No. 7

SB-296

Motor Vehicles

DRIVERS' LICENSES—

Nebraska motor vehicle statute that provides for summary suspension, after accumulation by traffic convictions of 12 or more point violations, of driver's license does not violate Due Process Clause.

A revocation for traffic violations under the point system of our statute involves a substantially different situation than revocation under Financial Responsibility Acts. Those acts are founded upon the premise that the motorist involved in an accident may be at fault. In Bell v. Burson, 402 U.S. 535, 39 LW 4607 (1971), the U.S. Supreme Court held that before the driver's license and registration of the motorist could be revoked there must be a determination made at a hearing "appropriate to the nature of the case" that there is a reasonable possibility he is in fact at fault. In those situations the danger that the Court wishes to guard against is an unreasonable possibility of wrongfully depriving the motorist of a valuable entitlement. Under the point system of revocation as established by our statutes, the possibility of error is unlikely and the procedural safeguards that are inherent in the system afford an opportunity to correct before irreparable damage occurs such as might happen.

The challenged statute prescribes the number of points to be assessed against the licensee for each conviction under the various categories of violations. It provides for revocation of the license if there is an accumulation of 12 or more points within a two-year period. The statute specifies the duty of tribunals in which the traffic conviction takes place with reference to entry of judgment in such case and requires the forwarding of an abstract of the convictions to the director of the Department of Motor Vehicles. The abstracts set forth the date of the violation; the date of hearing; the name and address of the motorist; the date of his birth; his operator's license number; the vehicle number; and docket and page number of the proceedings in the court; the judgment of conviction including fine and costs; the plea; a description of the offense; the name of the enforcing agency and the officer's name; the date of any appeal from the judgment or the date the appeal was dismissed if that is the case; and a formal certificate for a judge, clerk, or magistrate to sign.

Every motorist is charged with notice of the contents of the statute specifying the points assessed for the various violations. For every offense he has or is afforded an opportunity for hearing. He therefore is charged by law with knowledge that his license is in jeopardy and at all times is charged by law with notice of the state of his record as it pertains to points charged against him.

The information required to be set forth in the abstracts of conviction is entirely adequate to readily determine if mechanical or identification errors have occurred.

If errors do occur, or if there should be fraud, or an absolutely void judgment, the statute affords a remedy. The statute provides for an appeal from an order of revocation to the district court and authorizes the judge to stay the order of revocation pending the appeal. There is a full evidentiary hearing and no fact finding of the director is binding on the courts.

In a very real sense, the essential facts have been determined in judicial proceedings in connection with each conviction. In a very real sense the director acts only ministerially. The result — the revocation — flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. These circumstances do, in our opinion, make the procedures applicable to revocation of the driver's license for an accumulation of points for traffic offense convictions clearly distinguishable from revocation under a financial responsibility law as in Bell v. Burson. The financial responsibility statutes create without a hearing a presumption of fault. This is their constitutional deficiency. Such a situation does not exist in the case here involved. Under the statutory scheme of Nebraska, no notice and hearing were required before the issuance of the order of revocation. — Clinton, J.

—Neb. SupCt; Stauffer v. Weedlun, 3/10/72.

The United States
LAW WEEK
Mar.28,1972

SB-296 ETB

Nebraska Motor Vehicle Point System Is Upheld

Although the U.S. Supreme Court has recently cast doubts on the constitutionality of motor vehicle financial responsibility acts that deprive a driver of his license without a presuspension hearing, Bell v. Burson, 402 U.S. 535, 39 LW 4607 (1971), the Nebraska Supreme Court finds a way to sustain Nebraska's ex parte point system. Due process does not invalidate a system that automatically deprives a driver of his license after he accumulates a predetermined number of traffic violation points. (Stauffer v. Weedlun, 3/10/72)

Revocation under the state point system "involves a substantially different situation" than revocation under financial responsibility acts. Those acts are founded upon a premise that the motorist involved in an accident may be at fault. In those situations, the danger the court wishes to guard against is the possibility of wrongfully depriving the motorist of a valuable entitlement.

Every motorist is charged with notice of the contents of the statute specifying the points assessed for the various violations and, since for every offense the motorist has or is afforded an opportunity for a hearing, he is charged by law with knowledge that his license is in jeopardy.

In a very real sense, the essential facts leading up to the revocation have been determined in judicial proceedings in connection with each conviction. The Director of Motor Vehicles acts only ministerially and the result — revocation — flows from the operation of the statute upon the already judicially determined facts. (Page 2633)

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plaint and, on appeal, the union members assert that since individual liability for concerted action in violation of their contract is precluded under Section 301, a state cannot impose that liability.

It must be concluded that the federal preemption doctrine has withdrawn the diversity remedy stated in count 3. See San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959); Street, Electric Ry. and Motor Coach Employees v. Lockridge, 403 U.S. 274, 39 LW 4741 (1971). Although Section 301 does not grant federal courts exclusive jurisdiction over controversies within the Act's purview, a state court—or a federal diversity court—is not free to apply individualized local rules when called upon to resolve union-employer disputes. Section 301(a) is peculiarly one that calls for uniform law. Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962). In light of federal labor policy, legislative history, and congressional intentions, it must be concluded that Section 301 was enacted in part to prevent the assessment of damages against individual union members for the alleged misconduct stated in count 2. Any conflicting state rule must give way to the federal principle.—Kuley, J.

—CA 7; Sinclair Oil Corp. v. Oil—Chemical Workers, 10/0/71.

STRIKES—

Union adherents' mere participation in sit-down strike, absent established grievance procedures and unaccompanied by violence, threats of violence, or damage to employers' property, does not deprive them of Taft Act Section 7 protection.

The employees here were discharged after they engaged in a sit-down strike to protest six other employees' discharge. The six employees had been dissatisfied with the progress of bargaining and engaged in a work slowdown.

