

The Texas Transportation Code

The Law vs. The Lie



“No officer, I am not anti-government, but I am anti-idiot!”

If you are attending this seminar as an undercover officer of some variety from a local, state, or federal agency, welcome. We hope that you leave the seminar more informed and more willing to properly enforce the law as it was intended and written instead of continuing the unlawful and illegal status quo currently prevalent in Texas and elsewhere.

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Preface

When citing statutory references in this document it should be noted that I always try to include the entire section(s) (and sometimes whole chapters) being referenced in the Addendums section of the material unless the cite is being used for example purposes only. This is to prevent nay-sayers from arguing that the material is being taken out of context or is incomplete so that I can make the statute appear to read or verify something in a way that it actually doesn't.

The type styles that I have used in this document are meant to clarify and separate passages of text to make them easier to identify within the material.

The individual type styles used are:

Main Headings – Ariel Font 16 Point

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You will also find that the current powers-that-be will make no real effort to refute the information within this material. They will simply try to dismiss it as either a misinterpretation or misrepresentation of the law. Make them prove this assertion! I have documented every single one of mine herein, what have they done except provide an unsubstantiated opinion of what they want you to think?

Forward

This material is dedicated to our Peace Officers, the only true officers for the People. For those in "law enforcement" it is hopefully a wake up call, because these two professions are as incompatible as vampires and daylight.

I know, you're thinking "What does he mean by that..." it's simple; a Peace Officer knows that his/her only real duty is to preserve the peace and protect the rights of the People, which is the "only legitimate power of government" according to Thomas Jefferson. A Peace Officer is bound by the respective Constitutions and their oath of office to protect the People, even against the imposition of ordinances or statutes that violate the People's and/or the officer's understanding of those rights. A Peace Officer protects our rights against intrusions by the government acting in any manner that is in violation of those rights, whether the violation is against an individual, a group, or the People collectively. This is the real power and duty of the elected Sheriff. A Peace Officer will not knowingly or willingly violate the rights of the People simply to enforce a rule or law that is contrary to those rights. A Peace Officer will only arrest or detain if there is an actual criminal act committed in his/her presence or for which he/she carries a duly issued warrant of arrest by a judge with proper jurisdiction to issue such warrant. He/she is there to protect and to serve, not to control or judge.

In direct contrast to the Peace Officer we have the "Law Enforcement" Officer. This officer believes that his/her only duty or obligation is not to the People, but only to the single-minded enforcement of every ordinance, statute, or situationally facilitated rule that they can lay their minds upon. This officer is a paradox of contradictions, especially in regard to the rights of the general public and individuals. The most ludicrous statement I have ever heard a member of "law enforcement" make was under oath on the witness stand. This officer actually stated *"I don't have to read the law or know what it says, I only have to enforce it!"* To most law enforcement officers this reasoning is absolutely credible and sound. In all fairness however, it is not entirely their fault, they are trained to see the People as someone that must be controlled, that we are all really "bad guys" just waiting for an opportunity to act upon our "bad" nature. The mindset is instilled within the law enforcement officer that each and every one of us is a potential threat to their lives and safety and so they fear us, and through that fear they act in what to them is simply total self-preservation. *"Do what I say and do it now!"* roughly translates into *"I am afraid that you might do something that will harm me or cause me to harm you, so I am going to prevent that by making you do everything I say immediately and exactly so that doesn't happen, even if it means the use of unnecessary force. Your rights simply are not as important to me as the potential harm that might occur to one or both of us if I fail to force you to obey!"* This is the thought process of the more decent of these officers. This type of reasoning however completely ignores the fact that most people are perfectly law-abiding and would never even think of harming a peace officer.

There is also the high possibility that the particular law enforcement officer confronting you is one of the far too many in existence that became an officer simply for the power and ego trip because he/she now gets to play with a badge, gun, and radio, and gets a handsome costume that grants him/her some appearance of "authority" that he/she otherwise would not have. This officer is perhaps the most dangerous type of all to encounter (especially if you're trying to buy the last donut in his favorite shop). This type of officer has a "reputation" and an ego to protect, and nothing you do is going to be allowed to cause that self-aggrandizing protection to fail, even if it means you have to be physically injured or killed. This is why it is recommended that you never attempt to deal with any officer on the side of the road, no matter how wrong or incorrect he/she may be. Do it in the courtroom where there is less likelihood of actual danger to you from the officer.

While officers must have some level of discretion in the decisions that they make, that discretion should *never* be allowed to be an excuse for the violation of any individual's rights. It has always been the prevailing intent of the law and justice that it is better that a guilty man go free than to punish an innocent. The biggest danger these types of officers present is that they are more often than not willing to use unlawful threats and acts of physical and/or deadly violence.

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“How Gubmint Works”

Once upon a time the government had a vast scrap yard in the middle of a desert. Congress said, "Someone may steal from it at night." So they created a night watchman position and hired a person for the job.

Then Congress said, "How does the watchman do his job without instruction?" So they created a planning department and hired two people, one person to write the instructions, and one person to do time studies.

Then Congress said, "How will we know the night watchman is doing the tasks correctly?" So they created a Quality Control department and hired two people, one to do the studies and one to write the reports.

Then Congress said, "How are these people going to get paid?" So they created the following positions, a time keeper, and a payroll officer, then hired two people for the positions.

Then Congress said, "Who will be accountable for all of these people?" So they created an administrative section and hired three people, an Administrative Officer, Assistant Administrative Officer, and a Legal Secretary.

Then Congress said, "We have had this command in operation for one Year and we are \$18,000 over budget, we must cutback overall cost."

So, they laid off the night watchman.

NOW slowly, let it sink in.

Quietly, we go like sheep to slaughter.

Does anybody remember the reason given for the establishment of the DEPARTMENT OF ENERGY During the Carter Administration?

Anybody?

Anything?

No?

Didn't think so!

Bottom line. We've spent several hundred billion dollars in support of an agency ... the reason for which not one person who reads this can remember!

Ready??

It was very simple ... and at the time, everybody thought it very appropriate.

The Department of Energy was instituted on 8-04-1977.

TO LESSEN OUR DEPENDENCE ON FOREIGN OIL.

Hey, pretty efficient, huh???

AND NOW, IT'S 2009 -- 32 YEARS LATER -- AND THE BUDGET FOR THIS "NECESSARY" DEPARTMENT IS AT \$24.2 BILLION A YEAR. THEY HAVE 16,000 FEDERAL EMPLOYEES AND APPROXIMATELY 100,000 CONTRACT EMPLOYEES; AND LOOK AT THE JOB THEY HAVE DONE!

THIS IS WHERE YOU SLAP YOUR FOREHEAD AND SAY, "WHAT WAS I THINKING?"

Ah, yes -- good ole bureaucracy.

AND, NOW, WE ARE GOING TO TURN THE BANKING SYSTEM, HEALTH CARE AND THE AUTO INDUSTRY OVER TO THE SAME GOVERNMENT?

HELLOOO ! Anybody Home?

Chapter 1 – Basic Primer on Rights

What happens when lawyers take Viagra? A: they get taller.

1.1 Unalienable vs. Inalienable

1.1.1 As Americans we are a single unified nation under the Constitution of the United States of America, which is comprised of the union of the several states. But even in our unified nation each state is still a sovereign, separate from every other state as well as the federal government. This fact is the basis on which the idea of “state sovereignty” is formed. For instance, the Texas republic cannot be sued in any court by any other state or the federal government, nor any Citizen, “Person”, or “Individual” of either one of these. However, there is absolutely no provision in either the Constitution of the United States of America or the Texas Constitution granting the federal government or the government of Texas governmental or sovereign immunity from suit by one or more of its own People. This fact holds true in every other state as well, they can sue their own state or the federal government, but not another state.

1.1.2 As Americans we are a single unified nation under the Constitution of the United States of America, which is comprised of the union of the several states. But even in our unified nation each state is still a sovereign, separate from every other state as well as the federal government. This fact is the basis on which the idea of “state sovereignty” is formed. For instance, the Texas republic cannot be sued in any court by any other state or the federal government, nor any Citizen, “Person”, or “Individual” of either one of these. However, there is absolutely no provision in either the Constitution of the United States of America or the Texas Constitution granting the federal government or the government of Texas governmental or sovereign immunity from suit by one or more of its own People. This fact holds true in every other state as well, they can sue their own state or the federal government, but not another state.

1.1.3 Since both the federal and state government exists only by the power and authority of the People themselves, it would be an example of epic stupidity to argue that the People have no recourse to sue either of them for offenses committed against the People. This is especially true if that government, its agencies, its agents and/or its employees is engaged in criminal or otherwise unlawful acts against one or more of the People of Texas.

1.1.4 There is no constitutional prohibition against the People in the several states suing the federal government; it only prohibits suits between the individual state governments and suits between the state and federal governments. It is the courts that have decreed otherwise by judicial fiat while aiding and abetting Congress and the state legislators through enactment of unconstitutional statutes preventing suit. It is the epitome of willful ignorance and usurpation of power to claim that the STATE GOVERNMENT and its EMPLOYEES are immune from suit by the state Citizens they work for. Both the Declaration of Independence and the Texas constitution make it very clear that the People hold ALL of the political power in their individual states within the union. It is also abundantly clear that the People of Texas have not only the right, but the sovereign duty, to abolish by any means necessary or desirous any form of government that ignores the will and the rights of the People by acts contrary to their mutual and/or individual benefit.

TEXAS CONSTITUTION
ARTICLE 1
BILL OF RIGHTS

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

1.1.5 The respective constitutions were not designed and written to govern the People, but were written to govern, bind, and control the respective layers of government. Everything in our respective constitutions speaks entirely and specifically to what the **government** *can* do and what it *cannot* do, it places no such limitations in either respect on the People themselves. These specific limitations are put in place to guide government on a predetermined course of responsibility and accountability and it is to remain within these strict guidelines. It is the written rulebook for *how government is to interact with the People* as a whole, which is the only real purpose of any constitution. The federal constitution was designed to bind and restrain the actions of the federal government, not the individual states except where specifically written to apply to them. The respective state constitutions were meant to bind and control the individual state's interactions with the People/Citizen's of that state specifically on their behalf. It was and is the will of the People that whatever power or authority is not expressly granted or is specifically denied to government by enumeration within the respective Constitutions is thereby specifically prohibited and forever barred from governmental exercise. The government is also forever barred from interpreting one provision of the respective constitutions to grant a power or authority in contrast with another provision, meaning that a grant of authority that is specifically or circumstantially denied in any provision may not be circumvented by misinterpretation of another provision in order to acquire it.

1.1.6 It is my humble opinion that the federal constitutional requirement that all the laws and court decisions within one state be given equal force and effect in every other state was an ingenious method of ensuring that the states would not be able to enact any laws effecting the People directly which were not totally uniform amongst them. A straight forward common sense reading of this section of the federal constitution clearly demonstrates the purposeful genius of this interpretation was to ensure that the people never had to guess what the laws in any given part of the country would be regarding their rights and behavior, thus making the adage "ignorance of the law is not an excuse" self-ensuring because the laws were to be consistently uniform no matter where a Citizen found themselves located. By providing this requirement it was also meant to make the enforcement of those laws uniform across the board and therefore equal to all. In this way the elements of the crime and the resulting punishment would not vary from state to state, thus no more hearing the argument "that's illegal in this state even if its not in that state". Who says that the Founding Fathers were not wise beyond their century and that the Constitution does not take into consideration future matters? This is precisely the type of ever-present foresightedness that these great men demonstrated during the debates at the constitutional convention. The result forming the means to "bind down government with the chains of the constitution" thus establishing a nation, and ensuring that it's People remained free from any similar form of tyranny such as the one they were fighting so hard to extricate themselves from.

1.1.7 Some would argue that this interpretation would in effect remove the individual states autonomy and sovereignty, but in reality it would do no such thing. The individual states would still have control over their industry and property separate from any of this. But any law that was to be specifically directed at the People themselves would have to be uniform under this reading. Imagine,

one interpretation of what constitutes a crime, not several with varying degrees of the specific elements, one method of procedure and one set of rules on how to do things in any state for going to court and seeking justice, one way to tax or not tax the People or to determine if they wished to be taxed at all. How about the prevention of government abuse or other criminal acts against the People by the full and proper application of the judicial power within the courts to seek redress? It certainly sounds a lot simpler and more in line with the Founder's original intent than the current quagmire, that's for sure.

1.1.8 It should be fundamental law in every state that if one or more of the People raises a constitutional challenge to the validity, application, or the enforcement methods of a particular law or statute then the agency(s) to which that specific action or statute applied would and should bear the burden of proving that the law is constitutional, it should not fall upon the shoulders of the People to prove that it is not, it is enough that we thought it worthy of challenge to begin with. It is for this purpose that the courts were set up as the People's safety valve, the People challenge government action or authority based solely and entirely on the mandates of the respective constitutions, and the particular portion of government responsible must prove every aspect of the constitutionality of the law. Nothing else allows for the full exercise of the rights of the People to hold their government accountable for its actions and/or its failures to abide by the People's will instead of its own. I can guarantee that the Founding Fathers never intended for the duties of the court to be turned into a profiteering center, and I can likewise guarantee that they have never allowed for the requirement of any filing fee for suits against the government, suits between individual people maybe, but never suits against government. And they would certainly never allow their servant government to declare itself "sovereign" over the People, for to do so grants the idea that government has no master, and that idea is absolutely false because We the People ARE its master whether those working inside it likes it or not. I firmly believe that any politician, public employee, judge or attorney who argues to uphold this fallacy should be introduced to a life-long prison cell for treason.

1.1.9 It is also my humble opinion that the individual state legislatures were never granted authority or power to create laws that are meant to regulate or control the People themselves, but only laws governing those things over which the People granted specific legislative authority. The legislatures were created to act like a "board of directors" that set the statutory rules and procedures for those that work specifically as public servants and those legal entities created and controlled by those statutory enactments such as corporations (legal/statutory entities are NOT flesh and blood people).

1.1.10 It is important to note that throughout this document you will see references to the term "government". These references by me will *always* refer to government in its servant capacity, which is exactly what it was designed to be, the servant of the People, not our lord and master. The People were endowed with certain unalienable rights, and the powers of government are forever excepted from interfering with those rights, to wit:

TEXAS CONSTITUTION ARTICLE 1 BILL OF RIGHTS

Sec. 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLEATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is

excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

1.1.11 So what is an unalienable right in relation to an inalienable right? If you want to find out then check out the Addendums section for an article entitled "UNALIENABLE". It is an article that compares these two similar but ultimately different terms at length via case law. It can be found on the web at <http://www.gemworld.com/USA-Unalienable.htm>.

1.1.12 After reading it can there be any doubt that we the People *cannot* simply vote away or delegate our unalienable rights and those of our fellows to the few whom we elect to serve in public office? Can we be so blinded by the need to be obedient that we are no longer capable of making our own determinations about what our rights are and therefore leave them to be decided by those that profit most by taking them from us? I am reminded of another patriot and his thoughts on these questions:

"If ye love wealth better than liberty, the tranquility of servitude better than the animating contest of freedom, go home from us in peace. We ask not your counsels or your arms. Crouch down and lick the hands which feed you. May your chains set lightly upon you, and may posterity forget that ye were our countrymen."

Samuel Adams

1.1.13 We have allowed our government to usurp a power and authority that we the People never granted to it. If we continue to be good little Sheeple then we should not be at all surprised when we continue to be sheared of our rights and our property. My greatest fear for myself is that I will live to see America become the very type of nation that we used to only read about in the papers and see on the news while we shook our heads in disbelief that the people there would allow it to happen. Now look at us, we are allowing the same thing to take root here and all we seem to want to do to fix it is complain. Not me, not any longer, not ever again. I have swallowed the red pill, and I now know and believe that any right that you are either afraid or "prohibited" to exercise is a right that you do not have. And I will not allow my house to be run by my servants in any manner contrary to my wishes and demands, and I pray that more people will begin to feel and put into action the same ideals before it is too late to avoid the edge of the bottomless pit.

1.2 The Message Meant To Be Conveyed

1.2.1 The purpose of this seminar is to hopefully educate and equip each and every participant with the information, knowledge, and methods to reclaim and enforce the rights that have always been ours. Freedom has never been free or easy, and throughout history it is almost always hard-won as a result of personal sacrifice and bloodshed. Because freedom is purchased at such a high price it should be the most cherished possession the People have, without exception. For over two hundred and thirty years men and women have sacrificed all that they had, even to the point of death, to purchase that freedom for us. It cannot be a greater waste and insult to their sacrifice than for us to allow it to go unheeded and let our rights and freedoms continue to be stolen away lock-stock-and-barrel by corrupt politicians, scumbag lawyers, and ignorant law enforcement officers.

1.2.2 One of my many other prayers is that this seminar imparts useful information and knowledge to those that participate, and that it makes them angry. So angry that they spread the message loudly, both far and wide, that the federal government is not the only den of thieves for which we must be ever watchful, and that people not only tell others to be watchful, but will also teach them how to locate, corner, and drive these thieves out. Theft and fraud are crimes, and no matter what political title or window dressing of alleged authority with which you clothe the act, it is still criminal. Thieves in political clothing deserve their punishment, just as any other criminal does, and this is especially true if the criminal is in a public office or a position of public trust. Those occupying public office should be held to the highest standard of trustworthiness and accountability, and it is our failure and fault that this is not what is done. One case sums it up best I think "It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error." *Ryan v. Commission on Judicial Performance, (1988) 45 Cal. 3d 518, 533

1.2.3 If I were to make an analogy of what our situation is and what I would like to see change it would be stated thusly:

Imagine that with your current level of knowledge and confidence about your rights, your capabilities, and the law, that you're feeling very much like a little mouse scurrying across the wide open kitchen floor, hoping to find shelter before the cat spots you, or Heaven forbid, actually catches you...

After this seminar I pray that you will feel more like a 900 lb. well-armed mouse standing defiantly in the middle of the kitchen shouting “Yo, cat!”



1.2.4 The legislature does not, and in fact cannot, have a power or authority that is beyond the power and authority of the People themselves as individuals to grant to it. To see the truth and context of this statement try asking yourself this series of questions:

1. Do you, as one man (or woman), have the authority to tell your neighbor(s), against their will, what they can or cannot do on their own private property or in their own home?
2. Do you, as one man (or woman), have the authority to tell your neighbor(s), against

their will, how tall, short, or of what type their grass can be in their own yard?

3. Do you, as one man (or woman), have the authority to force your neighbor(s), against their will, pay you a monetary fine because they do not mow or water their lawn when you think they should?
4. Do you, as one man (or woman), have any authority to demand that your neighbor(s), against their will, have only certain lawn ornaments or exterior fixtures on their own home or property?
5. Do you, as one man (or woman), have any authority to determine anything about what your neighbor(s), against their will, owns, says, or does on or to their own property?
6. Do you and/or a small group of your neighbors, as a group in agreement, have any authority to hold a vote intended to force payment of a tax on one or more of your neighbor's properties, against their will, and spend the money for the "benefit of the neighborhood" as your group sees fit to mandate?
7. Do you and/or a small group of your neighbors, as a group in agreement, have any authority to vote to make mandatory on one or more of your neighbor's properties, against their will, a maintenance regimen and schedule, as your group sees fit to mandate?
8. Do you and/or a small group of your neighbors, as a group in agreement, have any authority to vote to monetarily fine one or more of your neighbors, against their will, for failure to perform the upkeep of their property in any manner that your group sees fit to mandate?
9. Do you and/or a small group of your neighbors, as a group in agreement, have any authority to vote to deny one or more of your neighbor's, against their will, the use of any part or thing that is their property for any particular reason that your group sees fit to mandate?
10. Do you and/or a small group of your neighbors, as a group in agreement, have any authority to vote to make one or more of your neighbor's, against their will, paint their house a particular way, drive a particular car, or have a particular number of children, as your group sees fit to mandate?
11. Do you and/or a small group of your neighbors, as an individual or a group in agreement, have any authority to resort to the use of threats, force, or violence in order to exert your will upon one or more of your neighbors for the purpose of enforcing compliance or consideration for any of the circumstances or conditions enumerated above?

1.2.5 If you answered anything other than "NO" to the above questions then perhaps you should consider running for public office, because only those who seek to be elected to public office for the power and prestige would have the audacity to think that the People ever granted their legislators or any other level of government such authority over them. Not a single one of us in this seminar have the authority to do even one of these things to our neighbor against his or her will. Any such authority can ONLY come from a mutual agreement to be bound by the rules in question and be susceptible to the fines and/or taxes that we all agreed would be instituted for that purpose. No man or woman is obligated or has a duty to agree to these types of rules or to be regulated by their peers and/or the

“government”. Because no such authority can be delegated by the People the government has no authority to force any one of the People to accept and abide by such rules and regulations against their will, PERIOD! The government does not have unalienable or inherent “rights”, it has delegated powers, it is a legal entity, a fiction surnamed the state, and it has been supplanted by THE STATE, and any alleged power or authority exercised by THE STATE or its political subdivisions that was not specifically delegated by the People is a power that has been usurped and is therefore absolutely unconstitutional and unlawful.

1.2.6 The People CANNOT delegate a power and authority to their servant government that the People themselves DO NOT HAVE! The ONLY exception to any of the above situations is the same exception that has always existed even before the founding of our nation, ***the protection of individual rights and property***, to wit:

- Your neighbor has no right to steal from you or your other neighbors, nor you from them.
- Your neighbor does not have the right to disturb the peace or destroy the property of you or your other neighbors, nor you theirs.
- No one has the right to physically assault someone except in self-defense or preservation of life, whether one’s own or another’s, and you and/or your neighbors are perfectly justified in preventing and/or interceding in such an act.
- No one has the right to steal or destroy the property of another, and you and/or your neighbors are justified in interceding and preventing such an act.
- The fact that the perpetrator wears a badge or bears a political office label does not grant them blanket authority to ignore these basic rights of human interaction and to commit those same offenses under color of that badge or office, and you and/or your neighbors are justified in interceding and preventing such an act.

1.2.7 The list can go on but the point is that it is only when one or more individuals are engaged in an act or acts that is directly or imminently detrimental to the rights or property of another that the power and authority of a third party to intervene and directly regulate or prevent the act in question arises.

1.2.8 While preparing this documentation I began reading a book by a gentleman named Peter Eric Hendrickson entitled “Cracking the Code: The Fascinating Truth About Taxation In America”. The book is a sensible and well-written point-by-point examination of the real facts, case-law, and statutes governing the federal income tax and those to whom it applies, I highly recommend it. In his book Mr. Hendrickson stated this precept of sovereignty and authority far more eloquently than I. Beginning on page 34 of this book he wrote:

“Before discussing the characteristics of law, which is the product of a state, it is necessary to briefly comment on sovereigns, who are the precursors to the state. A sovereign is a free-standing, independent agent, whose right to exist and act are inherent by nature. While much weird and degenerate philosophy has been fabricated over the centuries alleging social contracts, mystical fatherlands, divine right and the like, ad nauseum, the simple and

incontrovertible facts are:

- *No human being can assert a claim of authority by right over any other human being;*
- *All human agencies [government, corporations, etc.] are merely subordinate constructs which can claim no authority beyond that of their creators; furthermore all agencies can assert nothing for themselves and assertions made on their behalf can have no demonstrable standing beyond that of the speaker or speakers, who are just other human beings;*
- *No one can claim more or superior rights to those of any one else.*

Therefore, regardless of whether or not each of us really has a right to act freely, no one else has a right to interfere with our acting freely. So, we are all sovereign by default at least, if not by design. Our power-to-act is not dependent upon or answerable to any other person or any other person's creation.

States, on the other hand, are not sovereign, except as to other states."

1.2.9 There has NEVER been a vote by the People to do away with this common-sense approach to the delegated powers of government, at least as it pertains to the People themselves. And if these points sound familiar to you then congratulations, you have obviously been exposed to the Holy Bible at some point in your life, because each of these points is based on biblical principles that were put in place to govern the relationships of every man with his neighbors since before the time of the exodus.

1.2.10 The current occupants of the various seats of government currently operate under the false and treasonous presumption that there is nothing that they cannot do unless the various respective constitutions specifically prohibit it. This clearly demonstrates that they not only miss the point of a constitution, but that they also fail to understand the purpose of their duties defined within it. The very fact that a constitution does not speak to or grant a particular power or authority to a governmental body can only be construed by a sane individual as meaning that it is specifically prohibited. To argue otherwise renders the purpose of a constitution totally moot. These moronic arguments might as well issue forth a decree that "...since the constitution does not specifically prohibit the government from tattooing the People, the legislature hereby orders that within the next thirty (30) days everyone within the borders of THE STATE OF TEXAS must get a tattoo across their forehead reading "PROPERTY OF THE STATE OF TEXAS." --- And if you're one of those in government that thinks that this decree is perfectly okay --- Here's your sign!

1.2.11 However, assuming that a specific power and authority was delegated over the creation and regulation of certain legal entities such as corporations and other statutorily created fictions more commonly known in law and statute as "Persons", then the following arguments are being made.

1.2.12 The People are not "Persons". There has never been and can never be a legislative act that has or would convert the status of the individual sovereign People to that of an individual "Person" created and subservient by and to the government. We are real, natural born, flesh-and-blood, God-breathed, living men, women, and children; we are not and never shall be "Persons".

1.2.13 Our rights and freedoms cannot be licensed, regulated, taxed, fined, abrogated, derogated or otherwise subject to any legislative or *democratic* (read “mob-rule”) act or vote, they are *unalienable*! The form of government within Texas, as well as the several states and America as a whole, is NOT that of a democracy, it is not a democratic republic, it is a REPUBLIC, and that is all that We the People have ever authorized. We will not and should not settle for anything less. What does the Texas Constitution state:

THE TEXAS CONSTITUTION
ARTICLE 1. BILL OF RIGHTS

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

1.2.14 How about the Constitution of the United States? What did the Founding Fathers see fit to proclaim as the only valid form of government within the individual states of the union:

Constitution of the United States
Article IV
Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

1.3 I Don't Have to Please the Court, the People Have the Right to Travel Upon the Roads! Can't You People Frickin' Read?

1.3.1 I figure the best way to provide the truth of this is to present the case law from a “legal argument” point of view. This information is taken in part from a brief I located on the internet. I am/have making/made some modifications for its use here in Texas. Be aware that it is not used here a proper form for a brief per se, so I recommend that you make no attempt to use it for that purpose in this form. It is written here for the purpose of readability, not legal brief formatted argument. The arguments are written to be informative and accurate but with some entertainment value added language in order to make the material less mundane. So with that said the stage is set, let's begin.

1.3.2 **We the People demand that this court and the prosecution pay particular attention to the following which is presented in the form of judicial notice to this court. Even the federal government admits on the record that the motor vehicle laws and licensing statutes within the individual states exist solely for the purpose of regulating commercial activities upon the roads and highways and is neither intended nor of any effect against the People themselves who are not engaged in commerce upon them, to wit:**

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

Seth Waxman, Solicitor General

U.S. Department of Justice

BRIEF FOR THE PETITIONERS

Reno v. Condon, No. 98-1464, decided January 12, 2000

Supreme Court of the United States

1.3.3 ***We the People also remind the court that THE STATE is obligated by law to provide to the Defense, and to introduce to this court, not only the evidence THE STATE intends to use to secure a conviction, but also any and all exculpatory evidence, law, statements or testimony in its possession or knowledge. This includes but is not limited to the related and relevant state and federal statutes themselves and any and all case law interpretations thereof relevant to the subject matter at issue in the instant case, as well as to ensure that any trial on the merits is fair and impartial, to wit:***

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 1. GENERAL PROVISIONS

Art. 1.03. OBJECTS OF THIS CODE. This Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of procedure in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

1. To adopt measures for preventing the commission of crime;
2. To exclude the offender from all hope of escape;
3. To insure a trial with as little delay as is consistent with the ends of justice;
4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal;
5. To insure a fair and impartial trial; and
6. The certain execution of the sentence of the law when declared.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

CHAPTER 2. GENERAL DUTIES OF OFFICERS

Art. 2.01. DUTIES OF DISTRICT ATTORNEYS. Each district attorney shall represent the State in all criminal cases in the district courts of his district and in appeals therefrom, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within his district, he shall represent the State therein, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

1.3.4 We the People assert that any attempt by the prosecution or this court to make or sustain a Motion in limine that attempts to deny We the People the right to produce and argue the meaning and application of the statutes related to this cause is an abusive and oppressive act of obstruction of justice as well as a violation of the laws relating to your respective offices for which criminal charges will be filed.

1.3.5 We the People assert that any failure of the STATE to perform their investigation with all necessary due diligence to ensure that justice is served and the innocent go free is a breach of the public trust and of justice. The Texas statutes above clearly mandate that in the instant case THE STATE's duties include, but are not limited to, the research and review of all of the "Motor Vehicle v. Automobile" case law referenced and submitted to this court by the People as well as historical and current Texas case law upon that subject. It is also clearly made the responsibility of the prosecutor to thoroughly research and ascertain the correct meaning and application of the respective statutes in their entirety, and said prosecutor is not allowed to present or argue guilt based on presumption and conjecture or even current methodology as We the People are here to argue that the current methodology is unconstitutional and illegal. Anything less on the part of the prosecution is a willful failure to seek and/or exculpatory evidence for the sole purpose of obtaining a conviction at the expense of the accused Peoples and our respective individual right to justice in our own courts as well as a direct violation of the aforementioned state law.

1.3.6 The prosecution may not be heard to argue that the People simply do not understand the true and special meaning of these sections of law as a rebuttal to the People's argument as to its application and intent. As Sec. 1.03 of the Texas Code of Criminal Procedure so clearly states, the language and construction of the entire code is intended to be understood not only by the officers acting under its authority, but by everyone whose rights are to be affected by the rules contained therein. Therefore, unless the prosecution can introduce evidence that the mental capacity of the People has been somehow compromised or diminished to the point that the People can be declared "incompetent", this attempted rebuttal by the prosecution must fail.

1.3.7 Most state statutes have similar definitions for the term "Motor vehicle". The term was originally defined in Florida law as:

The term "motor vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways (but not over fixed rails) *for the transportation of persons*

or property for compensation either as common carriers, private contract carriers or for hire carriers.

Motor vehicle - Laws of Florida c. 14764 (1931)

1.3.8 California case law also makes the distinction between private non-commercial use of the roads and highways versus commercial use for gain:

"It is obvious that those who operate motor vehicles for the transportation of persons or property for hire enjoy a different and more extensive use of the public highways. * * * Such extraordinary use constitutes a natural distinction and a full justification for their separate classification and for relieving from the burden of the license tax those who merely employ the public highways for the transportation of their own property or employees."

Bacon Service Corporation v. Huss, 129 Cal. 21, 248 P. 235, 238." (State v. Karel, 180 So. 3 at 8.)

"... [T]he exemptions provided for in section 1 of the Motor Vehicle Transportation License Act of 1925 (Stats. 1925, p. 833) in favor of those who solely transport their own property or employees, or both, and of those who transport no persons or property for hire or compensation, by motor vehicle, have been determined in the Bacon Service Corporation case to be lawful exemptions.

In re Schmolke (1926) 199 Cal. 42, 46.

1.3.9 The historical facts and case law relating to the People's right to travel on the roads and highways are herein presented. In this instance let us first consider the contention that a Sovereign Man that is traveling upon the streets or highways in America is exercising a RIGHT. Virtually every state supreme court as well as the United States Supreme Court has ruled on this issue. The U.S. Supreme Court ruled thusly on the right to travel:

1.3.10 The RIGHT to travel is a part of the liberty of which the Citizen cannot be deprived without due process of the law under the 5th Amendment.

Kent v. Dulles, 357 U.S. 116, 125 (Emphasis added)

1.3.11 American Jurisprudence 1st Edition also makes this fact easy for even the most inept of judges and law enforcement personnel to comprehend:

1.3.12 The use of the highway for the purpose 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. (Emphasis added). See: Chicago Motor Coach v. Chicago, supra; Ligare v. Chicago, 28 N.E. 934; Boone v. Clark, 214 S.W. 607; American Jurisprudence 1st Ed., Highways § 163

1.3.13 The Supreme Court of Wisconsin stated in 1909:

1.3.14 The term "public highway," in its broad popular sense, includes toll roads--any road which the public has a RIGHT to use even conditionally, though in a strict legal sense it is restricted to roads which are wholly public. See: Weirich v. State, 140 Wis. 98.

1.3.15 Despite the popular misconception of the lower order constitutionally deficient shade-tree

judges and potato IQ'd law enforcement officers that we seem to have so many of these days, the People's right to travel upon the roads and highways and to use their private automobiles thereon is not a mere privilege. The various state courts proclaim this fact over and over again.

1.3.16 The use of the highway for the purpose 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. (Emphasis added). See: Chicago Motor Coach v. Chicago, supra; Ligare v. Chicago, 28 N.E. 934; Boone v. Clark, 214 S.W. 607; American Jurisprudence 1st Ed., Highways § 163.

1.3.17 Citizen's RIGHT to travel upon public highways includes RIGHT to use usual conveyances of time, including horse-drawn carriage, or automobile, for ordinary purposes of life and business. (Emphasis added). See: Thompson v. Smith (Chief of Police), 154 S.E. 579, 580.

1.3.18 The RIGHT of the Citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a COMMON RIGHT which he has under the RIGHT to life, liberty, and the pursuit of happiness. (Emphasis added). See: Thompson v. Smith, supra.

1.3.19 It could not be stated more conclusively that a Sovereign Man in the union of several states of America has a RIGHT to travel, without approval or restriction, (license), and that this RIGHT is protected under the U.S. Constitution. After all, who do the streets, highways, roadways and waterways belong to anyway? The People-At-Large! The governments of the several states and the federal government are only stewards of the People's property! There are a multitude of court decisions that expound these same facts:

1.3.20 . . . [T]he streets and highways belong to the public, for the use of the public in the ordinary and customary manner. See: Hadfield v. Lundin, 98 Wn. 657; 168 P. 516.

1.3.21 All those who travel upon, and transport their property upon, the public highways, using the ordinary conveyance of today, and doing so in the usual and ordinary course of life and business. See: Hadfield, supra; State v. City of Spokane, 109 Wn. 360; 186 P. 864.

1.3.22 The RIGHT of the Citizen to travel upon the highways and to transport his property thereon, in the ordinary course of life and business, *differs radically and obviously from that of one who makes the highways his place of business and uses it for private gain* ... (Emphasis added). See: State v. City of Spokane, supra.

1.3.23 . . . [F]or 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 purposes no person has a vested right to use the highways of the state, but is a MERE PRIVILEGE or license which the legislature may grant or withhold at its discretion.... (Emphasis added). See: Hadfield, supra; State v. Johnson, 243 P. 1073; Cummins v. Jones, 155 P. 171; Packard v. Banton, 44 S.Ct. 257, 264 U.S. 140 and other cases too numerous to mention.

1.3.24 The Washington State Supreme Court stated:

1.3.25 I am not particularly interested about the rights of haulers by contract, or otherwise, but I am deeply interested in the RIGHTS of the public to use the public highways freely for all lawful purposes. (Emphasis added). See: Robertson v. Department of Public Works, 180 Wash. 133 at 139.

1.3.26 The Supreme Court of the State of Indiana ruled in 1873:

1.3.27 It is not the amount of travel, the extent of the use of a highway by the public that distinguishes it from a private way or road. It is the RIGHT to so use or travel upon it, not its exercise. (Emphasis added). See: Ind 455, 461.

1.3.28 American Jurisprudence 1st, repeats the theme:

1.3.29 The RIGHT of the Citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is NOT a mere PRIVILEGE which may be permitted or prohibited at will, but a 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, not disturbing another's RIGHTS, he will be protected, not only in his person, but in his safe conduct. (Emphasis added). See: 11 American Jurisprudence 1st., Constitutional Law, § 329, page 1123.

1.3.30 The Supreme Court of the State of Georgia ruled:

1.3.31 In this connection it is well to keep in mind that, while the public has an absolute RIGHT to the use of the streets for their primary purpose, which is for travel, the use of the streets for the purpose of parking automobiles is a privilege, and not a RIGHT, and the privilege must be accepted with such reasonable burdens as the city may place as conditions to the exercise of the privilege. (Emphasis added). See: Gardner v. City of Brunswick, 28 S.E. 2d 135.

1.3.32 The Constitution of the State of Texas, Article I, § 2 provides that:

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

1.3.33 The People of Texas have reserved the right to abolish, alter, or reform our government at anytime and that all political power is inherent in the PEOPLE, not the government. The Texas legislature was not granted any power to control or regulate the People. Their regulatory control is strictly defined by the written will of the People in the instrument known as the Texas Constitution, and its regulatory authority is limited to those things that the People empowered the legislature to create and nothing more:

Sec. 17. TAKING, DAMAGING, OR DESTROYING PROPERTY FOR PUBLIC USE;

SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

1.3.34 The legislature did not grant any privileges or franchises to the People, nor were any part of the People's rights or property created under the authority of the legislature as such, and are therefore not subject to the control thereof.

1.3.35 The right to not be subject to the whims and fancies of the legislature was also reserved by and for the People and is forever specifically denied to every level of government in Article 1, Sec. 29:

Sec. 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLEATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

1.3.36 The Constitution of the State of Colorado, Article II, § 3 provides that:

1.3.37 All persons have certain natural, essential and unalienable RIGHTS, among which may be reckoned the RIGHT ... of acquiring, possessing and protecting property;...

1.3.38 An automobile is private property, and the People cannot be deprived of a single piece of property by anyone, especially THE STATE, except by due process of law. The terms "acquiring" and "possessing" in relation to property and within the meaning of the due process clause, includes the RIGHT to make full use of the property which one has the unalienable RIGHT to acquire and possess; to argue otherwise requires a special brand of ineptitude in the interpretation and purpose of the respective constitutions. What devious brand of government fool could truly be insane enough to argue *"Yes, it says you have an absolute right to acquire property, but nowhere does the constitution say you have the right to use it!"* The People have always had the absolute right to use their property for its intended purpose as long as that purpose is not the intentional harm of another man or his property. This right to property includes the roads and highways, because they belong to the People, not to the government. The People say again, government is nothing more than the People's appointed caretaker of the People's property, it is not the People's master, governor, or regulator as no such authority or power is or can be delegated for that purpose.

1.3.39 Every Citizen has an unalienable RIGHT to make use of the public highways of the state; every Citizen has full freedom to travel from place to place in the enjoyment of life and liberty. (Emphasis added). See: People v. Nothaus, 147 Colo. 210.

1.3.40 The Constitution of the State of Idaho contains the words:

1.3.41 All men are by nature free and equal, and have certain unalienable RIGHTS, among which are . . . ; acquiring, possessing, and protecting property. . . . (Emphasis added).

1.3.42 The words of the North Carolina Constitution are for all intents and purposes identical to those of the Idaho Constitution. The Constitution of the State of North Carolina, Article I, § 1, states as follows:

1.3.43 The equality and rights of persons. We hold it to be self-evident that all persons are created equal; that they are endowed by the Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

(The only meaning that can be assigned to the term “persons” as used in the above constitutional Article is “men”, it cannot mean a corporation or other legal entity since these entities are created with “privileges” and not rights, and these privileges are granted by another man-made fiction known as “government”, not by God).

1.3.44 To be that statute which would deprive a citizen of the RIGHTS of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land. (Emphasis added). See: Hoke v. Henderson, 15 N.C. 15, 25 AM. Dec. 677.

1.3.45 Other authorities have arrived at similar conclusions, the Constitution for the United States of America, Amendment 9:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

1.3.46 The Constitution of the State of North Carolina, Article I, § 36:

Other rights of the people. The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people. (Emphasis added).

1.3.47 We the People should be demanding the full use of all of our unalienable and unenumerated rights, including the right to travel upon the public highways and byways of the several states of the union.

1.3.48 The Constitution of the State of North Carolina, Article I, § 2:

Sovereignty of the people. All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

1.3.49 As the Sovereign People, we are not only entitled to use the highways and byways in the several states of America, we have an unalienable right to use the highways and byways:

1.3.50 Highways are public roads which every Citizen has a RIGHT to use. (Emphasis added). See: 3 Angel Highways 3.

1.3.51 A highway is a passage, road, or street, which every Citizen has a RIGHT to use. (Emphasis added). See: Bouvier's Law Dictionary.

1.3.52 The People have emphasized the word RIGHT because it is a common point among the authorities listed. The Texas Natural Resources Code even joins in on this common point:

NATURAL RESOURCES CODE
TITLE 3. OIL AND GAS
SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS
CHAPTER 114. OIL TANKER VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 114.001. DEFINITIONS. In this chapter:

...
(5) **"Public highway"** means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

1.3.53 The United States Supreme Court has ruled that:

1.3.54 Undoubtedly the RIGHT of locomotion, the RIGHT to remove from one place to another according to inclination, is an attribute of personal liberty, and the RIGHT, ordinarily, of free transit from or through the territory of any state is a RIGHT secured by the Fourteenth Amendment and by other provisions of the Constitution. (Emphasis added). See: Williams v. Fears, 343 U.S. 270, 274.

1.3.55 Vernon's Civil Statutes of State of Texas Annotated p. 119 Note 9 "Generally "public road" is road used by public as matter of right." Atchison Transportation & Shipping F. Ry. Co. v. Acosta, (Civ. App. 1968) 435 S.W.2d 539 ref. n.r.e..

1.3.56 "The streets of the cities of this country belong to the public. Primarily, every member of the public has a natural right to the free use of such streets in the normal pursuit of his private or personal business or pleasure. The right of the public at large to the free use of the streets is paramount to the natural right of the individual. ... The power of the city in exercising such control is limited only by the Constitution and general laws of the state, ... But neither the Legislature nor the city commissioners has the power to take away or unreasonably abridge, the natural rights of the Citizen to the use of the streets in the manner and for the purpose we have set forth above." *City of San Antonio v. Fetzer*, 241 SW 1034

1.3.57 "... both the transient public and the owners of abutting property have the right to the free passage of vehicles on the public highways." State v. Perry, 130 N.W.2d 343

1.3.58 "The use of the highway for the purpose 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" Chicago Motor Coach v. Chicago, 377 Ill. 200, 169 NE 22, ALR 834; Ligare v. Chicago, 139 Ill. 46, 28 NE 834; Boone v. Clark, 214 SW 607; 25 American Jurisprudence 1st - Highways, Sec. 163

1.3.59 "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 a city can

prohibit or permit at will, but a common Right which he has under the Right to life, liberty, and the pursuit of happiness." *Thompson vs. Smith*, 154 S.E. 579 *infra*.

1.3.60 "The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived." *Chicago Motor Coach v. City of Chicago*, 169 NE 22; *Ligare v. Chicago*, 28 NE 934; *Boon v. Clark*, 214 SSW 607; 25 American Jurisprudence (1st) Highways Sect.163

1.3.61 "... 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 for private gain. For the latter purpose, no person has a vested right to use the highways of the state, but is a privilege or a license which the legislature may grant or withhold at its discretion." *State vs. Johnson*, 243 P. 1073; *Cummins vs. Homes*, 155 P. 171; *Packard vs. Banton*, 44 S.Ct. 256; *Hadfield vs. Lundin*, 98 Wash 516

1.3.62 "Constitutional right to travel is among rights and privileges of national Citizenship and finds its base not only in Fourteenth Amendment but in Constitution as a whole. U.S.C.A. Const. Amend. 14; *McLellan v. Mississippi Power & Light Co.*, 545 F.2d 919

1.3.63 "Classifications which penalize exercise of right to travel are subject to strict scrutiny." *In re U.S. ex relatione Missouri State High School Activities Ass'n*, 682 F.2d 147 (In the matter of) (Upon relation or information)

1.3.64 "Even though government has legitimate and substantial purpose behind legislation, purpose cannot be sought by means that broadly stifle fundamental personal liberties when less drastic means for achieving same basic purpose are available... [There is a] Right of "all Citizens" to be free to travel within and between states uninhibited by statutes. U.S. C.A. Const. Art. 1, § 8" *Johnson v. City of Opelousas*, 658 F.2d 1065

1.3.65 "[The] Right to travel is constitutionally protected." *Agee v. Vance*, 483 F.Supp. 729, affirmed 629 F.2d 80, 203 U.S.App.D.C. 46, certiorari granted *Muskie v. Agee*, 101 S.Ct. 2766, 453 U.S. 280, 69 L.Ed.2d 640

1.3.66 "There exists a constitutionally protected right to travel. U.S.C.A. Const. Amend. 14" *Wherrett v. Doyle*, 456 F.Supp. 203

1.3.67 "Constitutionally protected right to travel is basically the right to travel unrestricted by unreasonable government interference or regulation." *Tetalman v. Holiday Inn*, 500 F.Supp. 217

1.3.68 "Right to travel and to freedom of movement, particularly within United States, are fundamental rights of all Citizens of the United States." *Gautier Torres v. Mathews*, 426 F.Supp. 1106, reversed *Califano v. Gautier Torres*, 98 S.Ct. 906, 435 U.S., 1, 55 L.Ed.2d 65

1.3.69 "[S]ince the right to travel is a constitutionally protected right, any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional". *Dunn v. Blumstein*, 405 U.S. 330, 339, 92 S.Ct. 995 (1972)

1.3.70 "The right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law"; *Schachtman v. Dulles*, 225 F.2d 938,941 (D.C.Cir. 1955)

1.3.71 "The right to travel is a basic, fundamental right under the Constitution, its origins premised upon a variety of constitutional provisions"; *Bergman v. United States*, 565 F.Supp. 1353, 1397 (W.D. Mich. 1983)

1.3.72 "[T]he right to travel interstate is fundamental". *Lee v. China Airlines, Ltd.*, 669 F.Supp. 979, 982 (C.D.Cal. 1987)

1.3.73 "We are all Citizens of the United States [of America], and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own states"; *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 49 (1868)

1.3.74 "The right to travel is a part of the liberty of which the Citizen cannot be deprived without the due process of law under the Fifth Amendment"; *Kent v. Dulles*, 357 U.S. 116, 125, 78 S.Ct. 1113 (1958)

1.3.75 "The right to travel is a well established constitutional right." *Coolman v. Robinson*, 452 F.Supp. 1324

1.3.76 "Freedom of movement is fundamental right which may be restricted only where necessary to further most compelling state interests and such regulations must be narrowly circumscribed in order to withstand constitutional challenge for over-breadth and vagueness." *Gayle v. Governor of Guam*, 414 F.Supp. 636

1.3.77 It would certainly appear to me that the courts have long recognized the right of the Citizen to use their private automobiles for their personal business and pleasure on the roads, streets and highways of the states. It is now an undisputed and established fact that the Citizen cannot be required to obtain permission from the Federal or State governments in order to exercise a constitutional right. It is in point of fact, the duty of courts such as this to ensure that the Citizens rights are protected against government encroachment and invasion. I would like the court to take judicial notice of the following court opinions on this subject:

1.3.78 "Where rights secured by the Constitution are involved, there can be NO LEGISLATION, OR RULE MAKING which would abrogate them."
Miranda v. Arizona, 384 US 436

1.3.79 "It is the duty of the courts to be watchful for the Constitutional Rights of the Citizen, and AGAINST ANY STEALTHY ENCROACHMENT THEREON."
Boyd v. US, 116 US 616 (1886).

1.3.80 And the People's final words on what the states may not do in relation to a right are echoed in the following cases:

1.3.81 "No State shall convert a liberty into a privilege, license it, and charge a fee therefore." *Murdock v. Pennsylvania*, 319 US 105

1.3.82 "There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights." *Sherer v. Cullen*, 481 F 946

1.3.83 "If the State converts a right (liberty) into a privilege, the citizen can ignore the

license and fee and engage in the right (liberty) with impunity." *Shuttlesworth v. City of Birmingham Alabama*, 373 US 262

1.3.84 Thus, there can be little doubt that, when the Sovereign People travel upon the streets or highways in the several states of America, they do so as a matter of RIGHT and not privilege, and THE STATE may not interfere with the exercise of the right. The authority for such use of the roads and highways for the purpose of travel is described variously as a RIGHT, a COMMON RIGHT, an ABSOLUTE RIGHT, an IN/UNALIENABLE RIGHT, and a RIGHT protected by the Constitution of the United States for every Citizen within the several states of union known as America. Let us then examine the importance of these terms to the Sovereign People by defining their meaning.

1.3.85 **RIGHT** -- In law, (a) an enforceable claim or title to any subject matter whatever; (b) one's claim to something out of possession; (c) a power, prerogative, or *privilege* as when the word is applied to a *corporation* . (Emphasis added). See: Webster Unabridged Dictionary.

1.3.86 **RIGHT** -- As relates to the person, RIGHTS are absolute or relative; absolute RIGHTS, such as every individual born or living in this country (and not an alien enemy) is constantly clothed with, and relate to his own personal security of life, limbs, body, health, and reputation; or to his personal liberty; RIGHTS which attach upon every person immediately upon his birth in the king's dominion, and even upon a slave the instant he lands within the same. (Emphasis added). See: 1 Chitty Pr. 32.

1.3.87 **RIGHT** -- A legal RIGHT, a constitutional RIGHT means a RIGHT protected by the law, by the constitution, but government does not create the idea of RIGHT or original RIGHTS; it acknowledges them. . . . (Emphasis added). See: Bouvier's Law Dictionary, 1914, p. 2961.

1.3.88 **Absolute** -- Without any condition or encumbrance as an absolute bond, simplex obligatio, in distinction from a conditional bond; an absolute estate, one that is free from all manner of conditions or encumbrance. A rule is said to be absolute when, on the hearing, it is confirmed. (Emphasis added). See: Bouvier's Law Dictionary.

1.3.89 **Unalienable** -- A word denoting the condition of those things, the property in which cannot be lawfully transferred from one person to another. (Emphasis added). See: Bouvier's Law Dictionary.

1.3.90 Put those words together, *absolute unalienable right*, and the result shows from these definitions that the states have an obligation to acknowledge the RIGHT of the sovereign People to travel on the streets or highways in the several states of America. Further, the states have the duty to refrain from interfering with this RIGHT and to protect this RIGHT and to enforce the claims of the sovereign People to it.

1.3.91 Now, if the sovereign People have the absolute RIGHT to move about on the streets or highways, does that RIGHT include the RIGHT to travel in an automobile and that it is a form of private property that may be used accordingly? Many of the cases previously cited have already emphatically stated "YES", but there are more cases in support of this proclamation. The Supreme Court of the State of Texas has made comments that are an appropriate response to this question:

1.3.92 Property in a thing consists not merely in its ownership and possession, but in the unrestricted RIGHT of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself. The substantial value of property lies in its use. If the RIGHT of use be denied, the value of the property is annihilated and ownership is rendered a barren RIGHT. Therefore, a law which forbids the use of a certain kind of property,

strips it of an essential attribute and in actual result proscribes its ownership. (Emphasis added). See: Spann v. City of Dallas, 235 S.W. 513.

1.3.93 These words of the Supreme Court of Texas were reiterated by the Idaho Supreme Court, which later quoted the Supreme Court of Texas and used these exact words in rendering its decision in the case of O'Conner v. City of Moscow, 69 Idaho 37. In the original ruling the Supreme Court of Texas went on to say further;

1.3.94 To secure their property was one of the great ends for which men entered into society. The RIGHT to acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms nobody, is a natural RIGHT. It does not owe its origin to constitutions. It existed before them. It is a part of the Citizen's natural liberty --an expression of his freedom, guaranteed as inviolate by every American Bill of RIGHTS. (Emphasis added). See: Spann supra.

1.3.95 Let us take a moment and speak to the issue of property, as it is a man's right to own and make use of his property that is most affected by the issues presented herein:

1.3.96 Bouvier's Law Dictionary defines property thusly:

Property -- The ownership of property implies its use in the prosecution of any legitimate business which is not a nuisance in itself. See: In re Hong Wah, 82 Fed. 623.

1.3.97 The United States Supreme Court states:

1.3.98 The Federal Constitution and laws passed within its authority are by the express terms of that instrument made the supreme law of the land. The Fourteenth Amendment protects life, liberty, and property from invasion by the States without due process of law. Property is more than the mere thing which a person owns. It is elementary that it includes the RIGHT to acquire, use and dispose of it. See: Buchanan v. Warley 245 U.S. 60, 74. (emphasis added)

1.3.99 These authorities point out that the RIGHT to own property includes the RIGHT to use it. The reasonable use of an automobile is to travel upon the streets or highways for our own personal business and pleasure, and it is for those purposes that we the sovereign People have an absolute RIGHT.

1.3.100 If THE STATE wishes to argue that the People have no right to "operate" a "motor vehicle" without THE STATE's permission, then perhaps the STATE would care to refer back to the previous arguments and case law cited herein as it pertains to the People's rights as at no point have the People argued for the right to conduct commerce on the highways through the use of a motor vehicle for commercial purposes.

