

ARTICLE I - TITLE

This initiative shall be titled as, The Motorist Protection Act.

ARTICLE II - DECLARATION OF PURPOSE

A) All persons who operate motor vehicles in the State of California, and the registered owners of vehicles, shall be guaranteed relief from the governmental abuses of power that victimize motor vehicle owners and operators with exaggerated violations, inflated fines and unregulated fees as means of producing revenue.

B) The relief for violations of law guaranteed by this act shall apply only to parking violations, and moving violations designated as infractions, under the California Vehicle Code, other than infractions cited pursuant to Vehicle Code Article 2, commencing with Section 23152, of Chapter 12 of Division 11. For purposes of this act, these parking and infraction violations shall be referred to hereafter as Covered Offenses. This act shall also guarantee relief from all local ordinances that authorize citations for, and prosecute violations of, Covered Offenses.

C) Parking violations on private property or off-street parking facilities, equipment violations, and moving violations that involve the use of alcohol or other controlled substances, or qualify as misdemeanor or felony offenses, in whole or in part, are not Covered Offenses and shall be adjudicated in the manner prescribed by law.

D) This act shall further protect the people from legislative erosion of rights by insuring that specific procedures established by the California Vehicle Code are never denied.

ARTICLE III - GOVERNMENTAL RESTRICTIONS

A) For purposes of this act, government shall mean any state, county or city agency or department, or any other entity authorized by any state, county or city agency or department, to enact or enforce parking and/or traffic laws. The word highway shall conform to the definition set forth in Vehicle Code Section 360 and shall include streets and roads.

B) The government shall follow the regulations set forth herein:

1) No fee shall be required to park a motor vehicle on any highway that was constructed or is maintained with public funds.

2) Parking on public highways may be prohibited or restricted by Vehicle Code statutes or local ordinances only if such legislation protects property or public safety, improves traffic movement, or assures unobstructed operation of public works, highway maintenance, construction, public utility or emergency vehicles.

3) Before any highway or any section of highway can be designated as a "NO PARKING" or a "RESTRICTED PARKING" area, the government must complete a study and provide a written report that supports such designation. These reports must be available to the public. This requirement shall not apply to violations of Vehicle Code Sections 22500, 22500.1, 22507.6, 22510, 22514, 22521 and 22522, or to local ordinances that have been adopted pursuant to any of these sections.

A certified copy of the report must be introduced into evidence at any trial for violation of a “NO PARKING” or “RESTRICTED PARKING” zone, or the case shall be dismissed. If the study and report have not been completed prior to the date of the alleged violation, the citation shall be unenforceable. Studies and reports for “NO PARKING” and “RESTRICTED PARKING” zones shall remain valid for five (5) years. A new report shall thereafter be completed.

4) If a motor vehicle is observed or identified as being parked or operated in a violation of law that is a Covered Offense, and a perpetrator is not cited at the scene of the alleged violation, the registered owner of that vehicle shall not be held accountable for that offense.

If no citation is issued at the scene of the alleged violation and the responsible person is identified through subsequent investigation, the investigating officer shall file a complaint, supported by a sworn oath, with the magistrate of jurisdiction. If the magistrate issues a warrant for arrest, the officer shall prepare a NOTICE TO APPEAR pursuant to the Vehicle Code (commencing with Section 40500). The NOTICE TO APPEAR shall be personally delivered to the accused person, who shall be released upon his or her written PROMISE TO APPEAR. If the NOTICE TO APPEAR can not be delivered to the accused person, the arrest warrant shall remain valid upon discretion of the court.

5) An unattended vehicle may be towed by order of law enforcement if it is: (a) parked in an area designated for disabled persons and does not display a license plate issued pursuant to Vehicle Code Section 5007 or a placard issued pursuant to Vehicle Code Sections 22511.55 or 22511.59, (b) blocking vehicular or pedestrian traffic, (c) endangering property or public safety, (d) obstructing any public works, highway maintenance, construction, public utility or emergency vehicles, (e) reported as stolen, or (f) left unoccupied by any person taken into custody.

All law enforcement authorities that authorize the towing of vehicles pursuant to this subsection shall have telephone assistance, available twenty four (24) hours per day, to advise interested parties on the whereabouts of any vehicle that was towed in their jurisdiction. Any person claiming a vehicle towed pursuant to this subsection, must positively identify himself or herself, and pay any fees due. The sum total of these fees shall not exceed one hundred dollars (\$100.00) per towed vehicle. No fees shall be assessed if the towed vehicle is disabled, has been reported stolen, or was parked in an area prior to that area being designated as a “TEMPORARY NO PARKING” zone. If it is determined that the person claiming the vehicle is also the person who parked the vehicle in violation of this act, that person shall also be cited for the violation.

