
THE RIGHT TO TRAVEL

DECEMBER 2009

All personal property is the product of some man's labor, and whether the owner has acquired it by his own labor, by inheritance or by exchange, his interest is a vested right of the most unlimited character. He does not hold it by any favor of the state, and in consequence of his possession of it he has assumed no peculiar obligation to the state. He has the right, therefore, to acquire it in any manner that he pleases, provided in so doing he does not interfere with or threaten the rights of others. Footnote: The term "personal property," it must be observed, is used in this connection in the sense of chattels personal, including movable property of all kinds, ...

Christopher Gustavus Tiedeman

The less than penurious authorities cited throughout this writing, though seemingly redundant, are not attendant of an obstreperous mentality; yet are instead meant to emphatically impress the all but forgotten law and the expression of our Rights to the free and unobstructed use of the highways. This information is not intended to belay comity, scruples, respect, consideration or empathy for fellow travelers or abate or avoid law or policy where and when applicable.

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Because she lived through the assaults and insults from many cops,
in the name of the law;
She has lost many days in jail and had many vehicles stolen from her,
in the name of the law;
She has lost jobs and been subject to stressful community humiliation,
in the name of the law;

THIS WORK IS DEDICATED TO MY DAUGHTER, ECHO;

NOW WE KNOW THE TRUTH

All thanks and appreciation to friends and family
who helped prepare and edit this writing.

DEFINITIONS

Citation. JUDICIAL AND STATUTORY DEFINITIONS OF WORDS AND PHRASES,
VOLUME 8; WEST PUBLISHING CO. , 1905

A citation is a *writ* of the court, addressed to an officer of the court, and commands him to do certain things.

Commerce.

From L. *commercium* "trade, trafficking"; from *com-* "together" + *merx* (gen. *mercis*) "merchandise" (see *market*). From commerce, "pertaining to trade"; meaning "done for the sake of financial profit". Commodity, from *commodité* "benefit, profit," from L. *commoditatem*

Constitution.

The term CONSTITUTION when used here in this writing may also be represented by the term CHARTER, and as such, the terms are interchangeable.

Constructive Contract.

"A constructive contract is where duty defines it instead of the contract defining the duty to be performed. Constructive contracts are fictions of law adopted to enforce the legal duties by actions of Contract where no proper contract exists, express or Implied."
Graham v. Cummings, 57 Atl. 943, 208 Pa. 616 (citing *Hertzog v. Hertzog*, 29 Pa. [5 Casey] 465).

Convey. Merriam Webster Ninth Collegiate,
To transfer or deliver to another; to cause to pass from one place or person to another; transmit.

Conveyance. Merriam Webster Ninth Collegiate,
b. an instrument by which title to property is conveyed

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

Driver. Black's Law Dictionary, 3rd Ed
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 Law Dictionary, 4th Ed, 1951
One employed...

License. The Law Applied To Motor Vehicles. Babbitt §83, @141
In Webster's Dictionary we find a "license" defined as: Authority or liberty given to do or forbear any act; especially a formal permission from the proper authorities to perform certain acts or to carry on a certain business, which without such permission would be illegal.

License. Bouvier's 3rd Ed., 1984

In Governmental Regulation. Authority to do some act or carry on some trade or business, in its nature lawful but prohibited by statute, except with the permission of the civil authority or which would otherwise be unlawful.

Operating Motor Vehicle. Ballentines Law Dictionary, 1969

Exercising control over the vehicle, although not at the time in the drivers seat.

Private. Merriam Webster Ninth Collegiate

1. a. intended for or restricted to the use of a particular person group or class.

b. belonging to or concerning an individual person, company, or interest.

Private.

c.1380, from L. *privatus* "set apart, belonging to oneself" (not to the state), used in contrast to *publicus, communis*; originally pp. stem of *privare* "to separate, deprive," from *privus* "one's own, individual," from Old L. *pri* "before." Meaning "not open to the public".

Privilege.

from L. *privilegium* "law applying to one person"; from *privus* "individual" + *lex* "law."

A right or immunity granted as a peculiar benefit, advantage or favor.

Public Road.

A road way existing for the free and unrestricted use of all common people, is a public road.

Heninger v. Peery 47 S.E. 1013, 102 Va. 896

Register.

From L. *regesta*, neuter pl. of *regestus*, pp. of *regerere* "to record", literally, "to carry back," from re- "back" + *gerere* "carry, bear."

Register. Merriam Webster Ninth Collegiate,

Means "enrollment".

Register. Blacks 7th ed.

To enter in a public registry

Service. Rev. Code of Washington 63.14.010

...services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services.

Traffic. Webster's Unified Dictionary and Encyclopedia

International Illustrated Edition (1960)

1. Business or trade, commerce. 2. Transportation.

3. The movement of vehicles on street or highway...

Traffic. Bouvier's Law Dictionary (1856)
Commerce, trade, sale or exchange of merchandise, bills, money and the like.

Traffic. Black's Law Dictionary 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.

Traffic. Black's Law Dictionary 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.

Transportation. Webster's Unified Dictionary and Encyclopedia
International Illustrated Edition (1960)
1. The act or business of moving passengers and goods.

Transportation. Black's Law Dictionary 3rd
The removal of goods or persons from one place to another, by a carrier.
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.

Transportation.
The removal of goods or persons from one place to another, by a carrier.
Interstate Commerce Comm. v Brimson 154 US 447, 14 S.Ct.1125

Transportation. Black's 6th
The movement of goods or persons from one place to another, by a carrier.

Transportation. 49 USC 5102 (12)
"transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

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

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

USC Title18 §31(6) Motor vehicle.

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

USC Title49 §30301(4)

"motor vehicle" means a vehicle, machine, tractor, trailer, or semi trailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line.

RCW 46.04.320

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

RCW 81.80.010(9)

"Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks.

RCW 46.04.670

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles.

RCW 81.04.010(4)

"Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

RCW 81.04.010(14)

"Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, and handling of the property transported, and the transmission of credit.

RCW 81.04.010(15)

"Transportation of persons" includes any service in connection with the receiving, carriage, and delivery of persons transported and their baggage and all facilities used, or necessary to be used in connection with the safety, comfort, and convenience of persons transported.

**RIGHT TO TRAVEL, FREEDOM OF MOVEMENT,
METHODS AND MODES OF LOCOMOTION
USE OF STREETS AND HIGHWAYS**

The constitutional Right of individuals, in the exercise of their liberty interests, by claiming their Right to travel, in this writing, is a one hundred year old concept, as it relates to the introduction and evolution of the automobile industry, and an individuals necessarily impetuous need to travel the common highways. As indicated herein, the highways were established for the use of the general public.

Streets and highways are established and maintained primarily for purposes of travel by the public and incidental uses.

Am Jur 2d Highways, Streets and Bridges §227, citing Birmingham Ry. Light and Power Company v Smyer 181 Ala 121, 61 So 354

The term travel is a generic and broad term. The phrase “incidental uses” in the above citation means the use of the highways as a means of personal gain, discussed later on. It is now, and has been known, that traveling is of two basic categories: those who travel in a personal capacity for pleasure and those who travel the public highways incident thereto for profit.

... the terms “travel” and” traveler” are usually construed in their broad and general sense where used in this connection, rather than in a narrow and restricted one, and the duty and consequent liability is extended so as to include all those who rightfully use the highways viatically, and who have occasion to pass over them for the purpose of business, convenience, or pleasure.

*Van Cleef v. Chicago, 240 Ill 318, 88 NE 815,
23 LRA(NS) 636, 130 Am St Rep 275;*

Traveling for pleasure connotes the movement from one place to another for ones own enjoyment, as in the case of visiting friends and relatives. However, it is undisputed that the use of common highways is also for general purposes. Those common purposes may include, but are in no way limited to traveling to or from the following places: doctor, veterinarian, grocer, hardware store, beach picnic, coffee stand, work, movie, funeral, convenience mart, bank, school, families homes, dinner out, sporting events, etc.

A distinction may also be made between private carriers who transport their own property for compensation and those who transport their own property without compensation. The use upon the public highways of motor vehicles engaged in transportation for hire may be prohibited restricted or conditioned by the controlling public authority. Highways are public avenues for use by the entire public for their private and personal purposes and the use of a highway for profit and gain may be restricted.

Stephenson v Binford 287 US 251, 53 S Ct 181

"...Based upon the fundamental ground that the sovereign state has the plenary control of the streets and highways in the exercise of its police power may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize the fundamental distinction between the ordinary Right of the Citizen to use the streets in the usual way and the use of the streets as a place of business or a main instrumentality of business for private gain. The former is a common Right; the latter is an extraordinary use. As to the former, the legislative power is confined to regulation, as to the latter, it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege."

Hadfield v Lundin, 98 Wash 657, 168 P. 516

The use of the highways for the purpose of transporting persons or property for hire by the ordinary means is incidental to and consistent with the primary purpose of their establishment [highways] and is therefore a proper use in the absence of any restricted regulation. Such use is not however one which may be exercise as of right but is a special or permissive use.

A street is a road or public way in a city town or village. A way over land set apart for public travel in a town or city is a street no matter by what name it may be called. It is the purpose for which it is laid out and the use made of it that determines its character. As the way is common and free to all people it is a highway and it is proper to affirm that all streets are highways although not all highways are streets.

Huddy On Automobiles §26

Rem. Rev. Stat., §10512 [P. C. §5639], reads in part as follows:

" . . . all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public,"
further...

"A highway is a way open to the public at large, for travel or transportation, without distinction, discrimination, or restriction, except such as is incident to regulations calculated to secure to the general public the largest practical benefit there from and enjoyment thereof. Its prime essentials are the right of common enjoyment on the one hand and the duty of public maintenance on the other. It is the right of travel by all the world, and not the exercise of the right, which constitutes a way a public highway, and the actual amount of travel upon it is not material. If it is open to all who desire to use it, it is a public highway although it may accommodate only a limited portion of the public or even a single family, although it accommodates some individuals more than others."

[citing] 25 Am. Jur. 339, §2

"Highways are public ways as contra–distinguished from private ways. The distinguishing mark of a highway is that it must be opened generally to public use, as expressed in the English books, 'common to all the king's subjects,' although it is the right to travel upon a highway by all the world and not the exercise of the right which makes the way a highway. It's character is not determined by the number of persons who actually use it for passage; if it is open, it is immaterial that but few individuals are in a position to make use of it, or that one person is most benefited by it; and its character as a highway is not affected even by the fact that it furnishes access or egress to but a single property owner."

[citing] 29 CJS 366, §1

State of Washington, in re Oregon- Washington Railroad & Navigation Company et al. v. Walla Walla County et al., 5 Wn.2d 95,

To further proliferate the fundamental liberty that is the Right to travel the common highways is the language below. In the first sentence, in italics, the court uses the language “*existence, creates, permits, will*”. These words are proof positive as declared by the courts, that one has a constitutional liberty interest in the free uninhibited use of the public highways. To exemplify these words, they become the epitome of divinity. *Existence* is existential, *creates* is creation or creator, *permits* is permission, *will* is liberty or freedom. The pinnacle summation of the forgoing, in strict text, reads: “*existence from creation is existential permission by our creator to the free use*”. Remembering that phrase, we understand the dominate introversion of private traveling versus the extroversion of traveling for hire and/or commercial travel.

The *existence* of a public highway *creates* a public easement of travel which *permits* the general traveling public to use the highway at *will*. All persons have an equal right to use highways for purposes of travel by proper means, and with due regard for the corresponding rights of others. *Italic mine*

Am Jur 2d Highways Streets and Bridges §228, citing
Town of Ridgefield v Eppoliti Realty Co, Inc. 71 Conn. App 321,
801 A 2d 902; *State v Mayo* 106 Me 62, 75 A 295; see also *Williamson v*
Garrigus 228 Ark 705, 310 SW 2d 8.

Hence a traveler as such may occupy and use any part of the highway he or she desires when not needed by another whose rights thereto are superior to his own.

Am Jur 2d Automobiles §10.

The right of locomotion has also been held to be a part of the liberty guaranteed by the due process clauses.

U.S. v Laub 385 US 475, 87 SCT 574.

The United States Supreme Court has held that "the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty."

Williams v. Fears 179 U.S. 270, 21 S. Ct.128; see *Papachristou v. Jacksonville*, 405 U.S. 156, 164, 92 S. Ct. 839; *Kent v. Dulles*, 357 U.S. 116, 126, 78 S. Ct. 1113; see also *Johnson v. City of Cincinnati* 310 F.3d 484, 6th Cir. 2002 (Constitution protects right to travel locally through public spaces and roadways).

The right of the public to use a street for travel is greater than that of an individual to occupy it for other purposes.

Am Jur 2d Highway Streets and Bridges §230.

The evolution of the highways dates back centuries, but this writing is confined to the 20th century. The "road" is what our grandfathers' grandfathers traveled to survey and settle this continent. It was traveled by horse, mule and wagon. Those people were not required to have a

driver license to travel the roads, albeit they were drivers, drivers of mule teams, etc. As noted below, one may choose the method and or mode of transportation which is most prudent to, and for his particular needs, not prohibited by law. Provided the use of said vehicle does not transcend to commerce.

It is therefore the *adaptation and use* rather than the form or kind of contrivance that concerns the courts. *Italic mine*

Huddy On Automobiles 6th Ed., Citing
Indiana Springs Company v Brown 165 Ind 465, 74 NE 615

The public easement includes every kind of travel and communication for the movement or transportation of persons or property which is reasonable and proper in the use of a public highway, or of a particular portion thereof, *with all means of conveyance which can be introduced* with a reasonable regard for the safety and convenience of the public, and without inflicting upon the owner of, the fee, an injury differing in kind from that imposed by use and improvement for ordinary public travel, and embraces all public travel, **not prohibited by law**, or by dedicatory restriction, on foot, in carriages, omnibuses, stages, sleighs, or other vehicles, including motor vehicles, as the wants and habits of the public demand. The public is not confined, to the use of vehicles in use at the time when the streets or highways were established, but may use such other reasonable means of conveyance as may be discovered in the future, provided they do not exclude the proper use of the highway by other modes or kinds of vehicles, or tend to destroy it as a means of passage and travel common to all.

The use of such new and improved *means of locomotion* must be deemed to have been contemplated when the highways and streets were laid out or dedicated, whenever it is found that the general benefit requires it, and such new *means of locomotion* cannot be excluded there from or be deemed unlawful merely because their use may tend to the inconvenience or even to the injury of those who continue to use the highways and streets by former methods.

Emphasis mine *Italic mine*

25 Am Jur Highways §165.

A citizen has an absolute right to choose his mode of conveyance provided he observes all of the laws of the road.

Swift v Topeka 43 Kan 671, 23 P 1075.

One may transport his goods over the highway in wagons, automobiles, or other vehicles, loaded thereon or therein as he may deem best, provided that in so transporting them he uses the care that a prudent man would use; care commensurate with the dangers created by his undertaking.

Ryder v. Hayward 98 Vt 106, 126 A 491, 36 ALR 453

"The right of the Citizen to travel upon the public highways includes the right, in so doing, to use the ordinary and *usual conveyances of the day, and under the existing modes of travel....*" *Italic mine*

Thompson v Smith 155 Va 367, 154 SE 579

It has also been recognized that as a village grows, the rights of the public in its streets are correspondingly broadened. The easement of the public highway is not limited to the particular use in vogue when the easement was acquired but included all methods that are later developed...

Cloverdale Homes v Town of Cloverdale 182 Ala 419, 62 So 712.

Improved methods of locomotion are perfectly admissible... "public rights do not depend upon the methods of travel recognized at the time the streets were opened or such public uses as have been sanctioned by long continued custom and acquiescence. *The use of the streets must be extended to meet the new needs of locomotion.*" *Italic mine*

Huddy On Automobiles 6th Ed., citing
People v Field & Co. 266 Ill 609, 107 NE 864.

In all human activities the law keeps up with improvement and progress brought about by discovery and invention and in respect to highways, if the introduction of a new contrivance for transportation purposes is conducted with due care, the contrivance is compatible with the general use and safety of the road.

Huddy on Automobiles 6th Ed. §31

In the cases of *Ryder* and *Swift* supra, the court uses the term "provided". There is no proviso in the statutes discussing a uniform blanket general licensing scheme, applicable to private travel. What is clear is that the primary intended use is for personal travel, consistent with

the proviso as to use by the general public, see *Birmingham Ry. Light and Power Company v Smyer* supra, by the usual and customary mode of transportation not inconsistent with the current status of mobility, which is a legally and lawfully acceptable use.

The states duties and obligations with respect to the safety of streets and other public ways are limited to keeping them reasonably safe for the uses for which they are intended, and for those who travel upon them in the ordinary and accustomed modes.

25 Am Jur HIGHWAYS §426, citing
Leber v King County, 69 Wash 134, 124 P 397, 42 LRA (NS) 267;
Lorence v Ellensburgh 13 Wash 341, 43 P 20, 52 Am St Rep 42;
Sutton v Snohomish, 11 Wash 24, 39 P 273, 48 Am St Rep 847

One of the most informational discussions on traveling, static constitutional issues thereto, and the distinctions of private automobile use, in the latter century, may be found in the following case. [*Lutz*] The state, by any agency, has not disputed and can not dispute any point of law herein, but will incessantly default to the statutory phrase “drive a motor vehicle” or “operate a motor vehicle”. This default motive claim, without objection, to the personal and private use of an automobile for personal and private purposes, is for all intents and purposes a tacit admission of the distinctions of personal use, without governmental interference, and the “incidental use” for commerce, which is secondary systemic; discussed further herein.

The rights of locomotion, freedom of movement, to go where one pleases and to use the public streets in a way that does not interfere with the personal liberty of others are basic values "implicit in the concept of ordered liberty" protected by the due process clause of the fourteenth amendment [citations omitted]. One may be on the streets even though he is there merely for exercise, recreation, walking, standing, talking, socializing, or any other purpose that does not interfere with other persons' rights.
further,

No right is more sacred, or is more carefully guarded, by the liberty assurance of the due process clause than the right of every citizen to the possession and control of his own person, free from restraint or interference by the state. The makers of our Constitution conferred, as against the government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized man.

Union Pacific Railway Company v Botsford 141 U.S. 250, 11 S. Ct. 1000;
Olmstead v. United States 277 U.S. 438, 48 S. Ct. 564. Uninhibited movement

is essential to freedom. *Baker v. Bindner*, 274 F. Supp. 658, 662 W.D. Ky. 1967; see *Aptheker v. Secretary of State*, 1964, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2D 992, *Id.* at 1254-55 (brackets added). See *Papachristou*, supra. further,

We recognize that defendant would distinguish pedestrians strolling and meeting on the sidewalk from persons operating motor vehicles on the streets but we reject this argument. Motor vehicles are a lawful means of locomotion and plaintiff has the right to drive himself where he pleases - to go where he wants to go for whatever reason - if he is otherwise obeying the law, including relevant traffic statutes and ordinances. Plaintiff has therefore asserted a valid liberty interest. ..."intrastate travel" as we understand that phrase, encompasses the right to migrate freely within a state.

Lutz v. City of York, Pennsylvania, 692 F. Supp. 457

It should be noted here that the court does not use the phrase "drive a motor vehicle" or "operate a motor vehicle", both of which have very clear contextual meanings in commerce. The terms *motor vehicle* and *drive* are broad terms, and these terms should not be confined to a single definition unless strictly done so by a legislative body. see Huddy and DLLA infra

The term *travel* is a broad term having two legally distinguishable meanings. One being the statutory definitions listed herein which specifically clarify, that commercial travel is accomplished when a person undertakes to deliver, using a public highway, that which has been purchased, and accepts a fee for such delivery. The other, being normal everyday use, as discussed above, by way of traveling public roads to connect oneself with the community. As the *Eggert* court points out, traveling the highways is not based on the commerce clause.

The right to travel is a right applicable to intrastate as well as interstate commerce. In as much as the right to travel is not based on the commerce clause, it does not depend on the interstate nature of travel. Rights such as the right to travel which involve personal liberty are not dependent on state lines. Both travel within and between states is protected.

Eggert et al v City of Seattle 81 Wn 2d 840, citing *King v New Rochelle Municipal Housing Authority*, 314 F. Supp. 427 (S.D.N.Y. 1979); *Karp v Collins*, 310 F. Supp. 627, (D.N.J. 1970); see also *Moen v Erlandson* 80 Wn 2d 755; *Frazer v Shelton* 320 Ill. 253

The Washington State Supreme Court understands the private right to use the public roads. It was not unlike that expressed by the United States Supreme Court. The *Boyd* Court in 1886 stated thus: "It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.", *Boyd v United States* 116 U.S. 616, which the Court reiterated again in 1961 in the case of *Mapp v Ohio* 367 U.S. 643. Justice Tolman of the Washington Supreme Court termed this language:

"Complete freedom of the highways is so old and well established a blessing that we have forgotten the days of the Robber Barons and toll roads, and yet, under an act like this, arbitrarily administered, the highways may be completely monopolized, if, through lack of interest, the people submit, then they may look to see the most sacred of their liberties taken from them one by one, by more or less rapid encroachment."

Robertson v Department of Public Works 180 Wash 133, 39 P.2d 596

The public roads have been monopolized by a foreign military [state police]. The "*most sacred of liberties*" of which Justice Tolman spoke is personal liberty. The definition of personal liberty is;

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property ... and is regarded as inalienable."

16 C.J.S., Constitutional Law, §202

This concept is further amplified by the American Jurisprudence Encyclopedia, 1st ed.;

"Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horse drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common

Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct."

11Am.Jur.(1st) Constitutional Law §329

And further...

"Personal liberty -- consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law."

Bouvier's Law Dictionary, 1914 ed.;
Black's Law Dictionary, 5th ed.;
Blackstone's Commentary 134;
Hare, Constitution, Pg. 777

Justice Tolman was concerned about the state prohibiting the Citizen from the "*most sacred of his liberties*," the Right of movement, the Right of moving one's self from place to place without threat of imprisonment, the Right to use the public roads in the ordinary course of life. When the state allows the formation of a public corporation business, it may control its creation by establishing guidelines (statutes and charters) for its operation. Companies that use the roads in the course of business do not use the roads in the ordinary course of life. There is a difference between a corporation and an individual. The United States Supreme Court has stated;

"...We are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for examination on the suit of the state. The individual may stand upon his Constitutional Rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to investigation, so far as it may tend to incriminate him. He owes no such duty to the state, since he receives nothing there from, beyond the protection of his life, liberty, and property. His Rights are such as the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his Rights are the refusal to incriminate himself, and the immunity of himself and his

property from arrest or seizure except under warrant of law. He owes nothing to the public so long as he does not trespass upon their rights." further...

"Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that the state, having chartered a corporation to make use of certain franchises, could not in exercise of its sovereignty inquire how those franchises had been employed, and whether they had been abused, and demand the production of corporate books and papers for that purpose."

Hale v Hinkel 201 US 43

Corporations engaged in mercantile equity fall under the purview of the State's admiralty jurisdiction, and the public at large must be protected from their activities, as they are engaged in business for profit. In order to reach a full understanding of the Right versus "privilege", it is important to know that courts have ruled consistently without ambiguity, no sacrifice exists;

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda v Arizona 384 US 436, 86 S. Ct. 1602

"The claim and exercise of a constitutional Right cannot be converted into a crime."

Miller v U.S. 230 F. 486

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

Sherar v Cullen 481 F. 946

Streets and highways are established and maintained for the purpose of travel and transportation by the public. Such travel may be for business or pleasure.

"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.
further...

Even the legislature has no power to deny to a citizen the right to travel upon the highway and transport his property in the ordinary course of his business or pleasure, though this right may be regulated in accordance with the public interest and convenience."

25 Am. Jur. (1st) Highways, §163
Chicago Motor Coach Co. v Chicago, 337 Ill. 200, 169 NE 22;
Ligare v Chicago 139 Ill. 436, 28 NE 934;
Boone v Clark 214 SW 607 Tex. Civ. App.

"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.

The right of the Citizen to travel upon the public highways includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel...."

Thompson v Smith 155 Va 367, 154 SE 579

It is certain that a Citizen has a Right to travel upon the public highways by automobile and the Citizen cannot be rightfully deprived of his Liberty. The courts have held that a Citizen has the Right to travel upon the public highways, but that he does not have the right to conduct business upon the highways. The ill-conceived notion that the Right to use of the common roads is always and only a privilege comes from, firstly, the ever threatening presence of the police, followed by ignorant fear gotten gossip. The courts have stated it as follows:

"... 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 v Johnson 75 Mont 240, 243 P. 1073;
Cummins v Jones 79)re 276, 155 P. 171;
Packard v Banton 264 US 140, 44 S. Ct. 256;
Hadfield v Lundin 98 Wash 657, 168 P. 516

"Heretofore the court has held, and we think correctly, that 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."

Willis v Buck 81 Mont 472, 263 P. 982;
Barney v Board of Railroad Comm. 93 Mont 115, 17 P.2d 82

"The right of the citizen to travel upon the highway 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 highway his place of business for private gain in the running of a stagecoach or omnibus."

State v City of Spokane 109 Wash 360, 186 P. 864

What is this Right of the Citizen which differs so "radically and obviously" from one who uses the highway as a place of business? The Court in noting a "radical and obvious" difference went on to explain what the difference is;

"The former is the usual and ordinary right of the Citizen, a common right to all, while the latter is special, unusual, and extraordinary."
and...

"This distinction, elementary and fundamental in character, is recognized by all the authorities."

State v City of Spokane supra.

This position does not hang precariously upon only a few cases, but has been proclaimed by an array of cases ranging from the state courts to the federal courts.

"The right of the Citizen to travel upon the highway 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 highway his place of business and uses it for private gain in the running of a stagecoach or omnibus. The former is the usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary."

Ex Parte Dickey 76 W. Va 576, 85 SE 781

"The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business."

Teche Lines v Danforth 195 Miss.226, 12 S.2d 784
Thompson v Smith, supra; see also,
Skinner v Town of Weathersfield 63A 142, 78 VT. 410;
Dunn v Blumstein 405 U.S. 330, 31 Lawyers Ed. 2D 272;
16 Am Jur 2d 607; 1 Hawk P.C. 22; *State v Stroud* 52 S.W.
697; 1 Bl. Comm. 134, *Joseph v Randolph* 71 Ala. 499;
Kent v Dulles 357 U.S. 116; *U.S. V Guest* 383 U.S. 745;
Shapiro v Thompson 394 U.S. 618

"The right to travel is a well-established common right that does not owe its existence to the federal government. It is recognized by the courts as a natural right.

Undoubtedly the right of locomotion, the right to move 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 14th amendment and by other provisions of the Constitution."

Schactman v. Dulles 96 App DC 287, 225 F2d 938, at 941

There is no dissent among various authorities as to this position. See Am. Jur. (1st) Const. Law, 329 and corresponding Am. Jur. 2nd.

"Personal liberty -- or the right to enjoyment of life and liberty -- is one of the fundamental or natural rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, nor dependent on, the U.S. Constitution. ... It is one of the most sacred and valuable rights [remember the words of Justice Tolman, supra.] as sacred as the right to private property ... and is regarded as inalienable."

16 C.J.S. Const. Law, §202

There exists considerable authority on the subject of the deprivation of the liberty of an individual "*using the roads in the ordinary course of life and business.*" However, it should be noted that extensive research has not turned up one case or authority acknowledging the state's power to convert the individual's right to travel upon the public roads into a privilege, see *Miranda v Arizona* supra.

Therefore, it is concluded that the Citizen does have a "*Right*" to travel and transport his property upon the public highways and roads and the exercise of this Right is not a "*privilege.*" "Driving" is not "traveling", absent express language to the contrary and proof of allegation. Notwithstanding the static eccentricities, no conviction may be lawfully sustained or upheld.

Nullum simile est idem; Things that are similar are not identical.
Expressio unius est exclusio alterius; The expression of one thing is the exclusion of the other.

No person shall be deprived of Life, Liberty, or Property without due process of law. The courts at many levels have firmly established an absolute Right to travel. The state, by applying commercial statutes to all who would use the highways, has deprived the common traveler of the Right of Liberty, without cause and without due process of law.

"The essential elements of due process of law are ...
notice and the opportunity to defend."

Simon v Craft 182 US 427

Yet, not one individual has been given notice of the loss of the Right to travel the roads and highways, let alone before signing the driver license application or the application for vehicle title. To defend against the potential loss of the Right to travel, by automobile, on the highways, the traveler must be armed with the knowledge that there was an intentional concealment by the Dept. of Licensing.

"There should be no arbitrary deprivation of Life or Liberty ..."

Barbour v Connolly 113 US 27; *Yick Wo v Hopkins* 118 US 356

"The right to travel is part of the Liberty of which a citizen cannot be deprived without due process of law under the Fifth Amendment. This Right was emerging as early as the Magna Carte."

Kent v Dulles 357 US 116 (1958)

The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. If that "liberty" is to be regulated, it must be pursuant to the law-making functions of the Congress. . . Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

62 C.J.S. Municipal Corporations §148 et seq; citing *Kent v Dulles*, supra

Since the state alleges, and forcibly alludes, that one give up the Right of traveling in order to exercise the privilege of driving, the statute regulation cannot stand under the police power, or due process, but which must be exposed as oppressive by misapplication and misrepresentation, to deprive the Citizen of Rights guaranteed by the United States Constitution and the State Constitutions.

"Any claim that this statute is a taxing statute would be immediately open to severe Constitutional objections. If it could be said that the state had the power to tax a Right, this would enable the state to destroy Rights guaranteed by the constitution through the use of oppressive taxation. The question herein, is one of the state taxing the Right to travel by the ordinary modes of the day, and whether this is a legislative object of the state taxation. The views advanced herein are neither novel nor unsupported by authority. The question of taxing power of the states has been repeatedly considered by the Supreme Court. The Right of the state to impede or embarrass the Constitutional operation of the U.S. Government or the Rights which the Citizen holds under it, has been uniformly denied."

McCulloch v Maryland 17 US (4 Wheat) 316

The Right to travel may not be restricted, regulated or alienated; no state or court of any jurisdiction, neither any legislative body, not one in this country, has authority to require an individual to apply for a privilege. The state may have discretion to grant or withhold the business privilege; however, it is the sole discretion and proprietary interest of the individual to even reach the point of making application.

The distinction can be simply stated as: an individual has a right to do that only which affects and benefits him, but no one has a right to do that which affects the community. The rule of travel is the same as the rule of standing. The rule of standing, simply stated, saving further elaboration, says a person may only sue on their own interest, and may not sue on the interest of the people at large. The distinction between a "Right" versus a "privilege" to use the public roads is drawn upon the line of "using the road as a place of business" and the various state courts have ruled as much. The U.S. Courts equally held to this point.

"First, it is well established law that the highways of the state are public property, and their primary and preferred use is for private purposes, and that their use for purposes of gain is special and extraordinary which, generally at least, the legislature may prohibit or condition as it sees fit."

Stephenson v Binford 287 US 251; *Packard v Banton* 264 US 140, 44 S.Ct. 256; *Frost and Frost Trucking Co. v Railroad Commission* 271 US 583, 46 S. Ct. 605; *Railroad Commission vs. Inter-City Forwarding Co.* 57 SW 2d 290 Tex. Civ. App.; *Parlett Co-operative Inc. v Tidewater Lines Inc.* 164 MD 405, 165 A. 313

So what is a privilege to use the roads? The distinction has been drawn between traveling upon and transporting one's property upon the public roads, which is our Right, and using the public roads as a place of business or a main instrumentality of business, which is a privilege.

"[The roads] ... are constructed and maintained at public expense, and no person therefore, can insist that he has, or may acquire, a vested right to their use in carrying on a commercial business."

Ex Parte Sterling 53 SW.2d 294;
Barney v Railroad Commissioners 17 P.2d 82;
Stephenson v Binford supra.

"When the public highways are made the place of business the state has a right to regulate their use in the interest of safety and convenience of the public as well as the preservation of the highways."
further...

"[The state's] right to regulate such use is based upon the nature of the business and the use of the highways in connection therewith."

Thompson v Smith, supra.

"We know of no inherent right in one to use the highways for commercial purposes. The highways are primarily for the use of the public, and in the interest of the public, the state may prohibit or regulate ... the use of the highways for gain."

Robertson vs. Dept. of Public Works, supra.

Wholesale licensing is accomplished under the guise of regulation. The Dept. of Licensing never asks what the name of the business is; they automatically assumed the person is the business. This statement is indicative in and of the states perseverance to ignore the limits placed upon governments by and through the several constitutions; further discussion of this is found in public disclosure, herein.

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

U.S. Constitution Amendment IX

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda v Arizona 384 US 436, 491

The legislature does not have the power to abrogate the Citizen's Right to travel upon the public roads, by passing legislation intimidating the citizen to waive his Right and convert that Right into a privilege. Furthermore, we have previously established that this "privilege" has been defined as applying only to those who are "conducting business on the streets" or "operating for-hire vehicles."