The company relies on NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939), and argues that the sit-down strike did not constitute concerted activity protected under Section 7 of the Taft Act. The discharges would therefore be for cause and would not violate Sections 8(a)(3) and (1). In Fansteel, 95 employees, in response to their employer's unfair labor practices, took over and held two of the employer's key buildings thereby causing the remainder of the plant to cease operation. After the employees' shift had ended, the plant's superintendent demanded that the employees leave. After they refused, they were discharged. They continued to hold the buildings for nine days, during which time a pitched battle occurred between workers and police officials upon efforts of the police to evict the strikers. The Supreme Court held that when the employees resorted to "that sort of compulsion" they took a position outside the protection of the statute.

The company contends that all sit-down strikes are thus unprotected by Section 7 and are not a legitimate weapon to be used in the field of labor relations. Since Fansteel however, the cases are clearly contrary to this contention.

For example, NLRB v. American Mfg. Co., 106 F.2d 61 (CA2 1939), involved a temporary work stoppage induced by an employer's unfair labor practice. The court refused to consider such activities an illegal sit-down strike, noting that the employees did not claim to hold the premises in defiance of the owner's right of possession. A similar result was reached in Olin Ind., Inc. v. NLRB, 191 F.2d 613 (CA5 1951).

Analogous activity was, however, found to be unprotected by the Fourth Circuit. In Cone Mills Corp. v. NLRB, 413 F.2d 445 (CA4 1969), employees engaged in a work stoppage to protest the discharge of a fellow employee. The union steward, despite established grievance procedures to the contrary, demanded that immediate reinstatement of the discharged employee before beginning discussions. Several of the employees stated that they would refuse to work until the discharged employee was rehired. The court relied heavily on the regular grievance procedures in effect, found that the employees had already made their point about their feelings concerning the previously discharged employees, and found no violation of Section 8(a)(1). However, NLRB v. Serv-Air, Inc., 401 F.2d 363 (CA 10 1968), held that, absent established grievance procedures, a spontaneous work stoppage to present a grievance was a protected activity.

There are no facts in this case showing that the employees were claiming to hold the premises in defiance of the owner's right of possession. The sit-down did not threaten to carry over into the next shift, and the employees left immediately when requested to do so by the police.

[*Text*] The mere act of sitting down on the job in order to further discussions with an employer, as was done in the instant case, can alone furnish no basis for a finding that the acts constituted a forcible seizure of the employer's property. Fansteel does not so hold, and we know of no case that does. * * * Without more than the mere act of sitting down during a labor dispute, there is no more incitement or probability of violence than is necessarily incidental to any other act. * * *

An employer cannot convert a protected in-plant work stoppage into an unprotected trespass by the simple expedient of ordering his employees from the plant where, as here, such an order served no immediate employer interest and unduly restricts the employees right to present grievances to their employer. The employer interest in maintaining an established grievance procedure and the absence of restriction on employees in the face of such procedures, such as that found in Cone Mills, is not present in the instant case. At the time of the sit-down strike, negotiations between the company and the union had just begun pursuant to the union's certification only two months prior. There is no evidence of any established, regular procedure by which employees were to present their grievances. Under such circumstances, we cannot find that the employees had no interest in presenting their grievance in the manner chosen in the instance case. [*End Text*]—Thornberry, J.

—CA 5; NLRB v. Pepsi-Cola Bottling Co. of Miami, Inc, 10/13/71.

Motor Vehicles

DRIVERS' LICENSES—

Due process bars suspension of driver's license under Pennsylvania "point system" without prior notice to driver and opportunity for hearing.

The Pennsylvania point system provides a means of assessing "points" by the Secretary of the Department of Transportation upon receipt of notification of conviction of certain specified violations of the Motor Vehicle Code. Notice is given to the driver of the imposition of the points on each occasion and when a total of 11 points is accumulated, the Secretary is directed to suspend the operator's license for a specified period. No administrative hearing is provided either upon each assessment of the points or before suspension, but after the penalty has been imposed an appeal may be taken to the commonwealth court.

The operator challenging the statute is a truck driver whose livelihood depends on his ability to operate a motor vehicle. His driving record over a two-year period resulted in his accumulation of a total of 11 points, the result of which was that his license was suspended by the secretary for a period of 60 days. He took an appeal to the court of common pleas, contending that he was not guilty of the violations for which points had been assessed and that there was a fatal variance between the information and the conviction for which five

points had been assigned. His appeal was dismissed, the court relying upon the case of Commonwealth v. Virnelson, 243 A.2d 464 (Pa. 1968), which held that there could be no review of the facts behind the conviction giving rise to the assessment of points and that the only matter which might be shown was improper calculation of the points. Under Pennsylvania law a payment of fines and costs, as this driver did, is equivalent to a plea of guilty and in the context of this case would be an admission of a conviction.

[*Text*] There can be no quarrel with the commonwealth's position that in order to regulate the use of its highways, the state does have power to enact the Point System Plan into law and that it may use infractions of the Vehicle Code as a basis for license suspension. We may say further that the legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver. However, it is not enough that the substantive provisions of a statute pass constitutional muster because it is also necessary that the methods of administration meet appropriate standards of due process.

Bell v. Burson, 402 U.S. 535, 39 LW 4607 (1971), makes it clear that even if denominated a privilege, as the Pennsylvania court did in Commonwealth v. Funk, 186 A. 65 (Pa. 1936), nevertheless an operator's license is not to be taken away by state action which fails to comply with procedures required by the Fourteenth Amendment.

The commonwealth in its brief concedes, and our independent examination confirms, that the Point System Act makes no provision for departmental administrative hearing at any time before suspension. Section 618(h) of the Vehicle Code provides that after notice of suspension, any person may request a departmental hearing but it is not the practice to notify the licensee of the availability of this opportunity. See In re Hamsher Motor Vehicle Operator License Case, 175 A.2d 303 (Pa. 1961). Similarly, judicial review under section 620 of the Code is provided only after suspension.

We find that this falls short of what the Constitution requires. As was said in the Bell case: "* * * it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." 402 U.S., at 542.