1.3.101 We the sovereign People have made no argument that anyone has the right to "operate" a "motor vehicle" upon the highways. THE STATE's own statutes clearly show that in every single instance within the statutes in question the term "motor vehicle" and/or "vehicle" are defined as a ***"self-propelled device designed and used for the purpose of transporting passengers or property"***. The People have so far argued nothing more than the fact that we have the right to use our private automobiles and our own roads and highways for the purpose of private personal business and travel.

1.3.102 We the People are certain that the STATE is, or at least should be, fully aware that there is a very legal difference between an automobile and a “motor vehicle” The terms “traffic” and “transportation” are defined as things relating directly to commerce by commercial common carriers. We the People are refuting THE STATE’s presumptive application to the People of the commercial TEXAS TRANSPORTATION CODE, as it does not and cannot apply to the People’s right to travel, but only to those that are using the public way for commercial purposes of gain.

1.3.103 But it should be noted and commented upon that due to the obscene influx of revenue that the STATE obtains from the unlawful and illegal enforcement of the TEXAS TRANSPORTATION CODE statutes by the lower courts and law enforcement, it is far more profitable to ignore the lawless activities and fight off those few individuals that are knowledgeable enough to raise the issue and this maintain the lucrative monetary infusion.

1.3.104 The respective constitutions of the United States and the several states guarantee the sovereign People the RIGHT to acquire and own property. The Supreme Courts virtually every state of the union, including Texas, have affirmed that the RIGHT to own property includes the RIGHT to use it while its use is not directed for the purpose of harming anybody.

1.3.105 If any representative(s) of THE STATE would argue that these fundamental truths and principles are not true then, I can only recommend that said representative(s) be remanded to the local mental health facility for long-term care and evaluation due to the obvious implication propounded by such argument, which is that they are certifiably insane and in a state of dementia.

1.3.106 Life, liberty, and the acquisition and use of property are all part-and-parcel within the limitless declaration of the People’s unalienable rights, THE STATE can neither abrogate nor derogate these principles no matter how hard it tries. We the People have never delegated any such power or authority to our servants in any level of government.

1.3.107 THEREFORE, We the People argue for the evidentiary inference of insanity on the part of the prosecution and this court. This inference is based on the simple reasoning that to foment such argument is to endorse and proclaim a new form of slavery, one that requires that the slaves not only serve the master through their labor but, in order to be allowed to live and do so, the slaves are forced to pay a tax for the “privilege” of serving as such in the form of a license. To the knowledge and understanding of We the People, we have never authorized nor empowered any legislature or court in this land to execute an order that would or could cause, or work to compel, any man to become the servant or slave of any city, county or state entity, without a conviction that was obtained in full compliance with the requirements of due process of law as set forth within the respective constitutions. For any city, county or state entity to pretend and argue otherwise is an insane absurdity of the greatest magnitude.

1.4 No Legislative or Judicial Authority May Be Exercised Beyond That Which Is Delegated By the People, PERIOD!

1.4.1 For the remainder of this material we will use the same rationale as the United States Supreme Court did when evaluating the *Brushaber v. Union Pacific Railroad* 240 U.S. 1 decision and approach the study of the statutes and codes of Texas in light of what the People have said the legislature CAN do, and thusly what the statutes CAN say and do accordingly, in order to understand what they DO say and do.

1.4.2 For simplicities sake we will use the following logic example in our examination of the statutes:

- *We the people do hereby delegate the authority to the legislature to regulate all CARS colored RED.*
- *The legislature immediately passes a law that reads – “All RED CARS shall have seatbelts installed at the factory.”*
- *The above law is totally within the powers We the People delegated in the preceding instance, agreed? BUZZZZZ!! No it is not! Did we delegate any authority to the legislature to regulate the factory and the manufacturing of the cars? NO!! So the law is invalid despite the fact that it purportedly pertains only to RED CARS.*
- *The following year the legislature amends the above law to read – “All RED CARS shall have seatbelts installed within 60 days of leaving the factory, and all such seatbelts shall have an over-the-shoulder harness configuration.”*
- *Is the new law valid? NO!! The authority to “regulate” does not imply the authority to require physical and expensive alteration and force the new owner to pay for it out of their own pocket, therefore it is still not within the delegated authority.*
- *Fours year later the legislature amends the above law once again to read – “All CARS shall have seatbelts installed within 60 days of leaving the factory, and all such seatbelts shall have both a waist and over-the-shoulder harness configuration with a single point of interlocking attachment to retard unilateral momentum or ejection of the driver in the case of a collision.”*
- *How about now, is the law in compliance with the delegated authority? No, the new law has unlawfully extended legislative authority to ALL CARS, not just those that are RED and it still requires physical alteration at the owner’s expense.*
- *Okay, the legislature amends the new law after much argument and debate with the People to read as follows – “All CARS painted any of the varying shades of RED, regardless of the color’s descriptive name, shall have seatbelts installed at government expense within 60 days of leaving the factory, and all such seatbelts shall have both a waist and over-the-shoulder harness configuration with a single point of interlocking attachment to retard unilateral momentum or ejection of the driver in the case of a collision.”*
- *NOW Is the amended law valid? NO! The People did not authorize any “variation” of the color RED; we only authorized authority to regulate CARS painted the specific color of RED and nothing more. Also, since the only money that government obtains comes from the People themselves then the stipulation that public funds would be allocated to fund the physical alteration of private property at public expense is also unacceptable. This is the way that stealthy encroachment of a legislative power begins, and it must be stopped before it starts*

forward on the always downward trend of the People's rights like the one we are living in today.

- The legislature would also not have the authority to obtain an enhanced or extended regulatory power over new subject matter by the passing of a law that reads – “All CARS manufactured in this state must be painted RED at the factory, and no other colors or color schemes such as pen-striping may be used for the exterior finish of such CARS.”*
- Any such law would be immediately null and void as We the People did not grant the legislature authority to regulate the painting of the car at the manufacturer, we only granted the authority to regulate it if the manufacturer painted it RED and shipped it from the factory that way.*
- The legislature taking the matter into court would change nothing. The court has no power or authority to act contrary to the specific delegation of powers defined and presented by the People within the respective constitutions. If the court has no law upon which to act then there is nothing that confers jurisdiction for them to act.*
- It is very much like the Ten Commandments monument ruling by U.S. District Judge Myron Thompson against Judge Roy Moore. If Congress has been forbidden by the People to create a specific type of law then on what authority did this overly presumptive “U-asS” District Judge pretend to act? The 1st Amendment reads “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”*
- Now, if Congress has no delegated authority to “make” law that establishes a religion or that interferes with its free practice, then on what law did the federal judge base his ruling? If he argues “Well the Constitution gave me authority!” then remove him from the bench and send him back to the padded cell that he obviously escaped from. How blind and/or dense is he and others like him that they cannot see that the Constitution **forbade** his actions, it did not authorize them*
- If Congress can make no law on which the judge **can** act then the judge has no authority **to** act. This federal judge acted entirely without jurisdiction and authority, and in doing so committed treason against the People by trampling on the specific prohibitions contained within the Constitution.*

Chapter 2 – Never Assume, Words Can Hurt You

What's the difference between a road-kill snake, and a road-kill Lawyer? A: there's break-marks in front of the snake.

2.1 Assume, the Easy Way to Make an Ass Out of 'U' and Me

2.1.1 Words, we use them every day. Most people are basically literate and have a fair understanding of the more common words used in our language. We have common language dictionaries that we use to determine the meaning of words that we do not know in order to increase our understanding. In the expanse of normal daily conversations we use many of these same words repeatedly in hundreds or thousands of combinations to transfer thoughts, ideas and desires with one another. Amazingly enough this results in a usually understandable exchange with only the occasional mistake or misinterpretation. When we use a particular word or phrase in conversation we do so with a common meaning and usage associated with that verbal symbology. Let's be logical, if each of us altered the meaning, application, or intent of various words or phrases each time we communicated with one another the result would be at best confusing and at worst chaotic (try thinking about some of the conversations you have had with your kids, you'll get the picture). It would be a return to the moment God befuddled the masses under Nimrod at the Tower of Babel. But in the realm of law and statutes this is almost ***always*** the case. The meaning, intent, and context of a word or phrase will change from Code to Code, Title to Title, Chapter to Chapter, Section to Section, and so on.

“Assume = Makes An ‘Ass’ Out of ‘U’ and ‘Me’!”

2.1.2 Perhaps you are familiar with the time-honored adage “Assume = Makes An ‘Ass’ Out of ‘U’ and ‘Me’”. Nowhere is this statement more true and accurate than in the reading of law and statutes. In studying the writing of laws and statutes it becomes readily apparent that the common method of verbal symbology that we have always used, understood, and relied upon for our communications in normal everyday language is not used in the transference of specifics and ideas in the realm of law, it is something totally different and alien to the common language. Why do I say this? I say this because the biggest controversies that exist in law are almost always a result of multiple and conflicting readings and interpretations of a particular body or section of law. It is that very fact that has caused us all to come together in this seminar. The particular meaning of words in the language of law can be so different from the common language usage and meaning in fact that the language has its own dictionaries to define them (Bouvier's, Black's, etc.). This confusion and conflict results primarily because in law and statute a particular word or phrase can have both it's meaning and application completely altered from one contextual usage to the next through the means of what can only be best described as verbal chicanery.

2.1.3 A good example of this deception is the usage of the word “Person”, another is “motor vehicle”, and there are many more, “transport”, “transportation”, “passenger”, “driver's license”, “certificate of title”, “taxpayer”, and so on. The specific meaning of these words has been altered in various ways for a specific use and meaning within statutes, this is especially true in federal statutes, but for this seminar we will be dealing with the State's method of linguistic calisthenics.

2.1.4 In a following chapter we will be going over the various terms that are used specifically within the statutes relating to the Transportation Code, Administrative Code, Code of Criminal Procedure and Penal Code and how it was done to verbally sculpt them into appearing to apply to everyone instead of the select few that are actually the subject of the terms and the statutes in

question. But for the moment we need to discuss the way that the researching and reading of the statute needs to be accomplished in order to expose the truth of what and how the statute actually means and applies rather than what and how the powers that be want it to mean and be applied.

2.2 Let's Learn How to Read All Over Again, Follow the Rabbit Trail

2.2.1 It is very important to determine the true root statutory meaning of every word used within a law or statute. You will quickly find that the definition of one term contains many other terms for which you must also seek a definition and context, the search can seem relentless at times. This is will be referred to as a "rabbit-trail". In the next subsection we will be looking at the term "person". You will quickly see how the definitions surrounding this term can rabbit-trail into the search for more related terms, which may also result in their own rabbit-trails. But in order to fully understand the meaning of a particular term you must follow these intertwined but individual trails to their respective conclusion(s). There is no other way to ensure that you have exhausted every means to refute any possible argument attempting to rebut the conclusions of your findings, this includes your own ability to successfully rebut so-called "case-law" that argues for a certain point of law but which totally ignores other pertinent facts in reaching its conclusions. A perfect example of this willful ignorance is the statutory distinctions between the terms "motor vehicle", "vehicle" and "automobile", which will also be discussed in a later section.

2.3 The Legal Person / Individual – Another Great Work of Fiction

2.3.1 For the purpose of this discussion on the methodology of how to research and determine the proper meaning and application of terms used in statutes we will borrow from the Texas Insurance Code. The definitions and contextual usage we will be examining, while similar and applicable in the general sense, will not be exactly the same as those related to the traffic laws, but this code contains some of the best examples of how specific terms can be rabbit-trailed and how we must follow them through to make our findings of fact and law.

2.3.2 Let's take a look at the term "Person" as it is defined within one specific section of the Texas Insurance Code (TIC):

INSURANCE CODE
TITLE 5. PROTECTION OF CONSUMER INTERESTS
SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED PRACTICES
CHAPTER 541. UNFAIR METHODS OF COMPETITION AND
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

...
(2) "Person" means an individual, corporation, association, partnership, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, adjuster, or life and health insurance counselor.

[Texas Insurance Code Sec. 541.002](#)

2.3.3 Notice in the above section of statute how the term “Person” defines the specific types of legal entities to which it applies with the term “means” in the first section, and then creates a pool or grouping illustrative of specific types of “individuals” that can and do act on the behalf of the previously defined legal entities by using the term “including”.

2.3.4 We can verify that this is a proper reading of the text and meaning by referring to Government Code Chapter 311, Code Construction Act. It very clearly shows that the term person is limited only to statutorily created legal entities.

2.3.5 In order to see the reasonableness of this reading of the statute we can ask the following questions:

1. *Can a corporation consist of one sole officer/individual, meaning can the man or woman legally incorporate themselves in some capacity?*
2. *Can the specific position of an “agent”, “broker”, “adjuster”, or a “life and health insurance counselor” be filled only by an “individual” and not an entire “corporation” or “association”, etc.?*
3. *Are these positions and their authority a creation of statute (meaning man-made rather than natural born)?*
4. *Can the position of an “agent”, “broker”, “adjuster”, or “life and health insurance counselor” be one engaged in by an “individual”, meaning one sole “person” that is not a part of a larger corporation (like in question one)?*
5. *Can the position also be a specific office within a “corporation”, “association”, “partnership”, or any of the other “legal entities” listed in the first section of the above statute?*
6. *Can a natural man that is not clothed in the authority of the official position or title of the legal entity exercise such authority and power and act as if he were? (Think, “impersonating a police officer or federal agent”).*
7. *Do these positions and their alleged authority exist in nature without the benefit of statutes to create and define them?*
8. *Is the acting “individual” clothed with the authority of an office or position within a statutorily created legal entity or are they acting under the responsibility and liability of a natural man in his own capacity?*

2.3.6 The answer to questions one through five (1-5) above is of course “YES”. The statutes created these terms so the statutes can and should define them, as the statute must in order to have the necessary detail for it to be valid. If the statute failed to provide enough detail about its subject and application it could be challenged as “overly vague or ambiguous” this is sometimes also referred to as “overbroad” (not overboard, though in a manner of speaking and circumstance this would also be appropriate).

2.3.7 In numbers six (6) and seven (7) the answer can only be “NO”, if the individual is acting while clothed with or claiming power under any statutory authority, office, or position then the “individual” is NOT acting in the capacity of a man. Indeed, the claim of power and authority being exerted by the “individual” is one of a statutorily created office and cannot be wielded by or as a man who is not clothed by that alleged authority.

2.3.8 Common sense would then dictate in response to number eight (8) that if the individual cannot be acting in the capacity of a man while exerting this authority then an “individual” can only be a term applicable to one that is acting entirely under statutory authority, and therefore can only be another facet or arm of the same “legal entity” defined by statute. You will see this example better in the narrative of the legal entity known as the “police officer” a little later on.

2.3.9 This brings us to another key concept to remember, if a statute creates an “office” then it will also create the qualifications and the related power and authority for someone to fill that office. The office itself is a legal fiction/entity created, defined, and empowered by statutory enactment. Therefore the office must have one or more statutory “positions” that can be filled by a statutory “person”, such as a “Mayor” for instance.

2.3.10 The official office/identity of the statutory “person” is really nothing more than a title in its nature, and the role of that title must be assumed by a living, breathing man (or woman). When the man stands in this statutory position and acts under its power and authority he is “transformed” into a legal entity for this purpose, he must become a “person” within the meaning of the law. He cannot wield any power or authority of this statutorily created position as a man, he must become the “Person” within the “office” before the authority and power of the office becomes vested in him. ***This is the only realm of authority where the “Person” may operate -- “under color of law”.*** The position of “Police Officer” is a perfect example of such an office. When a police officer is acting under the authority of his position, he is both a “person” and an “individual” within the meaning of statutory law. The inverse is also true, when he is acting under his own personal authority outside the scope and framework of his office, he is acting as a man, not as a statutory “person” or “individual”. This is especially true if the officer was acting outside of the scope of his duties and authority in an *ultra vires* act and/or in violation of a self-enacting clause of either the Texas or United States constitutions, in which case he has no governmental immunity or liability for those acts and can (and should) be prosecuted and/or sued for them.

2.3.11 Now you may ask “what is the difference in the use of the term “individual” here?” When the concept of how this subterfuge works becomes clear the answer is simple really. In the legal sense the term “individual” as used in the first context refers to one (1) single solitary “person” acting in relation to the legal office or position they occupy, while in relation to the acts authorized by the legal entity, it simply means one (1) of several that is or may be authorized to perform such an act on behalf of the legal entity. A police officer is a single “individual” within his department, one of several or many “individuals” in most cases, but his “individual” position is still dependent on his being a part of the department as a whole. In this context the distinction is one of classification (he is a police officer (an individual)) rather than enumeration or separation (he is the police officer (the individual)).

2.3.12 The law generally attempts to refer to a living man, whenever it can, as a “natural person”. Notice that the term “natural person” is not used in the above definition of “Person”, nor is there any definition for the term “individual”. But in this context the term “individual” is limited to the confines of what comprises a “Person”. Therefore we must look elsewhere if we are to determine who or what is included in the term “individual” in another context. So let’s take a look back at the beginning of another chapter of the insurance code to see such a context. We can see both the definition of

“individual” and “person” as they are used together in that part of the title:

INSURANCE CODE
TITLE 13. REGULATION OF PROFESSIONALS
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 4001. AGENT LICENSING IN GENERAL
SUBCHAPTER A. GENERAL PROVISIONS

...
Sec. 4001.003. DEFINITIONS. Unless the context clearly indicates otherwise, in this title:

...
(5) "Individual" means a natural person. The term includes a resident or a nonresident of this state.

...
(8) "Person" means an individual, partnership, corporation, or depository institution.

[Texas Insurance Code Sec. 4001.003](#)

2.3.13 Once again we can see that the definition of the term “individual” is broken into two parts, part one declares that it applies to a “natural person”, while part two enumerates exactly what specific grouping of “natural persons”, it applies specifically to one that is a “resident” or “non-resident” “of this state”.

2.3.14 Okay, that seems easy enough, right? It appears that this definition would encompass all of us doesn't it? Well, now you're assuming again, and I have no desire to be made an “ass” of by either “u” or “me” so let's make certain. To do that we need to know what the terms “resident” and “non-resident” mean. These are our third set of rabbit-trails. The first came when we wanted to know what the term “person” meant and the second when it became necessary to find the meaning of the term “individual”.

2.4 Remember the “IQE Rule” and Make a List

2.4.1 Let's start with the term “resident” by asking the first question that should ***always*** be asked when reading laws, codes and statutes. We will refer to this as the “IQE Rule”, meaning the “I Question Everything Rule so, ***What does that term mean?***” When you encounter another rabbit-trail term write it down in a list so that you remember to come back and look it up when you have followed the current rabbit-trail to its conclusion. Be certain to apply the proper “scope” to any definitions that you find. Scope will be covered shortly in a later section.

INSURANCE CODE
TITLE 4. REGULATION OF SOLVENCY
SUBTITLE D. GUARANTY ASSOCIATIONS
CHAPTER 463. TEXAS LIFE, ACCIDENT, HEALTH, AND
HOSPITAL SERVICE INSURANCE GUARANTY ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 463.003. GENERAL DEFINITIONS. In this chapter:

...
(8) "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

...
(10) "Resident" means a person who resides in this state on the earlier of the date a member insurer becomes an impaired insurer or the date of entry of a court order that determines a member insurer to be an impaired insurer or the date of entry of a court order that determines a member insurer to be an insolvent insurer and to whom the member insurer owes a contractual obligation. **For the purposes of this subdivision:**

(A) a person is considered to be a resident of only one state;

(B) a person other than an individual is considered to be a resident of the state in which the person's principal place of business is located; and

(C) a United States citizen who is either a resident of a foreign country or a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter is considered a resident of the state of domicile of the insurer that issued the policy or contract.

[Texas Insurance Code Sec. 463.003](#)

2.4.2 Notice that a new term is introduced in this definition, that term is "resides". So once again we must use the "IQE Rule" and ask the question, "**What does that term mean**"? Neither the term "reside" nor "resides" is defined within any Texas code that I can locate, so pursuant to the statutes themselves, when a term is not defined in statute then we must use it within its common meaning. But remember, in law, the common meaning is the meaning that is ***common in law, not in common English***. This will always be true when researching statutory terms. If the statutes themselves do not define the term then the next place to look is the law dictionaries, then if possible check case law for the term, if the term is still not found there then, and only then, can the more common definition of the term as it is written in an American Heritage or Webster's dictionary be used.

2.4.3 So let's start with the preferred law dictionary of the Supreme Court of the United States, **Bouvier's 1856 Edition**. The terms "reside" and "resides" are not found in Bouvier's 1856 Edition, but the terms "residence" and "resident" are. Obviously one can only "reside" in a "residence" if one is a "resident" so let's see what they mean:

RESIDENCE

1. The place of one's domicil. (q.v.) There is a difference between a man's residence and his domicil. He may have his domicil in Philadelphia, and still he may have a residence in New York; for although a man can have but one domicil, he may have several residences. A residence is generally transient in its nature, it becomes a domicil when it is taken up animo manendi. Roberts; Ecc. R. 75.

2. Residence is prima facie evidence of national character, but this may at all times be explained. When it is for a special purpose and transient in its nature, it does not destroy the national character.

3. In some cases the law requires that the residence of an officer shall be in the district in which he is required to exercise his functions. Fixing his residence elsewhere without an intention of returning, would violate such law. Vide the cases cited under the article Domicil; Place of residence.

RESIDENT, *international law*.

1. A minister, according to diplomatic language, of a third order, less in dignity than an ambassador, or an envoy. This term formerly related only to the continuance of the minister's stay, but now it is confined to ministers of this class.

2. The resident does not represent the prince's person in his dignity, but only his affairs. His representation is in reality of the same nature as that of the envoy; hence he is often termed, as well as the envoy, a minister of the second order, thus distinguishing only two classes of public ministers, the former consisting of ambassadors who are invested with the representative character in preeminence, the latter comprising all other ministers, who do not possess that exalted character. This is the most necessary distinction, and indeed the only essential one. Vattel liv. 4, c. 6, 73.

RESIDENT, *persons*.

A person coming into a place with intention to establish his domicil or permanent residence, and who in consequence actually remains there. Time is not so essential as the intent, executed by making or beginning an actual establishment, though it be abandoned in a longer, or shorter period. See 6 Hall's Law Journ. 68; 3 Hagg. Eccl. R. 373; 20 John. 211 2 Pet. Ad. R. 450; 2 Scamm. R. 377.

Note **: *Animo manendi. With intention of remaining.* A phrase used in the discussion of questions of domicile, to express the intention to remain and establish a permanent residence, which intention is essential to the acquiring of a new domicile in the place to which the residence has been removed. It is used in opposition to *animo reeertendi*, which expresses the contrary intention of returning to the former residence. The residence is described either as *animo recerlemli*, with intention of returning; or as *animo manendi* (sometimes in the form *animo remanendi*), with intention of remaining.

2.4.4 Since the above definitions make use of the term "domicile", and we wish to be thorough in our research, we will also check out what the term "domicile" means as well:

DOMICIL

1. The place where a person has fixed his ordinary dwelling, without a present intention of removal. 10 Mass. 488; 8 Cranch, 278; Ersk. Pr. of Law of Scotl. B. 1, tit. 2, s. 9; Denisart, tit. Domicile, 1, 7, 18, 19; Voet, Pandect, lib. 5, tit. 1, 92, 97; 5 Madd. Ch. R. 379; Merl. Rep. tit. Domicile; 1 Binn. 349, n.; 4 Humph. 346. The law of domicil is of great importance in those countries where the maxim "*actor sequitur forum rei*" is applied to the full extent. Code Civil, art. 102, &c.; 1 Toullier, 318.

2. A man cannot be without a domicil, for he is not supposed to have abandoned his last domicil until he has acquired a new one. 5 Ves. 587; 3 Robins. 191; 1 Binn. 349, n.; 10 Pick. 77. Though by the Roman law a man might abandon his domicil, and, until he acquired a new one, he was without a domicil. By fixing his residence at two different places a man may have two domicils at one and the same time; as, for example, if a foreigner, coming to this country, should establish two houses, one in New York and the other in New Orleans, and pass one-half of the year in each; he would, for most purposes, have two domicils. But it is to be observed that circumstances which might be held sufficient to establish a commercial domicil in time of war, and a matrimonial, or forensic or political domicil in time of peace, might not be such as would

establish a principal or testamentary domicil, for there is a wide difference in applying the law of domicil to contracts and to wills. Phill. on Dom. xx; 11 Pick. 410 10 Mass. 488; 4 Wash. C. C. R. 514.

3. There are three kinds of domicils, namely:

1. The domicil of origin. *domicilium originis vel naturale*.
2. The domicil by operation of law, or necessary domicil.
3. Domicil of choice.

4.-1. By domicil of origin is understood the home of a man's parents, not the place where, the parents being on a visit or journey, a child happens to be born. 2 B. & P. 231, note; 3 Ves. 198. Domicil of origin is to be distinguished from the accidental place of birth. 1 Binn. 349.

5.-2. There are two classes of persons who acquire domicil by operation of law. 1st. Those who are under the control of another, and to whom the law gives the domicil of another. Among these are,

1. The wife.
2. The minor.
3. The lunatic, &c. 2d.

Those on whom the state affixes a domicil. Among this class are found,

1. The officer.
2. The prisoner, &c.

6.-1st. Among those who, being under the control of another, acquire such person's domicil, are,

1. The wife. The wife takes the domicil of her husband, and the widow retains it, unless she voluntarily change it, or unless, she marry a second time, when she takes the domicil of the second husband. A party may have two domicils, the one actual, the other legal; the husband's actual and the wife's legal domicil, are, *prima facie*, one. Addams' Ecc. R. 5, 19.

2. The domicil of the minor is that of the father, or in Case of his death, of the mother. 5 Ves. 787; 2 W. & S. 568; 3 Ohio R. 101; 4 Greenl. R. 47.

3. The domicil of a lunatic is regulated by the same principles which operated in cases of minors the domicil of such a person may be changed by the direction, or with the assent of the guardian, express or implied. 5 Pick. 20.

7.-2d. The law affixes a domicil.

1. Public officers, such as the president of the United States, the secretaries and such other officers whose public duties require a temporary residence at the capital, retain their domicils. Ambassadors preserve the domicils which they have in their respective countries, and this privilege extends to the ambassador's family. Officers, soldiers, and marines, in the service of the United States, do not lose their domicils while thus employed.

2. A prisoner does not acquire a domicil where the prison is, nor lose his old. 1 Milw. R. 191, 2.

8.-3. The domicil of origin, which has already been explained, remains until another has been acquired. In order to change such domicil; there must be an actual removal with an intention to reside in the place to which the party removes. 3 Wash. C. C. R. 546. A mere intention to remove, unless such intention is carried into effect, is not sufficient. 5 Greenl. R. 143. When he changes it, he acquires a domicil in the place of his new residence, and loses his original domicil. But upon a return with an intention to reside, his original domicil is restored. 3 Rawle, 312; 1 Gallis. 274, 284; 5 Rob. Adm. R. 99.

9. How far a settlement in a foreign country will impress a hostile character on a merchant, see Chitty's Law of Nations, 31 to 50; 1 Kent, Com. 74 to 80; 13 L. R. 296; 8 Cranch, 363; 7 Cranch, 506; 2 Cranch, 64 9 Cranch, 191; 1 Wheat. 46; 2 Wheat 76; 3 Wheat. 1 4 2 Gall. R. 268; 2 Pet. Adm. Dec. 438 1 Gall. R. 274. As to its effect in the administration of the assets of a deceased non-resident, see 3 Rawle's R. 312; 3 Pick. R. 128; 2 Kent, Com. 348; 10 Pick. R. 77. The law of Louisiana relating to the "domicil and the manner of changing the same" will be found in the Civil Code of Louisiana, tit. 2, art. 42 to 49. See, also, 8 M. R. 709; 4 N. S. 51; 6 N. S. 467; 2 L. R. 35; 4 L. R. 69; 5 N. S. 385 5 L. R. 332; 8 L. R. 315; 13 L. R. 297 11 L. R. 178; 12 L. R. 190. See, on the subject generally, Bouv. Inst. Index, h.t. 2 Bos. & Pul. 230, note 1 Mason's Rep. 411; Toullier, Droit Civil Francais, liv. 1, tit. 3, n., 362 a 378; Domat, tome 2, liv. 1, s. 3; Pothier, Introduction Generale aux Coutumes, n. 8 a 20; 1 Ashm. R. 126; Merl. Rep. tit. Domicile 3 Meriv. R. 79; 5 Ves. 786; 1 Crompt. & J. 151; 1 Tyrwh. R. 91; 2 Tyrwh. R. 475; 2 Crompt. & J. 436 3 Wheat. 14 3 Rawle, 312; 7 Cranch, 506 9 Cranch, 388; 5 Pick. 20; 1 Gallis, 274, 545; 10 Mass. 488 11 Mass. 424; 13 Mass. 501 2 Greenl. 411; 3 Greenl 229, 354; 4 Greenl. 47; 8 Greenl. 203; 5 Greenl. 143; 4 Mason, 308; 3 Wash. C. C. R. 546; 4 Wash. C. C. R. 514 4 Wend, 602; 8 Wend. 134; 5 Pick. 370 10 Pick. 77; 11 Pick. 410; 1 Binn. 349, n.; Phil. on Dom. passim.

2.4.5 You can even go so far as to research the term “dwelling” if you wish to go even deeper. Each successive piece of information presents another layer on which to build your foundation of legal theory and argument.

2.4.6 We also need to determine what the terms “non-resident” and “inhabitant” means. Once again, these terms are not defined within Bouvier’s 1856, so let’s take a look at how Black’s Law, 6th Edition defines the terms:

Non-resident. One who does not reside within jurisdiction in question; not an inhabitant of the state of the forum. Special rules govern service of process on non-resident; e.g. Fed.R. Civil P. 4(e). See Long arm statutes.

Inhabitant. One who reside actually and permanently in a given place, and has his domicile there. Ex parte Shaw, 145 U.S. 444, 12 S.Ct. 935, 36 L.Ed. 786.

The words "inhabitant," "citizen," and "resident," as employed in different constitutions to define the qualifications of electors, means substantially the same thing; and, in general, one is an inhabitant, resident, or citizen at the place where he has his domicile or home. But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and permanent abode than the former, and importing privileges and duties to which a mere resident would not be subject. A corporation can be an inhabitant only in the state of its incorporation. Sperry Products v. Association of American Railroads, C.C.A.N.Y., 132 F.2d 408, 411. See also Domicile; Residence. Black's Law Dictionary, Sixth Edition, p. 782

2.4.7 So by all appearances of the specific terminology this particular statute can be lawfully applied only to a “resident”, meaning “one that is not permanently domiciled within the jurisdiction of the state and is only here in a temporary or transient nature”, or a “non-resident”, meaning someone that is “otherwise physically outside the jurisdiction of the state but is somehow acting within the borders and/or jurisdiction of the state itself”. Think carefully, does either of these definitions describe you?

2.4.8 With all theological interpretations and arguments aside for the moment, ask yourself this

question, "Are you a Texas "resident" only temporarily "residing" here with a permanent "domicile" elsewhere, or are you domiciled in Texas as your permanent home, an inhabitant?" This is an important question to each of us, especially in regard to the application of statutes such as the example above. If you answered "no" to the first part of this question and "yes" to the second part then the above statute would not and could not be legally applied to you as you do not meet the criteria of a "resident" or a "non-resident". As you can see the rabbit-trails can seem interminable, but just keep following them, add any new terms to your list, keep dissecting each new revelation and you WILL find the ultimate truth behind the lie, then all you have to do is make them eat it.

Chapter 3 – The Brass Tacks of Terminology

A recent study shows that more and more, scientists are beginning to use lawyers in place of rats, for their research experiments. This study found that lawyers were better research subjects than rats for several reasons. There were more lawyers available than rats; researchers had started to develop empathy for the rats; and there's some things that rats just won't do.

3.1 CFR Title 49 – The Fed Connection, Popeye Doyle Eat Your Heart Out

3.1.1 The Department of Public Safety Works For the Federal Government

3.1.1.1 I bet that you think the DPS works strictly for the benefit of the People of Texas, right? Well, prepare to be disappointed yet again. Our state agencies are being co-opted by the federal government at an ever-increasing rate. This is something that was never meant to be allowed by our system of government, and yet We the Sheeple sit by and let it continue to race ever-forward to our own eventual but certain destruction. Here is where ALL the rules and law associated with the Transportation Code we born. The only good part about this is that it proves the statutes being used against the People by the DPS and the local law enforcement robots are meant only for those engaged in commerce and that are subject to the federal interstate commerce laws:

Texas Administrative Code
TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1 TEXAS DEPARTMENT OF PUBLIC SAFETY
CHAPTER 4 COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES
SUBCHAPTER B REGULATIONS GOVERNING TRANSPORTATION SAFETY

RULE §4.11 General Applicability and Definitions

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through April 1, 2008. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through April 1, 2008. The rules adopted herein are to ensure that:

- (1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;
- (2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;
- (3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;
- (4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and,
- (5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section;

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety for vehicles operating in intrastate commerce;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31;

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper; and

(13) off-road motorized construction equipment includes but is not limited to motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment

routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and

(D) a vehicle transporting hazardous material requiring a placard.

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "operating authority" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be

the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, Part 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

Source Note: The provisions of this §4.11 adopted to be effective March 9, 2004, 29 TexReg 2376; amended to be effective August 31, 2004, 29 TexReg 8375; amended to be effective January 4, 2005, 29 TexReg 12235; amended to be effective May 22, 2005, 30 TexReg 3031; amended to be effective September 22, 2005, 30 TexReg 6065; amended to be effective January 24, 2006, 31 TexReg 404; amended to be effective May 30, 2006, 31 TexReg 4442; amended to be effective October 1, 2006, 31 TexReg 8109; amended to be effective January 28, 2007, 32 TexReg 245; amended to be effective April 30, 2007, 32 TexReg 2370; amended to be effective August 16, 2007, 32 TexReg 5034; amended to be effective January 2, 2008, 32 TexReg 10056; amended to be effective June 11, 2008, 33 TexReg 4527

3.1.2 Does anything about Rule 4.11(c)(1) (A)-(G) look familiar? How about the fact that every single type of “motor vehicle” listed in this section matches precisely with the listings under Transportation Code Chapters 521 and 522 regarding the types of “motor vehicles” and “commercial motor vehicles” that the “driver’s license” and the “commercial driver’s license” allegedly authorize a “person” to “operate”? Remember the old saying “...if it walks like a duck, looks like a duck, and it sounds like a duck...”, yet THE STATE would have we the People believe that these are dissimilar and unrelated things. Yeah, right, so while you’re busy believing that pile of you-know-what does anybody want to buy a bridge in Brooklyn, I’m willing to sell it cheap!

3.1.2 Jurisdictional Limitations Revisited

3.1.2.1 The federal government DOES NOT have limitless jurisdiction, and in fact, except on property that has been ceded to the federal government by the state, they have NONE within the borders of the several states themselves! They know this, but they count on local “cooperation” to allow them the authority to get away with treason. Let’s call it what it is folks, when a public official in any branch or level of government acts outside or in circumvention of the constitution or in spite of its prohibitions, THAT IS TREASON! It is a breach of their oath to protect, serve, and defend the Constitution of the United States, **from all enemies**, foreign **and domestic** and it is nothing less than an utter betrayal of the public trust and the People themselves.

3.1.2 This simple fact is more often ignored than not however. Local law enforcement rolls over and pants for a treat like a whipped pup peeing on itself when the federal boys roll into town. The local politicians smooze and suck up in the hopes that “a little friendly cooperation” will result in some much coveted federal funding. Meanwhile, the feds exercise an authority and a power within the states that we the People never granted to the federal government, power and authority that we did in fact absolutely forbid it to possess within the provisions of the constitution and the Bill of Rights.

3.1.2.1 So why haven't We the People filed charges and law suits against those public servants that violate their oath of office in this manner? Why do we continue to allow them to erode the bedrock on which this nation was founded and built, the creativeness, the integrity, and the prosperity of a free people that knew no limits to those abilities? I do not know the true answer to that question; I just have theories, hypothesis, and conjecture on which to base any answer I could offer. I just know that we need to make a change while we still can, and we need to do it before it requires an even more massive loss of life and bloodshed than it did the Founding Fathers generation in order to reverse our current course of self-destruction as a nation.

3.1.3 *Scope, It Isn't Just A Mouthwash Folks*

3.1.3.1 Scope is very important in the reading of a statute. Scope is the statutory proclamation that a particular definition or context of a term only applies within a certain title, chapter, section, subsection or individual sub-item of a statute. It is scope which determines whether or not the definition you are reading applies to some other part(s) of the statute(s) you are researching or just the part you are currently reading. For example, in Sec. 463.003 as shown above, the scope of the term "Person" as it used there is limited to "this chapter" while Sec. 4001.003 states the definition of the term "Person" is applicable to the entire title "Unless the context clearly indicates otherwise...". You can see how the definition or usage of a term can be altered at anytime, so it is your responsibility to determine which definition you should be applying at any given point.

3.1.3.2 Always check the scope for any term on which you are relying to argue any point of law or statute. Failure to check the scope will result in a faulty argument that will be handily defeated by the other party if they have checked it for themselves.

3.1.4 *Statutory Construction "Aids" – An Infection of Legalese With the Same Bad Results, Weakened Immunity (For Them)*

3.1.4.1 Now would seem to be the perfect time to delve into the basic area of statutory construction. So get out your hard hats, slide rules, and muck waders cause its gonna' get deep.

3.1.4.2 Naïve as I am, I like to think that a reasonable man, or group of men, when tasked with making a set of general rules that would be the basis for all interactions between the People and their servant government, would want to make those rules as clear and intelligible as possible to any that would read them. They should be brief but detailed, specific, and ensure the language addresses precisely to whom, how, when, where, and what the rule was meant to apply. The actual statute itself would contain everything that was needed to ensure that this understanding was fully attainable by simply reading the statute itself. As I said, I am naïve, "cause that just ain't the way it is at all!"

"The Code Construction Act is all about the legislature telling the governmental agencies how the codes *shall* be constructively written and certain general terms defined, and accordingly how they must be *read, interpreted, and applied.*"

3.1.4.3 Texas has this little 'ol chapter in the Government Code called "The Code Construction Act", and it is located in Chapter 311 of that code. It contains several general definitions of certain specific terms along with a set of rules determining how they are to be used and construed in the writing and construction of any statutory enactment bill that is passed by the Texas legislature in another of the power-drunk, micromanaging, control-freak frenzies that motivates most of the bills in question. Government Code Chapters 311 & 312 are included in their entirety in the Addendums section of this material. The Code Construction Act is all about the legislature telling the governmental agencies how the codes shall be constructively written and certain general terms defined, and accordingly how the resulting statute must be read, interpreted, and applied.

3.1.4.4 It is an inevitable consequence that by defining how the statutes within the codes are to be constructively written, the legislature is simultaneously constructing and instructing on the method and manner of how the statute must be read and interpreted as well as the lawful application thereof by both the individual regulating agency(s) and the courts.

3.1.5 *The "Gotcha" of Terminology – the Compound Definition*

3.1.5.1 Compound definitions can be hard to spot unless you're following the "IQE Rule" and paying attention. The definition of "motor vehicle" as used in this chapter is a **compound definition**, meaning that it relies on the definition of the term "vehicle" as part of the requisite criteria for its own definition. If you look at the definitions for "All-terrain vehicle", "Commercial motor vehicle", "Light truck", and "Passenger car" they are also compound definitions, they are in fact **multi-layered compound definitions**.

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE A. CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES
CHAPTER 502. REGISTRATION OF VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. **In this chapter:**

- (1) **"All-terrain vehicle"** means a **motor vehicle** that is:
 - (A) equipped with a saddle, bench, or bucket seats for the use of:
 - (i) the rider; and
 - (ii) a passenger, if the motor vehicle is designed by the manufacturer to transport a passenger;
 - (B) designed to propel itself with three or more tires in contact with the ground;
 - (C) designed by the manufacturer for off-highway use; and
 - (D) not designed by the manufacturer primarily for farming or lawn care.
- (2) **"Commercial motor vehicle"** means a **motor vehicle**, other than a

motorcycle, **designed or used primarily to transport property**. The term includes a passenger car reconstructed and used primarily for delivery purposes. The term does not include a passenger car used to deliver the United States mail.

...

(9) "**Light truck**" means **a commercial motor vehicle** that has a manufacturer's rated carrying capacity of one ton or less.

...

(11) "**Motor bus**" includes every vehicle used to transport persons on the public highways for compensation, other than:

(A) a vehicle operated by muscular power; or

(B) a municipal bus.

...

(13) "**Motor vehicle**" means a **vehicle** that is self-propelled.

...

(16) "**Owner**" means a person who:

(A) holds the legal title of a vehicle;

(B) has the legal right of possession of a vehicle; or

(C) has the legal right of control of a vehicle.

(17) "**Passenger car**" means a **motor vehicle**, other than a motorcycle, golf cart, light truck, or bus, **designed or used primarily for the transportation of persons**.

...

(21) "**Semitrailer**" means a **vehicle** designed or used with a **motor vehicle** so that part of the weight of the **vehicle** and its load rests on or is carried by another **vehicle**.

(22) "**Trailer**" means a **vehicle** that:

(A) is designed or used to carry a load wholly on its own structure;
and

(B) is **drawn** or **designed to be drawn** by a **motor vehicle**.

(23) "**Truck-tractor**" means a **motor vehicle**:

(A) designed and **used primarily for drawing another vehicle**; and

(B) not constructed to carry a load other than a part of the weight of the **vehicle** and load to be drawn.

(24) "**Vehicle**" means a device in or by which a **person or property is or may be transported or drawn on a public highway**, other than a device used exclusively on stationary rails or tracks.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 625, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 586, Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1280, Sec. 1, eff. June 15, 2007.

3.1.5.2 A multi-layered compound definition is one that contains one or more compound definitions within its own. Look at the definition of “Passenger car”, it contains the compound definition “motor vehicle”, which itself contains the term “vehicle”, and the term “Vehicle” contains the terms “transported” and “drawn”, hence the “layering” of the terminology to make it more difficult to determine just what applies within the definition.

3.1.5.3 I cannot state enough how important that it is to be ever watchful of this and to read and re-read a definition several times along with the statutory section in which it is being used to gain a full understanding of what it actually is stating. Remember that the statutes are intentionally written to hide the real truth and meaning from the casual or superficial reader of the words it contains. It is this fact that has gotten us into the mess that we are in and why we are here now reading and learning this material.

3.1.6 *The Terms You Need To Know*

3.1.6.1 In this next section I am going to provide you with a list of a few of the more common words and phrases along with their respective definitions as found in the various law dictionaries (when they exist). These are the words that you will most likely need to be the most familiar with when you are researching the various state transportation/motor vehicle codes. But always remember, when reading statutes -

Terminology is Important!

3.1.6.2 Never assume you know the meaning of the words or phrases that are used in statutory construction, ALWAYS look for a definition of a word or phrase no matter how familiar it looks to you.

If the statute supplies a definition for a word or phrase then you can be certain that it is defining a term that is being used and means something totally different than what you understand as the common usage and meaning.

3.1.6.3 When the statutes refer to a word or phrase having a “common usage” they almost always mean “common usage **in law**” not common everyday conversational English language usage. If this were not so then there would not be any need for law dictionaries, we could all just use Webster's. So, without further ado here are some of these terms listed in alphabetical order:

Carry - Black's 6th

To bear, bear about, sustain, **transport**, remove, or **convey**. To have or bear upon or about one's person, as a watch or weapon; locomotion not being essential. As applied to insurance, means “possess” or “hold”.

Convey - Black's 6th

To transfer or deliver to another. To pass or transmit the title to property from one to another. To transfer property or the title to property by deed, bill of sale, or instrument under seal. Used properly in sense of "assign", "sale", or "transfer". See *Conveyance*.

Common Carrier - Black's Law Dictionary (6th ed. 1990 at 275).

A common carrier is "[a]ny carrier required by law to convey . . . freight without refusal if the approved fare or charge is paid"
Black's Law Dictionary 275 (6th ed. 1990).

Common Carrier - Black's Law Dictionary (8th ed. 2004 at 275).

"a carrier that is "generally required by law to transport . . . passengers or freight, without refusal, if the approved fare or charge is paid."

Contract Carrier - Black's Law Dictionary, at 325

A contract carrier is a "transportation company that carries, for pay, the goods of certain customers only as contrasted to a common carrier that carries the goods of the public in general."

Driver - Bouvier's (1856)

1. **One employed in conducting a** coach, carriage, wagon, or other **vehicle**, with horses, mules, or other animals.
2. Frequent accidents occur in consequence of the neglect or want of skill of drivers of public stage coaches, for which the employers are responsible.
3. The law requires that a driver should possess reasonable skill and be of good habits for the journey; if, therefore, he is not acquainted with the road he undertakes to drive; 3 Bingh. Rep. 314, 321; drives with reins so loose that he cannot govern his horses; 2 Esp. R. 533; does not give notice of any serious danger on the road; 1 Camp. R. 67; takes the wrong side of the road; 4 Esp. R. 273; incautiously comes in collision with another carriage; 1 Stark. R. 423; 1 Campb. R. 167; or does not exercise a sound and reasonable discretion in travelling on the road, to avoid dangers and difficulties, and any accident happens by which any passenger is injured, both the driver and his employers will be responsible. 2 Stark. R. 37; 3 Engl. C. L. Rep. 233; 2 Esp. R. 533; 11. Mass. 57; 6 T. R. 659; 1 East, R. 106; 4 B. & A. 590; 6 Eng. C. L. R. 528; 2 Mc Lean, R. 157. Vide Common carriers Negligence; Quasi Offence.

Driver - Black's 3rd

One employed in conducting or operating a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or **motor car**, though not a street railroad car.

See Davis v. Petrinovich, 112 Ala. 654, 21 So. 344, 36 L.R.A. 615; Isaacs v. Railroad Co., 7 Am. Rep. 418, 47 N.Y. 122.

Driver - Black's 4th

One employed in conducting or operating a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or **motor car**, though not a street railroad car. **A person actually doing driving, whether employed by owner to drive or driving his own vehicle.**

(Wallace v. Woods 340 Mo. 452, 102 S.W.2d 91,97)

Driver - Black's 6th

A person actually doing driving, whether employed by owner to drive or driving his own vehicle.

Passenger - Black's 3rd

A person whom a common carrier has contracted to carry from one place to another, and has, in the course of the performance of that contract, received under his care either upon the means of conveyance, or at the point of departure of that means of conveyance. (Cites omitted.)

Passenger - Black's 6th

In general, a person who gives compensation to another for transportation. Shapiro v. Bookspan, 155 Cal.App.2d 353, 318 P.2d 123, 126. **The word passenger has however various meanings, depending upon the circumstances under which and in the context in which the word is used; sometimes it is construed in a restricted legal sense as referring to one who is being carried by another for hire;** on other occasions, the word is interpreted as meaning any occupant of a vehicle other than the person operating it. American Mercury Ins. Co. v. Bifulco, 74 N.J.Super. 191, 181 A.2d 20, 22.

The essential elements of "passenger" as opposed to "guest" under guest statute are that the driver must receive some benefit sufficiently real, tangible, and substantial to serve as the inducing cause of the transportation so as to completely overshadow mere hospitality or friendship; it may be easier to find compensation where the trip has commercial or business flavor. Friedhoff v. Engburg, 82 S.D. 522, 149 N.W.2d 759, 761, 762, 763.

A person whom a common carrier has contracted to carry from one place to another, and has, in the course of the performance of that contract, received under his care either upon means of conveyance, or at the point of departure of that means of conveyance.

Traffic - Bouvier's (1856)

Commerce, trade, sale or exchange of merchandise, bills, money and the like.

Traffic - Black's 3rd

Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing of goods or commodities from one person to another for an equivalent in goods or money.

Senior v. Ratterman, 44 Ohio St. 673, 11 N.E. 321; People v. Horan, 293 Ill. 314, 127 N.E. 673, 674; People v. Dunford, 207 N.Y. 17, 100 N.E. 433, 434; Fine v. Morgan, 74 Fla. 417, 77 So. 533, 538; Bruno v. U. S. (C.C.A.) 289 F. 649, 655.

Traffic includes the ordinary uses of the streets and highways by travelers. *Stewart v. Hugh Nawn Contracting Co.*, 223 Mass. 525, 112 N.E. 218, 219; *Withey v. Fowler Co.*, 164 Iowa, 377, 145 N.W. 923, 927.

Traffic - Black's 4th

Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing of goods or commodities from one person to another for an equivalent in goods or money. *Senior v. Ratterman*, 44 Ohio St. 673, 11 N.E. 321; *Fine v. Morgan*, 74 Fla. 417, 77 So. 533, 538; *Bruno v. U. S. C.A. Mass.*, 289 F. 649, 655; *Kroger Grocery and Baking Co. v. Schwer*, 36 Ohio App. 512, 173 N.E. 633. The subjects of transportation on a route, as persons or goods; the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, canal, etc. *United States v. Golden Gate Bridge and Highway Dist. Of California*, D.C.Cal., 37 F. Supp. 505, 512.

Traffic -Black's 6th

Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing or exchange of goods or commodities from one person to another for an equivalent in goods and money. The subjects of transportation on a route, as persons or goods; the passing to and fro of persons, animals, vegetables, or vessels, along a route of transportation, as along a street, highway, etc.

Transport - Black's 6th

To carry or convey from one place to another. *Sacramento Nav. Co. v. Salz*, 273 U.S. 326, 47 S.Ct. 368, 369, 71 L.Ed. 663; *People v. One 1941 Cadillac Club Coup*, 63 Cal.2d 418, 147 P.2d. 49, 51.

Transportation - Webster's Unified Dictionary and Encyclopedia, International Illustrated Edition (1960)

1. The act or business of moving passengers and goods.
2. The means of conveyance used.
3. Banishment, esp. of convicts to a penal colony.

Transportation - Bouvier's (1856)

Punishment. In the English law, this punishment is inflicted by virtue of sundry statutes; it was unknown to the common law. 2 H. Bl. 223. It is a part of the judgment or sentence of the court, that the party shall be transported or sent into exile. 1 Ch. Cr. Law, 789 to 796: *Princ. of Pen. Law*, c. 42.

Transportation - Black's 3rd

The removal of goods or persons from one place to another, by a carrier.
See *Railroad Co. v. Pratt*, 22 Wall. 133, 22 L.Ed. 827; *Interstate Commerce Com'n v. Brimson*, 154 U.S. 447, 14 Sup.Ct. 1125, 38 L.Ed. 1047; *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196, 5 Sup.Ct. 826, 29 L.Ed. 158.

Under Interstate Commerce Act, (49 USCA sec. 1 et seq.), "transportation" includes the entire body of services rendered by a carrier in connection with the receipt, handling, and delivery of property transported, and includes the furnishing of cars. *Pletcher v. Chicago, R. L. & P. Ry. Co.*, 103 Kan. 834, 177 P. 1, 2.

In a general sense transportation means merely conveyance from one place to another. *People v. Martin*, 235 Mich. 206, 209 N.W. 87.

In Criminal Law - A species of punishment consisting in removing the criminal from his own country to another, (usually a penal colony), there to remain in exile for a prescribed period. *Fong Yue Ting v. U. S.*, 149 U.S. 698, 13 Sup.Ct. 1016, 37 L.Ed. 905.

Transportation - Black's 4th

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

Transportation - Black's 6th

The movement of goods or persons from one place to another, by a carrier.

Transportation - 49 U.S.C. Sec. 5102(12)

"transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

Transportation - Words and Phrases

See *State v. Western Transportation Co.* 241 Iowa 896 43 N.W.2d 739 [The judge, after giving his conclusion, goes on to give examples of "transportation" - all involving the movement of persons or goods for hire.]

Traveler - Blacks 3rd

One who passes from place to place, whether for pleasure, instruction, business or health. *Lockett v. State*, 47 Ala. 45; 10 C.B.N.S. 429. The term is used to designate those who patronize inns; the distance which they travel is not material. *Walling v. Potter*, 35 Con. 185.

Traveler - Blacks 6th

One who passes from place to place, whether for pleasure, instruction, business or health.

* * * * * * * * *

**Special Attention to these terms taken from
Bouvier's Law Dictionary 1856 Edition**

* * * * * * * * *

MISDEMEANOR, crim. law.

1. This term is used to express every offence inferior to felony, punishable by indictment, or by particular prescribed proceedings; in its usual acceptation, it is applied to all those crimes and offences for which the law has not provided a particular name; this word is generally used in contradistinction to felony; **misdemeanors comprehending all indictable offences, which do not amount to felony**, as perjury, battery, libels, conspiracies and public nuisances.