The legislature has conspired (by legislative obfuscation) to deprive the Citizen of his Right to use the roads in the ordinary course of life and business, without affording the Citizen the safeguard of *due process of law*. This has been accomplished under illusive powers of regulatory authority.

"In addition to the requirement that regulations governing the use of the highways must not be violative of constitutional guarantees, the prime essentials of such regulation are reasonableness, impartiality, and definiteness or certainty."

25 Am.Jur. (1st) Highways, §260

"Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance of permission."

Davis v Massachusetts 167 US 43;
Packard v Banton supra.

"... the only limitations found restricting the right of the state to condition the use of the public highways as a means of vehicular transportation for compensation are (1) that the state must not exact of those it permits to use the highways for hauling for gain that they surrender any of their inherent U.S. Constitutional Rights as a condition precedent to obtaining permission for such use ..."

Riley v Lawson 143 So. 619; *Stephenson v Binford*, supra.

"We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another."

Simmons v United States 390 US 377

The promulgation of core terms, including, inter alia, the terms road, street, alley and highway (whether it be denominated a freeway), is and are cohesive.

A "road" is defined generally as "an open way or public passage for vehicles, persons, and animals: a track for travel or transportation to and for serving as a means of communication between two places usually having distinguishing names. . . ." Webster's Third New International Dictionary. In common parlance, therefore, a "road" is a thoroughfare intended to facilitate travel, including vehicular travel. Furthermore, "that the state may under the police power regulate travel upon the public highways cannot be doubted."

Silver v. Silver, 108 Conn. 371, 143 A. 240,
aff'd, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221

Above the court stated "to facilitate travel, **including** vehicular travel." The court so stating, confirms that vehicular traffic is a separate and distinct activity from mere travel. It is further stated below, "...for the purposes of travel **and** commerce...". This conclusively solidifies that there are in fact two distinct and separate uses, one public business, the other personal private travel.

"The right of the public in a common highway is paramount and controlling. This right extends to the entire territory within its limits; and an obstruction placed upon any part of it constitutes a public nuisance..."

The Law Applied To Motor Vehicles. Babbitt §34, @104 citing,
Morton v. Moore 81Mass. 573; citing *Commonwealth v. King* 13 Met. 115

The title of the public in the highway is that of an easement for "passage and re-passage," that is to say, it is a right to use for purposes of travel. The right of no one is exclusive, but is to be exercised with regard to the equal right of every one else. It is a right which each enjoys in common with all his fellow citizens. The subject is clearly summarized in the Pennsylvania motor vehicle case of *Radnor Township v. Bell*, 27 Pa. Super. Ct. 1, (1904), where the court say:

“The right in the public to use the highways is the right to use them for the purposes of travel and commerce by any method not of itself calculated to prevent a reasonably safe use of the highway by others. The rights of all travelers on the highway are reciprocal. The law of the road requires that every man restrain the speed of his vehicle within such bounds as will not endanger others, considering the place and circumstances. The roads are open and free to all on equal terms— that is to all complying with the reasonable regulations of the duly constituted authorities. The fundamental idea of a highway is not only that it is public, but that it is public for free and unmolested passage thereon by all persons desiring to use it— all the inhabitants of the said township, and of all other good citizens of the Commonwealth going, returning, passing and re-passing, in, along, and through the highway. The use of a highway is not a privilege, but a right, limited by the rights of others and to be exercised in a reasonable manner.”

The Law Applied To Motor Vehicles. Babbitt §35, @105

In keeping with the recognition that businesses can be dangerous to the public, and the tendency or likelihood that drivers could be dangerous to the public, thusly must obtain special training; it has been ruled that the usual and ordinary use of an automobile is not dangerous. A former Washington Attorney General addressed this point later herein.

“We do not believe that the automobile can be placed in the same category as locomotives, gun powder, dynamite and similarly dangerous machines and agencies. It is true that the operation of these machines is attended with some danger not common to the use of ordinary vehicles and we believe and have already held that those who operate these machines must be held to that degree of care which is commensurate with the dangers naturally incident to their use.”

Jones v Hoge 47 Wash 663, 92 Pac 433

“The customary or usual or ordinary use of a street is for travel from one point to another both along and across it. The Use of a street by an automobile when operated with due care and caution and not in violation of state or municipal police regulations would be deemed a proper and lawful one.”

Huddy On Automobiles 6th Ed, citing
Jenkins v Goodall 183 Ill App 633

As shown below, when using, by whatever phraseology, the terms, words or phrases commonly used in the English language known as motor vehicle and automobile, they are used by the layman in a generic sense. But when used in law they are defined and confined to have a narrow and particular meaning, in order to conform to a specific intent.

The term motor vehicle is not necessarily synonymous with the term automobile.

Huddy Automobile Law 9th Ed., Definition and Distinctions §3.

A mule team, a golf ball, or a nail, may be driven; these are generic idioms of driving. Legally speaking though, to drive is a more specific and intentional act as discussed in licensing later on. The same is true for motor vehicle, which generically describes any of several genre of motorized vehicle, which are self propelled by an internal combustion engine or an electric motor, or as now, in the 21st century, hydrogen engines.

Motor Vehicle is a broad term that has no universally accepted meaning. It has been considered to be much broader than the word automobile and to include various vehicles which cannot be classified as automobiles.

Am Jur 2d Automobile §2

An automobile may be purchased from an automobile dealership or a private party when such automobile is proffered for sale, and yet the purchase of the automobile itself does not trigger a commercial kinship. The dealership did not proffer for sale a “motor vehicle” as defined by statute. As stated by the *Dunklee* court, *infra*, it is not the possession of the vehicle that is subject to regulation, rather, it is the intended use. Personal use of a personal property automobile is not chimerically representative of a governmentally regulated activity merely because one may use it on the common highways. The definition of motor vehicle found in both the Federal regulations and those of the State of Washington are strictly construed and confined to the use of an automobile in a commercial aspect, meaning the remuneration for services.

The word automobile expresses its own meaning and generally it is to be taken and understood in its ordinary and popular sense.

Am Jur 2d Automobile §1, see also
Huddy Automobile Law 9th Ed., Definitions and Distinctions §1

“Judges have the general cognizance of other people as to the terms relating to the use of automobiles.”

Huddy Automobile Law 9th Ed., Definitions and Distinctions §7, citing Chamberlaynes Modern Law of Evidence.

...A motor vehicle must have been designed for use...or be used to transport persons and property over the public highways.

Am Jur 2d Automobiles §2

It is well known by the state and its agencies, that there is an absolute distinction between private travel and commercial travel. When versing a Motor Vehicle Act, it is critical that the definitions used therein are strictly adhered to. It is further inextricably technical that in order to enforce the motor vehicle code, the state, by any branch, must adhere to, and comply with, the *whole act rule*. ANY prosecution, civil or criminal, commenced pursuant to the motor vehicle act, must be in fact commercial, and it is the sole obligation of the state to prove that the act in question was in fact commercial.

are In pleadings however, especially in criminal proceedings, particular care should be exercised in using the proper and correct terms especially where the definitions to be found in a statute, which should be followed in the language of the act.

Huddy Automobile Law 9th Ed., Definition and Distinctions §7;
see also *City of Chicago v Gall* below

Let's rewind briefly. This is what the *Hadfield* court said of highway use;

The former is a common Right,... as to the former, [*the ordinary Right of the Citizen to use the streets in the usual way*] the legislative power is confined to regulation; the latter is an extraordinary use,...as to the latter, [*the use of the streets as a place of business...for private gain*] it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege.

...because the state,

...may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain.

Caution should be taken when using the term *private*. When used by the public state, the term *private* has a business connotation, because public business itself can be either common, or private, as confidential between two parties. This writer recommends the term “personal private” in order to distinguish and eliminate any confusion that may arise.

The Washington State Supreme Court has longstanding declared the difference of uses of automobiles not inconsistent with the breadth of this document. When Taxi operators had their licenses suspended, they appealed claiming loss of liberty. The word *particular* in this exemplar ruling, identifies a factual distinction between personal conduct and commerce; and even suggests, that one may use a company vehicle for personal use, when not commercially engaged. The Court said this;

The defendants are being prohibited from using a particular mode of travel in a particular way.

State v Scheffel 82 Wn 2d 872

The evident purpose of the ordinance...was to regulate and supervise the business of public carriers of passengers upon the streets of the city for the convenience and safety of the public. The license is required when one engages in that business and not when he used a vehicle for his own accommodation. In other words, the ordinance does not purport to regulate or supervise the mechanism of vehicles that are allowed to use the streets...It is only the business of public conveyance of vehicles of some kind that is subject to the supervision of the city.

State v Dunklee 76 NH 439, 84 Atl 40

In proceedings to punish for a violation of the regulation, the burden is upon the prosecution to show that the defendant is within the terms of the regulation and has violated it.

City of Chicago v Gall 195 Ill. App. 41,
See also *Huddy on Automobiles* 6th Ed. §145

On the trial of a charge of violating a provision ...without a license, it is necessary to prove that the accused was "plying for hire." As an example, the placement of an automobile on public street where it is accessible to those who may wish to hire it, and the solicitation of passengers for hire by the one operating it, by word, act or exhibition of signs or devices.

Huddy on Automobiles 6th Ed. §149

In the early 20th century, the State of Washington has ruled that personal and private use of ones personal automobile is perfectly legal and lawful. It is only under the auspice of a violation of commercial licensing statute policies that it could be said one has committed a traffic crime. The state would have to act in bad faith to rule personal use of public highways lawful and then with surreptitiously spurious intent, dare to bring a criminal violation of a policy which offers no jurisdiction, no redress, and no authority over lawful conduct.

Crimes are not to be created by inference. They may not be constructed nunc pro tunc. Ordinarily, citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach. As this Court said in *Raley v. Ohio* 360 U.S. 423, 438, we may not convict "a citizen for exercising a privilege which the state clearly had told him was available to him." As *Raley* emphasized, criminal sanctions are not supportable if they are to be imposed under "vague and undefined" commands (citing *Lanzetta v. New Jersey*, 306 U.S. 451 (1939)); or if they are "inexplicably contradictory" (citing *United States v. Cardiff*, 344 U.S. 174 (1952)); and certainly not if the Government's conduct constitutes "active misleading" (citing *Johnson v. United States*, 318 U.S. 189, 197 (1943)).

16 Am Jur 2d Constitutional Law §576

Of special note here, is that the legislative policy, has the blessing of the judiciary. The judicial blessings are supportive that the legislative policy is and only commercial in nature. This leaves only the executive branch of government to be reined and bridled as to their enforcement of interpretive presumption; noting of course, the executive does not have authority to interpret statutes, neither can they presume the statute to mean any thing more or less than its intent.

The State of Washington wholly concurs with this writers rendering of statute policy and law. The following is former attorney general John J. O'Connell's opinion as to the intent and application of the operator and driver license. Mr. O'Connell, as a [former] representative of the State of Washington, agrees that all statutes relating to operating and driving are static, as well as confirming that all license's issued by the Dept. of Lic. are in fact issued to "for hire" status and, by use of the latin legal maxim, *expressio unius est exclusio alterius*, he acknowledges that no license may issue for personal use of an automobile. Mr. O'Connell's opinion reads as follows:

AGO 61-62 No. 46

EDITED FOR SPACE AND CONTENT

"The business of operating as a motor carrier of freight for compensation along the highways of this state is a business affected with a public interest. The rapid increase of motor carrier freight traffic and the fact that under the existing law many motor trucks are not effectively regulated have increased the dangers and hazards on public highways and make it imperative that more complete regulation should be employed to the end that the highways may be rendered safer for the use of the general public;..."

RCW 81.80.211 provides:

"The commission may adopt rules and regulations relating to the hours of duty of motor carrier drivers and operators."

RCW 81.80.290 provides in part:

"The commission may, by general order or otherwise, prescribe rules and regulations in conformity with this chapter to carry out the purposes thereof, applicable to any and all 'motor carriers,' ..."

Outside the confines of chapter 81.80 RCW, but of prime importance and significance to our consideration of this matter is RCW 81.04.460 providing:

"The commission shall enforce the provisions of this title and all other acts affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal."

Thus, addressing ourselves solely to that portion of your question which relates to driver qualifications, we conclude that the public service commission has the authority to both adopt and enforce rules and regulations governing driver qualifications with respect to auto transportation companies and motor freight carriers. By this, we do not mean to imply that such authority includes the power to prescribe conditions precedent to the issuance of a motor vehicle operator's license. The "general supervision and control of the issuance of vehicle operators' licenses" is specifically vested in the director of licenses. RCW 46.20.010. However, the commission may prescribe safety regulations over and above those prerequisite to the issuance of a driver's license with respect to the drivers of auto transportation companies and motor freight carriers.

In so far as your question relates to the authority of the commission to adopt and enforce rules and regulations governing safety of equipment, a final conclusion at this juncture would be premature without first considering certain provisions of Title 46 RCW.

Section 46.08.010, chapter 12, Laws of 1961, provides in material part:

"The provisions of this title relating to the certificate of ownership, certificate of license registration, vehicle license, vehicle license plates and vehicle operator's license shall be exclusive..."

In this respect, it is worthy of note that although several provisions of chapter 81.68 RCW and chapter 81.80 RCW have been amended at various times since the original enactment and amendment of RCW 46.37.005, the legislature has never seen fit to amend in any way the particular provisions of RCW 81.68.030 and RCW 81.80.130 which grant the public service commission the authority to regulate the safety of operations of auto transportation companies and motor freight carriers respectively.

Under these circumstances, we do not feel it can be said that there is a manifest intent upon the part of the legislature to effect a repeal by implication.

Under the maxim "expressio unius est exclusio alterius," it is the uniform rule that the express mention of one thing in a statute implies the exclusion of all others. State ex rel. Port of Seattle v. Dept. of Public Service, 1 Wn. (2d) 102, 95 P. (2d) 1007 (1939).

Provisions relating to the same subject matter embodied in different statutes should be harmonized so as to maintain the integrity of both statutes whenever possible. State ex rel. Shomaker v. Superior Court, 193 Wash. 465, 76 P. (2d) 306 (1938). Furthermore, as previously noted, the authority to regulate granted by RCW 46.37 .005, supra, and the other provisions of chapter 46.37 RCW apply to motor vehicles generally, ... It is well established that a general statute does not repeal a special statute on the same subject, unless the intent to repeal is manifest and such an intent cannot be implied unless the two acts cannot stand together and effect be given to both. State v. Whitney, 66 Wash. 473, 120 Pac. 116 (1912), and cases cited therein.

In determining whether any particular rule or regulation of the public service commission is in conflict with those of the state commission on equipment or those set forth in chapter 46.37 RCW, the test is whether the former permits, or licenses, that which the latter forbids, or prohibits, and vice versa. *Bellingham v. Schampera*, 157 Wash. Dec. 1 (1960) [[57 Wn.2d 106]].

There yet remains for consideration the question of the public service commission's authority to enforce those rules and regulations which it properly adopts. Its authority in this respect is sufficiently prescribed in that portion of RCW 81.04.460, supra, providing:

"The commission shall enforce the provisions of this title and all other acts affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal."

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POLICE AUTHORITY

In order to understand police power, it should be understood what police are. When a man hears or thinks of police, his mind sees a public employee with a uniform, usually adorned with assorted weaponry. The word police is a conjugal derivative of policy. There are three branches of government; legislative, executive, and judicial. The legislative body writes policy; the executive branch enforces that policy; and the judicial resolves conflicts of policy. Government employees only fall into one of three categories, if the employee is not a member of the judiciary or a member of the legislature then he is a member of the executive branch, no matter municipal or state or his status.

The uniformed, armed, executive employees that prey upon our common highways are the same executive branch policy enforcers likened to those that sit behind a desk and issue tax warrants or demands for child support payments or issue building permits.

The truth of the matter is, that if one applies for and receive a driver license, that creates an assumption that one is always engaged in driving. Driving is legally defined as, a person in actual physical control of a motor vehicle, *as* an occupation or business; don't forget the underlying criteria of being paid for services rendered.

...the police power is exercised for the promotion of the public welfare by means of the regulation of dangerous or potentially dangerous business, occupations or activities...

16A Am Jur 2d Constitutional Law §318

The state, resting upon their original basis of sovereignty, exercise their police powers and regulates its domestic commerce, contracts.

Thurlow v. Massachusetts, 5 How. 504 (1847)

The state only has authority to license and regulate business. Business is commerce, commerce is sale and purchase, bought and sold, with, of course, the static delivery/shipment. The driver license issued after 1968 is, in fact, a proprietary operator license with a secondary driver aspect; this can be identified at RCW 46.01.040 (13). That's why, and how, the policy enforcement employee's are able to randomly interfere with the public at large; through lack of notice, and policy that is so deliriously fragmented, that a man of average intelligence could not understand it to be any thing other than what is facially posited.

RCW 46.01.040

Powers, duties, and functions relating to motor vehicle laws vested in department.

(13) Operators' licenses as provided in chapter 46.20 RCW;

(14)

Later in is discussed the state of Washington spurious introversion of operator and driver; but do not mistake the illusion that a license is not in fact permission to operate a business.

The constitutional Right of every person to pursue a business, occupation or profession as a paramount Right is subject to government regulation and restriction and as such is subject to reasonable use of police power. If a business itself is a proper subject of police regulation so are all its incidents and accessories such as the manner of conducting the business.

16A Am Jur 2d Constitutional Law §372

Since it is a universal rule that every business or occupation itself is subject to proper police regulation for the public interest, it logically follows that the right of every person to pursue a ***business, occupation, or profession*** is subject to the paramount right of the government as a part of its police power to impose such restrictions and regulations as the protection of the public may require.

Frazer v. Shelton, 320 Ill. 253, 150 N. E. 696, 43 ALR1086
see also *Anthony v Texas* infra

As stated above at Am Jur §372, again are the words *incident* followed by *manner*. In this context the actual commission of driving [a passenger] is incidental to the operation of the business. Likewise, it is well established that the operation of a business and the driving of an automobile are two absolutely distinct actions; until the automobile becomes the business.

This is where the restrictive nature of a license comes to bear. The license which is required restricts business use as well as types of business and the incidentals; load capacities, night time driving, chemical containers, explosives and oversize vehicles to name a few. These things may be prohibited.

These types of motor vehicles are categorized and the drivers thereof are classified (see RCW 46.25.080). It is however, with no small measure of deference, that the definition of “private carrier” is again fragmented and encrypted in yet another title of the statutes, as to what exactly is intended by the phrase, “use of the highways for gain.”

RCW 81.80.010(6).

A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

The highways of a state are public property, the primary and preferred use of which is for private purposes; their use for purposes of gain may generally be prohibited by the legislature.

Stephenson v Binford, supra

Under its inherent police powers the state has the right to regulate any and all kinds of businesses in order to protect the public health morals and welfare of its people subject to the restrictions of reasonable classification.

Allinder v City of Homewood 254 Ala 525, 49 So 2d 108

As shown above, where the intent of a statute or the execution of a statute must be determined by referring to other parts of a statute or a separate statute altogether, one must invoke the “whole act rule” as the separate chapters and separate statutes must be read in *para materia*.

The plain meaning of a statute may be “discerned from all that the legislature has said in the statute and *related* statutes which disclose legislative intent about the provision in question.” *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn. 2d 1, 43 P.3d 4. We emphasize that “[w]e read the plain language of the statute as a whole, and interpret its provisions in harmony with *other statutes in the same chapter and related chapters.*”

Miller v. Weaver 2003 UT 12, 66 P.3d 592

The state nonetheless is endowed with the authority to suspend or revoke a license for careless or negligent operation. However, as clarified earlier and hereunder, the loss of a license to operate a business does not disable a mans use, of the same, if appropriate, automobile for his personal affairs. In the *Scheffel* case, the court reasons a particular use in a particular way, which is prohibited. The *Scheffel* court, not inconsistent with the *Stephenson* court, have each succinctly denominated the separate and distinct nature of operating and driving for hire, as against the personal use of an automobile.

Revocation of a motor vehicle operator's permit is within the ambit of the state's police power to protect the public from reckless or negligent operators. The governmental interest involved is that of the protection of the individuals who use the highways. The act [RCW 46.65] calls for the revocation of the privilege of operating a vehicle where one has demonstrated his disregard for the traffic safety of others... *The defendants are being prohibited from using a particular mode of travel in a particular way.* *italic mine*

State v Scheffel 82 Wn 2d 872

The object and purpose of the statute is to promote the safety of those traveling the public highways. The statute has, in effect, forebode the operations of persons under the age of 18. It in substance declares that such persons do not possess the requisite care and judgment to run motor vehicles on the public highways.

Huddy on Automobiles 6th Ed. §222

When speaking of motor vehicles and interstate commerce the state must follow Federal standards, at a minimum, as outlined in the U.S. Code and those outlined in the Code of Federal Regulation. These Federal standards explain the minimal basis for what is commerce, whether

intrastate or interstate. So while the Federal statutes control interstate commerce, they have no authority to interfere and regulate intrastate commerce insofar as the intrastate commerce does not cross state lines. See also generally 49 USC 30103, for comity of regulations.

A state may be preempted from establishing its own standards, it is not preempted from enforcing the federal standards.

Sims v State of Florida, Dept. Hwy Sfty Mtr Veh. 862 F2d 1449

But very different considerations apply to the internal commerce or domestic trade of the states.”

United States v. Best, 573 F.2d 1095 (9th Cir. 1978),
citing 72 U.S. (5 Wall.) 462 (1866)

Under its police power, the state may control generally, the operation of motor vehicles upon a public highway.

Cohen v City of Hartford 244 Conn 206, 710 A 2d 746

The definition of motor vehicle is nearly succinct with the definition of vehicle at both state and federal levels, see definitions. Although the state definitions may be fragmented and diffuse, they operate with the same intent, to regulate commercial activity at the state level. By their language, they are intended to regulate *commerce* and *transportation*, for *compensation* or the *transmission of credit* upon the *receipt and delivery of property* (obtained as the result of a transaction). Notice that the state definition is nearly exact to Federal, save the deletion of the term commerce. Transportation is defined as;

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

Interstate Commerce Comm. v Brimson 154 US 447, 14 S.Ct.1125

Here again, notice that this definition, incorporating the term carrier, refers to one "*conducting business.*" No mention is made of one who is traveling in his personal private automobile. This definition is of one who is engaged in the passing of a commodity or goods in

exchange for money, i.e ., vehicles for hire. Furthermore, the words "*traffic*" and "*travel*" must have different meanings which the courts recognize. The difference is recognized in *Ex Parte Dickey*, supra, stating;

"...in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary traffic and travel and obstruct them."

Interstate Commerce Comm. v Brimson above

The court, by using both terms, signified its recognition of a distinction between the two. But, what was the distinction? We have already defined both terms, but to clear up any doubt;

"The word `traffic' is manifestly used here in secondary sense, and has reference to the business of transportation rather than to its primary meaning of interchange of commodities."

Allen v City of Bellingham 95 Wash 12, 163 P. 18

Here the Supreme Court of the State of Washington has defined the word "*traffic*", in either its primary or secondary sense, in reference to business, and not to mere travel! So it is clear that the term "*traffic*" is business related and therefore, it is a "*privilege*." The net result being that "*traffic*" is brought under the police power of the legislature. The term has no application to one who is not using the roads as a place of business.

"... Traffic thereon is to some extent destructive, therefore, the prevention of unnecessary duplication of auto transportation service will lengthen the life of the highways or reduce the cost of maintenance, the revenue derived by the state ... will also tend toward the public welfare by producing at the expense of those operating for private gain, some small part of the cost of repairing the wear ..."

Northern Pacific R.R. Co. v Schoenfeldt 123 Wash 579, 213 P. 26

In the above case, the word "*traffic*" is used in conjunction with the unnecessary Auto Transportation Service, or in other words, "*vehicles for hire*."

The ultimate test of the proprietary police power regulations must be found in the Fourteenth Amendment to the U.S. Constitution, since it operates to limit the field of the police power, to the extent of preventing the enforcement of statutes in denial of Rights that the Amendment protects. See generally *Parks v State*, 159 Ind 211, 64 NE 862 as to procurement of a license for the public practice of medicine.

"With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority."

Connolly v Union Sewer Pipe Co. 184 US 540;
Lafarier v Grand Trunk Railway of Canada 84 Me 286, 24 A. 848;
O'Neil v Providence Amusement Co., 42 RI 479, 108 A. 887

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution."

Buchanan v Warley 245 US 60;
Panhandle Eastern Pipeline Co. v State Highway Comm. 294 US 613

"It is well settled that the Constitutional Rights protected from invasion by the police power, include Rights safeguarded both by express and implied prohibitions in the Constitutions."

Tiche v Osborne 131 A. 60

"As a rule, fundamental limitations of regulations under the police power are found in the spirit of the Constitutions, not in the letter, although they are just as efficient as if expressed in the clearest language."

Mehlos v City of Milwaukee 156 Wis 591, 146 NW 882

The Fourteenth Amendment does not interfere with the proper exercise of the police

power, in accordance with the general principle that the power must be exercised so as not to invade unreasonably the rights guaranteed by the United States Constitution. It is established beyond question though, that every state power, including the police power, is instead limited by the Fourteenth Amendment.

The case of *Chicago v. Banker* below is a cumulative ruling exercising the charter restriction, emphasizing the difference of vehicle operator, from the personal private traveler, and further employing the rule *expressio unius est exclusio alterius*.

The case of *Chicago v. Banker*, 112 Ill. App. 94, 1904, turned upon the question whether the city of Chicago had the power by ordinance, *and in the absence of statute*, to require an automobile owner “to submit to an examination and to take out a license” before he should be permitted to operate his vehicle for his private and personal pleasure. The court, in declaring the ordinance **void**, held that inasmuch as there was no statutory provision on the subject, the charter of the corporation “is the measure of its powers, and the enumeration of those powers implies the exclusion of all others,”

The Law Applied To Motor Vehicles. Babbitt §32, @103

In the case of *Shreveport* below, the city brought an action against *Stringfellow* for the payment of taxes on his automobile. The cities claim for taxes was denied by the court because *Stringfellow* only had personal automobiles that were for his families use, not for access to or by the public. Galvanizing that no taxes may be levied against, and consequentially, no policy enforcement may be laid against a private traveler.

“In the case at bar, a license tax is sought to be collected from the defendant, not on account of his calling or vocation, but because he is the owner of two motor cars, used by him for the convenience of himself and family.”

City of Shreveport v Stringfellow 137 La. 552, 21 ALR 951

However, in maintaining consistency of authority, it is again reiterated, that businesses

fall under legislative purview, and subsequently, the police power of the executive branch. It is so because those who drive for a living spend a good deal of time on the roadways and therefore increase ratios of likely harm to other travelers.

Here in Washington we have several public “trails” that were created for the use and enjoyment of all walkers runners and cyclists that would choose to use them; the most popular being the Burke-Gilman Trail. These trails are used by athletes and serious health enthusiasts. This group of people would be likened to the businesses that use the highways, because it is this group that would attend the trail with more frequency, as would a business' use of the highway. However, there is the second group of people who would not use it so frequently, and for a less convicted purpose. The people out for a sunny day walk, or a romantic stroll, or perhaps walking a dog. There is no less of an expectant right to the common use of the trail differing from the athletes, but there is the courteous and accepted reasonable regulation; i.e. calling out when coming from behind or slowing down when approaching crowded areas or even the left side versus right side flow of movement.

“When the calling or profession or business is attended with danger, or requires a certain degree of scientific knowledge upon which others must rely, then legislation properly steps in to impose conditions upon its exercise.’ It is certainly true that the business of the man who operates and propels an automobile along the public street is such a business as is above alluded to.”

The Law Applied To Motor Vehicles. Babbitt §27, @101 citing, *State v. Swagerty* 203 Mo. 517 (1907); citing *Railroad v. Beckwith* 129 U. S. 29; See also *Radnor Township v. Bell* 27 Pa. Super. Ct. 1, 6, 1904.

“Some employments in which integrity is of vital importance it may be proper to treat as privileges merely, and to refuse the license to follow them to any who are not reputable.”

The Law Applied To Motor Vehicles. Babbitt §30, @102
See also *Freund, Police Power*, Sec. 651.

DUE PROCESS, VOID FOR VAGUENESS

Herein this section, it is plead that the state statutes are vague as to their text. The statutes do not expressly include personal use of an automobile in and of their regulatory scheme. The statutes make no mention of any use other than commercial. As is indicative of the breadth of dictum set forth herein, it is a fact the state has no authority to stop and harass personal private travelers in their use of the common highways, by any pretext.

The state statutes do not specifically include private conduct; ipso facto they impliedly exclude private and personal conduct. The state has the burden of defeating all arguments herein by a mandatory showing that private and personal conduct can be, or is properly, within the scope of the statutes hereby challenged.

If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron U.S.A., Inc. v Natural Res. Def. Council, Inc. 467 U.S. 837

...The right of reasonable regulation is a modification of the sweeping generalization that every person has a right to pursue any lawful calling. Restrictions and regulations may be imposed within proper limits without in any way impairing the fundamental right to engage in occupations. Thus, the state may demand skill requisite with the subject matter involved for public protection in those callings in which incapacity would injuriously affect the public...unless an act restricting the participation of a citizen in ordinary occupations can be shown to fall within the police power, such act is void as violating the constitutional right of the citizen to liberty and the pursuit of happiness...

11 Am Jur Constitutional Law §337, citing *Frazer v. Shelton*, 320 Ill. 253, 150 N. E. 696, 43 ALR1086; see also *Anthony v Texas* infra

However, it has also been held that statutory authority to prescribe traffic rules is strictly construed and that an ambiguity in a motor vehicle act should be read in favor of the motor vehicle operator because personal interests are at stake.

Am Jur 2d Automobiles §16

Now the judicial branch is a co-conspirator in the initially legislative, subsequently executive, licensing scam. Private travelers run the risk of being stopped and harassed for not

having license plates on their personal property automobile's or a driver license. But by what authority? Clearly the state has no authority or jurisdiction concerning private affairs. This writing goes back one hundred years to get resolution as to the licensing scheme. The fact that the Police use commercial license statutes to interfere with personal affairs is clearly inconsistent with the history of, and intent of the driver license. The statutes are void for vagueness as being overly broad and void for want of substantive due process, by failing to provide notice of the distinctions in traveling, whereby not clearly and succinctly delineating the differences and establishing proper authoritative and jurisdictional guidelines.

A statute is constitutional or unconstitutional in accordance in the way in which it operates and the effect that it has. The constitutionality of an act depends on its real character and on the end designed to be accomplished, rather than on its title, for the professions as to its purpose which may be contained in it...mere declaration cannot give character to a law or turn illegal operation into legal. "Courts should... consider the true operation and effect of the law which must be dealt with on the basis of the practical results which follow its operation and not alone by the legislative declarations contained therein." "As we said in both of these cases, the legislative body cannot change the real nature and purpose of an act by giving it a different title or by declaring its nature and purpose to be otherwise, anymore than a man can transform his character by changing his attire or assuming a different name."

State v Slavin, 75 Wn.2d 554, citing 16 Am. Jur. 2D Const. Law §150; *Bunting v Oregon* 243 U.S. 426, 37 S. Ct. 435; *Aberdeen Sav. & Loan Ass'n v Chase* 157 Wash. 351, 289 Pac 536; *Jenson v Henneford* 185 Wash. 209, 53 P. 2d 607; *Clark v Sieber*, 48 Wn 2d 783, 296 P. 2d 680

In the case of *Atty. Gen. of N.Y. v. Soto-Lopez*, the court determined that the state must state with particularity the compelling state interest or intent of the policy. Notice the use of the word compelling, not competing. A competing state interest may be found by comparing, for instance, the right of privacy of a sex offender to live at an unpublished location, against the states interest to protect the public and publicize his location for the safety of the public. A states compelling interests are based in the necessities of national or community life such as clear threats to public health, peace, and welfare.

States have a compelling interest in the practice of professions and as part of their power to protect public health and safety and other valid interests, they have the

broad power to establish standards for licensing practitioners and regulating the practice of the profession.

Lenders Service Inc. v Dayton Bar Asso. 758 F. Supp. 429
see also *Munns v Martin* 131 Wn 2d 192

Note the correlations of public health and safety. The personal private use and enjoyment of the highways is neither an existing threat, as in the former, neither an impending threat, as in the latter. The states use of a private “for hire” classification in one statute, and a vaguely written driver licensing statute, is an attempt to surreptitiously create or manifest some potential threat generated by all who use the roads and highways; these may be construed as fraud, because the courts, and the Attorney General, and other statutes have already confirmed that it is commerce that creates the threat.