Here the state furnished neither notice nor opportunity for Reese to be heard either at an administrative hearing or de novo before a court before the termination. * * *

[E]ven if the convictions cannot be contested, there still remain the possibilities, among others, that the convictions were those of another person with the same name; that the fines and costs were paid on an information at variance with that for which the minor judiciary entered a conviction as plaintiff contends occurred in this case; that the points were improperly calculated; that credits were wrongfully withheld; or that there were errors on the report of conviction form. In none of these instances is there a provision for a hearing before suspension even though notice of the assessment of points is given. Notice without opportunity to rectify error obviously is not sufficient. [*End Text*]—Weis, J.

Concurrence. [*Text*] Those licensed by a state to operate motor vehicles on its highways are charged with the knowledge that a violation of the Code will result in liability for the payment of a fine and the assignment of a specified number of points to that individual's record, and that on the accumulation of 11 points automatic license suspension will result. Accordingly, it seems to me that the licensed public is charged with knowledge of the provision of the Pennsylvania Motor Code; that all motor vehicle operator licensees must abide by the rules of the road, and that upon failure to do so to stand liable and submit to the penalty of a fine and points, and such suspension and revocation as are set forth in the Act.

I find it difficult to separate the penalty into two separate parts so as to indicate that the payment of a fine is one thing, and the imposition of points is another. In reality the paying of the fine and the imposition of the points are one and the same, since by legislative mandate the latter accompany the former. * * *

In the present situation, the repeated nature of the offenses, and the non-discretionary duty of the secretary compel the conclusion that in all probability the petitioner is the type of individual which the commonwealth sought to exclude from its highways in the interests of public safety. In almost every case of this sort, a hearing prior to the suspension would serve no valid purpose other than putting the commonwealth to the added burden of providing a hearing which would disclose that the assignment of 11 points to the individual's driving record was properly made. However, as the majority indicates, there does exist the extremely remote possibility that compounded errors could result in the suspension of the license of an innocent individual. Under these circumstances, which I feel are highly improbable, a miscarriage of justice would result in an individual being deprived of his operator's license without due process of law. * * *

Thus, while I firmly believe that Sec. 619.1 of the Pennsylvania Motor Vehicle Code is a valid exercise of police power, I am bound to support the ultimate conclusion reached by the majority only on the remote possibility that a summary suspension might inadvertently deprive an innocent person of his operator's license without due process of law. For the limited purpose of inquiring into the propriety of the secretary's record, and not for the purpose of authorizing a review of each of the constituent cases of their respective penalties whether fines or points, or both, I join in the result reached by the majority. [*End Text*]—Rosenberg, J.

—USDC WPa (three-judge court); Reese v. Kassab, 10/26/71.

Municipal Corporations

BUSINESS REGULATIONS—

District of Columbia City Council lacks authority under its general police power to enact "geographic discrimination" insurance regulations which, like Congress' D.C. Insurance Placement Act, seek to regulate availability of high risk coverage.

The insurance challenged here bars insurers from declining to insure or renew contracts of insurance "because of the geographic area within the District of Columbia wherein is located the subject of the risk or the applicant's or insured's address." Further, the regulations specifically list the permissible reasons for cancellation. These regulations were issued pursuant to the general police power granted to the Commissioners of the District of Columbia by Congress.

Although the ultimate legislative power over the District of Columbia resides in Congress, Congress has established a relationship with the District comparable to that existing between municipalities and their parent states.

Since the authority to make reasonable and usual police regulations was delegated to the District in 1892, that power has never been used to regulate the insurance field. With the exception of Chicago v. Phoenix Ins. Co., 126 Ill. 276, 18 N.E. 668 (1888), no cases considering the application of municipal police power to the regulation of insurance have been found. That case struck down a municipal insurance tax on the ground that the state

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NATIONAL COMMITTEE
ON
UNIFORM TRAFFIC LAWS AND ORDINANCES

955 NORTH L'ENFANT PLAZA, S. W. • WASHINGTON, D. C. 20024 • TELEPHONE 484-3120

YULE FISHER, National Chairman
EDWARD F. KEARNEY, Executive Director

March 6, 1972

Mr. Stuart C. Hall
Legislative Affairs Agency
Pouch Y
State Capitol
Juneau, Alaska 99801

Dear Mr. Hall:

Regarding your letter of March 1, 1972, you seem to already have satisfactory answers to your questions 4 and 5; here are some observations on the first three:

1. Six states and the Uniform Vehicle Code follow the approach of the Governor's bill. Another 16 jurisdictions have point systems which are administratively established. Thirteen states, on the other hand, follow the approach of the Ray bill, setting out the point values in the law itself.

2. Under Bell v. Burson and other recent Supreme Court cases it is clear that a driver's license cannot be taken away without affording the licensee due process, most essentially, a hearing. Whether that hearing must preceed delicensing action or can be offered subsequent to that action (as now authorized under the UVC) is a debatable question. Proposals have been submitted to amend the UVC in this respect. Probably your safest course of action would be to recommend that the Alaska law should require a hearing prior to any discretionary licensing action. Although I have not yet read the case myself, I am advised that a recent Federal District Court decision, Reese v. Kassab, 334 F. Supp. 744 (1971) requires a hearing prior to a sus ension based on a point system.

3. Better yet there should be a general provision to this effect applicable to your whole driver licensing law. See UVC § 6-204(c), for example. We believe it is constitutional. Alaska already has a comparable provision but it does not clearly apply to the whole driver licensing law. See AS § 28.15.190(c).

In terms of a general observation, we note that discretionary suspension and revocation in Alaska is in the hands of the courts rather than the department of motor vehicles. See AS § 28.15.220. This is very uncommon but we assume you have some good reason for doing it this way. Both the Governor's bill and the Ray bill, however, place the discretion to suspend in the department of motor vehicles. Passage of either of these bills would mean that both the courts and the department have authority to suspend, often upon the same grounds. This would be unnecessarily confusing and might make it much more difficult to keep accurate records of suspensions.