2. Misdemeanors have sometimes been called misprisions. (q. v.) Burn's Just. tit. Misdemeanor; 4 Bl. Com. 5, n. 2; 2 Bar. & Adolph. 75; 1 Russell, 43; 1 Chitty, Pr. 14; 3 Verm. 347; 2 Hill, S. C. 674; Addis. 21; 3 Pick. 26; 1 Greenl. 226; 2 P. A. Browne, 249; 9 Pick. 1; 1 S. & R. 342; 6 Call. 245; 4 Wend. 229; 2 Stew. & Port. 379. And see 4 Wend. 229, 265; 12 Pick. 496; 3 Mass. 254; 5 Mass. 106. See Offence.

OFFENCE, crimes. The doing that which a penal law forbids to be done, or omitting to do what it commands; in this sense it is nearly synonymous with crime. (q. v.) In a more confined sense, it may be considered as having the same meaning with misdemeanor, (q.v.) but it differs from it in this, that it is not indictable, but punishable summarily by the forfeiture of a penalty. 1 Chit. Prac. 14.

PENAL. That which may be punished; that which inflicts a punishment.

PENAL STATUTES.

1. Those which inflict a penalty for the violation of some of their provisions.

2. It is a rule of law that such statutes must be construed strictly. 1 Bl. Com. 88; Esp. on Pen. Actions, 1; Bosc. on Conv.; Cro. Jac. 415; 1 Com. Dig. 444; 5 Com. Dig. 360; 1 Kent, Com. 467. They cannot, therefore, be extended by their spirit or equity to other offences than those clearly described and provided for.
Paine, R. 32; 6 Cranch, 171.

PENALTY, contr.

1. A clause in an agreement, by which the obligor agrees to pay a certain-sum of money, if he shall fail to fulfil the contract contained in another clause of the same agreement.

2. A penal clause in an agreement supposes two obligations, one of which is the primitive or principal; and the other, is, conditional or accessory.

3. The penal obligation differs from an alternative obligation, for this is but one in its essence; while a penalty always includes two distinct engagements, and, when the first is fulfilled, the second is void. When a breach has taken place, the obligee has his option to

require the fulfilment of the first obligation, or' the payment of the penalty, in those cases which cannot be relieved in equity, when the penalty is considered as liquidated damages. Dalloz, Dict. mots Obligation avec clause penale.

4. It is difficult, in many cases, to distinguish between a penalty and liquidated damages. In general, the courts have inclined to consider the sum reserved by such agreement to be a penalty, rather than as stipulated damages. (q. v.)

5. The sum will be considered as a penalty, and not as liquidated damages, in the following cases:

1. When the parties to the agreement have expressly declared the sum to be a penalty, and no other intent is to be collected from the instrument. 2 Bos. & P. 346; 1 H. Bl. 227; 1 Pick. 45 1; 4 Pick. 179; 7 Wheat. 14; 3 John. Cases, 297.

2. When from the form of the instrument, as in the case of a money bond, it is sufficiently clear a penalty was intended.

3. When it is doubtful whether the sum was intended as a penalty or not, and a certain damage or debt is made payable on the face of the instrument. 2 B. & P. 350; 3 C. & P. 240.

4. When the agreement was evidently made for the attainment of another object, to which the sum, specified is wholly collateral, 11 Mass. 76; 15 Mass. 488; 1 Bro. C. C. 418, 419.

5. When the agreement contains several matters, of different degrees of importance, and yet the sum mentioned is payable for the breach of any, even the least. 6 Bing. 141; 5 Bing. N. C. 390; 7 Scott, 364.

6. When the contract is not under seal, and the damages may be ascertained and estimated; and this though the parties have expressly declared the sum to be as liquidated damages. 2B. & Ald. 704; 6 B. & C. 216; 4 Dall. 150; 5 Cowen, 144. See 2 Greenl. Ev. 258. 1 Holt N. P. C. 43 1 Bing. R. 302; S. C. 8 Moore, 244; 4 Burr. 2229.

6. The penalty remains unaffected, although the condition may have been partially performed; as in a case where the penalty was one thousand dollars, and the condition was to pay an annuity of one hundred dollars, which had been paid for ten years; the penalty was still valid. 5 Verm. 365.

7. A distinction seems to be made in courts of equity between penalties and forfeitures. In cases of forfeiture for the breach of any covenant other than a covenant to pay rent, relief will not be granted in equity, unless upon the ground of accident, fraud, mistake, or surprise, when the breach is capable of compensation. Edin. on Inj. 22; 16 Ves. 403; S. C. 18 Ves. 58 3 Ves. 692; 4 Bouv. List. n. 3915.

8. By penalty is understood, also, the punishment inflicted by law for its violation; the term is mostly applied to a pecuniary punishment. See 6 Pet. 404; 10 Wheat. 246; 1 Gall. R. 26; 2 Gall. R. 515; 1 Mason, R. 243; 3 John. Cas. 297: R. 451; 15 Mass. 488; 7 John. 72 4 Mass. 433; 8 Mass. 223; 8 Com. Dig. 846; 16 Vin. Ab. 301; 1 Vern. 83, n.; 1 Saund. 58, n.; 1 Swans. 318; 1 Wash. C. C. R. 1; 2 Wash. C. C. R. 323; Paine, C. C. R. 661; 7 Wheat. 13.

See, generally, Bouv. Inst. Index, h. t.

Chapter 4 – Give Me the Specific Statute On Which You Rely and Which Purportedly Authorizes You to do That.

The day after a verdict had been entered against his client, the lawyer rushed to the judge's chambers, demanding that the case be reopened, saying: "I have new evidence that makes a huge difference in my client's defense." The judge asked, "What new evidence could you have?" The lawyer replied, "My client has an extra \$10,000, and I just found out about it!"

4.1 The “Department” Makes the “Rules”

4.1.1 We begin this chapter’s analysis by setting forth a framework reference that will help us to better understand what is known as “the hierarchy of law”. What is meant by this is that there must be a top-most level at which any lawful authority begins, otherwise there is nothing to set the guidelines or boundaries within which to work and any law or authority can and does become arbitrary if left to the whims of men.

4.1.2 Therefore it is arguable by those who will have the most to lose, though not likely winnable, that there is no truth in what I am about to set forth. But without the truth of what follows we are nothing more than a lawless few ruling over those that abide by the appearance rather than the reality of the law.

4.1.3 In every state of the union there exists the highest level of the law, the United States Constitution. Following that is the individual state constitutions. Below the constitutions are the various state codes. Each of these codes must also have a level of hierarchy where one code must be the base upon which one or more codes at any other level may be empowered and enforced, such as the Government Code for example.

4.1.4 If the Government Code is not the highest level codified law, it at least has one Chapter that is, Chapter 311 THE CODE CONSTRUCTION ACT. It clearly states this hierarchy to every other code of Texas within that chapter. There does not appear to be an actual chart that shows the various hierarchies of the numerous codes, but certain conclusions about what it should be, and most likely is, can be drawn by their construction and designation of certain powers and authorities within them.

"Russians don't take a dump without a plan."

Fred Thompson - Hunt for Red October

4.1.5 Russian’s don’t and neither does government organizations, usually. Before government can perform any function or act it must have authority for doing so. That authority is usually laid out in one or more manuals, codes, or other documented and verifiable reference materials based on an actual legislative enactment of law. But until government, meaning the legislature, forms its various departments and agencies by law, it has no one which to assign any authority or duties to. So it forms its agencies and departments by writing, voting and passing the necessary laws, which are then converted to codes containing the statutes and regulations that are the interpretive explanations of the lawful authority and duties of those departments and agencies. After this is done then they can move forward with writing the other necessary laws, producing more codes which contain more statutes and regulations that define the next level of authority and duties to be assigned. Are you getting the picture yet? This is a hierarchy, and it can be as small or extensive as is necessary to facilitate the delegated authority to the legislature.

4.1.6 This brings us to the Texas Administrative Code. This code contains what I believe to be the base level hierarchy that promulgates all of the other authorities and duties of the various agencies to which it applies. Don't misunderstand, I am not saying it is the base code for everything, but only for particular named agencies and activities that are stated therein. These agencies are specifically named in the Administrative Code along with their respective authorities and duties. In this code these agencies are then delegated authority over certain areas of law, such as the Transportation Code, which is delegated to the Department of Public Safety of the State of Texas. Now, since this code established the DPS, it outlines their duties and authorities, and it specifies virtually everything about why they exist and how they are organized, the reasonable presumption is that this is indeed the beginning from which to start researching any authority and purpose for this state agency. So the conclusion is that this code has the highest level of hierarchy associated with the DPS and that every other code and its related duties and authorities are subject to the limitations placed upon the DPS by the Administrative Code. Which means that the Administrative Code controls the level to which the DPS can legally and lawfully assert any authority under any other code, which even though it is separate law, it is administered by an agency that is defined and controlled by the specific codified law within the Administrative Code and their authority and duties are constrained in accordance with it first and foremost.

4.1.7 The "Department" is the "Department of Public Safety of the State of Texas". They are tasked with the enforcement of the TRAFFIC laws, not general criminal law enforcement. They are also aware that they work for the benefit of the People and not for government. Their own rules written within the Texas Administrative Code confirm that this is true:

Texas Administrative Code

TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1 TEXAS DEPARTMENT OF PUBLIC SAFETY
CHAPTER 1 ORGANIZATION AND ADMINISTRATION
SUBCHAPTER B BASIC DOCTRINE

RULE §1.11 Basic Doctrines

(a) **The department of public safety accepts its responsibilities as a public trust.** It is our policy to discharge with dispatch any responsibility to the fullest extent **with maximum benefit for the public.**

(b) It is the policy of the department to afford maximum courtesy, service, and protection to all citizens and visitors in this state.

(c) **The department recognizes that government exists for the benefit of the governed-the people.** Enforcement and regulatory actions against persons are carried out for the benefit of society as a whole. The department does not act to adjudicate or rectify injustices, inequities, or wrongs between individuals, but acts only to maintain order for the preservation and protection of society as a whole.

(d) **It is a solemn obligation of members of the department to uphold the constitutions of the United States and the State of Texas as well as to enforce the statutory enactments. Constitutional provisions take precedence over statutory enactments. In the enforcement of the provisions of a statute, personnel of the department of public safety will refrain from infringing upon any rights or privileges guaranteed by the constitutions.**

(e) The department recognizes that the basic responsibility for the enforcement of the criminal laws rests with the local officers in their respective jurisdictions. It is the policy of the department to cooperate with and assist local officers fully in these matters but to leave the basic responsibility to them unless specifically assigned to do otherwise.

(f) It is the policy of the department to assume primary responsibility for traffic supervision on the rural highways of this state, including the regulation of commercial traffic.

(g) The department will cooperate with all governmental agencies discharging statutory duties when assistance complies with state law and departmental policies and regulations.

(h) It is the policy of the department to assign available manpower in any field service to the areas of the state in proportion to the amount of the statewide problem of that service existing in any particular area so that the department may, as nearly as practicable, render to all citizens their equitable share of the service available.

Source Note: The provisions of this §1.11 adopted to be effective January 1, 1976; amended to be effective December 30, 2002, 27 TexReg 12372

4.2 The “Department” and the Administrative Procedure Act

4.2.1 The “Department” is a “state agency” with “rule-making authority” and is therefore subject to the “Administrative Procedure Act” codified within Government Code Chapter 2001. The entire statutory text of this act is included in the Addendums section of this material. This act makes it very clear that any contested case between parties regarding any rule or law that is under the authority of a state agency is to be first heard by the “State Office of Administrative Hearings” and NOT the courts! In fact, the courts are specifically named as one of several governmental offices that are NOT to be considered a “state agency” for the purpose of such a contested case. Moreover, the court has no subject matter jurisdiction to conduct a judicial review of the case or the administrative determination until AFTER the administrative review hearing has been performed and completed, to wit:

GOVERNMENT CODE
TITLE 10. GENERAL GOVERNMENT
SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE
CHAPTER 2001. ADMINISTRATIVE PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

...
Sec. 2001.003. DEFINITIONS. In this chapter:

(1) "Contested case" means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(2) "**License**" includes the whole or a part of a state agency permit, certificate, approval, registration, or similar form of permission required by law.

(3) **"Licensing"** includes a state agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) **"Party"** means a person or state agency named or admitted as a party.

(5) **"Person"** means an individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.

(6) **"Rule"**:

(A) means a state agency statement of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of a state agency;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

(7) **"State agency"** means a state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. **The term does not include:**

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers ' compensation; or

(E) an institution of higher education.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 6.007, eff. September 1, 2005.

4.2.2 Since the courts are not a part of the administrative review process they cannot have jurisdiction to hear first arguments in a contested case regarding any agency rule or licensing issue. ALL state agencies that deal with any of the things listed in Sec. 2001.003(1)-(3) as shown above must begin with an administrative hearing determination in a contested case, not a judicial hearing.

4.2.3 And before the argument is made that this would only apply to the administrative rules side the agency and not the "law" within the statutes, it should first be acknowledge that the "state agency" known as the "Department" aka "The Department of Public Safety" sets the **rules and the standards** required for all officers that must be certified in order to enforce the "traffic laws". If these rules state that only certain officers, with certain and specific certifications and training, and while operating in certain specific places, can **then** enforce the "law" within the statutes in question, then that can only be regarded as abiding by the rule-making authority, hence the Administrative Procedure Act is in full force and effect.

GOVERNMENT CODE
TITLE 10. GENERAL GOVERNMENT
SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE
CHAPTER 2001. ADMINISTRATIVE PROCEDURE
SUBCHAPTER C. CONTESTED CASES: GENERAL RIGHTS AND PROCEDURES

Sec. 2001.058. HEARING CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

(a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.

(b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.

(c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.

(d) A state agency may not attempt to influence the finding of facts or the administrative law judge 's application of the law in a contested case except by proper evidence and legal argument.

(e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed. The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

(f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:

(1) the administrative law judge shall render the decision that may become final under Section 2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;

(2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation;

(3) the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146 and is the state agency that acts on the motion or extends a time period under Section 2001.146;

(4) the State Office of Administrative Hearings is the state agency responsible for sending a copy of the decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with Section 2001.142; and

(5) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 1997.

4.3 The “Department” Has Limited and Specific Authority

4.3.1 The “Department” has as its primary responsibility the enforcement of the TRAFFIC laws, not general criminal law enforcement, and Rule 1.11(f) above clearly states this as their primary responsibility. Rule 1.11(e) also declares that the enforcement of the criminal laws is within the jurisdiction of the local law enforcement and not that of the “Department” whose duty is only to assist the local law enforcement when needed.

4.4 The “Department” Enforces “Traffic” Rules, Not Criminal Laws

4.4.1 The “Department” aka “Department of Public Safety of the State of Texas”, is tasked with the enforcement of the TRAFFIC laws, not general and criminal law enforcement. They are also aware that they supposedly work for the benefit of the People and not for that of government. The “Department’s” own administrative rules as written within the Texas Administrative Code Rule 1.11(a), (c), and (d) as shown above confirm that this is true.

4.5 The “Department” Can Only Train and Certify Specific Officers As “Agents” For Traffic Enforcement

4.5.1 We Are the DPS – We Can Harass and Defraud the Public But We Cannot Investigate Our Own

4.5.1.1 The DPS can *investigate* crimes, but their primary responsibility is *not* to enforce the

criminal laws, and as we have seen they have a policy to that effect. But when it comes to the investigation of crime, it seems that the "department" has a sudden and serious flaw in logic. Apparently, an officer of the "department" (DPS) may NOT investigate any other public official, no matter what the crime or complaint is that is brought to a DPS officer's attention, unless the "director" of the "department" grants them permission to do so. See for yourself:

Texas Administrative Code
TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1 TEXAS DEPARTMENT OF PUBLIC SAFETY
CHAPTER 5 CRIMINAL LAW ENFORCEMENT
SUBCHAPTER A GENERAL PROVISIONS
RULE §5.2 Conduct of a Criminal Investigation

(a) An officer or other member of the Criminal Law Enforcement Division may conduct a criminal investigation when adequate suspicion exists that a crime has been, is being, or is about to be committed. The investigation shall ascertain the facts:

(1) to determine the existence of:

(A) reasonable suspicion to support the temporary detention of a suspect for further investigation or identification;

(B) probable cause to support a search or arrest warrant; or

(C) probable cause to support the warrantless seizure of property or evidence or the warrantless arrest of a suspect who is committing or has committed a crime, or

(2) to take lawful action to prevent a crime from being committed.

(b) An officer or member who is conducting a criminal investigation shall be primarily concerned only with an investigation within the specialty field to which the officer or member has been assigned, except:

(1) in an emergency situation; or

(2) when instructed to participate in a special investigation by a supervisor.

(c) No officer or member may investigate a public official without proper authorization of the director, the assistant director, or another individual expressly acting in the stead of the director.

4.5.1.2 Personally, if I were the Director of the DPS I would demand that the legislature remove this investigative limitation from statute while simultaneously issuing a blanket order that DPS officers are to immediately begin an investigation of any reported crime, especially if that crime involved a public official.

4.5.1.3 In a nutshell here is why I would make such a demand and issue such a directive:

PENAL CODE
TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION
CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION.

(a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or capias, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) that the warning was given in connection with an effort to bring another into compliance with the law.

(c) Except as provided by Subsection (d), an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the person who is harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, including an offense under Section 62.102, Code of Criminal Procedure, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony, including an offense under Section 62.102, Code of Criminal Procedure, and the person charged under this section knew that the person they harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 748, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 11, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 607, Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 1.19, eff. September 1, 2007.

4.5.1.4 As the director I would not want this charge falling on my head because I refused to allow the investigation of a public official against a criminal complaint, and therefore as far I would be concerned, open season would be declared on such officials for exactly that reason. Let's start teaching these King George wanna-be's that the law applies to them every bit as much as it applies to anyone else against whom they would use it.

4.5.1.5 So remember, DO NOT call the DPS for help if a crime is being perpetrated against you, they have to call 911 to come and help you! And if the crime is being committed by a public official then you my friend are SOL and totally on your own as far as the DPS is concerned. So much for the myth about law enforcement being one of their official duties.

4.5.2 So Just Exactly What Can the DPS Do Regarding "Traffic"?

4.5.2.1 The Texas Administrative Code is a wealth of information to which THE STATE has tried valiantly to suppress general access by the public. Just the small portions that I have provided in this material shows the invaluable information buried within it. And when it comes to the "who can do what" matters of "traffic law" enforcement, it is a butt-kicker for the public to use *ad nauseum* against the courts and local law enforcement officials.

4.5.2.2 Take for instance Administrative Code Rule 4.13 *Authority to Enforce, Training and Certificate Requirements*. This rule makes the limits on enforcement authority by both the DPS and local law enforcement crystal clear. The text of the rule is rather large and it is in the Addendums section of this material, but I would like to show you some of the facts in support of my statements in this section. The contents of this administrative rule is going to surprise you, and then it is going to annoy and anger you when you start thinking about all of the money that you have been defrauded of by THE STATE, the municipalities, and the counties.

4.5.2.3 One should also be aware that the Texas Transportation Code itself makes it abundantly clear that only those police officers that have been properly certified and trained via the requirements of Texas Administrative Code Rule 4.13(a)-(b) are allowed to enforce traffic laws in Texas. The Texas Transportation Code section below makes all of this very clear, and Rule 4.13(a) applies to each and every officer no matter where in Texas they are located, to wit:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE C. RULES OF THE ROAD
CHAPTER 541. DEFINITIONS
SUBCHAPTER A. PERSONS AND GOVERNMENTAL AUTHORITIES

Sec. 541.002. GOVERNMENTAL AUTHORITIES. In this subtitle:

(1) "**Department**" means the **Department of Public Safety acting directly or through its authorized officers and agents.**

(2) "Director" means the public safety director.

(3) "Local authority" means:

(A) a county, municipality, or other local entity authorized to enact traffic laws under the laws of this state; or

(B) a school district created under the laws of this state only when it is designating school crossing guards for schools operated by the district.

(4) "**Police officer**" means **an officer authorized to direct**

traffic or arrest persons who violate traffic regulations.

(5) "State" has the meaning assigned by Section 311.005, Government Code, and includes a province of Canada.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

4.5.2.4 Try to add it all up if you dare, yearly inspection and registration fees for each vehicle, license fees for each family member, insurance for each vehicle, and then there are the traffic citations, which according to Rule 4.13 could only be issued to driver's of a motor vehicle subject to Texas Transportation Code Chapters 522 and 644 because they are the only ones that ANY of the law enforcement officers or non-commissioned employees are authorized to stop AT ALL! Do you have a total amount of money added up yet? How many years have you been duped out of your money for these things? Are you mad yet? Now you may begin to understand and know why I finally said "enough!"

"Fellas, I've got myself a pretty good bullshit detector. And I can tell when someone's pissing on my boots and telling me it's a rain storm."

Burt Reynolds – Best Little Whorehouse in Texas

4.5.2.5 Please note that I have added some textual emphasis as well as some comments contained within square brackets and of a different font so that they could be distinguished from the actual text of the statute:

TEXAS ADMINISTRATIVE CODE
TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1 TEXAS DEPARTMENT OF PUBLIC SAFETY
CHAPTER 4 COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES
SUBCHAPTER B REGULATIONS GOVERNING TRANSPORTATION SAFETY

RULE §4.13 Authority to Enforce, Training and Certificate Requirements

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a commercial motor vehicle inspection site, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a

guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 50,000 or more;

[Not my town]

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;

[Not my town]

(C) a municipality any part of which is located in a county bordering the United Mexican States;

[Not my town]

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port;

[Not my town]

(E) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million;

[Not my town]

(F) a municipality with a population of 60,000 or more any part of which is located in a county with a population of 750,000 or more and in two or more counties with a combined population of one million or more; or

[Not my town]

(G) a municipality with a population of at least 34,000 that is located in a county that borders two or more states.

[Not my town]

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

[Not my county]

(B) a county with a population of 2.2 million or more.

[Not my county]

(6) A constable, or deputy constable, designated under Texas Transportation Code § 621.4015, meeting the training and certification requirements contained in subsection (b) of this section and certified

by the department, may stop, enter or detain on a highway within the county a motor vehicle subject to Texas Transportation Code, Chapter 644.

(7) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course with a certified officer and perform a minimum of 32 level I inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification

requirements must:

- (A) successfully complete the North American Standard Roadside Inspection Course;
- (B) successfully complete the Hazardous Materials Inspection Course;
- (C) successfully complete the Cargo Tank Inspection Course; and
- (D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

- (A) successfully complete the North American Standard Roadside Inspection Course;
- (B) successfully complete the Hazardous Materials Inspection Course;
- (C) successfully complete the Cargo Tank Inspection Course; and
- (D) successfully complete the Other Bulk Packaging Course.

(5) Passenger Vehicle. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

- (A) successfully complete the North American Standard Roadside Inspection Course;
- (B) successfully complete the Passenger Vehicle Inspection Course; and
- (C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

...

4.5.3 What Type of “Motor Vehicle” Are the DPS Officers or Non-Commissioned Employees Authorized to “Stop, Enter or Detain”?

4.5.3.1 Rule 4.13(a)(1) very clearly states that the only type of “motor vehicle” that a DPS officer is authorized to stop, enter, or detain on a highway or at a port of entry is a “motor vehicle” that is

subject to Transportation Code Chapter 644:

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

4.5.3.2 Rule 4.13(a)(2) very clearly states that the only vehicles that non-commissioned (civilian employee, not an officer) who is properly certified is authorized to stop, enter, or detain at a commercial motor vehicle inspection site or at a port of entry is a “motor vehicle” that is subject to Transportation Code Chapter 644:

(a) Authority to Enforce.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a commercial motor vehicle inspection site, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

4.5.3.3 Rule 4.13(a)(3) very clearly states that the only type of “motor vehicle” that either a DPS officer or non-commissioned employee are authorized to “*prohibit the further operation of*” is a “motor vehicle” that is subject to and in violation of Transportation Code Chapter 522 or Chapter 644:

(a) Authority to Enforce.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

4.5.3.4 Rule 4.13(a)(3) also states that the “motor vehicle” that is in violation of Transportation Code Chapter 522 or Chapter 644 they can then declare either the vehicle or the operator out-of-service using the federal guidelines for that procedure.

4.5.3.5 What this means then, is that Transportation Code Chapter 543, where the officer is authorized to arrest without warrant “a person” that is in violation of the statutes within that chapter cannot be applied to a private Citizen! If Chapter 543 could be legally and lawfully used against the Citizen then the Bill of Rights within the Texas Constitution means nothing, which in consequence means that the rule of law also means nothing. Therefore the only reasonable conclusion that can be drawn regarding the application of Chapter 543 is that its enforcement against a private Citizen MUST be declared unconstitutional on the following grounds:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE C. RULES OF THE ROAD
CHAPTER 543. ARREST AND PROSECUTION OF VIOLATORS
SUBCHAPTER A. ARREST AND CHARGING PROCEDURES; NOTICES AND PROMISES TO
APPEAR

Sec. 543.001. ARREST WITHOUT WARRANT AUTHORIZED. Any peace officer may arrest without warrant a person found committing a violation of this subtitle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

- The arrest without warrant provision of section 543.001 is a legislative enactment under the police powers, which falls under the general powers of government, and pursuant to Texas Constitution Article 1, Sec. 29 the general powers of government are forever barred from acting upon anything within the Bill of Rights, which would inherently also bar such interference by the police powers.
- Texas Constitution Article 1, Sec. 9 reads:

Sec. 9. SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

4.5.3.6 An arrest without warrant is ALWAYS unreasonable and illegal until it is proven to be otherwise by evidence of the reported or complained of commission of a felony, or a breach of the peace committed in the presence of the arresting officer or Citizen.

- Texas Constitution Article 1, Sec. 19 reads:

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

4.5.3.7 Again, these rights are *excepted* from the general powers of government, therefore it matters not how many statutes authorize an arrest without a warrant, those statutes are null and void upon their face *ab initio* pursuant to Article 1, Sec. 29 if any attempt is made to enforce them against a private Citizen.

4.5.4 What Type of “Motor Vehicle” Are Municipal Peace Officers Authorized to “Stop, Enter or Detain”?

4.5.4.1 Rule 4.13(a)(4) very clearly states that the only type of “motor vehicle” that a municipal officer may stop, enter, or detain either on a highway or at a port of entry, both of which MUST be within the municipality, is a “motor vehicle” subject to Transportation Code Chapter 644:

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a

highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

4.5.4.2 However, if you take a look at Rule 4.13(a)(4)(A)-(G) you will also see that this authority ONLY exists if the municipality meets the specifically listed location and/or population criteria, to wit:

(A) a municipality with a population of 50,000 or more;

[Not my town, how about yours?]

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;

[Not my town, how about yours?]

(C) a municipality any part of which is located in a county bordering the United Mexican States;

[Not my town, how about yours?]

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port;

[Not my town, how about yours?]

(E) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million;

[Not my town, how about yours?]

(F) a municipality with a population of 60,000 or more any part of which is located in a county with a population of 750,000 or more and in two or more counties with a combined population of one million or more; or

[Not my town, how about yours?]

(G) a municipality with a population of at least 34,000 that is located in a county that borders two or more states.

[Not my town, how about yours?]

4.5.5 What Type of “Motor Vehicle” Are Sheriffs and Deputy Sheriffs Authorized to “Stop, Enter or Detain”?

4.5.5.1 Rule 4.13(a)(5) very clearly states that the only type of “motor vehicle” that a sheriff or deputy sheriff may stop, enter, or detain either on a highway or at a port of entry, both of which MUST be within the county, is a “motor vehicle” subject to Transportation Code Chapter 644:

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

4.5.5.2 However, if you take a look at Rule 4.13(a)(5)(A)-(B) you will also see that this authority

ONLY exists if the county meets the specifically listed location or population criteria, to wit:

(A) a county bordering the United Mexican States, or
[Not my county, how about yours?]

(B) a county with a population of 2.2 million or more.
[Not my county, how about yours?]

4.5.6 What Type of “Motor Vehicle” Are Constables and Deputy Constables Authorized to “Stop, Enter or Detain”?

4.5.6.1 Rule 4.13(a)(6) very clearly states that the only type of “motor vehicle” that a constable or deputy constable may stop, enter, or detain either on a highway or at a port of entry, both of which MUST be within the county, is a “motor vehicle” subject to Transportation Code Chapter 644:

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

4.5.6.2 However, if you take a look at Rule 4.13(a)(5)(A)-(B) you will also see that this authority ONLY exists if the county meets the specifically listed location or population criteria, to wit:

(A) a county bordering the United Mexican States, or
[Not my county, how about yours?]

(B) a county with a population of 2.2 million or more.
[Not my county, how about yours?]

4.5.6.3 So, does your automobile fit within the statutes located in either Chapter 522 or 644 of the Transportation Code? Most likely not. How about the location of the municipality or county, is there a port of entry or one of the other necessary criteria that would allow for the enforcement of these statutes against you and your automobile? Again, most likely not. But if ALL of the criteria are not meant then the law is being enforced both illegally and unconstitutionally against the general public as well as to those whom it would otherwise properly apply.

4.5.7 Where Are the DPS and Other Law Enforcement Officers Authorized to “Enter or Detain” A Type of “Motor Vehicle”?

4.5.7.1 Okay, the “where” should be pretty easy to articulate by now, repeat after me:

- The DPS can only stop “on a highway” or “at a port of entry”;
- A non-commissioned DPS employee, that is properly trained and certified, can only stop “at

a commercial motor vehicle inspection site” or “at a port of entry”;

- The municipal peace officers, that is properly trained and certified, can stop “on a highway” or “at a port of entry” that is within the municipality; AND
 - if the municipality meets the location criteria as set forth in the Rule 4.13(a)(4)(A)-(G)
- A sheriff or deputy sheriff, that is properly trained and certified, can stop “on a highway” or “at a port of entry” that is within the county; AND
 - if the county meets the location criteria as set forth in the Rule 4.13(a)(5)(A)-(B)
- A constable or deputy constable, designated under Texas Transportation Code Sec. 621.4015, that is properly trained and certified, can stop “on a highway” that is within the county;

4.5.7.2 Okay, the “where” should be pretty easy to articulate by now, repeat after me:

- The DPS can only stop “on a highway” or “at a port of entry”;
- A non-commissioned DPS employee, that is properly trained and certified, can only stop “at a commercial motor vehicle inspection site” or “at a port of entry”;
- The municipal peace officers, that is properly trained and certified, can stop “on a highway” or “at a port of entry” that is within the municipality; AND
 - if the municipality meets the location criteria as set forth in the Rule 4.13(a)(4)(A)-(G)

4.5.8 Who Can the DPS Delegate Enforcement Authority To?

4.5.8.1 According to Rule 4.13 above, the DPS can delegate traffic enforcement authority to municipal officers, sheriff’s, deputy sheriff’s, constables, and deputy constables, BUT... only if these officers ***are in one of the specified locations in Texas*** that meets the necessary requirements under that rule, AND if they have successfully completed all of the necessary training and receive the required certifications for it. ***If any local law enforcement officer(s) is/are enforcing or acting under the color of the Transportation Code statutes and said officer(s) has/have NOT been properly certified and trained in accordance with the provisions of Rule 4.13(b) of this chapter of the Texas Administrative Code then that/those officer(s) is/are acting without jurisdiction or any lawful authority and is/has committing/committed a crime!***

4.5.8.2 That takes care of the “Who”, “What”, and “Where” part of this section. Now we get to discuss the criminal aspects of the officers actions brought on by their own negligence or willful ignorance in failing to know their duties and the laws associated with those duties.

4.5.9 The Municipal Police, AKA – A Legalized City Wide Armed Street Gang

4.5.9.1 Okay, I am going to show you a definition, but for the moment I am not going to show you where it comes from. What I would like for you to do is to read it and see if you can correlate it to your local police force using nothing more than the descriptive terms used within the definition itself,

ready?

"...three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate..."

4.5.9.2 Now let's contemplate for a second and then we can analyze this definition -- if a police officer violates a law, he commits a crime, and just as anyone else would be charged with that crime, so should the officer be. Whether the officer knowingly or unknowingly misapplies a law or misuses the authority of his office to aid, abet or otherwise facilitate the commission of a crime, he is committing a criminal act and should be charged with the crime, just as he would do to anyone else. Remember that *"ignorance of the law is not an excuse"*, especially for an officer. The fact that he or she wears a uniform and has a badge or special training does not excuse any of these facts, nor should it be used as an excuse for simply dismissing the officer's actions that are in clear violation of law (*can you say equal protection and applicability*). The material presented in this document discusses and exposes actions by officers that are clearly outside statutory authority, which means they are violations of law, and are therefore crimes against the People which are committed every single day in the misapplication of the traffic laws.

4.5.9.3 So let's see just how this definition plays a part in this material by showing what this definition actually means and applies to in the law:

PENAL CODE
TITLE 11. ORGANIZED CRIME
CHAPTER 71. ORGANIZED CRIME

Sec. 71.01. DEFINITIONS. In this chapter,

...
(d) **"Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.**

4.5.9.4 We can also examine another potential constitutional issue that has reared its very ugly head in the last couple of decades, and that is the constitutional prohibition of the states maintaining troops in a time of peace:

Constitution of the United States
Article 1
Section 10

... No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

4.5.9.5 It can be easily argued that the massive numbers of local law enforcement, the power and authority of which can be commandeered by THE STATE at virtually any time and for any reason, are

in fact the “Troops” that the U.S. Constitution specifically forbids the states to maintain (“keep”). Consider the facts:

- Ø The majority of police officers are now trained in military style tactics;
- Ø Police officers are being trained to subdue virtually any type of resistance, even verbal non-physical resistance, by an ever-escalating use of force or pain-inflicting techniques;
- Ø Police officers are considered virtually immune from prosecution or suit even when the facts clearly show that they committed one or more criminal acts;
- Ø Police officers are protected in this immunity by the very STATE that lays claim to them as a means of enforcement against the People;
- Ø Police officers routinely violate the People’s rights but are protected in those violations by the government, starting at the local level all the way up to the STATE level;
- Ø In most cases, it has literally become necessary for the police officer to be caught in the act by either numerous credible witnesses or video camera footage accompanied by a massive public outcry before any action will be taken to hold the officer accountable.

4.5.9.6 These are well-known and easily provable facts. Go to youtube.com and do a search for “police brutality”, you can find more videos on this subject than virtually any other, with the possible exception of footage covering 9/11 or the last two numb-nuts world-domineering royalty wanna-bes sitting in their purple robes and crowns at 1600 Pennsylvania Avenue.

4.5.9.7 How is that correlation to your local police department looking now? ‘Nuff said about that!

4.5.9.8 So, now we want to know the answer to the question “do the local law enforcement boys have any traffic law enforcement authority?” Well, I’m glad that you asked, because it would once again seem to the naked eye that the “criminal street gang” definition above is still in full force and effect where traffic laws are concerned.

4.5.9.9 We saw in Administrative Rule 4.13 above that the DPS must delegate the enforcement authority to the local municipal law enforcement officers, **THEY DO NOT HAVE ANY AUTHORITY TO ENFORCE THE TRANSPORTATION CODE BY DEFAULT!!** We also saw that there are very ***specific and mandatory location, training and certification requirements*** that must be met prior to an officer being certified to enforce the traffic laws. If the municipality does not fall within the territorial specifications (locations) outlined in Rule 4.13, then **THERE IS NO ENFORCEMENT AUTHORITY NO MATTER HOW MUCH TRAINING IS OBTAINED AND HOW MANY CERTIFICATIONS ARE ISSUED!**

4.5.9.10 But most importantly, we saw what the enforcement authority itself is limited to, “motor vehicles” specifically subject to Texas Transportation Code Chapter 644. There is NO authority for local law enforcement to act against any “motor vehicle” unless it falls within the subject of that specific chapter. There is absolutely no authority listed in any of the rules of the Administrative Code to act against members of the general public. And since the DPS sets the rules for the enforcement of these and other related sections of the Transportation Code, THE STATE would be hard pressed to say that these rules do apply to those statutes, because the statutes themselves clearly state that the DPS makes the rules regarding the administration of those statutes. Laugh that one off boys...

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE C. RULES OF THE ROAD
CHAPTER 541. DEFINITIONS
SUBCHAPTER A. PERSONS AND GOVERNMENTAL AUTHORITIES

Sec. 541.001. PERSONS. In this subtitle:

- (1) "Operator" means, as used in reference to a vehicle, a person who drives or has physical control of a vehicle.
- (2) "Owner" means, as used in reference to a vehicle, a person who has a property interest in or title to a vehicle. The term:
 - (A) includes a person entitled to use and possess a vehicle subject to a security interest; and
 - (B) excludes a lienholder and a lessee whose lease is not intended as security.
- (3) "Pedestrian" means a person on foot.
- (4) "Person" means an individual, firm, partnership, association, or corporation.
- (5) "School crossing guard" means a responsible person who is at least 18 years of age and is designated by a local authority to direct traffic in a school crossing zone for the protection of children going to or leaving a school.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.103, eff. Sept. 1, 1997.

Sec. 541.002. GOVERNMENTAL AUTHORITIES. In this subtitle:

- (1) "Department" means the Department of Public Safety acting directly or through its authorized officers and agents.
- (2) "Director" means the public safety director.
- (3) "Local authority" means:
 - (A) a county, municipality, or other local entity authorized to enact traffic laws under the laws of this state; or
 - (B) a school district created under the laws of this state only when it is designating school crossing guards for schools operated by the district.
- (4) "Police officer" means an officer authorized to direct traffic or arrest persons who violate traffic regulations.
- (5) "State" has the meaning assigned by Section 311.005, Government

Code, and includes a province of Canada.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

4.5.9.11 Once again please, repeat after me – “Criminal Street Gang, criminal street gang, criminal street gang”. This is all that the local law enforcement attempts to enforce the Transportation Code against the general public can result in, acting under color of law to commit criminal acts as armed gang members operating under a criminal leadership that refuses to acknowledge the law and to enforce it accordingly simply because it lowers the profit margin.

4.5.9.12 This criminal street gang status is no less true for the judges that aid and abet this criminal enforcement method and deny the People the introduction of the law at trial in their own defense. And if the accused does manage to get the law introduced the judge either ignores it or is too incompetent to understand it and finds or instructs that the accused be declared guilty anyway. A moron committing a criminal act is still a criminal, ...AND a moron.

4.5.10 The Local Sheriff – The Barney Fife Patrol Rides Again

4.5.3.1 I am certain that it did not escape your attention in Rule 4.13 that there are also strict limitations on the enforcement authority of the Sheriff's, Deputies, and Constables as well. They also must meet and obtain all of the same training and certification requirements that the municipal officers do but with some slightly different territorial limitations. But remember that, just as with the municipal law enforcement officers, the territorial limitations take precedent over the training and certifications. If the county does not fall within the territorial specifications outlined in Rule 4.13, then **THERE IS NO ENFORCEMENT AUTHORITY NO MATTER HOW MUCH TRAINING IS OBTAINED AND HOW MANY CERTIFICATIONS ARE ISSUED!**

4.5.3.2 I would bet good money that I could get even Barney Fife to understand this concept and the reality of what the statutes actually mean and apply to.

4.5.11 Mayberry, We Miss You

4.5.4.1 I remember watching an old Andy Griffith episode where a couple of state troopers are trying to arrest one of the folks in Sheriff Andy's jurisdiction. The man was holed up in his house and would not come out, and any time one of the officers would try to come closer to the house the man would fire a shot that barely missed him and sent him scurrying for cover.

4.5.4.2 Well, they finally send out a call to Sheriff Andy who arrives on the scene, and just as bold as brass he opens the wooden planked front gate to approach the house. Just as he swings the gate open a bullet hits the gate about six inches from Andy's hand. Andy looks down at the bullet hole and yells out to the man that he is going to come to the door of the house. The man yells back that he better not come closer, but Andy moves forward anyway. The man shoots close to Andy's feet but Andy still keeps coming. When he finally gets to the door he tells the man to come on outside and then asks him to hand over the gun, which the man does. Sheriff Andy arrests the man and the on-looking state troopers are duly impressed with the bravado of the small town sheriff of Mayberry. Now remember, Sheriff Andy never wore a gun around town, and he was not wearing one at this time

either, and the only time he did have one was when he was chasing down a hardened criminal that he did not know personally, and it well known that he almost never used handcuffs except on the hardened criminals.

4.5.4.3 I said all of that to make this point, Sheriff Andy was brave because he faced a man with a gun, he appeared brave because he personally knew the man in the house, he knew the man would not actually shoot him. Andy also knew that the man was probably the best shot in ten counties and could have killed every officer there if he had a mind to. Sheriff Andy acted as he did *because* he had a personal knowledge of this man and his character. It is that type personal knowledge about the people he was there to serve that made Sheriff Andy the best sheriff he could be, it was what made the people in his county trust him to do the right thing *for them* and to treat them fairly, and we desperately need more like him, especially today. And if I manage to get myself elected sheriff in my town I intend to see that I know the people of my county, that I know their needs, fears, and their hearts because I want to be the best sheriff that I can be, for them. My slogan will be straightforward: “Only God, the constitutions, and the law, taken in that order, will dictate my service to the people of this county, not the politics, moneyed interests, or any other public official, so help me God”.

Chapter 5 – It's A Person, What's A Person, Wouldn't You Like To Be A Person Too?

A lawyer died and arrived at the pearly gates. To his dismay, there were thousands of people ahead of him in line to see St. Peter. But, to his surprise, St. Peter left his desk at the gate and came down the long line to where the lawyer was standing. St. Peter greeted him warmly. Then St. Peter and one of his assistants took the lawyer by the hands and guided him up to the front of the line into a comfortable chair by his desk. The lawyer said, "I don't mind all this attention, but what makes me so special?" St. Peter replied, "Well, I've added up all the hours for which you billed your clients, and by my calculation you must be about 150 years old!"

5.1 The Statutory "Person", A Figment of the STATE's Imagination

5.1.1 In virtually every statute, regardless of the state or the topic, you will find the vague-while-seemingly-specific term of "Person" as being the entity to which the statute is applicable and on whom the duty to abide by the statute is placed. In some instances you will find various other terms that are equally ambiguous and non-specific, resulting in the necessary application of time and analysis to discern just exactly who or what the term used actually pertains to.

5.1.2 Say that you and a friend were sitting around and having a discussion about your respective day and how it went. Your friend says "I met a really interesting person at lunch today", several things might flash through your mind, "...he met a girl", "...he had a self-revelation brought on by philosophical discussion with a homeless old guy selling newspapers", or something along that nature. I would be willing to publicly state that you NEVER thought for one minute to entertain the thought that your friend actually was saying "I met a really interesting corporation today", or "I met a really interesting old government agency today". And if I am incorrect in this presumption then please, seek immediate counseling, your further gone than I feared. The point is that the *normal usage* of the term "Person" and the *legal usage* are in fact, worlds apart.

5.2 Why the Term "Person" Cannot And Does Not Mean "the People"

5.2.1 The People are not "Persons". There has never been and can never be a legislative act that has or would convert the status of the individual sovereign People to that of an "individual" or "person" regulated by statute. We are real, natural born, flesh-and-blood, God-breathed, living men, women, and children; we are not and never shall be statutory "individuals" or "persons".

5.2.2 Take a look at this section of the Government Code and you will see what I mean about the term "Person":

GOVERNMENT CODE
TITLE 3. LEGISLATIVE BRANCH
SUBTITLE B. LEGISLATION
CHAPTER 311. CODE CONSTRUCTION ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

...

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a

different definition:

...
(2) "**Person**" **includes** corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

5.2.3 The grouping created by the term "Person" is illustrative of the things to be encompassed by the term. The courts have ruled consistently that the terms "includes" and "including" are *illustrative* of what is listed following the term, but the terms so illustrated are the **ONLY** things to which the definition will apply. The legal term for this limitation is ***inclusio unius, exclusio alterius*** (Latin: the inclusion of one is the exclusion of all others).

5.2.4 Dr. Frederick Graves, the author of Jurisdictionary, could not have said it more clearly than he did in his material:

"The paramount rule for interpreting statutes is that the words used by the legislature should be given their "plain meaning". Courts should not play games with the legislature's words. If a reasonable person would read the word "bicycle" to mean a two-wheeled engine-less vehicle powered only by legs and feet, then courts should not interpret that word to include motorcycles. The law should say what it means and mean nothing more. Words should be given a plain meaning, according to the plain meaning rule.

But, what if the meaning is not plain?

By the rule of ejusdem generis (Latin: "of the same type"), courts should interpret general terms at the end of specific lists as including only things of the same type as those specifically mentioned in the list. For example, if a statute lists "oranges, grapefruit, lemons, and other fruit", the doctrine of ejusdem generis limits the phrase "other fruit" to mean other citrus fruit. Apples and pears are not included. The courts are allowed to assume the legislature intended by "other fruit" to include all the many types of citrus, kumquats, tangelos, limes, etc. When the legislature lists items of similar kind and adds "and other", the doctrine of ejusdem generis limits the word "other" to include only items of the same type.

Simple enough?

Another rule of statutory interpretation is *inclusio unius, exclusio alterius* (Latin: include one, exclude others). If a statute specifically refers to lemons (and does not mention limes or grapefruit or "other fruit"), courts should obey this rule and not expand the legislative intent to include limes and grapefruit. It is not the domain of our courts to expand what the legislature says beyond what the legislature specifically says!"

5.3 Why the Term "Individual" Does Not Mean "One of the People"

5.3.1 How are any of the legal entities listed in Government Code Section 311.005(2) above illustrative of a "natural man", which the statutes often attempt to misleadingly refer to as a "natural person"? The short answer is, they aren't. They are illustrative only of various and specific types of

legal entities and nothing more. The use of the term “includes” here in Chapter 311 Government Code clearly shows that the source pool/grouping for the application of the term “individual”, “corporation”, “association”, etc. can only come from one of the legal entities described here. Stated more directly, an “individual” must be associated in some direct manner or capacity with one of these types of legal entities, such as being an officer, agent, or employee for example, just as a particular “corporation” must be associated with one of the legal entities enumerated here. Since the law ALWAYS refers to a “natural person” in the definition of any term where they are attempting to insinuate its application to the individual People in general, and “natural person” does not appear in this list, then this is the only plausible interpretation of the term “Person” defined anywhere else in the codes that uses the term “individual” rather than the term “natural person” or “human being”.

5.3.2 This argument is shown to be even more solid if you consider that in many of the statutes where this term is used in this fashion, that if that statute *were* applied to the People in general, there would be no doubt that the application would be unconstitutional on its face.

5.3.3 It should be noted however that the term “natural person” is never defined in any Texas code except one:

TAX CODE
TITLE 2. STATE TAXATION
SUBTITLE F. FRANCHISE TAX
CHAPTER 171. FRANCHISE TAX
SUBCHAPTER A. DEFINITIONS; TAX IMPOSED

Sec. 171.0001. GENERAL DEFINITIONS. In this chapter:

..
(11-a) **"Natural person"** means **a human being** or the estate of **a human being**. **The term does not include a purely legal entity given recognition as the possessor of rights, privileges, or responsibilities, such as a corporation, limited liability company, partnership, or trust.**

5.3.4 Now it strikes me as rather odd that the term “natural person” is defined only once within the multitude of Texas codes and that one singular definition is constructed in that precise instance to specifically exclude anything other than a living, breathing “human being”. The implication of this is that in every other instance of use the term “natural person” presumably DOES encompass at least some form of legal entity and NOT necessarily real human beings.

5.3.5 It would also be a good time to remind you that in all cases the respective constitutions set the limits on what government can and cannot do. Simply writing a statute with terminology that attempts to imply an application and authority beyond that granted by the People does not automatically grant that authority. If a statute is being interpreted or enforced in any manner that is contrary to the rights secured to the People or in excess of the delegated powers, then that statute, its interpretation, and its enforcement are unlawful, illegal, and void upon their face. So crank up the criminal charges printing press against any public official that attempts to deny your rights in favor of any such statute.

5.3.6 To prove the reasonableness of this assessment we can search throughout the various codes themselves. In the section below you will also notice that unless the local code or statute states that Government Code Chapter 311 specifically DOES NOT apply, then it DOES apply and the general definitions established therein control unless otherwise rejected locally in the statute. We will

also see how this is done momentarily, for now let's see how it looks when it DOES apply. This fact is consistent throughout the individual codes:

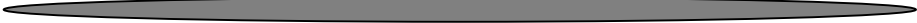
ALCOHOLIC BEVERAGE CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.02. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1977, 65th Leg., p. 393, ch. 194, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 67, eff. Sept. 1, 1985.

Sec. 1.04. DEFINITIONS. In this code:

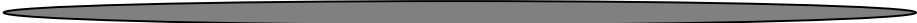
...
(6) "**Person**" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.



BUSINESS AND COMMERCE CODE
TITLE 2. COMPETITION AND TRADE PRACTICES
CHAPTER 15. MONOPOLIES, TRUSTS AND CONSPIRACIES IN RESTRAINT OF TRADE
SUBCHAPTER A. GENERAL PROVISIONS AND PROHIBITED RESTRAINTS

Sec. 15.03. DEFINITIONS. Except as otherwise provided in Subsection (a) of Section 15.10 of this Act, for purposes of this Act:

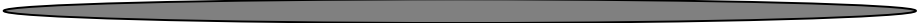
...
(3) The term "**person**" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, but does not include the State of Texas, its departments, and its administrative agencies or a community center operating under Subchapter A, Chapter 534, Health and Safety Code.



BUSINESS ORGANIZATIONS CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS AND OTHER GENERAL PROVISIONS
SUBCHAPTER A. DEFINITIONS AND PURPOSE

Sec. 1.002. DEFINITIONS. In this code:

...
(38) "**Individual**" means a natural person.



CIVIL PRACTICE AND REMEDIES CODE
TITLE 2. TRIAL, JUDGMENT, AND APPEAL
SUBTITLE B. TRIAL MATTERS
CHAPTER 15. VENUE
SUBCHAPTER A. DEFINITIONS; GENERAL RULES

...

Sec. 15.002. VENUE: GENERAL RULE.

(a) Except as otherwise provided by this subchapter or Subchapter B or C, all lawsuits shall be brought:

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) in the county of defendant's residence at the time the cause of action accrued **if defendant is a natural person**;

(3) in the county of the defendant's principal office in this state, **if the defendant is not a natural person**; or

(4) if Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

OCCUPATIONS CODE
TITLE 14. REGULATION OF MOTOR VEHICLES AND TRANSPORTATION
SUBTITLE A. REGULATIONS RELATED TO MOTOR VEHICLES
CHAPTER 2301. SALE OR LEASE OF MOTOR VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2301.002. DEFINITIONS. In this chapter:

...

(27) "**Person**" means **a natural person**, partnership, corporation, association, trust, estate, or any other legal entity.

5.3.7 Out of curiosity I wanted to know what else the term "human being" was being associated with in the codes. By doing a search for the term I came across something interesting. The Texas Penal Code contains a definition of the term "individual" for use globally within the penal statutes (the scope is 'in this code'), it defines the term individual" thusly:

PENAL CODE
TITLE 1. INTRODUCTORY PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.07. DEFINITIONS. (a) **In this code:**

...

(26) "**Individual**" means **a human being** who is alive, including an unborn child at every stage of gestation from fertilization until birth.

PENAL CODE
TITLE 5. OFFENSES AGAINST THE PERSON
CHAPTER 20. KIDNAPPING AND UNLAWFUL RESTRAINT

Sec. 20.01. DEFINITIONS. In this chapter:

...
(5) Notwithstanding Section 1.07, "individual" means a human being who has been born and is alive.

5.3.8 Okay, now we have the introduction of the term "individual" in relation to a "human being" so being the curious types that we are lets see what the various codes say about that. If the statute intends for the term "individual" to mean a "natural person / human being" then it usually specifically states this intention:

BUSINESS ORGANIZATIONS CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS AND OTHER GENERAL PROVISIONS
SUBCHAPTER A. DEFINITIONS AND PURPOSE

Sec. 1.002. DEFINITIONS. In this code:

...
(38) " **Individual**" means a natural person.

5.3.9 If the statute fails to make this distinction then the term is being used to illustrate nothing more than a singular instance of something, singular instance meaning one (1), not a designation of a type of something, type meaning a man/woman.

5.3.10 I can see the wheels turning in your thoughts to produce the question "So what about the specific statutes where the term is not defined, doesn't that mean it applies to everybody?" Short answer is, absolutely NOT! Remember, there is a constitutional limit on what the People have authorized government to do, and to regulate the rights of the People is something that is outside those limits, it always has been. We need to get out of the mindset that we are required to seek permission from government before we can do something, that "requirement" is utter fallacy, there is a reason that they are called public *servants* and not lord and master.

