloucester Ferry Co. v. Pennsylvania*, 5 S.Ct. 826, 114 U.S. 196, 29 L.Ed.
15 158 *Black's Law Dictionary*, 4th Ed., p. 1670**

16 **BAILEE**, contracts. One to whom goods are bailed.

17 2. His duties are to act in good faith he is bound to use extraordinary diligence
18 in those contracts or bailments, where he alone receives the benefit, as in loans; he
19 must observe ordinary diligence of those bailments, which are beneficial to both
20 parties, as hiring; and he will be responsible for gross negligence in those
21 bailments which are only for the benefit of the bailor, is deposit and mandate.
22 *Story's Bailm. Sec. 17, 18, 19.* He is bound to return the property as soon as the
23 purpose for which it was bailed shall have been accomplished.

24 3. He has generally a right to retain and use the thing bailed, according to the
25 contract, until the object of the bailment shall have been accomplished.

26 4. A bailee with a mere naked authority, having a right to remuneration for his
27 trouble, but coupled with no other interest, may support trespass for any injury,
28 amounting to a trespass, done while he was in the actual possession of the thing. 4
Bouv. Inst. n. 3608.

The "number plates" and or "emblems" are the EVIDENCE that the "license" has
been acquired.

The License Tax Act of 1933 was enacted as a step in the second line, that of
certain acts and constitutional provisions which were primarily revenue measures,
designed to secure for the state a fair return for the use of the public highways of
the state in transporting persons or property for compensation. (*Stats. 1923*, p.
706; *Stats. 1925*, p. 833; *Stats. 1927*, p. 1708; *Stats.1927*, p. 1742; *California*
Const., art. XIII, sec. 15; *Pol. Code*, sec. 3664aa; *Stats.1933*, p. 928.) These
enactments have been before the courts of this state in the following cases: *Bacon*
Service Corp. v. Huss, 199 Cal. 21 [248 Pac. 235]; *In re Schmolke*, 199 Cal. 42
[248 Pac. 244]; *Los Angeles etc. Transp. Co. v. Superior Court*, 211 Cal. 411
[295 Pac. 837]; *Alward v. Johnson*, 208 Cal. 359 [281 Pac. 389]; *People v.*
Duntley, 217 Cal. 150 [17 Pac. (2d) 715]; *People v. Lang Transp. Co.*, 217 Cal.
166 [17 Pac. (2d) 721]. An analysis of the legislative history discloses the fact

1 that all the statutes dealing with the regulation of transportation agencies refer to
2 persons in the business of transportation of persons or property upon the public
highways for hire or compensation....

3 We are satisfied that the purpose of the enactment of the License Tax Act of 1933
4 was to secure a fair return to the state for the use of its public highways not only
5 from carriers, both common carriers and private contract carriers, but also from
6 the larger class of persons who fairly answer to the description of "operator"
7 therein defined as taxable and who receive compensation, either directly or
indirectly, from the use of the public highways.

[Empahsis and italics added]

8 CALIFORNIA COMMERCIAL CODE

§9109. Classification of Goods: "Consumer goods"; "Equipment"; "Farm
9 Products"; "Inventory"

Goods are

10 (1) "Consumer goods" if they are used or bought for use primarily for personal,
family or household purposes;

11 (2) "Equipment" if they are used or bought for the use primarily in business
12 (including farming or a profession) or by a debtor who is a nonprofit organization
13 or a government subdivision or agency or if the goods are not included in the
definitions of inventory, farm products, or consumer goods.

14 California Code Comment

By John A. Bohn and Charles J. Williams

Prior California Law

15 1. The classification of goods in this section is new statutory law. The
16 significance of this classification is described in Official Comment 1.

17 Although goods cannot belong to more than one category at any time, they may
18 change their classification depending upon who holds them and for what reason.
Each classification is mutually exclusive but the four classifications described are
19 intended to include all goods.

Official Comment 2.

20
21 "Moreover, a "distinction must be observed between the regulation of an activity
22 which may be engaged in as a matter of right and one carried on by government
sufferance or permission." *Packard v Banton*, 264 US 140, 145.

23 "... (its object) is to confer right or power which does not exist without it and
24 exercise of which, without license would be illegal." *Inter-City Coach Lines v*
Harrison, 157 SE 673,676.

25 "A permit, granted by an appropriate governmental body, generally for
26 consideration, to a person, firm, or a corporation, to pursue some occupation or to
27 carry on some business which is subject to regulation under the police power."
Rosenblatt v California State Bd. of Pharmacy, 158 P. 2d 199, 203.

1 The term "**license**" **implies a divestiture** of right or title, by the licensee, to the
2 property which is subject to the "license." A "**license**" is a **mere revokable**
3 "**privilege**" to do An act (or series of acts) upon land, and excludes the right or
4 Title thereto. *Eastman v Piper*, 229 P. 1002, 1003;
5 *Gravelly Ford Canal Co. v Pope and Talbot Land Co.*, 178 P. 155, 163; *Howes v*
6 *Barmon*, 81 P. 48, 49, *Rodefer v Pittsburgh*, 74 NE 183, 186.
7 "A **license**... is no more than a **temporary permit** to do that which would
8 otherwise be unlawful..." *Rawson v Dept of Licenses*, 15 Wn.2d 364, 371 (1942).

9 "The only limitations found restricting the right of the state to condition the use of
10 the public highways as a means of vehicular transportation for compensation are
11 (1) that the state must not exact of those it permits to use the highways for hauling
12 for gain that they shall surrender any of their inherent U.S. constitutional Rights
13 as a condition precedent to obtaining permission for such use..." *Riley v Lawson*,
14 143 SO. 619; *Stephenson v Binford*, 287 US 251, 87 ALR 721, 736.

15
16 The Right of the Accused to arrange his affairs in any lawful way cannot be doubted. See
17 *Gregory v. Helvering*, 193 U.S. 465, 469, 55 S.Ct. 266, 267, 79 L.Ed. 596 (1935); *Boccardo v.*
18 *Commissioner* 56 F.3d 1016 at [1,2] (9th Cir.1995).

19
20 I affirm pursuant to the laws of the republic state of California, that to the best of my
21 abilities the foregoing is true, accurate and complete.

22 Respectfully submitted this Thursday, February 05, 2009

23 _____ 2/5/2009

24 Rik Munson
25 Accused in Pro per
26
27
28