The Randolph-Warwick bill is very different. It provides for mandatory license action on the basis of the accumulated point level. The UVC, the Ray bill and the Governor's bill, on the other hand, all provide for discretionary action against a driver who is identified by the point system. See my observations on this distinction in my February 25th letter. It is where the Randolph-Warwick type effect is given to a point system that an administrative determination of point values might very well be an unreasonable delegation of authority. Thus proponents of this bill will quite justifiably urge that the point values should be set out in the law. Where, as under the UVC, however, the point system is merely used to identify "habitually reckless or negligent" drivers, and the law clearly authorizes the department to suspend such habitually reckless or negligent drivers, there should be no problem in allowing the department to determine point values.

Unfortunately, while both the Governor's bill and the Ray bill specify the purpose of the point system as "identifying habitually reckless or negligent drivers . . .," neither clearly gives the department authority to suspend such drivers. That authority now rests with the courts under AS § 28.15.220(b)(4). Both bills would be made stronger by inclusion of a provision such as UVC § 6-206(a)(3), or by completely revising AS § 28.15.220 to conform with UVC § 6-206 in its entirety.

Sincerely,

John W. English
Staff Attorney

Section III

Statutory Point Systems

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(Table 7)

In addition to the authority granted by law to suspend or revoke a driver's license on a mandatory or discretionary basis (Tables 1-6), at least 19 states have established statutory point systems governing license suspension and revocation.* In six of these states (Idaho, Iowa, Nevada, South Dakota, Utah, Wisconsin) the department is authorized to develop a point system by rule in accordance with the general mandate laid down by the legislature. The UVC, by a 1968 revision, now incorporates similar authority.

Under this authority, points are assessed for specified offenses and the accumulation of a given number of points within a prescribed period of time results in license withdrawal.

Digests of the several statutory point systems are covered on the following pages. Included also are the New Jersey and District of Columbia Point Systems established by regulation. One thing that may be considered common to all such point systems is their dissimilarity in many basic features.

For example, Michigan, Nebraska and Ohio provide that the accumulation of 12 or more points within two years subjects a person to license withdrawal. In addition to variations in the procedures to be followed, Michigan provides for maximum suspension of one year. In Ohio, suspension shall be for six months if the offender had not been previously suspended under the point system; but suspension shall be for one year if such person had no more than one such previous suspension, three years if not more than two such suspensions, and five years if three or more previous such suspensions. Nebraska requires mandatory revocation of license for one year, unless the court specifies a longer period.

In another state (N. C.) where 12 or more points within a three-year period also results in license suspension, the maximum periods are as follows: on first suspension, 60 days, on the second, six months, and on a third, one year; a licensee is also subject to suspension upon accumulating eight points within a three-year period following reinstatement after license has been withdrawn because of conviction for one or more traffic offenses.

In other jurisdictions suspension action is taken according to a graduated point accumulation over a period of years. Thus, in Colorado a maximum of one year's suspension may be imposed when a driver has accumulated 12 points within 12 consecutive months or 24 points within 24 months. (It might be noted that the Colorado law which included grounds for discretionary suspension of license similar to those covered in Tables 4-6, repealed this authority in 1959 and substituted a statutory point system.)

The assessment of eight points within two years in Maryland results in the initial suspension of license from two days to 30 days; on the second suspension, the period of license withdrawal would be from 15 to 90 days; a license is revoked for three months upon the accumulation of 12 points within a two-year period.

Florida is somewhat similar but fixes the period of maximum suspension for point demerits within the periods prescribed: 12 points within 12 months calls for suspension for a maximum of 30 days; for 18 points within 18 months, the maximum suspension is three months; and the accumulation of 24 points within 36 months results in suspension for a maximum of one year. Points used as the basis for suspension are used in determining point accumulation leading to subsequent suspension, since points maintain full value for 36 months.

Florida has also modified its point values for all the offenses listed by changing from a fixed point total to a point range. Thus, reckless driving, previously resulting in an assessment of four points, now has a point spread of from two to six points; passing a stopped school bus, formerly a four point violation, now has a range of from two to four points. Courts are required to assess points against violators from the minimum to the maximum point values specified; if court fails to do so, department shall assign the median points.

Hawaii, which adopted a court administered statutory point system in recent years, also provides for a point spread in the violations listed. In fact, in some violations listed, point assessment may be from zero to two or three points. For example, for unlawful passing, the point range is from zero to three; improper turning, from zero to two points.

Missouri, which enacted a point system law within the past few years, also has a special feature with regard to point values covering all offenses enumerated. For example, driving while under the influence of intoxicating liquor or narcotic drugs results in the assessment of 12 points if the violation is under state law, but only six points if a violation of a county or municipal ordinance. Moreover, practically all author-

**The following states are reported to have administrative point systems: Alabama, Arizona, Connecticut, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, Maine, Montana, New Jersey, New York, Oklahoma, Oregon, Rhode Island and Washington.*

ity for license suspension or revocation, is now covered in the Missouri point system.

There is also considerable variation among the states with regard to the type of violations included under the point systems and the value of points assigned for comparable offenses. The offense of passing a stopped school bus might be cited as an example of this situation.

In North Carolina conviction for such violation requires the assignment of five points against the offender's record; in South Carolina six points are assessed. In Colorado, four points are assigned upon conviction for failing to stop for a stopped school bus, whereas in Florida, as noted above, two to four points are assessed. No specific reference is made to such violation in the schedule of offenses in the point system laws of Michigan, Nebraska or Ohio, for example, but all moving violations other than those listed are assigned two points; thus such an offense would presumably have a two point value. These differences in points assessed for the same offense would have to be correlated with the total point accumulation and the time periods at which action against a person's license may be initiated in the several states in order to draw an accurate comparison.

Moreover, some states include offenses which would require mandatory revocation of license under other law, such as convictions for driving while under the influence of intoxicating liquor or drugs. In some of these, the number of points assessed are equal to the action level required under the point system and this raises a question concerning which law is applicable. One state (Colo.), makes this clear by providing that other statutory authority governing mandatory license revocation takes precedence over the point system law.

In Michigan, whose point system also includes "mandatory" revocation offenses covered under other law, a license would be revoked under such other law, but a licensee would also be given six points, which is half the point total required (12 points within two years) for action under the point system. Thus a person would be subject to revocation under the basic law but would also be assigned points under the point system for the same offense.

Many differences also exist with regard to other matters concerning the application of the law.