5.3.11 A perfect example of what I have been referring to in how the term "individual" is used in the definition of "person" can be found below. Also pay attention to the definition of "Highway":

TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE Z. MISCELLANEOUS ROADWAY PROVISIONS
CHAPTER 472. MISCELLANEOUS PROVISIONS
SUBCHAPTER C. CRIMINAL OFFENSES AND PENALTIES REGARDING WARNING SIGNS AND BARRICADES

Sec. 472.021. TAMPERING WITH WARNING DEVICES.

(a) A person commits an offense if the person tampers with, damages, or removes a barricade, flare pot, sign, flasher signal, or other device

warning of construction, repair, or detour on or adjacent to a highway set out by the state, a political subdivision, a contractor, or a public utility.

(b) This section does not apply to a person acting within the scope and duty of employment if the **person** is:

- (1) an officer, agent, independent contractor, employee, or trustee of the state or a political subdivision;
- (2) a contractor; or
- (3) a public utility.

(c) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$25 or more than \$1,000;
- (2) confinement in a county jail for a term not to exceed two years; or
- (3) both the fine and the confinement.

(d) In this section: (NOTE SCOPE is this section only)**

(1) **"Contractor"** means a person engaged in highway construction or repair under contract with this state or a political subdivision of this state.

(2) **"Highway"** means the entire width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular travel or any part of which is under construction or repair and intended for public vehicular travel on completion. The term includes the space above or below the highway surface.

(3) **"Person"** means an individual, firm, association, or corporation and includes an officer, agent, independent contractor, employee, or trustee of that individual or entity.

5.4 A God-Breathed Natural Born Man or Woman Is Not A “Legal Entity”

5.4.1 We the People were not created by the laws of men, nor did the laws of men precede the People. The very existence of government in any form is only by the design and consent of the governed, unless they are slaves, and I for one am not and have no intention to ever be. Being created of God and not of men then We the People cannot be a “legal entity”, it is a contradiction of nature and of law.

5.4.2 The servant government is not in charge of the People, it exists solely for the purpose of serving them, not controlling them. Government may not exercise an arbitrary power to take from one member of the public under the guise of giving to another, which is the only manner in which such an act can be achieved.

5.4.3 The power to regulate or tax is the power to control and/or destroy, and that is most certainly a power the People never delegated to government.

Chapter 6 - The Driver's License, What's In Your Wallet?

An old man was on his death bed. He wanted badly to take some of his money with him. He called his priest, his doctor and his lawyer to his bedside. "Here's \$30,000 cash to be held by each of you. I trust you to put this in my coffin when I die so I can take all my money with me." At the funeral, each man put an envelope in the coffin. Riding away in a limousine, the priest suddenly broke into tears and confessed, "I had only put \$20,000 into the envelope because I needed \$10,000 for a new baptistery." "Well, since we're confiding in each other," said the doctor, "I only put \$10,000 in the envelope because we needed a new machine at the hospital which cost \$20,000." The lawyer was aghast. "I'm ashamed of both of you," he exclaimed. "I want it known that when I put my envelope in that coffin, it held my personal check for the full \$30,000."

6.1 The Tale of Two Licenses, Neither of Which You Need

6.1.1 What is a "Driver's License"?

6.1.1.1 What is a driver's license? Who issues a driver's license? Who has to obtain a driver's license? What are the requirements to obtain a driver's license? These are all questions that have been asked by many people for the last several decades. The issue regarding the "driver's license" that we are about to discuss has nothing to do with the *correct* answers to these questions however. Instead we are going to be dealing with the lies and falsehoods that are used in place of the correct answers to these questions.

6.1.1.2 Every root issue surrounding THE STATE's attempt to destroy the right of the People to travel upon their own roads and highways can be traced back to one single solitary issue, the "driver's license". All of the other issues such as insurance, registration, inspection, seatbelts and many others only apply to those that are subject to the TEXAS TRANSPORTATION CODE (TTrC) statutes and the licensing requirements therein pursuant to chapters 521 and 522. The key to understanding whether or not you are subject to the TTrC is knowing whether or not you are actively engaging in commercial activity that uses the streets, roads or highways (roadways) as a place of business. From the Truckers to the local Taxi driver there is the commercial connection. Inversely, a "Soccer Mom", Handyman, or even a **private** chauffeur are not using the vehicle and roadways as a place of business for commercial gain and therefore have absolutely no requirement to be licensed by anybody. Only those that are being paid to drive for the commercial benefit of a legal entity or are actually using the roads for their own commercial business or enterprise are required to obtain a license and the other related requirements that are part-and-parcel with it. And when I say commercial benefit I mean a public business, not private employment with a natural man. Remember, We the People did not grant any authority or consent to the legislature to regulate the travel, and therefore the liberty, of the People (us, you and me), no matter what manner of conveyance we choose to use to travel and exercise our liberty.

6.1.1.3 You think I'm crazy, right? I can see the little gears turning in your mind, you're thinking "That would mean that my ten year old could drive my car!" Well, I'm not crazy, despite popular opinion to the contrary. And if you are so foolish as to allow your ten year-old behind the wheel of your car then the question of sanity should not be aimed at me. YOU, not me, not the government, YOU, are responsible for your own choices and decisions. How you raise your kids and make the determination that they are responsible enough to use the family car is not up for group discussion or vote. Unless and until that child or anyone else acts irresponsibly then the matter is moot. No one, especially some long-distance legislator, can know your personal circumstances or prevent or undo an unforeseeable thing, which is why as a responsible adult it is entirely your responsibility to foresee as best as possible all of the possible outcomes of your choices and decisions for yourself, your

children, and your family in general. The right of the People to be self-sufficient and to act responsibly, and this goes for all of us, is not something that falls under the “police power” of the STATE to enforce or regulate. This is not a question about what age someone is able to handle the responsibility of controlling mechanized or motorized machinery. Hell, most rural folks allow their kids to drive the farm tractor or their old pickup all over the pastures and fields without a second thought. But that does not mean that you would automatically turn that same child loose on a public roadway where they do not have the proper training and sense of responsibility to act or behave as necessary. That however, is an entirely different matter and set of responsibilities, child rearing is not the subject of this material. Suffice it to say that any private adult Citizen, or young adult of a parentally determined responsible age and mentality, with the proper training and knowhow to travel safely and in consideration of others, has the right to liberty and consequently the right of travel without any STATE involvement in the matter. You can argue the what-ifs and semantics till the cows come home, but government cannot make the determination of what the rights of the People are; only We the People can and should make that determination for ourselves. Global history shows all too well the result of allowing the rights of the many to be determined by a select few, and that result has *never* been proven good for the many in all of human history. Now that the great sanity debate and responsible child rearing diatribe is completed we can move on.

6.1.1.4 First things first, what is a license? What purpose and/or necessity is there for a printed or engraved piece of paper, plastic, stone, metal, carbon fiber, or any combination thereof that portends to grant you or I some permission to do something? Let's find out:

Bouvier's Law Dictionary (1856)

LICENSE, *contracts*.

1. A right given by some competent authority to do an act, which without such authority would be illegal. The instrument or writing which secures this right, is also called a license. Vide Ayl. Parerg, 353; 15 Vin. Ab. 92; Ang. Wat. Co. 61, 85.

2. A license is express or implied. An express license is one which in direct terms authorizes the performance of a certain act; as a license to keep a tavern given by public authority.

3. An implied license is one which though not expressly given, may be presumed from the acts of the party having a right to give it. The following are examples of such licenses:

1. When a man knocks at another's door, and it is opened, the act of opening the door licenses the former to enter the house for any lawful purpose. See Hob. 62. A servant is, in consequence of his employment, licensed to admit to the house, those who come on his master's business, but only such persons. Selw. N. P. 999; Cro. Eliz. 246. It may, however, be inferred from circumstances that the servant has authority to invite whom he pleases to the house, for lawful purposes. See 2 Greenl. Ev. Sec. 427; Entry.

4. A license is either a bare authority, without interest, or it is coupled with an interest. 1. A bare license must be executed by the party to whom it is given in person, and cannot be made over or assigned by him to another; and, being without consideration, may be revoked at pleasure, as long as it remains executory; 39 Hen. VI. M. 12, page 7; but when carried into effect, either partially or altogether, it can only be rescinded, if in its nature it will admit of revocation, by placing the other side in the same situation in which he stood before he entered on its execution. 8 East, R. 308; Palm. 71; S. C. Poph. 151; S. C. 2 Roll. Rep. 143, 152.

5.-2. When the license is coupled with an interest the authority conferred is not properly a mere permission, but amounts to a grant, which cannot be revoked, and it may then be

assigned to a third person. 5 Hen. V., M. 1, page 1; 2 Mod. 317; 7 Bing. 693; 8 East, 309; 5 B. & C. 221; 7 D. & R. 783; Crabb on R. P. Sec. 521 to 525; 14 S. & R 267; 4 S. & R. 241; 2 Eq. Cas. Ab. 522. When the license is coupled with an interest, the formalities essential to confer such interest should be observed. Say. R. 3; 6 East, R. 602; 8 East, R. 310, note. See 14 S. & R. 267; 4 S. & R. 241; 2 Eq. Cas. Ab. 522; 11 Ad. & El. 34, 39; S. C. 39 Eng, C. L. R. 19.

LICENSE, *International law*.

1. An authority given by one of two belligerent parties, to the citizens or subjects of the other, to carry on a specified trade.

2. The effects of the license are to suspend or relax the rules of war to the extent of the authority given. It is the assumption of a state of peace to the extent of the license. In the country which grants them, licenses to carry on a pacific commerce are stricti juris, as being exceptions to the general rule; though they are not to be construed with pedantic accuracy, nor will every small deviation be held to vitiate the fair effect of them. 4 Rob. Rep. 8; Chitty, Law of Nat. 1 to 5, and 260; 1 Kent, Com. 164, 85.

LICENSE, *pleading*.

The name of a plea of justification to an action of trespass. A license must be specially pleaded, and cannot, like liberum tenementum, be given in evidence under the general issue. 2. T. R. 166, 108

LICENSEE.

One to whom a license has been given. 1 M. Q. & S. 699 n.

Black's Law Dictionary, 6th Edition:

License

A personal privilege to do some particular act or series of acts on land without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable.

Lehman v. Williamson, 35 Colo.App. 372, 533 P.2d 63, 65

Black's Law Dictionary 6th Edition Pg. 919-920

Streets and Highways. A permit to use street is a mere license revocable at pleasure. *Lanham v. Forney*, 196 Wash. 62, 81 P.2d 777, 779. The privilege of using the streets and highways by the operation thereon of motor carriers for hire can be acquired only by permission or license from the state or its political subdivisions.

Black's Law Dictionary 6th Edition Pg. 920

6.1.1.5 What about case law, do the courts have anything to say about a license?

The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowable.

People v. Henderson, 391 Mich. 612, 218 N.W.2d 2, 4

Leave to do thing which licensor could prevent.

Western Electric Co. v. Pacent Reproducer Corporation C.C.A.N.Y., 42 F.2d 116, 118

Permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation.

Blatz Brewing Co. v. Collins, 88 Cal.App.2d 639, 160 P.2d 37, 39, 40

6.1.1.6 We also need to be aware of some other terminology related to the subject of licenses. Since a license is virtually always bestowed only after the paying of a required fee or tax associated with obtaining the license, we need to know what that fee or tax means and how it applies. Let's again turn to that printed bastion of amorphous definitional integrity, Black's Law Dictionary:

Black's Law Dictionary, 6th Edition:

License fee or tax

1. Charge imposed by governmental body for the granting of a privilege.

Pennsylvania Liquor Control Board v. Publicker Commercial Alcohol Co., 347 Pa. 555, 32 A.2d 914, 917

2. Charge or fee imposed primarily for the discouragement of dangerous employments, the protection of the safety of the public, or the regulation of relative rights, privileges or duties as between individuals.

Conrad v. State, DelSuper., 2 Terry 107, 16 A.2d 121, 125.

3. Price paid to governmental or municipal authority for a license to engage in and pursue a

particular calling or occupation. Tax on privilege of exercising corporate franchise.
City Investments v. Johnson, 6 Cal.2d 150, 56 P.2d 939, 940.

4. The term "license tax" includes both charge imposed under police power for privilege of obtaining license to conduct particular business, and tax imposed upon business for sole purpose of raising revenue; "license tax" being defined as sum exacted for privilege of carrying on particular occupation.
5. Price paid to governmental or municipal authority for a license to engage in and pursue a particular calling or occupation. Tax on privilege of exercising corporate franchise.

City Investments v. Johnson, 6 Cal.2d 150, 56 P.2d 939, 940

6. The term "license tax" includes both charge imposed under police power for privilege of obtaining license to conduct particular business, and tax imposed upon business for sole purpose of raising revenue; "license tax" being defined as sum exacted for privilege of carrying on particular occupation. Where a fee is exacted and something is required or permitted in addition to the payment of the sum, either to be done by the licensee, or by some regulation or restriction imposed on him, then the fee is a "license fee".

Conrad v. State, DelSuper., 2 Terry 107, 16 A.2d 121, 125.

7. A license fee is charge made primarily for regulation, with the fee to cover cost and expenses of supervision or regulation.

State v. Jackman, 60 Wis.2d 700, 211 N.W.2d 480, 487.

8. See also Franchise tax.

6.1.1.7 Black's has all of these items running together in a single block definition. I took the liberty of breaking them into separate items to make them easier to read and study.

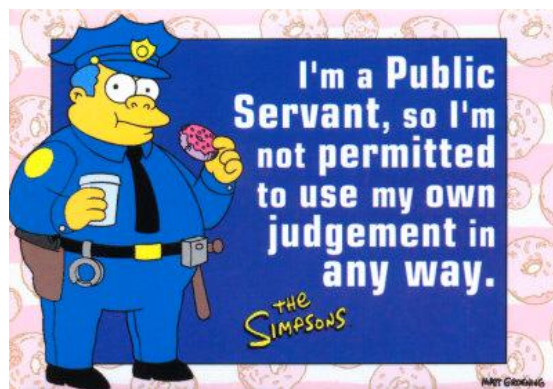
6.1.1.8 So what do these definitions tell us about a license? In every definition given it is either explicitly or implicitly implied that a license is the seeking of permission or authority to perform some act or conduct some business that would be illegal without the license, and that acceptance of the license usually involves payment of some sort of fee or tax. Also, a license virtually *always* carries the additional requirement of adherence to specified rules and/or regulations associated with the use of the license. If this were not true then there would be no need for a license at all as there would be nothing altered by the issuing of the license or the performing of the act without the license, duh!!

6.1.1.9 In order for any of these definitions to apply in a driver's license case, the state has to assume and argue the legal position that the exercise of a Constitutional Right, the People's right to liberty and the free use of their own roads and highways in the ordinary course of life and business, without obtaining a license (STATE permission) **is illegal** and constitutes a trespass against the STATE. The STATE also has to argue that the People's private use of the roadways for traveling is somehow a **commercial use** that falls under the commercial statutes of the TTrC and therefore under the police powers. In short the STATE wants us to accept the position that the People's right to liberty and use of the People's own property is one which the STATE can tax, license, regulate, or prevent altogether for **commercial purposes**. This argument is not only ludicrous on its face it is patently unconstitutional in every sense of the word. The property referred to here is not only the automobile, but also the roads and highways. We the People paid for them and they belong to us. The STATE is nothing more than the appointed caretaker of that property, it is not the owner. The STATE is to maintain them for **our** use and benefit, not its own, and most especially not for the purpose of commercial gain for private business interests or the STATE itself.

6.1.1.10 Let us also not forget the case law cited early on in this material which clearly demonstrates that the right to travel and the use the roads and highways for that purpose is a fundamental and unalienable right of the People, and is therefore removed from the police powers and legislative acts of government regardless of level or location.

6.1.1.11 As we saw earlier in this material, the higher courts in virtually every state and the United States Supreme Court have all historically and repeatedly held that the People's right to liberty and the use of the roads and highways IS a constitutional issue and a protected right. These same courts have also ruled that the use of an automobile or other method of mechanized/motorized conveyance for that purpose is not something the STATE or any of its political subdivisions could abrogate or derogate. Only the most narrow of mind and vision, paired with a self-important elitist complex and all powered by a pea-sized intellect, straight regulated like that of a politician, could argue with a face that a man's liberty can be restricted and by a third-party against his will while simultaneously stating "...but you're still free to go where it how you do it." you want and when you want, you just can't do want or use property that you rightfully own to

6.1.1.12 By usurping an authority that the never granted, THE STATE allows and unlawful acts by local law enforcement and the courts that are in complete violation of the very intent, and purpose of the Bill of Rights within respective constitutions. Our local law enforcement agencies and the lower courts are committing **treason and other high crimes and misdemeanors**. This is especially true since the language of the statutes they portray as their authority to commit these heinous crimes actually contradicts their enforcement methods and wrongful application of those statutes.



6.1.1.13 The almost total extinction of the People's unrestricted liberty is exactly what THE STATE OF TEXAS, through its various agents, officers, and judges, has achieved for all intents and purposes. And this usurpation of power and authority has been done through the decades long, slow-to-encroach, long-term and intentional misapplication of commercial statutes against the general public, which is totally unlawful and unconstitutional. These activities and applications under a law that has NEVER applied to the People in general raises Constitutional questions and controversies of the greatest magnitude as it is diametrically opposed to fundamental Constitutional concepts and findings at law. Now I am not arguing that the statutes themselves are unconstitutional, I AM arguing however that the application and enforcement of commercial statutes against the private property and Citizens who are not actively engaged in commerce upon the roads and highways IS unconstitutional.

6.1.1.14 Based upon years of research of the statues of Texas it would seem that the proper definition of a "driver's license" can only be:

"a permit, granted by an appropriate governmental body, generally for consideration, to a person, firm, or corporation, to pursue some occupation or to carry on some business which is subject to regulation under the police power."

Rosenblatt vs. California State Board of Pharmacy, 158 P.2d 199, 203

6.1.1.15 This definition would fall more in line with the "privilege" of engaging in a business enterprise that makes use of the streets, roads and highways of Texas.

6.1.1.16 Most people tend to think that "*licensing*" is imposed by the state simply for the relatively benign purpose of raising revenue, yet there may well be more diabolical reasons contemplated; for when one seeks license (permission) from someone to do something the seeker (licensee) invokes the jurisdiction and control of the grantor (licensor) which, in this case, is THE STATE. In essence, the licensee may well be seeking to be regulated by the licensor, but even if they are not the end result of this jurisdiction and regulation is control. The licensor has all of it, the licensee has none.

"A license fee is a charge made primarily for regulation, with the fee to cover costs and expenses of supervision or regulation."

State vs. Jackson, 60 Wisc.2d 700; 211 NW.2d 480, 487

6.1.1.17 As I have already stated, we the People in our private capacity already have an unalienable Right to do the act (travel on the highways in our automobiles) but the STATE through its various agents and agencies accuses the People of doing something that it has termed a "crime" if We the People did not seek, what is in THE STATE mindset, proper permission or authority from THE STATE to travel on the roadways. The utter failure of public servants employed by THE STATE to understand the limitations of both their constitutional and lawful authority regarding the People is the root cause of most of the problems that we as Texans and as Americans are facing today. The People have become far too complacent with the intrusions of our servants into areas of our lives and households that we never authorized. It is a simple fact that most public officials will not take the time, perform the research, verify the information, and actively engage the gears on their 5cc brain to see if they are doing their jobs correctly. Everyone is being led around by someone that is either higher up the food chain or has been around longer and for that reason alone is considered the "expert" on how it is done and applies. Having spent many years in the military and working as a consultant in Washington D.C. and numerous counties across the country, I can assure you that this IS the process and mentality prevalent in public service positions, "I'm here, where's my paycheck, I'm going home".

6.1.2 Who Needs A "Driver's License"?

6.1.2.1 Now we come to the "who" part of the license requirement. Obviously there must be someone for the statute to be applied to, so who is it? Does section 521 tell us who has to have one, and if so, where does it tell us? The answer is not hard to find, let's look at Texas Transportation Code Sec. 521.021 where we see:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER B. GENERAL LICENSE REQUIREMENTS

Sec. 521.021. LICENSE REQUIRED. A person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver's license issued under this chapter.

[View Sec. 521.001 online...](#)

6.1.2.2 Okay, we can see that once again the statute makes it clear that it is a “**person**” who must acquire the license “...issued under this chapter”, and **the only “driver’s license” issued under chapter 521 is one of these three forms relating to some type of “license” – “temporary license”, “instruction permit” and “occupational license”.**

6.1.2.3 We can also see that the term “Person” is not defined in Chapter 521, so we turn to the definition put in place by Government Code Chapter 311.005(2).

(2) “**Person**” includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

6.1.2.4 If necessary you can refer back to Chapter 5 of this material for the discussion of the term “Person” and the statutes related to the subject.

6.1.3 Who Can Issue A “Driver’s License”?

6.1.3.1 The preliminaries for the code that we need to know about in this section are found in Chapter 1, Section 1, and they are:

TRANSPORTATION CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE.

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 1.004. DEFINITION. In this code, "Department of Public Safety" means the Department of Public Safety of the State of Texas.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

6.1.3.2 The "Department" meaning the "Department of Public Safety", meaning the "Department of Public Safety of the State of Texas", is the issuing authority for driver's licenses:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.001. DEFINITIONS.

(a) In this chapter:

(1) **"Department"** means the **Department of Public Safety**.

(2) **"Director"** means the public safety director.

(3) **"Driver's license"** means an authorization issued by the department for the operation of a motor vehicle. The term includes:

(A) a **temporary license** or **instruction permit**; and

(B) an **occupational license**.

6.1.3.3 Notice also that the revisions being made to the code each time it is rewritten in this manner state that they are being done "...without substantive change" and thus without affecting the application or intent of the underlying law. This is statutory code-speak for "*Watch the pea while we move the three shells, are you watching, huh, are you?*"

6.1.3.4 This means that no matter how the statutes now *appear* to read, they do not change their real applicability or legislative intent even one little bit, it is a shell game. The legislators did not actually pass new law they simply amended the language of the old law but otherwise *did nothing* to it.

6.1.3.5 It would also appear that only a judge can grant and issue a court order for an "occupational license", which is then actually issued by the "department" pursuant to Sec. 521.242:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS

CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER L. OCCUPATIONAL LICENSE

Sec. 521.242. PETITION.

(a) A person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction under Section 49.04, Penal Code, may apply for an occupational license by filing a verified petition with the clerk of the county court or district court with jurisdiction in the county in which:

- (1) the person resides; or
- (2) the offense occurred for which the license was suspended.

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:

- (1) the person's license has been automatically suspended or canceled under this chapter for a conviction of an offense under the laws of this state; and
- (2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(c) A petition filed under this section must set forth in detail the person's essential need.

(d) A petition filed under Subsection (b) must state that the petitioner was convicted in that court for an offense under the laws of this state.

(e) The clerk of the court shall file the petition as in any other civil matter.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.83(a), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1289, Sec. 1, 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 941, Sec. 1, eff. Sept. 1, 2001.

6.1.3.6 Notice also however that a judge may NOT issue an occupational license to someone that has lost their license due to:

- a mental disability or impairment; or
- that is convicted of an offense pursuant to Penal Code 49.04 DRIVING WHILE INTOXICATED; and
- the court may not grant an occupational license for the operation of a "commercial motor vehicle" to which chapter 522 applies.

6.1.3.7 Did you pick up on that? The judge may NOT issue a license that allows the “person” to **resume** engaging in the occupation of operating a commercial motor vehicle. No license to operate in commerce... interesting huh?

6.1.4 What Kind of License(s) Is the “Department” Authorized To Issue?

6.1.4.1 Under Chapter 521.001(3) as shown above the “driver’s license” that may be issued under that chapter is one of the following:

6.1.4.1.1 Temporary License.

6.1.4.1.2 Instruction permit.

6.1.4.1.3 Occupational License

6.1.4.2 There is no other “type” of license or licensing authority granted to the “department” or defined in the term “driver’s license” under chapter 521.

6.1.4.3 Under Chapter 522 there is but one license authorized, the “Commercial Driver’s License”. There is nothing that deals with either a “temporary license” or “instruction permit”. In fact, neither of these terms appears AT ALL in chapter 522. But we DO seem to have a terminology change. Even though the term “instruction permit” does not appear in chapter 522, we now have the term “commercial driver learner’s permit”. Again, interesting huh?

6.1.4.3.1 So the “department” can issue either a “Commercial Driver’s License”; or

6.1.4.3.2 A “Commercial Driver Learner’s Permit”

6.1.4.4 Occupational license is granted by a judge and then issued by the “Department” under directive of the court order.

6.1.4.5 Different stage or disposition of the same license, the commercial driver’s license.

6.1.5 The Occupational License, don’t “Drive” Without It.

6.1.5.1 Okay, we know what a license is, at least generally. The time has come to see what a “driver’s license” is specifically. We can find out easily enough as the term is very clearly defined in TTrC Chapter 521.

6.1.5.2 Okay, we will make a quick detour to address the other two license types contained in the definition of “driver’s license”. There does not appear to be a definition for either the term **“temporary license”** or **“instruction permit”** in any Texas code. Since the codes or statutes themselves do not define the terms, nor are they defined in the Chapter 311 General Definitions

section of the Government Code and, the terms are not found within Black's Law Dictionary 6th Edition either, we are left with little choice but to go with the actual "everyday usage" option and see what we find... nothing! Normal dictionaries do not normally define actual phrases, they only define the individual words, so we need to break the terms down even further if we are to determine what they should mean since we have no actual statutory definition on which to rely or base another definition. Fortunately this will not be necessary, while the code does not provide an actual definition of the terms it does provide a section for each that describes the subject terms specific purpose and use.

6.1.5.3 Each subject term is explained within the Transportation Code. First lets take a look at the "temporary license":

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER F. APPEARANCE OF DRIVER'S LICENSE

Sec. 521.124. TEMPORARY LICENSE; ISSUED WITHOUT PHOTOGRAPH.

(a) The department may issue a temporary license without a photograph of the license holder:

(1) to an applicant who is out of state or a member of the armed forces of the United States; or

(2) if the department otherwise determines that a temporary license is necessary.

(b) A temporary license is valid only until the applicant has time to appear and be photographed and a license with a photograph is issued.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

6.1.5.4 Okay, it certainly appears that the "temporary license" is still considered a "driver's license" in form and function, it just does not include the license holder's picture. It appears that this particular version of the license is also issued only to "an applicant who is out of state" or "a member of the armed services of the United States", or if the "department" makes a "determination" that a temporary license is necessary for some apparently arbitrary reason. It also states that the "temporary license" is only valid until the "applicant" appears and gets photographed at which time the "real" license with a photograph is issued.

6.1.5.5 IQE Rule – do the terms "applicant" and "license holder" as used in Sec. 521.124, mean the same thing as "person" as that term is used in Sec. 521.021? And remember, the term "person" is not defined in Chapter 521, so we must rely on the term definition from Government Code Chapter 311.005(2) as to what "person" means.

6.1.5.6 Do I appear to be missing anything in that summation? If not then that leaves us with another set of telling facts and questions that need to be discussed and asked.

6.1.5.7 The first question to be raised is – "What type of license is the 'temporary license' being temporarily issued in place of?"

6.1.5.8 If the “temporary license” is to be replaced with a different type/classification of a permanent license once the picture is added, then what type/classification of permanent license does it then become?

6.1.5.9 Is it still a temporary license now that it has a picture on it? A reasonable and sound mind would not tend to think so... so what kind of license is it now since it is no longer “temporary”?

6.1.5.10 You can’t just say all over again that it is still a “driver’s license” because that would make the definition circular and of no value as under these conditions it would still be either a “temporary license”, or an “instruction permit”, or an “occupational license”. So, unless you want to argue the merits of it now being a “*permanent* temporary license”, which is NOT one of the types defined and addressed by Chapter 521, then we need to know specifically, what type of license is it now?

6.1.5.11 It can’t become an “occupational license” simply by adding the picture because that can only be issued by a judge under court order if you have already lost your “license” due to a DWI conviction or APR decision.

6.1.5.12 It is also cannot become the “instruction permit”, which we will cover next, because the “temporary license” does not have the restrictions that are associated with the “instruction permit”.

6.1.5.13 In its original form it cannot be the actual license because it is specifically defined as being valid only until the real one with a photograph can be issued, so we ask again, what type of license is it temporarily substituting for?

6.1.5.14 Now, let’s do a quick fact check on what the “instruction permit” is. We can find it referenced within Transportation Code Sec. 521.222:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER K. RESTRICTED LICENSES

Sec. 521.222. INSTRUCTION PERMIT.

(a) The **department or a driver education school** licensed under the **Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes)** may issue an instruction permit, including a Class A or Class B driver's license instruction permit, to a person who:

- (1) is 15 years of age or older but under 18 years of age;
- (2) has satisfactorily completed and passed the classroom phase of an approved driver education course, which may be a course approved under Section 521.205;
- (3) meets the requirements imposed under Section 521.204(3); and
- (4) has passed each examination required under Section 521.161 other than the driving test.

(b) The department may issue an instruction permit to a person 18 years

of age or older who has successfully passed all parts of the driver's examination required under Section 521.161 other than the driving test.

(c) A driver education school may issue an instruction permit to a person 18 years of age or older who has successfully passed:

(1) a six-hour adult classroom driver education course approved by the Texas Education Agency; and

(2) each part of the driver's examination required by Section 521.161 other than the driving test.

(d) An instruction permit entitles the holder to operate a type of motor vehicle on a highway while:

(1) the permit is in the holder's possession; and

(2) the holder is accompanied by a person occupying the seat by the operator who:

(A) holds a license that qualifies the operator to operate that type of vehicle;

(B) is 21 years of age or older; and

(C) has at least one year of driving experience.

(e) Except as provided by Subsection (f), an instruction permit is not required to include a photograph.

(f) The department may issue an instruction permit under this section to a person who is subject to the registration requirements under Chapter 62, Code of Criminal Procedure, and is otherwise eligible for the permit. An instruction permit issued under this subsection must include a photograph of the person.

(g) A person who occupies the seat in a vehicle by a holder of an instruction permit commits an offense if, while the holder is operating the vehicle, the person:

(1) sleeps;

(2) is intoxicated, as defined by Section 49.01, Penal Code; or

(3) is engaged in an activity that prevents the person from observing and responding to the actions of the operator.

(h) It is a defense to prosecution of a violation under Subsection (g) that at the time of the violation another person in addition to the defendant:

(1) occupied the seat by the operator;

(2) complied with the requirements of Subsections (d)(2)(A)-(C); and

(3) was not in violation of Subsection (g).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.80(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 546, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1251, Sec. 2, eff. Jan. 1, 2002.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 347, Sec. 1, eff. September 1, 2007.

6.1.5.15 The DPS even has an FAQ web site that talks specifically about the “instruction permit” and references back specifically to this section of the Transportation Code. Click on the link to view it: [DPS Driver's License FAQ on the web...](#)

6.1.5.16 The problem with Sec. 521.222 however is not immediately apparent, that is until you try to read “Article 4413(29c), Vernon's Texas Civil Statutes” which does not appear to exist anywhere in any of the Texas Codes, including Vernon's. It is referenced in several places in several codes, but the actual section itself is nowhere to be found, at least not in the publicly available locations like the Texas Government web site search engine or the downloadable codes themselves. And just for good measure and thoroughness, a search of the various codes for the act itself also turns up absolutely nothing except the references in individual sections, but no actual defining or enacting statute. So it appears that the DPS is issuing “instruction permits” based on an alleged authority in statute that does not appear to exist. And if no statute exists that defines and authorizes the act, then the DPS is not in compliance with the laws regulating their duties and activities and are in fact ***acting without lawful authority in their issuance of instruction permits under Transportation Code Chapter 521.***

6.1.5.17 Remember, if a statute does not exist establishing the rules and procedures for a branch, department, agency, office, officer, agent, or employee of government, at least in some general and directive form, then neither does the authority to perform that act or duty. So where is the legislative act that allegedly grants the authority to the DPS to issue “instruction permits”?

6.1.5.18 In the Resources\Videos folder of the accompanying CD you will find several videos put on youtube.com by attorneys advertising how they can help you get an “occupational license”. Pay close attention to exactly what these attorneys say an “occupational license” is and how it is obtained. You can also view these videos on youtube.com by clicking on the links below:

[Attorney Douglas W. Atkinson - Conroe, Texas](#)

[Offical Website...](#)

[Attorney Matt Horak - Houston, Texas](#)

[Official Website...](#)

[Attorney David E. Cook - Bedford, Texas](#)

[Official Website...](#)

6.1.5.19 Are you surprised? Personally I think you and all of your friends should get together and plan to separately call each these guys and ask them a whole bunch of questions about the “occupational license” and the statutes in particular just to hear them hem-n-haw and say that “...oh, you’re just not reading it correctly...” Well, if we are not reading it correctly, then just exactly what is the Department of Public Safety doing by stating that it is something that the statutes show that it clearly cannot be, a blanket “driver’s license” for the general public.

6.1.5.20 Think about it, how can you be cited by a police officer for specifically not having a license issued under Sec. 521.021, that according to these attorneys and the statutes, is only issued by a judge after a DWI conviction or APR (Administrative Procedures Ruling) takes it away from you, and you have never had either?

6.1.5.21 If the license that the general public is being allegedly required to have is an “occupational license”, or the temporary license or instruction permit allegedly becomes an “occupational license” license, then a serious due process issue is about to raise its very ugly head, therefore I recommend that we be certain of the facts. So let’s ask ourselves these questions:

1. If a judge is the only one who issues the order for an “occupational license” then why are people able to go to the Department of Public Safety (DPS) and apply for one without a court order?
2. And if the court order IS required, by what authority is the DPS issuing these types of licenses to virtually every applicant without presentment of any documentation from a judge?
3. If the DPS can issue the license without the court order then would this not clearly demonstrate that an “occupational license” is not simply a restricted use license issued only by a judge?
4. How can someone be lawfully or legally cited by a police officer for not having one of these licenses if they have never been convicted for DWI or had an unfavorable APR decision, and the revocation suit filed after the conviction or administrative ruling is the only way to get one?
5. Most importantly, since there are only two chapters in the Transportation Code dedicated to the DPS’ authority to issue a “driver’s license” (Chapters 521 and 522), and since Chapter 521 deals solely with the “temporary license”, “instruction permit”, and the “occupational license”, which is apparently issued only under order of a judge, then that would leave only Chapter 522 as the issuing authority, which is problematic since it is specifically limited to the “Commercial Driver’s License” and the “commercial driver learner’s permit”... so where is the authority to require a regular ‘ol Joe to have a license if he does not fall under either of these sections of law because he does not drive commercially?
6. Is THE STATE actually attempting to argue that the People have no access to the roads and highways unless they apply for and receive a commercial driver’s license?
7. Is THE STATE actually arguing that the People have to surrender their privacy by turning over all of their personal and private information to the DPS and that they are to be denied their right to travel and exercise their personal liberty unless they do so?
8. Anybody else see a problem with this argument?

6.1.5.22 This would seem to be quite a conundrum. So how do we confirm or deny either of these two possibilities? Simple, we read, we dissect, we analyze, and by doing so we make the truth reveal itself to us. We know from Sec. 521.241 that the “occupational license” IS a license that can be issued only by the order of a judge. This is a whole proverbial can of worms for the DPS if it has been

issuing everybody an “occupational license”, because then everybody that has ever obtained a “driver’s license” under these false presentments by the DPS and THE STATE have standing to go after the individual law enforcement officers who issue the citations, the judges that fail to apply the law properly, the Department of Public Safety for not properly supervising and educating them, **and** THE STATE for aiding and abetting the commission of extortion and fraud upon the public.

6.1.5.23 The local law enforcement writes a fraudulent citation and the judge forces you to pay it or go to jail (another fraudulent act). Let’s not forget that the court and the prosecution are both *aware* that the law is being misapplied, ***and they don’t care!*** The prosecution and the court pull every dirty trick that they can to prevent you from presenting the law to the jury and proving the law is being illegally applied to you. They both profit from this severe conflict of interest, the judge by the fines collected for the city/county and the prosecuting attorney by the bond generated by your conviction along with another tally on their win record.

6.1.5.24 Meanwhile, the DPS is issuing the license under false pretenses and charging every applicant a fee for each license while knowing full well that there is no judicial order accompanying the application, hence taking money under false pretenses resulting in fraud. But since they work in collusion with the local law enforcement and the courts to propagate this system of fraud they can also be charged with criminal conspiracy and organized criminal activity.

6.1.5.25 Together these acts constitute extortion, fraud, criminal conspiracy, and organized criminal activity. My concern has always been just how far up the ladder this apparent corruption of our rights and our system of justice goes, and apparently it is all the way to the top, which speaks volumes about how criminal our state agencies have become.

6.1.5.26 By lying to the people and selling them the proverbial Brooklyn Bridge in the form of the lie that “everybody has to have a license”, and then using threats and armed force to ensure compliance with the lie, these public servants are nothing more than criminals. I would bet solid gold coins that most of them are actually perfectly willing to engage in criminal activity as long as they believe that they will be protected in the act. Prove it to yourself; make one or more of them aware of the facts contained in this material, see if they even acknowledge it and modify their behavior or methods of application and enforcement accordingly. Sadly, I feel that you are almost certainly going to be disappointed. This mindset on the part of law enforcement is a textbook example of the P.T. Barnum adage “There’s a sucker born every minute.”

6.1.5.27 Section 521.001(a)(3) undeniably illustrates that the “Driver’s License” is a commercial use only license by defining it in statute as an “occupational license” and reads as follows:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.001. DEFINITIONS. (a) In this chapter:

...
(3) "Driver's license" means an authorization issued by the department for the operation of a motor vehicle. The term includes:

- (A) a ***temporary license or instruction permit; and***
- (B) an ***occupational license.***

...

[View Sec. 521.001 online...](#)

6.1.5.28 Okay, kick in the “IQE Rule” and let’s start our analysis. In this context the terms “temporary license” and “instruction permit” appear to only be related to the specifically named “occupational license”. Most people know these as the two early stage temporary or “interim” licenses that precede the actual “license”. Both allow you to do the same activity, operate a motor vehicle, but with slightly different limitations. The instruction (learner’s) permit allows you to operate a motor vehicle as long as another fully licensed motor vehicle operator is sitting in the front seat with you. The temporary license is issued after the written test is completed and passed and functions as the full equivalent of the actual “license” until you receive it via the United States Mail several weeks later. If you have ever applied for a license and gotten one then you are already familiar with this process.

6.1.5.29 But what if you never had to go through this process at all? You would have saved money, time, and you would not have to worry about traffic citations or being pulled over because the traffic laws in general do not apply to someone that is not required to have this license. So let’s see what the statutes read regarding the “who” of the licensing the scheme in question, Sec. 521.021 reads:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER B. GENERAL LICENSE REQUIREMENTS

Sec. 521.021. LICENSE REQUIRED. A person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver's license issued under this chapter.

[View Sec. 521.001 online...](#)

6.1.5.30 Okay, we can see that once again the statute makes it clear that it is a “person” who must acquire the license “...issued under this chapter”, and **the only “driver’s license” issued under chapter 521 is one of the three forms of the “occupational license”**.

6.1.5.31 The term “occupational license” does not appear to be actually defined within the TRANSPORTATION CODE. After making this determination I performed a search of the various codes and formulated this summary definition from the resulting statutory sections for the term, it means “... a license a person must obtain to practice or engage in a particular business, occupation, or profession...”. The only statutory sections in Texas that appear to define this specific term are GOVERNMENT CODE Sec. 2054.251(5)(A), HUMAN RESOURCES CODE Sec. 91.051(10), and OCCUPATIONS CODE Sec. 58.001(7), and the above formulated definition is relatively consistent throughout those sections:

Results 1 through 3 out of 3 matches.
Search phrase: "occupational license means"

- 1. [GOVERNMENT CODE CHAPTER 2054. INFORMATION RESOURCES](#)

- 2. [HUMAN RESOURCES CODE CHAPTER 91. TEXAS COMMISSION FOR THE BLIND](#)
- 3. [OCCUPATIONS CODE CHAPTER 58. USE OF GENETIC INFORMATION](#)

GOVERNMENT CODE
TITLE 10. GENERAL GOVERNMENT
SUBTITLE B. INFORMATION AND PLANNING
CHAPTER 2054. INFORMATION RESOURCES
SUBCHAPTER I. TEXASONLINE PROJECT

Sec. 2054.251. DEFINITIONS. In this subchapter:

...
(3) "**Licensing entity**" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that **issues an occupational license**.

...
(5) "**Occupational license**" means a license, certificate, registration, permit, or other form of authorization, including a renewal of the authorization, that:

(A) a person must obtain to practice or engage in a particular business, occupation, or profession; or

(B) a facility must obtain before a particular business, occupation, or profession is practiced or engaged in within the facility.

HUMAN RESOURCES CODE
TITLE 5. SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED
CHAPTER 91. TEXAS COMMISSION FOR THE BLIND
SUBCHAPTER D. VOCATIONAL REHABILITATION OF THE BLIND

Sec. 91.051. DEFINITIONS. In this subchapter:

..
(10) "**Occupational license**" means a license, permit, or other written authorization required by a governmental unit as a condition for engaging in an occupation.

OCCUPATIONS CODE
TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING
CHAPTER 58. USE OF GENETIC INFORMATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS. In this chapter:

(7) '**Occupational license**' means a license, certificate, registration, permit, or other form of authorization required by law or rule that must be obtained by an **individual** to engage in a particular business or occupation.

6.1.5.32 So it should be easy enough to see from these definitions that the "driver's license"

cannot be anything more than a variation on the name “Commercial Driver’s License” (“occupational license” get it...) which is specifically covered later and comes from TTrC Chapter 522.

6.1.5.33 Now you can look the officer straight in the eye and demand to know his alleged basis of probable cause, as well as his factual and/or evidentiary basis to accuse or assert that:

- a. You are/were actively engaged in an occupation, business, or profession that requires you to obtain and use such a license; or
- b. that you have been convicted of DUI/DWI resulting in the suspension of a commercial driver’s license (CDL) issued to you and in your possession for that purpose; and
 - 1) that due to such suspension you are/were ordered and are required to be in possession of an occupational license by a court of competent jurisdiction over you to enforce such an order.

6.1.5.34 Section 521.001 also contains several other criteria that are deserving of analysis in this case:

- a. the “department” that does the issuing of the license is none other than the “Department of Public Safety of the State of Texas” as defined in TTrC Sec. 1.004; and
- b. the “department” issues the authorization for the “operation” of a “motor vehicle”, the authorization in this instance apparently cannot be anything other than the commercial “occupational license”; and
- c. the authorization requirement (occupational license), by definition, is specifically limited to those engaged in certain business’, occupations, or professions.

6.1.5.35 Therefore, it would seem that a “motor vehicle” would also have to be commercial in nature as this is the only type of activity addressed by the legislature in the above statutes requiring an authorization (license).

6.1.5.36 The legislature saw fit to require licensing only for those engaged in commerce, so there must be a definite legal distinction between a “motor vehicle” and a “private automobile/vehicle/conveyance”, the former being used on the roads and highways for the purpose of commercial business while the latter is being used for non-commercial personal business and travel. Since neither the lower courts nor the various police agencies have the authority to expand the meaning, intent, and effect of a legislative act in a manner that exceeds or ignores the words used by the legislature in its creation, this leaves them with little choice but to acknowledge that the license and its intended purpose is commercial in nature, not private. Since the license has nothing to do with any specific non-commercial activity, such as private travel, it is not a requirement that private Citizens obtain or use a “driver’s license” and subsequently cannot be legally or lawfully charged with “driving without a license.” It is nothing short of fraud for the various law enforcement agencies and the lower courts to apply these commercial statutes to private citizens when it is crystal clear that the licensing statutes specifically apply only to those actively engaged in using the roads and highways as a place of business and commerce.

6.1.5.37 There is in fact, separate and distinct definitions in various statutes for the terms

“vehicle” and “motor vehicle” that are disparate in the specifics of their wording and therefore in their intent and effect. In several of these definitions the term “motor vehicle” is a compound definition, meaning that it relies on the definition of the term “vehicle” to then create its own distinct and separate definition by the introduction of additional criteria. This will be covered in detail in a later section of the material.

6.1.5.38 We can now assert that the burden of proof is fully on the officer and the STATE to prove the following:

- a. That you are in fact a “Person” as that term is defined within the relevant statute(s) and you are therefore subject to and have a duty to perform under the statute; and
- b. that you, while acting in the capacity of such a “Person”, are/were:
 - 2) engaged in a commercial enterprise or business requiring the use of such a license; and/or
 - 3) that you are/were operating a “motor vehicle” in commerce that required such an occupational license; or
 - 4) that you are/were actively engaged in activity requiring the occupational license to be in your possession due to a DUI/DWI conviction that suspended a commercial driver’s license (CDL); and/or
 - 5) that you were ever issued a commercial driver’s license pursuant to Sec. 522 TRANSPORTATION CODE in order for it to be “suspended”; and
- c. that you were NOT simply traveling in a private automobile for private non-commercial purposes; and
- d. that a “motor vehicle”, “vehicle” and “automobile” are synonymous terms within the meaning and intent of the commercial statutes cited and intended to be used against you by the STATE in the instant case.

6.1.5.39 You can fully argue that you are/were NOT engaging in any commercial enterprise or business on the roads and highways of Texas when interfered with by the Officer, but simply traveling for your own personal business and/or pleasure, and no such license is or can be required for this purpose since the roads and highways are open to the public as a matter of right for the purpose of vehicular travel and as one of the People you are entitled to full access and use of them:

NATURAL RESOURCES CODE
TITLE 3. OIL AND GAS
SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS
CHAPTER 114. OIL TANKER VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

(5) **“Public highway” means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel,** even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

6.1.5.40 You can fully argue that you are/were NOT engaging in any commercial enterprise or business on the roads and highways of Texas when interfered with by the Officer, but simply traveling for your own personal business and/or pleasure, and no such license is or can be required for this purpose since the roads and highways are open to the public as a matter of right for the purpose of vehicular travel and as one of the People you are entitled to full access and use of them:

6.1.5.41 Let's take a look and see if there are any other references to the license and its relation to commercial activity. Just for grins we can look at the statute regarding the suspension of an occupational license for either refusing or failing an alcohol blood level test. Be aware however, I am a firm believer in not drinking and driving under any circumstances that have nothing to do with the preservation of life. If I personally have the opportunity to confront and apprehend a drunk driver I will do my best to cleanup the several "accidents" his condition will subject him to before the cops arrive to take him to jail. I neither believe in nor condone the idea that a moron has a right to place my life and the life of others in jeopardy. While being stupid in the privacy of your own home is not against the law, public conduct that *results* in reckless endangerment to innocent bystanders is, and rightly so, and that is the charge that should be applied in these particular cases. And if the drunk kills or injures someone then the act should be murder or assault with a deadly weapon, not manslaughter. The decision to drink and drive is willful and knowing with foreseeable consequences, so there should not be any slack on the punishment in such a case. Someone can be as stupid as they like, but when their actions place my life or someone else's in danger with their ignorance then they should not act surprised when we do not take it kindly and react harshly or violently in response.

6.1.5.42

6.1.6 The "Commercial Driver's License", the Only License In Town

6.1.6.1 For.

6.1.6.2 For.

6.2 Holy Occupations Batman! He Isn't Engaged In Commerce On the Public Right-of-way!

6.2.1 No Commercial Activity, No Commercial License Necessary

6.2.1.1 For.

6.2.1.2 For.

6.2.2 No License Necessary, None of the Accouterments Apply Either

6.2.2.1 For.

6.2.2.2 For.

Chapter 7 - The Speeding Ticket Scam, Officer What Part of “Commercial Vehicle” Do You Not Understand?

7.1 It Is Statutorily Impossible For Your Private Automobile To Be Legally Cited For Speeding

7.1.1 The Speed Sign – Maybe It Should Be Printed In Braille?

7.1.1.1 Okay, obviously the judge is Ray Charles, the prosecutor is Stevie Wonder, and the law enforcement officer is Mr. Potato Head (without the eyes and brain-power). Did they all skip English class every day in school? Do they only read foreign languages instead of English? What is the darn problem... oh right... willful ignorance or malicious stupidity, my mistake.

I mean how else would you explain the fact that they are entirely ignorant of what the law states very plainly is the only purpose and application of any Speed Sign posted on a Texas road or highway? Does anyone else have a problem following along with the words in Transportation Code Sec. 201.904:

TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 201. GENERAL PROVISIONS AND ADMINISTRATION
SUBCHAPTER K. ROAD AND HIGHWAY USE; SIGNS

Sec. 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, Sec. 1, eff. Sept. 1, 1995.

7.1.1.2 This section of the Texas Transportation Code is in the Addendums section of this material, as is the entirety of sections 545.351 and 545.352 which deals specifically with the “prima facie” speed limits, which we will cover a little later on in this material.

7.1.1.3 Now I ask you, is there any ambiguity at all in this statute as to what its purpose is and what it applies to? No? You mean you don't see that big honking elephant in the language of the statute that clearly shows that it applies to **every** vehicle on the roads and highways and not just those engaged in commerce? C'mon, read it again, surely you can't miss seeing it! Hell, every judge, prosecutor and law enforcement officer in Texas see's it, why in hell don't you?!?!

7.1.1.4 So do you give up? Are you sure you don't want to read it just once more and see if it becomes clear to you? Okay, let me explain it to you then.... IT'S NOT FRICKIN' THERE!!! There is absolutely nothing in this statute that authorizes the posted speed limit to be

applied to any type of vehicle other than one of the types of “commercial motor vehicle” specifically enumerated in this section. **Commerce** is the **specific “use”** that every single type of vehicle listed in Sec. 201.904 is actually involved in, get that, COMMERCE!

- 7.1.1.5 There is absolutely nothing in Sec. 201.904 that could possibly be construed as applying to anything but a “commercial use” motor vehicle, at least not by an honest man or woman that can read and comprehend above the fourth grade level.

7.1.2 “Prima Facie” – How To Be Two-faced In Dispensing Justice To The People

- 7.1.2.1 *Prima facie* simply means “on the face of”. It also means that you need to pay close attention because THE STATE is about to try and pull yet another fast one in their choice and use of words and language. Check the Addendums section for the text of Sections 545.351 and 545.352, by now you should be able to easily start picking out the terms you need to get familiar with in order to analyze the statutes, which is exactly what we are going to do.

- 7.1.2.2 For.

7.1.3 Who Can Issue A “Driver’s License”?

- 7.1.3.1 For.

- 7.1.3.2 For.

7.1.4 What Kind of License(s) Is the “Department” Authorized To Issue?

- 7.1.4.1 For.

- 7.1.4.2 For.

7.1.5 The Occupational License, don’t “Drive” Without It

- 7.1.5.1 For.

- 7.1.5.2 For.

7.1.6 The “Commercial Driver’s License”, the Only License In Town

7.1.6.1 For.

7.1.6.2 For.

Chapter 8 – The “Motor Vehicle”, A “Commercial Motor Vehicle” Without the Extra Fat and Calories

8.1 Let’s Compare the Parameters

8.1.1 *Licensing Required?*

8.1.1.1 Most people do not understand that the law makes distinctions in common terminology by creating a statutory definition of a word or phrase. Nowhere is this truer than in the definitions and usage of the terms “Person”, “motor vehicle”, “vehicle”, and “includes”. We have covered the term “Person” extensively already, now we are going to concentrate on the latter two terms and some of those related to them.

8.1.1.2 We have covered the “driver’s license” in great detail, so now we need to talk about the “motor vehicle” to which the “license” applies. It goes without saying that if we delegated the power to THE STATE to regulate the commercial use of the roads and highways then we also allowed for the means to achieve those ends. But that is the distinction AND the difference, lack of commerce means lack of subject and *in personam* jurisdiction over the general public who are doing nothing more than exercising their natural and unalienable right to travel upon the roads and highways.

8.1.1.3 But if commerce is the activity in which one is engaged then the need for a license as part of the delegated regulatory power is valid. Transportation Code Chapters 521 and 522 both require a license for the operation of a “motor vehicle” but not an “automobile” or “private vehicle” and we have seen that this is the only purpose for which a license may be issued and therefore the inference is made that the activity that is being regulated can be and is only that of commerce. This leaves no room to argue against the obvious fact that the “motor vehicle” MUST be used in that same capacity to require ANY of the related accouterments such as a license, registration, insurance or inspection. Hell, we cannot even be given a speeding ticket unless we are in a “commercial motor vehicle” of some type.