6) A law enforcement agency that authorizes the towing of a motor vehicle that does not present a hazard described in Subsection 5, shall have a civil liability to reimburse the claiming party for all costs incurred to regain possession of the vehicle, plus court costs, attorney fees, and five hundred dollars (\$500.00) in punitive damages.

7) If a government adopts an ordinance providing for the towing of vehicles that are obstructing the public works duty of street sweeping, no vehicle may be towed for such violation for a period of ninety (90) days from the latter of the effective date of this act, or the effective date of the ordinance, during which time a written notice shall be attached to all vehicles parked in violation of such ordinances. The notice shall quote the ordinance and state that all vehicles parked in violation, as of a specific date, will be

towed. In addition, these areas shall be clearly marked as tow away zones and include the day or date that the no parking ordinance shall be in effect.

No government shall adopt a policy of street sweeping at a frequency more often than once per month unless such a policy is approved by a majority vote of the registered voters in that government's jurisdiction. Any citation issued based on a policy that does not comply with this subsection shall be unenforceable. Any government that orders the towing of a vehicle for a violation of a street sweeping ordinance, without first complying with this subsection, shall be subject to the penalties imposed by Subsection 6.

8) Before any motor vehicle is declared abandoned, the government must complete a due diligence effort to notify the registered owner. A "NOTICE OF ABANDONED VEHICLE" shall be prepared, noting the vehicle description, the license plate number, the vehicle identification number, the current location of the vehicle, and the telephone number of the agency for contact. The notice shall be served on the registered owner as follows:

a) By registered mail with return receipt, and service shall be deemed complete on the date the return receipt is received by the issuing agency.

b) If the issuing agency does not receive the return receipt within twenty (20) days from the date of mailing of the "NOTICE OF ABANDONED VEHICLE," service shall then be completed pursuant to Code of Civil Procedure Section 415.20.

c) If personal or substituted service is not possible, service shall be completed by publication pursuant to Government Code Section 6064, and service by this method shall be deemed complete on the last date of publication.

If the registered owner or the agent of the registered owner claims the vehicle, the government may recover the actual costs expended for notification or one hundred dollars (\$100.00), whichever is less. This amount shall be added to the cost of towing and the total must be paid before the vehicle is released. Notification fees may not be recovered if the abandoned vehicle has been reported stolen prior to the date that service of the "NOTICE OF ABANDONED VEHICLE" is deemed complete.

If the vehicle is not claimed within thirty (30) days from the date of service of the "NOTICE OF ABANDONED VEHICLE," the vehicle may be disposed of in the manner prescribed by law and by order of the court of jurisdiction.

9) Engineering and traffic surveys conducted to establish speed limits, and all traffic control signs, markings and devices throughout the State, shall conform to the specifications set forth in the Manual On Uniform Traffic Control Devices, published by the United States Department of Transportation, Federal Highway Administration, referred to hereafter as the MUTCD. Any citation issued for a Covered Offense violation established by an engineering and traffic survey, or a traffic control sign, marking or device, that does not conform to the MUTCD specifications shall be unenforceable.

10) The government may not seize, impound or immobilize a motor vehicle as a punishment, as a means of insuring that a sentence is completed, or to collect fines assessed prior to passage of this act, without due process of law and by court order.

11) No court costs or other costs or fees shall be imposed on any person accused of a Covered Offense violation, during any stage of the proceedings.

ARTICLE IV – ILLEGAL EVIDENCE

This act shall amend all laws that prohibit the use of evidence obtained from speed traps to also exclude the use of evidence obtained from all unmanned electronic equipment in any prosecution of a Covered Offense. These methods of gathering evidence shall be known as violation traps and are defined by Subsection (B).

The California Vehicle Code shall be amended as follows: (The words in parenthesis and lined out are deleted, and the words in italics are added.)

A) Section 40801 shall hereafter be titled, *Speed and Violation Trap Prohibition*.

No peace officer or other person shall use a speed *or violation* trap in arresting, or participating or assisting in the arrest of, any person for any alleged violation of this code nor shall any speed *or violation* trap be used in securing evidence as to the speed of any vehicle, *or any other violation of this code*, for the purpose of an arrest or prosecution.

B) Section 40802.5 shall be added to the Vehicle Code and shall be titled: *Violation Trap Defined*.

Violation Traps are all unmanned radar units, cameras, video recorders and all automated enforcement systems that record alleged violations of this code, and provide photographic images of the suspected vehicles and/or drivers.