For example, in some states points retain full value for the period within which they are effective; in others, they diminish in value as time progresses and until they are expunged. As noted, points are cumulative in some states for the period of time specified and can be used again for subsequent suspension or revocation of license. In others, (e.g. Nebraska, North Carolina, Ohio, South Carolina) the law specifically provides that points once used in suspending a driver's license cannot be considered again as the basis for further action. (See Appendix 2, McAnerney v. State, Dept. of Public Safety, Drivers License Division, 341.P (2d) 212, 9 Utah (2d) 191, 1959).

States also differ with regard to the holding of hearings. In some, the department is authorized to suspend and then notify the licensee of the action taken and of his right to a hearing. In some jurisdictions, the suspension takes effect only after the period for hearing has expired and if a hearing is requested, suspension is delayed until the hearing is held. In others, a hearing must precede an order of suspension. In one state at least, the department may suspend with or without a hearing.

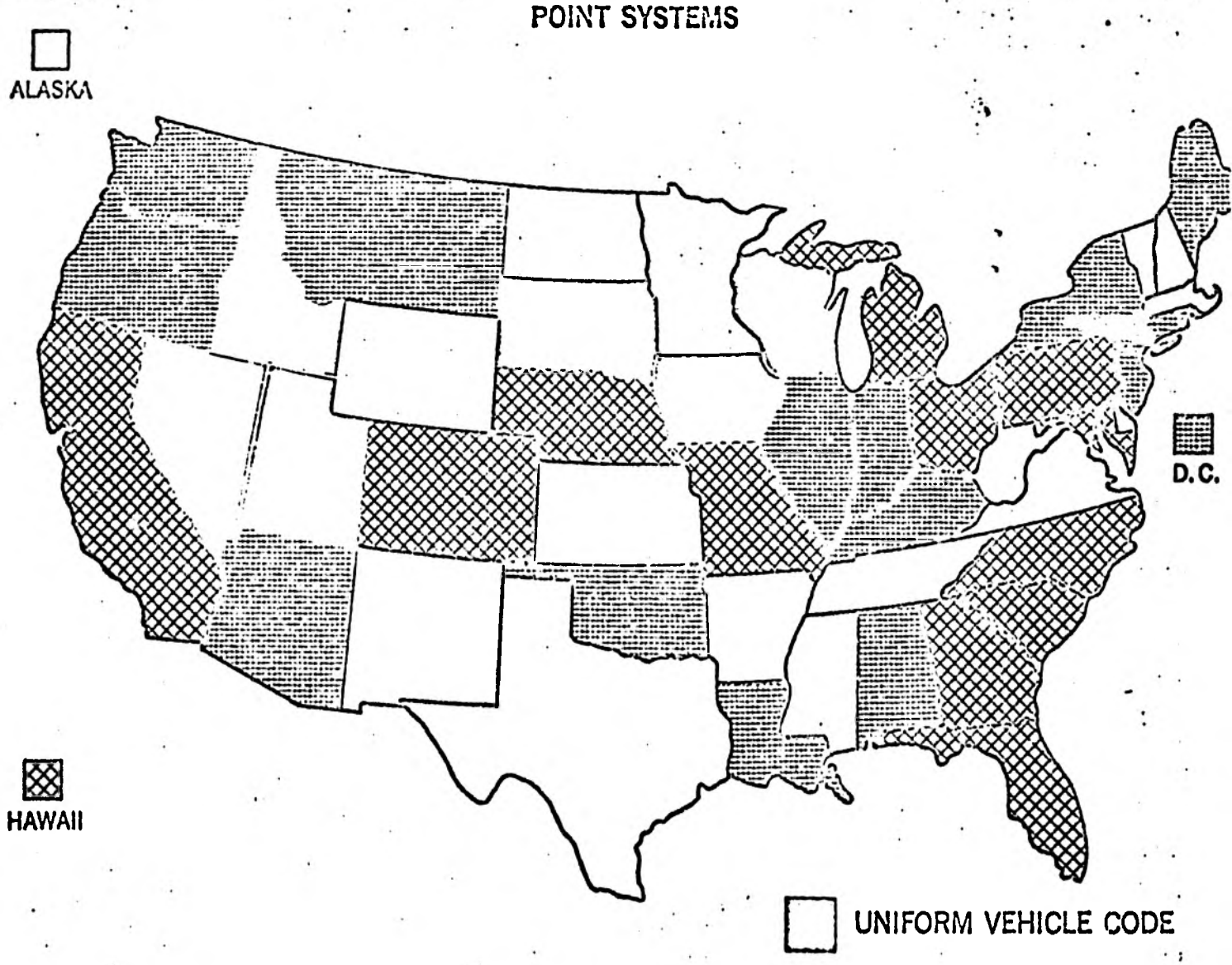
In most states, after the accumulation of a certain number of points below the action level, the department as a matter of law or under administrative procedures, sends out a warning letter or requests the licensee to submit to an interview, or both, but the point levels at which such steps are taken vary.

Out-of-state conviction of resident drivers for comparable in-state offenses are treated differently under the point systems of the several states. In New Jersey, for example, points are assessed against a resident driver who is convicted in another state of an offense covered by the point system. In Florida, except for those offenses requiring mandatory revocation of license, "point system" values for out-of-state convictions may be assessed at half the value that normally would be assigned if the convictions had been had in Florida. In Maryland and North Carolina, points are assigned against residents only upon conviction within the state and do not apply to such offenses committed in a foreign jurisdiction. In Hawaii and South Carolina, out-of-state convictions of residents apply if reciprocal agreements have been entered into with such jurisdictions.

A few states also give special consideration to licensees subject to action under the point system. For example, in North Carolina, when a person accumulates seven points he may be afforded an opportunity to attend a driver improvement clinic, and if he successfully completes such course, three points are deducted from his record. In Maryland, if a person needs a license for purpose of employment, additional points beyond the normal action level are permitted before a license is suspended or revoked. In Colorado, Iowa and Missouri for example, a special restricted license may be issued for occupational purposes to a licensee otherwise subject to suspension. (See also Occupational Licenses under Table 13.) In Utah, the number of points assessed for a violation may be increased or decreased by 10%, depending upon the severity of the offense as determined by the court.