8.1.1.4 “Motor vehicle” registration is covered under Transportation Code Chapter 502. We will start there and see what crawls out of the proverbial woodwork when we set it on fire with simple logic and understanding of the terminology.

8.1.1.5 The STATE wants to propagate the assumption of applicability and a required duty by arguing that Chapter 502 of the Texas Transportation Code requires the registration of **all** vehicles in Texas that travel on the roads and highways. This is not only a total misinterpretation of the statute based on its own definitions and language, it is also a willful misapplication for the purpose of both controlling the movement of the general public and to extract taxes, fees and fines that absolutely do not apply to the general public at all. This amounts to nothing less than fraud and is a criminal act upon its face by THE STATE.

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COMMITTEES:
APPROPRIATIONS
CHAIR, S/C HEALTH AND HUMAN SERVICES
PUBLIC HEALTH

District 28 TEXAS HOUSE OF REPRESENTATIVES

April 1, 2009

Mr. Tim XXXXXX
P. O. Box 9999
Sovereign, Texas 77777-7777

Dear Mr. XXXXXX:

Thank you for contacting me regarding your questions related to the wording of certain sections of Texas' Transportation Code. I always appreciate hearing your comments, suggestions and questions.

The Certificate of Title Act, Chapter 501 of the Transportation Code, established the requirement for the owners of motor vehicles to obtain a certificate of title. The legislative intent and substance of Chapter 501 and Chapter 502 clearly establish that a private motor vehicle must obtain a certificate of title and register, specifically the definitions of a motor vehicle stated in Chapter 501.002 (14) and the definition of an "owner" stated in 501.002 (16) respectfully.

Section 501.004 states that the act applies to "a motor vehicle owned by the state or a political subdivision of the state" and does not apply to a short list of other motor vehicles. In general, the applicability of a certain code in a chapter can be used to ensure that certain groups are also included into law and in this instance state entities are not exempt from having to obtain a certificate of title. Therefore, a private motor vehicle must register having a certificate of title as stated in Section 502.152 of the Transportation Code.

As your elected State Representative, I take my role as the people's representative here at the State Capitol in Austin very seriously. Without the input of constituents like you who take the time to voice their concerns and opinions, our system of government does not work properly.

Please feel free to call upon my office by phone at (512) 463-0657 or by e-mail at district28.zerwas@house.state.tx.us regarding this or any other matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Zerwas".

John Zerwas, M.D.
State Representative-House District 28



8.1.1.6 Tim sent me a scanned copy of a letter that he received from STATE DISTRICT 28 REPRESENTATIVE, Dr. John Zerwas, M.D in response to Tim's letter asking about the statutes allegedly requiring all vehicles to be registered. The complete text of the letter is on the previous page and I have used it with Tim's kind permission.

8.1.1.7 When the final dissertation on the Texas statutes regarding "motor vehicle" registration is complete then I hope that you will take the opportunity to show the initiative to keep your state representative better educated and informed than Tim's on how to read the laws, since they are allegedly capable of understanding them when they are actually voting on them but can't seem to comprehend them at all after they are codified in statute.

8.1.1.8 For the purpose of keeping the documentation down to a manageable size I will not reiterate complete code sections under discussion within the discussion sections, I will simply refer back to the sections already included within previous or following citations of those code sections.

8.1.1.9 This is the definitions section of Transportation Code Chapter 502:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE A. CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES
CHAPTER 502. REGISTRATION OF VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. In this chapter:

(1) "All-terrain vehicle" means a motor vehicle that is:

(A) equipped with a saddle, bench, or bucket seats for the use of:

(i) **the rider; and**

(ii) **a passenger, if the motor vehicle is designed by the manufacturer to transport a passenger;**

(B) designed to propel itself with three or more tires in contact with the ground;

(C) designed by the manufacturer for off-highway use; and

(D) not designed by the manufacturer primarily for farming or lawn care.

(2) "Commercial motor vehicle" means a motor vehicle, other than a motorcycle, designed or used primarily to transport property. The term includes a passenger car reconstructed and used primarily for delivery purposes. The term does not include a passenger car used to deliver the United States mail.

(3) "Department" means the Texas Department of Transportation.

(4) "Farm semitrailer" means a semitrailer designed and used primarily as a farm vehicle.

(5) "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(6) "Farm trailer" means a trailer designed and used primarily as a farm vehicle.

(7) "Golf cart" means a motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(8) "Implements of husbandry" means farm implements, machinery, and tools as used in tilling the soil, including self-propelled machinery specifically designed or adapted for applying plant food materials or agricultural chemicals but not specifically designed or adapted for the sole purpose of transporting the materials or chemicals. The term does not include a passenger car or truck.

(9) **"Light truck"** means a **commercial motor vehicle** that has a manufacturer's rated carrying capacity of one ton or less.

(10) "Moped" has the meaning assigned by Section 541.201.

(11) **"Motor bus"** **includes every vehicle used to transport persons on the public highways for compensation,** other than:

(A) a vehicle operated by muscular power; or

(B) a municipal bus.

(12) "Motorcycle" means a motor vehicle designed to propel itself with not more than three wheels in contact with the ground. The term does not include a tractor.

(13) **"Motor vehicle"** means a **vehicle** that is self-propelled.

(14) "Municipal bus" includes every vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to the municipality.

(15) "Operate temporarily on the highways" means to travel between:

(A) different farms;

(B) a place of supply or storage and a farm; or

(C) an owner's farm and the place at which the owner's farm produce is prepared for market or is marketed.

(16) **"Owner"** means a **person** who:

(A) holds the **legal title** of a **vehicle**;

(B) has the **legal right** of possession of a **vehicle**; or

(C) has the **legal right** of control of a **vehicle**.

(17) "**Passenger car**" means a **motor vehicle**, other than a motorcycle, golf cart, light truck, or bus, **designed or used primarily for the transportation of persons.**

(18) "Public highway" includes a road, street, way, thoroughfare, or bridge:

- (A) that is in this state;
- (B) that is for the use of vehicles;
- (C) that is not privately owned or controlled; and
- (D) over which the state has legislative jurisdiction under its police power.

(19) "Public property" means property owned or leased by this state or a political subdivision of this state.

(20) "Road tractor" means a vehicle designed for the purpose of mowing the right-of-way of a public highway or a motor vehicle designed or used for drawing another vehicle or a load and not constructed to carry:

- (A) an independent load; or
- (B) a part of the weight of the vehicle and load to be drawn.

(21) "**Semitrailer**" means a **vehicle** **designed or used with a motor vehicle** so that part of the weight of the vehicle and its load rests on or is carried by another vehicle.

(22) "**Trailer**" means a **vehicle** that:

- (A) is designed or used to carry a load wholly on its own structure; and
- (B) **is drawn or designed to be drawn by a motor vehicle.**

(23) "Truck-tractor" means a motor vehicle:

- (A) designed and used primarily for drawing another vehicle; and
- (B) not constructed to carry a load other than a part of the weight of the vehicle and load to be drawn.

(24) "**Vehicle**" means **a device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks.**

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 625, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 586, Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1280, Sec. 1, eff. June 15, 2007.

8.1.1.10 Notice that in this chapter the definitions of “motor vehicle” and “vehicle” have been totally reversed from the way they have been defined in all of the other chapters. I was curious as to what the motivation could be to suddenly reverse the definition of these two terms. Being the jaded individual that I am, if I had to offer a probable guess it would be “to hide the true purpose and intent of what specific motor vehicles are being acted upon under this statute.” I would also be willing to bet real money that this answer would be the correct one.

8.1.1.11 Be that as it may, the end result of studying the definitions is that the applicability of the statute has still not changed; it is still being strictly limited to commercial vehicles. So before we even get to the definitions involved we need to establish where the alleged “requirement” to register comes from, then we can determine what the “requirement” is actually addressing and is applicable to. We get there like this -section 502.002 states that registration is “required” for a “*motor vehicle*”, “*trailer*”, or “*semitrailer*” and is to be done by the “*owner*”:

Sec. 502.002. REGISTRATION REQUIRED; GENERAL RULE.

(a) The owner of a motor vehicle, trailer, or semitrailer shall apply for the registration of the vehicle for:

(1) each registration year in which the vehicle is used or to be used on a public highway; and

(2) if the vehicle is unregistered for a registration year that has begun and that applies to the vehicle and if the vehicle is used or to be used on a public highway, the remaining portion of that registration year.

(b) The application must be made to the department through the county assessor-collector of the county in which the owner resides.

(c) A provision of this chapter that conflicts with this section prevails over this section to the extent of the conflict.

(d) A county assessor-collector, a deputy county assessor-collector, or a person acting on behalf of a county assessor-collector is not liable to any person for:

(1) refusing to register a motor vehicle because of the person's failure to submit evidence of residency that complies with the department's rules; or

(2) registering a motor vehicle under this section.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.44(a), eff. Sept. 1, 1997.

8.1.1.12 Now we begin by asking our normal research question using the IQE Rule - “**What do these terms mean?**”

8.1.2 Owner – Who It Is and Who It Isn’t

8.1.2.1 The first term we want to look at is “owner”. This definition is applicable to the entirety of chapter 502, barring a local provision, and is found in Sec. 502.001(16) above. This definition of “owner” speaks to all things “legal” rather than “lawful”. So everything that the section addresses about what an “owner” is exists only by virtue of being created and defined *in statute*. Therefore this term relates only to an “owner” under the terms or conditions outlined in statute. The owner is one that has “*legal title*”, “*legal right of possession*”, or “*legal right of control*”. This definition does not address “lawful owner/ownership”, “equitable title holder” or “lawful right of possession and use”. But despite this it also sets a very important limitation to the meaning of “owner”, it applies only to a “vehicle”.

8.1.2.2 To place this into proper context we can take a look at an example of what I mean, let’s look only at the legal definition of “legal title” for a moment. One definition is found in Black’s Law, 6th Edition:

Legal Title - One cognizable or enforceable in a court of law or one which is complete and perfect so far as regards the apparent right of ownership and possession but who carries no beneficial interest in the property, another person being equitably entitled thereto. In either case the antithesis of equitable title. It may also mean the appearance of title as distinguished from complete title. Full and absolute title or apparent right of ownership with beneficial or equitable title in another, not necessarily record title.

8.1.2.3 So according to these definitions, the “owner” defined in Transportation Code 502.001(16) is one that does not really own the “vehicle” in question but only has the *appearance* of ownership and equitable interest. This would seem to imply that the term “legal” simply means “the appearance of” or more simply “appearance”. Under this train of thought the “owner” would be someone having only have the “appearance” of “ownership”, “possession”, or “control” of a “vehicle” in Sec. 502.001(16). Doesn’t all of this sound an awful lot like a business that owns and operates one or more vehicles as either a fleet or other related commercial occupation using hired “drivers” and not simply a private automobile that is not being used for “transporting” or “for the transportation of” passengers or property?

8.1.3 Motor Vehicle – This Isn’t Your Father’s Oldsmobile

8.1.3.1 Okay, we have a good idea now what an “owner” is, so now we need to determine just exactly what a “motor vehicle” is. Sec. 502.001(13) states that it is a “vehicle that is self-propelled”. Personally, if I had not learned how to read the statutes I would think that would refer to my automobile. Fortunately I have become somewhat wiser in the ways of legalize and would now find this definition to be a bit overbroad.

8.1.3.2 So how do we go about making this definition less broad? Easy, by limiting its scope of application and the definition already supplies us with the means to do just that by using the term “vehicle” within its own definition. Now we need to know what a “vehicle” is in these statutes. Sec. 502.001(24) above states what the definition of “vehicle” is:

(24) “**Vehicle**” means a device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks.

8.1.3.3 Once again we see that the term “vehicle” applies only to a device that has the ultimate use of transporting or drawing a “person” or “property”. You can refer back to the section on “The Terms You Need To Know” to review the definitions and usage of these terms in law. But the term “transported” is directly related to a special use for the purpose of commercial activities, and remember, these are not my opinions, these are the opinions of a wide range of state and federal courts as well as the United States Supreme Court. The term “drawn” simply means “towed”, as in a trailer or some other manner of towed “vehicle”.

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE A. CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES
CHAPTER 502. REGISTRATION OF VEHICLES
SUBCHAPTER D. REGISTRATION PROCEDURES AND FEES

Sec. 502.152. CERTIFICATE OF TITLE REQUIRED FOR REGISTRATION.

(a) The department may not register or renew the registration of a motor vehicle for which a certificate of title is required under Chapter 501 unless the owner:

(1) obtains a certificate of title for the vehicle; or

(2) presents satisfactory evidence that a certificate of title was previously issued to the owner by the department or another jurisdiction.

(b) This section does not apply to an automobile that was purchased new before January 1, 1936.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 67, Sec. 7, eff. Sept. 1, 2001.

Sec. 502.153. EVIDENCE OF FINANCIAL RESPONSIBILITY.

(a) Except as provided by Subsection (j), the owner of a motor vehicle, other than a trailer or semitrailer, for which evidence of financial responsibility is required by Section 601.051 or a person who represents the owner for purposes of registering a motor vehicle shall submit evidence of financial responsibility with the application for registration under Section 502.151. A county assessor-collector may not register the motor vehicle unless the owner or the owner's representative submits the evidence of financial responsibility.

(b) The county assessor-collector shall examine the evidence of financial responsibility to determine whether it complies with Subsection (c). After examining the evidence, the assessor-collector shall return the evidence unless it is in the form of a photocopy or an electronic submission.

(c) In this section, evidence of financial responsibility may be:

(1) a document listed under Section 601.053(a);

(2) a liability self-insurance or pool coverage document issued by a political subdivision or governmental pool under the authority of Chapter 791, Government Code, Chapter 119, Local Government Code, or other applicable law in at least the minimum amounts required by Chapter 601;

(3) a photocopy of a document described by Subdivision (1) or (2); or

(4) an electronic submission of a document or the information contained in a document described by Subdivision (1) or (2).

(d) A personal automobile policy used as evidence of financial responsibility under this section must comply with Article 5.06 or 5.145, Insurance Code.

[Note*** Article 5.145 does not appear to exist and both this section and the above referenced Article 5.06 are in the uncodified version of the insurance act.]

(e) At the time of registration, the county assessor-collector shall provide to a **person** registering a motor vehicle a separate statement that the motor vehicle being registered may not be operated in this state unless:

(1) liability insurance coverage for the motor vehicle in at least the minimum amounts required by law remains in effect to insure against potential losses; or

(2) the motor vehicle is exempt from the insurance requirement because the person has established financial responsibility in a manner described by Section 601.051(2)-(5) or is exempt under Section 601.052.

(f) A county assessor-collector is not liable to any person for refusing to register a motor vehicle to which this section applies because of the person's failure to submit evidence of financial responsibility that complies with Subsection (c).

(g) A county, a county assessor-collector, a deputy county assessor-collector, a person acting for or on behalf of a county or a county assessor-collector, or a person acting on behalf of an owner for purposes of registering a motor vehicle is not liable to any person for registering a motor vehicle under this section.

(h) This section does not prevent a person from registering a motor vehicle by mail or through an electronic submission.

(i) To be valid under this section, an electronic submission must be in a format that is:

(1) submitted by electronic means, including a telephone, facsimile machine, or computer;

(2) approved by the department; and

(3) authorized by the commissioners court for use in the county.

(j) This section does not apply to a vehicle registered pursuant to Section 501.0234.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 148, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 260, Sec. 1, eff. May 28, 1999; Acts 2003, 78th Leg., ch. 206, Sec. 21.45, eff. June 11, 2003.

Sec. 502.1535. EVIDENCE OF VEHICLE EMISSIONS INSPECTION. A county assessor-collector may not register a motor vehicle subject to Section 548.3011 unless proof that the vehicle has passed a vehicle emissions test as required by that section, in a form authorized by that section, is presented to the county assessor-collector with the application for registration.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 5, eff. Sept. 1, 2001.

8.1.3.4

8.1.4 Age Restrictions?

8.1.3.5 For.

8.1.3.6 For.

8.1.5 Weight Restrictions?

8.1.3.7 For.

8.1.3.8 For.

8.1.6 Passenger Load Restrictions?

8.1.3.9 For.

8.1.3.10 For.

8.2 If It Walks, Looks, and Sounds Like A Duck...

8.2.1 Then It Is STILL Not A Motor Vehicle, Unless...

8.2.1.1 Okay, let's continue the educational approach as we did on the right to travel argument earlier in the material. We will once again present the facts in the form of legal argument. This time we will be dissecting the terms "Motor Vehicle" and "Commercial Motor Vehicle".

8.2.1.2 We the People remind the court that the STATE has the burden of proof in any such case to prove that an automobile and a "motor vehicle" are synonymous. And since the charge being prosecuted by the STATE is allegedly for a "criminal" offense, the burden of proof is that of "beyond a reasonable doubt", it is not "by a preponderance of the evidence" as the STATE would have a jury believe.

8.2.1.3 The People will now address the issue of the STATE's position that individual members

of the sovereign People are attempting to operate a “motor vehicle” upon the roads and highways without STATE permission. To do this the People will first present argument demonstrating that whether or not a vehicle or automobile is to be considered a “motor vehicle” is defined by the manner in which it is currently being used.

8.2.1.4 Texas statutes define the terms “motor vehicle” and “vehicle” differently from each other, and in almost every section of the statute where either term is defined at all, each term is defined somewhat differently than it is in another section. This is confusing to say the least, and We the People have the concern that this cause of confusion is by design and intended for the purpose of deception by the STATE. The People will now list each definition and the section in which it defined for each of these terms, and where applicable any additional terms that either of these two terms encompass within their own definitions.

8.2.1.5 DO NOT FORGET TO DETERMINE AND APPLY THE SCOPE OF THE DEFINITIONS!!

8.2.1.6 A search within the Texas statutes for the term “*motor vehicle means*” produced the following results:

Results 1 through 16 out of 16 matches.

Search phrase: "motor vehicle means"

- 1. [TRANSPORTATION CODE CHAPTER 501. CERTIFICATE OF TITLE ACT](#)
- 2. [TRANSPORTATION CODE CHAPTER 502. REGISTRATION OF VEHICLES](#)
- 3. [TRANSPORTATION CODE CHAPTER 522. COMMERCIAL DRIVER'S LICENSES](#)
- 4. [TRANSPORTATION CODE CHAPTER 541. DEFINITIONS](#)
- 5. [TRANSPORTATION CODE CHAPTER 545. OPERATION AND MOVEMENT OF VEHICLES](#)
- 6. [TRANSPORTATION CODE CHAPTER 548. COMPULSORY INSPECTION OF VEHICLES](#)
- 7. [TRANSPORTATION CODE CHAPTER 601. MOTOR VEHICLE SAFETY RESPONSIBILITY ACT](#)
- 8. [TRANSPORTATION CODE CHAPTER 621. GENERAL PROVISIONS RELATING TO VEHICLE SIZE AND WEIGHT](#)
- 9. [TRANSPORTATION CODE CHAPTER 642. IDENTIFYING MARKINGS ON COMMERCIAL MOTOR VEHICLES](#)
- 10. [TRANSPORTATION CODE CHAPTER 644. COMMERCIAL MOTOR VEHICLE SAFETY STANDARDS](#)
- 11. [TRANSPORTATION CODE CHAPTER 647. MOTOR TRANSPORTATION OF MIGRANT AGRICULTURAL WORKERS](#)
- 12. [TRANSPORTATION CODE CHAPTER 648. FOREIGN COMMERCIAL MOTOR TRANSPORTATION](#)
- 13. [TRANSPORTATION CODE CHAPTER 683. ABANDONED MOTOR VEHICLES](#)
- 14. [TRANSPORTATION CODE CHAPTER 707. PHOTOGRAPHIC TRAFFIC SIGNAL](#)
- 15. [TRANSPORTATION CODE CHAPTER 725. TRANSPORTATION OF LOOSE MATERIALS](#)
- 16. [TRANSPORTATION CODE CHAPTER 728. SALE OR TRANSFER OF MOTOR VEHICLES AND MASTER KEYS](#)

8.2.1.7 In Texas Transportation Code Chapter 501 the term "vehicle" is not defined but the term "Motor Vehicle" reads:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE A. CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES
CHAPTER 501. CERTIFICATE OF TITLE ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. SHORT TITLE. This chapter may be cited as the **Certificate of Title Act**.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 501.002. DEFINITIONS. In this chapter:

...
(14) **"Motor vehicle"** means:

(A) **any motor driven or propelled vehicle required to be registered under the laws of this state**;

(B) a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds;

(C) a house trailer;

(D) an all-terrain vehicle, as defined by Section 502.001, designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or

(E) a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course.

(15) **"New motor vehicle"** means a **motor vehicle** that has not been the subject of a first sale.

8.2.1.8 In Texas Transportation Code Chapter 502 the terms are defined as follows:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE A. CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES
CHAPTER 502. REGISTRATION OF VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. In this chapter:

(1) **"All-terrain vehicle"** means a **motor vehicle** that is:

(A) equipped with a saddle, bench, or bucket seats for the use of:

(i) the rider; and

(ii) a **passenger**, if the **motor vehicle** is designed by the manufacturer to transport a passenger;

(B) designed to propel itself with three or more tires in contact with the ground;

(C) designed by the manufacturer for off-highway use; and

(D) not designed by the manufacturer primarily for farming or lawn care.

(2) "**Commercial motor vehicle**" means a motor vehicle, other than a motorcycle, **designed or used primarily to transport property**. The term includes a passenger car reconstructed and used primarily for delivery purposes. The term does not include a passenger car used to deliver the United States mail.

(3) "**Department**" means the **Texas Department of Transportation**.

(4) "**Farm semitrailer**" means a **semitrailer** designed and used primarily as a farm vehicle.

(5) "**Farm tractor**" means a motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(6) "**Farm trailer**" means a **trailer** designed and used primarily as a farm vehicle.

(7) "**Golf cart**" means a motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(8) "Implements of husbandry" means farm implements, machinery, and tools as used in tilling the soil, including self-propelled machinery specifically designed or adapted for applying plant food materials or agricultural chemicals but not specifically designed or adapted for the sole purpose of transporting the materials or chemicals. The term does not include a passenger car or truck.

(9) "**Light truck**" means a commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(10) "Moped" has the meaning assigned by Section 541.201.

(11) "**Motor bus**" includes every vehicle used to transport persons on the public highways for compensation, other than:

(A) a vehicle operated by muscular power; or

(B) a municipal bus.

(12) "Motorcycle" means a motor vehicle designed to propel itself with not more than three wheels in contact with the ground. The term does not include a tractor.

- (13) **"Motor vehicle"** means a vehicle that is self-propelled.
- (14) **"Municipal bus"** includes every vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to the municipality.
- (15) "Operate temporarily on the highways" means to travel between:
- (A) different farms;
 - (B) a place of supply or storage and a farm; or
 - (C) an owner's farm and the place at which the owner's farm produce is prepared for market or is marketed.
- (16) **"Owner"** means a person who:
- (A) holds the legal title of a vehicle;
 - (B) has the legal right of possession of a vehicle; or
 - (C) has the legal right of control of a vehicle.
- (17) **"Passenger car"** means a motor vehicle, other than a motorcycle, golf cart, light truck, or bus, designed or used primarily for the transportation of persons.
- (18) **"Public highway"** includes a road, street, way, thoroughfare, or bridge:
- (A) that is in this state;
 - (B) that is for the use of vehicles;
 - (C) that is not privately owned or controlled; and
 - (D) over which the state has legislative jurisdiction under its police power.
- (19) **"Public property"** means property owned or leased by this state or a political subdivision of this state.
- (20) **"Road tractor"** means a vehicle designed for the purpose of mowing the right-of-way of a public highway or a motor vehicle designed or used for drawing another vehicle or a load and not constructed to carry:
- (A) an independent load; or
 - (B) a part of the weight of the vehicle and load to be drawn.
- (21) "Semitrailer" means a vehicle designed or used with a motor vehicle so that part of the weight of the vehicle and its load rests on or is carried by another vehicle.
- (22) **"Trailer"** means a vehicle that:

(A) is designed or used to carry a load wholly on its own structure;
and

(B) is drawn or designed to be drawn by a motor vehicle.

(23) "Truck-tractor" means a motor vehicle:

(A) designed and used primarily for drawing another vehicle; and

(B) not constructed to carry a load other than a part of the weight of the vehicle and load to be drawn.

(24) "Vehicle" means a device in or by which a **person or property is or may be transported or drawn on a public highway**, other than a device used exclusively on stationary rails or tracks.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 625, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 586, Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1280, Sec. 1, eff. June 15, 2007.

8.2.1.9 The legal definition of the term "Transportation" indicates the true nature of the entire Texas Transportation Code, which is that it is a commercial code only, and that it has nothing to do with the regulation of the normal traveling activities of the People. It is also readily apparent that the definitions of "motor vehicle" and "vehicle" are specialized and purposeful and therefore not intended to be applicable to every type of "vehicle". The continuous reference to the term "transport", "transported", and "transportation" and the variations thereof only serves to strengthen this interpretation, further clarifying that only those having a connection with the "transportation" of persons or property are subject to these statutes.

8.2.1.10 The definition of "motor vehicle" as used in this chapter is what I refer to as a **compound definition**, meaning that it relies on the term "**vehicle**", which itself is a defined term, as part of the requisite criteria for its own definition. The result being that it must be read thusly:

"Motor vehicle" means a self-propelled device in or by which a **person or property is or may be transported or drawn on a public highway**, other than a device used exclusively on stationary rails or tracks.

8.2.1.11 The legal debate and conflict over the definition of "motor vehicle" and the purpose and proper application of the various state "motor vehicle" codes and statutes has been the subject of numerous court decisions ever since the introduction of the automobile into American society:

8.2.1.12 The term "Motor Vehicle" may be so used as to include only those self-propelled vehicles which are used on highways primarily for purposes of "transporting" persons and property from place to place. (Emphasis added). See: 60 Corpus Juris Secundum § 1, Page 148; Ferrante Equipment Co. v. Foley Machinery Co., N.J., 231 A.2d 208, 211, 49 N.J. 432.

8.2.1.13 It seems obvious that the entire Motor Transportation Code and the definition of motor vehicle are not intended to be applicable to all motor vehicles but only to those having a connection with the "transportation" of persons or property. (Emphasis added). See: Rogers

Construction Co. v. Hill, Or., 384 P.2d 219, 222, 235 Or. 352.

8.2.1.14 **"Motor vehicle"** means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Commission, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service. (Emphasis added).

See: Transportation, Title 49, U.S.C.A. § 10102 (17).

8.2.1.15 **"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 transportation of passengers, passengers and property, or property and cargo; ... "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[.]"

18 U.S.C. 31

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

Seth Waxman, Solicitor General

U.S. Department of Justice

BRIEF FOR THE PETITIONERS

Reno v. Condon, No. 98-1464, decided January 12, 2000

Supreme Court of the United States

8.2.1.17 Short argument, an "automobile" or other "vehicle" is only a "motor vehicle" when it is being used for commercial transportation purposes and the term is specifically denied application to a private automobile/vehicle that is not being used for commercial transportation purposes. THE STATE has used the transportation laws to create the same power sphere of control and constitutional denial to the People that has been used to propagate the drug war in America. They use the laws in such a way as to deny constitutional applicability and surreptitiously make it subordinate to the police power. We the People should not and will not tolerate this type of abuse of authority by our public servants any longer.

8.2.1.18 It should also be noted that even the Texas Attorney General has weighed in on the fact that a "motor vehicle" and an "automobile" are not synonymous. In the Addendums section you will see copies of two Attorney General Opinion Letters which reference a Texas Supreme Court case *Slaughter v. Abilene State Sch.*, 561 S.W.2d 789'791-92 (Tex.. 1977). In this case the court stated that the two terms were different but that the term "motor vehicle" did in fact cover the term "automobile" as being classified as a "motor vehicle". However, it should be noted that the Supreme Court failed to do several things in the writing of this opinion because it had nothing to do with the differences or uses of the motorized vehicle. If it had then it could be argued that the court erred due to the following:

1. It did not take into consideration the myriad definitions for the term "motor vehicle" within the Transportation Code.
2. It also did not take into consideration the multitude of case law stating that it is the use of the vehicle in question that provides the focal point on which the jury bases a determination

of

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whether or not an automobile is determined to be a “motor vehicle”:

"[I]t is a jury question whether ... an automobile ... is a motor vehicle[.]"
United States v Johnson, 718 F.2d 1317, 1324 (5th Cir. 1983).

3. By failing to consider the distinguishing use of the vehicle in question the opinion could appear to entirely overturn the court's own ruling regarding the right to the use of one's own property, the roads and highways, in City of San Antonio v. Fetzer, 241 SW 1034:

“The streets of the cities of this country belong to the public. Primarily, every member of the public has a natural right to the free use of such streets in the normal pursuit of his private or personal business or pleasure. The right of the public at large to the free use of the streets is paramount to the natural right of the individual. ... The power of the city in exercising such control is limited only by the Constitution and general laws of the state, ... But neither the Legislature nor the city commissioners has the power to take away or unreasonably abridge, the natural rights of the Citizen to the use of the streets in the manner and for the purpose we have set forth above.”

8.2.1.19 Do all of you in law enforcement that are reading this understand yet? You are enforcing the statutes ***illegally and unconstitutionally***. And if you are one of those officers that still wants to be the tough guy and say “*Well, I’m going to enforce this the way that I have been told or taught to do, I don’t care what the law says or what you can prove, the judge will back me up*” then you had better also pray that the judge or your supervisor are willing to chip in and pay your bills for you and your family while your criminal ass is serving time in jail.

8.2.1.20 If you are an officer that is more interested in obeying the law rather than just going along to get along then protect yourself. Demand that your supervisor sign an affidavit of personal liability stating the following:

- Ø that you have been properly and totally instructed on the lawful and legal enforcement requirements of the traffic laws of this state; and
- Ø that he/she accepts full financial and criminal responsibility for any and all tort or criminal judgments brought against you; and
- Ø stating that these methods and applications you have been taught are in full compliance with Texas and federal law.

8.2.1.21 Now, if your supervisor is so certain that everything is proper and lawful, there should be no hesitation on his /her part to placate your concerns with such an affidavit, but I am more than willing to step forward and say “*There is no way in hell your supervisor or any other person in your chain-of-command will **ever** sign that affidavit.*”

8.2.1.22 At that point, if I were you, I would certainly be a little more willing to reconsider my position on enforcing this the way I had been taught until someone above me was willing to risk their own neck and pension instead of mine.

8.2.2 A Private Automobile Is NOT A Motor Vehicle!

8.2.2.1 Most people do not understand that the law makes distinctions in common terminology by creating a statutory definition of a word or phrase. Nowhere is this truer than in the definitions and usage of the terms “Person”, “motor vehicle”, “vehicle”, and “includes”. We have covered the term “Person” extensively already, now we are going to concentrate on the latter two terms and some of those related to them.

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

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8.2.2.2 In virtually every traffic citation one of the elements on which the charge is based is that the citation recipient was “operating a **motor vehicle**”. We need to know what this term means, and like most cases involving statutory terminology we see that they are very much like a Lay’s Potato Chip, we can’t define just one! This is because each definition will contain other terms that have to be defined in turn to truly comprehend the one we want.

8.2.2.3 Okay, I want to take a moment and really quickly introduce another statutory section that will help to further clarify the distinctive difference in the definition of “Motor Bus” and “Passenger Car” as they are defined in this section of statute. Take a look at this section of the Administrative Code:

Texas Administrative Code
TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1 TEXAS DEPARTMENT OF PUBLIC SAFETY
CHAPTER 4 COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES
SUBCHAPTER B REGULATIONS GOVERNING TRANSPORTATION SAFETY

RULE §4.13 Authority to Enforce, Training and Certificate Requirements

...

(5) **Passenger Vehicle**. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections **on passenger vehicles such as motor coaches/buses**. These inspections should be completed as soon as practicable, but no later than six months after course completion.

...

8.2.2.4 Do you see what a “Passenger Vehicle” is? It is a ***motor coach or bus***. And since the Administrative Code specifically limits the DPS to “motor vehicles” subject to chapters 522 and 644 and the various local law enforcement officers to “motor vehicles” that are subject to chapter 644, then the motor coach or bus in question **MUST** be engaged in commerce, meaning transporting passengers for compensation or hire.

8.2.2.5

8.3 The Motor Vehicle Daisy Chain Rule

Chapter 9 “Motor Vehicle” Registration – What I Own Is None of the STATE’s Business

9.1 The Right To Privacy

9.1.1 By what authority does THE STATE claim to be able to “require” that the People must provide them with a complete list of information regarding the private property that is owned by the individual private Citizens of Texas? They started with our land, then they wanted to know about the buildings, then they wanted to know about improvements, then our guns, then our cars, and now they want to inventory us! When are we going to realize and remember that We the People DID NOT AUTHORIZE ANY OF THIS?!?!

9.1.2 If we did not authorize it then by what authority is THE STATE acting to get their hands on this information about us? Short answer, NONE, Nada, NYET, Zero! As a people we need to remember that we ALWAYS have the power to say “NO” to our public servants, and when they refuse to abide by our lawful demands to cease and desist, we open up a can of legal whoop-ass and pour it down their throats to make our point about just who they work for. If we are not willing to protect our right to privacy of not only our personal information, but about what we own or do in our own private lives that is not anyone else’s business, then who is going to do so? We agree that it is not anyone else’s business, so we cannot expect them to fight for our right to privacy even though the same coercive efforts by THE STATE may be exerted against them at the same time or in the future. THE STATE is the instigator to get their hands on the information, so they are not going to defend your right to say no either, which leaves only us to do so. But we CAN fight together without giving up any of those rights to each other, we must simply support each other and join in the outpouring of voices, criminal charges and law suits to put an end to usurpations and intrusions by our servant government regardless of the level from which it comes.

9.1.3 When the Constitution of the United States and the Texas Constitution guarantee that “the People shall be secure in their person, papers and property from all search and seizures except by due process of law”, the inference of a personal and unalienable right to privacy of ALL things personal and private belonging to the individual People was established. Government bred ignorance coupled with the room-temperature IQ of your average government employee is the only reason the obviousness of this intent has been assaulted in the way that it has, but we CAN stop it if we will work together to do so.

9.2 A Thieves Shopping List

9.2.1 “Motor vehicle” registration records are a matter of public record, which means that for a small fee you can go down and get a printout from the registrar’s office that will show you every make, model, name and address of any automobile or motor vehicle as well as the name and address of the owner. Which means a car thief can determine if somebody in the area owns a car that is on his “shopping list” and at the same time know EXACTLY where to find it. So please, tell me, why in the world would I want any information about what I own and where it is located put into the public domain for anybody with the cost of the report to gain access to it?

9.3 By What Authority Do You Demand To Know?

9.2.1 When exactly did I as one of the People ever grant THE STATE or any other level of my servant government the authority to know everything about me and what I own, or to then sell that information to the general public or some other entity without my knowledge and consent? I don't remember ever voting yes on that bill, or any other for that matter, that said any of this was okay by me.

9.2.2 I also do not recall assigning any power of attorney to my neighbors or legislators to act on my behalf to authorize my agreement without my knowledge, nor have I ever been declared mentally incompetent or disabled in order to allow anyone to presume that authority on my behalf, so when did you?

9.2.3 If we did not grant it knowingly, willingly, and for its application only upon OURSELVES and NOT our neighbors, who obviously did not vote for it, and therefore are automatically against it, then we cannot be bound to it, nor can we bind anyone else to it, and if We the People do not have that authority then we cannot delegate it to the legislature to do it for us.

9.4 The STATE Has No Financial Interest, Keep It That Way

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9.5 The Registration Daisy Chain Rule

Chapter 10 – The Insurance Scam, the Power of THE STATE Compels You!

10.1 Why Insurance Cannot Be Compelled On the People

- 9.2.6 So far we have seen that the People are NOT required to have a “driver’s license”, we have also seen that a private automobile is not the same thing as a “motor vehicle”. Furthermore we have seen that the authority to enforce the Transportation Code is limited to only particular certified law enforcement officers, and then ONLY against a “motor vehicle” that is subject to Chapters 522 and 644 of that code. There is no other apparent authority allowing the code to be used against the general public or a private Citizen who is not engaged in commerce in a “motor vehicle”. And as likened to a cherry on top of an ice cream sundae, we have seen voluminous amounts of case law that could not make anymore clear the concept of traveling in one’s own personal automobile (private property) IS a constitutionally protected right of personal liberty. With these facts now irrefutable by THE STATE we can examine the alleged “mandatory requirement” for “motor vehicle insurance”.
- 9.2.7 Anybody with half a brain would agree that an insurance policy IS a contract. And the same half-brained individual in question would also likely agree that a contract must be entered into voluntarily, not under threat or duress as this would be a compelled contract, which is null and void on its face, not to mention illegal and unlawful. It would appear however that THE STATE has presumed it has the authority to attempt just that, forcing the People into a compelled contract with a third party where THE STATE has a vested financial interest in the contract that is made, being the insurance policy itself.
- 9.2.8 If the legislature had no authority to require mandatory insurance in all of the years preceding 1996 when they first enacted the statutes, or before 1999 when they began actively enforcing the statutes, then by what means or source did they suddenly acquire that authority? *I am going to offer some conjecture on this point of the three year time span between the enactment and the active enforcement of the statutes. Since the legislature knows, or at least should know, that they cannot pass laws that regulate or compel the People in general, they instituted a waiting period for those three years to see who bucked under the idea. If the mass of the general public did not dissent then they could begin enforcement because the public had seemed to accept the law as something “necessary and valid” rather than what it actually was, an illegal compulsory contract that meant huge profits for THE STATE in insurance contract kickbacks. The law substantiates this assertion, it clearly lays out that THE STATE gets a “fee” on every insured “motor vehicle” policy or individual insured “motor vehicle”. If the masses remained complacent THE STATE’s profits were assured.*
- 9.2.9 The both the Constitution of the United States and the Texas Constitution forbids the states from creating any law that impairs the obligation of contracts, to wit:

Constitution of the United States
Article I
Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of

Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Texas Constitution
Article 1

Sec. 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

9.2.10 And as we have already determined, an insurance policy IS a contract. So THE STATE cannot create any law that lessens the enforceability or liability of any party to the contract or grants an advantage of one parties interest above that of any other party. Okay, so THE STATE can't interfere with the contract through legislative means, but can they force you into one to which they are a party?

9.2.11 We have seen clear factual case law statutory evidence that THE STATE cannot interfere with the People's right to travel by requiring them to obtain a license and that their automobiles are not classified as "motor vehicles" for the purpose set forth in any chapter of the Transportation Code relating to a "motor vehicle". So why would there be any assumption or assertion by THE STATE that the alleged "requirement" for insurance under the same code falls into a different category than that of commercial activity? Well I am here to tell you that it does not.

9.2.12 Now let's approach this analysis from the point of view of the constitutional prohibitions as shown above and check that against what the legal definition of the terms "compulsion", "compulsory", "compulsory contract", and "impairing the obligation of contracts" are:

Bouvier's Law Dictionary 1856

NOTE** : The terms COMPULSORY and COMPULSORY CONTRACT do not appear to be defined in Bouvier's

COMPULSION.

1. The forcible inducement to act.

2. Compulsion may be lawful or unlawful.

1. When a man is compelled by lawful authority to do that which he ought to do, that compulsion does not affect the validity of the act; as for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of

compulsion.

2. But if the court compelled a party to do an act forbidden by law, or not having jurisdiction over the parties or the subject-matter, the act done by such compulsion would be void.

Bowy. Mod. C. L. 305.

3. Compulsion is never presumed. Coercion. (q.v.)

IMPAIRING THE OBLIGATION OF CONTRACTS.

1. The Constitution of the United States, art. 1, s. 9, cl. 1, declares that no state shall "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

2. Contracts, when considered in relation to their effects, are executed, that is, by transfer of the possession of the thing contracted for; or they are executory, which gives only a right of action for the subject of the contract. Contracts are also express or implied. The constitution makes no distinction between one class of contracts and the other. 6 Cranch, 135; 7 Cranch, 164.

3. The obligation of a contract here spoken of is a legal, not a mere moral obligation; it is the law which binds the party to perform his undertaking. The obligation does not inhere or subsist in the contract itself, *proprio vigore*, but in the law applicable to the contract. 4 Wheat. R. 197; 12 Wheat. R. 318; and. this law is not the universal law of nations, but it is the law of the state where the contract is made. 12 Wheat. R. 213. Any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. 12 Wheat. 256; *Id.* 327; 3 Wash. C. C. Rep. 319; 8 Wheat. 84; 4 Wheat. 197.

4. The constitution forbids the states to pass any law impairing the obligation of contracts, but there is nothing in that instrument which prohibits Congress from passing such a law. Pet. C. C. R. 322. Vide, generally, Story on the Const. Sec. 1368 to 1891 Serg. Const. Law, 356; Rawle on the Const. h.t.; Dane's Ab. Index, h.t.; 10 Am. Jur. 273-297.

Black's Law Dictionary 6th Edition

NOTE** : The terms COMPULSORY and COMPULSORY CONTRACT do not appear to be defined in Bouvier's

COMPULSION.

Constraint; objective necessity; duress.

Forcible inducement to the commission of an act. The act of compelling or the state of being compelled; the act of driving or urging by force or by physical or moral constraint; subjection to force. The compulsion which will excuse a criminal act must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm. To constitute "compulsion" or "coercion" rendering payment involuntary, there must be some actual or threatened exercise of power possessed, by payee over payer's person or property, from which payer has no means of immediate relief except by advancing money. See Coercion; Duress

COMPULSORY

Involuntary; forced; coerced by legal process or by force of statute.

IMPAIRING THE OBLIGATION OF CONTRACTS.

A law which impairs the obligation of a contract is one which renders the contract in itself less valuable or less enforceable, whether by changing its terms and stipulations, its legal qualities and conditions, or by regulating remedy for its enforcement.

To "impair the obligation of a contract", within prohibition of Art. I, § 10, U.S. Const., is to weaken it, lessen its value, or make it worse in any respect or in any degree, and any law which changes the intention and legal effect of the parties, giving to one a greater and to the other a less interest or benefit, or which imposes conditions not included in the contract or dispenses with the performance of those included, impairs the obligation of the contract.

A statute "impairs the obligation of a contract" when by its terms it nullifies or materially changes existing contract obligations.

10.2 Insurance Applies Only To Commercial Motor Vehicles and Not To Private Automobiles

10.2.1 For.

10.2.2 For.

10.3 Compelled Contracts Are Forbidden

10.3.1 For.

10.3.2 For.

10.4 The Insurance Daisy Chain Rule

10.4.1 For.

10.4.2 For.

Chapter 11 Inspection – What I Own Is Not Up For Inspection Unless You’re Buying It!

11.1 The Right To Say “Hell No”

11.2 The Inspection Daisy Chain Rule

Chapter 12 Seatbelts – Click It, or We Will Assault and Arrest You In Front of Your Kids!

12.1 A “Passenger Car” Is A Motor Vehicle, But My Private Automobile Is Neither!

12.2 The Seatbelt Daisy Chain Rule

Chapter 13 – “Tow” & “Impound” Are Code Words For “We Are Conspiring to Commit Grand-Theft Auto”

13.1 The Alleged Authority to Steal Your Car

13.2 They Steal It, Then Have the Gall to Charge YOU For Returning Your Own Property

Chapter 14 – DUI = Don't Underestimate Ignorance (by Law Enforcement)

14.1 Not Condoning Drinking and Driving, the Bare Knuckles Truth...

14.1.1 Let's take a look and see if there are any other references to the license and its relation to commercial activity. Just for grins we can look at the statute regarding the suspension of an occupational license for either refusing or failing an alcohol blood level test. Be aware however, I am a firm believer in not drinking and driving under any circumstances that have nothing to do with the preservation of life. If I personally have the opportunity to confront and apprehend a drunk driver I will do my best to cleanup the several "accidents" his condition will subject him to before the cops arrive to take him to jail. I neither believe in nor condone the idea that a moron has a right to place my life and the life of others in jeopardy. While being stupid in the privacy of your own home is not against the law, public conduct that *results* in reckless endangerment to innocent bystanders is, and rightly so, and that is the charge that should be applied in these particular cases. And if the drunk kills or injures someone then the act should be murder or assault with a deadly weapon, not manslaughter. The decision to drink and drive is willful and knowing, with foreseeable consequences, so there should not be any slack on the punishment in such a case. Someone can be as stupid as they like, but when their actions place my life or someone else's in danger with their ignorance then they should not act surprised when we do not take it kindly and react harshly or violently in response.

14.2 Traffic Law Enforcement Is Still Limited to Those Engaged In Commerce, Including Suspected DUIs/DWIs

14.2.1 Okay, got that out of my system so let's continue. If we look at TTrC Chapter 524 we see the following:

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 524. ADMINISTRATIVE SUSPENSION OF DRIVER'S LICENSE
FOR FAILURE TO PASS TEST FOR INTOXICATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 524.001. DEFINITIONS. **In this chapter:**

- (1) "Adult" means an individual 21 years of age or older.
- (2) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.
- (3) "Alcohol-related or drug-related enforcement contact" means a **driver's license suspension**, disqualification, or prohibition order under the laws of this state or another state resulting from:

(A) a conviction of an **offense prohibiting the operation of a motor vehicle** while:

- (i) intoxicated;
- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance;

(B) a refusal to submit to the taking of a breath or blood specimen following an arrest for an offense prohibiting the operation of a **motor vehicle** while:

- (i) intoxicated;
- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance; or

(C) an analysis of a breath or blood specimen showing an alcohol concentration of a level specified by Section 49.01, Penal Code, following an arrest for an offense prohibiting the operation of a **motor vehicle** while intoxicated.

(4) "Arrest" **includes** the taking into custody of a child, as defined by Section 51.02, Family Code.

(5) "Conviction" **includes** an **adjudication** under Title 3, Family Code.

(6) "Criminal charge" **includes** a charge that may result in a proceeding under Title 3, Family Code.

(7) "Criminal prosecution" **includes** a proceeding under Title 3, Family Code.

(8) "Department" means the **Department of Public Safety**.

(9) "Director" means the public safety director of the **department**.

(10) "**Driver's license**" has the meaning assigned by Section 521.001. The term **includes a commercial driver's license or a commercial driver learner's permit issued under Chapter 522.**

(11) "Minor" means an individual under 21 years of age.

(12) "Public place" has the meaning assigned by Section 1.07(a), Penal Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1013, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 444, Sec. 1, eff. Sept. 1, 2001.

Sec. 524.002. RULES; APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

(a) The department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.

(b) Chapter 2001, Government Code, applies to a proceeding under this chapter to the extent consistent with this chapter.

(c) **The State Office of Administrative Hearings may adopt a rule that conflicts with Chapter 2001, Government Code, if a conflict is necessary to expedite the hearings process within the time required by this chapter and applicable federal funding guidelines.**

14.2.2 Does any of this terminology and phraseology look familiar to you at all? We are still dealing with a “motor vehicle”, the DPS and their limited “traffic law” authority, and the same “driver’s license” from 521.001(3).

6.1.5.1

Chapter 15 – When You Can Snatch the Pebble From My Hand It Will Be Time For You to Leave Grasshopper

15.1 Learn Well Grasshopper, Proper Knowledge and Training Is Essential to Good Results

15.2 Learn the Essential Tools to Assist You In Battle

15.2.1 Know Your Rights and Don't Give Them Up

The Bill of Rights in the Texas Constitution is the most underutilized Article in the People's entire arsenal. We don't stand on it, we don't make the government obey or enforce it, and we don't really know its contents and how to use them. It is pretty much like the Constitution of the United States of America, it once meant something but now its just a piece of paper with no meaning.

Remember, any right that you are either unwilling or unable to exercise is a right that you do not have or won't have for long.

15.2.2 The Texas Constitution

15.2.2.1 Do You Understand the Words That Are Comin' Outta My Mouth? Government 101 All Over Again

The division of powers doctrine, if the courts take it as it is written and apply it accordingly, absolutely forbids the cross-over or encroachment of one branch of government into any other by any "Person" or office within any other branch. The branches are three fold, the Legislative, Executive, and Judicial.

The various lawmaking activities are limited to those in the legislative branch, the various police agencies and certain public officers such as mayors, county commissioners, district attorneys, and county attorneys are in the executive branch, and the courts, clerks, judges, and attorneys are in the judicial branch. Now let's assume for the sake of argument that the term "Person" as utilized in Article 1 Sec. 2 refers to any officer, agent, or employee of government either singularly or in a group at any level within the state and that the term "department" means "branch".

15.2.2.2 The Division of Powers Doctrine

As one of the most powerful and limiting Articles on government power and authority in the Texas Constitution, Article 2, Section. 1 is seldom used anymore as a legal linchpin in arguing case law. Commonly known as the "Division of Powers Doctrine" it reads as follows:

THE TEXAS CONSTITUTION
ARTICLE 2. THE POWERS OF GOVERNMENT

Sec. 1. DIVISION OF POWERS; THREE SEPARATE DEPARTMENTS; EXERCISE OF POWER PROPERLY ATTACHED TO OTHER DEPARTMENTS. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Now for something entirely mind-numbing in its duplicity and avarice, and is patently unconstitutional and illegal. Observe the following from the Texas Constitution:

THE TEXAS CONSTITUTION
ARTICLE 1. BILL OF RIGHTS

Sec. 26. PERPETUITIES AND MONOPOLIES; PRIMOGENITURE OR ENTAILMENTS. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

...

Sec. 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLETE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Notice that these two sections set the stage for two things, the absolute denial of any authority for anyone to create or maintain a monopoly of any kind within Texas pursuant to Article 1, Sec. 26, and the express directive by the People of Texas that the every provision within the entire Bill of Rights in Article 1 is forever removed from the general powers of government regardless or purpose or intent pursuant to Article 29.

This article alone negates any possibility that the Transportation Code statutes can be

lawfully used to deprive the People of their right to liberty and the use of their private property for peaceful purposes.

Now take a look at the following within Article 16, Sec. 20:

THE TEXAS CONSTITUTION
ARTICLE 16. GENERAL PROVISIONS

Sec. 20. MIXED ALCOHOLIC BEVERAGES; INTOXICATING LIQUORS; WINES; REGULATION; LOCAL OPTION. (a) The Legislature shall have the power to enact a Mixed Beverage Law regulating the sale of mixed alcoholic beverages on a local option election basis. The Legislature shall also have the power to regulate the manufacture, sale, possession and transportation of intoxicating liquors, including the power to establish a State Monopoly on the sale of distilled liquors.

...

(Amended Aug. 11, 1891, May 24, 1919, Aug. 26, 1933, Aug. 24, 1935, and Nov. 3, 1970; Subsec. (d) added Sept. 13, 2003.)

Maybe I am just being picky, maybe I am just not reading it correctly, but this section certainly seems to be a direct violation of both Article 1 Secs. 26 and 29. It violates Sec. 26 by creating a monopoly under the general powers that is absolutely forbidden by the constitution, and then places that monopoly in the hands of the government and the legislature, the very entities that the constitution was designed to both limit and prohibit in its activities and powers.

It is a direct violation of Sec. 29 because the power and authority to change, alter, or act contrary to any of the provisions within the Bill of rights is absolutely removed and forbidden to government **forever!** They may not alter or abolish any part of the Bill of Rights and they most certainly may not make any law or general constitutional provision that could do so, no power, no authority, nada, nein, zip, none, finito!

Do either the criminal courts or those in law enforcement do a damn thing about any of this? No! And then the courts deny the People the right petition and file suit to ensure that their constitution is upheld and enforced by their public servants. Is the reason for the monopolistic control of the judicial branch of government becoming clear yet? A non-bar card carrying prosecutor could file suit against the STATE within his county for operating an illegal monopoly, but there are no non-bar card carrying prosecutors. The executive branch gets a cut of the action authorized by the statutes created by the legislature. The judicial branch gets its share by convicting those it finds in violation of the legislative acts and every damn bit if it is illegal! Texas truly is run by a single organized criminal gang operating as a three branch governmental entity.

As Citizens we need to make a federal case out of this, literally. We need to sue and prosecute THE STATE OF TEXAS Corporation, not the state/government but the corporate entity and all of it's officers and employees, for operating or at least conspiring to create an illegal monopoly that operates within the borders of Texas and force this issue at the federal level. Anybody have a liquor license? That should be all we would need for standing to file suit.

15.2.3 The Texas Administrative Code

15.2.4 The Texas Code of Criminal Procedure

15.2.4.1 The Attorney For the State – Another Game of Bait and Switch

15.2.4.2 Who or what is an “attorney for the state”? In this section of the seminar we are going to discuss this question to, what is in my humble opinion, its only possible conclusion.

15.2.4.3 Let’s start by setting the stage and scene of exactly who or what we are actually dealing with in this topic. I received an email from Tim with the following information and questions on this particular subject:

Eddie,

Regarding TCCrP 2.07(d), please take a look at TCCrP 45.201.