Further, the licensing statutes reach unconstitutional vagueness, because elemental in their failure to provide notice, the statutes do not define with specificity a rational basis for including, covertly, the personal and private use of the highways and how it reasonably relates to licensed commercial activity, which would have to be done consistent with the threat discussed above.

"The traditional test for a denial of equal protection is: whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective."

Turner v. Fouche, 396 U.S. 346

For a classification to be constitutional there must be: 1) real or substantial difference in kind of persons it defines, and 2) it must bear a rational relation to the evil to be remedied.

Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124,
cert. denied, 344 U.S. 837

The statute policies challenged are enforced in excess of their historical legislative intent, by the Police at their individual discretion. The chapter by chapter cross reference search needed,

suffers only to establish there to be absolutely no link or suggestion that private and personal use of a personal automobile is even remotely implied; and further fails in submission to the narrowing rule, wherein if the suspect statute were stripped to its bare minimum intent, could that intent include the private and personal use of a personal automobile, and thus requiring a driver license? NO!

Why? Because if the statute had a compelling state interest, declaring a threat by the private and personal use of a personal automobile, the statute policies could not possibly contain language giving “discretionary” ability to Police. The statute policy is enforced in excess of its historical legislative intent, and is per se banishment, when the Police exercise discretionary functions, whereby penalizing private travel by arrest and imprisonment, for the enjoyment of the common highways.

While "all property is held subject to the right of government to regulate its use in the exercise of the police power"; *Figarsky v. Historic District Commission*, 171 Conn.198, 368 A.2d 163; "if regulation goes too far, it will be recognized as a taking." (Internal quotation marks omitted.)

Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886; see also *Cohen et al. v. City of Hartford* 244 Conn. 206, 710 A.2d 746

The *Lucas* ruling above, declares that enforcement in excess of statute, constitutes a taking. A taking requires compensation by Constitutional authority, or restriction as it may be, by law of eminent domain.

Also included in due process is the vagueness doctrine. Anthony argues the unwritten policy is inherently vague and the "vague statutory language permits selective law enforcement." There is also a denial of due process where inherently vague statutory language permits selective law enforcement. *Smith v. Goguen*, 415 U.S. 566, 576, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974). In order to satisfy constitutional due-process requirements, the statute or regulation must provide adequate notice of the required or prohibited conduct. *Freeman United Coal Mining Co. v. Fed. Mine Safety & Health Review Comm'n*, 323 U.S. App. D.C. 304, 108 F.3d 358, 362 (D.C. Cir. 1997); see *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972); *Papachristou*, 405 U.S. at 162; *State v. Holcombe*, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006). Although the regulation must give fair warning--in light of common

understanding and practices--of the prohibited conduct, the regulation is not required to be mathematically precise. *Grayned*, 408 U.S. at 110; *Ex parte Anderson*, 902 S.W.2d 695, 698 (Tex. App.--Austin 1995, pet. ref'd). The regulation, though, must be defined with "sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not permit arbitrary and discriminatory enforcement." *Holcombe*, 187 S.W.3d at 499.

The unwritten policy at issue here is not premised on a violation of specific park rules. The policy delegates complete discretion to the police officer, and there are no guidelines for the exercising of that discretion. A reasonable person would not have fair warning of what conduct would violate that regulation. Not only are the policy's prohibitions not clearly defined, the policy presents substantial risk of arbitrary and discriminatory enforcement. While there is no evidence Pool used this policy in a discriminatory manner, the policy presents significant risk it could be used in such a manner. The unwritten policy is unconstitutionally vague.

Due process is ordinarily absent if a party is deprived of his or her property or liberty without evidence having been offered against him or her in accordance with established rules. *In re Application of Eisenberg*, 654 F.2d 1107, 1112 (5th Cir. 1981). see red section below

"However, a court may not assume the legislative prerogative and rewrite a statute in order to save it if the statute is not readily subject to a narrowing construction." *Id.* Without completely rewriting the policy, there is no reasonable interpretation of the unwritten policy that would be constitutional. We are to sever the unconstitutional portion of the unwritten policy, and the unable unwritten policy is not susceptible to a narrowing construction.

In reviewing the legal sufficiency of the evidence, we view the relevant evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000).

Lamar Anthony, Jr., v State of Texas 209 S.W.3d 296; 2006 Tex. App.

Somewhat similar is the statement that is a rule as old as the law that; "no one shall be personally bound [restricted] until he has had his day in court," by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and it is oppressive and can never be upheld where it is fairly administered.

A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is

not entitled to respect in any other tribunal. ...Until notice is given the court has no jurisdiction in any case to proceed to judgment, whatever it's authority may be, by the law of it's organization, over the subject-matter. ...that no one shall be personally bound until he has had his day in court... Judgment without such opportunity wants all the attributes of a judicial determination. ..." The definition here given is apt and suitable as applied to judicial proceedings, which cannot be valid unless they 'proceed upon inquiry', and render judgment only after trial."

Hovey v. Elliot 167 U.S. 409; *State v Strasburg* 60 Wash 106, 110 P. 1020; *Dennis v Moses* 18 Wash 537, 52 P. 333; see also 12 Am. Jur. [1st] Const. Law, §573.

When later we discuss tort liability, it is important to understand the 4th Amendment law of search and seizure. The following court ruling is a cumulative summation, including some of the most reverent search and seizure case studies this writer could delineate. So, without compounding duplicitous rulings, the law of search and seizure is stated thus;

The application of the Texas statute to detain appellant and require him to identify himself violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe that appellant was engaged or had engaged in criminal conduct. Detaining appellant to require him to identify himself constituted a seizure of his person subject to the requirement of the Fourth

Amendment that the seizure be "reasonable." *Cf. Terry v. Ohio*, 392 U.S. 1; *United States v. Brignoni-Ponce*, 422 U.S. 873. The Fourth Amendment requires that such a seizure be based on specific, objective facts indicating that society's legitimate interests require such action, or that the seizure be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers. *Delaware v. Prouse* 440 U.S. 648. Here, the State does not contend that appellant was stopped pursuant to a practice embodying neutral criteria, and the officers' actions were not justified on the ground that they had a reasonable suspicion, based on objective facts, that he was involved in criminal activity. Absent any basis for suspecting appellant of misconduct, the balance between the public interest in crime prevention and appellant's right to personal* * * security and privacy tilts in favor of freedom from police interference.

Brown v. Texas 443 U.S. 47 (1979)

The *Brown* case above exalts the operational dictate that a policy enforcement employee

must have at least one of three potentially overlapping minimal criteria; reasonable suspicion, reasonable cause or probable cause. When a policeman stops a traveler on the highway and upon his approach to the automobile, the traveler should inquire of the Policeman his reasonable cause to stop; and the answer he gives should be “reasonably” along the lines of operating a business evidenced by the license attached to the automobile. Second, inquiry as to the “probability” that a violation of some motor vehicle business related statute has occurred; civil or criminal, is irrelevant.

When construing this Act, we are guided by the familiar rule of construction stated by this court in *United States v. Miller*, 303 F.2d 703, 707 (9th Cir. 1962), cert. denied, 371 U.S. 955, 83 S.Ct. 507, 9 L.Ed.2d 502 (1963), when construing provisions under the previous aviation act (the Civil Aeronautics Act of 1938):

'It is axiomatic that any regulation should be construed to effectuate the intent of the enacting body. Such intent may be ascertained by considering the language used and the overall purpose of the regulation, and by reflecting on the practical effect of the possible interpretations.'

U.S. v Christensen 419 F.2d 1401

The history of the *invasion* of the Citizen's Right to use the public highways was not attempted in an outright action, but in a slow, meticulous, calculated encroachment upon the Citizen's Right to travel.

"Disobedience or evasion of a Constitutional Mandate cannot be tolerated, even though such disobedience may, at least temporarily, promote in some respects the best interests of the public."

Slote vs. Examination, 112 ALR 660

"Economic necessity cannot justify a disregard of Constitutional guarantee."

Riley v Carter 79 ALR 1018;
16 Am. Jur. 2nd Const. Law §81

"Constitutional Rights cannot be denied simply because of hostility to their assertions and exercise; vindication of conceded Constitutional Rights cannot be

made dependent upon any theory that it is less expensive to deny them than to afford them."

Watson v Memphis 375 US 526

The state cannot demand from the *Sovereign People* what it never had a right to. Then there is the issue of *public policy*. Public policy a.k.a. statute, is just that, public policy, and does not transcend the private. However, if this argument is used, it too must fail, as:

"No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution."

16 Am. Jur. 2nd Const. Law §70

"Statutes that violate the plain and obvious principles of common right and common reason are null and void."

Bennett v. Boggs, 1 Baldwin 60

So even public policy cannot abrogate the Citizen's Right to travel and to use the common highways in the ordinary course of life and business. Therefore, it must be concluded that;

"We have repeatedly held that the legislature may regulate the use of the highways for carrying on business for private gain and that such regulation is a valid exercise of the police power."

"The act in question is a valid regulation, and as such is binding upon all who use the highway for the purpose of private gain."

Northern Pacific R.R. Co. v Schoenfeldt 123 Wash 579, 213 P. 26

It is possible to go on quoting court decision after court decision, but it is not necessary, because the Constitution itself tells us a government cannot legally put restrictions on the rights of the American people at any time, for any reason. Article Six of the U.S. Constitution reads;

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;...shall be the supreme Law of the Land; and the Judges in

every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary not one word withstanding."

In the same Article, it says just who within our government are bound by this Supreme Law:

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..."

The state cannot proceed upon presumption. The presumption that someone allegedly violated some business regulation is based on a presumption that someone was *driving* as defined by statute. The law against presumption is found in 5 ALR 3d 100 Inference on Inference et seq;

The rule that it is not permissible in making a case or proving an issue to draw one presumption based upon another presumption may be found stated in many cases.

United States v Ross (1876) 92 US 281, 23 L ed 707;
Manning v John Hancock Mut. L. Ins. Co. (1880) 100 US 693, 25 L ed 761; *Looney v Metropolitan R. Co.* (1906) 200 US 480, 50 L ed 564, 26 S Ct 303.

The presumption that officials have done their duty is limited by the rule that *a presumption cannot be based upon a mere presumption*, and will not supply proof of independent, substantive facts, such as that a deficiency judgment was entered and docketed by the clerk of the court. *Italic mine*

Mahoney v Boise Title & T. Co. (1926) 116 Okla 202, 244 P 170

Where circumstantial evidence is proper, since the same consists in reasoning from facts which are known or proved to establish such as are conjectured to exist, the process is defective if the circumstances from which it is sought to deduce the conclusion depend also upon conjecture and speculation.

St. Louis & S. F. R. Co. v Mobley (1918) 70 Okla 297, 174 P 510

FEDERAL PREEMPTION

Titles 46, 47, and 81, Revised Code of Washington, are intended to compliment the federal motor vehicle act at 49 USC, 23 USC, 23 CFR and 49 CFR. The State codes apply to intrastate commerce whereas the federal counterpart applies to interstate commerce. The state would have absolutely NO control over interstate commerce common carriers if they [State] were not certified to participate in the Federal Motor Carrier Act.

This declaration of intent demonstrates that the act was intended to cooperate with the Federal act, and to be construed in connection therewith. Section 21, of initiative 141, supra, expressly provides that, "if any portion, section or clause" of the act shall be declared not in accordance with the provisions of the Federal social security act, such adjudication shall not affect the remainder of the act. By this provision, the intent that the act shall accord with the Federal statute is made doubly clear.

further,

...The ... Federal ... is not subject to criticism as to its reasonableness or legality.

...It is manifestly the intention of the state act to place the state in a position to avail itself to the full of the benefits of the Federal act, and the state statute negatives the idea that it was the intention of the act that the state proceed upon its relief program independently of the predominant partner, the Federal government, in administering relief funds, or upon any plan or system different from that established by the Federal act.

"The federal and state statutes represent a cooperative legislative effort by state and national governments, for carrying out a public purpose common to both, which neither could fully achieve without the cooperation of the other.

Carmichael v. Southern Coal & Coke Co., 301 U. S. 495." *Northwestern Mutual Life Ins. Co. v. Tone*, 125 Conn. 183, 4 A. (2d) 640

James R. Morgan v. Department of Social Security 14 Wn.2d 156

In keeping with the spirit of the above citation we find similar language in the statutes of the State of Washington; keeping in mind the rule "*expressio unius est exclusio alterius*", to specifically identify a person, class of persons or intent, impliedly excludes **all** others. The following statute specifically declares compliment to federal statutes.

RCW 46.25.005 Purpose — Construction.

(1) The purpose of this chapter is to implement the federal Commercial Motor

Vehicle Safety Act of 1986 (CMVSA), Title XII, P.L. 99-570, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

- (a) Permitting commercial drivers to hold only one license;
- (b) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses;
- (c) Strengthening licensing and testing standards.

(2) This chapter is a remedial law and shall be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter prevails. Where this chapter is silent, the general driver licensing provisions apply.

As shown above and amplified below, again it is declared by the legislature that state statute is to be implicitly factored in relation to federal law. Below we see the use of the term “other laws” which includes federal laws, and other state laws through the interstate driver compact at RCW 46.21.010. The viscous use of the phrase 'other laws' or 'all laws' is an inclusive mandate to read statutes in pari materia. This declaration is demonstrated as follows;

RCW 46.98.020 Provisions to be construed in pari materia.

The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 47 RCW, and *with other laws* relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively.

Emphasis mine

The starting point for every case involving statutory construction is the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, (1985); *Miller v. Dept of Trans.* 86 M.S.P.R. 293, 7 (2000). Where the statutory language is clear, it must control absent clearly expressed legislative intent to the contrary. *Lewark v. Department of Defense*, 91 M.S.P.R. 252, 6 (2002); *Todd v. Dept. of Defense*, 63 M.S.P.R. 4, 7 (1994), *aff'd*, 55 F.3d 1574 (Fed. Cir. 1995). Statutory provisions should not be read in isolation; rather, each section of a statute should be construed in connection with other sections so as to produce a harmonious whole. *Styslinger v. Department of the Army*, 105 M.S.P.R. 223, 17 (2007).

further...

...further,

Under the general rules of statutory construction, Congress can be presumed to

have known that its selection of the broader phrase “by law,” in the absence of any limiting language, could expand the scope of the exemption to include all “law.” See *D’Elia v. Department of the Treasury*, 60 M.S.P.R. 22677 M.S.P.R. 224 (1998), *Thomas overruled in part on other grounds by Ganski v. Department of the Interior*, 86 M.S.P.R. 32 (2000).

MacLean v. Department of Homeland Security
Docket No. SF-0752-06-0611-I-2 (2009)
United States of America Merit Systems Protection Board

Under the Supremacy Clause of the United States Constitution, "the Laws of the United States . . . shall be the supreme Law of the Land . . . , any thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. A state law which conflicts with federal law is unenforceable. *In re Tax Appeal of Karsten*, 22 Kan. App. 2d 882, 886, 924 P.2d 1272 (1996). Because "[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case," analysis of a federal statute "must begin with its text," including the "structure and purpose of the statute as a whole."

Medtronic, Inc. v. Lohr, 518 U.S. 470, 135 L. Ed. 2d 700, 116 S. Ct. 2240 (1996) (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 11 L. Ed. 2d 179, 84 S. Ct. 219 (1963), and *Gade v. National Solid Wastes Management Assn.* 505 U.S. 88, 120 L. Ed. 2d 73, 112 S. Ct. 2374 (1992))

As discussed above, some of those other laws, including but not limited to the following, are always construed in a commercial nature and intent as and by their predicate definitions contained in statute. They also show the congressional edict asserting superior force and effect, and any State law in conflict with that federal law as unenforceable.

Title 23--Highways
Chapter 3--General provisions
Sec. 308--Cooperation with Federal and State agencies and foreign countries
(a) The Secretary is authorized to perform by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies, and reimbursement for such services, which may include depreciation on engineering and road building equipment used, shall be credited to the appropriation concerned.

Title 23--Highways
Chapter 1--Federal-Aid Highways

Sec. 154. Open container requirements

(b) Open Container Laws.--

(2) Motor vehicles designed to transport many passengers.--For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger)--

(A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; emphasis mine

RCW 46.61.519 Alcoholic beverages

Drinking or open container in vehicle on highway – Exceptions.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for ***compensation in a for hire vehicle*** licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license endorsed for the appropriate classification under chapter 46.25 RCW in the course of his usual employment transporting passengers at the employer's direction: PROVIDED, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway. **Emphasis mine**

In the above statute, albeit long winded, diluted yet still opaque, the State of Washington has committed itself to the rule of preemption by showing conformity to the federal mandate. This simple agreement is in and of itself sufficient to show that the expression of “drinking and driving” is specifically and only designated to for hire vehicle drivers and operators, notwithstanding the FMCSA (federal motor carrier safety act).

On the rule of preemption; *Epstein's* Casenote-Legal Briefs/Torts, defines the preemption

rule of law as: “CONCISE RULE OF LAW: Federal law implicitly preempts an area traditionally regulated pursuant to the states’ police powers if the state and federal law are in actual conflict or the state law frustrates Congress intent.” *Epstein’s* relies on this holding of the following case;

The Supremacy Clause of the federal Constitution provides that any state law in conflict with a federal law is preempted by the federal law and has no effect. ... preemption only applies where it is clear that Congress intended preemption to apply. Preemption is accomplished in several ways: expressly, by pervasive regulation in a particular field, or by implication where state and federal law conflict so that it is impossible to comply with both.

Lewis v Brunswick Corp. 107 F.3d 1494 (1997)

It is irrepressibly shown, throughout this writing, and more predominately in the first two chapters, that the U.S. Supreme Court has reverently and concisely stated that the people have the Right to freedom of movement and the Right to the free use and enjoyment of their personal property and of the uninhibited use of the roadways.

The Supreme Court has final authority to determine meaning and application of those words of Constitution which require interpretation to resolve judicial issues.

Pennekamp v State of Fla. 66 S.Ct. 1029, 328 U.S. 331,
90 L.Ed. 1295. (1946)

The construction given by the United States Supreme Court to the constitution and laws of the United States is to be accepted by all courts as the proper construction.

Elmendorf v. Taylor, 23 U.S.152, 10 Wheat. 152, 6 L.Ed. 289. (1825)

Decisions of United States Supreme Court in cases involving federal questions are conclusive authorities in state courts.

Provident Institution v. State of Mass. 73 U.S. 611, 6 Wall. 611,
18 L.Ed. 907 (1867)

MUNICIPAL REGULATION

The courts are *duty bound* to recognize and stop the *stealthy encroachments* which have been made upon the Citizen's Right to travel and to his personal, private use of the roads. *Hadfield*, supra. Further, the court must recognize that the Right to travel is part of the Liberty of which a Citizen cannot be deprived without specific cause and without the *due process of law* guaranteed in the Fifth Amendment. *Kent*, supra.

In general, municipal corporations possess no power to encroach on individual rights unless such authority is plainly conferred by the City charter or other law, and municipal ordinances ordinarily should not contravene those principles of common right which are embodied in the common law.

Ferran v. City of Palo Alto, 50 Cal. App. 2d 374, 122 P.2d 965 (1942);
McKelley v. City of Murfreesboro, 162 Tenn. 304

It is the duty of the court to recognize the substance of things and not the mere form.

"The courts are not bound by mere form, nor are they to be misled by mere pretenses. They are at liberty -- indeed they are under a solemn duty -- to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purported to have been enacted to protect ... the public safety, has no real or substantial relation to those objects or is a palpable invasion of Rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Mugler v Kansas 123 US 623, 661

A municipality has no authority, subsequently no jurisdiction to prosecute claims of a commercial nature against private Citizens not commercially engaged. More because the highways passing through a city are extensions of highways preemptively regulated by state and federal laws.

When the state chooses to regulate and act under its police power, its laws and

operations predominate over the local laws and ordinances. Municipalities may not adopt ordinances that are inconsistent with state law. A State statute which preempts a field precludes local agency or government legislation on the subject...

56 Am Jur 2d Municipal Corporations §391;
see also *Ollinger v Bennett* 562 NW 2d 167 ;
Thomas v State 614 So 2d 468

A city may not attempt to regulate beyond its jurisdiction.

City of East Lansing v Yocca 142 Mich App 491, 369 NW 2d 918

The focal point of this question of police power and due process must balance upon the point of making the public highways a safe place for the public to travel. A local municipality may induce reasonable regulations; for instance when a person could block a portion of road for a parade, or erect barriers to protect the public from a sinkhole or designate certain portions of road for public parking.

A municipality may impose other regulations adapted to its own peculiar conditions if they are not inconsistent with those of the general character prescribed by the State.

Am Jur 2d Automobiles §20

Municipalities retain considerable authority to regulate how motor vehicles engaged in **interstate commerce** shall be operated over their streets and may require that such vehicles obey traffic and other general safety regulations.

Am Jur 2d Automobiles §29, citing *City of Chicago v Atchison, T. and S. F. Ry Co.* 357 US 77, 78 S CT 1063

On the other hand, a municipal regulation is not necessarily rendered invalid by

the mere fact that private rights are subjected to restraint or that loss will result to individuals from its enforcement, this is more to parking enforcement for instance.

Dennis v. Village of Tonka Bay, 156 F.2d 672 (C.C.A. 8thCir. 1946);
Downey v. Sioux City, 208 Iowa 1273, 227 N.W. 125 (1929); *City of Butte v. Paltrovich*, 30 Mont. 18, 75 P. 521 (1904); *Solof v. City of Chattanooga*, 180 Tenn. 296, 176 S.W.2d 816 (1944); *Harper v. City of Wichita Falls*, 105 S.W.2d 743, Tex. Civ. App. Fort Worth (1937)

...as long as municipal bodies confine their enactments within the proper limits of their police power, they do not unlawfully violate the private rights of the individual.

Rehmann v. City of Des Moines, 200 Iowa 286, 204 N.W. 267, 40 A.L.R. 922 (1925); *Wilhoit v. City of Springfield*, 237 Mo. App. 775, 171 S.W.2d, 95 (1943); *Harper v. City of Wichita Falls*, 105 S.W.2d 743 (Tex. Civ. App. Fort Worth 1937), writ refused.

These next few pages tell of municipal regulation and municipal authority from a myriad legal resource, which need no further narration on the part of this writer as they are substantially clear on municipal abatement; as much as these judicial decisions and legal resources further explicate the breadth of this writing, the length of the citations remain to show judicial and legal consistency.

However, the municipal police power must be so exercised as not to infringe arbitrarily or unreasonably on private rights,...

of *Merrill v. City of Wheaton*, 379 Ill. 504, 41 N.E.2d 508 (1942); *Downey v. Sioux City*, 208 Iowa 1273, 227 N.W. 125 (1929); *City of New Orleans v. Southern Auto Wreckers*, 193 La. 895, 192 So. 523 (1939); *Farrell v. City of Syracuse*, 137 Misc. 472, N.Y.S. 316 (Sup. Ct. 1930); *Harper v. City of Wichita Falls*, S.W.2d 743 (Tex. Civ. App. Fort Worth 1937), writ refused.

...whether they are personal rights or property rights.

Jell-O Co. v. Brown, 3 F. Supp. 132 (W.D. Wash. 1926); *Miami Shores Village v. Wm. N. Brockway Post No. 124 of American Legion*, 156 Ha. 673, 24 So. 2D 33 (1945); *City of New Orleans v. Southern Auto Wreckers*, 193 La. 895, 192 So. 523 (1939).

The standard for evaluating ordinances claimed to be violative of due process or

equal protection is whether a rational basis exists for the police power exercised or classification established by the ordinance.

Autotronic Systems, Inc. v. City of CoeurD'Alene
527 F.2d 106 (9th Cir. 1975).

Local police power enactments must not interfere with private rights beyond necessities of the situation.

Hausman v. Dayton, 73 Ohio St. 3d 671, 653 N.E.2d 1190 (1995), reconsideration denied, 74 Ohio St. 3d 1423, 655 N.E.2d 742 (1995) and (distinguished by, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 715 N.E.2d 1062 (1999)); *Priddy v. City of Tulsa*, 1994 OK CR 63, 881 P.2d 81 (Okla. Crim. App. 1994).

Any interference with the protected rights of the citizens of the municipality must bear a reasonable relationship to the public need served.

Metropolitan Dade County Fair Housing and Employment Appeals Bd. v. Sunrise Village Mobile Home Park, Inc., 511 So. 2D 962 (Fla. 1987); *Priddy v. City of Tulsa*, 1994 OK CR 63, 882 P.2d 81 Okla. Crim. App. (1994); *Tidewater Ass'n of Homebuilders, Inc. v. City of Virginia Beach*, 241 Va. 114, 400 S.E.2d 523 (1991).

The police power does not justify an interference with the citizen's constitutional rights that is entirely out of proportion to any benefit redounding to the public.

City of Baton Rouge v Williams 661 So. 2d 445 (La. 1995).

Municipalities must not exercise their extensive regulatory powers in an arbitrary or discriminatory manner.

Neece v City of Johnson City, 767 S.W.2d 638 (Tenn. 1989).

It is not within the power of a municipal corporation to make a particular use of

property which, in the absence of legislation, is lawful but which is of such a character that it may be regulated or controlled by public authority, conditional upon the assent or permission of private persons...When an ordinance thus attempts to confer power on some property holders virtually to control and dispose of the property rights of others, and creates no standard by which the power thus given is to be exercised, so that the property holders who desire and have the authority to establish the regulations may do so solely for their own interests, or even capriciously, constitutional limits have been violated.

56 AM Jun 2d Municipal Corporations Etc. §400, cites omitted

A municipal ordinance which commits the exertion of the police power to the option of individuals to determine whether the use of property for a purely lawful purpose offends the health, safety, or welfare and violates the fundamental principles of the police power.

Appeal of Perrin, 305 Pa. 42, 156 A. 305, 79 A.L.R. 912 (1931)

As a general rule, the owner of private property is entitled to the enjoyment thereof free from municipal interference. However, a municipal corporation in the exercise of its police power may make regulations with respect to property within its borders provided the regulations are reasonable and bear a substantial relation to the preservation of the public health, safety, morals, or welfare.

Teglund, below

In general, and except insofar as concerns the exercise by a municipality of its police powers, the owner of private property, located within the municipal boundaries, may use it for any lawful purpose or in any lawful manner that he may see fit,

Teglund v. Dodge, 316 Mich. 185, 25 N.W.2d 161 (1946); *Tillotson v. City Council of City of Cranston*, 61 R.I. 293, 200 A.767 (1938).

...a municipal corporation may not interfere with such right.

Benner v. Tribbitt, 190 Md. 6, 57 A.2d 346 (1948);
Town of Clinton v Ross 226 N.C. 682, 40 S.E.2d 59 (1946)

But unless or until harm or damage (a crime) is committed, there is no cause for

interference in the private affairs or actions of a Citizen.

56 Am Jur 2d Municipal Corporations Etc. §396 et seq;

Municipal police regulations must also operate in a manner that is not arbitrary, oppressive, or fraudulent.

City of Russellville v. Vulcan Materials Co., 382 So. 2d 525 (Ala. 1980);
Wilson v. City of Cincinnati, 46 Ohio St. 2d 138, 75 Ohio Op. 2d 190, 346
N.E.2d 666 (1976); *Wright v. Woodridge Lake Sewer Dist.*,
218 Conn. 144, 588 A.2d 176 (1991).

Municipalities may enact ordinances pursuant to their police power, subject to constitutional limitation that they be not arbitrary or capricious.

515 Associates v. City of Newark, 132 N.J. 180, 623 A.2d 1366 (1993).

The police power exercised by localities is subordinate to the equal protection and other guarantees of the federal and state constitutions.

Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), probable jurisdiction noted,
434 U.S. 919, 98 S. Ct. 391, 54 L. Ed. 2d 275 (1977); *Town of Atlantic
Beach v. Young*, 307 N.C. 422, 298 S.E.2d 686 (1983), appeal dismissed,
462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

As a short corollary, saving exciting discussion, see section on anatomy of a traffic infraction. At 56 Am Jur 2d Municipal Corporations Etc. §396 above, the question of harm is raised. The question or statement of harm raises, in a criminal context, the rule of *corpus delicti*. The rule of *corpus delicti* demands that the crier show proof that some actual injury has been sustained. So, the question begs, in a criminal traffic prosecution, against the unaware traveler who thinks a license is mandatory, what exactly was the loss incurred by the crier [state]? Immediately there are only two suspect yet undisclosed potential losses: 1) loss of revenue, 2) failure to maintain the business in conformance with state policy mandate; more to the point, *corpus delicti*, in a legislative context, means an injury *malum prohibitum*, which means, violation of a legislated policy, i.e. loss of interest; it does not import actual physical loss.

The WHOLE ACT RULE

and
'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS'

This chapter is dedicated to the summation that all law supports all law. It does not matter the type of law; commercial, civil, criminal, common, or tort. All law is somehow and somewhere dependent on other forms of law. For instance criminal trespass lends itself to civil tort. Maritime law lends itself to commercial trade. While this writing is prejudice to common law travel, constructive rules of law still apply. The *whole act rule* is based in part on these two latin maxims of law;

Optimus interpretandi modus est sic leges interpretare ut leges legibus accordant
The best mode of interpreting laws
is to make laws agree with laws.

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum stutum
The best interpreter of a statute is
(when all the separate parts of it have been considered)
the statute itself.

The basic introduction to the whole act rule is stated thus;

Statutes in pari materia must be construed together. Statutes in pari materia are those which relate to the same person or thing, or the same class of persons or things; and in construing a statute, or statutes, all acts relating to the same subject matter of having the same purpose, should be read in connection therewith as together constituting one law. The object of the rule is to ascertain and carry into effect the intent of the legislature, and it proceeds upon the supposition that the several statutes having to do with related subject matters were governed by *one spirit or policy*, and were intended to be consistent and harmonious in their several parts and provisions.

emphasis

mine

State v Houck 32 Wn 2d 681, (citing *State ex rel. American Piano Co. v. Superior Court*, 105 Wash. 676, 178 Pac.827; *Palto v. Aetna Cas. & Surety Co.*, 119 Wash. 101, 204 Pac. 1044.)

In referencing the basics of the “whole act rule”, a Washington State Court of appeals has stated, that only one part or section, does not beget an allegation;

“When Legislative intent is at issue, the whole act rule requires that the entire statute, not merely designated parts, be reviewed.” *Prante v Kent School District* 27 Wn. App. 375, (citing *Graham v State Bar Ass'n* 86 Wn 2d 624, 548 P. 2d 310, *State v Rinkes* 49 Wn 2d 664, 306 P. 2d 205, *Degrief v Seattle* 50 Wn. 2d 1, 297 P. 2d 940.) In *State v. Rinkes*, 49 Wn. (2d) 664, 667, 306 P. (2d) 205 (1957), further...

Those we set out the rules to which we are committed in construing penal statutes. applicable here are: “...The legislative intent must be gleaned from a consideration of the whole act, by giving effect to the entire statute and to every part thereof.

Chapin v Rhay 59 Wn 2d 459.

The entireties of Titles 46, 47, and 81 RCW, are intended for and only the regulation of commercial motor carriers. Whereas every chapter, sub chapter, section, subsection, paragraph and subparagraph, part and subpart of title’s 46, 47 and 81 is and can only be enforced on commercial enterprise.

In placing a judicial construction upon a legislative enactment, the entire sequence of all statutes relating to the same subject matter should be considered.

Percy Connick et al., v. City of Chehalis et al. 53 Wn.2d 288; citing, *State ex rel. Washington Mut. Sav. Bank v. Bellingham* 183 Wash. 415, 48 P. 2d 609

“It is our duty to construe two statutes dealing with the same subject so that the integrity of both will be maintained. *Buell v. McGee*, 9 Wn 2d 84, 90, 113 P. (2d) 522 (1941). The same rule applies to the construction of parts of one act. Each part *must be construed in connection with every other part or section.* 2 Sutherland, *Statutory Construction* (3d ed.), 336, § 4703.” **emphasis mine**

Tacoma v. Cavanaugh 45 Wn 2d 500, 275 P. (2d) 933.

The language of a statute must be read in context with the entire statute and construed consistently with its general purpose.

Wilson et al. v. Lund 74 Wn.2d 945

The driver license issued by the Dept. of Licensing (DOL) under authority of RCW 46.25, as a species corollary to RCW 46.20, is for the conduct of business on the highways and no others. Take for example, RCW 46.72 Transportation of passengers in for hire vehicles, RCW 46.72A Limousines, RCW 46.73 Private carrier drivers.