Iowa, Hawaii and Utah also have features not covered in any other point system laws. In Iowa, a person is permitted to accumulate credit points, one for each year of violation-free driving, until he receives a total of five points. These credits may then be used

POINT SYSTEMS



- Statutory point system *(13 states)*
- Law sets standards and authorizes licensing agency to establish point system *(6 states)*
- Administrative point system established by licensing agency under general authority *(15 states and D.C.)**
- No formal, publicized point system *(16 states)*

**See Footnote, Section III, summary.*

STATUTORY POINT SYSTEM*

Table 7

U. V. C.	X	U. V. C.	X
Alabama	—	Nebraska	X
Alaska	—	Nevada	X
Arizona	—	New Hampshire	—
Arkansas	—	New Jersey	#
California	X	New Mexico	—
Colorado	X	New York	—
Connecticut	—	N. Carolina	X
Delaware	—	N. Dakota	—
Florida	X	Ohio	X
Georgia	X	Oklahoma	—
Hawaii	X	Oregon	—
Idaho	X	Pennsylvania	X
Illinois	—	Rhode Island	—
Indiana	—	S. Carolina	X
Iowa	X	S. Dakota	X
Kansas	—	Tennessee	—
Kentucky	#	Texas	—
Louisiana	—	Utah	X
Maine	—	Vermont	—
Maryland	X	Virginia	—
Massachusetts	**	Washington	—
Michigan	X	W. Virginia	—
Minnesota	—	Wisconsin	X
Mississippi	—	Wyoming	—
Missouri	X	Dist. of Columbia	#
Montana	—		

* *See digest of state laws on following pages.*

** *1953 law under which registrar established and administered a point system was repealed in 1960.*

\# *In Sturgill v. Beard, see Appendix, Section III, Table 7, Point System—court held that department has authority under the law (covered in Tables 4-6) to establish an administrative point system.*

to offset the assessment of points for future offenses committed. Hawaii, similarly, provides that if no violation is charged against a person during a 24-month period, a total of six favorable points will be credited to his account which may be used to offset points charged for violations. In Utah, the department is authorized to delete points for violation-free driving for such period of time as it may prescribe.

And in Pennsylvania, a point is credited, or demerit points are assessed, depending upon whether or not a person assigned to a driver improvement school successfully completes the course and meets other related requirements.

DIGESTS OF STATUTORY POINT SYSTEMS

UNIFORM VEHICLE CODE

Basic authority for establishing a point system was incorporated in the 1968 revision of the UVC. The provision leaves to administrative determination point values to be assigned to offenses and the number of points and time period within which they are accumulated before suspension may be authorized. Footnotes, however, suggest certain criteria for the consideration of the responsible administrative agency. Following is a brief digest of the substantive elements of the provision and footnotes:

1. *Authority to Establish:*
   To identify habitually reckless or negligent drivers and habitual or frequent violators of the traffic regulations, requires department to adopt regulations for a uniform system of demerit points to be assigned for convictions of violation of the rules of the road (Chapter 11) and local ordinances regulating the operation of motor vehicles.

2. *Non-Assignment of Points:*
   No points shall be assessed for violations governing standing, parking, equipment or size or weight. (Footnote suggests also that no points be assigned for violations by pedestrians, passengers or bicycle riders, or for violations of provisions relating to the preservation of the condition of traffic control devices on the highway.)

3. *Out-of-State Convictions:*
   Department is authorized to assess points for conviction in other States of offenses which, if committed in home state, would be grounds for such assessment.

4. *Interim Action:*
   Notice of assessment of points may be given to driver, but notice shall be given when point ac-

cumulation reaches a certain percent of the number of points at which suspension is authorized (footnote suggests 50 percent as appropriate).

5. *Two or More Offenses Arising Out of Single Incident:*

In the event of conviction for two or more traffic violations committed on a single occasion, points to be assessed for one offense, and if point values differ, points to be assessed for offense having greater point values.

6. *Suspension — Hearings:*

Department authorized to suspend license of driver, with or without a hearing (but see Table 4 re suspension without a preliminary hearing) when his driving record identifies him as an habitually reckless or negligent driver or as an habitual or frequent violator under the point system.

7. *Action Level — Point Values:*

As a guide to the administrator and in the interest of interstate uniformity, a footnote suggests the following action level and point values for offenses:

An accumulation of 12 or more points during any consecutive 12-month period, or 18 or more points during any 24-month period as the basis for suspension.

Six points for conviction of reckless driving (willful and wanton disregard for safety of persons or property) speeding at least 20 mph over the lawful limit; four points for conviction of relatively serious offenses; and three points for less serious offenses.

CALIFORNIA

1. *Number of points which authorizes action:*

When the department determines that a person is a negligent operator, it may refuse to issue or renew a driver's license. (However, under administrative policy, when a person's driving record shows the following violation point count the department may suspend, revoke or place such person on probation based upon the circumstances involved.)

In applying the authority granted, the department is required to give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

A person is presumed to be a negligent operator if he has accumulated a violation point count of:

4 or more points in 12 months
6 or more points in 24 months
8 or more points in 36 months

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Failing to comply with requirements, in accident resulting in property damage, including vehicle; parking vehicle which becomes runaway and causes such damage.....	2
(2) Driving under the influence of intoxicating liquor or combined influence of liquor and any drug.....	2
(3) Reckless driving	2
(4) Reckless driving — bodily injury.....	2
(5) Any other traffic conviction involving safe operation of a motor vehicle....	1
(6) When licensee involved in accident is deemed responsible by department..	1

3. *Interim Action:*

Not specified in law but under administrative procedure warning letters are sent in the discretion of the department when person accumulates three points in one year; five points in two years and seven points in three years.

4. *Two or more offenses arising out of a single incident:*

When more than one violation arises out of a single incident only one violation is counted under the point system.

COLORADO

1. *Number of Points which authorizes suspension:*

12 points within any 12 consecutive months or 18 points within any 24 consecutive months.