C) Section 40803 shall hereafter be titled: *Evidence from Speed and Violation Traps*, and shall add the following subsection: (d) *No evidence shall be admissible in any court for a violation of this code that is obtained from a violation trap.*

D) Section 40804 shall hereafter be titled: *Testimony Based on Speed and Violation Traps*, and Subsection (a) is amended as follows:

(a) In any prosecution (~~under this code~~) upon a charge involving (~~the speed of a vehicle~~) *a violation of this code*, any officer or other person shall be incompetent as a witness if the testimony is based upon or obtained from or by the maintenance or use of a speed *or violation* trap.

E) Section 40805 shall hereafter be titled: *Admission of Speed and Violation Trap Evidence*, and shall be amended as follows:

Every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of this code (~~involving the speed of a vehicle~~) if the court admits any evidence or testimony secured in violation of, or is inadmissible under this article.

ARTICLE V – ADDITIONAL RIGHTS AND GUARANTEES

In addition to the rights specified in the Constitutions of the United States of America and the State of California, every motor vehicle operator and registered owner shall be guaranteed the following rights when charged with a violation of a Covered Offense:

A) To have their case prosecuted, from arraignment to verdict, in a court that also hears misdemeanor and felony matters.

B) To be released on their own recognizance if they maintain a valid California Driver's License. A California Identification Card may be used for pedestrian-related offenses. If the accused does not possess the identification required by this section, is named on an outstanding warrant, or has a prior conviction for a failure to appear violation, the court may order the accused to deposit bail in an amount not to exceed two

hundred fifty dollars (\$250.00). If bail is ordered and is not deposited without good cause, a bench warrant shall be issued. The amount of bail shall be refunded if the charges are dismissed, if the defendant is found not guilty, or if the defendant is found guilty and the sentence ordered by the court is completed. If bail is deposited and the accused fails to return for any stage of the proceedings or to complete his or her sentence without good cause, bail shall be forfeited and a bench warrant shall be issued.

C) To demand the place to appear as the Superior Court at the seat of the county where the violation is alleged to have occurred. Vehicle Code Section 40502(b) shall be amended as follows: (The words in parenthesis and lined out are deleted, and the words in italics are added.)

(b) Upon demand of the person arrested, before a judge or other magistrate having jurisdiction of the offense at the county seat at the county in which the offense is alleged to have been committed. (~~This subdivision applies only if the person arrested resides, or the person's principal place of employment is located, closer to the county seat than to the court or other magistrate nearest or more accessible to the place where the arrest is made.~~)

This demand may be made at the time the citation is issued or at arraignment. If any court has ruled that any branch court(s), located outside the city limits of the seat of that county, are also county seat courts, the accused may select any court within that county as the place to appear.

D) To have their case dismissed if the citing officer is not present at trial.

ARTICLE VI – PROCEDURES FOR TRIAL

A) A person accused with a violation of a Covered Offense may have his or her case adjudicated by one of the following procedures:

1) A plea of guilty may be entered by mail on or before the date to appear as written on the citation. Upon receipt of the guilty plea, the court shall notify the accused of the sentence imposed pursuant to Article VIII and provide a list of agencies where the sentence can be completed. Bail must be deposited if required by this act and completion of sentence shall conform to the provisions of Article X.

2) An accused may enter a plea of guilty or nolo contendere at arraignment and shall be sentenced pursuant to the provisions of Article VIII.

3) An accused may enter a plea of not guilty at arraignment and the case shall be set for trial.

4) The right to trial by written declaration and the right to a trial de novo, incorporated therein, shall not be infringed. The procedures set forth in Vehicle Code Section 40902 and in California Courts: Rules: Title Two: Rule 828 shall be followed in all jurisdictions and shall be amended to include the following provisions:

a) Trial by written declaration shall be available to any person accused of any violation of a Covered Offense.

b) Bail shall be deposited only if required by this act, and shall be retained until the case is closed. The amount of bail shall be refunded or forfeited pursuant to this act.

c) Evidence shall include the written declaration of the accused signed under penalty of perjury, the written declaration of the arresting officer signed under penalty of perjury, and any documents required to establish foundation, if required by the Vehicle

Code, for evidence or testimony submitted or to prove that a speed or violation trap was not used to obtain evidence.

d) If the arresting officer does not submit a declaration signed under penalty of perjury, the case shall be dismissed.

e) The verdict shall be decided by a judge or commissioner and the Decision and Notice of Decision shall include any sentence imposed pursuant to this act.

Vehicle Code Section 40902(e) shall be added as follows: *Any case submitted for trial by written declaration shall be adjudicated within forty five (45) days from the date the court receives the written declaration from the accused, or the case shall be dismissed.*

5) A summary of the above trial procedures shall be included with all citations.

B) No civil court shall have appellate jurisdiction from any conviction of a Covered Offense.