<http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.45.htm#45.201>
SUBCHAPTER D. PROCEDURES IN MUNICIPAL COURT

Art. 45.201. MUNICIPAL PROSECUTIONS. (a) All prosecutions in a municipal court shall be conducted by the city attorney of the municipality or by a deputy city attorney.

(b) The county attorney of the county in which the municipality is situated may, if the county attorney so desires, also represent the state in such prosecutions. In such cases, the county attorney is not entitled to receive any fees or other compensation for those services.

(c) With the consent of the county attorney, appeals from municipal court to a county court, county court at law, or any appellate court may be prosecuted by the city attorney or a deputy city attorney.

(d) It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.

I have highlighted the primary elements in red which basically says the county attorney may represent the state.

I was wondering if this changes the argument. However, this doesn't say anything about the city attorney representing the state. Maybe that's why they don't want to meet the requisites of a complaint under 45.019 as it would have to say "In the name and by the authority of the State of Texas"

Is that the separation that still makes your argument valid?

Thanks,
Tim

- 15.2.4.4 Let's take the above statutes and place them in context next to the Texas Constitution and the other articles of the Texas Code of Criminal Procedure (TCCrP):

Texas Constitution

Sec. 21. COUNTY ATTORNEYS; DISTRICT ATTORNEYS. A County Attorney, for counties in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of four years. In case of vacancy the Commissioners Court of the county shall have the power to appoint a County Attorney until the next general election. The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of District Attorneys in such districts, as may be deemed necessary, and make provision for the compensation of District Attorneys and County Attorneys. District Attorneys shall hold office for a term of four years, and until their successors have qualified.

CODE OF CRIMINAL PROCEDURE TITLE 1. CODE OF CRIMINAL PROCEDURE CHAPTER 2. GENERAL DUTIES OF OFFICERS

Art. 2.01. DUTIES OF DISTRICT ATTORNEYS. **Each district attorney shall represent the State in all criminal cases in the district courts of his district and in appeals therefrom, except in cases where he has been, before his election, employed adversely.** When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within his district, **he shall represent the State therein**, unless prevented by other official duties. It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1981, 67th Leg., p. 801, ch. 291, Sec. 98, eff. Sept. 1, 1981.

Art. 2.02. DUTIES OF COUNTY ATTORNEYS. The county attorney shall attend the terms of court in his county below the grade of district court, and shall represent the State in all criminal cases under

examination or prosecution in said county; and in the absence of the district attorney he shall represent the State alone and, when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court. **He shall represent the State** in cases he has prosecuted which are appealed.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 2.07. ATTORNEY PRO TEM.

(a) Whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of his office, or **in any instance where there is no attorney for the state**, the judge of the court in which he represents the state may appoint any competent attorney to perform the duties of the office during the absence or disqualification of the attorney for the state.

(b) Except as otherwise provided by this subsection, if the appointed attorney is also **an attorney for the state**, the duties of the appointed office are additional duties of his present office, and he is not entitled to additional compensation. Nothing herein shall prevent a commissioners court of a county from contracting with another commissioners court to pay expenses and reimburse compensation paid by a county to **an attorney for the state** who is appointed to perform additional duties.

(b-1) **An attorney for the state** who is not disqualified to act may request the court to permit him to recuse himself in a case for good cause and upon approval by the court is disqualified.

(c) If the appointed attorney is not an attorney for the state, he is qualified to perform the duties of the office for the period of absence or disqualification of the attorney for the state on filing an oath with the clerk of the court. He shall receive compensation in the same amount and manner as an attorney appointed to represent an indigent person.

(d) In this article, "attorney for the state" means a county attorney, a district attorney, or a criminal district attorney.

(e) In Subsections (b) and (c) of this article, "attorney for the state" includes an assistant attorney general.

(f) In Subsection (a) of this article, "competent attorney" includes an assistant attorney general.

(g) An attorney appointed under Subsection (a) of this article to perform the duties of the office of an attorney for the state in a justice or municipal court may be paid a reasonable fee for performing those duties.

15.2.4.5 One of the original and basic methodology tools for studying and developing conclusions of law is I.R.A.C., which means:

I = Issue

R = Rule
A = Application/Analysis
C = Conclusion

15.2.4.6 What is the statement of the **issue** at hand, the statement of the **rules** pertinent in deciding the issue, the **application/analysis** applies the rules developed in the rules section to the specific facts of the issue at hand, and the **conclusion** section directly answers the question presented in the issue section.

15.2.4.7 There are several other methodologies allegedly devised to overcome the limitations and constraints of the IRAC method (CREAC/CRuPAC being one of the most popular), so try to find the method that is most comprehensible to you. Heaven forbid that common sense ever becomes a recognized methodology of deciding the issues and conclusions of man-made law. Despite this shortcoming within the myriad of current analysis methods used in law, my methodology considers the following as well:

1. what makes sense under the constitutional provisions and Bill of Rights,
2. is within the powers delegated to the legislature to regulate, tax, or control, and
3. is in compliance with all of the respective constitutions provisions and clauses, and
4. how the various courts have ruled on the issues and conclusions found, and
5. have we actually discovered a first-blush issue that has never been adjudicated.

15.2.4.8 I will concede to you however that the number three (3) item on that list seems to be totally ignored by virtually every legislative act passing forth from the nether regions of the respective state legislatures and the United States Congress as well as rulings of the various courts.

15.2.4.9 There is also an easier method that may be more comprehensible and appreciable to you than any of these, as you can usually sum up a case in two sentences using the formula of **facts, holding, rationale** (oh my!). It should look like this: "*In the Smith case, the court found that monkeys were in fact members of the legislature because they were easily as capable as elected officials in making law for the state. The court reasoned that if a ham sandwich could be indicted, then a monkey could rule the land.*" This is not a real case by the way (I felt the need to mention that because these days you never know, take a look at our current monkeys-in-residence in the white house and congress, a lawsuit is inevitable).



15.2.4.10 It should be noted however that I once read an online article which reported that a state grand jury did in fact indict a ham sandwich. It went something like this: *"To prove the point that he could get an indictment on anybody, the state's prosecutor wrote up a phony indictment naming a ham sandwich as the Defendant, the grand jury indicted the sandwich because not one of them bothered to read the indictment before handing down the decision. They simply did as the prosecutor asked them to and voted to indict."* Sound familiar – Patriot Acts I & II, trillion dollar federal bail-out bills - heeeelloooooo? While this may appear funny to all of us in the grand scheme of things there is more at work here than meets the eye, and this has been true for quite some time in our beloved nation. And yes, he does in fact have a plan, or at least a starring role. It is a decades long, ongoing, and ultimate plan, and here it is:



Confucius say: "Remember always, a criminal is a criminal no matter what his title, occupation, or address... 'Nuff said!"

15.2.4.11 You can read more about the IRAC process here: [What is the IRAC process...](#) The source is a Wikipedia article on the subject which is also included in the Addendums section of this material.

15.2.4.12 **Now let's analyze each of these sections to formulate the basis for the conclusions that follow:**

Note: The following abbreviations are used in the explanations below for brevity purposes.

DA = District Attorney
CA = County Attorney
CrDA = Criminal District Attorney
AAG = Assistant Attorney General
CyA = City Attorney
JP = Justice of the Peace
TCCrP = Texas Code of Criminal Procedure

- 15.2.4.13 **The Texas Constitution** sets the stage for the duties of the DA and CA. If both a DA and CA exist within the same county THEN the legislature can regulate their respective duties by statutory enactment, but may do so ONLY for those DAs and CAs within that specific county, not for all DAs and CAs statewide. Notice that the power to appoint a new CA rests solely with the county commissioner's court of the county in question; appointment of CA is not a delegated power to any judge or other party such as the STATE. Notice also the last two words of this clause which reads "have qualified". This speaks directly to the requirement that the elected official to the office of DA MUST be "qualified", meaning both the oath of office and the surety bond mandated in the constitution. This is a logical inference since these qualifications are a prerequisite of assuming the powers and authority of that office. Nowhere does the constitution speak to the requirement of a law degree, or for that matter to any other educational requirements, as a prerequisite to any public office, so these are obviously not the qualifications that are referred to in this clause. The oath and the bond are the only two "qualifications" of assuming public that are mandated within the constitution that I have found. This does not address the "disqualifications" for public office, which are a separate issue.
- 15.2.4.14 **TCCrP Art. 2.01** outlines the DA's duties as an "attorney for the state" - "**he shall represent the State therein**".
- 15.2.4.15 **TCCrP Art. 2.02** outlines the CA's duties as an "attorney for the state" - "**He shall represent the State**".
- 15.2.4.16 **TCCrP Art. 2.07(a)** sets the criteria for appointing an Attorney Pro Tem, who can be appointed by ***the judge of the same court*** in which the "attorney for the state" regularly represents the state, but the judge may do so ONLY if the "attorney for the state" is either:
1. disqualified, or
 2. absent, or
 3. unable
- to perform their duties. Notice that it does not authorize an attorney pro tem to be appointed simply because the "attorney for the state" either *refuses* or *chooses* not to act "*at his discretion*" or because he is "*unwilling*" to do so.
- 15.2.4.17 **TCCrP Art. 2.07(c)** shows very specifically that IF the appointed attorney IS NOT already an "attorney for the state" by benefit of holding a DA, CA or CrDA elected office within the specific county in question, then they MUST take the oath of office in order to qualify to perform the (temporary) duties of that office. It would also appear to be a reasonable conclusion that since the state constitution requires all elected (public) office holders to have TWO prerequisite qualifications BEFORE assuming any duties of that office, namely the taking of the oath of office AND posting the required surety bond, that the bond would also be a circumstantial requirement of the temporary appointment as there is no limitation specified within the Texas Constitution to require any less for a temporary office holder than a duly elected term office holder.
- 15.2.4.18 **TCCrP Art. 2.07(d)** further clarifies that only certain **elected** office holders may be an "attorney for the state", the CA, DA and the CrDA.
- 15.2.4.19 **TCCrP Art. 2.07(e)** adds an AAG to the mix of "**attorney for the state**" for the purposes of subsections (b) and (c) but not (b-1), AND sets the specific limitation to ONLY an AAG

by stating "**includes** an assistant attorney general".

- 15.2.4.20 **TCCrP Art. 2.07(f)** further enforces this limitation, for the purposes of subsection (a) "**competent attorney**" is ALSO limited to an AAG by the same criteria, by stating that it "**includes** an assistant attorney general".
- 15.2.4.21 **TCCrP Art. 2.07(g)** finally clinches the requirement that ONLY an "**attorney for the state**" appointed under the requirements of subsection (a) may perform the duty to **represent the state in a municipal or JP court**. This conclusion is easy to see coming when you know the jurisdictional limitations of these specific types of courts.
- 15.2.4.22 Nowhere in CCrP chapter 45 or in any of its other chapters is the CyA referred to as an "attorney for the state", and nowhere does it read that the CyA may represent the state. Therefore the declaration that the CyA shall prosecute **all cases** in the municipal court is a misnomer. The statutory sections above clearly declare that this is not and cannot be so.
- 15.2.4.23 The CyA cannot simply run over to the JP court and represent the state there, not even if the JP court is within the city limits. The CyA has NO authority to act on behalf of the county does he? The CyA cannot represent the state in any other court, so how could he be empowered to do so in a municipal court? How did the CyA suddenly acquire higher authority to act on behalf of the state, an entity which CAN act within the respective counties, municipalities, AND in ANY court within the state? See the problem yet? If the CyA acquires the power of a state office but NONE of the public accountability, then this becomes a severe constitutional circumvention issue.
- 15.2.4.24 Take notice also that the statute speaks directly to the "duties of the office" and that the office in question is a **public office** which can only be properly filled by a qualified ***elected*** person. The statute bears out this requirement, to wit "any **competent attorney to perform the duties of the office during the absence or disqualification of the attorney for the state**". Do you remember who is "included" in the term "competent attorney" pursuant to TCCrP Art. 2.07(f)?
- 15.2.4.25 The CyA IS NOT elected, he holds NO public office, he is a PRIVATE attorney, he is simply an employee or contractor, nothing more. Therefore, the only remaining possible conclusion on the prosecutorial powers of the CyA is that the he may prosecute ONLY those cases in municipal court that are the direct result of ORDINANCE violations, not violations of state law. This would also apply to the APPEALS for those ordinance cases just like the statute reads. This also means that the municipality is barred from seeking a "hired gun" prosecutor from a private law firm for state law cases for exactly the same reasons.
- 15.2.4.26 It is axiomatic in the design of the governmental structure established by the respective constitutions that ONLY those that are elected to a public office, and that have met all the criteria to hold that office, may perform any acts or duties, or exercise any authority under that office, regardless of whether or not the act(s) is/are purported to have a direct effect on any member(s) of the general public. This stems from the constitutional accountability and answer-ability requirement that elected officials have to the People at large, for it us for whom they work and to whom they must be held to justify their actions when we deem it necessary.

qualified and elected to act as an "attorney for the state" are DISQUALIFIED, ABSENT, or UNABLE to perform those duties AND we held an emergency election that the "ultra-maroon" (*thanks for the loan of the word Bugs*) actually won.

- 15.2.4.28 Therefore, traffic citations that cite state law as the basis for the citation may ONLY be prosecuted in ANY court by a qualified "attorney for the state", said qualifications being an elected official already occupying the office as either a DA, CA, or CrDA, or in certain limited cases, an assistant attorney general.
- 15.2.4.29 C-ya later Mr. city attorney, we don't need 'ya, can't use 'ya, move along, no state money for you.
- 15.2.4.30 I hope that this clarifies why I have come to these particular conclusions on this "issue".
- 15.2.4.31 On a final note I would like to recommend a book you should read, it is **Courtroom 302** by Steve Bogira. It captures the reality of Criminal justice better than anything I've read, making clear that the system is run for the convenience of those who manage it--judges, prosecutors, defense counsel, and court clerks.
- 15.2.4.32 One example of this is that judges are reluctant to let defendants out on bond because it's easier for court personnel to return them to jail than to do the paperwork required by bonds. Another is that defendants plead guilty not because they are guilty, but because overworked public defenders pressure them to plead, and judges, anxious to keep things moving--and in some cases, to meet "cases disposed of" quotas--do not expend excessive effort questioning the legitimacy of the pleas.
- 15.2.4.33 I have read tons of articles about the tendency of grand juries to follow the dictates of prosecutors (like the ham sandwich case) instead of concerning themselves, as they are supposed to do, with protecting the unjustly accused. Still, I was stunned by one of the statistics presented by Bogira. From 2000 through 2003, Cook County (Chicago) grand juries "approved 1,706 indictments for every indictment they rejected."
- 15.2.4.34 This does not appear to be very good odds for the wrongly accused when it comes to being indicted in Chicago. Do we really want to allow this statistic to become the norm for Texas as well?

15.2.5 The Texas Penal code

15.2.6 The Texas Code of Civil Procedure

15.3 Learning the Proper Technique and Fighting Style to Combat Your Opponent

15.4 Learn How to Use Your Opponents Own Fighting Style Against Him to Win

15.5 Learn How to Make Your Opponent Commit Himself to Your Defense

15.6 Learn How to Win Your Battles Completely and Gracefully

15.7 Learn How Claim the Spoils of Battle

10.4.3 For.

10.4.4 For.

Addendums

UNALIENABLE.

The state of a thing or right which cannot be sold.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

DECLARATION OF INDEPENDENCE

"Things which are not in commerce, as public roads, are in their nature unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are UNALIENABLE."
Bouvier's Law Dictionary 1856 Edition

"Unalienable: incapable of being alienated, that is, sold and transferred."
Black's Law Dictionary, Sixth Edition, page 1523

You can not surrender, sell or transfer unalienable rights, they are a gift from the Creator to the individual and can not under any circumstances be surrendered or taken. All individual's have unalienable rights.

"Inalienable rights: Rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights."
Morrison v. State, Mo. App., 252 S.W.2d 97, 101.

You can surrender, sell or transfer inalienable rights if you consent either actually or constructively. Inalienable rights are not inherent in man and can be alienated by government. Persons have inalienable rights. Most state constitutions recognize only inalienable rights.

"Men are endowed by their Creator with certain unalienable rights, -'life, liberty, and the pursuit of happiness;' and to 'secure,' not grant or create, these rights, governments are instituted. That property which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation."
BUDD v. PEOPLE OF STATE OF NEW YORK, 143 U.S. 517 (1892)

"Among these unalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'THE PROPERTY WHICH EVERY MAN HAS IN HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL

OTHER PROPERTY, SO IT IS THE MOST SACRED AND INVIOABLE. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. . . The right to follow any of the common occupations of life is an inalienable right, it was formulated as such under the phrase 'pursuit of happiness' in the declaration of independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the constitution. It is what no legislature has a right to do; and no contract to that end can be binding on subsequent legislatures. . ."

BUTCHERS' UNION CO. v. CRESCENT CITY CO., 111 U.S. 746 (1884)

"Burlamaqui (Polit. c. #, . 15) defines natural liberty as "the right which nature gives to all mankind of disposing of their persons and property after the manner they may judge most consonant to their happiness, on condition of their acting within the limits of the law of nature, and so as not to interfere with an equal exercise of the same rights by other men;" and therefore it has been justly said, that "absolute rights of individuals may be resolved into the right of personal security--the right of personal liberty--and the right to acquire and enjoy property. These rights have been justly considered and frequently declared by the people of this country to be natural, inherent, and unalienable."

Potter's Dwaris, ch. 13, p. 429.

"From these passages it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects, that induced them to unite in society. No man would become a member of a community, in which he could not enjoy the fruits of his honest labour and industry. . . The constitution expressly declares, that the right of acquiring, possessing, and protecting property is natural, inherent, and unalienable. It is a right not ex gratia from the legislature, but ex debito from the constitution. . . Where is the security, where the inviolability of property, if the legislature, by a private act, affecting particular persons ONLY, can take land from one citizen, who acquired it legally, and vest it in another?"
VANHORNE'S LESSEE v. DORRANCE, 2 U.S. 304 (1795)

("[T]he Due Process Clause protects [the unalienable liberty recognized in the Declaration of Independence] rather than the particular rights or privileges conferred by specific laws or regulations."

SANDIN v. CONNER, ___ U.S. ___ (1995)

"In the second article of the Declaration of Rights, which was made part of the late Constitution of Pennsylvania, it is declared: 'That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding; and that no man ought or of right can be compelled, to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent; nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be, vested in, or assumed, by any power whatever, that shall, in any case, interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.' (Dec. of Rights, Art. 2.). . . (The Judge then read the 1st. 8th. and 11th articles of the Declaration of Rights; and the 9th. and 46th sections

of the Constitution of Pennsylvania. See 1 Vol. Dall. Edit. Penn. Laws p. 55. 6. 60. in the Appendix.) From these passages it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects, that induced them to unite in society. No man would become a member of a community, in which he could not enjoy the fruits of his honest labour and industry. The preservation of property then is a primary object of the social compact, and, by the late Constitution of Pennsylvania, was made a fundamental law. . . The constitution expressly declares, that the right of acquiring, possessing, and protecting property is natural, inherent, and unalienable. It is a right not ex gratia from the legislature, but ex debito from the constitution."

VANHORNE'S LESSEE v. DORRANCE, 2 U.S. 304 (1795)

"I had thought it self-evident that all men were endowed by their Creator with liberty as one of the cardinal unalienable rights. It is that basic freedom which the Due Process Clause protects, rather than the particular rights or privileges conferred by specific laws or regulations. . . It demeans the holding in *Morrissey* - more importantly it demeans the concept of liberty itself - to ascribe to that holding nothing more than a protection of an interest that the State has created through its own prison regulations. For if the inmate's protected liberty interests are no greater than the State chooses to allow, he is really little more than the slave described in the 19th century cases. I think it clear that even the inmate retains an unalienable interest in liberty - at the very minimum the right to be treated with dignity - which the Constitution may never ignore."

MEACHUM v. FANO, 427 U.S. 215 (1976)

"All commissions (regardless of their form, or by whom issued) contain, impliedly, the constitutional reservation, that the people at any time have the right, through their representatives, to alter, reform, or abolish the office, as they may alter, if they choose, the whole form of government. In our Magna Charta it is proclaimed (2d section of the Bill of Rights, under the 9th Article of the Constitution of Pennsylvania), that 'all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of these ends they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.' It has been well said, by one of the ablest judges of the age, that 'a constitution is not to receive a technical construction, like a common law instrument or a statute. It is to be interpreted so as to carry out the great principles of the government, not to defeat them.'"

Per Gibson, C. J., in *Commonwealth v. Clark*, 7 Watts & S. (Pa.), 133. BUTLER v. COM. OF PENNSYLVANIA, 51 U.S. 402 (1850)

"The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself."

U S v. CRUIKSHANK, 92 U.S. 542 (1875)

". . . The question presented is not whether the United States has the power to condemn and appropriate this property of the Monongahela Company, for that is conceded, but how much it must pay as compensation therefore. Obviously, this question, as all others which run along the line of the extent of the protection the individual has under the Constitution against the

demands of the government, is of importance; for in any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government. The first ten amendments to the Constitution, adopted as they were soon after the adoption of the Constitution, are in the nature of a bill of rights, and were adopted in order to quiet the apprehension of many, that without some such declaration of rights the government would assume, and might be held to possess, the power to trespass upon those rights of persons and property which by the Declaration of Independence were affirmed to be unalienable rights."
UNITED STATES v. TWIN CITY POWER CO., 350 U.S. 222 (1956)

"By the common law, the king as parens patriae owned the soil under all the waters of all navigable rivers or arms of the sea where the tide regularly ebbs and flows, including the shore or bank to high- water mark. ... He held these rights, not for his own benefit, but for the benefit of his subjects at large, who were entitled to the free use of the sea, and all tide waters, for the purposes of navigation, fishing, etc., subject to such regulations and restrictions as the crown or the Parliament might prescribe. By Magna Charta, and many subsequent statutes, the powers of the king are limited, and he cannot now deprive his subjects of these rights by granting the public navigable waters to individuals. But there can be no doubt of the right of Parliament in England, or the Legislature of this state, to make such grants, when they do not interfere with the vested rights of particular individuals. The right to navigate the public waters of the state and to fish therein, and the right to use the public highways, are all public rights belonging to the people at large. They are not the private unalienable rights of each individual. Hence the Legislature as the representatives of the public may restrict and regulate the exercise of those rights in such manner as may be deemed most beneficial to the public at large: Provided they do not interfere with vested rights which have been granted to individuals."
APPLEBY v. CITY OF NEW YORK, 271 U.S. 364 (1926)

"I Elliot's Debates on the Federal Constitution (1876) 319 et seq. In ratifying the Constitution the following declarations were made: New Hampshire, p. 326, 'XI. Congress shall make no laws touching religion, or to infringe the rights of conscience.' Virginia, p. 327, '... no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.' New York, p. 328, 'That the freedom of the press ought not to be violated or restrained.' After the submission of the amendments, Rhode Island ratified and declared, pp. 334, 335, 'IV. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence; and therefore all men have a natural, equal, and unalienable right to the exercise of religion according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established, by law, in preference to others. ... XVI. That the people have a right to freedom of speech, and of writing and publishing their sentiments. That freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated."
JONES v. CITY OF OPELIKA, 319 U.S. 105 (1943)

"As to the objections made on the other side to our interpretation of the compact, that it impugns the right to the pursuit of happiness, which is inherent in every society of men, and is incompatible with these unalienable rights of sovereignty and of self-government, which every independent State must possess, the answer is obvious: that no people has a right to pursue its own happiness to the injury of others, for whose protection solemn compacts, like the present, have been made. It is a trite maxim, that man gives up a part of his natural liberty when he enters into civil society, as the price of the blessings of that state: and it may be said, with truth, this liberty is well exchanged for the advantages which flow from law and justice."

GREEN v. BIDDLE, 21 U.S. 1 (1821)

"This court said, in the case of The Bank of Columbia v. Okely (4 Wheat. 235), in speaking of a summary proceeding given by the charter of that bank for the collection of its debts: 'It is the remedy, and not the right, and as such we have no doubt of its being subject to the will of Congress. The forms of administering justice, and the duties and powers of courts as incident to the exercise of a branch of sovereign power, must ever be subject to legislative will, and the power over them is unalienable, so as to bind subsequent legislatures.' And in Young v. The Bank of Alexandria (4 Cranch, 397), Mr. Chief Justice Marshall says: 'There is a difference between those rights on which the validity of the transactions of the corporation depends, which must adhere to those transactions everywhere, and those peculiar remedies which may be bestowed on it. The first are of general obligation; the last, from their nature, can only be exercised in those courts which the power making the grant can regulate.'" See also The Commonwealth v. The Delaware & Hudson Canal Co. et al., 43 Pa. St. 227; State of Maryland v. Northern Central Railroad Co., 18 Md. 193; Colby v. Dennis, 36 Me. 1; Gowan v. Penobscot Railroad Co., 44 id. 140. U.S. v. UNION PAC. R. CO., 98 U.S. 569 (1878)

"It is significant that the guarantee of freedom of speech and press falls between the religious guarantees and the guarantee of the right to petition for redress of grievances in the text of the First Amendment, the principles of which are carried to the States by the Fourteenth Amendment. It partakes of the nature of both, for it is as much a guarantee to individuals of their personal right to make their thoughts public and put them before the community, see Holt, Of the Liberty of the Press, in Nelson, Freedom of the Press from Hamilton to the Warren Court 18-19, as it is a social necessity required for the "maintenance of our political system and an open society." Time, Inc. v. Hill, supra, at 389. It is because of the personal nature of this right that we have rejected all manner of prior restraint on publication, Near v. Minnesota, 283 U.S. 697, despite strong arguments that if the material was unprotected the time of suppression was immaterial. Pound, Equitable Relief Against Defamation and Injuries to Personality, 29 Harv. L. Rev. 640. The dissemination of the individual's opinions on matters of public interest is for us, in the historic words of the Declaration of Independence, an "unalienable right" that "governments are instituted among men to secure." History shows us that the Founders were not always convinced that unlimited discussion of public issues would be "for the benefit of all of us"¹³ but that they firmly adhered to the proposition that the "true liberty of the press" permitted "every man to publish his opinion."

Respublica v. Oswald, 1 Dall. 319, 325 (Pa.).

CURTIS PUBLISHING CO. v. BUTTS, 388 U.S. 130 (1967)

"While the "meaning and scope of the First Amendment" must be read "in light of its history and the evils it was designed forever to suppress," Everson v. Board of Education, supra, at 14-15, this Court has also recognized that "this Nation's history has not been one of entirely sanitized separation between Church and State." Committee for Public Education & Religious Liberty v. Nyquist, supra, at 760. "The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself." Abington School District v. Schempp, 374 U.S. 203, 213 (1963).⁵ The Court properly has noted "an unbroken history of official acknowledgment . . . of the role of religion in American life." Lynch v. Donnelly, 465 U.S., at 674, and has recognized that these references to "our religious heritage" are constitutionally acceptable."

Id., at 677. EDWARDS v. AGUILLARD, 482 U.S. 578 (1987)

"When the First Congress was debating the Bill of Rights, it was contended that there was no need separately to assert the right of assembly because it was subsumed in freedom of speech. Mr. Sedgwick of Massachusetts argued that inclusion of "assembly" among the enumerated rights would tend to make the Congress "appear trifling in the eyes of their constituents. . . ." If

people freely converse together, they must assemble for that purpose; it is a self-evident, unalienable right which the people possess; it is certainly a thing that never would be called in question" 1 Annals of Cong. 731 (1789). Since the right existed independent of any written guarantee, Sedgwick went on to argue that if it were the drafting committee's purpose to protect all inherent rights of the people by listing them, "they might have gone into a very lengthy enumeration of rights," but this was unnecessary, he said, "in a Government where none of them were intended to be infringed." *Id.*, at 732. Mr. Page of Virginia responded, however, that at times "such rights have been opposed," and that "people have . . . been prevented from assembling together on their lawful occasions": "[T]herefore it is well to guard against such stretches of authority, by inserting the privilege in the declaration of rights. If the people could be deprived of the power of assembling under any pretext whatsoever, they might be deprived of every other privilege contained in the clause." *Ibid.* The motion to strike "assembly" was defeated."

Id., at 733. *RICHMOND NEWSPAPERS, INC. v. VIRGINIA*, 448 U.S. 555 (1980)

"Gentlemen, I have insisted, at great length, upon the origin of governments, and detailed the authorities which you have heard upon the subject, because I consider it to be not only an essential support, but the very foundation of the liberty of the press. If Mr. Burke be right in his principles of government, I admit that the press, in my sense of its freedom, ought not to be free, nor free in any sense at all; and that all addresses to the people upon the subjects of government, and all speculations of amendment, of what kind or nature soever, are illegal and criminal; since if the people have, with out possible re-call, delegated all their authorities, they have no jurisdiction to act, and therefore none to think or write upon such subjects; and it would be a libel to arraign government or any of its acts, before those who have no jurisdiction to correct them. But on the other hand . . . no legal argument can shake the freedom of the press in my sense of it, if I am supported in my doctrines concerning the great unalienable right of the people, to reform or to change their governments. It is because the liberty of the press resolves itself into this great issue, that it has been in every country the last liberty which subjects have been able to wrest from power. Other liberties are held under governments, but the liberty of opinion keeps governments themselves in due subjection to their duties."

1 Speeches of Lord Erskine 524-525 (J. High ed. 1876).

HERBERT v. LANDO, 441 U.S. 153 (1979)

"The denial of human rights was etched into the American Colonies' first attempts at establishing self-government. When the colonists determined to seek their independence from England, they drafted a unique document cataloguing their grievances against the King and proclaiming as "self-evident" that "all men are created equal" and are endowed "with certain unalienable Rights," including those to "Life, Liberty and the pursuit of Happiness." The self-evident truths and the unalienable rights were intended, however, to apply only to white men." An earlier draft of the Declaration of Independence, submitted by Thomas Jefferson to the Continental Congress,

UNIVERSITY OF CALIFORNIA REGENTS v. BAKKE, 438 U.S. 265 (1978)

"The Declaration of Independence states the American creed: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." This ideal was not fully achieved with the adoption of our Constitution because of the hard and tragic reality of Negro slavery. The Constitution of the new Nation, while heralding liberty, in effect declared all men to be free and equal - except black men who were to be neither free nor equal. This inconsistency reflected a fundamental departure from the American creed, a departure which it took a tragic civil war to set right. With the adoption, however, of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, freedom and equality were guaranteed expressly to all regardless "of race, color, or previous condition of servitude."

1 *United States v. Reese*, 92 U.S. 214, 218.

BELL v. MARYLAND, 378 U.S. 226 (1964)

Addendum: Texas Statutes Website – Occupational Licenses

Bill: HB 288 [Add to Bill List](#)
Legislative Session: 81(R) **Author:** Dutton | [Add to Alert List](#)

Introduced

Relating to authorizing a justice or municipal court to grant an occupational driver's license.

Bill: HB 288 [Add to Bill List](#)
Legislative Session: 81(R) **Council Document:** 81R 647 JD-D | [Add to Alert List](#)

Last Action: 03/09/2009 H Left pending in committee

Caption Version: Introduced

Caption Text: Relating to authorizing a justice or municipal court to grant an occupational driver's license.

Author: Dutton

Subjects: Courts--Justice (I0110)
 Courts--Municipal (I0100)
 Vehicles & Traffic--Driver's Licenses (I0840)
 OCCUPATIONAL DRIVER'S LICENSE (S0699)

House Committee: [Public Safety](#)
Status: In committee

Actions: (descending date order)

	Description	Comment	Date	Time	Journal Page
H	Left pending in committee		03/09/2009		
H	Testimony taken/registration(s) recorded in committee		03/09/2009		
H	Considered in public hearing		03/09/2009		
H	Scheduled for public hearing on . . .		03/09/2009		
H	Referred to Public Safety		02/17/2009		287
H	Read first time		02/17/2009		287
H	Filed		11/19/2008		

Addendum: HB 288 – JP & Municipal Courts Can Issues ODL's

Bill:
HB 288

Legislative Session: 81(R)

Author: Dutton

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Actions: (descending date order)

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H	Left pending in committee		03/09/2009		
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Bill:
HB 288

Legislative Session:
81(R)

Author:
Dutton

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Stage 1

Filed

11/19/2008

Stage 2

Out of House Committee

Stage 3

Voted on by House

Stage 4

Out of Senate Committee

Stage 5

Voted on by Senate

Stage 6

Sent to Governor

Stage 7

Bill Becomes Law

Legend

- Indicates bill passed stage
- Indicates bill has not reached stage
- Indicates bill failed to complete stage

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[Referral to a committee](#)
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[Effective date](#)
[Legislative glossary](#)

Stage 1
Bill filed by Dutton on 11/19/2008.

Stage 2
Not reached.

Stage 3
Not reached.

Stage 4
Not reached.

Stage 5
Not reached.

Stage 6
Not reached.

Stage 7
Not reached.

Addendum: HB 288 – Text of the Bill

81R647 JD-D

By: Dutton

H.B. No. 288

A BILL TO BE ENTITLED

AN ACT

relating to authorizing a justice or municipal court to grant an occupational driver's license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 521.242, Transportation Code, is amended to read as follows:

Sec. 521.242. PETITION. (a) A person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction under Section 49.04, Penal Code,

may apply for an occupational license by filing a verified petition with the clerk of the justice [the county] court or municipal [district] court [with jurisdiction] in the precinct or municipality [county] in which:

- (1) the person resides; or
- (2) the offense occurred for which the license was suspended.

(b) ~~[A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:~~

~~[(1) the person's license has been automatically suspended or canceled under this chapter for a conviction of an offense under the laws of this state; and~~

~~[(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.~~

~~[(c)] A petition filed under this section must set forth in detail the person's essential need.~~

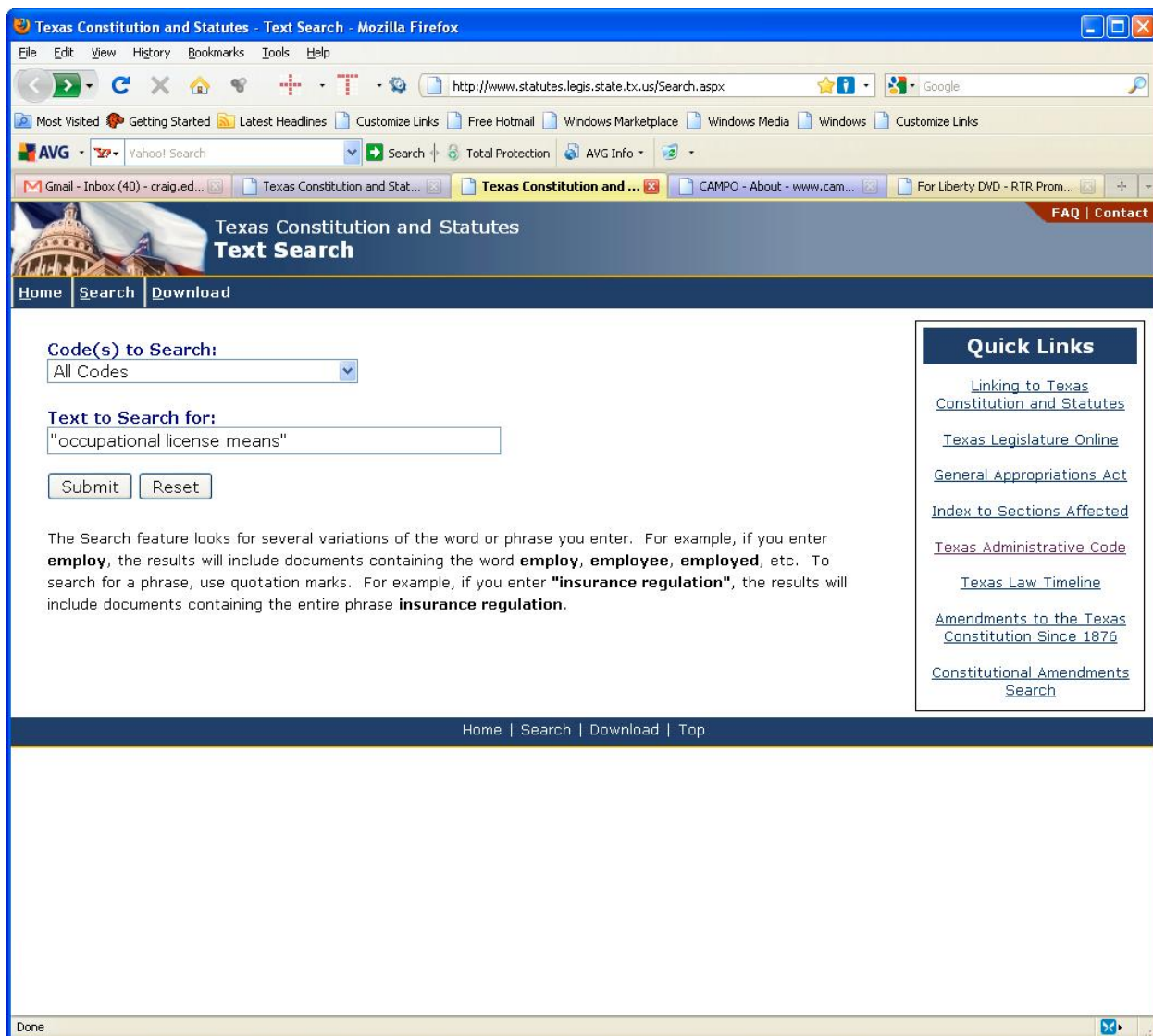
~~[(c)] [(d)] A petition filed under Subsection (b) must state that the petitioner was convicted in that court for an offense under the laws of this state.~~

~~[(e)] The clerk of the court shall file the petition as in any other [civil] matter.~~

~~[(d)] [(f)] A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.~~

SECTION 2. The change in law made by this Act applies only to a petition requesting an occupational driver's license that is filed on or after the effective date of this Act. A petition for an occupational driver's license that is filed before the effective date of this Act is covered by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2009.



Code(s) to Search:

Text to Search for:

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[Linking to Texas Constitution and Statutes](#)

General Appropriations Act

Texas Administrative Code

Amendments to the Texas Constitution Since 1876

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Addendum: Texas Administrative Code – Occupational Licenses

Texas Administrative Code

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§303.8	16	8	A	Executive Secretary	05/03/2007
§303.202	16	8	F	Guidelines	05/03/2007
§307.61	16	8	C	General Authority	12/03/2001
§309.163	16	8	B/3	Fingerprinting	12/08/2008
§311.6	16	8	A/1	Denial, Suspension and Revocation of Licenses	06/27/2008
§30.3	30	1	A	Purpose and Applicability	
§30.7	30	1	A	Definitions	
§30.26	30	1	A	Recognition of Licenses from Out-of-State	
§30.51	30	1	B	Purpose and Applicability	
§30.60	30	1	B	Qualifications for Initial License	

Records 1 to 10

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§30.62	30	1	B	Qualifications for License Renewal	
§30.81	30	1	C	Purpose and Applicability	
§30.90	30	1	C	Qualifications for Initial License	
§30.92	30	1	C	Qualifications for License Renewal	
§30.111	30	1	D	Purpose and Applicability	
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§30.122	30	1	D	Qualifications for License Renewal	
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§30.180	30	1	E	Qualifications for Initial License	
§30.185	30	1	E	Qualifications for License Renewal	

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Texas Administrative Code

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§30.190	30	1	E	Qualifications for Initial Registration	
§30.192	30	1	E	Qualifications for Registration Renewal	
§30.201	30	1	F	Purpose and Applicability	
§30.210	30	1	F	Qualifications for Initial License	
§30.212	30	1	F	Qualifications for License Renewal	
§30.231	30	1	G	Purpose and Applicability	
§30.240	30	1	G	Qualifications for Initial License	
§30.242	30	1	G	Qualifications for License Renewal	
§30.247	30	1	G	Registration of Maintenance Providers	
§30.261	30	1	H	Purpose and Applicability	

Records 21 to 30

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§30.270	30	1	H	Qualifications for Initial License	
§30.272	30	1	H	Qualifications for License Renewal	
§30.301	30	1	I	Purpose and Applicability	
§30.310	30	1	I	Qualifications for Initial License	
§30.312	30	1	I	Qualifications for License Renewal	
§30.315	30	1	I	Qualifications for Initial Registration	
§30.317	30	1	I	Qualifications for Registration Renewal	
§30.331	30	1	J	Purpose and Applicability	
§30.340	30	1	J	Qualifications for Initial License	
§30.342	30	1	J	Qualifications for License Renewal	

Records 31 to 40

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§30.346	30	1	J	Qualifications for Initial Registration	
§30.348	30	1	J	Qualifications for Registration Renewal	
§30.381	30	1	K	Purpose and Applicability	
§30.390	30	1	K	Qualifications for Initial License	
§30.392	30	1	K	Qualifications for License Renewal	
§30.396	30	1	K	Qualifications for Initial Registration	
§30.398	30	1	K	Qualifications for Registration Renewal	
§222.159	30	1	E	Operator Licensing	
§285.1	30	1	A	Purpose and Applicability	04/07/2003
§285.2	30	1	A	Definitions	04/07/2003

Records 41 to 50

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§285.50	30	1	F	General Requirements	04/07/2003
§330.3	30	1	A	Definitions	07/31/2003
§330.59	30	1	B	Contents of Part I of the Application	07/31/2003
§334.401	30	1	I	License and Registration Required	11/03/2000
§334.455	30	1	J	Notice to Owner or Operator	11/03/2000
§344.1	30	1	A	Definitions	05/28/2004
§344.30	30	1	C	License Required	05/28/2004
§344.31	30	1	C	Exemption for Business Owner Who Provides Irrigation Services	05/28/2004
§344.71	30	1	G	Contracts	05/28/2004
§106.551	40	2	C/3	Goods and Services	08/13/2008

Records 51 to 60

Chapter.Rule	Title	Part	Subchapter	Heading	Chapter Review Date
§106.572	40	2	C/3	Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies	08/13/2008
§107.127	40	2	B/1	Occupational Licenses, Tools, Equipment, and Training Supplies	08/13/2008

Records 61 to 62

Statutory Definitions For Speed Limits

TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 201. GENERAL PROVISIONS AND ADMINISTRATION
SUBCHAPTER K. ROAD AND HIGHWAY USE; SIGNS

Sec. 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, Sec. 1, eff. Sept. 1, 1995.

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE C. RULES OF THE ROAD
CHAPTER 545. OPERATION AND MOVEMENT OF VEHICLES
SUBCHAPTER H. SPEED RESTRICTIONS

Sec. 545.351. MAXIMUM SPEED REQUIREMENT.

(a) An operator may not drive at a speed greater than is reasonable and prudent under the circumstances then existing.

(b) An operator:

(1) may not drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing; and

(2) shall control the speed of the vehicle as necessary to avoid colliding with another person or vehicle that is on or entering the highway in compliance with law and the duty of each person to use due care.

(c) An operator shall, consistent with Subsections (a) and (b), drive at an appropriate reduced speed if:

(1) the operator is approaching and crossing an intersection or railroad grade crossing;

(2) the operator is approaching and going around a curve;

(3) the operator is approaching a hill crest;

(4) the operator is traveling on a narrow or winding roadway; and

(5) a special hazard exists with regard to traffic, including pedestrians, or weather or highway conditions.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.109, eff. Sept. 1, 1997.

Sec. 545.352. PRIMA FACIE SPEED LIMITS.

(a) A speed in excess of the limits established by Subsection (b) or under another provision of this subchapter is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful.

Text of subsec. (b) as amended by Acts 1999, 76th Leg., ch. 663, Sec. 2 and Acts 1999, 76th Leg., ch. 739, Sec. 1

(b) Unless a special hazard exists that requires a slower speed for compliance with Section 545.351(b), the following speeds are lawful:

(1) 30 miles per hour in an urban district on a street other than an alley and 15 miles per hour in an alley;

(2) 70 miles per hour in daytime and 65 miles per hour in nighttime if the vehicle is a passenger car, motorcycle, passenger car or light truck towing a trailer bearing a vessel, as defined by Section 31.003, Parks and Wildlife Code, that is less than 26 feet in length, passenger car or light truck towing a trailer or semitrailer used primarily to transport a motorcycle, or passenger car or light truck towing a trailer or semitrailer designed and used primarily to transport dogs or livestock, on a highway numbered by this state or the United States outside an urban district, including a farm-to-market or ranch-to-market road;

(3) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a passenger car or motorcycle on a highway that is outside an urban district and not a highway numbered by this state or the United States;

(4) 60 miles per hour outside an urban district if a speed limit for the vehicle is not otherwise specified by this section; or

(5) outside an urban district:

(A) 60 miles per hour if the vehicle is a school bus that has passed a commercial motor vehicle inspection under Section 548.201 and is on a highway numbered by the United States or this state, including a farm-to-market road;

(B) 50 miles per hour if the vehicle is a school bus that:

(i) has not passed a commercial motor vehicle inspection under Section 548.201; or

(ii) is traveling on a highway not numbered by the United States or this state; or

(C) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is a truck, other than a light truck, or if the vehicle is a truck tractor, trailer, or semitrailer, or a vehicle towing a trailer other than a trailer described by Subdivision (2),

semitrailer, another motor vehicle or towable recreational vehicle.

Text of subsec. (b) as amended by Acts 1999, 76th Leg., ch. 663, Sec. 2 and Acts 1999, 76th Leg., ch. 1346, Sec. 1

(b) Unless a special hazard exists that requires a slower speed for compliance with Section 545.351(b), the following speeds are lawful:

(1) 30 miles per hour in an urban district on a street other than an alley and 15 miles per hour in an alley;

(2) 70 miles per hour in daytime and 65 miles per hour in nighttime if the vehicle is on a highway numbered by this state or the United States outside an urban district, including a farm-to-market or ranch-to-market road, except as provided by Subdivision (4);

(3) 60 miles per hour in daytime and 55 miles per hour in nighttime if the vehicle is on a highway that is outside an urban district and not a highway numbered by this state or the United States;

(4) outside an urban district:

(A) 60 miles per hour if the vehicle is a school bus that has passed a commercial motor vehicle inspection under Section 548.201 and is on a highway numbered by the United States or this state, including a farm-to-market road;

(B) 50 miles per hour if the vehicle is a school bus that:

(i) has not passed a commercial motor vehicle inspection under Section 548.201; or

(ii) is traveling on a highway not numbered by the United States or this state; or

(C) 60 miles per hour in daytime and 55 miles per hour in nighttime if:

(i) the vehicle is a truck, other than a light truck, or if the vehicle is a truck tractor, trailer, or semitrailer; and

(ii) the vehicle is on a farm-to-market or ranch-to-market road;

(5) on a beach, 15 miles per hour; or

(6) on a county road adjacent to a public beach, 15 miles per hour, if declared by the commissioners court of the county.

(c) The speed limits for a bus or other vehicle engaged in the business of transporting passengers for compensation or hire, for a commercial vehicle used as a highway post office vehicle for highway post office service in the transportation of United States mail, for a light truck, and for a school activity bus are the same as required for a passenger car at the same time and location.

(d) In this section:

(1) "Interstate highway" means a segment of the national system of interstate and defense highways that is:

(A) located in this state;

(B) officially designated by the Texas Transportation Commission; and

(C) approved under Title 23, United States Code.

(2) "**Light truck**" means a truck with a manufacturer's rated carrying capacity of not more than 2,000 pounds, including a pick-up truck, panel delivery truck, and carry-all truck.

(3) "Urban district" means the territory adjacent to and including a highway, if the territory is improved with structures that are used for business, industry, or dwelling houses and are located at intervals of less than 100 feet for a distance of at least one-quarter mile on either side of the highway.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.110(a), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1020, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 663, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 739, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1346, Sec. 1, eff. Sept. 1, 1999.

Statutory Definitions For "Passenger Vehicle"

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE C. RULES OF THE ROAD
CHAPTER 545. OPERATION AND MOVEMENT OF VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 547.408. PERFORMANCE REQUIREMENTS FOR BRAKES.

(a) A **motor vehicle** or combination of vehicles shall be equipped with service brakes capable of:

(1) developing a braking force that is not less than:

(A) 52.8 percent of the gross weight of the vehicle for a passenger vehicle; or

(B) 43.5 percent of the gross weight of the vehicle for a vehicle other than a passenger vehicle;

(2) decelerating to a stop from 20 miles per hour or less at not less than:

(A) 17 feet per second per second for a passenger vehicle; or

(B) 14 feet per second per second for other vehicles; and

(3) stopping from a speed of 20 miles per hour in a distance, measured from the location where the service brake pedal or control is activated, of not more than:

(A) 25 feet for a passenger vehicle;

(B) 30 feet for a motorcycle, motor-driven cycle, or single unit vehicle with a manufacturer's gross vehicle weight rating of 10,000 pounds or less;

(C) 40 feet for:

(i) a single unit vehicle with a manufacturer's gross weight rating of more than 10,000 pounds;

(ii) a two-axle towing vehicle and trailer combination with a weight of 3,000 pounds or less;

(iii) a bus that does not have a manufacturer's gross weight rating; and

(iv) the combination of vehicles in an operation exempted by Section 547.407(b); and

(D) 50 feet for other vehicles.

(b) A test for deceleration or stopping distance shall be performed on a dry, smooth, hard surface that:

(1) is free of loose material; and

(2) does not exceed plus or minus one percent grade.

(c) In this section, "passenger vehicle" means a vehicle that has a maximum seating capacity of 10 persons, including the operator, and that does not have a manufacturer's gross vehicle weight rating.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

...

Sec. 545.412. CHILD PASSENGER SAFETY SEAT SYSTEMS; OFFENSE.

(a) A **person** commits an offense if the **person operates** a **passenger vehicle**, **transports** a child who is younger than five years of age and less than 36 inches in height, and does not keep the child secured during the **operation** of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

(c) It is a defense to prosecution under this section that the **person** was **operating** the vehicle in an emergency or for a law enforcement purpose.

(d) Repealed by Acts 2003, 78th Leg., ch. 204, Sec. 8.01.

(e) This section does not apply to a person:

(1) operating a vehicle transporting passengers for hire, including third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or

(2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

(f) In this section:

(1) "Child passenger safety seat system" means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(2) "Passenger vehicle" means a passenger car, light truck, sport utility vehicle, truck, or truck tractor.

(3) "Safety belt" means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(4) "Secured," in connection with use of a safety belt, means using the lap belt and any shoulder straps according to the instructions of:

(A) the manufacturer of the vehicle, if the safety belt is original equipment; or

(B) the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

(g) A judge, acting under Article 45.0511, Code of Criminal Procedure, who elects to defer further proceedings and to place a defendant accused of a violation of this section on probation under that article, in lieu of requiring the defendant to complete a driving safety course approved by the Texas Education Agency, shall require the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course approved by the Texas Education Agency under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) that includes four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts and emphasizes:

(1) the effectiveness of child passenger safety seat systems and seat belts in reducing the harm to children being transported in motor vehicles; and

(2) the requirements of this section and the penalty for noncompliance.

(h) Notwithstanding Section 542.402(a), a municipality or county, at the end of the municipality's or county's fiscal year, shall send to the comptroller an amount equal to 50 percent of the fines collected by the municipality or the county for violations of this section. The comptroller shall deposit the amount received to the credit of the tertiary care fund for use by trauma centers.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997,

75th Leg., ch. 165, Sec. 30.114(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 618, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 910, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1042, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, Sec. 8.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 913, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 913, Sec. 2, eff. September 1, 2005.

Addendums: Government Code – Chapter 311 Code Construction Act

GOVERNMENT CODE
TITLE 3. LEGISLATIVE BRANCH
SUBTITLE B. LEGISLATION
CHAPTER 311. CODE CONSTRUCTION ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.002. APPLICATION. This chapter applies to:

- (1) each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;
- (2) each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;
- (3) each repeal of a statute by a code; and
- (4) each rule adopted under a code.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.004. CITATION OF CODES. A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

- (1) Title 1, Business & Commerce Code;
- (2) Chapter 5, Business & Commerce Code;
- (3) Section 9.304, Business & Commerce Code;
- (4) Section 15.06(a), Business & Commerce Code; and
- (5) Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 13(b), eff. Sept. 1, 1985.

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

- (1) "Oath" includes affirmation.
- (2) "Person" includes corporation, organization, government or governmental

subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Population" means the population shown by the most recent federal decennial census.

(4) "Property" means real and personal property.

(5) "Rule" includes regulation.

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

(7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(8) "Swear" includes affirm.

(9) "United States" includes a department, bureau, or other agency of the United States of America.

(10) "Week" means seven consecutive days.