In the case of *Seattle v. Clark*, 28 Wash. 717, 69 Pac. 407, it was stated:
"Every statute must be considered according to what appears to have been the intention of the legislature... It is decisive evidence of an intention to prescribe the provisions contained in the later act, as the only ones on that subject which shall be obligatory."

further,

In ascertaining the purposes of the legislature, we realize it to be a fundamental rule of statutory construction that the whole act must be considered together, that each word, phrase, clause, and sentence must be considered with reference to the other words, phrases, clauses, and sentences appearing in the statute.

word "The practical inquiry is usually what a particular provision, clause or means. To answer it one must proceed as he would with any other composition construe it with reference to the leading idea or purpose of the whole instrument.

A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently each part or section should be construed in connection with every other part or section and so as to produce a harmonious whole. It is not proper to confine the attention to the one section to be construed.

"It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, into separate words, and then apply to each, thus separated from its context, some particular definition given by lexicographers, and then reconstruct the instrument upon the basis of these definitions." 2 Lewis Sutherland, *Statutory Construction* (2d ed.), 706, § 368. See, also, *Seattle v. Clark*, supra; *Bradley Engineering & Mfg. Co. v. Heyburn*, 56 Wash. 628, 106 Pac. 170, 134 Am. St.1127; *Rothweiler v. Winton Motor Car Co.*, 92 Wash. 215, 158 Pac. 737; *Salo v. Pacific Coast Casualty Co.*, 95 Wash.109, 163 Pac. 384, L. R. A. 1917D, 613; *State v. Hilstad*, 148 Wash. 468, 269 Pac. 844

in re Port of Seattle, 1 Wn.2d 102, infra ***Emphasis mine***

The businesses identified above, similarly situated, are the private class of persons required to have a driver license to operate motor vehicles for hire. To remove this class of operator, limits the license scheme to common carriers under Title 81 RCW. The whole act rule demands respect on this issue.

In determining legislative intent, with which we are here concerned, we are not limited to the provisions of the act being construed, but may consider the general provisions of the criminal statutes.

State v. Burgess, 111 Wash. 537, 191 Pac. 635, 59 Wn.2d 459;
*In the Matter of the Application for a Writ of Habeas Corpus
of Ben Omar Chapin v B. J. Rhay*

In the usual case, if “the statute’s language is plain, the sole function of the courts is to enforce it according to its terms,” without reference to its legislative history. *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989) (quotation omitted). This rule “results from deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill.” *Lamie v. United States Trustee* 540 U.S. 526, 538 (2004) (quotation omitted).

Where the plain meaning of a statute is clear, “we are not free to replace it with an unenacted legislative intent.” *INS v. Cardoza Fonseca*, 480 U.S. 421, 453 (1987) (Scalia, J., concurring). “If Congress enacted into law something different from what it intended, then it should amend the statute to conform it to its intent.” *Lamie*, 540 U.S. at 542.

...further,

Like most principles of statutory construction, judicial deference to the plain meaning of a statute is not an absolute. One exception consists of those “rare cases” when a statute’s plain text produces a result “demonstrably at odds with the intentions of its drafters, and those intentions must be controlling.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982); see *In re Kolich*, 328 F.3d 406, 409-10 (8th Cir. 2003).

Owner-Operator Independent v. United Van Lines
United States Court of Appeals for the Eighth Circuit
#07-3829, (2009)

The case citation directly above tells us that, on the topic of driver licenses, when RCW 46.20. et seq is read to its noticed language, there is no mention of business or commerce, when the statute says that no person may operate a motor vehicle without a license. But when one consider the case above where the court stated; ...*when a statute’s plain text produces a result “demonstrably at odds with the intentions of its drafters, ...;* It means that the application of the statute effecting the right to private use of the highways “**is** demonstrably at odds with the intent of the drafters”. To conclude otherwise, is to admit that the legislature, intended to engage in converting a protected Right into a mere privilege.

The implication of the whole act rule demands we attach RCW 46.20 et seq to all other *related* statutes, which includes RCW 46.25 et seq. In the states defense, and only on this point, the fact of having two separate statutes for application of a driver license, is clear and convincing proof, that the legislature recognizes and intended to delineate between common carriers [RCW 46.25] and private carriers [RCW 46.20] only, there is no other statute for common law traveler's.

"For purposes of the present case, the key phrase, obviously, is 'relating to.' The ordinary meaning of these words is a broad one – 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,' Black's Law Dictionary (5th ed. 1979)

"related broadly bolsters exception of court the U.S. at ICCTA,

This passage supports the district court's conclusion that the phrase "to" in the express preemption clause at 49 U.S.C. § 14501(c)(1) should be construed broadly. The Supreme Court's statutory interpretation in *Morales* also bolsters the proposition that the phrase "relating to" in the price preemption clause at 49 U.S.C. § 14501(c)(2)(C) should be construed broadly. The *Morales* effectively equated the words "related to" and "relating to," even though the phrases were found in different acts, *i.e.*, the ADA and ERISA. See 504 U.S. at 383-86. Similarly, we should not differentiate these phrases in the especially when they are found in the same statute.

It is true *Morales* construed "relating to" with regard to the breadth of preemption, not the breadth of an exception to preemption which is at issue here, but the principle is the same. *Morales* emphasized that "statutory intent" is based on "the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose. [Citations omitted.]" 504 U.S. at 383. Nothing in the ordinary meaning of language suggests that cognates of "relate" have a broad meaning for purposes of preemption but a narrow meaning for purposes of an exception to preemption. Such a construction could only be based on a consideration other than the statutory language itself.

In this regard, we note there is a general presumption *against* preemption of state law. See *Coma Corporation v. Kansas Dept. of Labor*, 283 Kan. 625, 632, 154.3d 1080 (2007) (citing *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654, 131 L. Ed. 2d 695, 115 S. Ct. 1671 [1995]).

emphasis mine

In The Court of Appeals of the State of Kansas, No. 96,967, *State of Kansas ex rel. Phill Kline, Att.General v. Transmasters Towing and Kevin Raasch*; see also *Independent Towers, WA v. Washington* 350 F.3d 925 (9th Cir. 2003)

The intent of the drafters, for the basis of a driver license, is found at PIERCE CODE, Laws of 1919, §196, which code is printed herein. We then look to the latter half of the court ruling in *Owner-Operator Independent* above which states; "...and those intentions must be controlling." This tells us that the original intent of the license statute requires the name of the business and the intended use of the vehicle.

"Congressional intent has been traditionally determined by an examination of the language and focus of the statute, its legislative history, and a consideration of its statutory purpose." *R. B. J. Apartments, Inc. v. Gate City Savings & Loan Association*, 315 N.W.2d 284, 287 (N.D. 1982) "Statutes must be construed with reference to the policy intended to be accomplished, so as to effectuate the legislative purpose which prompted their enactment." *Hughes v. State Farm Mutual Automobile Insurance Company* 236 N.W.2d 870 (N.D. 1975).

Northwest Airlines v. State, ex rel. Board of Equalization
358 N.W.2d 515 (N.D. 1984)

Title 46 RCW specifically includes for hire statutes and definitions. Therefore under the statutory construction canon *expressio unius est exclusio alterius* there can be no other form of license. Licenses are issued to and for businesses. RCW 46.72(010) Definitions (1), reads in relevant part;

The term "for hire vehicle" includes all vehicles used for the transportation of passengers for compensation.

"It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius*." 25 R. C. L. 981, § 229. In *North Point Consolidated Irr. Co. v. Utah & S. L. Canal Co.*, 14 Utah 155, 46 Pac. 824, the court made this statement:

is "The maxim, 'Expressio unius est exclusio alterius,' is usually applied to determine the intention of the lawmaker where it is not otherwise expressed, and applicable to constitutional or statutory provisions which grant originally a power or right. When a statute defining an offense designates but one class of persons as subject to its penalties, all other persons are deemed to be excluded.

further...

...further,

As a general rule, the expression of one thing in a constitution or statute excludes all others. So **specific provisions**, relating to particular subjects, **must govern** in relation to that subject, as **against general provisions** in other parts of the law which might otherwise be broad enough to include it. Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others and the natural inference follows that it is not intended to be general."

emphasis

mine

*the State of Washington, on the Relation of the Port of Seattle
v. the Department of Public Service et al.* 1 Wn.2d 102,

What follows here, is a gathering of research on the whole act rule, which is reverently succinct as to the commands and dictates of reading policies in pari materia; from legislative conception to judicial rendering. This writer finds no need, as holding self indicting, to expound on, neither narrate, these rules further.

"Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded." *Bour v. Johnson*, 122 Wn 2d 829, 836, 864 P.2d 380 (1993). "Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expressio unius est exclusio alterius--**specific inclusions**

exclude

implication." emphasis mine

Washington Natural Gas Co. v. Public Util. Dist. No. 1
77 Wn 2d 94, 459 P.2d 633 (1969).

Under the "expressio unius est exclusio alterius" canon of statutory construction, the expression of one thing in a statute "implies the exclusion of the other."

State v. Delgado, 148 Wn.2d 723, 63 P.3d 792 (2003)
citing In re Det. of Williams, 147 Wn.2d 476, 55 P.3d 597 (2002)

In ascertaining the purposes of the legislature, we realize it to be a fundamental rule of statutory construction that the whole act must be considered together, that each word, phrase, clause, and sentence must be considered with reference to the other words, phrases, clauses, and sentences appearing in the statute. "The practical inquiry is usually what a particular provision, clause or word means.

further...

...further,

To answer one must proceed as he would with any other composition – construe it with reference to the leading idea or purpose of the whole instrument.” A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently each part or section should be construed in connection with every other part or section and so as to produce a harmonious whole.

State ex Rel Port of Seattle v Dept. of Public Service 1 Wn 2d 102

In construing a statute and ascertaining the legislative intent, certain rules are observed by the courts. The legislative intent must be gleaned from a consideration of the whole act by giving effect to the entire statute and every part thereof.

Houck supra (citing *Lin v. Reid*, 114 Wash. 609, 196 Pac. 13; *State ex rel. Baisden v. Preston*, 151 Wash. 175, 275 Pac. 81; *Pease v. Stephens*, 173 Wash. 12, 21P. (2d) 294; *Arden Fare Co. v. Seattle*, 2 Wn. (2d) 640, 99P. (2d) 415; *State ex rel. Wilson v. King County*, 7Wn. (2d)291.)

Language within a statute must be read in context with the entire statute and construed in a manner consistent with the general purposes of the statute. A learned writer has explained: The presumption is that the lawmaker has a definite purpose in every enactment and has adapted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish it; and that, if that is the intended effect, they will, at least, conduce to effectuate it. That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. This intention affords the key to the sense and scope of minor provisions. From this assumption proceeds the general rule that the cardinal purpose or intent of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious.

Wilson v Lund 74 Wn 2d 945.

Where the language of a statute is plain, free from ambiguity, and devoid of uncertainty, there is no room for construction because the meaning will be discovered from the wording of the statute itself.

Houck supra (citing *Shelton Hotel Co. v. Bates*, 4 Wn. (2d) 498, 104 P. (2d) 478)

Where an act has a doubtful or ambiguous meaning, it is the duty of the court to adopt a construction that is reasonably liberal in furtherance of the obvious or manifest purpose of the legislature.

Houck supra (citing *Othus v. Kozer*, 119 Ore. 101, 248 Pac. 146; *Gallagher v. Campodonico*, 121 Cal. App. 765, 5 P. (2d) 486.)

Under this approach, it is appropriate for a court to give, and did the court appeals, a nontechnical statutory term its dictionary meaning. We have, however, recently indicated that the plain meaning of a statute may be “discerned from all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Under this approach, we construe the act as a whole giving effect to all of the language used. We stated that this “formulation of the plain meaning rule provides the better approach because it is more likely to carry out legislative intent.”

Thurston County v Cooper Point Ass’n 148 Wn 2d 1.

We emphasize that “[w]e read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Miller v. Weaver*, 2003 UT 12, ¶17, 66 P.3d 592 (emphasis added). In so doing, we adhere to “the cardinal rule that the general purpose, intent, or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object.” *Id.* (Citations omitted). Therefore, to avoid interpreting the statute in a “piecemeal fashion,” we interpret the terms of the act as a “comprehensive whole.”

Business Aviation of S.D., Inc. v. Medivest, Inc. 882 P.2d 662 (Utah 1994).

Generally, the first step a court takes when reviewing the meaning of a statute is to look into the plain meaning of its terms.

State v. Fjermestad 114 Wn.2d 828, 791 P. 2d 897 (1990).

“It is too well-established to need citation of authority that a court may not place a narrow, literal, and technical construction upon a part only of a statute and ignore other relevant parts. In the process of construction, the intention of the lawmakers must be extracted from a consideration of all of the provisions of the act.”

DeGrief v City of Seattle 50 Wn 2d 1
(citing *In re Cress*, 13 Wn.(2d) 7, 123 P. (2d) 767.) see also
Commercial waterway District no.1 of King County v
Permanente Cement Company 61 Wn 2d 509

“It is a familiar canon of construction, that when similar words are used in different parts of a statute, the meaning is presumed to be the same throughout.”

DeGrief supra, (citing *Booma v. Bigelow-Sanford Carpet Co.*, 330 Mass. 79, 111 N.E. (2d) 742, and cases cited

"courts should interpret a statute with an eye to the surrounding statutory landscape and an ear for harmonizing potentially discordant provisions * * * ." *United States v. Bass* 404 U.S. 336, 344 (1971). Indeed, even in the context of sentencing provisions in penal statutes, a single phrase should not be construed in isolation from the statutory scheme as a whole when to do so would result in a meaning that contradicts or distorts "the fair import of the whole remaining language." *United States v. Brown*, 333 U.S. 18, 25-26 (1948); see, e.g., *United States v. Campos-Serrano*, 404 U.S. 293, 298 (1971); *United States v. Bass*, supra, 404 U.S. At 350-351.

further;

the rule of lenity is merely "a guide to statutory construction" (*Callanan v. United States*, 364 U.S. 587, 596 (1961)), which is not applicable unless there is such a "grievous ambiguity or uncertainty in the language and structure of the Act" (*Huddleston v. United States*, 415 U.S. 814, 831 (1974)) that even "(a)fter (a court has) 'seiz(ed) every thing from which aid can be derived * * * ' (it is still) left with an ambiguous statute." *United States v. Bass*, supra, 404 U.S. 347, quoting *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805). As this Court observed in *United States v. Moore*, 423 U.S. 122, 125 (1975), quoting *United States v. Brown*, 333 U.S. 18, 25-26 (1948):

The canon in favor of strict construction (of criminal statutes) is not an inexorable command to override common sense and evident statutory purpose * * * . Nor does it demand that a statute be given the "narrowest meaning"; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.

See also, e.g., *United States v. Naftalin*, 441 U.S. 768, 778-779 (1979), *United States v. Culbert*, 435 U.S. 371, 379 (1978); *Scarborough v. United States*, 431 U.S. 563, 577 (1977); *Iannelli v. United States*, 420 U.S. 770, 789 (1975); *id.* at 795 (Douglas J., dissenting); *id.* at 798 (Brennan, J., dissenting); *United States v. Moore*, 613 F.2d 1029, (D.C. Cir. 1979), cert. Denied, 446 U.S. 954 (1980).

Moreover, as this Court noted in *United States v. Culbert*, *supra*, 435 U.S. at 379, the rule of lenity applies only when a statute is genuinely ambiguous, or uncertainty exists as to Congress' intent.

...further,

The "rule of lenity," which should only be utilized when a court's " * * * interpretation can be based on no more than a guess as to what Congress intended." *Bifulco v. United States*, *supra*, 447 U.S. at 387. It should not be used to directly contradict legislative intent or to reach what the Second Circuit correctly characterized as an "anomalous result." *United States v. Rossetti Brothers*, *supra*, 671 F.2d at 720.

UNITED STATES OF AMERICA v. RSR Corp.

In the Supreme Court of the United States

October Term, 1982, No. 82-491

The Solicitor General, on behalf of the United States of America.

Petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit

A court should presume that every word has some meaning, and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439, 457; 553 NW2d. Legislative intent is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense. *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995) The primary goal of statutory interpretation is to ascertain and give effect to its legislative purpose. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc v City of Warren*, 210 Mich App 304, 307; 532 NW2d 920 (1995). If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted. *Dept of Transportation v Thrasher*, 196 Mich App 320, 323; 493 NW2d 457 (1992), *affd* 446 Mich 61; 521 NW2d 214 (1994). "...the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." See: *Lindsay v. Southern Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 188 S.E.2d 374 (1972). When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. *State v. Martin*, 293 S.C. 46, 358

S.E.2d 697 (1987).

Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. *Martin v. Nationwide Mutual Insurance Company*, 256 S.C. 577, 183 S.E.2d 451(1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991); *Jones v. South Carolina State Highway Department*, 247 S.C. 132, 146 S.E.2d 166 (1966). Rules of construction are but guidelines by which to arrive at legislative intent and must be applied with care and with due regard to common sense. A study not only of the rule but the cases applying them and attention to the purpose of Congress, prior tariff acts, background information, and legislative history are important in this area. *L.R. Markell et al. v. United States*, 16 Ct. Cust. Appls. 518, T.D. 43239 (1929). It is a primary function of the courts to determine legislative intent. *United Metal Goods Mfg. Company v. United States*, 46 CCPA 120, C.A.D. 712 (1959); *United States v. S. H. Kress & Co.*, 46 CCPA 135, C.A.D. 716 (1959). The first source for the determination of that intent is the statutory language, which is presumed to be used in its normal sense. *United States v. Esso Standard Oil Co.*, 42 CCPA 144, 151, C.A.D. 587 (1955); *United States v. British Cars & Parts, Inc., et al.*, 47 CCPA 114, C.A.D. 741 (1960); *John S. James a/c The Consolidated Packaging Corp. v. United States*, 48 CCPA 75, C.A.D. 768 (1961); *United States v. Gulf Oil Corporation et al.*, 47 CCPA 32 C.A.D. 725 (1959). It is the duty of the court to adopt the rule of construction which will give effect to the intention of Congress as ascertained. *United States v. American Express Co.*, 2 Ct. Cust. Appls. 95, T.D. 31636 (1911).

results In the presence of ambiguity in a statute, the fact that inconsistent or absurd may flow from one construction and not another will often lead the court to adopt the latter as most likely expressing the legislative intent. *Cohn & Rosenberger v. United States*, 4 Ct. Cust. Appls. 378, 383, T.D. 33536 (1913); *Spencer-Importing & Trading Co. v. United States*, 2 Ct. Cust. Appls. 444, T.D. 32201 (1912). A possible ambiguity in the first part of an act may be resolved when the entire statute is read and considered. *Border Brokerage Company v. United States*, 27 Cust. Ct. 223, 227-228, C.D. 1375 (1951), *aff'd* 40 CCPA 185, C.A.D. 515 (1953). It is well-established that in the construction of a statute the intention of the legislature is to be deduced from the whole statute and every material part of the same. The entire context must be considered and every effort made to give full force and effect to all the language contained therein. *United States v. Invicta Seeland Inc.*, 25 CCPA 300, 305, T.D. 49397 (1938); *Dart Export Corp. et al. v. United States*, 43 CCPA 64, 74, C.A.D. 610 (1956); *United States v. Gulf Oil Corporation et al.*, 47 CCPA 32, 35, C.A.D. 725 (1959).

STATUTE HISTORY

The statute policies herein challenged, determined to be commercially geared, do not specifically employ the “for hire” language, see anywhere in RCW 46.20. While it may be, with some coordination of interrelated statutes, reasonably established that a common carrier is any person who transports persons or property for compensation, the subtle illusion comes from the private automobile, which may be used in some instance for monetary gain on the highways.

It is contended that the absence of a drivers license was evidential of the operators unfitness to drive a car. We think such evidence was irrelevant and that the rejection was proper. Non observance of the statute, by the [driver], is not evidence of his ability to drive a car. He may have possessed more skill than may persons that held a license...

Ross v Penn. R. Company (N.J.L.) 148 A 741;
See generally Huddy on Automobiles 9th Ed. §249 footnote 63

It is this intentional want of language, missing from the statute policy, which creates discretion. It is necessary to turn the clock back forty years and in some instances over one hundred years to establish that the 'incidental use of the highways' language which is the historical legislative authority, regulating commerce, does not transcend the private, until that private is intended to be used commercially. This is exactly the question in considering “narrow” policy construction, whereby inquiring and invoking the “strict scrutiny” rule.

An examination of the county's implementation and authoritative constructions of the ordinance demonstrates the absence of the constitutionally required "narrowly drawn, reasonable and definite standards,"

Niemotko v. Maryland 340 U.S. 268

A law subjecting the right of free expression in publicly owned places to the prior restraint of a license, without narrow, objective, and definite standards is unconstitutional, and a person faced with such a law may ignore it and exercise his First Amendment rights.

Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969), 89 S. Ct. 935
Can RCW 46.20 be definitively narrowed to succinctly and specifically identify the differing aspects of private, and the authority of the state, when a person “hires” out his personal automobile. NO! The object rule of substantive “notice” is to be plainly posted for a person of average intelligence to understand. The rule does not provide any latitude for the state to fragment chapters, which clearly have a causal link to the primary intent and purpose of the regulation, which would tend to force an affected person not to suspect that there are volumes more relevant and pertinent information on the requirements of a “driver” license.

In considering the “offer and acceptance” practice that is the fundamental basis of commerce, when the state proffers a claim a.k.a. charge, civil or criminal, it is the states burden of proof, to show that in fact their was a commercial act to effect their claim.

If the state, in their enforcement proceedings, cannot show commercially, that personal affairs falls within the reach of the questioned policy, the policy does not provide notice of whether or not private conduct falls within the prescript of the legislative intent.

The state is equally bridled with, in consideration of the foregoing paragraph, the burden of showing that there was an attempted solicitation to “hire” out.

As a general rule of construction, the plain language of the statute will prevail in the absence of evidence of a contrary legislative intent.[4] Only when the meaning of the language is unclear will the court resort to the recitals in or title of a statute to ascertain the intent of the Legislature.[5] However, it is a fundamental principle that statutes should be construed to effectuate the Legislature's intent.

[4] *See, e.g., City of Miami Beach v. Galbut*, 626 So. 2d 192 (Fla. 1993) (where statute is clear and unambiguous, court will not look behind statute's plain language for legislative intent); *Cohen v. Florida Department of Law Enforcement*, 654 So. 2d 1058 (Fla. 1st DCA 1995) (where language of statute is unambiguous, statute should be accorded its plain and ordinary meaning).

[5] *See generally*, 82 C.J.S. *Statutes* ss. 349 and 350.

Attorney General Advisory Legal Opinion
AGO 96-57, July 19, 1996
Robert A. Butterworth
Florida Attorney General

Should then the statute be narrowly construed? Yes! Why? Because the statute [RCW 46.20 et seq] as written, clearly uses the term motor vehicle but does not imply private travel. To narrowly construe the statute, the term vehicle should be defined. We know what the legal definition of vehicle is, but it is equally important that the natural language definition of vehicle is understood for translation from natural language to legal language, the natural language definition is “medium—means of conveyance”. When one speaks legally, the term 'convey' by any extension, means to transfer property from one place or person to another place or person.

But when the statute impinged on the common law, that is, legislation was in derogation of the common law, the courts could narrowly interpret the statute by appealing to the canon of interpretation that such statutes should be narrowly construed.

Statutes in Courts,
The History and Theory of Statutory Interpretation.
[a book] authored/compiled by WILLIAM D. POPKIN

Further, we cannot " 'add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.' " *Id* . (quoting *State v. Delgado* , 148 Wn 2d 723, 727, 63 P.3d 792 (2003)).

not The plain language of RCW 10.31.040 is clear. Its unambiguous language does encompass the enforcement of civil arrest warrants. Because we cannot add words or clauses to an unambiguous statute, we are prohibited from reading into the statute "civil actions." Thus, we presume that the legislature intended to exclude "civil actions" from RCW 10.31.040.

State v. Thompson 151 Wn.2d 793,(2004)

Due process is the linchpin of both over breadth and vagueness. One involves substantive due process; the other, vagueness, implicates procedural due process.

Blondheim v. State 84 Wn 2d 874, 529 P.2d 1096 (1975).

On the issue of over breadth, i.e., substantive due process, does the statute fail? Is it so broadly drawn that it may prohibit constitutionally protected activity as well as unprotected behavior?

State v. Yancy 92 Wn 2d 153, 594 P.2d 1342 (1979).

The issue of vagueness raises the procedural due process requirements of fair notice to citizens and clear standards to prevent arbitrary enforcement of laws. *State v. Maciolek*, 101 Wn 2d 259, 676 P.2d 996 (1984).

Hontz v. State 105 Wn.2d 302, 714 P.2d 1176

In *Hontz* above, the last paragraph identifies arbitrary enforcement of laws. If an individual has a driver license or a vehicle business license, enforcement is not arbitrary. However, if one did not have either license and declared oneself to be a private traveler or common law traveler, then any enforcement is arbitrary and may raise tort liability to the individual policeman. It is, by reading the current driver license statute and even the current vehicle license statute, exceedingly simple to fall into the business trap set by the legislature, whereby the common law right to free travel “falls within the scope of regulation”. It was stated thus;

“A regulatory statute does not violate substantive due process unless constitutionally protected activity falls within its scope. The permissible scope of a legislative regulation depends upon an evaluation of the governmental interest promoted versus the degree and reasonableness of the intrusion on individual rights.” (cite omitted)

“A regulatory statute is not so vague as to violate procedural due process protections unless it does not give fair notice to citizens of the conduct subject to regulation or does not contain clear standards to prevent arbitrary enforcement.” (cite omitted)

Referencing the above quote, and considering RCW 46.20, give attention to the use of the phrases; *governmental interest, fair notice, subject to regulation, clear standards to prevent arbitrary enforcement*. Ask these questions...;

- Does the current statute give fair notice of the intent of the statute?
- Does the current statute give fair notice of the subject regulation?
- Does the current statute give fair notice of preventative restrictions that a policy enforcement employee would trespass against private travels, and arbitrarily enforce public business standards?

- Does the current statute provide notice of the states competing or compelling interest?

Reflecting on the questions above, here is a portion of an intake orientation from a prominent law school, also reflecting the breadth of this writing;

Substantive Canons - reflecting certain policy choices;

- Statutes in derogation of the common law should be strictly construed.
- The Rule of Lenity: criminal statutes should be narrowly construed.
- Special statutes trump general statutes.

Ejusdem Generis: when general words follow particular words, the general words are to be limited to the class of things indicated by the particular words.

Georgia State University College of Law,
Orientation notes on statutory interpretation

To address further the above orientation sheet, refer to the following latin maxim of law, but also keeping this in mind while reading on:

generalibus specialia derogant; things special restrict things general

The whole act rule requires traverse to all statutes which cover similarly the same subject matter. As to criminal allegations relating to motor vehicles, traverse to the State of Washington criminal code is prudent. There, we find a definition that irrevocably binds commercial carriers to private carriers. This definition is a pinnacle summation, eradicating all confusion which might arise considering the definition listed at RCW 46.04. RCW 9a.04.110 reads in relevant part;

(28) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

Notice the above statute definition does confine itself to Washington codes and policies, but by use of the term "laws" implies all laws including Federal. Federal law defines motor vehicle in the transportation field. See also *MacLean v. Department of Homeland Security* below.

18 USC 31. Definitions. "Motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power **and used for**

commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo; **emphasis mine**

The curriculum of law schools is expressed throughout this writing; as indicated above, the law school presents that special statutes trump general statutes, and that particular words trump general words. The same theory of law was expressed in the policy intent by the Washington State Legislature at RCW 46.25.005 as follows;

...To the extent that this chapter conflicts with general driver licensing provisions, **this chapter prevails**....

The special commercial motor vehicle provisions of 46.25 trump and prevail over the general license proviso of 46.20. That is proof positive that all licenses are in fact commercial!

The following case law is introduced to influence thought as to the entire application of the motor vehicle act. The following case is a good example for a criminal traffic infraction; can a person be charged with, for instance, driving under the influence, while traveling privately? NO. WHY? Initially, because the rule of preemption dictates that federal statute prevails. That is important here because federal statute only regulates commerce. Secondly, state statute has already admitted to be predicated on the federal statute.

Thirdly, as and for commercial consideration, with respect to the rule of lenity, and the following rule of severability, the DUI and DWI statutes were passed subsequent to the initial licensing act; so, speaking to these rules means that, according to the rule of lenity, to strictly construe a DUI statute is to make it only applicable to drivers of businesses, thusly, to the rule of severability below, if were able to delete from the states police power and regulation the licensing provisions, would then the state have the ability to charge a person with a DWI under motor vehicle laws? No.

It also runs counter to the constitutional requirement that the prosecution must prove every element of its case beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 363, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Roberts*, 88 Wn 2d 337, 340, 562 P.2d 1259 (1977).

further...

...further,
more "An act of the legislature is not unconstitutional in its entirety because one or
one of its provisions is unconstitutional unless the invalid provisions are unseverable
(quoting and it cannot reasonably be believed that the legislature would have passed the
without the other, or unless the elimination of the invalid part would render the
remainder of the act incapable of accomplishing the legislative purposes."
State v. Anderson 81 Wn 2d 234, 236, 501 P.2d 184 (1972)).

State v. Crediford 130 Wn.2d 747, 927 P.2d 1129

The following case, while not factually adjunct to this discussion, in the first half, reasons those who actually benefit from the business license granted by the state have no justification for complaint. In contrast, it further reasons, in the latter half, that the state ought not bootstrap private travel under public law.

The U.S. Supreme Court phrase "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes" stated in the case below, when placed juxtapose the Washington legislature's own language; "It is intended that this 1965 amendatory act be liberally construed to effectuate the purpose of improving the safety of our highways through driver licensing procedures *within the framework of the traditional freedoms to which every motorist is entitled*"[SB 334(1965)]; galvanizes the utilitarian aspect of highways, as secondary to the primary private use classification.

Yet the fact that all those not benefited by the challenged exemption are treated equally has no bearing on the legitimacy of that classification in the first place. A state cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own **bootstraps**. "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes." *Rinaldi v. Yeager*; 384 U.S. 305,308 (1966). **Emphasis mine**

Williams v. Vermont 472 U.S. 14 (1985)

Washington statutes are no different in intent and content, than what is discussed of Florida and Kansas herein. Why? Because of the Uniform Vehicle Code, which was implemented nationwide after several years of discussion and evolution. This was as much admitted by the Washington State Legislature, Senate Bill No. 334, (1965);

An Act relating to motor vehicle driver licensing;

Purpose--Construction--1965 ex.s. c121 §1. With the advent of greatly increased interstate vehicular travel and the migration of motorists between the states, the legislature recognizes the necessity of enacting driver licensing laws which are reasonably **uniform with the laws of other states** and are at the same time based upon sound, realistic principles, stated in clear explicit language. To achieve these ends the legislature does hereby adopt this 1965 **amendatory act** relating to driver licensing modeled after the Uniform Vehicle Code subject to such variances as are deemed better suited to the people of this state. It is intended that this 1965 **amendatory act** be liberally construed to effectuate the purpose of improving the safety of our highways through driver licensing procedures *within the framework of the traditional freedoms to which every motorist is entitled.*”

emphasis mine

Take note of the emphasis directly above. First, this act is amendatory not newly created. Secondly, notice the phrase *within the framework of the traditional freedoms to which every motorist is entitled.* In 1965 the Washington State legislature acknowledged we have the free use of the public roads, and the legislature designed the commercial aspect to be within **not** to replace that freedom!

What Washington statutes have done is to dilute the clarity of express language, appealing to the supposed necessity of the “driver license”, and has concealed the concept of the free and unmolested use of the highways by the general public, and openly enforced, by statute, the highways only as a place of business, bootstrapping the governments alleged compelling interest to regulate travel.

That spurious maneuver has divided its intent amongst no less than four statute titles, two administrative code sections, and the myriad related chapters, with dizzying plausible affects so that the average individual could not possibly, without the aid of the whole act rule, the rule of

exclusion, the rule of lenity, bootstrapping, and the rule of statutory construction, “*expressio unius est exclusio alterius*” and the equity rule “*nullem simile est idem*”, discern the purpose and intent of not only the state's jurisdiction and authority to regulate and control the roads, but also the federal governments original issue intent of and for the highway system (not to detract from the legal definition of the term highway).

Anyone can pick up the Revised Code of Washington, currently, look to Title 46, and find, what 99% of police and lawyers know to be the policy laws of conduct upon the highways; this is not to suggest the Police are not aware of personal private travel. Beginning in 1915, the statute codes of Hill, Ballinger, Remington, and Pierce as and with their amendments, were slowly absorbed by amendment, or simply repealed, to be rewritten into what was enacted in 1919 to be an exclusive title for vehicle codes. Pierce Code at section 196, Laws of 1919, states that this act is now conclusive. Meaning, it is now a comprehensive conclusive statute of vehicle codes, over what had been a mere few sporadic codes previous.