Time periods shall be based on date of violation but points shall not be assessed until after conviction; accumulation of points shall not be affected by the issuance or renewal of license. (See Table 8 for maximum period of suspension).

Other statutory provisions covering cancellation and mandatory revocation take precedence over the point system law. (See Tables 1-3).

2. *Application to certain licensees:*

In case of provisional licensees (18-21 years of age) license subject to suspension for accumulation of eight points within 12 consecutive months or 12 points within 24 consecutive months, or 14 points within period for which license was issued; in case of minor operator (16-18 years of age) license subject to suspension for four points within 12 consecutive months or more than six points within time period for which license issued. Whenever a minor operator receives a summons for a traffic violation, his parent or legal guardian shall be notified by the court.

If any applicant for license has illegally operated motor vehicle prior to issuance of valid license or permit within 36 months prior to application, department may deny issuance for not more than 12 months.

Points accumulated by minor operator under a temporary instruction permit shall apply to license subsequently issued.

Authority to suspend under point system not to prevent issuance of restricted license under other law (13-4-14: among other restrictions, license may be issued limiting operation to driving to and from place of employment or performance of duties in course of employment; on satisfactory evidence of violation of such restrictions, department may cancel or suspend restricted license but offender entitled to hearing as otherwise provided.)

3. *Violations and schedule of point values based upon convictions:*

	Points
(1) Leaving scene of accident	12
(2) Driving while intoxicated (.10% or more) or under the influence of drugs	12
(3) Driving while impaired by consumption of alcohol (more than .05% and less than .10%)	8
(4) Speed contests	12
(5) Eluding or attempting to elude a police officer	12
(6) Reckless driving	8
(7) Careless driving ...4	4
(8) Speeding — one to nine miles per hour over the posted speed limit	3
(9) Speeding — 10 to 19 miles per hour over the posted speed limit	4
(10) Speeding — 20 miles or more per hour over the posted speed limit	6
(11) Failure to stop for school signals	6
(12) Driving on wrong side of road	4
(13) Improper passing	4
(14) Failure to stop for school bus	4
(15) Following too closely	4
(16) Failure to observe traffic sign or signal	4
(17) Failure to yield to emergency vehicle	4
(18) Failure to yield right-of-way	3
(19) Improper turn	3
(20) Driving in wrong lane or direction of one-way street	3
(21) Driving through safety zone	3
(22) Conviction of violations not herein stated while driving a moving vehicle, which are violations of a state law or municipal ordinance	3
(23) Failure to signal or improper signal	2
(24) Improper backing	2
(25) Failure to dim or turn on lights	2
(26) Operating an unsafe vehicle	2
(27) Improper, dangerous parking	1

4. *Hearings:*

Suspension imposed only after a hearing; hearing held 10 days after notice to licensee; hearing delays are granted only upon good cause and then no later than 30 days following date of original hearing; if person fails to appear for hearing, when delay or continuance not requested, department shall immediately suspend license without further notice. However, such suspension or revocation not to be effective until 20 days after notification of such action has been mailed to licensee; such notice to inform licensee that he may apply for hearing within 20 days after mailing of notice, and if hearing is requested, effective date of action will be extended until hearing; hearing to be held within 30 days of request.

If after hearing, record of licensee does not sustain suspension, department shall not suspend and shall adjust point total accordingly. (See also under item 5 —Interim Action.)

5. *Interim Action:*

Upon accumulation of half as many points as are required for suspension, department may send licensee a warning letter or order a preliminary hearing; failure to send such warning letter or hold such hearing not to be grounds for invalidating subsequent suspension action resulting from accumulation of additional points. Failure to report for preliminary hearing when ordered, unless good cause shown, may result in license suspension.

6. *Duration of Points:*

Points to accumulate throughout period for which license issued (birthday renewal of licenses every three years).

7. *Probationary Licenses:*

If license is suspended, department may issue probationary license for period not exceeding period of suspension; (conditions for issuance of such license not stated); license may contain such restrictions as department may deem reasonable and necessary and

is subject to cancellation for violation of restrictions; department may also order any person whose license is suspended to take a complete driving reexamination.

8. *Appeal to Court:*

After hearing, licensee may appeal department's decision to district court. See Note in Table 11.

FLORIDA

1. *Number of points which authorizes suspension:*

12 points within 12 months — maximum 30 days.

18 points, including points upon which suspension action is taken above, within 18 months — maximum 5 months.

24 points, including points upon which suspension action is taken above, within 36 months — maximum 1 year.

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Reckless driving willful and wanton.	2-6
(2) Leaving scene of accident resulting in property damage of more than $50,.	3-7
(3) Passing stopped school bus.....	2-4
(4) Unlawful speed	2-4
(5) Improper equipment (brakes, lights, steering)	1-3
(6) All other moving violations (including parking on highways outside municipal limits)	1-3
(7) Any moving violation covered above resulting in accident	2-4

3. *Point Assessment:*

Courts shall assess points against violators from the minimum to the maximum shown above; if court fails to specify number of points on conviction report at the time of conviction, department shall assign the median points provided for the violation committed.

4. *Hearings:*

Suspension before hearing, but licensee entitled to hearing.

5. *Interim Action:*

Warning letter sent when driver's record reaches "danger zone."

6. *Duration of Points:*

Points have full value for period of 36 months; after 36 months points are erased.

7. *Out-of-State Convictions:*

Resident drivers may be assessed half the point values for comparable out-of-state convictions; exception is made for offenses requiring mandatory revocation. (Tables 1-3).

GEORGIA

1. *Authority:*

Department (Director of Department of Public Safety) to establish point system for assessment of points for moving traffic violations committed by resident licensees within or without state.

Note: With regard to plea of nolo contendere, points to be assessed upon a second or subsequent such plea.

2. *Number of points which require suspension:*

Department shall suspend license for a period of not more than one year upon accumulation of 15 or more points in any consecutive 18-month period.