(11) "Written" includes any representation of words, letters, symbols, or figures.

(12) "Year" means 12 consecutive months.

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 340, Sec. 1, eff. Aug. 28, 1989.

Sec. 311.006. INTERNAL REFERENCES. In a code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.

Added by Acts 1993, 73rd Leg., ch. 131, Sec. 1, eff. May 11, 1993.

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS.

(a) Words and phrases shall be read in context and construed according to the

rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.012. TENSE, NUMBER, AND GENDER.

(a) Words in the present tense include the future tense.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of one gender include the other genders.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY.

(a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.014. COMPUTATION OF TIME.

(a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

- (1) "May" creates discretionary authority or grants permission or a power.
- (2) "Shall" imposes a duty.
- (3) "Must" creates or recognizes a condition precedent.
- (4) "Is entitled to" creates or recognizes a right.
- (5) "May not" imposes a prohibition and is synonymous with "shall not."
- (6) "Is not entitled to" negates a right.
- (7) "Is not required to" negates a duty or condition precedent.

Added by Acts 1997, 75th Leg., ch. 220, Sec. 1, eff. May 23, 1997.

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;

- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS.

(a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

- (1) the date on which the last presiding officer signed the bill;
- (2) the date on which the governor signed the bill; or
- (3) the date on which the bill became law by operation of law.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 340, Sec. 2, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 220,

Sec. 2, eff. May 23, 1997.

Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL.

(a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 131, Sec. 2, eff. May 11, 1993.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.031. SAVING PROVISIONS.

(a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

- (1) the prior operation of the statute or any prior action taken under it;
- (2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;
- (3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or
- (4) any investigation, proceeding, or remedy concerning any privilege,

obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.032. SEVERABILITY OF STATUTES.

(a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 8, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1150, Sec. 1, eff. September 1, 2005.

Addendums: Transportation Code – Subchapter L. Occupational License

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS
CHAPTER 521. DRIVER'S LICENSES AND CERTIFICATES
SUBCHAPTER L. OCCUPATIONAL LICENSE

Sec. 521.241. DEFINITIONS. In this subchapter:

(1) "Essential need" means a need of a person for the operation of a motor vehicle:

(A) in the performance of an occupation or trade or for transportation to and from the place at which the person practices the person's occupation or trade;

(B) for transportation to and from an educational facility in which the person is enrolled; or

(C) in the performance of essential household duties.

(2) "Ignition interlock device" means a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator of the vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.242. PETITION.

(a) A person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction under Section 49.04, Penal Code, may apply for an occupational license by filing a verified petition with the clerk of the county court or district court with jurisdiction in the county in which:

(1) the person resides; or

(2) the offense occurred for which the license was suspended.

(b) A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:

(1) the person's license has been automatically suspended or canceled under this chapter for a conviction of an offense under the laws of this state; and

(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.

(c) A petition filed under this section must set forth in detail the person's essential need.

(d) A petition filed under Subsection (b) must state that the petitioner was convicted in that court for an offense under the laws of this state.

(e) The clerk of the court shall file the petition as in any other civil matter.

(f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.83(a), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1289, Sec. 1, 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 941, Sec. 1, eff. Sept. 1, 2001.

Sec. 521.243. NOTICE TO STATE; PRESENTATION OF EVIDENCE.

(a) The clerk of the court shall send by certified mail to the attorney representing the state a copy of the petition and notice of the hearing if the petitioner's license was suspended following a conviction for:

- (1) an offense under Section 19.05, 49.04, 49.07, or 49.08, Penal Code; or
- (2) an offense to which Section 521.342 applies.

(b) A person who receives a copy of a petition under Subsection (a) may attend the hearing and may present evidence at the hearing against granting the petition.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.244. HEARING; ORDER; DETERMINATION OF ESSENTIAL NEED.

(a) The judge who hears the petition shall sign an order finding whether an essential need exists.

(b) In determining whether an essential need exists, the judge shall consider:

- (1) the petitioner's driving record; and
- (2) any evidence presented by a person under Section 521.243(b).

(c) If the judge finds that there is an essential need, the judge also, as part of the order, shall:

- (1) determine the actual need of the petitioner to operate a motor vehicle; and
- (2) require the petitioner to provide evidence of financial responsibility in accordance with Chapter 601.

(d) Except as provided by Section 521.243(b), the hearing on the petition may

be ex parte.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.245. REQUIRED COUNSELING.

(a) If the petitioner's license has been suspended under Chapter 524 or 724, the court shall require the petitioner to attend a program approved by the court that is designed to provide counseling and rehabilitation services to persons for alcohol dependence. This requirement shall be stated in the order granting the occupational license.

(b) The program required under Subsection (a) may not be the program provided by Section 521.344 or by Section 13, Article 42.12, Code of Criminal Procedure.

(c) The court may require the person to report periodically to the court to verify that the person is attending the required program.

(d) On finding that the person is not attending the program as required, the court may revoke the order granting the occupational license. The court shall send a certified copy of the order revoking the license to the department.

(e) On receipt of the copy under Subsection (d), the department shall suspend the person's occupational license for:

(1) 60 days, if the original driver's license suspension was under Chapter 524; or

(2) 120 days, if the original driver's license suspension was under Chapter 724.

(f) A suspension under Subsection (e):

(1) takes effect on the date on which the court signs the order revoking the occupational license; and

(2) is cumulative of the original suspension.

(g) A person is not eligible for an occupational license during a period of suspension under Subsection (e).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.246. IGNITION INTERLOCK DEVICE REQUIREMENT.

(a) If the person's license has been suspended after a conviction under Section 49.04, 49.07, or 49.08, Penal Code, the judge, before signing an order, shall determine from the criminal history record information maintained by the department whether the person has any previous conviction under those laws.

(b) As part of the order the judge may restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that the person's license has been suspended following a conviction under Section 49.04, 49.07, or 49.08, Penal Code. As part of the order, the

judge shall restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that:

(1) the person has two or more convictions under any combination of Section 49.04, 49.07, or 49.08, Penal Code; or

(2) the person's license has been suspended after a conviction under Section 49.04, Penal Code, for which the person has been punished under Section 49.09, Penal Code.

(c) The person shall obtain the ignition interlock device at the person's own expense unless the court finds that to do so is not in the best interest of justice and enters that finding in the record. If the court determines that the person is unable to pay for the device, the court may impose a reasonable payment schedule for a term not to exceed twice the period of the court's order.

(d) The court shall order the ignition interlock device to remain installed for at least half of the period of supervision.

(e) A person to whom this section applies may operate a motor vehicle without the installation of an approved ignition interlock device if:

(1) the person is required to operate a motor vehicle in the course and scope of the person's employment;

(2) the vehicle is owned by the person's employer;

(3) the employer is not owned or controlled by the person whose driving privilege is restricted;

(4) the employer is notified of the driving privilege restriction; and

(5) proof of that notification is with the vehicle.

(f) A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this section if:

(1) the previous conviction was a final conviction under Section 49.04, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted; and

(2) the person has not been convicted of an offense under Section 49.04, 49.07, or 49.08 of that code committed within 10 years before the date on which the instant offense for which the person was convicted.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.84(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1105, Sec. 1, eff. Sept. 1, 1999.

Sec. 521.2465. RESTRICTED LICENSE.

(a) On receipt of notice that a person has been restricted to the use of a motor vehicle equipped with an ignition interlock device, the department shall

notify that person that the person's driver's license expires on the 30th day after the date of the notice. On application by the person and payment of a fee of \$10, the department shall issue a special restricted license that authorizes the person to operate only a motor vehicle equipped with an ignition interlock device.

(b) On receipt of a copy of a court order removing the restriction, the department shall issue the person a driver's license without the restriction.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.85(a), eff. Sept. 1, 1997.

Sec. 521.247. APPROVAL OF IGNITION INTERLOCK DEVICES BY DEPARTMENT.

(a) The department shall adopt rules for the approval of ignition interlock devices used under this subchapter.

(b) The department by rule shall establish general standards for the calibration and maintenance of the devices. The manufacturer or an authorized representative of the manufacturer is responsible for calibrating and maintaining the device.

(c) If the department approves a device, the department shall notify the manufacturer of that approval in writing. Written notice from the department to a manufacturer is admissible in a civil or criminal proceeding in this state. The manufacturer shall reimburse the department for any cost incurred by the department in approving the device.

(d) The department is not liable in a civil or criminal proceeding that arises from the use of an approved device.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.84(b), eff. Sept. 1, 1997.

Sec. 521.2475. IGNITION INTERLOCK DEVICE EVALUATION.

(a) On January 1 of each year, the department shall issue an evaluation of each ignition interlock device approved under Section 521.247 using guidelines established by the National Highway Traffic Safety Administration, including:

- (1) whether the device provides accurate detection of alveolar air;
- (2) the moving retest abilities of the device;
- (3) the use of tamper-proof blood alcohol content level software by the device;
- (4) the anticircumvention design of the device;
- (5) the recalibration requirements of the device; and
- (6) the breath action required by the operator.

(b) The department shall assess the cost of preparing the evaluation equally against each manufacturer of an approved device.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.86(a), eff. Sept. 1, 1997.

Sec. 521.2476. MINIMUM STANDARDS FOR VENDORS OF IGNITION INTERLOCK DEVICES.

(a) The department by rule shall establish:

- (1) minimum standards for vendors of ignition interlock devices who conduct business in this state; and
- (2) procedures to ensure compliance with those standards, including procedures for the inspection of a vendor's facilities.

(b) The minimum standards shall require each vendor to:

- (1) be authorized by the department to do business in this state;
- (2) install a device only if the device is approved under Section 521.247;
- (3) obtain liability insurance providing coverage for damages arising out of the operation or use of devices in amounts and under the terms specified by the department;
- (4) install the device and activate any anticircumvention feature of the device within a reasonable time after the vendor receives notice that installation is ordered by a court;
- (5) install and inspect the device in accordance with any applicable court order;
- (6) repair or replace a device not later than 48 hours after receiving notice of a complaint regarding the operation of the device;
- (7) submit a written report of any violation of a court order to that court and to the person's supervising officer, if any, not later than 48 hours after the vendor discovers the violation;
- (8) maintain a record of each action taken by the vendor with respect to each device installed by the vendor, including each action taken as a result of an attempt to circumvent the device, until at least the fifth anniversary after the date of installation;
- (9) make a copy of the record available for inspection by or send a copy of the record to any court, supervising officer, or the department on request; and
- (10) annually provide to the department a written report of each service and ignition interlock device feature made available by the vendor.

(c) The department may revoke the department's authorization for a vendor to do business in this state if the vendor or an officer or employee of the vendor violates:

- (1) any law of this state that applies to the vendor; or

(2) any rule adopted by the department under this section or another law that applies to the vendor.

(d) A vendor shall reimburse the department for the reasonable cost of conducting each inspection of the vendor's facilities under this section.

(e) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

Added by Acts 1999, 76th Leg., ch. 1105, Sec. 2, eff. Sept. 1, 1999.

Sec. 521.248. ORDER REQUIREMENTS.

(a) An order granting an occupational license must specify:

(1) the hours of the day and days of the week during which the person may operate a motor vehicle;

(2) the reasons for which the person may operate a motor vehicle; and

(3) areas or routes of travel permitted.

(b) The person may not operate a motor vehicle for more than four hours in any 24-hour period, except that on a showing of necessity the court may allow the person to drive for any period determined by the court that does not exceed 12 hours in any 24-hour period.

(c) An order granting an occupational license remains valid until the end of the period of suspension of the person's regular driver's license.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.249. NOTICE TO DEPARTMENT; ISSUANCE OF OCCUPATIONAL LICENSE.

(a) The court shall send a certified copy of the petition and the court order setting out the judge's findings and restrictions to the department. The person may use a copy of the order as a restricted license until the 31st day after the date on which the order takes effect.

(b) On receipt of the copy under this section and after compliance with Chapter 601, the department shall issue an occupational license to the person. The license must refer on its face to the court order.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.250. COURT ORDER IN OPERATOR'S POSSESSION. A person who is issued an occupational license shall have in the person's possession a certified copy of the court order granting the license while operating a motor vehicle. The person shall allow a peace officer to examine the order on request.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.251. EFFECTIVE DATE OF OCCUPATIONAL LICENSE.

(a) If a person's license is suspended under Chapter 524 or 724 and the person has not had a prior suspension arising from an alcohol-related or drug-related enforcement contact in the five years preceding the date of the person's arrest, an order under this subchapter granting the person an occupational license takes effect immediately. However, the court shall order the person to comply with the counseling and rehabilitation program required under Section 521.245.

(b) If the person's driver's license has been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest, the order may not take effect before the 91st day after the effective date of the suspension.

(c) If the person's driver's license has been suspended as a result of a conviction under Section 49.04, 49.07, or 49.08, Penal Code, during the five years preceding the date of the person's arrest, the order may not take effect before the 181st day after the effective date of the suspension.

(d) Notwithstanding any other provision in this section, if the person's driver's license has been suspended as a result of a second or subsequent conviction under Section 49.04, 49.07, or 49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed, an order granting the person an occupational license may not take effect before the first anniversary of the effective date of the suspension.

(e) For the purposes of this section, "alcohol-related or drug-related enforcement contact" has the meaning assigned by Section 524.001.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 969, Sec. 5, eff. Sept. 1, 2001.

Sec. 521.252. LICENSE REVOCATION.

(a) The court that signs an order granting an occupational license may issue at any time an order revoking the license for good cause.

(b) The court shall send a certified copy of the order to the department.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 521.253. CRIMINAL PENALTY.

(a) A person who holds an occupational license commits an offense if the person:

(1) operates a motor vehicle in violation of a restriction imposed on the license; or

(2) fails to have in the person's possession a certified copy of the court order as required under Section 521.250.

(b) An offense under this section is a Class B misdemeanor.

(c) On conviction of an offense under this section, the occupational license and the order granting that license are revoked.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

BLASHFIELD'S AUTOMOBILE LAW AND PRACTICE

THIRD EDITION

VOLUME 14

Sections 465 to 479

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- § 465.2 Distinctions Based Upon Classification**
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**BLASHFIELD
AUTOMOBILE LAW AND PRACTICE**

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**REGULATIONS
—
CONTRACTS
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BAILMENTS**

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§ 465.1

REGISTRATION AND LICENSE

Ch. 465

Sec.

- 465.5 Exemptions in Classifying Commercial Vehicles.
- 465.6 Amount of Fee.
- 465.7 Manufacturers and Dealers as Separate Classes.

B. COMPULSORY INSURANCE ACTS

- 465.21 In General.
- 465.22 Exemption of Nonresident Owners or Operators.

A. IN GENERAL

Library References:

C.J.S. Motor Vehicles §§ 59 et seq., 79 et seq.
West's Key No. Digests, Automobiles ¶21 et seq., 65 et seq.

§ 465.1 Power to Classify

Research Note:

The power to vary license fees based upon different classifications is considered *infra* § 400.40 and § 400.51 et seq.

Library References:

C.J.S. Motor Vehicles §§ 60, 61, 80, 81.
West's Key No. Digests, Automobiles ¶24-26, 69-71.

The classification of motor vehicles for licensing purposes is vested primarily in the Legislature.¹ It may exercise a wide discretion with respect thereto,² and where it has acted and provided a classification, a subordinate body or agency is without authority to prescribe a different classification than that provided.³

Under such power, motor vehicles may be segregated for the purpose of registration and license from other vehicles using the highways,⁴ and may be further subdivided into pleasure vehicles,

1. Cal.—Pacific Electric Ry. Co. v. Department of Motor Vehicles, 48 P.2d 657, 4 Cal.2d 181.

Ind.—Baldwin v. State, 141 N.E. 343, 194 Ind. 303.

Ky.—Schoo v. Rose, 270 S.W.2d 940.

2. Conn.—Spector Motor Service v. Walsh, 61 A.2d 89, 135 Conn. 37.

Nev.—Ex parte Iratacable, 30 P.2d 284.

Okl.—Herring v. State, 64 P.2d 921, 60 Okl.Cr. 449, certiorari denied 57 S.Ct. 937, 301 U.S. 704, 81 L. Ed. 1358.

3. Okl.—Campbell v. Cornish, 22 P.2d 63, 163 Okl. 213 (tax commission).

4. Fla.—Jackson v. Neff, 60 So. 350, 64 Fla. 326, error dismissed 35 S.Ct. 792, 238 U.S. 610, 59 L.Ed. 1488.

Ill.—Westfalls Storage, Van & Express Co. v. City of Chicago, 117 N.E. 439, 280 Ill. 318.

Minn.—State v. Finch, 80 N.W. 856, 78 Minn. 118, 46 L.R.A. 437.

Mo.—State v. Swagerty, 102 S.W. 483, 203 Mo. 517, 10 L.R.A., N.S., 601, 120 Am.St.Rep. 671, 11 Ann. Cas. 725.

Okl.—Booth v. State, 137 P.2d 602, 76 Okl.Cr. 410.

Vt.—State v. Coplan, 135 A. 705, 100 Vt. 140.

business vehicles, trucks, farm tractors, and the like.⁵ In addition commercial freighting motor vehicles may be placed in one class and all other trucks using the highways in another class,⁶ or vehicles may be graduated according to the horse power of their engines.⁷

The classification, however made, always must be reasonable and without any arbitrary distinctions.⁸

Classification in general

State or municipality may classify various vehicles which it is authorized to license, provided classification is natural and real and not arbitrary or fanciful and is properly based upon use to which such vehicles are devoted rather than value of vehicles. *Samuel Bevard Manuro Products Co. v. Baughman*, 173 A. 40, 167 Md. 55.

License taxes

A license tax imposed by constitutional amendment on vehicles registered for operation on the highways in Arizona in lieu of all ad valorem property taxes is not violative of the federal constitutional provision requiring "equal protection of the laws," since motor vehicles are property of such special class that they may be treated for taxation in a different manner from any other property. *McAhren v. Bradshaw*, 113 P. 2d 932, 57 Ariz. 342.

5. Minn.—*Dohs v. Holm*, 189 N.W. 418, 152 Minn. 529.

Okl.—*Herring v. State*, 95 P.2d 128, 68 Okl.Cr. 32.

S.D.—*State v. Black Hills Transp. Co.*, 20 N.W.2d 683, 71 S.D. 28.

Tenn.—*Ogilvie v. Hailey*, 210 S.W. 645, 141 Tenn. 392.

6. Minn.—*McReavy v. Holm*, 206 N.W. 942, 166 Minn. 22; *Raymond v. Holm*, 206 N.W. 166, 165 Minn. 215.

Vt.—*State v. Caplan*, 135 A. 705, 100 Vt. 140.

Wis.—*State v. Zimmerman*, 196 N.W. 848, 181 Wis. 552.

7. U.S.—*Hendrick v. Maryland*, S.Ct. 140, 235 U.S. 610, 59 L. 385.

8. U.S.—*Lindsley v. Natural Gas Co.*, 31 S.Ct. 337, U.S. 61, 55 L.Ed. 369, Ann. 1912C, 160.

Ala.—*Ex parte Smith*, 102 So. 212 Ala. 262.

Ill.—*Heartt v. Village of Down Grove*, 115 N.E. 869, 278 Ill. 9.

Ind.—*Richmond Baking Co. v. Department of Treasury*, 18 N.E. 778, 215 Ind. 110; *Baldwin State*, 141 N.E. 343, 194 Ind. 30.

Minn.—*McReavy v. Holm*, 206 N.W. 942, 166 Minn. 22 (valid classification).

N.C.—*Clark v. Maxwell*, 150 S.E. 197 N.C. 604, affirmed 51 S. 211, 282 U.S. 811, 75 L.Ed. 72.

N.Y.—*Farrall v. Bragalini*, 178 S.2d 850, 11 Misc.2d 1075, appeal dismissed 177 N.Y.S.2d 683, 15 E.2d 648, 4 N.Y.2d 1030 (highway fees on station wagons than on passenger vehicles valid).

S.D.—*Ex parte Hoffert*, 148 N.W. 34 S.D. 271, 52 L.R.A., N.S., (placement of automobiles in a separate class is valid).

Equality between members of

In *State v. Zimmerman*, 196 N.W. 848, 181 Wis. 552, it is stated that as long as there is an equality between members of each class in a law classified tax measure, neither State nor the Federal Constitution are invaded, and there need not be equality between different classes unless the inequality is so great

eq., 65 et seq.

different classifica-

69-71.

licensing purposes is to exercise a wide discretion and provided without authority as provided.³

segregated for the use of vehicles using the same to pleasure vehicles,

Johnson v. Neff, 60 So. 350, 6, error dismissed 35, 238 U.S. 610, 59 L.Ed.

Storage, Van & Express Co. v. City of Chicago, 117 Ill. 318.

v. Finch, 80 N.W. 856, 18, 46 L.R.A. 437.

Swagerty, 102 S.W. 2d 517, 10 L.R.A., N.S., 11 Ann. St. Rep. 671, 11 Ann.

v. State, 137 P.2d 602, 410.

Coplan, 135 A. 705, 100

§ 465.2 Distinctions Based Upon Classification

Library References:

C.J.S. Motor Vehicles § 136.

West's Key No. Digests, Automobiles ¶45, 97.

In the exercise of police power, the Legislature or a municipality may use a wide scope of discretion in making classifications and may draw distinctions based upon classifications of the subjects regulated, provided the classification rests upon a rational difference, which necessarily distinguishes all those of particular classes from those of other classes.⁹

it evinces a purpose to destroy or unreasonably hamper one class as against the other.

Md.—Grossfeld v. Baughman, 129 A. 370, 148 Md. 330.

Special treatment for public vehicles

Exemption of publicly owned vehicles from laws regulating use of public streets by motor vehicles or permitting publicly owned vehicles the use of a street denied to public would be improper because discriminatory, except for extraordinary use by emergency vehicles. People ex rel. Hunter v. Department of Sanitation, 86 N.Y.S.2d 437, 193 Misc. 233.

9. Ala.—Madison County v. Gwathney, 103 So. 656, 212 Ala. 566.

Cal.—Generally a license tax on vehicles may be fixed at a specified sum or graded according to type, size or use. City of Los Angeles v. Tannahill, 233 P.2d 671, 105 Cal.App.2d 541; California Fireproof Storage Co. v. City of Santa Monica, 275 P. 948, 206 Cal. 714.

Idaho.—Smallwood v. Jeter, 244 P. 149, 42 Idaho, 169.

Ill.—People v. Thompson, 173 N.E. 137, 341 Ill. 166.

Ky.—Beavers v. City of Williamsburg, 206 S.W.2d 938, 306 Ky. 201; Baker v. Glenn, D.C.Ky., 2 F.Supp. 880 (non-profit cooperative associations validly exempted).

Minn.—State v. Storaasli, 230 N.W. 572, 180 Minn. 241, affirmed Storaasli v. State of Minnesota, 51 S.

Ct. 354, 263 U.S. 57, 75 L.Ed. 839; State v. Le Febvre, 219 N.W. 167, 174 Minn. 248.

Mont.—State v. Johnson, 243 P. 1073, 75 Mont. 240 (exemption of police and hospital vehicles).

Nev.—Ex parte Anderson, 242 P. 587, 49 Nev. 208.

N.J.—Weimar Storage Co. v. Dill, 143 A. 438, 103 N.J.Eq. 307.

N.M.—State v. Ingalls, 135 P. 1177, 18 N.M. 211.

N.Y.—People v. MacWilliams, 86 N.Y.S. 357, 91 App.Div. 176 (manufacturers exempted from certificate requirement).

Ohio.—Fisher Bros. Co. v. Brown, 146 N.E. 100, 111 Ohio St. 602; Graves v. James, 2 Ohio App. 383, 34 Ohio Cir.Ct.R. 470 (exemption in favor of fire and police apparatus, road rollers, and traction engines).

Or.—State v. Kozar, 242 P. 621, 116 Or. 581; Northwest Auto Co. v. Hurlburt, 207 P. 161, 104 Or. 398.

S.C.—State v. Perry, 136 S.E. 314, 138 S.C. 329.

Tenn.—City of Memphis v. State ex rel. Ryals, 179 S.W. 631, 133 Tenn. 83, L.R.A.1916B, 1151, Ann.Cas. 1917C, 1056.

Tex.—Ex parte Sepulveda, 2 S.W.2d 445, 108 Tex.Cr.R. 533; A B C Storage & Moving Co. v. City of Houston, Tex.Civ.App., 269 S.W. 882.

Classification

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U.S. 57, 75 L.Ed. 839;
Febvre, 213 N.W. 167,
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v. Johnson, 243 P.
ont. 240 (exemption of
hospital vehicles).

te Anderson, 242 P.
208.

Storage Co. v. Dill,
103 N.E. 307.

v. Ingalls, 135 P. 1177,
1.

v. MacWilliams, 86 N.
1 App.Div. 176 (manu-
exempted from certifi-
cament).

Broas Co. v. Brown,
100, 111 Ohio St. 602;
James, 2 Ohio App. 383,
10 C.R. 479 (exemption
fire and police appara-
rollers and traction en-

Koen, 240 P. 621, 116
Northwest Auto Co. v.
207 P. 161, 104 Or. 398.

A. Perry, 116 S.E. 314,
29.

of Memphis v. State ex
179 S.W. 111, 133 Tenn.
1915E, 115L, Ann.Cas.
8.

te Scrivener, 2 S.W.2d
Tex.Civ. 223; A B C
Moving Co. v. City of
Tex.Civ.App. 269 S.W.

Ch. 465 CLASSIFICATION OF MOTOR VEHICLES § 46

The controlling test of the validity of all laws directed ag-
a particular class is that the same means and methods must be
partially applied to all the constituents of such class, so that
law shall operate equally and uniformly upon all persons in
class sought to be regulated.¹⁰ Dissimilar regulations of dis-
ilar occupations can never serve as a basis or support in law
a claim of improper discrimination.¹¹

Vt.—State v. Caplan, 135 A. 705, 100
Vt. 140.

Va.—Gruber v. Commonwealth, 125
S.E. 427, 140 Va. 312.

Wis.—State v. Railroad Commission
of Wisconsin, 220 N.W. 390, 196
Wis. 410; State ex rel. Transporta-
tion Ass'n of Wis. v. Zimmerman,
196 N.W. 848, 181 Wis. 552.

10. U.S.—Butler-Newark Bus Line,
Inc. v. Sinclair, D.C.N.J., 34 F.
2d 780.

Cal.—Lord v. Henderson, 234 P.2d
197, 105 Cal.App.2d 426, appeal
dismissed 72 S.Ct. 561, 342 U.S.
937, 96 L.Ed. 697; Old Homestead
Bakery v. Marsh, 242 P. 749, 75
Cal.App. 247 (flat fee for electric
vehicles and graduated fee for gas-
propelled vehicles based on fuel
consumption is valid).

Iowa.—Motor Vehicle Ass'n v. Board
of Railroad Com'rs, 221 N.W. 364,
207 Iowa 461, 75 A.L.R. 1, af-
firmed 50 S.Ct. 151, 280 U.S. 529,
74 L.Ed. 595.

Mont.—City of Bozeman v. Nelson,
237 P. 528, 73 Mont. 147.

Ohio.—State ex rel. Brunenkant v.
Wallace, 30 N.E.2d 696, 137 Ohio
St. 379 (exemption of vehicles pro-
pelled by overhead trolley wires
valid).

Tenn.—Frazier v. Lindsey, 36 S.W.2d
436, 162 Tenn. 228 (statute impos-
ing privilege tax on passenger au-
tomobiles and trucks, but not dis-
tinguishing between different
makes of passenger cars).

Tex.—Boot v. City of Dallas, Civ.
App., 179 S.W. 301.

Legislative discretion

The equal protection clause
Fourteenth Amendment does
take from the state the pow-
classify in the adoption of
laws, but admits the exercise
wide scope of discretion in the
gird, and avoids what is done
when it is without any reason-
basis, and therefore is purely
trary. A classification having
reasonable basis does not
against that clause, merely be-
it is not made with mathemat-
nicety, or because in practice
sults in some inequality. When
classification in such a law is
in question, if any state of
reasonably can be conceived
would sustain it, the existence
that state of facts, at the time
law was enacted, must be as-
One who assails the classification
such a law must carry the bur-
of showing that it does not rest
any reasonable basis, but is in-
tially arbitrary. *Lindsley v. N.*
Carbonic Gas Co., 31 S.Ct. 33
U.S. 61, 55 L.Ed. 369, Ann.Cas.
160.

Payment of second registry fee

Statute requiring one who
transfers his automobile or who
have occasion to purchase a
in place of one destroyed, or
to pay an additional registry
valid, even though it may re-
payment of two registry fees
same year, because it works
formly and affects all in the
way who may sell or exchange
Bleon v. Emery, 209 P. 627, 60
582.

11. N.M.—State v. Mirabal, 1928,
928, 33 N.M. 553, 62 A.L.R.

§ 465.3 Reasonable Basis for Classification

Research Note:

Recovery of fees paid under an unreasonable basis for classification is considered *infra* § 400.59.

The judgment of the Legislature with respect to the choice of expedients or the merits between different methods of fixing license fees for use of the highways cannot be overthrown unless the particular fee complained of is manifestly unreasonable or without reasonable relation to the use of the highways.¹² However, scientific precision in classification is not required.¹³

Where legislation is limited in its application to a particular class of persons, the classification must rest on some substantial difference between the citizens of the class created, and other persons to whom it does not apply,¹⁴ and it must operate equally and uniformly on all persons in each class.¹⁵

The classification must not be arbitrary so that persons who are actually in similar circumstances are placed in different classifications. It must be based on some real and substantial distinction bearing a reasonable and just relation to the things with respect to which such classification is imposed.¹⁶ Something

(law requiring payment of property tax as condition precedent to issuance of license).

Tex.—*Boot v. City of Dallas*, Civ. App., 179 S.W. 301.

12. U.S.—*Piper v. Bingaman*, D.C. N.M., 12 F.Supp. 755, affirmed 56 S.Ct. 948, 298 U.S. 643, 80 L.Ed. 1375, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457.

13. U.S.—*Piper v. Bingaman*, D.C. N.M., 12 F.Supp. 755, affirmed 56 S.Ct. 948, 298 U.S. 643, 80 L.Ed. 1375, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457.

14. Idaho.—*State v. Crosson*, 190 P. 922, 33 Idaho 140.

N.D.—*Figenskau v. McCoy*, 265 N.W. 259, 66 N.D. 290.

Tenn.—*City of Memphis v. State*, 179 S.W. 631, 133 Tenn. 83, L.R.A. 1916B, 1151, Ann.Cas.1917C, 1056.

15. Md.—*Samuel Bevard Manuro Products Co. v. Baughman*, 173 A. 40, 147 Md. 55.

N.J.—*Weimar Storage Co. v. Dill*, 143 A. 438, 103 N.J.Eq. 307.

16. U.S.—*Southern Ry. Co. v. Green*, 30 S.Ct. 287, 216 U.S. 400, 54 L.Ed. 536, 17 Ann.Cas. 1247.

Cal.—*T. E. Connolly, Inc. v. State*, 164 P.2d 60, 72 Cal.App.2d 145 (exemption from registration fee of oversize vehicles only occasionally using the highways valid).

Arbitrary distinction

There is no constitutional distinction between those transporting farm products by motor truck and common carriers hauling various kinds of freight, including farm products. Thus, the exemption of only the former class from a regulation is arbitrary and invalid. *Franchise Motor Freight Assn. v. Seavey*, 235 P. 1000, 196 Cal. 77.

Tax on vehicles commonly used on roads

Ordinance of commissioners' court levying license tax on vehicles used on roads in hauling logs, staves, etc.,

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more is required than a mere designation by such characterist
as will serve to classify. The mark of distinction must be son
thing of substance, some attendant or inherent peculiarity, su
gested by natural reason and calling for legislation.¹⁷

The question generally is whether the classification adopt
lacks a rational basis,¹⁸ and legislation which makes distinctio
or classifications for the purposes of imposing a license fee on p
vate motor vehicles,¹⁹ without any rational basis for the distib
tion, or which purports to impose on a certain class engaged in t
transportation of freight and passengers for hire burdensome ta
es and regulations, and to exempt therefrom others engaged in t
same business, without justification or reason for the classifi
tion, cannot be sustained.²⁰

reasonably construed as applicable
to vehicles commonly so used and
not to vehicles only occasionally so
used, is not unconstitutional as an
arbitrary, unreasonable and discrim-
inatory classification. Ex parte
Smith, 102 So. 122, 212 Ala. 262.

17. U.S.—Baker v. Glenn, D.C.Ky.,
2 F.Supp. 880 (classification based
on weight).

Cal.—Bacon Service Corp. v. Huss,
248 P. 235, 199 Cal. 21, error dis-
missed 48 S.Ct. 158, 275 U.S. 507,
72 L.Ed. 397 (exemption of opera-
tors deriving percentage of gross
receipts from mail contracts).

Or.—State v. Kozer, 242 P. 621, 116
Or. 581.

Tenn.—Frazier v. Lindsey, 36 S.W.
2d 436, 162 Tenn. 228 (distinction
between passenger cars and trucks
held reasonable).

Agricultural vehicles

The exemption of vehicles selling
or delivering farm produce from a
tax statute has been held justified.
The distinction between this class of
vehicles and other classes of com-
mercial vehicles probably being that
the delivery of such produce to mar-
ket by the grower was considered as
merely incidental to farming, and did
not involve such use of the highway
as would warrant an increased tax.
State v. Kozer, 242 P. 621, 116 Or.
581.

18. U.S.—Sproles v. Binford, 52
Ct. 581, 286 U.S. 374, 76 L.
1167, affirming, D.C.Tex., 56 F.
189.

19. Tex.—Ex parte Faison, 248
W. 343, 93 Tex.Cr.R. 403.

20. Cal.—Bacon Service Corp.
Huss, 248 P. 235, 199 Cal.
error dismissed 48 S.Ct. 158,
U.S. 507, 72 L.Ed. 397 (exempt
of sight-seeing motor vehicles).

Idaho.—State v. Crosson, 190 P.
33 Idaho 140.

N.J.—Weimar Storage Co. v. I
143 A. 438, 103 N.J.Eq. 307.

Tex.—Ex parte Faison, 248 S.W.
93 Tex.Cr.R. 403.

Exemption of agricultural vehicle

Statute requiring license fees
registration of motortrucks and t
tors used by all private owners
cept farmers, and prohibiting co
mercial vehicles of a greater cap
ity than 8,000 pounds to be used
any one except for agricultural p
poses, held discriminatory as
based upon a proper classificati
Lossing v. Hughes, Tex.Civ.App.,
S.W. 556.

Exemption of hotel busses and n
vehicles

Statute regulating the operation
public service vehicles, which
empts from the requirements of p

Regulations by cities imposing license fees for the operation of vehicles on their streets should be, as far as possible, general and impartial in their operation,²¹ and a license ordinance must include all those coming within the class sought to be taxed.²²

A city may tax nonresident automobile owners for the use of its streets,²³ but may not discriminate against them by failing to tax residents.²⁴

A municipal ordinance imposing license fees in a stated amount for express wagons or motor vehicles used in delivering express matter, and a much smaller fee for light vehicles delivering goods not in the express business, is discriminatory and unreasonable as against one engaged in the express business,²⁵ but there is no discrimination if the license fee is imposed on all express companies alike.²⁶

§ 465.4 Classification as Pleasure Cars or Commercial Vehicles

Research Note:

Treatment of manufacturers and dealers as a separate class from either pleasure or commercial users is considered *infra* § 400.41.

Library References:

C.J.S. Motor Vehicles § 136.

West's Key No. Digests, Automobiles ⇐45, 97.

A classification of motor vehicles, based on whether they are used for business or commercial purposes, or merely kept for pleasure or family use, a license fee being imposed in one case and not in the other, is a proper one.²⁷

curing a license and of giving bond hotel busses operating solely between hotels and trains, and automobiles and auto-trucks used for and engaged in carrying mails on star routes, is invalid. *State v. Crosson*, 190 P. 922, 33 Idaho, 140.

21. N.J.—*Siciliano v. Neptune*, 83 A. 865, 83 N.J.L. 158.

22. Or.—*Kellaher v. City of Portland*, 110 P. 492, 112 P. 1076, 57 Or. 575 (ordinance imposing a license tax on automobiles and other vehicles which exempts horse-drawn vehicles used for the same purposes is invalid).

23. Ky.—*Watson v. City of Paducah*, 229 S.W.2d 453, 312 Ky. 680;

Johnson v. City of Paducah, 147 S.W.2d 721, 285 Ky. 294 (since nonresidents driving in city aggravate complicated traffic conditions and receive benefits of police protection).

24. Ky.—*Davis v. Pelfrey*, 147 S.W.2d 723, 285 Ky. 298 (denial of equal protection).

25. N.J.—*Siciliano v. Neptune*, 83 A. 865, 83 N.J.L. 158.

26. N.C.—*Southeastern Express Co. v. City of Charlotte*, 120 S.E. 475, 186 N.C. 668.

27. Ohio.—*Fisher Bros. Co. v. Brown*, 146 N.E. 100, 111 Ohio St. 602.

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City of Paducah, 147
21, 285 Ky. 294 (since
its driving in city ag-
complicated traffic condi-
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285 Ky. 298 (denial of
section).

Siciliano v. Neptune, 83
N.J.L. 158.

Southeastern Express Co.
f Charlotte, 120 S.E. 475,
668.

-Fisher Bros. Co. v.
46 N.E. 100, 111 Ohio St.

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Thus a county ordinance levying a tax for the privileg
using the county roads, and fixing no license tax on an automo
used by the owner or his family for other than commercial
poses is not unreasonable and arbitrary in the imposition of
tax on vehicles used for commercial purposes.²⁸

§ 465.5 Exemptions in Classifying Commercial hicles

Library References:

C.J.S. Motor Vehicles § 63 et seq.
West's Key No. Digests, Automobiles ¶78.

In the classification of commercial vehicles, certain ex-
tions are permissible and are not unreasonable, for example
exemption of persons using the highway for the transportati
their own goods, in their own privately owned vehicles, fr
statute imposing a license tax on auto transportation compa
who use the highway for the carriage of passengers or freight
hire as a business,²⁹ private or contract carriers,³⁰ vehicles
exclusively for carrying school children from a statute fixi
license fees of auto transportation companies,³¹ operators of n
vehicles transporting their own property or employees or
from a tax measure to provide revenue for public highways

Or.—Kellaher v. City of Portland,
110 P. 492, 112 P. 1076, 57 Or.
575.

Tenn.—Ogilvie v. Hailey, 210 S.W.
645, 141 Tenn. 392.

Vt.—State v. Caplan, 135 A. 705,
100 Vt. 140.

28. Ala.—Hill v. Moody, 93 So. 422,
207 Ala. 325.

29. Idaho.—Smallwood v. Jeter,
244 P. 149, 42 Idaho 169.

Nev.—Ex parte Iratacable, 30 P.2d
284, 55 Nev. 263.

30. U.S.—Brashear Freight Lines v.
Public Service Commission of Mis-
souri, D.C.Mo., 23 F.Supp. 865, ap-
peal dismissed 59 S.Ct. 480, 306
U.S. 204, 83 L.Ed. 608, rehearing
denied 59 S.Ct. 784, 306 U.S. 669,
83 L.Ed. 1063.

31. Cited by the court in State ex
rel. Walls v. Wallace, 35 N.E.2d

167, 138 Ohio St. 410, as sh
that a statute exempting
buses from a motor vehi
cense tax is valid.

Cal.—Bacon Service Corp. v.
248 P. 235, 199 Cal. 21, err
missed 48 S.Ct. 158, 275 U.S.
72 L.Ed. 397; Ex parte Sch
248 P. 244, 199 Cal. 42, err
missed Schmolke v. O'Brien,
Ct. 244, 273 U.S. 646, 71
820.

Idaho.—Smallwood v. Jeter,
149, 42 Idaho 169.

Iowa.—Iowa Motor Vehicle A
Board of Railroad Com'rs,
W. 364, 207 Iowa 461, 75 A.
affirmed 50 S.Ct. 151, 28
529, 74 L.Ed. 595.

Minn.—State v. Le Febvre, 21
167, 174 Minn. 248.

Nev.—Ex parte Iratacable, 3
284, 55 Nev. 263.

side cities,³² motor carriers operating within city limits from a motor vehicle license tax on the theory that such vehicles may be called upon by the municipalities themselves to pay a license tax or similar charge,³³ taxicabs or private carriers operating within a certain radius of city limits from an act regulating and licensing motor carriers,³⁴ carriers transporting or delivering dairy products or farm products³⁵ or livestock,³⁶ operators of hearses or ambulances,³⁷ operators of hotel or sight-seeing busses, and various other vehicles.³⁸

32. Ala.—Griffin v. Edwards, 68 So. 2d 705, 260 Ala. 12.

Minn.—State v. Le Febvre, 219 N.W. 167, 174 Minn. 248.

Cal.—Bacon Service Corp. v. Huss, 248 P. 235, 199 Cal. 21, error dismissed 48 S.Ct. 158, 275 U.S. 507, 72 L.Ed. 397; Ex parte Schmolke, 248 P. 244, 199 Cal. 42, error dismissed Schmolke v. O'Brien, 47 S.Ct. 244, 273 U.S. 646, 71 L.Ed. 820.

Neb.—In re Rodgers, 279 N.W. 800, 134 Neb. 832.

Passengers or farm products

Statute imposing license tax on private motor vehicle carriers for hire held not unconstitutional by reason of exception of vehicles hauling passengers or farm products between points without railroad facilities and not passing through or beyond municipalities having such facilities. Aero Mayflower Transit Co. v. Georgia Public Service Commission, 55 S.Ct. 709, 295 U.S. 285, 79 L.Ed. 1439.

Contractor's own equipment

Act licensing and regulating motor carriers held not discriminatory because exempting transportation of highway contractor's own equipment in his own motor vehicle. Ex parte Iratacable, 30 P.2d 284, 55 Nev. 263.

Colo.—Colorado Contractors Ass'n v. Public Utilities Commission, 262 P.2d 266, 128 Colo. 333.

33. Cal.—Ex parte Bush, 56 P.2d 511, 6 Cal.2d 43; Ex parte Schmolke, 248 P. 244, 199 Cal. 42, error dismissed Schmolke v. O'Brien, 47 S.Ct. 244, 273 U.S. 646, 71 L.Ed. 820.

Invalid exemption

Statute imposing a fee for use of highways, but exempting retailers delivering only gas and gas products from bulk station directly to farmer and of farmers hauling lignite coal, if done for other farmers in exchange for work and not for cash, held unconstitutional as being based on arbitrary and discriminatory classifications. Figenskau v. McCoy, 265 N.W. 259, 66 N.D. 290.

Exemption from fuel tax

Autobus operators, paying municipal license tax of stated sum annually instead of gross receipts tax, held exempt from motor fuel tax. Licata v. New Jersey State Board of Tax Appeals, 169 A. 541, 12 N.J.Misc. 15, affirmed 172 A. 566, 113 N.J.L. 36.

36. Neb.—In re Rodgers, 279 N.W. 800, 134 Neb. 832.

Nev.—Ex parte Iratacable, 30 P.2d 284, 55 Nev. 263.

34. Nev.—Ex parte Iratacable, 30 P.2d 284, 55 Nev. 263.

37. Nev.—Ex parte Iratacable, 30 P.2d 284, 55 Nev. 263.

35. Ga.—Southern Transfer Co. v. Harrison, 155 S.E. 338, 171 Ga. 358.

38. Cal.—Sequoia Nat. Park Stages Co. v. Sequoia & General Grant Nat. Parks Co., 291 P. 208, 210 Cal. 156.

BLASHFIELD'S AUTOMOBILE LAW AND PRACTICE

SECOND EDITION

VOLUME 14

Chapter 466

LICENSE AND LICENSE FEES IN GENERAL

- § 466.1 Licenses in General**
- § 466.2 License Fees in General**
- § 466.3 License Fees Imposed under Police Power or as Revenue Measure**
- § 466.4 License Fee Imposed under Police Power or as Revenue Measure - Tests for Determining Whether Fee Imposed under Police Power or for Revenue**
- § 466.5 Presumptions and Burden of Proof as to Reasonableness of Fee**
- § 466.6 Theory of Registration Fee for Revenue Purposes**
- § 466.7 Combination of police and Taxing Powers in Same Statute**
- § 466.8 Weight or Value as basis of Tax**

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Chapter 466

LICENSE AND LICENSE FEES IN GENERAL

Sec.	
466.1	Licenses in General.
466.2	License Fees in General.
466.3	License Fee Imposed under Police Power or as Revenue Meas- ure.
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466.21	Injunction Suits.
466.22	Driving Instructors.
466.23	Rolling Stores; Using Streets to do Business.
466.24	House Trailers.
466.25	Caravans, Transportation by.
466.26	Collection and Enforcement.

Library References:

C.J.S. Motor Vehicles §§ 14, 146 et seq.
West's Key No. Digests, Automobiles ⇨129 et seq.

§ 466.1 Licenses in General

Research Note:

Licensing and registration of private motor vehicles is consid-
ered infra § 467.1 et seq. Licensing of chauffeurs and drivers is
considered infra § 468.1 et seq. As to the power of a state or mu-
nicipality to vary licensing requirements based upon classification
of the vehicles or operators, see §§ 465.1-465.7 supra.

Library References:

C.J.S. Motor Vehicles § 146 et seq.
West's Key No. Digests, Automobiles ⇨130.

A license to operate a motor vehicle is granted under the in-
herent right of a state or municipality to regulate its use on the

public highways or streets.¹ It is a personal privilege which is neither transferable nor vendible, and is in no sense a contract between the state and the licensee,² for, unless there is authority under the law to make a transfer of a license, the license expires with the transfer of the motor vehicle to which it is attached.³

1. Cited by the court in *Ingels v. Boteler*, C.C.A.Cal., 100 F.2d 915, 919, affirmed 60 S.Ct. 29, 308 U.S. 57, 521, 84 L.Ed. 78, 442.

Cal.—*Lord v. Henderson*, 234 P.2d 197, 105 Cal.App. 426, appeal dismissed 72 S.Ct. 561, 342 U.S. 937, 96 L.Ed. 697.

Ky.—*Smith v. Commonwealth*, 194 S.W. 367, 175 Ky. 286.

Mass.—*Rummel v. Peters*, 51 N.E.2d 57, 314 Mass. 504.

N.Y.—*Papiernick v. City of New York*, 115 N.Y.S.2d 454, 202 Misc. 717.

Tex.—*Ex parte Schutte*, 42 S.W.2d 252, 118 Tex.Cr.R. 182.

State's power exclusive

The exclusive power to regulate the licensing of motor vehicles and to regulate their use of the public highways rests with the state and the city cannot legislate on this subject. *Sperling v. Valentine*, 28 N.Y.S.2d 788, 176 Misc. 826.

Where a bona fide regulation of an occupation by city is concerned, a license may be required even though the nature of the occupation implies the use of streets by a motor vehicle. *Sperling v. Valentine*, 28 N.Y.S.2d 788, 176 Misc. 826.

2. Ala.—*Foshee v. State*, 72 So. 685, 15 Ala.App. 113, certiorari denied 73 So. 999, 198 Ala. 689.

D.C.—*Stewart v. District of Columbia, Mun.App.*, 35 A.2d 247 (taxi-cab license not transferrable).

Me.—*Burnham v. Burnham*, 156 A. 823, 130 Me. 409.

Mass.—*Burgess v. City of Brockton*, 126 N.E. 456, 235 Mass. 95.

Miss.—*Allen v. City of Kosciusko*, 42 So.2d 388, 207 Miss. 343 (taxi-cab permit not a vested or property right).

Mo.—*State ex rel. and to Use of Public Service Commission v. Blair*, 146 S.W.2d 865, 347 Mo. 220.

N.J.—“License” to operate motor vehicle is mere privilege, and not a contract or property right. *Garford Trucking v. Hoffman*, 177 A. 882, 114 N.J.L. 522.

Pa.—*Rineer v. Boardman*, 32 D. & C. 27, 45 Dauph. 78.

Purpose of license

Registration of automobiles is for purpose of exercising control of right to use highways, and certificate of registration constitutes a “license” to operate in accordance with such conditions as are imposed. *Steves v. Robie*, 31 A.2d 797, 139 Me. 359.

License to use highways, conferred by certificate of registration of automobile is “privilege” and not “contract” or “property”, and state may make such rules for the issuance of the certificate as state deems proper. *Steves v. Robie*, 31 A.2d 797, 139 Me. 359.

Civil rights

The permission to operate a motor vehicle upon the highways of the Commonwealth is not embraced within the term civil rights, nor is a license to do so a contract or a right of property in any legal or constitutional sense. *Appeal of Klepeis*, 20 Leh.L.J. 59.

3. Utah.—*Bleon v. Emery*, 209 P. 627, 60 Utah, 582.

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City of Kosciusko,
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2d 865, 347 Mo. 220.

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Its object is to confer a right or power which does not exist without it and the exercise of which without the license would be illegal,⁴ and as legally interpreted it signifies the intangible right granted the licensee as well as the instrument which is the evidence of the grant.⁵ The fact that a driver is unlicensed, however, will not preclude him from recovering for injuries sustained in a collision caused by another driver.⁶

All the statutes of a state covering the general subject of licensing and taxing motor vehicles or the use thereof should be construed together.⁷

§ 466.2 License Fees in General

Research Note:

The amount of tax which can be levied is considered infra
§ 466.8.

Library References:

C.J.S. Motor Vehicles § 158.

West's Key No. Digests, Automobiles ☞141.

A motor vehicle license or registration fee is a privilege tax or an excise tax⁸ levied in exercise of the police power to control and regulate travel on the public highways. It is distinguished from a tax on property as such, which is imposed for producing revenue for public purposes.⁹ That is, when levied it is not con-

4. Ga.—Inter-City Coach Lines v. Harrison, 157 S.E. 673, 172 Ga. 390.

200; State ex rel. Walls v. Wallace, 35 N.E.2d 167, 138 Ohio St. 410.

Ky.—Harlow v. Dick, 245 S.W.2d 616.

Tenn.—Silver Fleet Motor Exp. v. Carson, 219 S.W.2d 199, 188 Tenn. 338 (not ad valorem taxes).

5. Conn.—Connecticut Breweries Co. v. Murphy, 70 A. 450, 81 Conn. 145.

Minn.—Moore v. City of St. Paul, 63 N.W. 1087, 61 Minn. 427.

N.Y.—Aldrich v. City of Syracuse, 236 N.Y.S. 614, 134 Misc. 698.

6. Cal.—Espe v. Salisbury, 68 Cal. Rptr. 796.

Mo.—Siess v. Layton, 417 S.W.2d 6.

7. Kan.—State ex rel. Sullivan v. Hickman, 89 P.2d 903, 149 Kan. 865.

8. Ohio.—Columbus & Southern Ohio Electric Co. v. West, App., 36 N.E.2d 1, appeal dismissed 37 N.E.2d 41, 138 Ohio St. 553, affirmed 42 N.E.2d 906, 140 Ohio St.

Equal protection

A tax on privilege of using private motor vehicles, being excise tax, is not objectionable as denying equal protection of laws and demands of equality and uniformity in taxation, but is valid, unless inherently oppressive or unreasonably classifying persons or objects. State ex rel. Hansen v. Salter, 70 P.2d 1056, 190 Wash. 703.

9. Cited by the court in Ingels, Director of Motor Vehicles v. Boteler, C.C.A.Cal., 100 F.2d 915, 919, affirmed 60 S.Ct. 29, 308 U.S. 57, 521, 84 L.Ed. 78, 442.

Ala.—Foshee v. State, 72 So. 685, 15 Ala.App. 113, certiorari denied 73 So. 999, 198 Ala. 689.