Not to discount any of the several amendments to Title 46, the focus of this writing is with the origins of the state motor vehicle acts back to the turn of the century [1900], with select curiosities. First, here, (for discussion only, discounting repeal) we find that a vehicle on the public roads with an expired registration (tags) or without a valid driver license is a nuisance. Therefore the individual has damaged the state. What do nuisances create? Tort liability.

PIERCE CODE circ.1902, CHAPTER 73. OFFENSES AGAINST PUBLIC POLICY. Amendatory—**AN ACT relating to nuisances**, amending section 118 of the Penal Code (C8I §898) contained in Hill's Annotated Statutes and Codes of Washington. Approved March 2, 1895. Laws '95 p 21.

§1741. Doing **Business Without License**. §900.—137. **Every person who shall, by himself or agent, transact any business, or do any act, without a license therefor**, where such license is required by any law in this state, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and in all such cases where the principal is prosecuted, his agent may be compelled to testify; and when the agent is prosecuted, the principal may be compelled to testify. B. C. §7311; 2 H. P. C. §132.

emphasis mine

In 1903, the legislature passed a law (in so accepting federal highway grants [funds]) that the free use of the highways shall be maintained, and as such, not cause impediment to travelers.

SESSION LAWS, 1903, CHAPTER 103. [H.B. No. 424]

EMPOWERING BOARDS OF COUNTY COMMISSIONERS TO
ACCEPT RIGHTS-OF-WAY FOR CONSTRUCTION OF PUBLIC HIGHWAYS.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The boards of county commissioners in their County Commissioners respective counties in this state are hereby authorized and empowered to accept the grant of rights of way for the construction of highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the

Revised Statutes of the United States, ... *Provided, That nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had.* Emphasis mine

Remember that pursuant to, and with accommodation of, the whole act rule, all statutes “relating” to a particular scope are considered in the interpretation of the intent of the policy.

See Washington Constitution Art. XII §15 for similar language.

SESSION LAWS, 1911. [CH. 117.]

ARTICLE II. PROVISIONS RELATING TO COMMON CARRIERS.

SEC. 9. *Charges; Duties of Common Carriers.* All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

Every common carrier shall construct, furnish, maintain and provide safe, adequate and sufficient, service facilities, trackage, sidings, railroad connections, industrial and commercial spurs and equipment to enable it to promptly, expeditiously, safely and properly receive, transport and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort and convenience of its patrons, employees and the public.

All rules and regulations issued by any common carrier affecting or pertaining to the transportation of persons or property shall be just and reasonable.

Sec. 10. *Duty of Carriers and Persons to Expedite Traffic.* Every common carrier shall under reasonable rules and regulations promptly and expeditiously receive, transport and deliver all persons or property offered to or received by it for transportation.

So in consideration of all previous citations, court rulings, and implications of commerce whether public or private, we have the first [as near] complete collection of statutes under a single act for motor vehicles. Restated here, by and with the authors excision of dictum matters;

PIERCE CODE, Laws of 1919, §196. AUTOMOBILES.
AN ACT relating to the use of the public highways...

§196. Act conclusive.

§200. Application for License. Showing to Be Made. The application must show:

(1) The name of the owner, with the business or residence address thereof, or both if there be such;

(2) The nature of the license required; whether a license has heretofore been issued for such vehicle, and if so, the number of such license;

(3) The trade name of such vehicle, the factory number thereof and the name and address of the manufacturer;

(4) The kind of vehicle, whether a motor cycle, automobile, auto stage, auto truck or other motor vehicle;

(5) The rated carrying capacity of such vehicle;

(6) The purpose for which the same is to be used, and whether for public private use; if for public, the nature of the same and the city or community to be served;

(7) The power to be used, whether electric, steam, gas or other power;

(8) The weight of all automobiles for private use which shall be

or

determined

Provided,
such shipping
*may by general
time prescribe
thereof by certificate,*

application for license
of state and the owner of the
italic mine

by the shipping weight thereof as given by the manufacturer:

however, that if the secretary of state is unable to obtain weight on any particular make or model of automobile *he rules and regulations adopted and published from time to time to the method of ascertaining such weight and the proof affidavit or otherwise which shall accompany the*

when the same is forwarded to the secretary vehicle shall pay ...

§207. Number Plates. §12 ...The secretary of state may put such other mark or character on such plates...to properly identify the kind of license issued.

§228. Arrests by Peace Officers. §32. Any peace officer may make arrests for any **violation of this act** with or without warrant therefore upon showing his authority as such officer, and for the purpose of **enforcing the provisions of this act** the secretary of state, or his appointed deputies shall be deemed peace officers and shall have the same power and authority as any peace officer within the county,

city or town in which such violation occurs.

Emphasis mine

§230. Restrictions on Local Authorities. §34. The local authorities shall have no power to pass or enforce any ordinance, rule or regulation governing the speed of any motor vehicle **in conflict with the provisions of this act** or requiring of the owner or operator of any motor vehicle, any license other than an **occupation license** ... when such motor vehicle is engaged in inter-city service,... Provided, however, that nothing herein shall be construed as limiting the power of the county commissioners or local authorities to make, enforce, and maintain ordinances, rules and regulations governing traffic **in addition to the provisions of this act** affecting motor vehicles, **but not in conflict therewith.** **Emphasis mine**

§235. Permits for Automobiles as Passenger Carriers. §1. It shall be unlawful for any person, firm or corporation, ...to engage in or carry on the business of carrying or transporting passengers for hire in any motor propelled vehicle along any public street, road, or highway, **Provided,... engaging in the business of transporting passengers for hire in any motor propelled vehicle ...shall come under the provisions of this act...** **Emphasis mine**

The following section is added to this reading to show that statute code is only prima facia evidence of [law] policy. The following excerpt is the legislative enactment from 1919. Notice how the legislative language differs from the preceding statute section 200, paragraph 8.

SESSION LAWS, 1919. Chapter 59. SEC.5.

...the owner of any such automobile when making application for license thereon shall cause said vehicle to be duly weighed upon a public scale and attach the certificate of weight to his application for license, which certificate must accompany such...

We find an admitted acknowledgment from the state that the motor vehicle act is commercial.

PIERCE—WASHINGTON CODE circ.1921, AUTOMOBILES—Common Carriers; §234-10. Application **Intrastate**. §8. Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union **except in so far as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.**

Emphasis mine

Prior to 1921 the office of the secretary of state would receive applications for motor vehicle business license. However, in consideration of the rapid growth and popularity of the motor vehicle, replacing horses to transport their freight and passengers, this became a burden on the secretary's office, thusly the Washington State Legislature created a separate dept. to handle the massive influx of applications. Can the Dept. of Licensing issue any kind of license that isn't a business?? NO!! As shown in and of the numerous, consistent, non-conflicting court rulings, use of the public highways as a place of business and profit is separate and distinct from that of the common traveler. As seen above in the legislative enactment, the following excerpt is proof positive that a license is for business, and only for those who use the public roadways for purpose of that business: *“The word “license” wherever used in the succeeding sections shall be held and construed to mean...authorizing the practice of a profession or calling, the carrying on of a business or occupation,...”*

SESSION LAWS, 1921. CHAPTER 7. [H. B. 11.] ; ADMINISTRATIVE CODE
Be it enacted by the Legislature of the State of Washington:

SECTION 1. This act shall be known and may be cited as the administrative code.

SEC. 2. There shall be, and are hereby created, departments of the state government which shall be known respectively as, ...(9) the department of licenses,

SEC. 98. The word “license” wherever used in the succeeding sections shall be held and construed to mean and include license, certificate of registration, certificate of qualification, certificate of competency, certificate of authority, and any other instrument, by whatever name designated, authorizing the practice of a profession or calling, the carrying on of a business or occupation, or the doing of any act required by law to be authorized by the state.

Review above, PIERCE CODE, Laws of 1919, AUTOMOBILES. §200. Application for License. Note the differences in legislation here now below in 1921. This language is implicated again in 1937 and 1947. Below, there is no longer the term “business” in subsection (1) as was previous, because the state has unilaterally “assumed” that the owner of the vehicle business is the person making application, and therefore must both be at the same address. Secondly, the

request for the purpose of the license in sub section (4), to determine whether the vehicle is used to transport persons, property, or freight. Sub section (5) shows the requirement to disclose the “adult seating capacity” of the vehicle, for 'purposes' of transporting passengers. The remainder of this title discussion on motor vehicle weights is primarily for “haulers”, who transport goods and property at a scale weight. However, it is noteworthy, that all pick-up trucks and some SUV's pay a “tonnage” excise tax when the yearly tabs are renewed, which classifies and qualifies them as commercial freight haulers, irrespective of whether that commerce is public or private.

The application must show:

- (1) Name and address of the owner of the vehicle. _____
- (2) Trade name of the vehicle, the model, year, type of body, factory number and motor number thereof.
- (3) The power to be used, whether electric, steam, gas or other power.
- (4) The *purpose for which said vehicle is to be used* and the nature of the license required.
- (5) The rated carrying capacity of such vehicle, which in cases of auto for hire, auto stages or auto stage trailers shall be *the adult seating capacity* thereof and in cases of motor trucks or trailers shall be the rated capacity load as given by the manufacturer ...

In 1923, the legislature, once again makes a published admission that there is a separate and distinct difference between those who operate motor vehicles as a business on the public highways and the common traveler. In one enactment the legislature has distinguished vehicle, motor vehicle and other.

SESSION LAWS, 1923, CHAPTER 122, [S. B. 267.] MOTOR VEHICLES.

An Act relating to the operation of vehicles and the use of public highways, providing for the licensing of persons operating motor vehicles, providing for the enforcement thereof and all other highway and motor vehicle laws and prescribing penalties for violations thereof; and amending Section 234-22 of Pierce's Code, and adding a new section. **emphasis**

mine

Be it enacted by the Legislature of the State of Washington:

SEC. 2. That a new section be added to Sec. 234-22 of Pierce's Code, to be known and designated as Sec. 234-22-a, to read as follows: Sec. 234-22-a. It shall be unlawful for any person to drive a motor vehicle in a reckless manner over and along the public highways of this state. For the purpose of this section, to *drive* in a reckless manner shall be construed to mean *the operation of a motor vehicle upon the public highways* of this state in such a manner as to endanger or inconvenience unnecessarily *other users of such highway*. Any person found

guilty of a violation, of this section shall be guilty of a misdemeanor, and the court may in his discretion suspend the operator's license for a period of time not to exceed six months. **emphasis mine**

By 1937, motorized automobiles had been around for near thirty year. So, what is the difference though between an automobile, a vehicle, and a motor vehicle? As it is defined by federal law, a motor vehicle is, while not distinguishing types, a *publicly* available commercially applied vehicle. A vehicle however is a *private not for public* use vehicle. Although a private vehicle is still commercially engaged because it is employed in the private business sector. This distinction was clarified by the Washington State legislature as follows;

SESSION LAWS, 1937 [CH. 188.] SEC. 29. ...The application must show:

- (2) Trade name of the vehicle, model, year, type of body, the motor number thereof **if such vehicle be a motor vehicle**, or the serial number thereof **if such vehicle be a trailer**; **emphasis mine**

TAXATION

The exertion of power used in the case of private travel cannot, however, be the power of taxation since an attempt to levy a tax upon a Right would be open to Constitutional objection. A state may not levy a tax or fee on the exercise of a protected Right; a Right that may be taxed is not a Right but a mere privilege.

“Each law relating to the use of police power must ask three questions: 1. "Is there threatened danger? 2. Does a regulation involve a Constitutional Right? 3. Is this regulation reasonable?"

People v Smith 108 Am. St. Rep. 715;

To the first, as discussed earlier herein, the term “threatened danger” requires the state to show a compelling interest. That compelling interest has been considered by the courts and they have determined that businesses whom spend, in all probability, the better part of a business day on the highways are more of a threat than those who infrequently occasion the roads for quick trips to a market.

"The automobile is not inherently dangerous."

Cohen & Others v Meador 119 Va 429, 89 SE 876;
Blair v Broadmore 93 SE 532

“We do not believe that the automobile can be placed in the same category as locomotives, gun powder, dynamite and similarly dangerous machines and agencies. It is true that the operation of these machines is attended with some danger not common to the use of ordinary vehicles and we believe and have already held that those who operate these machines must be held to that degree of care which is commensurate with the dangers naturally incident to their use.”

Jones v Hoge 47 Wash 663, 92 Pac 433

Next, does the regulation involve a Constitutional Right? The Right to travel freely is a liberty interest. While personal private travel is a separate liberty interest from the driver license, the driver license none the less remains a property interest of which a person may not be deprived without due process of law, see *Bell v Burson* 402 US 535 (1971), also *Goldberg v Kelly* 397 US 254 (1970).

"If the Right of passing through a state by a Citizen of the United States is one guaranteed by the Constitution, it must be sacred from state taxation."

...further,

"... It may be said that a tax of one dollar for passing through the state cannot sensibly affect any function of government or deprive a Citizen of any valuable Right. But if a state can tax ... a passenger of one dollar, it can tax him a thousand dollars."

Crandall v Nevada 6 Wall 35

Indeed, the very purpose of constraining the state to comply with the limitations of the Constitution was to protect the rights of the people from intrusion, particularly by the forces of government. So, we can see that any attempt by the legislature to convert the act of using the public highways as a matter of Right into a granted privilege crime, is void upon its face.

"The state cannot diminish Rights of the people."

Hurtado v California 110 US 516; see also
Miller, supra; Sherar, supra

We know that taxes are of two varieties, direct and indirect. A direct tax is notoriously either a strict percentage or a flat rate, and applied to a specific (tangible) thing or group. An indirect tax is applicable to a thing or class which tends to be passive in nature. The excise tax paid to renew the tabs on a vehicle business is a quasi-direct tax on the vehicle itself but indirect in nature, as to the business it purports to represent.

“One invariable limitation upon the power of taxation is that it must always be exercised for the benefit of the public. * * * Whether or not a particular purpose of taxation is a ‘public’ purpose, is a question which must be determined, in the first instance, by the legislature. But its determination is not conclusive. And if the courts can see that the purpose of the tax is plainly and indubitably a private purpose, they will not allow its collection.” *Black, Const. Law*, p. 336. Among the purposes “unquestionably ‘public’ in every proper sense of the term” the author last quoted (p.340), mentions “the construction, repair, and improvement of public roads including highways, turn pikes, and paved streets in cities.” See also *Cooley on Taxation* 3d Ed., p. 182. *Lowell v. City of Boston*, 11 Mass. 454, 462, was case involving a question of taxation, Mr. Justice Wells, says:

“The power of the government, thus constituted to affect the individual in his private rights of property, whether *by exacting contributions to the general means*, or *by sequestration of specific property*, is confined, by obvious implication as well as by express terms, to purposes and objects alone which the government ‘was established to promote, to wit, *public uses and the public service*. * * * So far as it concerns the question what constitutes public use or service that will justify the exercise of these sovereign powers over private rights of property, which is the main question now to be solved, this identity renders it unnecessary to distinguish between the two forms of exercise, as the same tests must apply to and control in each.” **emphasis mine**

The Law Applied To Motor Vehicles. Babbitt §66, @131

The manner in which all forms of taxes other than a direct tax affect the present consideration, is as a tax “on the privilege of carrying on the business,” that is to say, of using and operating the vehicle.

The Law Applied To Motor Vehicles. Babbitt §90, @145 citing, *Cooley on Taxation*, 3d Ed.

In these next three citations from Babbitt, we see that the state has authority to tax those who supply a benefit to the public, thusly the rule of reciprocity dictates that business is to be of mutual benefit, which public benefit is the subject of the tax. As seen in the second citation below, *Portland Bank v Apthorp*, the question of income tax arises. If a person operates a vehicle business, then certainly that person must have a tax liability. Yes? This is the essence of federal

taxing regulations of commodities.

“When employments are expressly permitted to be taxed as privileges, the burden is usually restricted to those which in some particular are exceptional, either * * * because they require special regulations * * * or because they supply a general demand.”

“When the tax takes the form of a tax on the privilege of following an employment, convenience in collection will commonly dictate the requirement of a license, and the person taxed will be compelled to pay the tax as a condition to the right to carry on the business at all. In such case the business carried on without a license will be illegal.”

The Law Applied To Motor Vehicles. Babbitt §74, @135 citing, Cooley on Taxation, 3d Ed., pp. 1906, 1097.

“The term *excise* is of very general signification, meaning tribute, custom, tax, tollage, or assessment. It is limited, in our Constitution, as to its operation, to produce goods, wares, merchandise, and commodities. This last word will perhaps embrace everything, which may be a subject of taxation, and has been applied by our legislature from the earliest practice under the Constitution, to the *privilege* of using particular branches of business or employment...

It must have been under this general term, *commodity*, which signifies convenience, privilege, profit, and gains, as well as goods and wares, which are only its vulgar signification, that the legislature assumed the right,... . It is a commodity, convenience, or privilege, which the legislature has by contemporaneous construction of the Constitution, assumed a right to sell at a reasonable price, and, by parity of reason, it may impose the same conditions upon every other employment or handicraft.”

The Law Applied To Motor Vehicles. Babbitt §81, @140 citing, *Portland Bank v Apthorp* 12 Mass 252

“It is entirely customary, under our system, to impose exceptional taxation upon certain pursuits and callings, upon the theory that, from their relation to the public interest * * * they should be classed as special privileges or franchises * * *. Where the legislature has power to tax an occupation, it has the further power to make it a penal offense for any person to engage in that occupation without first paying the tax imposed * * *. Such provisions cannot be said to deprive the citizen of his rights or property without due process of law.”

The Law Applied To Motor Vehicles. Babbitt §96, @154.

As to the cite above, Babbitt §96, consider whether the state provided verbal or written notice, that the application was actually for a business license, that they could impugn for noncompliance; i.e. traffic infractions for, *pick a violation*, or even throw someone in jail for violating some federally adjunct drunk driving statute and then turn a blind eye when the state quarterly tax reports weren't filed, as required by statute; assuming of course, the vehicle business were 100% legitimate. Certainly if the state can prosecute, either civilly or criminally, the motor vehicle act against an individual, it must be then, that quarterly B&O and sales taxes are due to the Dept. of Revenue.

“[taxation]assumes the *legality* of the business for any who may choose to pursue it, but imposes a burden for the public benefit upon those engaged in it. ...A license law, assumes the *illegality* of the business and denounces penalties upon those who pursue it without previously protecting themselves by procuring a license. ...Hence it follows that any law which requires certain acts other than the mere payment of the tax, to be done by the party as a prerequisite to his right to enter upon the pursuit * * * and makes it a penal offense to engage in the business without such formalities, is in reality a license law, no matter whether it be called a tax or by any other name.”

The Law Applied To Motor Vehicles. Babbitt §97, @155 citing,
Cleary v Johnston 74 Atl. Rep. 538 (1909)

To command the perfection of license before entry upon the highways is deprivation of property and liberty; for the state to place a road in the pathway of a traveler constitutes an obstruction and nuisance, which one could demand removal of, (saving eminent domain), as it inhibits/restricts the enjoyment of freedom of movement. If a traveler wanted to pass from point A to point B along a specific route; would it be legal for the state to place a paved road along the identical route and have the audacity to expect him to obtain a business license to undertake that journey? NO!

"It cannot be contended that by the enactment of this chapter [ordinance]...that it has taken away from it [the city] the power to keep it [highways] free from nuisance, and open and free to the general public as an avenue of travel. ...*It is*

*true that it provides that municipalities may not exclude the owner of an automobile from the free use of the public highway. ...In passing on the last proposition [italicized] it is sufficient to say that this ordinance does not exact any fee, license, or permit from the owner of any automobile for the privilege of using the public streets. It [ordinance] does not exclude any automobile owner from the free use of the public streets. ...***We interpret this to mean the free use for the purpose for which streets are primarily dedicated,—the free use of the streets for public travel.** Conceding, for the purpose of the argument, that the legislature has given to the automobile driver the free use of the public streets, and that the city has no power to exclude from the free use of the public streets, we must construe this language to mean that free use which is involved in the right to come and go and drive upon the streets without let or hindrance.

Emphasis mine

21 ALR 1209 citing,

Pugh v. Crawford (1916) 176 Iowa 593, 156 N. W. 892

So then to answer the third question from above; Is this regulation reasonable? What is a highway? A highway is nothing more than a footpath; a footpath that has been widened and covered to allow for heavier forms of conveyance. Can the state demand application for license to use a footpath in the woods? No. Then is the driver license regulation reasonable? No.

CONSTITUTIONAL (CHARTER) AUTHORITY, UNDERSTANDING THE CONTRACT

Nearly every aspect of the scope of this writing was summarized here by Albert Stickney one hundred and twelve years ago. Everything basic, needed to understand the right of travel, the privilege of commerce, and authority of state control, is contained in these first three paragraphs.

And the reason why the use has always been held a public one is that such a road is a highway, whether made by the government itself, or by the agency of corporate bodies, or even by individuals, when they obtain their power to construct it from legislative grant. ... Whether the use of a railroad is a public or a private one, depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the state. Though the ownership is private, the use is public. . . . The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. That all persons may not put their own cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge.' "All public highways are subjects of general state jurisdiction, because their uses are the common property of the public. This principle of the common law is in this state of universal application. As to the class of public highways known as railroads, the common law is fortified by the express conditions of the statutes creating or regulating or controlling them.
further,

On other public highways every person may be his own carrier; or he may hire whomsoever he will to do that service. Between him and such employee a special and personal relation exists, independent of any public duty, and in which the state has no interest.

STATE CONTROL OF TRADE AND COMMERCE
BY NATIONAL OR STATE AUTHORITY, c1897
[a book] BY ALBERT STICKNEY OF THE NEW YORK BAR
citing; *People v New York Central, etc, R.R. Co.* 28 Hun, 543

"This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common, law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.' This was said by *Lord Chief Justice Hale* more than two hundred years ago, in his treatise *De Portibus Maris*, 1 Harg. L. Tr., 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large.

When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control.

Thus, as to ferries, *Lord Hale* says, in his treatise *De Jure Maris*, 1 Harg. L. Tr. 6, the King has "A right of franchise or privilege, that no man may set up a common ferry for all passengers, without a prescription time out of mind, or a charter from the King. He may make a ferry for his own use or the use of his family, but not for the common use of all the King's subjects passing that way; because it doth in consequence tend to a common charge, and is become a thing of public interest and use, and every man for his passage pays a toll, which is a common charge, and every ferry ought to be under a public regulation, viz.: that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fail in these he is finable." So if one owns the soil and landing-places on both banks of a stream, he cannot use them for the purposes of a public ferry, except upon such terms and conditions as the body politic may from time to time impose; and this because the common good requires that all public ways shall be under the control of the public authorities. This privilege or prerogative of the King, who in this connection only represents and gives another name to the body politic, is not primarily for his profit, but for the protection of the people and the promotion of the general welfare.

This statement of the law by *Lord Hale* was cited with approbation and acted upon by *Lord Kenyon* at the beginning of the present century, [1800] in *Bolt v Stennett*, 8 T.R., 606.

STATE CONTROL OF TRADE AND COMMERCE
BY NATIONAL OR STATE AUTHORITY, c1897
[a book] BY ALBERT STICKNEY OF THE NEW YORK BAR
citing; *Munn v People of Illinois*, 94 U.S. 113

One further consideration may be added. The United States Supreme Court has laid down the following as one of the guiding principles in the interpretation of statutes: "Even in construing the terms of a statute, courts must take notice of the history of legislation, and out of different possible constructions, select and apply the one that *best comports with the genius of our institutions* and is therefore most likely to have been the construction intended by the law-making power.

"The history of legislation," as set forth in the preceding pages, seems to make it clear, that attempts to control the contractual freedom of persons engaged in trade and commerce have been found unwise and pernicious. The "genius of our institutions" is overwhelmingly in favor of emancipation from all restrictions on complete contractual freedom—in private employments. In public employments—wise jurists and wise legislators are well agreed, that the individual citizen must have all needful protection at the hands of the State. But what are we to say of the latest attempt at State control of trade and commerce, in private employments?

STATE CONTROL OF TRADE AND COMMERCE
BY NATIONAL OR STATE AUTHORITY, c1897
[a book] BY ALBERT STICKNEY OF THE NEW YORK BAR citing;
Texas & Pac. R. Co. v. Interstate Commerce Commission,
162 U. S. 197, 218.

There are many judicial rulings both at the state and federal level, which will indicate that a driver license is not a contract. The application for a driver license does not create a contract, neither does the possession of the driver license; IT IS however, an application for permission to engage in offering a public service as a driver, to a publicly oriented business, whether that be for a business outright or a business colorable. It is now undoubtedly and without dispute that to be driving is to be either an employee or a subcontractor or in some instances a sublet. The *vehicle operator* is the employer/contractor, which *creates the contract*; while the driver is the employee/subcontractor/sublet.

Let's use tow trucks, taxi cabs, and moving company's for reference because they are, the three most well known forms of vehicles that transport persons and property for compensation. Each of the three operators usually has a fleet of vehicles a.k.a. motor vehicles, which are owned by typically one company, the employer/contractor. Each of the three operators either lease the

vehicle/motor vehicle to subcontract drivers or are driven by employees. There are a variety of factors which determine that relationship. ONE – the operator owns the vehicle and hires [employee] drivers to execute the business transaction with the public. TWO – the operator owns the vehicle but leases it to a subcontract driver assigning an element of risk and a de facto benefit to the driver whereby the subcontract driver would have to insure the vehicle to protect the operators interest.

The two examples above should not be considered exhaustive or limiting to establish the relationship. With and for the purpose of this discussion, below is established plausibility for both. Starting with the Constitution of the State of Washington. The state constitution is tantamount to the magna carte, which is, simply stated, a charter.

Const. Art. I DECLARATION OF RIGHTS

§16 EMINENT DOMAIN.

...No private property shall be taken or damaged for public or private use without just compensation having been first made, ...Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public:

Const. Art. XII CORPORATIONS OTHER THAN MUNICIPAL

§1 CORPORATIONS HOW FORMED.

...all corporations doing business in this state may, as to such business, be regulated, limited or restrained by law.

§10 EMINENT DOMAIN AFFECTING.

The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

§13 COMMON CARRIERS, REGULATION OF.

All railroad, canal and other transportation companies are declared to be common carriers and subject to legislative control. (...)

§18 RATES FOR TRANSPORTATION.

The legislature may pass laws establishing reasonable rates of charges for the transportation of passengers and freight, and to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the state, and shall enforce such

laws by adequate penalties. A railroad and transportation commission may be established and its powers and duties fully defined by law.

A *service* is said to be performed when one takes to perform a task or duty for which there is no instruction, guidance or assistance from the party receiving the benefit of said service. However, a service may still be performed if the parties agree that the beneficial party assumes some portion of the risk for consideration.

In the case of the taxi and tow truck company, they provide a *service* and therefore provide the driver. That driver may be either a subcontractor or an employee depending on their agreement. In the case of the moving company, they hold out their business to the public, but they are considered a private contract carrier because they provide a private service and do not hold open their business for the general public at large as would a bus company or ferry service. Moreover, the moving company may provide a driver, his employee, or it may sublet the vehicle and allow the sublet to drive the vehicle or their hired driver. The moving company, like the car rental service below, would agree to sub[let] contract to a person in consideration of a reduced fee for the interest.

If a person rents a vehicle from a car rental service company, he will be required to sign a contract agreement to provide a driver, or at a minimum have a driver license (which is the same thing); likewise signing a contract to provide the lessor with his insurance company information or purchase insurance from their insurance provider. If a person provides insurance and a driver he is a sub[let] contractor. If, however, a person purchases the service fully at the lessors proviso then he is merely contracting a service from a private carrier.

While the question of contract as to a driver license is settled law, it remains a clever focus of clandestine artifice. The vehicle license actually created a contract, because it is the business. The term *contract* means to come together and make an agreement; assimilate. To say that one agrees to be bound by the motor vehicle code can be established merely by asking if there are license plates on the vehicle. Here's why; the individual consented to **convey** the property (the automobile) to state (legislative) control. Start with the Constitution of the State of Washington, DECLARATION OF RIGHTS;

Const. Art. I §1-POLITICAL POWER.

All political power is inherent in the people, and governments derive their just powers from the consent of the governed...

On the idea of consent, the legal maxim of law is stated thus;

Non potest rex subditum renitentem onerare impositionibus;

meaning-The king cannot load a subject with impositions against his consent.

When an individual voluntarily registers an automobile with the state, he has consented and given a security interest to the state. This can be verified by looking to UCC Chapter 9. The state now has a perfected security interest in the vehicle by issuance of a certificated title of ownership. See, inter alia, UCC 9 et seq. *Ownership* by corporate standard means only a secured interest. To say governments derive their just powers from the consent of the governed is in fact a contract agreement. To further expound this statement, is to look to the following definition;

The phrase "valuable and adequate consideration," used in Act Cong. June 30, 1864, c. 173, §132, declaring that if any person shall by deed of gift or *other assurance of title* made without valuable and adequate consideration, and purporting to vest the estate, either immediately or in the future, convey any real estate, such disposition shall be taken *to confer upon the grantee* the succession, means either money paid or *some present legal interest* or estate parted with or charged, or services rendered, to the value of the property received.

(Italic mine)

Judicial and Statutory Definitions of Words and Phrases
West Publishing Co., 1905 ; citing,
United States v. Banks (U.S.) 17 Fed. 322

When applying for title, whereby registering the [now] vehicle, a.k.a. starting a business, the State obviously could not *take* the automobile from an individual, saving fair market payment, without, at a minimum, *giving* or perhaps *taking* valuable consideration. As seen below, defined in law, valuable consideration consists of any thing that has value; accordingly everything is assigned value. That does not mean everything has a monetary value, only that some value attaches; for example *sentimental* value.

Value *in se* is not indicative of a proprietary interest, albeit value may be intrinsic or extrinsic. As seen below, the vehicle business has value because the state has considered the

mutual financial benefit. In derogation though, the loss of a driver license occurs in consideration of the failure to keep the business within regulatory standards.

JUDICIAL AND STATUTORY DEFINITIONS OF WORDS AND PHRASES,
VOLUME 8; WEST PUBLISHING CO. , 1905

Valuable Consideration.

A valuable consideration, in the sense of the law, may consist either of some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. (*cites omitted*)

"A valuable consideration is one that is either a benefit to the party promising, or some trouble or prejudice to the party to whom the promise is made. Any damage or suspension or forbearance of a right will be sufficient to sustain the promise." That is, a benefit or advantage accruing to the party who makes the promise, or some inconvenience or injury sustained by the party to whom the promise is made, is sufficient to support a contract. *Homan v. Steele*, 26 N. W. 472, 474, 18 Neb. 652.

"A valuable consideration is such as money, marriage, or the like, which the law esteems an equivalent for the grant, and is therefore founded in motives of Justice." (*cites omitted*)

A "valuable consideration," as denned in the books, means money or any other thing that bears a known value. As much may be inferred from the word "consideration" as from the word "value." *Jackson v. Alexander* (N. Y.) 3 Johns. 484, 489, 3 Am. Dec. 517.

A "valuable consideration" means, and necessarily requires, under every form and kind of purchase, something of actual value, capable, in the estimation of the law, of pecuniary measurement; parting with money or money's worth, **or an actual change of the purchaser's legal position for the worse.** (*cites omitted*) **emphasis mine**

To constitute a valuable consideration, as against existing creditors, the consideration recited, if relied on, must be such as will evidence an obligation on the part of the creditor that the grantee could have enforced against him or his estate. (*cites omitted*)

A valuable consideration is a thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value," (*cites omitted*)

In the dissection of constitutional provisions, remember, the people went to them and applied, the state did not come to the people. The state did not per se take the private property.

Const. Art. I §16 EMINENT DOMAIN. No private property shall be taken
... for public ... use without just compensation having been first made, ...

“The legislature represents the public. So far as concerns the public, it may authorize one use to-day and another and different use to-morrow. If the new use affects private rights, proceedings for condemnation may have to be invoked; but so far as it affects the public alone, its representative, in the absence of constitutional restraint, may do as it pleases.”

The Law Applied To Motor Vehicles. Babbitt §40, @111 citing,
People v. Walsh 96 Ill. 232

Section 16 tells us that the state now owns (has a perfected security interest in what was) the personal automobile which is now a public vehicle. We must read the charter colorably. Why? Because the charter tells us the state only *attempted*; this is because they threatened statutory sanction and we consented to “fear of the unknown”. The charter also tells us for a **use** “*alleged*” to be public. See also the section on *use* of the highway earlier. The question of use is to be judicially determined. However §16 read literally, says, if there is a dispute as to whether the use was public or not, the judiciary shall resolve the dispute; *PROVIDED THAT* the question **is** “determined [*as such*] to be public”, regardless of legislative intent. It is most certainly public because consent was given conveying personal property to the public state, and not one judge will adjudicate otherwise, *ESPECIALLY* when the vehicle has business license plates attached to the front of it *AND* that business vehicle information appears on the policy enforcement traffic infraction of business activity within the state.