ARTICLE VII - STATUTE OF LIMITATIONS

The statute of limitations for all Covered Offenses is one hundred eighty (180) days.

ARTICLE VIII - PENALTIES

Convictions for violations of Covered Offenses shall not result in fines, penalty assessments, levies or other monetary punishment, including civil penalties. Convictions shall result only in sentences of community service pursuant to the following:

A) A parking violation conviction shall result in two (2) hours of community service. The court shall suspend this sentence if the convicted person has had no convictions for a Covered Offense parking violation within twelve (12) months preceding the date of conviction and was not convicted of a violation of Subsections 5(a) through 5(d) of Section B of Article III.

B) Convictions for an infraction violation shall result in a sentence of four (4) hours of community service. The court shall suspend this sentence if the convicted person has had no convictions for a Covered Offense infraction violation within twelve (12) months preceding the date of conviction and the violation charged did not result in personal injury, property damage or imminent danger to persons or property.

C) The court shall allow at least sixty (60) days for a convicted person to complete a sentence of community service.

D) No designated number of Covered Offense convictions, within any specified period of time, shall result in a charge greater than an infraction for any subsequent Covered Offense violation.

E) Convictions for Covered Offenses shall not be included on any person's driving record, nor shall they be made accessible to persons other than court personnel.

F) All courts, where trials for Covered Offenses are held, shall maintain a listing of approved public and private agencies where community service sentences may be completed.

G) The court shall allow a non-resident, convicted of a Covered Offense, to complete a sentence of community service at a location within his or her State of residence.

H) All courts shall be without jurisdiction to permit an accused or convicted person to pay monetary penalties or costs in exchange for the dismissal of charges or the waiving of any community service sentence imposed by this act.

ARTICLE IX – EXEMPT OFFENSES

Convictions for the following Covered Offenses shall not be eligible for a suspended sentence: carpool lane violations, toll evasion infractions and littering.

ARTICLE X – COMPLETION OF COMMUNITY SERVICE

A defendant sentenced to community service under this act, shall file a Notice of Completion with the court, signed by an authorized representative of the location where the sentence was completed, on or before the date specified by the court. If a defendant does not complete the sentence required by the date specified by the court without good cause, he or she shall be in contempt of court and subject to a fine of five hundred dollars (\$500.00) or forty eight (48) hours of imprisonment in county jail, or both. These penalties shall be imposed in addition to the original sentence.

ARTICLE XI – FEES ALLOWED

The government may require a fee for the annual registration of a motor vehicle and for the application fee and renewal of driver's licenses.

A) All noncommercial motor vehicles shall pay an equal amount for registration. This amount shall not exceed fifty dollars (\$50.00) for motorcycles and one hundred dollars (\$100.00) for all other noncommercial vehicles.

Commercial vehicles shall pay an annual registration fee, weight fee and any other fee or tax allowed by statute. In no event shall these fees and taxes exceed those assessed as of December 31, 2002.

Any vehicle may be registered under a "Non Use" status for an annual fee not to exceed ten dollars (\$10.00).

A grace period of thirty (30) days, verified by date of postmark or receipt, shall apply to payment of all fees pursuant to this section. A late charge shall apply to payments made after the grace period. The late charge shall be twenty dollars (\$20.00) or ten (10) per cent of the fee, whichever is greater. No other fees or penalties shall apply.

B) The driver's license fee shall not exceed fifteen dollars (\$15.00) on initial application and license issuance or on subsequent renewal dates, and will apply to all licensed drivers regardless of license class or classes. Renewal periods shall be those defined by statute, as of December 31, 2002.

ARTICLE XII – VIOLATION POINT COUNT

A conviction for any Covered Offense shall not be assessed a violation point count value.

ARTICLE XIII – EFFECT OF INITIATIVE

The provisions of this amendment shall supersede all California Codes, Rules of Court, or local ordinances that establish, enforce or prosecute Covered Offenses.

ARTICLE XIV – CHANGES OF CONTENT

Changes to any provisions or fees specified herein, or any monetary assessments proposed to be levied on motor vehicle owners, operators, or licensed drivers not specified herein, must be approved by a majority vote, at a statewide or special election, before such changes can become effective.

The violations specified herein as Covered Offenses shall not be changed by any subsequent legislation, and all parking or infraction violations enacted after passage of this act shall also become Covered Offenses, pursuant to Article II, Section B and Section C.

ARTICLE XV – EFFECTIVE DATE OF INITIATIVE

This act shall become effective the day following approval by a majority vote.

ARTICLE XVI - SEVERABILITY

If any provisions of this act are held to be invalid, those provisions shall have no effect on the validity of any of the other provisions. And to this end, the provisions of this act are severable.

Submitted by proponent,

Robert Ridley