§ 466.2 REGISTRATION AND LICENSE Ch. 466

sidered as a tax on the motor vehicle itself, but for the privilege of using the highways. As such it is in the nature of compensation for damage done to the roads, and is properly based not on the value of the machine, but on the amount of destruction it may cause.¹⁰ The collection of such a tax by way of a tollage or license for the use of public ways by motor vehicles has been upheld in many jurisdictions,¹¹ and the constitutional provision requiring uniformity in taxation has no application to license fees as such, since taxation as therein referred to relates to taxation in the general acceptance of the term as upon property.¹²

- Ark.—Crane v. Crane, 199 S.W.2d 316, 211 Ark. 55; Wiseman v. Madison Cadillac Co., 88 S.W.2d 1007, 191 Ark. 1021, 103 A.L.R. 1208.
- Cal.—Kelly v. City of San Diego, 147 P.2d 127, 63 Cal.App.2d 638.
- Colo.—Ard v. People, 182 P. 892, 66 Colo. 480.
- Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 764, L.R.A.1915D, 322, Ann.Cas.1917A, 228.
- Ky.—Reeves v. Deisenroth, 157 S.W. 2d 331, 288 Ky. 724, 138 A.L.R. 1493.
- Miss.—State v. Lawrence, 66 So. 745, 108 Miss. 291, Ann.Cas.1917E, 322.
- N.J.—Kane v. Titus, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, Ann. Cas.1912D, 237, affirmed 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222; State v. Unwin, 68 A. 110, 75 N.J.L. 500, affirming Unwin v. State, 64 A. 163, 73 N.J.L. 529.
- Ohio.—State ex rel. Brunenkant v. Wallace, 30 N.E.2d 696, 137 Ohio St. 379.
- Tex.—Payne v. Massey, 196 S.W.2d 493, 145 Tex. 237; Atkins v. State Highway Department, Tex.Civ. App., 201 S.W. 226.
10. Cal.—Valley Motor Lines v. Riley, 73 P.2d 288, 23 Cal.App.2d 208.
- Colo.—Colorado Contractors Ass'n v. Public Utilities Commission, 262 P. 2d 266, 128 Colo. 333 (ton-mile tax).
- Iowa.—State v. Robbins, 15 N.W.2d 877, 235 Iowa 602.
- Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.
- N.J.—Kane v. Titus, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, Ann. Cas.1912D, 237, affirmed 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222.
- Or.—Northwestern Auto Co. v. Hurlburt, 207 P. 161, 104 Or. 398.
- Equalization fees**
- The act imposing equalization fees on vehicles propelled by motors burning fuel not subject to state motor vehicle tax laws is not equivalent of income tax levy, but fixes reasonable compensation for use of state's highways by such vehicles. Rocky Mountain Lines v. Cochran, 299 N.W. 596, 140 Neb. 378.
11. Mass.—Opinion of Justices, In re, 148 N.E. 889, 250 Mass. 591.
- N.D.—State v. Kromarek, 52 N.W.2d 713, 78 N.D. 769, certiorari denied 72 S.Ct. 1064, 343 U.S. 968, 96 L. Ed. 1364 (no violation of due process).
12. Colo.—Public Utilities Commission v. Manley, 60 P.2d 913, 99 Colo. 153.
- Fla.—Jackson v. Neff, 60 So. 350, 64 Fla. 326, dismissed 35 S.Ct. 792, 238 U.S. 610, 59 L.Ed. 1488.
- Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 764, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

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4, L.R.A.1915D, 322,
A, 228.

For the same reason, automobile license taxes have been held to be beyond the reach of various other constitutional requirements deemed to control property taxes¹³ such as a requirement that taxation be in proportion to value.¹⁴

Since the ultimate police power upon which the right to levy a license tax resides is in the state, a state may provide that no municipality may levy a use tax even upon vehicles using its municipal roads. In this case, no valid municipal license tax may be enacted by a city or town.¹⁵

§ 466.3 License Fee Imposed under Police Power or as Revenue Measure

Research Note:

License fees based upon a combination of police and taxing powers in the same statute are considered infra § 466.7.

The question of whether a license fee is imposed under the police power or as a revenue measure depends more upon the nature of the fee than the use made of the motor vehicle. Thus,

13. Colo.—Public Utilities Commission v. Manley, 60 P.2d 913, 99 Colo. 153.

Pa.—Shirks Motor Exp. Corp. v. Messner, 100 A.2d 913, 375 Pa. 450, appeal dismissed 74 S.Ct. 639, 640, 347 U.S. 941, 98 L.Ed. 1090, rehearing denied 74 S.Ct. 775, 776, 347 U.S. 970, 98 L.Ed. 1111 (not a "tax on motor vehicles or operators").

Exemptions

Statute levying three-mill tax per ton mile for use of highways by persons operating their own motor vehicles for transportation of their own property for commercial purposes held not a "property tax" so as to be subject to constitutional provision prohibiting exemption of certain classes of property from taxation. Public Utilities Commission v. Manley, 60 P.2d 913, 99 Colo. 153.

14. Cal.—City of Los Angeles v. Riley, 59 P.2d 137, 6 Cal.2d 621.

Ohio.—Rapa v. Haines, Com.Pl., 101 N.E.2d 733, appeal dismissed 108 N.E.2d 833, 158 Ohio St. 275, af-

firmed App., 113 N.E.2d 121 (house trailer).

Double license tax

Constitutional requirement that taxation must be in proportion to value held applicable only to property taxes and does not affect power of Legislature to impose double license tax on operation of automobiles on public highways. Ingels v. Riley, 53 P.2d 939, 5 Cal.2d 154, 103 A.L.R. 1.

15. N.Y.—McLean Trucking Co. v. City of New York, 116 N.Y.S.2d 292, 202 Misc. 604; Papiernick v. City of New York, 115 N.Y.S.2d 454, 202 Misc. 717.

Tex.—Payne v. Massey, 196 S.W.2d 493, 495, 145 Tex. 237 (under a statute exacting a license or registration fee and prohibiting such a fee by municipalities, a municipality could not impose a street rental charge on taxicabs); A B C Storage & Moving Co. v. City of Houston, Tex.Civ.App., 269 S.W. 882 (city may require license but cannot require payment of fee for issuance thereof).

when license fees are imposed for the sole or main purpose of raising revenue, they are in effect taxes.¹⁶

Although registration or license fees for the purposes above stated may be required under either the police power¹⁷ or the taxing power of the state, the considerations governing the determination of the validity of the fee when exacted under one power are not the same as those determining such validity when imposed under the other. It is therefore important to determine which power the legislative body has attempted to exercise in imposing the particular fee.¹⁸

For example, constitutional provisions requiring that taxes be levied uniformly on all subjects in the same class,¹⁹ and that

16. U.S.—Ziemer v. Babcock & Wilcox Co., D.C.Nev., 22 F.Supp. 384.

Cal.—Ex parte Bush, 56 P.2d 511, 6 Cal.2d 43 (revenue measure).

Okl.—Ex parte Mayes, 167 P. 749, 64 Okl. 260.

Vt.—State v. Williams, 135 A. 713, 100 Vt. 160; State v. Caplan, 135 A. 705, 100 Vt. 140.

Privilege tax

A privilege tax on automobiles is a "tax" as distinguished from a "toll" and is not an exercise of the "police power" of the state, as distinguished from the "taxing power." Roberts v. Federal Land Bank of New Orleans, 196 So. 763, 189 Miss. 898.

17. Mont.—Anderson v. Commercial Credit Co., 101 P.2d 367, 110 Mont. 333 ("police regulation" designed to deter auto thefts and apprehend thieves).

Neb.—Rocky Mountain Lines v. Cochran, 299 N.W. 596, 140 Neb. 378.

Provisions of revenue nature

The statutes relating to registration of motor vehicles and license fees, are "regulatory" and not "revenue" measures, notwithstanding that statutes contained provisions of revenue nature. Carter v. State Tax Commission, 96 P.2d 727, 98 Utah 96, 126 A.L.R. 1402.

18. U.S.—Hendrick v. State of Maryland, 35 S.Ct. 140, 235 U.S. 610, 59 L.Ed. 385.

Ark.—City of Van Buren v. Lawson, 255 S.W. 295, 160 Ark. 631.

Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Iowa.—Solberg v. Davenport, 232 N.W. 477, 211 Iowa, 612.

N.J.—Kane v. State, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, Ann.Cas.1912D, 237, affirmed Kane v. State of New Jersey, 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222.

Or.—Briedwell v. Henderson, 195 P. 575, 99 Or. 506 (preamble of statute may be used to determine intent of legislature).

Extrinsic evidence not admissible

That the intention of the board of commissioners of a town in enacting an ordinance licensing and regulating automobiles was to levy a tax, and not to provide a police regulation, cannot be shown by extrinsic evidence, but the intention can be ascertained only from the face of the ordinance. Thompson v. Town of Lumberton, 108 S.E. 722, 182 N.C. 260.

19. Ga.—Lee v. State, 135 S.E. 912, 163 Ga. 239.

Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

they be collected for a registration or license fee, or for the operation of the vehicle, is not a determination of the validity of the fee when exacted under one power or the other. It is therefore important to determine which power the legislative body has attempted to exercise in imposing the particular fee.²³

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20. Idaho.—113, 26 322, Ann.C

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Mo.—State er, 233 S.

Okl.—Ex p Okl. 654.

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Idaho.—Ga Co. v. Pf 576 (unif not appli

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State, 135 S.E. 912,

Kessler, 146 P. 113,
4, L.R.A.1915D, 322,
A, 228.

they be collected according to regulations which insure a just valuation for all property subject to the tax,²⁰ do not apply to license or registration fees imposed under the police power as conditions to the operation of private automobiles upon the highway.²¹ A statute is not invalid, therefore, which provides for the payment of registration fees in varying amounts depending upon the horsepower of the vehicle.²² The legislature need not base the amount of the fee upon the value of the motor vehicle because the fee is imposed for the right to use the automobile upon the highway, and the value of this right is not affected by the value of the motor vehicle.²³

A city ordinance imposing a fee for the regulation of the use and operation of motor vehicles is generally a police regulation,²⁴

20. Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Miss.—State v. Lawrence, 66 So. 745, 108 Miss. 291, Ann.Cas.1917E, 322.

Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

Okl.—Ex parte Shaw, 157 P. 900, 53 Okl. 654.

Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

21. Cited by the court in Payne v. Massey, 196 S.W.2d 493, 495, 145 Tex. 237.

Ark.—Baldwin v. City of Blytheville, 208 S.W.2d 458, 212 Ark. 975.

Colo.—Ard v. People, 182 P. 892, 66 Colo. 480.

Idaho.—Garrett Transfer & Storage Co. v. Pfost, 33 P.2d 743, 54 Idaho 576 (uniformity of taxes provision not applicable to licensing).

Mo.—Samuel Bevard Manuro Products Co. v. Baughman, 173 A. 40, 167 Md. 55 (uniformity of taxes provision not applicable to licensing).

Miss.—State v. Lawrence, 66 So. 745, 108 Miss. 291, Ann.Cas.1917E, 322.

Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

Ohio.—Rapa v. Haines, Com.Pl., 101 N.E.2d 733, appeal dismissed 108

N.E.2d 833, 158 Ohio St. 275, affirmed, App., 113 N.E.2d 121 (uniformity of taxes).

Tenn.—Large v. City of Elizabethton, 203 S.W.2d 907, 185 Tenn. 156.

Invalid statute

Statute, making right to operate automobile upon public highway dependent upon whether person had paid his personal property taxes on property other than the vehicle to be licensed, did not relate to any of the subjects to which police power extended but was simply a revenue measure, adjunctive to enforcing collection of taxes on personal property. Schoo v. Rose, Ky., 270 S.W.2d 940.

22. Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

23. Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

24. Ill.—Keig Stevens Baking Co. v. City of Savanna, 44 N.E.2d 23, 380 Ill. 303 (\$15 license fee for food delivery vehicles is valid).

Ky.—Garner v. Hancock, 249 S.W.2d 824; Kroger Grocery & Baking Co. v. City of Lancaster, 124 S.W.2d 745, 276 Ky. 585 (license fee valid

and is valid unless the license fees are unreasonable or disproportionate to the cost of exercising the police power.²⁵

A municipality may not levy a tax under the guise of an exercise of its police power.²⁶ Thus the mere power to license automobiles or to subject them to police regulation does not include the power to tax distinctly for revenue purposes,²⁷ and municipalities frequently are without power to levy taxes on private motor vehicles for revenue purposes.²⁸

In some jurisdictions, statutes providing for the payment of a registration tax to the state also prohibit local authorities from enacting similar legislation requiring payment of a fee as a condition of using the streets of the municipality.²⁹

Under such a statute it has been held that a municipality could not collect a fee or tax for the privilege of operating taxicabs

even though it provides about 10 per cent of city's revenues).

N.Y.—*People, on Complaint of Wallace v. Oestricher*, 17 N.Y.S.2d 468, 173 Misc. 147 (license fee of \$20 for sight-seeing bus).

25. Ill.—*Bode v. Barrett*, 106 N.E.2d 521, 412 Ill. 204, judgment affirmed 73 S.Ct. 468, 344 U.S. 583, 97 L.Ed. 567 (tax is not unreasonably high when it does not even equal the total cost of highway maintenance).

Iowa.—*Huston v. City of Des Moines*, 156 N.W. 883, 176 Iowa, 455 (party attacking validity of fee has burden of proof as to unreasonableness).

Ky.—*Johnson v. City of Paducah*, 147 S.W.2d 721, 285 Ky. 294 (burden of proving unreasonableness of license fee lies with party attacking ordinance); *Kroger Grocery & Baking Co. v. City of Lancaster*, 124 S.W.2d 745, 276 Ky. 585; *Daily v. City of Owensboro*, 77 S.W.2d 939, 257 Ky. 281 (reasonableness of amount of fee is a question of fact).

Mass.—*Commonwealth v. Slocum*, 119 N.E. 687, 230 Mass. 180 (valid police regulation).

Mont.—*City of Bozeman v. Nelson*, 237 P. 528, 73 Mont. 147 (reasonableness of license fee is normally left to discretion of city council

and will not be reversed unless manifestly unreasonable).

N.Y.—*People v. Horton Motor Lines*, 10 N.Y.S.2d 580, 170 Misc. 507, reversed on other grounds 22 N.E.2d 338, 281 N.Y. 196 (valid police regulation).

N.D.—*Ex parte Bryan*, 264 N.W. 539, 66 N.D. 241 (valid police regulation).

Okl.—*City of Muskogee v. Wilkins*, 175 P. 497, 73 Okl. 192; *Ex parte Mayes*, 167 P. 749, 64 Okl. 260.

Tenn.—*Hermitage Laundry Co. v. City of Nashville*, 209 S.W.2d 5, 186 Tenn. 190.

Tex.—*Ex parte Bogle*, 179 S.W. 1193, 78 Tex.Cr.R. 1 (fee of \$50 per jitney not a tax).

26. Ark.—*Baldwin v. City of Blytheville*, 208 S.W.2d 458, 212 Ark. 975.

Okl.—*Ex parte Holt*, 178 P. 260, 74 Okl. 226.

S.C.—*Southern Fruit Co. v. Porter*, 199 S.E. 537, 188 S.C. 422.

27. Okl.—*Ex parte Mayes*, 167 P. 749, 64 Okl. 260.

28. Miss.—*Wasson v. City of Greenville*, 86 So. 450, 123 Miss. 642.

29. Okl.—*Ex parte Phillips*, 167 P. 221, 64 Okl. 276.

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30. Tex.—W.2d 41

31. Miss.—ville, 86

Okl.—Ex Okl. 226 ed from act).

32. Cal.—age Co 275 P. 9

Ga.—City S.E. 641

Tenn.—So Lines v. 2d 4, 18 validity privilege to the rather sought

33. U.S.—Troy, 1

by calling it a street rental charge.³⁰ Where a statute of this type is present, the validity of an ordinance requiring the payment of a license fee as a condition precedent to the operation of a vehicle upon the streets will depend on whether it can be deemed a regulatory measure, enacted pursuant to the police powers given to the municipality.³¹

It should be noted, however, that the term "license tax" as used in some statutes may be sufficiently broad to include both a charge imposed under the police power for a license to conduct a particular business, as the business of operating motorbusses, and a tax imposed for the sole purpose of raising revenue.³²

§ 466.4 License Fee Imposed under Police Power or as Revenue Measure—Tests for Determining Whether Fee Imposed under Police Power or for Revenue

The general rule, which is applicable to both private and commercial motor vehicles, is that license fees imposed under the police power should not exceed the reasonable cost of issuing the license and of supervising and regulating the subject of the license,³³ with the limitation in some jurisdictions that it is within

30. Tex.—Payne v. Massey, 196 S. W.2d 493, 495, 145 Tex. 237.

(\$15 fee on vehicles carrying food-stuffs not unreasonable).

31. Miss.—Wasson v. City of Greenville, 86 So. 450, 123 Miss. 642.

Alaska.—Hoff v. City of Ketchikan, 10 Alaska 220.

Okl.—Ex parte Holt, 178 P. 260, 74 Okl. 226 (answer must be ascertained from all the provisions of the act).

Cal.—In re Schuler, 139 P. 685, 167 Cal. 282, Ann.Cas.1915C, 706.

Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 764, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

32. Cal.—California Fireproof Storage Co. v. City of Santa Monica, 275 P. 948, 206 Cal. 714.

Iowa.—Solberg v. Davenport, 232 N. W. 477, 211 Iowa, 612; Star Transp. Co. v. Mason City, 192 N.W. 873, 195 Iowa, 930.

Ga.—City of Waycross v. Bell, 149 S.E. 641, 169 Ga. 57.

Tenn.—Southeastern Greyhound Lines v. City of Knoxville, 184 S.W. 2d 4, 181 Tenn. 622 (in determining validity of ordinance imposing a privilege tax, the court must look to the purpose of the ordinance rather than the name of the tax sought to be imposed).

Ky.—Daily v. City of Owensboro, 77 S.W.2d 939, 257 Ky. 281; City of Newport v. French Bros. Bauer Co., 183 S.W. 532, 169 Ky. 174; City of Henderson v. Lockett, 163 S.W. 199, 157 Ky. 366 (reasonableness of amount of fee is a question of fact).

33. U.S.—Jewel Tea Co. v. City of Troy, Ill., C.C.A.Ill., 80 F.2d 366

Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann. Cas.1915D, 128.

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the police power of the state to exact a license tax in excess of such cost where the subject is within the police power, and to apply the excess to the remedying of the effects of the exercise of the taxed privilege.³⁴

The legislature need not, however, determine the exact amount of the cost of executing a police regulation, and the fact that a license or regulation fee produces funds in excess of the expenses of carrying out the law does not render the regulation invalid.³⁵ Thus, a registration fee may be a valid police regulation even if it results in an accumulation of excess funds, if these funds are used for the maintenance or construction of streets and highways.³⁶

- N.Y.—United Taxicab Board of Trade v. City of New York, 270 N.Y.S. 263, 150 Misc. 636 (charge of 5 cents per fare collected by taxicabs strongly indicates a revenue producing purpose of ordinance).
- Okl.—Ex parte Holt, 178 P. 260, 74 Okl. 226.
- Or.—Hickey v. Riley, 162 P.2d 371, 177 Or. 321; Fine, In re, 264 P. 347, 124 Or. 175.
- S.C.—State v. Perry, 136 S.E. 314, 138 S.C. 329.
- Tex.—Kissinger v. Hay, 113 S.W. 1005, 52 Tex.Civ.App. 295.
- Vt.—State v. Caplan, 135 A. 705, 100 Vt. 140.
- Wyo.—Western Auto Transports v. City of Cheyenne, 120 P.2d 590, 57 Wyo. 351.
34. Ga.—Lee v. State, 135 S.E. 912, 163 Ga. 239.
- Ky.—Blue Coach Lines v. Lewis, 294 S.W. 1080, 220 Ky. 116; Smith v. Commonwealth, 194 S.W. 367, 175 Ky. 286.
- Mont.—State v. Pepper, 226 P. 1103, 70 Mont. 596; State ex rel. City of Bozeman v. Police Court of City of Bozeman, 219 P. 810, 68 Mont. 435.
35. Ohio.—Castle v. Mason, 110 N.E. 463, 91 Ohio St. 296, Ann.Cas. 1917A, 164, quoted in Fisher Bros. Co. v. Brown, 146 N.E. 102, 111 Ohio St. 602.
36. U.S.—Kane v. State of New Jersey, 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222, affirming Kane v. State, 80 A. 453, 81 N.J.L. 594, Ann. Cas.1912D, 237, L.R.A.1917B, 553.
- Colo.—Walker v. Bedford, 26 P.2d 1051, 93 Colo. 400, followed Consolidated Motor Freight v. Bedford, 26 P.2d 1066, 93 Colo. 440.
- Ga.—Lee v. State, 135 S.E. 912, 163 Ga. 239.
- Ind.—Bridges v. State ex rel. Vaughn, 190 N.E. 758, 208 Ind. 684.
- Ky.—Smith v. Commonwealth, 194 S.W. 367, 175 Ky. 286; City of Newport v. French Bros. Bauer Co., 183 S.W. 532, 169 Ky. 174.
- Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann. Cas.1915D, 128.
- Mont.—State v. Pepper, 226 P. 1103, 70 Mont. 596.
- N.J.—Cleary v. Johnston, 74 A. 538, 79 N.J.L. 49.
- Or.—Camas Stage Co. v. Kozar, 209 P. 95, 104 Or. 600, 25 A.L.R. 27.
- S.D.—Ex parte Hoffert, 148 N.W. 20, 34 S.D. 271, 52 L.R.A.,N.S., 949.
- Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

Ch. 466

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7. State of New 30, 242 U.S. 160, affirming Kane v. 81 N.J.L. 594, Ann. L.R.A.1917B, 553.

Bedford, 26 P.2d 400, followed Con- Freight v. Bed- 36, 93 Colo. 440.

135 S.E. 912, 163

State ex rel. Vaughn, 8 Ind. 684.

Commonwealth, 194 Ky. 286; City of nch Bros. Bauer Co., 69 Ky. 174.

Secretary of State, 179 Mich. 157, Ann.

Pepper, 226 P. 1108,

Johnston, 74 A. 538,

ge Co. v. Kozier, 209 600, 25 A.L.R. 27.

Hoffert, 148 N.W. 20, 2 L.R.A.,N.S., 949.

State Highway De- App., 201 S.W. 226.

While a registration fee is generally construed to be a license fee or toll for the use of the highway,³⁷ rather than a tax,³⁸ a court will often look to the disposition of the revenue from the fee in order to determine whether the regulation imposes a license fee or a tax.³⁹ Under the better rule, however, the disposition of the fee will not alone control the decision as to whether it is a license fee or a tax.⁴⁰

The fact that the revenue produced by a licensing ordinance is paid into a city treasury for the use of a special or general fund does not deprive the assessment of the character of a police regulation.⁴¹

If, upon investigation, the fee is found to be only sufficient to pay the expense that may reasonably be presumed to arise in the supervision and regulation of the automobile licensed, its disposition should not have the effect of converting it into a tax.⁴² The expenses of licensing and supervising automobiles and their drivers in the use of the highway must be borne by the city, out of its funds for governmental purposes, and it is immaterial that the particular funds used are not those derived from the license fee.⁴³

37. Ala.—Foshee v. State, 72 So. 685, 15 Ala.App. 113.

Colo.—Ard v. People, 182 P. 892, 66 Colo. 480, citing Atkins v. State Highway Department, Tex.Civ. App., 201 S.W. 226.

38. Colo.—Ard v. People, 182 P. 892, 66 Colo. 480.

Registration fee as a tax

It has been held that a law providing for the payment of registration fees according to a schedule of horsepower rates is a revenue measure, in view of other statutory provisions that the registration fees, less the cost of administering the law, must be paid into the state treasury for the benefit of the state road fund. State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

A statute providing for the collection of an annual license tax, for the purpose of enforcing and paying the expenses of administering the Motor Vehicle Act and of maintaining the roads, all fees collected being paid in-

to the state treasury to the credit of the state road repair fund, is obviously a tax measure for the purpose of raising revenue for a specified purpose. Saviers v. Smith, 128 N.E. 269, 101 Ohio 132.

39. Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann.Cas.1915D, 128.

40. Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann.Cas.1915D, 128.

41. Iowa.—Star Transp. Co. v. Mason City, 192 N.W. 873, 195 Iowa 930.

Tex.—Ex parte Sullivan, 178 S.W. 537, 77 Tex.Cr.R. 72.

42. Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann.Cas.1915D, 128.

43. Ky.—City of Newport v. French Bros. Bauer Co., 183 S.W. 532, 169 Ky. 174.

§ 466.5 REGISTRATION AND LICENSE Ch. 466

§ 466.5 Presumptions and Burden of Proof as to Reasonableness of Fee

In the absence of anything in the record indicating that the fee exacted from persons operating motor vehicles exceeds the reasonable cost of proper supervision, the fee will not be held so unreasonable as to brand the act as a revenue measure rather than a police regulation, the presumption being that the fee is reasonable until the contrary appears.⁴⁴

One who complains that such a fee is unreasonable or excessive for the purposes declared in the levying statute or ordinance has the burden of proving such fact.⁴⁵

§ 466.6 Theory of Registration Fee for Revenue Purposes

Where a registration fee is construed to be a tax for revenue purposes, the incident of the tax is the privilege of operating a vehicle on the highways, not the ownership of the vehicle itself.⁴⁶ Thus, constitutional provisions require equality and uniformity in taxation to validate such a privilege tax.⁴⁷ Accordingly, it

44. Mont.—State v. Pepper, 226 P. 1108, 70 Mont. 596; State ex rel. City of Bozeman v. Police Court of City of Bozeman, 219 P. 810, 68 Mont. 435.

Tenn.—Hermitage Laundry Co. v. City of Nashville, 209 S.W.2d 5, 186 Tenn. 190.

Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

45. U.S.—Clark v. Paul Gray Inc., 59 S.Ct. 744, 306 U.S. 583, 83 L.Ed. 1001 (caravan fee).

Ky.—Daily v. City of Owensboro, 77 S.W.2d 939, 257 Ky. 281 (\$5 fee).

Contra:

Undercoffer v. White, 149 S.E.2d 845, 113 Ga.App. 853.

46. U.S.—Storaasli v. State of Minnesota, 51 S.Ct. 354, 283 U.S. 57, 75 L.Ed. 839, affirming State v. Storaasli, 230 N.W. 572, 180 Minn. 241.

Minn.—Raymond v. Holm, 206 N.W. 166, 165 Minn. 215.

Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

S.D.—Ex parte Hoffert, 148 N.W. 20, 34 S.D. 271, 52 L.R.A.N.S., 949.

Excise tax

The annual motor vehicle registration fee exacted by statute is an "excise tax" for revenue purposes imposed on the privilege of operating motor vehicles upon highways of state. Holdcroft v. Murphy, 283 N.W. 860, 66 S.D. 388.

47. Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

N.M.—State v. Ingalls, 135 P. 1177, 18 N.M. 211.

Ohio.—State ex rel. Walls v. Wallace, 35 N.E.2d 167, 138 Ohio St. 410.

Must be used for highway purposes

Statute imposing additional motor vehicle registration fees to provide additional funds for aid of needy and destitute held unconstitutional as imposing tax for county purposes.

Ch. 466

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cannot be objected to on the ground that it is imposed without regard to the value of the property involved.⁴⁸

§ 466.7 Combination of Police and Taxing Powers in Same Statute

Library References:

C.J.S. Motor Vehicles § 146 et seq.
West's Key No. Digests, Automobiles ⇨132.

A motor vehicle law will sometimes provide for the exaction of fees for licenses, both as a regulatory measure and a source of revenue⁴⁹ and that the statute has a two-fold purpose does not render it invalid, provided it operates uniformly throughout the state.⁵⁰

§ 466.8 Weight or Value as Basis of Tax

A tax on the use of the highways by a motor vehicle is an excise tax, not a property tax, whether it is based to the value of the automobile,⁵¹ or upon its weight.⁵² Subject to certain exemp-

Walker v. Bedford, 26 P.2d 1051, 93 Colo. 400, followed Consolidated Motor Freight v. Bedford, 26 P.2d 1066, 93 Colo. 440.

48. N.J.—Kane v. Titus, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, AnnCas.1912D, 237, affirming Kane v. State of New Jersey, 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222.

49. Conn.—Dempsey v. Tynan, 120 A.2d 700, 143 Conn. 202 (identification and revenue).

Fla.—Miami Transit Co. v. McLin, 133 So. 99, 101 Fla. 1233.

Ill.—City of Chicago v. Willett Co., 115 N.E.2d 785, 1 Ill.2d 311 (license, tax and regulate carters).

Ind.—Kelly v. Finney, 194 N.E. 157, 207 Ind. 557.

Or.—State v. Preston, 206 P. 304, 103 Or. 631, 23 A.L.R. 414.

50. Mich.—Jasnowski v. Board of Assessors of City of Detroit, 157 N.W. 891, 191 Mich. 287.

Nev.—Ex parte Iratacable, 30 P.2d 284, 55 Nev. 263 (primarily a reve-

nue measure but secondarily a police measure).

Or.—State v. Preston, 206 P. 304, 103 Or. 631, 23 A.L.R. 414.

Utah.—Bleon v. Emery, 209 P. 627, 60 Utah 582.

51. Cal.—Consolidated Rock Products Co. v. Carter, 129 P.2d 455, 54 Cal.App.2d 519; Ingels v. Riley, 53 P.2d 939, 5 Cal.2d 154, 103 A.L.R. 1.

52. U.S.—Brashear Freight Lines v. Hughes, D.C.Ill., 26 F.Supp. 908.

Ala.—State v. H. M. Hobbie Grocery Co., 142 So. 46, 225 Ala. 151.

Hawaii.—Kitagawa v. Shipman, 31 Haw. 726, affirmed Kitagawa v. Shipman, C.C.A.Hawaii, 54 F.2d 313, certiorari denied 52 S.Ct. 496, 286 U.S. 543, 76 L.Ed. 1281, and Mana Transp. Co. v. Shipman, 52 S.Ct. 496, 286 U.S. 543, 76 L.Ed. 1281 (purpose of tax is to regulate under police power as well as to compensate for damage to highways).

Ill.—People ex rel. Auburn Coal & Material Co. v. Hughes, 192 N.E. 551, 357 Ill. 524.

CONTINUE TO "LIABILITY FOR FEE AS DEPENDANT ON USE OF AUTOMOBILE ON ROAD"

 [HERE](#)

Addendums: – Original Texas Driver's License Cases, People Don't Need One

Cases From Southwest Reporter Regarding No Driver's License

Complete cases below! Who needs a drivers license?

Answer no one since the court already decided this issue in the following cases:

Here is how the Appellate Criminal Courts of Texas have answered this request: "The court has held that there is no such license known to Texas Law as a "driver's license." (Frank John Callas v. State, 167 Tex. Crim. 375; 320 S.W. 2d 360.)

And...We have held that there is no such license as a driver's license known to our law." (Claude D. Campbell v. State, 160 Tex. Crim. 627; 274 S.W. 2d 401.)

And... "An information charging the driving of a motor vehicle upon a public highway without a driver's license charges no offense, as there is no such license as a driver's license known to the law." (Keith Brooks v. State, 158 Tex. Crim. 546; 258 S.W. 2d 317)

And..."There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a highway without such a license, charges no offense." (W. Lee Hassell v. The State, 149 Tex. Crim. 333; 194 S.W. 2d 400)

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DEPARTMENT OF COMMERCE

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Frank John CALLAS, Appellant, v.

STATE of Texas, Appellee.

No. 30094.

Court of Criminal Appeals of Texas. Jan. 7.1959.

Prosecution for driving motor vehicle on public road after operator's license had been suspended. The County Court at Law, Potter County, Mary Lou Robinson, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Woodley, J., held that where testimony showed that only two persons were in or around truck at time defendant was apprehended and patrolman testified that the other person was not the driver of truck, and largely upon this testimony jury found defendant guilty, and after jury retired police officer filed complaint charging other person with driving motor vehicle with violation of restrictions imposed on his operator's license and such other person was convicted upon his plea of guilty, defendant's motion for new trial setting forth conviction of such other person should have been granted in order that defendant might have the benefit of evidence regarding conviction of other party in another trial.

Reversed and remanded. Criminal Law

Key 938(1)

In prosecution for driving after operator's license had been suspended where testimony showed that there were only two persons including defendant in or around truck at time patrolman reached it and patrolman testified that other person was not driving panel truck, and after jury retired patrolman filed complaint charging other party with driving motor vehicle and he was convicted upon his plea of guilty, defendant's motion for new trial should have been granted in order that he might, in another trial, have the benefit of evidence regarding conviction of other party. Vernon's Ann.Civ.St. art. 6687b, § 1(n).

McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst. County Atty., Amarillo, State's Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road "after the Texas Operator's License of the said Frank John Callas had * * * been suspended" and further alleged that appellant had received an extended period, of suspension "of said Texas Operator's License * * * " and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b. Sec. I (n), Vernon's Ann.Civ.St.

This Court has held that there is no such license known to Texas law as a "driver's license". See Hassell v. State, 149 Tex. Cr.R. 333, 194S.W.2d400; Brooks v. State, 158 Tex.Cr.R. 546, 258 S.W.2d 317.

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that Schaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driving [Page - Tex 361] a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and S chaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial

should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant's motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded

CAMPBELL v. STATE
(Cite as 274 S.W.2d 401)

Tex. 401

The punishment was assessed at a fine of \$25 and six months in jail. **1. Automobiles §353** **17**
At the outset, we are confronted with vehicle upon a public highway while op- At the out-
that the misdemeanor of erator's license is suspended, the state has the contention
driving may not be un- burden of showing that defendant had been ense of drunken
as the unlawful act issued an operator's license to drive a motor ized and relied upon
homicide or the sec- vehicle upon a public highway, that such constituting negligent
license has been suspended, and that, while and degree.
such license was suspended, defendant drove By Art. 812b, Vernon's P.L.
it is a let- a motor vehicle upon a public highway; any for an intoxicated driver o-
f an auto- mobile to kill another person by a
resident. **2. Automobiles §352** or mistake. Being a felony, such a
crime. Proof that defendant had driven an auto- not be prosecuted as the misdemeanor
or automobile while his driver's license was offense of negligent homicide of the second
suspended did not sustain allegations of degree. *McCarthy v. State, Tex. Cr. App.*, en
large that he has driven while his op- 278 S.W.2d 100; *Flowers v. State, 130 Tex. Cr.*
er's license was suspended. *Cr. R. 467, 302 S.W.2d 402, 203 S.W.2d*
3. Automobiles §139 **530** **3. Automobiles**
in Texas no such license as a The judgment is reversed and the pros- There is
" caution ordered dismissed. "driver's license

for appellant.
Austin, for



No attorney on appeal
Wesley Dies, State's Atty,
the State.

Claude D. CAMPBELL, Appellant,

BEUCHER, Commissioner,

The STATE of Texas, Appellee.
No. 2745.

Court of Criminal Appeals of Texas
Jan. 12, 1955.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of \$25.

Defendant was convicted of unlawfully [1] Under such a charge, the state was operating a motor vehicle upon a public highway while his operator's license was suspended. The County Court, Panola, had to drive a motor vehicle upon a public highway; that such license had been suspended, and an appeal was taken. The Court proved, and that, while such license was of Criminal Appeals, Beucher, C. held that suspended, appellant drove a motor vehicle upon a public highway; mobile while his driver's license was suspended. To meet this requirement, the state here, proved did not sustain allegations of degree, relies upon testimony that appellant drove that he had driven while his operator's license was suspended. Judgment reversed and cause remanded. that driver's

274 S.W.2d 401

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Claude D. CAMPBELL, Appellant, v.
The STATE of Texas, Appellee. No. 27245.
Court of Criminal Appeals of Texas. Jan. 12, 1955.

Defendant was convicted of unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended. The County Court, Panola County, Clifford S. Roe, J., rendered judgment, and an appeal was taken. The Court of Criminal Appeals, Belcher, C., held that proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

Judgment reversed and cause remanded.

1. Automobiles Key 353

Upon a charge of operating- a motor vehicle upon a public highway while operator's license is suspended, the state has burden of showing that defendant had been issued an operator's license to drive a motor vehicle upon a public highway, that such license has been suspended, and that, while such license was suspended, defendant drove a motor vehicle upon a public highway.

2. Automobiles Key 352

Proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

3. Automobiles Key 136 There is in Texas no such license as a
"driver's license."

No attorney on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State. BELCHER,
Commissioner.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating- a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of \$25.

[1] Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was at suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his license was suspended

[2, 3] "This proof is insufficient to 'sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a driver's license known to our law. Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400; Holloway v. State, 155 Tex.Cr.R. 484, 237 S.W. 2d 303; and Brooks v. State, Tex.Cr.App., 258 S.W.2d 317.

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.

We must determine whether the paper cups, one of which smelled of beer, the the fact broken, empty beer bottles and fil ~t h at each were found in a place of business constitute direct or circumstantial evidence of grlt of the charm against the appellant. We have c` that such facts were circumstanc r than direct proof of the fact that an an had the beer for sale absence of which nothing is and that, therefore, the learned trial court fell into error in not giving the requested charge. Miller v. presented review. State, 135 Tex.Cr.R. 309, 119 S.W.2d 1052, and Hinton v. State, 135 T ca.Cr.R. 400, 120 S.W.2d 1053. d by the Court. The firmed. Opinion appro

for

It of the trial court is af-

The judgment is reversed and the cause remanded.

BROOKS v. STATE.
No. 26468.

YANCY v. STATE.
No. 26463.

Court of Criminal Appeals of Texas.
May 27, 1053.

Defendant was convicted of possessing intoxicating liquor for the purpose of sale. The County Court, Childress County, Richard D. Bird, J., rendered judgment on the verdict, and defendant appealed. The Court of Criminal Appeals, Belcher, C., held that nothing is presented for review, in the absince of a statement of facts or bills of exception, where the complaint, information, and all matters of procedure appear regular.

Judgment affirmed.

Criminal Law 1090(l)

Where complaint, information and all matters of procedure appear regular and record on appeal from conviction contains no statement of facts or bills of exception, nothing is presented for review.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of \$50.

The information upon which this conviction was predicated alleged **that appellant** "did then and there unlawfully drive and operate a motor vehicle upon a public

purpose of sale, and his punishment was assessed by the jury at a fine of \$250. The complaint and information, as well as all matters of procedure, appear regular. The record is before us without a statement of facts or bills of exception, in the

No attorney on appeal for appellant.

Wt sley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the offense of possessing intoxicating liquor for the

Court of Criminal Appeals of Texas.
May 27, 1953.

From a judgment rendered by the County Court, Cuiberson County, defendant appeal-ed. The Court of Criminal Appeals, Belcher, C., held that information, charging defend-ant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense. Reversed with directions.

Automobiles 351

Information, charging defendant with driving a motor vehicle upon a public high-way while his "driver's license" was suspended, charged no offense. Vernon's Ann. Civ.St. art. 6687b, § 27.

George W. Walker, Van Horn, for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

highway, to-wit: U. S. Highway Number 50, situated within said county and state, while his, the said Keith Brook's_ drivers license was suspended."

In Hassell v. State, 144 Tex.Cr.R. 333, 194 S.W.2d 400, -101, we said:

"There being no such license as a `driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense." See also Holloway v. State, Tex.Cr.App., 237 S.W.2d 303,

Because the information fails to charge an offense, the lodgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court

The fire was confined to the one room of house and was soon put out.

A strong odor of kerosene permeated appellant's clothing when he was apprehended at the fire. There was also a strong odor of kerosene in the room as well as on the mattress and bedclothes, and kerosene was found at different places on the floor.

The mother testified that she kept a brown gallon-bottle of kerosene on a shelf in the room, which she used in a lantern and also to burn trash in the back yard.

It is upon these facts that this conviction rests.

The jury disregarded the appellant's defense that the burning of the room was accidental and not the result of any wilful

BOROQUEZ v. STATE.

No. 26447.

Court of Criminal Appeals of Texas.

June 3, 1963.

Defendant was convicted of the wilful burning of the house of his mother.

El Paso County, El Paso, Texas, Roy D. Jackson, J., entered judgment, and defendant appealed. The Court of Criminal Appeals, Davidson, C., held that the evidence sustained conviction.

3rd judgment affirmed,

Arson 37(1)

Evidence sustained conviction of the wilful burning of the house of defendant's mother.

Richard C. White and Richard Burgos Ferrenet, El Paso, for appellant.

William E. Clayton, Dist. Atty., Owen H. Ellington, Asst. Dist. Atty., C. Rutledge Isaacs, Asst. Dist. Atty., El Paso, Wesley Dice, State's Atty., of Austin, for the State.

DAB 1DSO, Commissioner.

Appellant, who a few months prior had been honorably discharged from the army, occupied, with his mother, Josefa Alpuente, one room of a live-room house. The remainder of the house was occupied by two other parties and their families.

Appellant stands here convicted of the wilful burning of the house of Josefa Alpuente, with punishment assessed at three years in the penitentiary.

The sufficiency of the evidence to support the conviction is challenged.

Shortly after midnight, appellant came home drunk. He awakened his mother and began teasing her and, as she testified, acting "like Dracula." The mother became frightened, left the room, and went to the room of another occupant of the house. She later went to the house of a neighbor. About the time she left the house, appellant was seen carrying some personal effects and a small table out of the room, from which smoke was issuing.

Alvarez, a special officer, testified that when he arrived at the scene of the fire appellant was standing in front of the house watching the fire. Upon his asking if there was any one in the house, appellant replied, "I don't give a damn if the whole place burns down with everybody in it." The witness further testified that appellant made no effort to help in getting people out of the burning house.

BROOKS v. STATE.

No. 26458.

Court of Criminal Appeals of Texas. May 27, 1953.

From a judgment rendered by the County Court, Culberson County, defendant appealed. The Court of Criminal Appeals, Belcher, C. held that information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense.

Reversed with directions. Automobiles

Key 351

Information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense. Vernon's Ann. Civ. St. art. 6687b, § 27.

George W. Walker, Van Horn, for appellant. Wesley Dice,

State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of \$50.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully drive and operate a motor vehicle upon a public [Page - Tex. 318] highway, to-wit: U. S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended."

In Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400, 401, we said:

"There being no such license as a 'driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense." See also Holloway v. State, Tex.Cr.App., 237 S.W.2d 303.

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

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HAS SELL v. STATE.

No. 23353.

Court of Criminal Appeals of Texas.

May 15, 1946.

1. Automobiles Key I37

Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or chauffeur is not required to have an operator's license. Vernon's Ann.Civ. St. art. 6687b, § 2,3,44.

2. Automobiles Key 351

Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators' commercial operators' and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

Commissioners' Decision.

Appeal from Hunt County Court; Wm. C. Parker, Judge.

W. Lee Hassell was convicted of operating a motor vehicle upon a highway without a license, and he appeals.

Reversed and prosecution ordered dismissed.

G. C. Harris, of Greenville, for appellant.

Ernest S. Goens, State's Atty., of Austin, for the State.

DAVIDSON, Judge.

The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of \$50.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State. Sec. 2 of Article II of the Act reads as follows:

"Drivers must have license.

"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

"(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 91 1A and Subsection (b) of Section 4 of Article 91 1B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty .for the violation.

[1] It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, to wit. State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

[2] Only three types of licenses are authorized or required under the Act. These are "operators," "commercial operators," and "chauffeurs," and they are specially defined in the Act. The term "driver"—as used in the Act—is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

PER CURIAM.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

The following shows the correct stuff, and I've put notes and cites in brackets. Your CD has the right cites, even showing some, but someone had done text-copying that made typos. I didn't know if you might want to make corrections.

I found you had Callas (1959) and Brooks (1953) okay. You show Campbell as (1955) 1985; and Hassell (1946) with wacky typos.

They're OLD, and I bet judges aren't ruling like that anymore. It would be good to take these as public info into court, though. Would they even hear such cases anymore? I've seen internet places where these cites were shown with mistakes.

[cite as 149 Tex. Crim. 333, 194 S.W. 2d 400]

Added comments:

Recently I was in JUSTICE OF THE PEACE COURT w/ a friend who cited the above cases & said, "the Driver's License in NOT known to law."

The STATE PROSECUTOR said, "That is incorrect. It is cited in Texas Trans. Code § 521.001." I nearly shouted that's right!

Unfortunately my friend did not take the opportunity to say & what does the statute say? IF he had, he would not have been found guilty.

Pursuant to Chapter 521. Driver's Licenses & Certificates

Texas Trans. Code § 521.001. Definitions.

(a) In this chapter:

(3) "Driver's license" means an authorization issued by the department for the operation of a motor vehicle. The term includes:

(A) a temporary license or instruction permit; & (B) occupational license.

Further pursuant to State Law in Texas Affecting Local Codes & Ordinances prepared by Municipal Code Corporation Businesses – Generally

(2) Occupation taxes. Municipalities & counties, per V.T.C.A., Tax Code §101.008 are not allowed to levy occupation taxes on business subject to license under V.T.C.A., Tax Code title 2, unless specifically authorized by state law.

If the MUNICIPALITIES & COUNTIES cannot levy an occupation tax on a business - what's gives them authority to levy a tax on my friends?

I walk the walk, talk the talk, right wrong & read backwards in my quest for truth & righteousness! I do all it is to be a man! This makes sense to me!

Texas Case Law

CALLAS v. STATE, 167 Tex. Crim. 375 (Tex.Cr.App. 1959)
320 S. W.2d 360
Frank John CALLAS, Appellant, v. STATE of Texas, Appellee.
No. 30094.
Court of Criminal Appeals of Texas.
January 7, 1959.

Appeal from the County Court at Law, Potter County, Mary Lou Robinson, J.

McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst. County Atty., Amarillo, State's Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road `after the Texas Operator's License of the said Frank John Callas had \* \* \* been suspended' and further alleged that appellant had received an extended period of suspension `of said Texas Operator's License * * * and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b, Sec. 1(n), Vernon's Ann.Civ.St.

This Court has held that there is no such license known to Texas law as a `driver's license'. See Hassell v. State, 149 Tex.Crim. 333, [194 S.W.2d 400](#); Brooks v. State, [158 Tex.Crim. 546](#), [258 S.W.2d 317](#).

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that S chaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driving

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a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and Schaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant's motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded.

Texas Case Law

CAMPBELL v. STATE, 160 *Tex.Crim.* 627 (Tex.Cr.App. 1955)
274 S. W.2d 401
Claude D. CAMPBELL, Appellant, v. The STATE of Texas, Appellee.
No. 27245.
Court of Criminal Appeals of Texas.
January 12, 1955.

Appeal from the County Court, Panola County, Clifford S. Roe, J. No attorney
on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of \$25.

Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his driver's license was suspended.

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This proof is insufficient to sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a driver's license known to our law. *Hassell v. State*, 149 Tex.Crim. R., [194 S.W.2d 400](#); *Holloway v. State*, 155 Tex.Crim. R., [237 S.W.2d 303](#); and *Brooks v. State*, Tex.Cr.App., [258 S.W.2d 317](#).

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.

Texas Case Law

BROOKS v. STATE, 158 *Tex.Crim.* 546 (Tex.Cr.App. 1953)
258 *S. W.2d* 317
BROOKS v. STATE.
No. 26458.
Court of Criminal Appeals of Texas.
May 27, 1953.

George W. Walker, Van Horn, for appellant. Wesley Dice,
State's Atty., of Austin, for the State. BELCHER, Commissioner.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of \$50.

The information upon which this conviction was predicated alleged that appellant 'did then and there unlawfully drive and operate a motor vehicle upon a public

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highway, to-wit: U.S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended.'

In Hassell v. State, 149 Tex.Crim. R., [194 S.W.2d 400](#), 401, we said:

"There being no such license as a `driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.' See also Holloway v. State, Tex.Cr.App., [237 S.W.2d 303](#).

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

Texas Case Law

HASSELL v. STATE, 149 Tex. Crim. 333 (1946)

194 S. W.2d 400

W. LEE HASSELL v. THE STATE.

No. 23353.

Court of Criminal Appeals of Texas.

Delivered May 15, 1946.

1. — Drivers' License Act — Statute Construed.

Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or a chauffeur is not required to have an operator's license.

2. — Drivers' License Act — Information.

Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators', commercial operators', and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle.

Appeal from County Court of Hunt County. Hon. Wm. C. Parker, Judge.

Appeal from conviction for operating a motor vehicle upon a highway without a license; penalty, fine of \$50.00. *Reversed and prosecution ordered dismissed.*

The opinion states the case.

G. C. Harris, of Greenville, for appellant.

Ernest S. Goens, State's Attorney, of Austin, for the State.

DAVIDSON, Judge.

The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of \$50.00.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State, Sec. 2 of Article II, of the Act reads as follows:

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"Drivers must have license.

"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State, unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

"(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 91 1A and Subsection (b) of Section 4 of Article 91 1B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty for the violation.

It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II. Thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, to-wit, State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

Only three types of licenses are authorized or required under the Act. These are operators', commercial operators', and chauffeurs', and they are specially defined in the Act. The term "driver" — as used in the Act — is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view

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of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

Texas Case Law

HOLLOWAY v. STATE, 155 *Tex.Crim.* 484 (Tex.Cr.App. 1951)
237 S. W.2d 303

HOLLOWAY v. STATE.
No. 25192.
Court of Criminal Appeals of Texas.
March 7, 1951.

Appeal from the County Court, Jones County, Roger Garrett, J. W. E.

Martin, Abilene, for appellant.

George P. Blackburn, State's Atty., of Austin, for the State. WOODLEY,
Commissioner.

Appellant was convicted and assessed a fine of \$100 under an information and complaint charging that appellant "did then and there unlawfully drive and operate a motor vehicle upon the public roadways of the state while his drivers license was suspended."

Appellant attacks the sufficiency of the information to charge an offense.

The prosecution appears to have been brought under the provisions of art. 6687b, Vernon's Ann. Civil Statutes, commonly referred to as the Texas Drivers License Law, Sec. 27 thereof in part providing that no person whose operator's, commercial operator's or chauffeur's license or privilege to operate a motor vehicle in this state has been suspended shall operate a motor vehicle during such suspension. Sec. 44 of such Act provides a punishment for such offense by fine not to exceed \$200.

The information against appellant fails to allege that appellant had been issued either an operator's, commercial operator's or chauffeur's license, or that he drove a motor vehicle while such a license was suspended.

In *Hassell v. State*, 149 Tex.Crim. R., [194 S.W.2d 400](#), an information alleging that the defendant operated a motor vehicle upon a public highway without a "drivers license" was held insufficient to charge an offense since a drivers license is not known to the law.

In *Barber v. State*, 149 Tex.Crim. R., [191 S.W.2d 879](#), a complaint charging the operation of an automobile and failure to display operator's license on demand of a peace officer was held insufficient to charge an offense in the absence of an allegation that accused was, on the date of the alleged offense, a licensee.

The information being insufficient to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

Texas Case Law

BARBER v. STATE, 149 Tex. Crim. 18 (1945)
191 S. W.2d 879
C. R. BARBER v. THE STATE.
No. 23252.
Court of Criminal Appeals of Texas.
Delivered December 19, 1945.

Automobile Operator's License — Complaint.

A complaint charging operation of automobile and failure to display operator's license on demand by peace officer was insufficient to charge an offense under statute requiring a license to be carried and exhibited on demand, in absence of allegation that accused was, on date of alleged offense, a licensee.

Appeal from County Court of Lubbock County. Hon. Walter Davies, Judge.

Appeal from conviction for failing to exhibit an automobile operator's license on demand of a peace officer; penalty, fine of \$200.00.

Reversed and prosecution ordered dismissed. The opinion states the case.

Eugene F. Mathis, of Lubbock, for appellant.

Ernest S. Goens, State's Attorney, of Austin, for the State.

DAVIDSON, Judge.

The brief filed by the State's Attorney before this Court reflects the views of the Court and is adopted as its opinion, viz.:

"This is an appeal from the County Court of Lubbock County, Texas, from a conviction for failure to exhibit an operator's license on demand, the punishment, a fine of \$200.00.

"The prosecution, however, originated in the Justice Court of Precinct No. 1, Place No. 2, in Lubbock County, wherein the defendant was charged by complaint, (eliminating the formal part thereof), 'C. R. Barber did then and there unlawfully, while operating an automobile upon a street, within the City of Lubbock, Lubbock County, Texas, fail to display an operator's license upon demand to do so by a peace officer, against the peace and dignity of the State.' This complaint was apparently brought under the provisions of Article 6687b-13 of the Civil Statutes of Texas, which reads as follows:

" 'Sec. 13 — License to be carried and exhibited on demand — Every licensee shall have his operator's, commercial operator's,

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or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate or any officer of a court of competent jurisdiction or any peace officer. It shall be a defense to any charge under this Section that the person so charged produce in court an operator's commercial operator's, or chauffeur's license theretofore issued to such person and valid at the time of his arrest.'

Texas Case Law

"It will be noted that the statute provides that every licensee shall have his operator's, commercial operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle. It therefore occurs to us that it is absolutely necessary for the State to allege and prove that the accused was, on the date of the alleged offense, a licensee, for, as we construe the statute above quoted, it applies specifically to a licensee and unless the person accused was a licensee, we fail to understand how he could be guilty of violating the provisions of this portion of the statute in failing to display same upon demand."

In holding the complaint insufficient to charge an offense under the statute mentioned, we are not to be understood as passing upon the validity of the statute. That question is not before us and is not decided. What we hold is that the instant complaint does not charge an offense under the statute.

Accordingly, the judgment of the trial court is reversed and the prosecution ordered dismissed.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.