§16 EMINENT DOMAIN. ...Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public.

An application for a driver license is a request for permission to provide a service [driving] for someone else who has agreed to remunerate the driver in some fashion, whether that be for a business outright or a business colorable. If a person drives for an individual, using his own vehicle he is both the business operator and the driver. If the vehicle being driven belongs to another person, then the driver is driving for some other business. As it pertains to the motor vehicle code, a driver submits to legislative control because of the business venture related use of the roads and highways.

Const. Art. XII CORPORATIONS OTHER THAN MUNICIPAL
§1 CORPORATIONS HOW FORMED.

...all corporations doing business in this state may, as to such business, be regulated, limited or restrained by law.

As a short corollary, saving further comment, to this employee/employer status, review Internal Revenue Service Code, section 3121(a) WAGES. The term *wages* includes the *cash value* for benefits. Having a driver license and or an operators [business] license is a benefit privilege granted by the state. As such, that benefit has a *cash value*. As a co-[registered] owner is then presumed to be actually operating a business. Having either of the licenses, or presumptively both of the licenses, entitles a person, pursuant to authority of Title 26 United States Code, to take as a deduction, every single dime made in a year as a business expense.

The state is a colorable business having an ownership interest in the vehicle [business]. Notice above, that the constitution expressly states the taking of individual property. Art. XII §10 (Constitution of the State of Washington) is an expression that no business shall be exempt from governance. The term *taking* used in §10 below, more to the point, declares that equal protection of the law applies to big business which requires an extensive easement across private and/or public land, as is the case of the railway, and shall not be given prejudicial deference over small business, requiring a similar easement.

Const. Art. XII §10 EMINENT DOMAIN AFFECTING.

The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from *taking* the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

For the same reason that doctors, dentists and daycares provide the street address of the buildings where they have their business practice, is why the vehicle is registered, the license plates perpetrate an address for the place of business. If the doctor, dentist or daycare attempted to practice without a license the state would have authority to injunct the premises to prevent further unlicensed practice. While the vehicle [business] has the good fortune of being mobile the state would likely seize the vehicle to prevent unlicensed practice; *unless*, and with prejudicial discretion on the part of the policy enforcement officer, a licensed driver were to take control of

the vehicle.

It is not such a reach to suggest that a person, however subtle, may be transporting state persons and state property, for the state, in the interest of community proliferation, exercising and thusly stimulating the economy, for which the state has mutually benefited from a persons travels, having at a minimum collected sales taxes from a myriad purchases from other merchants, now have the expectant obligation to report to the Internal Revenue Service the cash value of those travels as income to the state.

Possession of a driver license and a vehicle business license is regulated by a legislative grant of authority under the constitution. The charter gives the legislature authority to regulate “all...other transportation companies”. Vehicles and motor vehicles are, by license, transporters of persons and property, which makes them a common carrier.

§13 COMMON CARRIERS, REGULATION OF.

All ... other transportation companies are declared to be common carriers...

The Congress of the United States and the State Legislature proliferate the dichotomy of *interstate* and *intrastate* commerce by qualifying and distinguishing purpose and capacity. For instance there are three major divisions of carrier; common, contract and private. Common carriers deal almost entirely with quantum mass public movement; trains—of any size or rail, buses, trams and ferries. Contract carriers are transfuse, meaning they can either transport, by contract, a large shipment for a common carrier or a smaller shipment for a private carrier; i.e. moving companies and postal shipping companies. Contract carriers operate *for* the public benefit by way of private contract. Both common and contract carriers are predominately classified by axle weight, tonnage or prejudice of easement, as of railways or water borne vessels.

The private [for hire] carrier is as diverse as it is transfuse. The private carrier is of two calibers: those carrying greater than sixteen passengers and/or 26,001 .lbs, versus those carrying less than those limits. Here the classification being lesser axle weight and/or lesser passenger capacity, the automobile “bottom feeds” on the smaller contracts of the larger counterpart, but

still is able to bill itself as a publicly offered common carrier. These types of vehicles are pick-up trucks and small panel trucks and anything from a subcompact two door sedan to a stretch limousine.

Tow trucks, taxis, ambulances, postal trucks, ice cream trucks, milk trucks, police cars, dial-a-ride taxis, and plumber trucks. All of these vehicles use the highways as a place of business. It seems obtusely obvious to say that these vehicle businesses could not exist without the highways, because they transport persons and or property upon a public road and *they get paid to do it.*

When taking into consideration the definition of commerce, from *com-* "together" + *merx* "merchandise"; look around while commuting on the roads and visualize the highway as a side walk "marketplace" not unlike the Pike Place Market, with all the vehicle businesses lined up booth to booth to booth, conducting a business hawking their wares.

More succinctly the roadways are governed because of the vascular "connectivity". That is to say that commerce itself, the act of exchange and trade, is done privately, on private property, in private buildings, on private phones. It is "transportation", after the fact, when the "goods" or "commodities" need to be exchanged, that requires *delivery* to the purchaser. That delivery, requiring space on the roadways, is *incidental* to the normal use.

DRIVING

Now as shown *infra*, the legislature has clearly outlined the parameters of driving as that which is commercial by common carrier, private carrier and private for hire. What is of importance is the type of use. Personal use of the roads does not occasion the need for a license.

The legislative body acknowledged a right to beg that does not rise to the level of "aggressive solicitation," or it would have proscribed begging altogether. By expressly proscribing one type of solicitation, the ordinance implicitly allows other types not otherwise proscribed. *See State v. Delgado* 148 Wn 2d 723, 729, 63 P.3d 792 (2003) ("Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other.' " quoting *In re Det. of Williams*, 147 Wn 2d 476, 491, 55 P.3d 597)

City of Spokane v. Marr 129 Wn. App. 890
See also *Brown-Edwards v. Powell* 144 Wn. App. 109

"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,
(*State v. Karel*, 180 So. 3 at 8.)

The term "*travel*" or "*traveler*", while typically neuter, refers to one who uses an automobile or a vehicle to move from one place to another, and includes all those who use the highways as a matter of Right. The term "*driver*" is a contradistinction to "*traveler*," as defined. Therefore, one who uses the road in the ordinary course of life and business, for the purpose of travel, is a traveler. The term "*for hire*" is a rhetorical term, and is defined as a person who holds himself out for payment of a fee or fare in exchange for transfer of some others property or passenger.

Considering the eristic poignancy of this writing, let's review the charge of DWI. Of the many court room arguments that litigants get into, then relying on judicial discretion for resolve; the argument of "I'm not a driver" or "I wasn't driving", may come up so then the judge would have to consider the definition of driver. Remember though, the judge will always (saving grievous error) favor the state. So, according to the ruling below, in order to actually convict for *driving* under the influence, it must be established that a person was actually *driving*. (if one has a license, the presumption is in fact, that one was driving).

When analyzing the concept of misconduct, the trier of fact must consider the legal definition in context with the factual circumstances surrounding the conduct at issue.

Garman v State Employment Security Dept. 102 Nev. 563, 729 P 2d 1335 (1986); *Jones v Rosner* 102 Nev. 215, 719 P2d 805

In and of all the research founded, the great many courts across this country, including Washington courts, do not visit the discussion of driving *v* traveling, very often exceeding decades. At that though they usually will divert attention to some other question of fact or law. As much as driving is an element of a statute crime, in arguing civil and criminal litigation, there is almost always more than one issue raised on appeal, and the courts will not address the driving *v* traveling issue when given another option.

Due process requires that the prosecution prove each element of a crime. *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Jury instructions must ***define*** every element of the offense charged.

State v. Johnson 100 Wn 2d 623

emphasis mine

The omission of an element of the crime produces a "fatal error" by relieving the State of its burden of proving every essential element beyond a reasonable doubt. Additionally, failure to instruct the jury on every element of the crime was reversible error because such an error relieves the State of its burden of proving every element beyond a reasonable doubt.

State v. Eastmond, 129 Wn 2d 497, 919 P.2d 577 (1996); *State v. Daniels*

87 Wn App. 149; *State v Byrd* 125 Wn 2d 707, 887 P. 2d 396 (1995)
The construction of the constitution of the United States by the supreme court is binding on a jury as well as the court.

U.S. v Shive 20 Fed. Dig. 439, Fed. Cas. No.16278, Bald. 510 (1832)

As is indicated in definitions at RCW 46.20.040, *drive* and *operate* shall mean the same thing: to be in actual physical control of a motor vehicle; except that it is shown conclusively herein that driving is not operating. The statutes of the State of Kansas read near word for word identical to Washington statutes; so it was stated in *State of Kansas v Kendall* 274 Kan. 1003, 58 P.3d 660, that the action of physical control of a motor vehicle is therefore transportation, and therefore the basis of commercial activity. Kansas statutes of 1999.

We know that transportation of persons or property is a commercial activity. While the term *property* is restricted to tangible physical items, to which possession is claimed by *title*, *contract* or *receipt* (bill of sale-bill of lading). The term *person* is a more broad term and in the transportation of persons the term may be expressed as a rider, quest, or passenger. No matter which phrase is used, or the calibre of vehicle, be it public or private, to transport a person means there is the axiomatic payment for such carriage. A rider does not always pay a fare, in the case of a driver trainee, or husband and wife long haulers, or taking a cameraman along to film an activity, whereby one does the driving and the others presence is merely migratory. Contrastly a rider may pay a fare as a second or third party in a taxi where the initial fare is borne at a stipulated rate or mileage, and the second and/or third passengers pay a “surcharge” as it were, for carriage, having created additional transcendental wear and tear on the vehicle.

The term *guest* is similar to that of *rider* having much of the same attributes, but moreover is someone who was invited, and as such is a mere invitee. Guests are incidental to businesses that hold their doors open to the public, but the presence of the guest could be non-commercial. A fee charged for service is borne to the user and the guest is welcome at the invitation of the user when the user has paid a bulk rate, as it were, for the service. The term *guest* is appropriate, when the demand for fare is discretionary, and contingent on the intended

use. For instance, a hotel charges a rate for guests who would use a room for staying the night; a hotel would not however charge a fee to a guest who was attending a conference in a hall. As it relates to the highways, a person may hire the services of a limousine company (the operator) and the limousine company would provide a driver, and for that fee, the limousine would take any number of persons on an excursion. Only one person paid the fare and all other riders are guests.

The term *passenger* is quantitatively similar to each of the definitions above for each of the stated reasons. The term passenger is derived from passage; a passenger in a vehicle is one having right of passage upon payment of fare. It is argumentative to say that the actual passenger paid the fare, more certainly because a passenger could have received the right of passage from a third person who paid the fare but is not the passenger.

The term passenger ordinarily imports some contractual relation between the parties.

Long v Archer et al 221 Ind.186, 46 NE 2d 818; citing; *Gale v Wilber* 163 Va. 211, 175 SE 739; *Bushouse v Brom* 297 Mich 616, 298 NW 303

There is involved here, not a common, but rather a gratuitous, carrier. The legal definition of "passenger" is two fold. Many definitions may be found for this relationship between the one conveyed and the conveyor. Facts always control in an individual case. When speaking generally upon the subject of common carriers, this court said, in *Weber v Chicago, R.I.&P.R. Co.* 175 Iowa 358, 151 NW 852. It is not easy to state a general rule, nor to give a definition of the word 'passenger' which would embrace all the essential elements. As said in 2 Hutchinson on Carriers (3rd Ed.), Sec. 997: 'The one usually accepted by the courts, when a definition has been attempted, is that a passenger is "one who travels in some public conveyance by virtue of a contract, express or implied, with the carrier, as the payment of fare, or that which is accepted as equivalent therefore." This definition, however, like all others, is hardly comprehensive enough; for, as a general rule, every person not an employee, being carried with the express or implied consent of the carrier upon a public conveyance usually employed in the carriage of passengers, is presumed to be lawfully upon it as a passenger: First, an undertaking on the part of the person to travel in the conveyance provided by the carrier; and second, an acceptance by the carrier of the person as a passenger. Whether either or both of these elements exist is ordinarily a question for the jury.

Pucket v Pailthorpe 207 Iowa 613, 223 NW 254

Persons who drive are drivers. So, what is it to drive or be a driver, or do the driving? Firstly, we recall the definition of driver, as being one who is employed, in Bouviers and Blacks Law dictionaries. To expound on that definition the following rulings make clear that drivers and driving is strictly a commercial venture and does not apply to all who use the public roadways. For instance, in the Transportation Law Journal, 27 Trans. LJ 113 (2000), there is lengthy discussion about for hire conduct of taxi cab driver/owners. For purposes of this record, the following excerpts were found to be expositive of the nature of a driver license;

"...the condition of vehicles used as taxi cabs; ...the chauffeurs operating taxi cabs; ...the companies providing taxi cab service."

The journal article is replete with use of the term(s): taxicab chauffeurs, taxicab license owners, owner/driver taxicab drivers, taxicab drivers, taxicab license holder. It should be stated that while a license to operate a taxicab business is distinct from the license to physically drive the vehicle, there is the axiomatic relationship of owner/driver. The journal article also references, sub silencio, the Florida statute which calls for what is termed a "for hire license". The distinctions between owner and driver are discussed further at *Wallace v Woods* infra.

The above journal review is an overtly expositive narrative of how cab drivers may or may not own their own vehicles but would stand to make more money in the exercise of their trade if they did in fact own their vehicles, and were therefore owner/operator, instead of merely employees, then paying the business operator for the use of the vehicle. The journal also discusses the intrinsic relationship of the government then having authority to regulate the business of both the operator and the driver.

The most revealing statement of the journal narrative (27 Trans. LJ 113) is stated thus;

"Anyone who owned an automobile could provide taxicab service."

It is the forgoing quote from the journal that raises, the most litigious concern, the "**presumption**". This presumption is the basis for the police to stop the unsuspecting motorist and issue a traffic infraction and more significantly reproach the general traveling public with the

entirety of title 46 RCW here in Washington. It is important to recognize when there is discussion of private carriers we see the term 'vehicle', when there is discussion of common carriers and contract carriers we see the phrase 'motor vehicle'. This is congruent with the federal definitions of motor vehicles and the context of common carriers.

Highlighting the discussion in 27 Trans. LJ 113 above, we look to the following cases; *Howards Yellow Cabs Inc. v UNITED STATES OF AMERICA* 987 F. Supp. 469, 97-2 U.S. Tax Cas.(CCH) P50, 694 (1997); and *J&J Cab Service Inc. v UNITED STATES OF AMERICA* 98-1 U.S. Tax Cas. (CCH) P50, 360. Both cases involve cab company **operators**. In *Howard's*, the following language is used by the court (see similarly, dictum at *J&J Cab Service*);

As found by the magistrate judge, the facts are as follows: ...that the drivers collected money from the cash paying riders; that [plaintiff] gave the drivers “credit” for any contract riders whom they transported; that the drivers “settled up” with the dispatcher by giving him 50% of the money collected from the cash paying riders when such amounts exceeded the amounts due the drivers for the contract riders which they had transported;

The Howard court citing *Manchester Music Co. v. US*, 733 F. Supp. 473, stated at footnotes;

“a payment occurs with the transfer of possession, dominion, or control over money or its equivalent from a person who up to that point had been exercising such prerogatives over the same to another who is due the funds.”

The previous citations describe the use of a vehicle, driving the public “for hire”. Below is the description of the use of a private vehicle not for hire yet with the employ of a driver none the less.

In the case of *Ford Motor Co. v Stella D. Madden et al*, 987 F. Supp. 469, there is the distinctive act of driving a vehicle at the direction of an employer because the employer had control of the vehicle. The driver was an employee of Ford Motor Co. and thusly, subsequently, remunerated by a private party to drive vehicles for the purpose of attesting as to the vehicle marketability. In this case, the dealership operated the vehicle although someone else drove it.

An operator is defined as one who has actual physical control over a vehicle or a motor vehicle. Operating a vehicle is also defined as one who facilitates or augments the movements of the vehicle. In the two preceding cases, the cab company 'operated' the vehicles because they had the authority and/or the ability, to determine when and where the drivers would pick up and deliver or transport passengers to and from.

A license to carry on a business or trade is an official permit to carry on the same or perform other acts forbidden by law except to persons obtaining such permit.

Hoefling v. City of San Antonio, 85 Ten. 228, 20 S.W. 85, 16 L. R. A. 608.

In some cases it is held that where a license is for the protection of the public and to prevent improper persons from engaging in a particular business, and the license is for revenue merely, a contract made by an unlicensed person in violation of an act is void;

Bowdre v. Carter, 64 Miss. 221, 1 South. 162; 4 C. B. N. S. 405;
Johnson v. Hulings, 103 Pa. 501, 49 Am. Rep. 131;
Hustis v. Pickands, 27 Ill. App. 270.

When the power is exercised by municipal corporations, a license is the requirement, by the municipality, of the payment of a certain sum by a person for the privilege of pursuing his profession or calling, whether harmful or innocent, for the general purpose of producing a reliable source of revenue;

Tied. Lim. Pol. Pow. 271.

require those who apply for a license to pay a reasonable sum to defray the expense of issuing the license and maintaining the Proper supervision. What is a reasonable sum must be determined by the facts of each case; but where it is a plain case of police regulation, the courts are not compelled to be too exact in determining the expense of regulation and supervision, so long as the sum demanded is not altogether unreasonable;

Tied. Lim. Pol. Pow. 274;
City of Boston V. Schaffer, 9 Pick. (Mass.) 415;
Welch v. Hochkiss. 39 Conn.140, 12 Am.Rep. 383

Think of the distinction between driver and operator more like open ocean racing, or hydroplane racing, stock car racing, or Baja sand rail racing. There is a very distinctly separate function between driving and operating not excepting that the operator could be the driver. It may be easier to understand operator in the context of navigator. When racing cigarette boats and sand rails, there is a driver and a navigator. One person drives, by depressing the accelerator and the brake and turning the steering wheel, and the other person manipulates the vehicle by coordinating and directing its destination. Or, in the case of the hydroplane and stock car, there obviously, is a driver, but the pit crew is the operator because the pit mechanic controls the changing of tires, foils and windshields and has the ultimate responsibility to determine the serviceability of the vehicle and, therefore, determine if it is in an operable condition.

However, a driver can be the operator if the vehicle is maintained, navigated, and driven by one individual, as in the case of a sole proprietor business.

Another example of driver/operator is N.A.S.A., National Aeronautics and Space Agency. Yes, flying constitutes driving by federal definition of law. The flight crew drives the shuttle to the moon, while the control center “operates” the shuttle by monitoring critical functions and navigation.

The *Howard's* court above, also established the fact that: The “drivers...had personal use of the cabs during the day.” An empowering correlation to *Howard's* above, are the cases of *City of Chicago v Gall* 195 Ill. App. 41 and *State v Scheffel* 82 Wn 2d 872. In the *Chicago* case it was recognized that simply because there existed a license to operate a vehicle does not mean that any person is fully engaged 24 hours a day in the operation of that business. Equally, it was said in the *Scheffel* case, that use of an automobile, during certain periods, as a vehicle does not preclude its use as an automobile when not being formally used as a vehicle.

To further amplify the distinctive nature that is driving, we find at Transportation Law Journal, 35 Trans. L.J. 1, which is excerpt for brevity, not to lessen the context, more certainly for clarity, as follows;

In the motor carrier industry, the “employment classification” determination is frequently critical because of the high incidence of use of “owner-operators.” (footnote; The term “owner-operator” reflects individuals who lease motor carrier equipment to a motor carrier with driver services. Normally the lessor performs the driver service.) ...other carriers operate a fleet utilizing driver-employees as well as owner-operators. Driver-employees were utilized and were paid hourly wages. The drivers take upon themselves...to complete a freight movement. ...most drivers, whether employee or an owner-operator, are paid on a “per mile” basis...

It is obvious that a driver and owner-operator could increase his “pay” by driving more miles and handling more loads and “overtime” as “dessert” would increase the temptation to do so despite the wear and tear on the equipment and more important, to the health and safe performance of the driver. Significantly, the federal legislators recognized this and felt that two different units of the government and approaches to wage and hour issues should not interfere with each other. “Safety” of the public and the operators won out and thus the Secretary of Transportation, who was presumably more knowledgeable of trucking operations, was given the power to dictate the hours of service which drivers could drive based, in part, of the normal operations of carriers.

Historically, the view of the courts, is that the history of a statute is important when attempting to understand evaluate and implement a current version. As shown below, the historical purpose of the statute, as opined by the court, is conducive of the legislative statement in 1965, see section on statutes.

This reading is prejudice to the phrase *traditional freedoms to which every motorist is entitled*, to exemplify that not everyone placing and using their personal automobile on the highways needs a “driver” license, further, by extension and implication, even a numbered “business” license plate on their personal automobile.

“The primary rule of construction of statutes is to ascertain the lawmakers’ intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning, and to promote its object, and ‘the manifest purpose of the statute, considered historically,’ is properly given consideration.... [2 Lewis Sutherland on Stat. Const. (2 Ed.), sec. 363; Endlich on Interpretation of Statutes, sec.329; and Maxwell on Statutes (5 Ed.) 425.]”

emphasis mine

Wallace v Woods infra, citing, *Cummins v. Kansas City Public Service Co.*, 334 Mo. 672, 66 S. W. (2d) 920

That is, "where a statute has been construed by the highest court of the state, the court's construction is deemed to be what the statute has meant *since its enactment*. In other words, there is no question of retro activity."

Emphasis mine

State v. Moen 129 Wn 2d 535, 919 P.2d 69 (1996).

Notice here, that the judiciary has stated that inquiry must be to the historical intent of the statute to properly determine its present intent. The court further explained jurisprudence based on the whole act rule, stated thus;

said "with a view of determining the meaning of the word 'driver', all provisions of section must be considered."

Wallace v Woods infra, citing,
Bowers v Missouri Mutual Assn. 62 S.W. 2D 1063

Statutory references to driving have always been about compensation. As seen below, the phrases *drive*, *driver*, and *driving* are only for those who receive compensation for their skill. Underlined for emphasis are the key words used by the judiciary, in their own description of driving.

doing "Certainly a **driver is only one who drives**. A stage coach driver may have had unusual authority on his trips (see *Drolshagen v. Union Depot Railroad Co.*, 186 Mo. 258, 85 S.W. 344), but we know of no good reason why the word driver would not be commonly and reasonably interpreted to be the person actually the driving, whether he was one **employed by the owner** to drive or whether he was the owner driving. If such terms expressed the purpose of subsequent amendments, there was no reason to change them merely because the statute was being made applicable to situations beyond its original scope. We cannot now judicially know the situation as to how often owners drove their own stage coaches or how many were **driven by hired drivers**. However, we do know, and we are sure that the Legislature knew, when and after they later inserted the words "motor car" and "automobile" in this statute that many owners of **motor vehicles used for public transportation** of both freight and passengers did drive them in **such service**. It seems reasonable to believe that, in all the amendments broadening the scope of the act, there was some purpose in using and continuing to use different terms with respect to railroads and other instrumentalities of public transportation."
emphasis mine

Wallace v Woods 340 Mo.452, 102 S.W. 2D 91 (1937)

As one may well establish by the length of this reading that driving is and must be of a commercial nature. The term commercial means to engage in commerce. To produce, deliver, and receive payment is commercial, as being in commerce; everything from trucking coast to coast; to the variety of the local fast food joint, where they produce a cheeseburger, deliver it over the counter, whereupon credit is transferred to the store.

The plumber may be the best example, here, of operating and driving and commerce and private carrier (under 16,001 lbs). The plumber epitomizes the very substance of these definitions. Title 81 RCW is the best definition of plumber;

RCW 81.80.010(6).

A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

...lets rewrite the statute definition for purpose of this writing;

A "plumber" is a person who transports by his company truck [van], with or without compensation, your new shower stall which is owned or is being bought or sold by the consumer [client], or property where the plumber is the seller, purchaser, lessee, or bailee and the transportation is incidental (after being picked up at the warehouse) to and in furtherance of working on your bathroom conducted by the person in good faith. [that you will pay him for his services]

...now lets excerpt that definition;

A "plumber" is a person who transports by his company truck [van], your new shower stall which is bought by the consumer [client], or the plumber is the bailee (of your new shower stall) to and in furtherance of working on your bathroom ...

Remember, no driver license is needed to operate a business; conversely, no operator license is required to drive. When the State of Washington defined driver and operator to be the same thing, it in fact was intended to reify these two separate functions in order to bridge or bootstrap common law traveling. Because then, most common people that have the driver/operator license, fit quite neatly into this perverse extrapolation.

LICENSING

A claim may be laid that RCW 46.20, is void for vagueness as being over broad, similarly void for want of due process, similarly facially void and as applied void. This can be articulated by demanding the state to provide the section of the Act that provides substantive notice of its application to personal use of personal automobiles; same, by demanding the state to provide the section of the Act that provides procedural protections, of its application to personal use of personal automobiles. If the state cannot provide these sections, then the statute must be void, as overly broad in its intent, and application, for want of clear, concise and express terms.

The power of the state to license, and further regulate, through a driver license, private affairs, is non existent.

It has been laid down as a general rule that if the power of the state to control its highways has not been delegated, and the state has prescribed no conditions limiting or regulating the use of the highway, the people are at liberty to use it for travel, transportation, and communication, by any lawful means, subject only to the condition that such use neither interfere with other or similar lawful uses of the way nor invade the rights of the owners of abutting lands.

25 Am Jur HIGHWAYS §169, citing
State ex rel. Bartlett v. Weber, 88 Kan 175, 127 P 536

The Washington State Supreme Court has already made it clear in the following case that the “driver license” is intended to apply only to “for hire” vehicles. The *International Motor Transit Co.* case below must be read in *pari materia* with the rules of municipal regulation.

“[Sec. 103] It shall be unlawful for any person to drive an automobile or other motor vehicle carrying passengers for hire, within the city of Seattle, without having a valid and subsisting license so to do, to be known as a ‘drivers license’. “Driver’s license, ‘first class’ shall entitle the holder thereof to drive any kind or class of motor vehicles for hire within the city of Seattle. “Drivers license, second class’ shall be limited to stages, sight-seeing cars, or other motor vehicles operating over a specified route and having a fixed terminal. “Drivers license, ‘third class’ shall be limited to drivers of taxicabs, for hire cars, or other automobiles not operating on fixed routes, and having a passenger capacity of less than seven (7) persons, not including the driver. ...it is intended to apply to

“for hire” vehicles as provided in section 6313, Rem. Comp. Stats., are defined to mean all motor vehicles other than automobile stages used for the transportation of persons for which remuneration of any kind is received, either directly or indirectly.”

International Motor Transit Co. v Seattle 141 Wash 194, 251 P. 120

As noted previously and further in this section, the requirement of a driver license is for the operation and conduct of a business. The research compiling this section procured no evidence anywhere, not in any state or federal regulation or judicial opinion which extends the State authority in Title 46 RCW to the common man, requiring a driver license to the use of a personal automobile to conduct personal affairs.

A state is within its police power by requiring a license as a prerequisite to the carrying on of certain activities commonly designated as businesses, occupations, professions, trades or callings.

51 Am Jur 2d Licenses and Permits §14

States have broad powers to regulate and license the practice of the professions.

National Pharmacies Inc. v De Melecio 51 F. Supp. 2D 45

It is seemingly proper to reiterate the definition of the term "*license*," as the definition of this word will be important in understanding the statutes as they are properly applied:

"The permission, by competent authority to do an act which without permission, would be illegal, a trespass, or a tort."

People v Henderson 391 Mich 612, 218 NW.2d 2

"Leave to do a thing which licensor could prevent."

Western Electric Co. v Pacent Reproducer Corp. 42 F.2d 116

For this definition to apply to a common traveler, a state would have to take up the position that the exercise of a protected Right to use the public roads, in the ordinary course of life and business, is illegal, a trespass, or a tort, which a state could then regulate or prevent. This position would raise fundamental questions, as this position would be diametrically opposed to Constitutional Law. As recognized in this writing, the proper definition of a "license" is;

"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 v California State Board of Pharmacy
69 Cal. App. 2D 199, 158 P.2d 199

Curiosity alone should question the authority of a state to impugn one for not having a public license for travel in the private. What reason could the legislature have, not to include language, and in the history of amended legislation, purposefully delete such terms as 'business', if it were not to confuse, and manifest a clandestine subterfuge of fraudulently created businesses, which then a state could regulate.

What the state may not do directly it may not do indirectly.

Bailey v Alabama, 219 US 219, 31 S Ct 145, 55 L Ed 191

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

State v Jackman 60 Wisc.2d 700; 211 NW.2d 480, 487

Shown above are the fundamentals of a driver license. One court called out the distinction, in discussing the public health and welfare, as that being the use of the highway by travelers is usually a short trip with a single departure point and a single termination point, limiting the amount of time on the highway. Where in contrast, a driver for hire or other occupation or profession, may spend several hours or days traveling public easements with several intermittent stops whereby creating greater liability to other travelers.

States have a compelling interest in the practice of professions and as part of their power to protect public health and safety and other valid interests, they have the broad power to establish standards for licensing practitioners and regulating the practice of the profession.

Lenders Service Inc. v Dayton Bar Asso. 758 F. Supp. 429

Certainly the operation of business on public roads and streets by those individuals who use the highways in excess, should be required to pay a highway or tonnage tax.

What was spuriously deleted from the Motor Vehicle Act reformation in the 1960's is the term chauffeur, discussed infra. It is the chauffeur that is the subject of a basic driver license notwithstanding other delivery type occupations. The Latin term *nullum simile est idem*, things that are similar are not the same, is the suspect of a claim of void, as to RCW 46.20. See RCW 46.20.055 for similar definitions following;

It is necessary, in order to regulate automobiling, to pay the expenses of the department issuing licenses and registering drivers and owners of automobiles. These expenses naturally should be met by the class of persons regulated and licensed.

Statutes which regulate the licensing of chauffeurs, contemplate that an applicant for a license shall have received training in that work. Under a statute permitting an unlicensed person over a designated age to operate a motor vehicle "accompanied by a licensed operator", such training may be possible.

Huddy on Automobiles 6th Ed. §225

..."any trade, business, occupation, vocation or profession"...may impose license tax "upon persons and corporations doing business"...

excerpt from John MacArthur McGuire, Harvard Legal Essays, citing *State v Gowdy* 62 Montana 119, 203 Pac 1115, see also 4 Thorpe 2324

taxing power is exercised for the purpose of raising revenue and is subject to certain designated constitutional limitations.

16A Am Jur 2d Constitutional Law §318

Here we start to see the courts express the original intent of the statutes, which the legislature has conveniently excised, classifying types of drivers and the tax revenue generated by the business they execute in their use of the highways. The question may be asked, does a state have authority to classify personal conduct as a part of commerce like that of chauffeurs? NO! Why? Because travelers don't collect a fee, or charge a fare, for traveling to visit the doctor, the veterinarian, the grocer, the hardware store, the beach, the coffee stand, a job, the bank, the school, other family, a restaurant, a sporting event, or to see a movie, or attend a funeral, etc. Ipso facto, if no fee is collected for personal affairs, then the state cannot impose a tax, which is defacto revenue, which is one of several intents of regulation for Title 46 RCW.

Earlier, we encountered, at Am Jur 2d Highways, Streets and Bridges §227 and Huddy On Automobiles §26, the term '*incidental*'. This term refers to the nature of commerce upon the highways. The courts, in their determination of the phrase incidental, have acknowledged the transpersonal hyperbolic legal reasoning behind licensing statutes. When we look at RCW 46.20, the licensing statute for the STATE of WASHINGTON, we find ***no notice*** of the personal private use versus the private for hire use that was formerly a part of the statute.

The fundamental risk associated with unbridled license schemes is the inability to detect the extent of the licensing statute in the absence of a narrowly drawn objective and definite standards to guide the licensing authority. Whatever the motive which induced its legislative adoption, lack of strict legislative definition promulgates an overly broad legislative scheme and ***is*** therefore void for vagueness.

The void for vagueness doctrine, on the front end, necessarily implies that the governmental intent of the statute must be made explicit in the text, not then subject to judicial or administrative construction.

see generally 16A Am Jur 2d Constitutional Law §527

However, in order to regulate...the government may impose a permit requirement...so long as the scheme does not delegate an overly broad licensing discretion to an governmental official...therefore any licensing scheme must be narrowly tailored to serve a significant governmental interest...

16A Am Jur 2d Constitutional Law §527

So, the question comes, is RCW 46.20.001 narrowly tailored? No it is not. This writer found the statute to be overly vague, and substantial research was needed to qualify the text and intent of the currently written statute. Ultimately what was determined is that the currently written statute (including those prior, dating back to 1968) classifies every single man and woman desiring to use the public highways as a chauffeur a.k.a. driver for hire. RCW 46.20.001 reads in relevant part;

- (1) No person may drive a motor vehicle upon a highway in this state without first obtaining a valid driver's license issued to Washington residents under this chapter. ...
- (2) A person licensed as a driver under this chapter: (a) May exercise the privilege upon all highways in this state; (b) May not be required by a political subdivision to obtain any other license to exercise the privilege; and (c) May not have more than one valid driver's license at any time.

The interesting similarities between RCW 46.20.001 and the pre-reformation statutes are these; 1) A person licensed as a driver, 2) May not have more than one valid driver's license at any time. These sections as written are expositive of the spurious attempt of the legislature to conceal the actual purpose of the licensing statutes. Licensing statutes must provide notice as to purpose and intent, and the Washington State legislature has intentionally done exactly the opposite. So comes the question, is the state attempting to regulate personal use of personal property? Sure seems like it. Maybe the state would like to license and regulate the type of shoes a man can wear on the public easements. Sure, why not, it is established that many things qualify as vehicles, as in the *Laub* case of a U.S. Passport.

The legislature can in the exercise of its police power, regulate and require the licensure of professionals as it sees fit, but any law in furtherance of the police power must be reasonable and not arbitrary.

51 Am Jur 2d Licenses and Permits §14, citing
Auto Reality Service, Inc. v Brown 27 Ohio App. 2d §77, 272 NE 2d 642;
see also Ohio AGO 96-045

The means or mode of traveling may be subjected to reasonable regulations.
Benning v State 161 Vt. 472, 641 A2d 757
As noted by the *Benning* court, above, the state may regulate, for the safety of the public

health and welfare, to protect the public health and welfare. However, as discussed supra the choice of vehicle is for individual determination and use, not then subject to state *licensorship*. The shoes people wear are in fact vehicles, same as an automobile or skateboard and as such are subject to state licensing. The state can no more require a license for the use of shoes than they can require a license to ride a skateboard or use a personal automobile.

Commerce is simply defined as payment, delivery, receipt. Intercourse is the giving and receiving of that which is mutually beneficial. What constitutes commerce upon the highways is one of two usual scenarios. *One*: purchase point of origin-delivery/transport along the highway- and payment/receipt at a terminal point, as is defined of shipping vessels in maritime/admiralty. *Two*: purchase/hire of a third party vehicle on the highway-for delivery along the highway- payment/receipt [compensation] for use of the third party vehicle on the highway.

Commerce consists of commercial intercourse. It must be conceded that interstate travel for pleasure and recreation does not savor of anything commercial. It is not business. It is pleasure and recreation and nothing more. The greater amount of interstate automobile travel is for the pleasure and recreation. Business and pecuniary gain have no connection with it. We will consider briefly in the note the meaning of the term commerce and ascertain if the travel must in some way be connected or related to business, trade or gain. It is the opinion of many persons that Congress possesses no power to take cognizance of the automobile which is engaged in interstate travel for pleasure merely, by legislation directly regulating that kind of travel.

See generally Huddy on Automobiles 6th Ed. §86;

Regulations which might be an unreasonable infringement of the common right to use the highways in the one case would be proper when applying to one seeking to use the highways as a carrier of passengers.

Le Blanc v New Orleans 138 LA 243, 70 So 212;
see also *Chicago v Banker* and *Hutson v DesMoines* infra

Moreover it has been held that, as a prerequisite to one operating his automobile

for pleasure on the public ways, the city of Chicago has no power to require a party who uses his automobile for his private pleasure only, to submit to an examination and to take out a license.

Huddy on Automobile 6th Ed., citing
Chicago v Banker 112 Ill. App. 94.

Discussed here again is the personal use dictum *versus* the for hire dictum. Title 46 RCW Chapter 20 is overly broad because it presumes to notice the public, conversely, the public assumes by the vague language, that all are subject to the statutes licensing guise. What is relevant in this statement is that Washington Courts have ruled on class distinctions several times.

“It is well settled that the equal protection of the 14th amendment to the federal constitution does not take from the State the right or power to classify the subject of legislation; it is only [an] arbitrary and unreasonable classification, classifications to which there is no just difference or distinction between the class affected and others that is thus prohibited.”

Huddy on Automobiles 6th Ed. §137, citing *State v Seattle Taxi Cab and Transfer Co.* 90 Wash. 416, 156 Pac 837; *Allen v City of Bellingham* 95 Wash. 12, 163 Pac18; *McGlothorn v City of Seattle* 199 Pac 457

The legislature has ample power to compel the owners of...motor vehicles used for the carriage of passengers for hire to procure licenses.

Hutson v Des Moines 176 Iowa 455, 156 NW 883

The fact that the operator of a vehicle has taken out a license to operate it for hire does not raise any presumption that he is actually engaged in that business.

City of Chicago v Gall 195 Ill. App. 41;
See also Huddy on Automobiles 6th Ed. §145

No license is required to use personal automobiles for personal affairs, and no state may coerce or otherwise mandate a license to exercise personal liberties. It seems appropriate to discuss when, and to whom a license is required. To follow this discussion, notice the language

below, *persons driving motor vehicles*. Now let's digress to RCW 46.20.001 previous and the language thereto. In the first sub chapter we see the language "*person may drive a motor vehicle*". Relevant here is the reference to the *Stork* court. Persons who drive for hire a.k.a. for compensation, are the proper and only subject of legislation.

Chauffeur. The term in legal significance means any *persons* operating or *driving a motor vehicle* as an employee or for hire. *Italic mine, emphasis mine*

Huddy on Automobiles 9th Ed. § 27, Definitions.

The occupation of a chauffeur for hire is one for which under the police power inhering in legislative bodies may properly be a subject for regulation.

Huddy on Automobiles 9th Ed. §238, citing
Matter of Stork 167 Cal. 294, 139 P. 694

Under its power to regulate the use of the streets and pass and enforce all necessary police regulations, a city may require the drivers of automobiles used in transporting persons or property for hire to be examined and licensed...

Huddy on Automobiles 6th Ed. §221

In 1968, a major reformation was undertaken affecting the motor vehicle acts of many states. Of special note here, as to the strict distinction of who must possess a driver license, in the latter half of paragraph one below, it is made clear that those chauffeur drivers currently in possession of a license will remain current until such time as they may come to renew subject to the new codification. Every driver license issued after 1968 is issued to a chauffeur or driver for hire, notwithstanding the substitution of the word driver in place of chauffeur.

The State of Washington Dept. of Licensing issues thousands of driver licenses every year. Is it a realistic presumption that every man and woman who gets a driver license is a driver for hire, *or*, is it fraud?? If it is a realistic presumption, there is absolutely no cause for any man or woman to be unemployed

However, as this all applies to the State of Washington the following is published and known;

Prior to 1968, chapter six provided for the issuance of operator's licenses and chauffeur license. This distinction was discontinued in 1968. In favor of licensure based on the type or general class of vehicles to be driven by the licensee.

It is also suggested that each state consider adopting a law providing that all operators and chauffeurs licenses issued prior to the effective date of the revised chapter 6 [1968] shall remain valid until their normal date of expiration or the dates of expiration shown on such license cards...
further...

Attention is directed to the fact that this section referring to any person driving “any motor vehicle” is sufficiently broad by reason of the definition of motor vehicle in section 1-134...

UNIFORM VEHICLE CODE AND
MODEL TRAFFIC ORDINANCE, Ch.6, 1968;

Throughout the years of its existence the *Code* has reflected provisions of state driver licensing laws and in turn many state laws have reflected the visions of the *Code*. Although there has been less conformity with the *Code* in driver licensing laws than in rules of the road [Model Traffic Ordinance], nevertheless many state driver licensing laws can be categorized on the basis of similarity to a provision which is now or has been in the past a part of the *Uniform Vehicle Code*.

further...

Hence the development of the *Code* should be of general interest in that it mirrors the evolution of driver licensing law in this country and may be helpful in improving or at least explaining existing laws.

DRIVER LICENSING LAW ANNOTATED, 1980, (herein after DLLA)
U.S. Dept. of Transportation,
National Highway Traffic Safety Administration,
[see Historical notes at preface]

The State of Washington was a major supporter of the UVC and MTO. The definition contained in the federal Motor Vehicle Act is, not of irony, identical in the preceding reference to the DLLA, which uses the object definition of motor vehicle contained in UNIFORM VEHICLE CODE AND MODEL TRAFFIC ORDINANCE, Definitions §1-134 Motor Vehicle, which reads;

Every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

What was done in the mid to late 60's, having several revisions to gain nationwide acceptance by 1968, was to combine the operator's license with the chauffeur's license,(as a taxi cab company operating vehicles for hire and the drivers paid to transport people) creating one license. The term chauffeur, French in origin, was deleted and replaced with the English common term, driver.

What did **not** happen, citing from the sources below, is the presumptive all encompassing graft of every man and woman who may use their personal automobile, and subject them to a driver license. Here, once again, deference to RCW 46.20.001 and the language thereto is prudent. Subchapter (2)(c) reads: May not have more than one valid driver's license at any time. Forty years later, this statute bears a striking resemblance to the 1968 Uniform Vehicle Code. The *Code* was extensively amended in 1968 to form the current §6-101(c), by eliminating the operator-chauffeur distinction and by clearly applying the one license concept to all licenses issued under the *Code*. DLLA infra.

Valid driver's license. In 1968 the *Code* abandoned the distinction between operators and chauffeurs licenses and combined these two categories into a single driver's licenses with classifications based upon the type of vehicle the licensee is qualified to drive. Thirty one jurisdictions follow this *Code* concept by issuing just one basic driver's license and by not making the distinction between operators and chauffeurs.

DLLA supra §6-101(a); [including the State of Washington]

The one license concept expresses that every person has but one privilege to drive and that no matter how many different types or classes of vehicles a licensee has been qualified to drive in his home state all types and classes will be noted on one license card. The issuance of one license card to a person for a motorcycle, another card for a passenger car, and another for a tractor semi trailer combination is not recommended because of the inconvenience and enforcement difficulties that would result.

DLLA supra. footnote 4 § 6-101(c)

This annotation covers state laws which provide for license classification for special licensing based upon factors of vehicle type...or factors of vehicle use (...to transport persons or property for compensation...) or a combination of such factors.

DLLA supra §6-104, statutory annotation subsection (a)
(*Washington is listed in this annotation.*)

In Washington the law provides that the director [of the Dept. of Lic.] shall adopt rules and regulations and standards pertaining to a determination of what types of vehicles require special skills for the operations thereof, taking into consideration the extent to which a special knowledge of traffic laws pertaining to the type of vehicle and a special ability to maneuver such vehicles is necessary for the safe operation of the vehicle both alone and in relationship to other types of vehicles on the road.

DLLA supra §6-104 subsection (b);

Every time an executive employee stops, detains, interferes and harasses a traveler on the common highway, that employee invokes and uses commercial licensing policy to coerce the traveler into believing that the personal use of the common highways by personal automobile is illegal and he has authority to deter such further conduct until such time as the policy is complied with.

The illusion of the necessity of a license to use a personal automobile is per se banishment from the free use of the public highways. The state police stop people at random for traveling and issue traffic infractions for no valid operator's license, and arrest people, and impound their personal property for allegedly driving on a suspended license.

For purpose of discussion, if an individual should have the unfortunate circumstance of not paying a traffic infraction, and as a consequence, perhaps the driver license is suspended or revoked, consider RCW 46.20.245, driving While License Suspended. This statute penalizes the driver for traveling the common easements in a personal capacity, with a monetary fine and incarceration. This is done via presumption that because one was traveling the common highways one must have been driving, by definition.

The right to travel includes the freedom to enter and reside in any state, and a state law implicates that right when it actually deters such travel, when impeding travel is its primary objective, or when, as here, it uses a classification that penalizes the exercise of that right. When the latter is involved, heightened scrutiny of the law is required to determine its constitutionality, and the State must come forward with a compelling justification. *Emphasis mine*

Atty. Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898 (1986);
Eggert et al v City of Seattle supra, *Turner v. Fouche* infra.,
see also 39 Mich. Law Review 782

The decision in *Dunn* [*Dunn v Blumstein* 405 US 330] makes clear that the right to travel is, as a fundamental right, violated, by classifications which penalize, not actually deter the right to travel and the actual deterrence was not a factor to be considered in deciding whether a penalty was imposed.

Eggert, supra, citing *Vaughan v Bower* 313 F. Supp. 37
see also *Turner v Fouche* infra

The people have a Right to travel, uninhibited, the common highways. That Right is prejudicially barred when the state or local armed police stop and arrest based on a statute that is factually designed for compensatory drivers. Theft of a personal automobile is loss of personal property. While the personal automobile is in impound, an individual is forced to use alternate methods and modes of transportation.

RCW 46.25 does not have a sub-chapter for the suspension of a commercial driver license. A suspension of a commercial driver license is affected through RCW 46.20.245. This represents proof positive that RCW 46.20 is in fact a commercial licensing statute.

Other illustrations could be included but it is readily apparent that when one is deprived of the use of his automobile today, for all practical purposes his mobility is seriously impaired. Admittedly he may be able to locate public transportation, such as a taxi or a bus, but in many instances it will not be available [when needed]. Furthermore, as we have seen, the constitutional right of mobility is an individual, personal right which is not protected but [de facto] restricted if he is forced to use public transportation.

[a book], THE LEGAL NATURE OF A DRIVER'S LICENSE; John H. Reese.

As a general rule, any law subjecting the exercise of liberty, such as the freedom of movement, to the prior restraint of a license, infringes that freedom.

16A Am Jur 2d Constitutional Law §527.

One's Right to travel is severely limited if he is forced to constantly wait for buses or taxis, both of which would create a financial hardship. For then, the Right to travel freely, with the usual and ordinary conveyance of the day, is then subject to a fee or fare. Which is a state dictate, for an individual to pay, for limited and restricted exercise of a Right.

Strict scrutiny is the most rigorous form of judicial review. In applying the strict scrutiny test the Supreme Court has determined the Right to travel, a fundamental Right worthy of protection by strict scrutiny. Once a court determines that strict scrutiny must be applied, it is presumed that the law or policy is unconstitutional. The government has the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the government must show that its policy is necessary to achieve a compelling state interest. If this is proved, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result.

Here again we have the term 'narrowly tailored'. So, does RCW 46.20 have a narrow state objective as to the licensing of drivers for hire? The answer is NO! Can the statute distinguish the Right to the use of a personal automobile in contrast to that of a driver for hire? NO!

This right to travel is a fundamental right subject to the strict scrutiny test under the United States Constitution.

16B Am Jur 2d Constitutional Law §612,
see also *Johnson v City of Opelousas* 658 F. 2d 1065

To be unconstitutional the restrictions must prevent or limit a person's freedom of movement.

15A Am Jur 2d, Commerce §97 and cases cited.

Taking into consideration what has been discussed thus far, in order for the statute to have a valid objective only two plausibility's exist; 1) when the personal automobile was purchased, The buyer was then obligated to hire a full time driver subject to the license statute, for two reasons; a) certainly one cannot pay himself to drive, b) if the buyer is the operator /driver, then he is required by law to obtain a business license and pay taxes to the Dept. of Revenue; 2) Every automobile dealership is in fact a defacto "motor vehicle" distributor wherein every vehicle purchased is actually a private 'for hire' vehicle and the purchaser is subject to the licensing statute.

A partnership or corporation is not entitled to a motor vehicle license as such. They may register the machine "in the corporate or partnership name, *but the license must be issued to the person who operates it.*" *italic mine*

The Law Applied To Motor Vehicles. Babbitt §86, @143 citing, *Emerson etc.. Co. v. Pearson*, 74 N. H. 22, 1906.

However, for either of these to be true, the statute would have had to provide substantive notice of the license regulation at the time of purchase. Not likely however, because as we have seen previously, the legislature has ***NOT*** specifically classified personal automobiles and the personal use thereof.

RCW 46.20 is unconstitutionally vague as overly broad, facially void and as applied void because it allows the state to indiscriminately interfere in private affairs by using what has now been shown to be the driver for hire classification statute to inflict undue harassment, illegal fines, unlawful imprisonment and illegal seizure, upon a common traveler, where NO otherwise authority exists. To remain consistent, RCW 46.55.113 is also void as applied because this statute is an accessory to the fact of illegal enforcement.

...or when it uses any classification which it serves to penalize exercise of that right.

16A Am Jur 2d Constitutional Law §576,
see also *Attorney General of New York v Soto-Lopez* 476 US 898,
106 S CT 2317; see also *Johnson v City of Opelousas*.

It is only after careful study of numerous fragmented statutes, that it is determined, the entirety of Title 46 RCW, is and only for, application to commerce upon the public highways and that all provisional clauses thereto can only be enforced to persons who use the highways in and for commercial trade for compensation.

“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

“RCW 46.25.080 License contents, classifications, endorsements, restrictions, expiration—Exchange of information.

(1) The commercial driver’s license must be marked “commercial driver’s license” or “CDL,”

...(a) Licenses may be classified as follows:

(i) Class A...

(ii) Class B...

(iii) Class C...

RCW 46.25.050(1) Commercial driver's license required

— Exceptions, restrictions, reciprocity.

Drivers of Commercial motor vehicles shall obtain a “commercial driver’s license” as required under this chapter...

HOWEVER, this requirement does not apply to any person:

(C) Who is operating a recreational vehicle for non commercial purposes.

It is undisputed that all driver licenses are issued under RCW 46.20 (even those issued to common carriers under RCW 46.25, and RCW 81 et seq) as and for the purpose of trade, traffic and transportation upon the public highways. Below is the *implied exclusion* rule. Notably, it is reasonably ascertainable that the statutes apply to drivers of businesses, thereto by implied exclusion, if the statute does not expressly include private travel, then it impliedly excludes it.

...and it is possible to argue that it is limiting only under the rule of express mention and implied exclusion. In *State ex rel. Becker v. Wiley* 16 Wn 2d 340, 133 P. (2d) 507, this court said, with respect to that rule, the following: ". . . This rule should be applied only if and when it aids in determining legislative intent.

"In other words, the principle is to be used only as a means of ascertaining the legislative intent where it is doubtful, and not as a means of defeating the apparent intent of the legislature."

King County Employees Assn. et al. v. State Employees' Retirement Board 54 Wn.2d 1

We cannot presume the legislature meant it to be applied to persons it specifically **excluded**. *City of Seattle v. State*, 103 Wn 2d 663, 678, 694 P.2d 641 (1985); 16A AM. JUR. 2D *Constitutional Law* § 218, at 109 (1998) **Emphasis mine**

Mt. Hood Beverage Co. v. Constellation Brands, Inc.
149 Wn.2d 98 (2003)

There is no such thing as a personal driver license!! As shown previously, the legislature has seen to discuss 'general' license schemes referencing RCW 46.20, as well as special commercial license under RCW 46.25 issued pursuant to RCW 46.20, but what is **not** discussed, neither is it written anywhere in the breadth of title 46, is the term 'personal' driver license. That term is likewise not discussed in the Washington Administrative Code, or any other associative policy. However, it does further serve dogmatic, the whole act rule, which now undoubtedly has determined the driver license a.k.a. operator license to be a business license for compensation.

Not to get lost in the vortex of commercial definitions, the State of Washington has declared by Executive directive in the Administrative Code, that "driving" is in fact driving a motor vehicle in *commerce* and that a person is deemed a *commercial* operator/driver.

WAC 308-100-005 (3) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

WAC 308-100-005(10) "Street driving" means driving a commercial motor vehicle on a

public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

In fact the entirety of WAC 308-100 is a mandate to the State of Washington Dept. of Licensing, directing the issuance of a commercial driver license and NO other kind. However one may escape this tenebrous licensing scheme if an automobile qualifies as a recreational vehicle primarily designed for travel use.

WAC 308-100-210 the term "recreational vehicle" shall include vehicles used exclusively for noncommercial purposes which are: (1) Primarily designed for ... travel use;

This too is illusive, as discussed earlier, the term travel is a broad vague term with contextually express statutory meanings, notwithstanding every vehicle run on the highways was designed for travel in one context or another. Caution be had to recreational use as well, because recreational use also has business ramifications. For clarification, the Washington Administrative Code specifically defines the term "*recreational vehicle*" at WAC 308-100-210 which policy reads:

WAC 308-100-210 Recreational vehicle—Definition.

For the purposes of RCW 46.25.050(1)(c), the term "recreational vehicle" shall include vehicles used exclusively for noncommercial purposes which are: (1) Primarily designed for recreational, camping, or travel use.

Note the use of the term *vehicle*. Vehicles have a commercial orientation when spoken in the language of statute. To be sure, there are many businesses that rent out motor-homes and motorcycles and mini-cars for tourists to fulfill their recreational muse.

The Law Applied To Motor Vehicles. Babbitt §91, @147 stating,

Still again, subdivision of the last mentioned class has occurred, vehicles on four wheels perhaps, being placed in one group, and those on two wheels in another; or perhaps, vehicles drawn by two horses have been made to pay one rate of license fee, and vehicles drawn by one horse, another. Where, then, in principle, is there any distinction when it comes grading or grouping automobiles into sub-classes according to their horse-power, or the number of passengers they carry? It may be

said of either class, that the large or heavy vehicle pays a license fee rated on some arbitrary basis—a commercial vehicle pays on a standard established for the class within which it falls, and the pleasure vehicle owner pays his license according to the vehicle which he operates. (*Dillon on Mun. Corp.*, 4th Ed., Sec. 682.) Anybody can join any one or several of the classes as he chooses.

A personal automobile may be used for personal reasons on the roads and ways as long as that use is not and does not cumulate to trade, traffic and transportation; this was expressed in the cases of *State v Scheffel*, *Chicago v Gall*, *Chicago v Banker*, and *Howards Yellow Cab* as it is, by intent of the whole act.

Giving respect to the rule of exclusion, it was equally stated by the *Marr* court; while the factual basis of *Marr* is not precisely adjunct to this discussion, the theoretical resonance is the same; from the language of the [statute], one can legally [travel] as long as he or she does not engage trade or traffic [for compensation]. One's personal automobile is his personal property the same as the shoes on his feet, and as such, may be used to his personal indulgence not being in service for hire.

From the language of the ordinance, one can legally beg as long as he or she does not do so aggressively.

Spokane v. Marr 129 Wn. App. 890.

"... [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 199 Cal. 42 (1926)

ANATOMY OF A TRAFFIC INFRACTION

One might be wondering where is the written authority for the police power to be executed against a personal private traveler. Nowhere. The threshold of the police power, at least as far as statute traffic regulations are concerned, is the public enterprising businesses. Initially, in this section, remember that possession of a driver license and a vehicle registered to the state is a public benefit of business grant from the state.

What is the point of challenging a traffic infraction? Perhaps even to challenge personum jurisdiction, or subject matter jurisdiction? What of an effort to challenge the facts that gave rise to the infraction? Perhaps a challenge that the infraction failed to give notice.

A citation by definition is a command, by way of writ, from an agency head or a policy dictate, sometimes issued by a court, to compel an officer of the court to do a thing. An arrest warrant is a per se citation. The traffic infraction issued by a policeman is a violation of the separation of powers doctrine. A court is only supposed to resolve disputes and settle claims between litigants, based on the facts brought by either party.

As it pertains to a traffic infraction, the judiciary has stepped across boundaries and issued a “citation” commanding the executive branch, to use the courts format for an infraction notice, whereby providing to the executive branch a “pleading” document, intended to perfect judicial appellate jurisdiction. The executive branch citation, a.k.a. traffic infraction, is an executive branch citation; which, on the reverse, gives the option to appeal the infraction to a lower court. The 'appeal' to a lower court is descendant of an executive administrative action.

As citations go, look to Infraction Rules for Courts of Limited Jurisdiction 2.1(a) (IRLJ 2.1(a), which reads as follows;

Infraction Form Prescribed or approved by the Administrative Office of the Courts.
Infraction cases shall be filed on a form entitled "Notice of Infraction" prescribed by the Administrative Office of the Courts; ... Notice of Infraction forms prescribed or approved by the Administrative Office of the Courts are presumed valid and shall not be deemed insufficient by reason of defects or imperfections which do not prejudice substantial rights of the defendant.

The preceding “citation” is found at the bottom of a traffic infraction. Notice at the

bottom of the infraction claim form, the words “WASHINGTON UNIFORM COURT DOCKET”. This 'form' of infraction, or *writ*, is a command by the judiciary to the executive department of government, the police, to provide the judiciary with all of the jurisdictional information they need to perfect the states claim.

Everything that happens in a court room happens at the discretion of the judge. However, be equally assured that the judge will use that discretion to the best benefit of the state; because as the rule above indicates, an infraction is valid so long as it does not “prejudice substantial rights of the defendant.” And a drivers substantive rights will not have been violated, because the driver is presumed to have knowledge of the constructive contract. (*see definitions*)

Because several statutory alternatives for meeting that element were based on conduct alone, the statutory scheme created a strict liability crime, requiring no proof of the defendant's intent.

State of Washington v. Steven Mertens

(2003)

The policy enforcement employee is only enforcing a contract that was made to operate a business, and the judge is fully cognizant of that contract. HERES WHY; the infraction contains a certification by the police employee that everything is as true:

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON
[your legal person information here]

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY
AND
[your business information here]

DID AND THEN THERE COMMITT EACH OF THE FOLLOWING OFFENSES
[statute violation(s) here]

I CERTIFY UNDER PENALTY OF PERJURY..... /S/

On the infraction, there are three 'jurisdictional balloons'. The first balloon contains a persons employee driver license number which certifies the person to be a driver. It also contains all identifying information about t legal person. It also contains a block for the identity of the employer of the driver. It also contains several blocks which indicate that the statute violation occurred within the venue jurisdiction of the State of Washington and/or the local jurisdiction. The first balloon gives the court indisputable personum jurisdiction.

The second balloon contains all of the business identifiers (as far as the DOL, DMV, and DOT are concerned, saving taxing regulations) necessary to convince a judge, that in fact, there exists a business for the proprietary jurisdiction of the police and the latent jurisdiction of the court. It contains the business name and address as well as the business vehicle identifiers, primarily the license plate number. The license plate number itself is tantamount to a Master Business License; and as such, is a physical address, as it were, of the business vehicle, much like a street address if the business were located on real property. Occasionally a policeman will write "same as above", in the "owner" box. This is because the owner/operator of the business occasionally is driving his own business. The second balloon gives the court the first element of subject matter jurisdiction, being that the business is conducted within the State of Washington.

This third balloon gives the court, the second half of subject matter jurisdiction. This balloon calls for the specific statute code section purportedly violated. The box labeled DV is an acronym for domestic violence.

As for wanting to argue facts; when a person checks the box to request a mitigation (appeal) hearing, he is not only acquiescing that he committed the violation, and subsequently wants to negotiate the damages he caused the state (asking for equitable review), he also, in and of his eristic delusion, has voluntarily given the last element of subject matter jurisdiction, which are now *the facts in evidence*. All totaled, the court has complete and inescapable jurisdiction to uphold the executive decision.

Damages? Yes damages. When a traffic violation is alleged, it is a suspect determination, that a driver has disrupted the flow of traffic or caused there to be a potential public risk circumspectly harmful to some other fellow traveler or commercial enterprise. So, in the estimation of the states regulatory police power, it is deemed suitable to issue a warning, as it were, that the conduct is suspect, and that the driver surrender some consideration of penalty (money), intended to be a form of behavioral modification.

CRIMINAL **TRAFFIC** **NON-TRAFFIC**

0018330 BC
WASHINGTON

IN THE DISTRICT MUNICIPAL COURT OF BOTHELL
 STATE OF WASHINGTON , PLAINTIFF VS. NAMED DEFENDANT
 COUNTY OF KING
 CITY/TOWN OF BOTHELL

L.E.A. ORI #: WA0170300

COURT ORI #: WA0175K1J

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO.	STATE	EXPIRES	PHOTO I.D. ON PERSON <input type="checkbox"/> YES <input type="checkbox"/> NO
NAME: LAST	FIRST	MIDDLE	
ADDRESS <input type="checkbox"/> IF NEW ADDRESS			
CITY	STATE	ZIP CODE	EMPLOYER LOCATION
DATE OF BIRTH	RACE	SEX	HEIGHT WEIGHT EYES HAIR
RESIDENTIAL PHONE NO. ()	CELL / PAGER NO. ()	WORK PHONE NO. ()	
VIOLATION DATE ON OR ABOUT	MONTH	DAY	YEAR TIME 24 HOUR
AT LOCATION	M.P.	CITY / COUNTY OF	<input type="checkbox"/> INTERPRETER NEEDED LANG:

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YR.	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO.	STATE	EXPIRES	TR. YR.	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TR. YR.
OWNER/COMPANY IF OTHER THAN DRIVER							
ADDRESS CITY STATE ZIP CODE							
ACCIDENT NO	BAC NR	COMMERCIAL VEHICLE	HAZARD PLACARD	EXEMPT VEHICLE	FARM R.V.	FIRE OTHER	

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

1. VIOLATION/STATUTE CODE	<input type="checkbox"/> DV
2. VIOLATION/STATUTE CODE	<input type="checkbox"/> DV
<input type="checkbox"/> MANDATORY COURT APPEARANCE OR <input type="checkbox"/> BAIL FORFEITURE IN U.S. \$	
APPEARANCE DATE	MO. DY. YR. TIME A.M. P.M. RELATED # DATE ISSUED
WITHOUT ADMITTING HAVING COMMITTED EACH OF THE ABOVE OFFENSE(S), I PROMISE TO APPEAR AS DIRECTED ON THIS NOTICE	I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S), AND MY REPORT WRITTEN ON THE BACK OF THIS DOCUMENT OR ATTACHED TO IS TRUE AND CORRECT.
<input checked="" type="checkbox"/> DEPENDANT'S SIGNATURE	OFFICER #
	OFFICER #

COMPLAINT / CITATION

ABSTRACT OF JUDGMENT	CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FND/JUDG DATE
	1	G NG		G NG D BF	\$	\$	\$	ABS. MLD TO OLY
	2	G NG		G NG D BF	\$	\$	\$	TO SERVE
						OTHER COSTS \$		WITH DAYS SUSP.
	RECOMMENDED NONEXTENSION OF SUSPENSION <input type="checkbox"/>		LICENSE SUR-RENDER DATE		TOTAL COSTS \$		CREDIT/TIME SVD	

0018330 BC

TORT LIABILITY

The journal discussion below, not intending polemic discourse from the significance of the article, has been taken excerpt and edited for content. The journal article is a discussion of the differences between those who are specifically invited, impliedly invited and those who trespass for want of permission to enter a premises.

The article also discusses the liability of tort, or percent thereof, for injury while on those premises, with respect to the type of permission granted, implied or expressed. The article lays out differences between property owner's vs lessors of property and their relation to the permission given. As a matter of course, of and for expurgatory value, there also is intold of a right of passage on property. It is the last which the discussion here exemplifies.

As we move through the actual article excerpt, be mindful of the following terms. There is significance in these terms as we substitute them later.

owner.....occupier.....licensee.....defendant.....invitee..... bare licensee..
visitor..... premises..... property..... dangerous..... condition.....

63 YALE LAW JOURNAL 605

Rule: Even where the occupier knows of a danger, he owes the licensee
no duty of precaution if the danger is perfectly obvious.

This rule has sometimes been put as a duty to warn the licensee of a known "trap" and some of the older cases considered a condition a trap...if it was...dangerous and very much concealed.

The licensee must show defendant's knowledge of the dangerous pitfall, whether it be natural condition or arrangement of premises. ...or that he made an inspection which would have been likely to disclose the dangerous condition to him. If he shows that defendant created the dangerous condition, which will suffice. While Plaintiff must show defendant's actual knowledge of the condition, defendant will be held to appreciate its danger if a reasonable man would do so.

An interesting question is posed if defendant created a condition which was not dangerous at the time but which would foreseeably become dangerous.

There are a good many dicta —mostly in older cases —and some holdings to the effect that the occupier of land owes the bare licensee no greater duty than to refrain from intentional, or willful or wanton, misconduct towards him.

“Once a person’s presence becomes known, the significance of the classifications largely disappears, and he is owed the duty of reasonable care (as to activities) whatever his status on the land. ... This does not mean, however, that the plaintiff’s status may have no bearing on what conduct defendant may reasonably expect of him.” (*cites omitted*)

The occupier is commonly said to owe greater duties to his invitees than to licensees, notably with respect to inspection and discovery of latent dangers on his land. ...The economic benefit theory proceeds on the assumption that affirmative obligations are imposed on people only in return for some consideration or benefit. Any obligation to discover latent dangerous conditions of the premises is regarded as an affirmative one, and the consideration for imposing it is sought in the economic advantage—actual or potential—of the plaintiff’s visit to the occupier’s own interest.

“It is not the fact of ‘invitation, nor of the knowledge of the probability of the customer’s presence which this implies which raises the duty, but the purpose of the visit and the occupier’s interest therein.”
(*cites omitted*)

The invitation test does not deny that “invitation” may be based on economic benefit, but it does not regard that as essential. Rather it bases “invitation” on the fact that the occupier by his arrangement of the premises or other conduct has led the entrant to believe “that [the premises] were intended to be used by visitors” for the purpose which the entrant was pursuing, “and that such use was not only acquiesced in by the owner [or possessor], but that it was in accordance with the intention and design with which the way or place was adapted and prepared.... Even an express invitation might not raise such expectations, however. ...It has been applied particularly when premises were prepared for the public or a segment of it.

“A business visitor is a person who is invited or permitted to enter or remain on land in the possession of another for a purpose directly or indirectly connected with business dealings between them.” (*cites omitted*)

premisess, whether for business or for any other purpose, it is his duty to be
reasonably sure that he is not inviting them into danger, and to that end he must
exercise ordinary care and prudence to render the premises reasonably safe for the

visit.” ...
commercial business
is moved by a lawful
invitation. The enterprise
interested therein, *or* that
(*cites omitted*)

“Mutuality of interest does not mean that there must be a
transaction between the parties, but merely that each party
purpose or interest in the object and subject-matter of the
must be mutual to the extent that each party is lawfully
there is a common interest *or* mutual advantage involved.”

In other cases, there has been no arrangement of the premises so as to induce entry, and the significant factor is the economic benefit conferred on the occupier by the visit. ... This is true of ... the person summoned to transact business with the occupier, whether the premises be arranged for business....

...viewed as indirectly incidental to an economic benefit, it seems much more to the point that “such people know that the occupier is required by law to receive them, and so have reason to believe that their coming is anticipated, and that the premises are ready for their reception.”

...”There is no reasonable distinction between the rights of a person visiting the premises for the purpose of escorting another to a departing train, and the rights of one who goes there for the purpose of talking with a departing person on a business matter. There is a wide difference between the use of the premises with such motives [the latter] and those of idle curiosity and merely to kill time.” [the former] (*cites omitted*)

These cases can be reasonably explained only by the invitation theory, as can the cases involving an apparent extension of the highway. If a man arranges part of his land so that it looks like an extension of the public sidewalk or roadway, a traveler who takes it for such is an invitee though his entry onto the private land confers no benefit whatever on its possessor.

“It makes no difference that no pecuniary profit or other benefit was received or expected by the society. The fact that the plaintiff comes by invitation is enough....” (*cites omitted*)

If, on the other hand, defendant arranges part of his premises, leading a visitor reasonably to think they are included in the area of invitation, he will be held as an invitor as to that part even though he did not mean to invite the plaintiff to it.

The occupiers' duty to the invitee is one of due care under all circumstances. If plaintiff is an invitee at the time and place of his injury, the occupier, of course, owes him all the duties he owes to trespassers and licensees. Thus the occupier must use care not to injure plaintiff by negligent activity.... In addition, the occupier owes the duty of care to inspect his premises and to discover dangerous conditions. This is the most prominent difference between the rights of invitees and those of licensees....

...the occupier need not invite visitors, and if he does, he may condition the invitation on any terms he chooses, so long as there is full disclosure of them. If the invitee wishes to come on those terms, he assumes the risk.

But here again, the basis of defendant's truncated duty is not his superior knowledge, but his ownership and control of the unreasonably dangerous condition. Under this rule the occupier's superior knowledge might properly be called a condition of liability, but it is not a reason or justification either for the occupier's duty or for the limitation put upon it.

Defendant claimed that its only duty was to warn, but the court answered that it did "not recognize it to be a universal rule that an owner who invites the public upon his premises for business or pleasure may, in the absence of reasonable necessity, maintain thereon dangerous agencies, as wires charged with deadly currents of electricity, in such places as to endanger life and limb, and escape liability by maintaining danger signals or otherwise advising the public."

(cites omitted)

In cases where the invitee's recovery has been denied, contributory negligence has often played an important role, and is sometimes hopelessly confused with the duty issue. If contributory negligence would always bar an invitee who was injured by a condition of the premises which he knew and appreciated, the confusion would do little practical harm....

Most of the decisions denying liability are rested equally on the ground of contributory negligence. *Curtis v. Traders Nat. Bank*, 314 Ky. 765, 237 S.W.2d 76

These situations show that the invitee will not always be barred by his self exposure to known dangers on the premises. This means that the Restatement rule will sometimes bar a plaintiff, who has not been negligent, from recovery against a defendant who has acquainted the plaintiff with the condition which would be negligent towards him if a full duty of care were owed.

A right to enter also stands on a footing different from the privilege which the occupier is free to withhold or to give by invitation or permission. This does not mean that visitors in their own right should all be accorded the same treatment. They are not, and probably should not be. Rather, it casts further doubt on the utility of the present system of fairly rigid classifications.

END

In this latter interpretive discussion and for purposes of this section, the following terms used in the journal are given accord; though still very much within the parameters of the scope of the journal discussion, the terms are augmented, to give veracity to this discussion. The term 'plaintiff' will not be affected because the non-business traveler (now armed with absolute knowledge) would be the injured plaintiff. When reading this version, take care to notice, the journal terms, have been replaced with terms applicable to this topic, and yet remains in context:

Journal <u>terms:</u>	substitute <u>terms:</u>
owner.....	public
occupier.....	state
licensee.....	licensee (business)
defendant.....	state
invitee.....	traveler
bare licensee..	traveler
visitor.....	traveler
premises.....	highways/roads
property.....	highways/roads
dangerous.....	business
condition.....	license

Rule: Even where the *State* knows of a *business*, the State owes the *licensee (business)* no duty of precaution **if** the *business* is perfectly obvious.

This rule has sometimes been put as a duty to warn the *licensee(business)* of a known “trap” and some of the older cases considered a *license* a trap...if it was...*business* and very much concealed.

The *licensee(business)* must show *state's* knowledge of the *business* pitfall, whether it be naturally occurring or a specific arrangement of *highways/roads*. ...or that he made an inspection which would have been likely to disclose the *business license* to him. If he shows that the *state* created the *business license*, that will suffice. While Plaintiff must show *state's* actual knowledge of the *license*, the *state* will be held to appreciate its *business* if a reasonable man would do so. An interesting question is posed if the *state* created a *license* which was not *business* at the time but which would foreseeably become *business*.

There are a good many dicta —mostly in older cases —and some holdings to the effect that the *state* owes the *traveler* no greater duty than to refrain from intentional, or willful or

wanton, misconduct towards him.

“Once a person’s presence becomes known, the significance of the classifications largely disappears, and he is owed the duty of reasonable care (as to activities) whatever his status on the land. ...This does not mean, however, that the plaintiff’s status may have no bearing on what conduct the *state* may reasonably expect of him.”

The *state* is commonly said to owe greater duties to its *travelers* than to its *licensee* (*business*), notably with respect to inspection and discovery of latent *business* on his land. ...The economic benefit theory proceeds on the assumption that affirmative obligations are imposed on people only in return for some consideration or benefit. Any obligation to discover latent *business license* of the highways/roads is regarded as an affirmative one, and the consideration for imposing it is sought in the economic advantage—actual or potential—of the plaintiff’s visit to the *state's* own interest.

“It is not the fact of invitation, nor of the knowledge of the probability of the customer’s presence which this implies which raises the duty, but the purpose of the visit and the *States* interest therein.”

The invitation test does not deny that “invitation” may be based on economic benefit, but it does not regard that as essential. Rather, it bases “invitation” on the fact that the *state* by his arrangement of the *highways/roads* or other conduct has led the entrant to believe “that [the *highways/roads*] were intended to be used by visitors” for the purpose which this entrant was pursuing, “and that such use was not only acquiesced in by the *public* [or possessor], but that it was in accordance with the intention and design with which the way or place was adapted and prepared.... Even an express invitation might not raise such expectations, however.... It has been applied particularly when *highways/roads* were prepared for the public or a segment of it.

“A business visitor is a person who is invited or permitted to enter or remain on land in the possession of another for a purpose directly or indirectly connected with business dealings between them.”

“[W]hen one expressly or by implication invites others to come upon his *highways/roads*, whether for business or for any other purpose, it is his duty to be reasonably sure that he is not inviting them into *business*, and to that end he must exercise ordinary care and prudence to render the *highways/roads* reasonably safe for the visit.” ...“Mutuality of interest does not mean that there must be a commercial business transaction between the parties, but merely that each party is moved by a lawful purpose or interest in the object and subject-matter of the invitation. The enterprise must be mutual to the extent that each party is lawfully interested therein, *or* that there is a common interest *or* mutual advantage involved.”

In other cases there has been no arrangement of the *highways/roads* so as to induce entry, and the significant factor is the economic benefit conferred on the *state* by the visit. ...This is true of ... the person summoned to transact business with the *state*, whether the *highways/roads* be arranged for business....

...viewed as indirectly incidental to an economic benefit, it seems much more to the point that “such people know that the *state* is required by law to receive them, and so have reason to believe that their coming is anticipated, and that the *highways/roads* are ready for their reception.”

...”There is no reasonable distinction between the rights of a person visiting the premises for the purpose of escorting another to a departing train, and the rights of one who goes there for the purpose of talking with a departing person on a business matter. There is a wide difference between the use of the premises with such motives [the latter] and those of idle curiosity and merely to kill time [the former].”

These cases can be reasonably explained only by the invitation theory, as can the cases involving an apparent extension of the highway. If a man arranges part of his land so that it looks like an extension of the public sidewalk or roadway, a traveler who takes it for such is an invitee though his entry onto the private land confers no benefit whatever on its possessor.

“It makes no difference that no pecuniary profit or other benefit was received or expected by the society. The fact that the plaintiff comes by invitation is enough....” (*cites omitted*)

If, on the other hand, *state* arranges part of the *highways/roads*, leading a *traveler* reasonably to think they are included in the area of invitation, he will be held as an invitor as to that part even though he did not mean to invite the plaintiff to it.

The *states* duty to the *traveler* is one of due care under all circumstances. If plaintiff is a *traveler* at the time and place of his injury, the *state*, of course, owes him all the duties he owes to trespassers and *licensee (business)*. Thus, the *state* must use care not to injure the plaintiff by negligent activity.... In addition, the *state* owes the duty of care to inspect the *highways/roads* and to discover *business licenses*. This is the most prominent difference between the rights of *travelers* and those of *licensee (business)*....

...the *state* need not invite *travelers*, and if he does, he may *license* the invitation on any terms he chooses, so long as there is full disclosure of them. If the *traveler* wishes to come on those terms, he assumes the risk.

But here again the basis of *state's* truncated duty is not its superior knowledge, but its ownership and control of the *business license*. Under this rule the *state's* superior knowledge might properly be an assumption of liability, but it is not a reason or justification either for the *state's* duty or for the limitation put upon it.

Defendant claimed that its only duty was to warn, but the court answered that it did “not recognize it to be a universal rule that an owner who invites the public upon his premises for business or pleasure may, in the absence of reasonable necessity, maintain thereon dangerous agencies, as wires charged with deadly currents of electricity, in such places as to endanger life and limb, and escape liability by maintaining danger signals or otherwise advising the public.”

In cases where the *traveler's* recovery has been denied, contributory negligence has often played an important role, and is sometimes hopelessly confused with the duty issue. If contributory negligence would always bar a *traveler* who was injured by a *license* of the *highways/roads* which he knew and appreciated, the confusion would do little practical harm....

Most of the decisions denying liability are rested equally on the ground of contributory negligence. *Curtis v. Traders Nat. Bank*, 314 Ky. 765, 237 S.W.2d 76

These situations show that the *traveler* will not always be barred by his self exposure to known *businesses* on the premises. This means that the Restatement rule will sometimes bar a plaintiff, who has not been negligent, from recovery against a *state* who has acquainted the plaintiff with the *license* which would be negligent towards him if a full duty of care were owed.

A right to enter also stands on a footing different from the privilege which the *state* is free to withhold or to give by invitation or permission. This does not mean that *travelers* in their own right should all be accorded the same treatment. They are not, and probably should not be. Rather it casts further doubt on the utility of the present system of fairly rigid classifications.

END

What does all this mean?

It means that the state should take caution to warn travelers that an application for a driver license or an operator's license moves the traveler from a "free use" category to a full time regulated business category. Conversely, a traveler has an obligation, to make his non-business presence known to the state. The state owes a duty of full disclosure as to the distinction, purpose of, and use for, the application for driver/operator license. When that "free use" traveler distinction is made, the several classifications of vehicles and motor vehicles become irrelevant.

The states regulatory authority stops predominately (not entirely) at the regulation of businesses. The state has a duty to protect all travelers as members of the general public; all the while it is surveying the roadways affecting its business regulatory police power. The state cannot force an individual into a business license of any kind and must accept the private traveler on the common highway.

Licenses are for the conduct of businesses in commerce and the private traveler cannot be forced by attrition to relinquish or surrender his common law access to the highways for some license to engage in a business pursuit. The state has an obligation to allow private use of the highways. When a policeman stops a traveler, he is trespassing creating a *private* nuisance; if the policeman issues a traffic infraction, he creates an aggravation of circumstance. Although, the infraction is tantamount to a solicitation, and thusly, an invitation to engage in a secured transaction (saving elaboration), see UCC 1et seq, offering an opportunity to the traveler, to submit to state jurisdiction, and/or admit that someone was actually *driving* a business.

The nuisance theory is reciprocal. It is this nuisance, post trespass, which creates the tort liability of John Doe policeman. The fact that John Doe policeman has impeded the ability to travel, he is the very epitome of an obstruction.

Blacks law dictionary defines nuisance as;

nuisance.

1. A condition or situation that interferes with the use or enjoyment of property.

“A ‘nuisance’ is a state of affairs. To conduct a nuisance is a tort.

“The right of the public in a common highway is paramount and controlling. This right extends to the entire territory within its limits and an obstruction placed upon any part of it constitutes a public nuisance.

Commonwealth v. King, 13 Met. 115.”

The Law Applied To Motor Vehicles, Babbitt c.1911;
citing *Morton v. Moore*, 81 Mass. 573

To further define nuisance, we'll look to Washington statutes, to discern, between a public and a private nuisance. First, we find a poignant statement of nuisance, affecting state actors, at RCW 7.48.120, which reads as follows:

Nuisance defined.

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

Emphasis mine

Below is the distinction of public versus private. Carefully noting though, that a public nuisance, is when an obstruction affects the whole of the public; as likened to a roadblock or fallen tree, which prevents passage to **all** people. RCW 7.48.130 reads as follows:

Public nuisance defined.

A public nuisance is one which affects equally *the rights of an entire community* or neighborhood, although the extent of the damage may be unequal.

Italic mine

Traveling privately is not *unlawful*; conversely, police license regulation directed to private travel is **not** *lawful*. What concerns the personal private traveler is the following statute. The private nuisance is one that affects an individual interest, and not the whole of the public.

RCW 7.48.150, reads as follows.

Private nuisance defined.

Every nuisance not included in the definition of RCW 7.48.130 is private. But the policeman is protected by the state, right? No, not in the instance of the personal private traveler. It was found at RCW 7.48.120 above, that a nuisance is, “unlawfully doing an act”. Does the policeman have lawful authority to interfere with private travel? Not according to one hundred ten plus years, of legal authority contained in the breadth of this writing. The state is not in disagreement with this statement. State policy is found at RCW 4.92.070, which says that the state will defend an employee *if* he is within the scope of his official duties. RCW 4.92.070 reads:

If the attorney general shall find that said officer, employee, or volunteer's acts or omissions were, or were purported to be in good faith, within the scope of that person's official duties,

The police' official duties are restricted to regulating business's. It is not a public employee defense that a traveler did not apply for an employee driver license and/or convey an interest in the automobile to the state by registering it as a business or even pay quarterly business taxes; it also is not a defense that so many other persons have licenses.

While the state has an obvious interest in the money machine that the Dept. of Licensing has allowed to burgeon by way of failure to disclose the true intent of the licenses and yet accept every single license application that crosses the counter; it does not, itself, obviate the individual policeman from liability in tort, for trespass.

It is not a defense that the policeman does not know the breadth of the law which is stated in this writing; then he is poorly trained in the law of the highways. A policy enforcement employee who affronts the private traveler, should be trained in the breadth of this legal study.

The determination of who is “adversely affected or aggrieved within the meaning of any relevant statute” has “been marked out largely by the gradual judicial process of inclusion and exclusion aided at times by the courts judgment as to the probable legislative intent derived from the spirit of the statutory scheme.”

“That the streets of the city are highways of the state, and therefore public roads which every citizen has a right to use, *is* a valid argument against *stopping or unreasonably hindering travel over the streets*, but it is *no* argument at all against subjecting travel over those streets to rules and regulations.”

emphasis mine

The Law Applied To Motor Vehicles. Babbitt §43, @112 citing, *City of St. Louis v. Green*, 7 Mo. App. 468

However, should a person actually possess a driver or operator license, admittedly suffers the contributory negligence “learning curve”. Notwithstanding that, an individual can use a company vehicle without a driver license, according to the *Scheffel* court (*State v Scheffel* 82 Wn 2d 872); the fact that a business license is in effect on the vehicle, pugnaciously mandates that a person take up the traffic infraction solicitation and go to court and mitigate the damages, because the alleged driver presumptively falls under the prescript of the statute regulation.

People have a right to the use of the common highways, but equally have an obligation to *NOTICE* the state of that intended use, for the simple reasons that one is simply exercising the existential right to free use of the highways and is not an enemy combatant. Once notice is given the state, by any one or more agencies, of the status as private traveler, the full weight of tort liability, falls on the policeman who has actually engages and detains the personal private traveler. If the police are going to enforce the law, they should know the law; the affect for and the effect of said law.

PUBLIC DISCLOSURE

This writer undertook to get information from the State of Washington Dept. of Licensing (DOL) to quantify the policy law stated herein this writing. A series of public disclosure (p-d) inquiries went out and were answered in a timely professional manner. The p-d's themselves and the e-mails exchanged are part of permanent files retained by this writer; what was queried is documented hereafter.

The first set of requests was for the establishment of the license plates on vehicles, those questions were presented as follows;

- Is the vehicle license plate number * * * a business license?
- Is the license plate number * * * a vehicle business license?
- If * * * is not the business license number for the vehicle, please provide the business license number for said vehicle?
- At the time of, and upon, the application, in * * *, for a vehicle license, what was the name of the business printed on the application for license?
- At the time of, and upon, the application, in * * *, for a vehicle license, what was the type of business the vehicle was registered under?
- Please provide a copy of the application for vehicle license, congruent with the vehicle license stated above.

The response received from the DOL indicated that the license plate number was not registered to a business but only to a person's name, and further requested me to fill out a notarized request using their form, which was done. The notarized request was required by the DOL because the information requested may fall under the purview of the privacy act. The notarized request was filled out and sent with these questions;

- Please provide to me a copy of the original application for vehicle license on a specific vehicle.
- Please also provide a copy of the original application for driver license for a particular person.
- Please also provide a copy of the original application for an operators license for a specified person with a known (specified) license number.

Attached as a separate p-d was a question as to the DOL's use of the term "personal driver license". Which is the term the DOL uses on their disclosure form in response to a state request for a driver abstract, when they suspend the driver license of a driver. Included in this query was the use of the term "private" driver license. The DOL does not know what a private driver license is; "No responsive record found." See responsive items 11-12 below. In response to the question of a personal driver license, the DOL stated it thus;

Finally, in response to your question "is there a specific statute that uses the language 'personal driver license,'" I can only reassert that the statute I provided, RCW 46.20.001 provides the authority for driver licensing: "No *person* may drive a motor vehicle upon a highway in this state without first obtaining a valid *driver's license*." (emphasis added).

As to the question for a copy of the driver license application, a notarized form swearing that the information would not be disseminated was sent, intended, as requested, to protect personal information. A response came back telling me that the information would not be released because it contained personal information and also that the record of question was aged and unavailable. The DOL was asked to provide a copy of a blank form application for vehicle license and a blank form application for driver license.

While waiting for a response to the vehicle licensing questions, a p-d was sent asking if the DOL has a form similar to the U.S. FMCSA (federal motor carrier safety act) DOT-150. The DOL' response is that the state does not have a form similar to the DOT-150.

In response to the question of application for vehicle license, the response came back with a blank specimen "Vehicle Certificate of Ownership (Title) Application". Along with that was a computer generated application for driver license. No hard copy form exists for inspection prior to application, as noted in item 6, response below.

5. A blank copy of application for vehicle registration.

(Requested by e-mail of Sunday, October 11, 2009)

A copy of the "Vehicle Certificate of Ownership (Title) Application" form is enclosed with the posted copy of this letter, and under the file name "Veh Reg Application pdf" accompanies the email carrying the electronic version of this letter.

6. A blank application for a driver license.

(Requested by email of Sunday, October 11, 2009)

Interestingly, this form does not exist as a paper form, nor can it be printed as a blank form. The application for a driver's license is completed by the Licensing Services Representative questioning the applicant. Only then is it printed, after which it is signed by the applicant.

An example of both the Record of Application and Application for Commercial Driver's License from a record creating for system testing is enclosed with the posted copy of this letter, and under the file name "DL Application.pdf" accompanies the e-mail carrying the electronic version of this letter.

7. Application for vehicle operators license.

(Requested by letter dated October 15 and received at Master License Service on October 26)

The responsive record is the same as that supplied in satisfaction of Item 6 above

8. Application for motor vehicle operators license.

(Requested by letter dated October 15 and received at Master License Service on October 26)

The responsive record is the same as that supplied in satisfaction of Item 6 above.

9. Application for driver license.

(Requested by letter dated October 15 and received at Master License Service on October 26)

The responsive record is the same as that supplied in satisfaction of Item 6 above.

10. Application for vehicle registration.

(Requested by letter dated October 15 and received at Master License Service on October 26)

The responsive record is the same as that supplied in satisfaction of Item 5 above.

11. The statutory authority which uses the language "personal as it applies to driver licenses. *(Requested by letter dated October 15 and received at Master License Service on October 26, but not the same letter referenced in Items 7-10 above)*

Driver licenses are required by and issued pursuant to Chapter 46.20.001 of the Revised Code of Washington (RCW).

RCW 46.20.001 License required — Rights and restriction.

- (1) No person may drive a motor vehicle upon a highway in this state without first obtaining a valid driver's license issued to Washington residents under this chapter. The only exceptions to this requirement are those expressly allowed by RCW 46.20.025.
- (2) A person licensed as a driver under this chapter:
 - (a) May exercise the privilege upon all highways in this state;
 - (b) May not be required by a political subdivision to obtain any other license to exercise the privilege;and
 - (c) May not have more than one valid driver's license at any time.[1999 c6 §3.]

12. The statutory authority for the issue (sic) of "private" driver license.
(Requested by letter dated October 15 and received at Master License Service on October 26; the same letter referenced in Item 11 above)
No responsive record found.

So it is determined, that an application for license plates and an application for registration are the same thing. An application for title, is an application for a business license; which application doubles as the signing over of ownership interest in an automobile to the state; giving the state an interest in personal property which authorizes the regulation of the business that was created .

A public disclosure was sent to the DOL, asking them to clarify vehicle license plates. The p-d asked the DOL if it could be correctly determined that that License plate configuration 000AAA was a passenger carrier, and the configuration A00000A as a common carrier. Three responses were received initially, stating that the 000AAA plates are passenger and the A00000A plates are for trucks.

To galvanize the certainty in this writing that license plates are business related, these questions were asked of the DOL, but notice below that the DOL has declared the license plates to be an unidentifiable record, and further, will not definitively say *yes* they are business license plates, neither will they say definitively *no* they are not business license plates.

QUERY

1. As it pertains to the license plate configuration, and the relation to the attached disclosure request, could you please state with clarity whether these are in fact license plates issued to "carrier" businesses, and in so stating;
2. I would ask that you answer the disclosure request and state with clarity if an application for vehicle title and an application to register a vehicle is in fact registering a business?
3. I am still not clear on the term "personal" driver license. Ben attempted to locate the term Personal in statute but could not. I ask again could you please tell me what statute I can find the term "personal" as it exists on the attached DOL research document.
4. If the term "personal" does not exist in statute authority, could you identify the term as a misnomer or provide statutory authority to issue personal driver license'.

RESPONSE

We have provided all the public records you requested. Your remaining questions below are not requests for identifiable public records. Since I am with the public disclosure office, I can't effectively respond to them with the exception of Item 2.

The titling and registration of a vehicle is not the same as obtaining a Washington state business license. Our website gives a very nice guide to business licensing at [*website omitted*]. Some business own vehicles and register the vehicles under the business name.

Of course, you know from prior communications that state agency staff cannot give legal advice, and will not indulge in speculative interpretations of the law.

As seen from the above p-d response, received from the single, sole, and only agency responsible for issuing license plates in the State of Washington; when asked if the license plates issued, are for "carrier" businesses, and in so doing, if applying for title to register a vehicle is in fact registering a business, the DOL's response, is that they are "not requests for identifiable public records", and that the DOL "can't effectively respond to them" because to do so would be to engage in "speculative interpretations of the law".

When we resort to the maxim of law, being, *the expression of one thing is the exclusion of the other*, and then look around on the highways, what is found is that two door and four door sedans, station wagons and smaller sport utility vehicles all adorn the 000AAA license plate. Now if a taxi cab business has this license plate, what does that make the rest of the vehicles? If the answer is passenger carrier business, that's correct. Were the quarterly business taxes paid to the Dept. of Revenue?

On the other hand though, notice that the larger sport utility vehicles and pick-up trucks and vans all have the same A00000A license plate that is found on the semi tractor trailer big rigs, and community transit buses. If it is *the expression of one thing*, that the license plate nomenclature A00000A is a common carrier, does that make "John Doe's" pick-up truck a common carrier? Absolutely it does! So, to be, *the exclusion of the other*, or common traveler, no registration, title or license as a business is required.

On the computer generated driver license application form that was received from the DOL, after a few requisite questions, mostly questions establishing a legal person and its residence, there is a signature line certification. First it must be sworn that the person applying for the license is the person signing. The second half of that certification reads thus;

"I grant the Department of Licensing permission to consider this application with the understanding this permission cannot be withdrawn."

Addressing the above certification, notice the terms *grant*, *permission* and *consider*. First, the signer makes a *grant* to the state; which is in retrospect, the exact consent which is required, according to the State of Washington Constitution at Art.1§1; "by the consent of the governed", as seen by reference to the definitions below.

Websters Ninth Collegiate defines *grant* as:

1. v. a. to consent to carry out for a person.
 - b. to permit as a right, privilege or favor.
- n. 3. a. a transfer of property by deed or writing.

Websters Ninth Collegiate defines *convey* as:

2. c. STEAL, to carry away secretly.
- d. to transfer or deliver to another; *specif*: to transfer by a sealed writing.

Websters Ninth Collegiate defines *permission* as:

2. n. b. formal consent: AUTHORIZATION.

Websters Ninth Collegiate defines *deed* as:

4. n. a signed and usu. sealed instrument containing some legal transfer, bargain, or contract.

Blacks Law Dictionary defines *grant* as:

1. n. An agreement that creates a right of any description other than the one held by the grantor. Examples include ... licenses.
2. vb. To formally transfer * * * by deed or other writing...

Blacks Law Dictionary defines *convey* as:

- vb.* To transfer or deliver * * * to another, esp. by deed or writing.

Blacks Law Dictionary defines *permission* as:

2. A license or liberty to do something; authorization.

Blacks Law Dictionary defines *deed* as:

3. n. At common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in property.

A driver license is not, in and of itself, a per se state business, moreover because the driver license is simply an identification of an employee's particular task. However, the spurious fraudulent act that the State of Washington has committed is to combine, by statute definition and purpose, RCW 46.20.040, the operators (business) license with the driver license, whereby the grant to be considered is not simply a request for a driver license but that the state has created an operator paradigm business without noticing the applicant of that action; that act, or *deed*, is the consideration language of the application, where the right to travel was conveyed, and converted to the operation of a business privilege granted by the state. Ipso facto the driver license is a sole proprietor business.

To further invoke the notion of constructive fraud, of special note here, is that the application for driver/operator license only contains line space for identification of an individuals name; if it was only the operator (business) license, and not the driver license, that one sought to make application for, there is *no* separate line space to identify a business proper.

Also noteworthy, is a reference to the application for title. For succinct purposes here, we only need address two lines on the application for title; one, is the line space asking for a name and the other asking for an address. The address line reads thus:

Washington State primary residence **street address** (*if an individual*)
or
Washington State principal place of business **street address** (*if a business*)
bold mine

The name line only asks for a name, without distinguishing an individual from a business, while the business can be at either of two addresses. Interestingly though, saving discussion on the difference of The State of Washington *versus* Washington State. What is relevant here is the play on words; for example, *primary* and *principal* are each synonyms of the other; and the *business* is the *res-ident* (latin, meaning- identity of a thing; in this case, it is the business). There is *no* separate line to identify an actual business. This coy illusion is unnecessary because all the DOL needs, by statute authority, is an address for the *res-ident*. Each of the two preceding paragraphs should be read consistent with the section on statute history, earlier herein.

When an individual assumes application for a driver/operator (business) license is mandatory, the applicant then assumes he must register his automobile. An automobile purchased from a private sale comes with a *bill of sale*; the bill of sale is a *deed* of Right of possession. When the automobile is registered, the DOL asks for the bill of sale, two things happen; one- the possessor conveys to the state a partial, priority interest of right of ownership; and second-grants to the state a consideration for the business that was created.

The bill of sale that was freely given over to the state will never be seen again, because the right of possession has been conveyed, and title was claimed by the state. The applicant has now consented and authorized the state police to stop him for any one or more of the statute violations, enumerated in the miscellaneous motor vehicle codes.

Produced also from this research, were two applications for a license, more appropriately two parts of one application. The first, is a “general” license, and the second a commercial driver license. The first, general license (simple) application having the above described terms. The second, a commercial application which has the intrinsic information contained in the simple license but also has curious attributes.

The commercial application asks four qualification questions. Three are highlighted here;

1. Do you drive a vehicle in interstate commerce?
2. Do you meet all the requirements in the code of federal regulations part 392.11 and 383.51?
3. Do you have a driver license from more than one state or licensing jurisdiction?

According to question number one, if a person can *drive a vehicle in interstate commerce*, (which is federally regulated) he is automatically under the states authoritative mandate to possess only one license. If the state only allows one license, and this one is commercial, then by what authority is there issued a non-commercial license? The answer, is none, every license is commercial.

The second question is vague. It points to “code of federal regulation part [* * *].” What title of the code of federal regulation? To be ironically certain, Title 49 Code of Federal Regulation--Transportation.

The third curious attribute to the commercial application is the class certifications list, and the signature certification, which reads in relevant part here;

“...the vehicles I drive are representatives for the class marked above.”

For purposes of this writing, it is the first class which concerns the bulk of the private vehicles that are licensed. The diagram below is shown as it appears on the license application (that was provided); the classes of vehicles, and drivers thereof, are as follows;

CLASS	ENDORSEMENTS AND / OR RESTRICTION TEST NEEDED	
	Passenger/Bus	<input type="checkbox"/> Hazardous Materials
	<input type="checkbox"/> Double/Triple Trailer	<input type="checkbox"/> School Bus
	<input type="checkbox"/> Tank Vehicle	<input type="checkbox"/> Air Brakes Restriction

Note that a passenger vehicle is first on the list, of classes of vehicles and drivers thereof. What is interesting about this is that, a) this class appears on the commercial application, not the general application; b) the passenger classification does not have a demarcation line; c) the applicant swears the vehicle is representative of the class marked above.

Of the types of vehicles shown, a passenger vehicle, by statute, RCW 46.25.080, is a class “C” commercial vehicle. This means that JOHN DOE has sworn that, for example, a Honda Civic, is representative of a class “C” vehicle. It is a standing rule of law that silence is acquiescence. The passenger class, being absent the demarcation line, is a technical silence as to the applicable choice. However, this absence does not prevent the DOL from making some type of sign or mark indicating the passenger class, thereby “assuming” this to be the correct class, for the type of vehicle registered. It is, for all intents and purposes, a free for all default selection.

So, this “void”, is itself representative of an *unidentifiable public record* which *cannot be effectively responded to*, as it presumes *speculative interpretation of law*.

Remember there is only one license authorized by statute and it is issued by authority of RCW 46.20; the special license at RCW 46.25, called “commercial”, only authorizes the *extension* of specific performance or circumstance, concerning weights, capacities, and cargo's. And **every** vehicle bearing license plates **is** a business, registered to some person.