3. *Violations and schedule of point values based on convictions:* (See Note, Item 1, above)

	Points
(1) Exceeding speed limit by 25 mph or more	6
(2) Exceeding speed limit by more than 10 mph but less than 25 mph.....	3
• (3) Exceeding speed limit by not more than 10 mph: except school zone .....no points in school zone	2
(4) Unlawful passing of school bus.....	6
(5) Any moving violation resulting in accident	4
(6) Improper passing on hill or curve...	4
(7) Disobedience of any traffic control device	3
(8) Disobedience of any traffic officer....	3
(9) All other moving traffic violations...	2

4. *Reinstatement — Hearings:*

Department may after 30 days of suspension (60 days on second or subsequent conviction) reinstate licensee if he qualifies as a self-insurer or produces evidence of a policy of liability insurance (in accordance with 92A-608).

Any person suspended under point system is entitled to a hearing (as provided in 92A-602).

•*Note: Under other law (63-2113), no speeding violation of less than 10 mph above speed limit in a county or municipality in which person is given a speed ticket shall be used by the department for purposes of revoking a driver's license. No speed violation reported by counties or municipalities which fails to specify the speed shall be used by the department to revoke license of violator.*

5. *Point count following reinstatement:*

Upon reinstatement of licensee, point count reduced to six. If no additional violation points accumulated within 12 months subsequent to reinstatement, point count reduced to zero.

6. *Interim Action:*

Department to notify licensee when point count equals or exceeds one-half the number of points requiring suspension of license. Notice to be in form determined by department, but shall give ample warning that continued violations might result in license suspension. Sending or receipt of such notice not a condition precedent to license suspension.

7. *Records:*

Courts, except juvenile courts, to maintain records of violations and action taken and forward abstract of conviction to department within 30 days of last day of month in which conviction occurred. (department to pay 25 cents for each such report)

8. *Provisions of law cumulative, supplemental:*

Authority to suspend under point system law is cumulative and supplemental to other powers, duties and responsibilities of the director in relation thereto.

9. *Removal of points — special circumstances:*

In cases where Governor issues an executive order (pursuant to 68-1628) suspending the power of a county or municipality from enforcing speed limits within their jurisdiction, any points assessed during period of such suspension shall be removed from licensee's record; not applicable, however, when points assessed as a result of arrest by any member of the Department of Public Safety or person enforcing the law under the department's supervision.

HAWAII

1. *Authority:*

Points imposed by district magistrates for conviction of state traffic laws or county traffic ordinances with such frequency as to indicate a disrespect for such laws and ordinances and a disregard for the safety of other persons on the highway.

A total of 12 points indicates such disrespect and disregard. Magistrates not precluded from imposing greater sentence as may be provided by law.

2. *Number of points which authorize action:*

District magistrates shall suspend license for a period of one to six months upon accumulation of 12 points. Upon a showing of good cause, magistrate may suspend the license suspension.

In computing points, those accrued during the 12-month period including and immediately preceding the last violation shall be counted at full value; those accrued from 12 to 24 months preceding the last violation shall be counted at one-half their value; points resulting from violations more than 24 months prior to last violation shall not be counted.

If no violation has been charged against a person during a 24-month period, a total of six favorable points will be credited to his account which may be used to offset points charged for violations.

In the event a district magistrate subsequent to bail forfeiture does hear the case, he may set aside the points resulting from the bail forfeiture and designate the points he deems necessary, provided that no licensee shall twice be assigned points for the same traffic violation.

3. *Violations and schedule of point values based upon convictions:*

	Points
(1) Heedless and careless driving	3 to 6
(2) Driving while license suspended or revoked (includes court conviction as well as safety responsibility violations)	3 to 6
(3) Fraudulent use of license	3 to 6
(4) Excessive speeding (15 miles or more over established limit)	3 to 6
(5) Leaving scene of accident	3 to 6
(6) Speeding (10 miles or more over established speed limit)	1 to 4
(7) Failure to report accident immediately	1 to 4
(8) Driving on left side of roadway	0 to 4
(9) Inattention to driving; negligent driving	1 to 4
(10) Permitting unlicensed driver to drive	1 to 4
(11) Following too closely	1 to 3
(12) Disregarding stop signs	1 to 3
(13) Right of way violations	0 to 3
(14) Disregarding traffic control signals	1 to 3
(15) Unlawful passing	0 to 3
(16) Unsafe changing of lanes	0 to 3
(17) Crossing solid or double lines	0 to 3
(18) Impeding traffic	0 to 2
(19) Improper turning	0 to 2
(20) Unsafe emergence from parked position	0 to 2
(21) Disregarding pavement markings	0 to 2
(22) Unsafe movements	0 to 2

	Points
(23) Stopping at medial openings	1 to 2
(24) Improper emergence from private driveway	1 to 2
(25) Unattended motor vehicle (if motor running)	1 to 2
(26) Violations of pedestrian's right of way	1 to 2
(27) Unsafe equipment on vehicle	0 to 2
(28) Faulty brakes	0 to 2
(29) Driving with improper lights	0 to 2
(30) Operating or carrying a passenger on a motor scooter or motorcycle without a safety helmet or, in absence of a windscreen, without eye and face protective devices or other protective devices required by state highway safety coordinator	0 to 2
(31) Driving after failure to renew license	0 to 2

Whenever an employee is cited for driving a vehicle with unsafe, faulty or improper equipment, brakes or lights and the responsibility for such condition is that of the employer, no points shall be assessed against the driver.

With regard to items (8) and (13), and (15) through (22), no points shall be assessed by court where the violations are due to the size or nature of the vehicle, or the necessity of the driver's following a specific route or schedule in the course of his employment and not to inattention or fault on the part of the driver.

Where bail forfeiture is allowed, the court shall assess the driver the minimum points set forth above, but in no case less than one point.

4. *Duration of Points:*

See under 2, above.

5. *Notice of Suspension — return of license:*

Upon accumulation of sufficient points to warrant suspension by the district magistrate, licensee required to surrender license to court, if present in court; if licensee not present when license suspended, clerk of court to notify licensee in writing by certified mail of license suspension and the return of license within 15 days of receipt of notice; willful failure to return license shall, on conviction, result in fine of not more than $100 or imprisonment for not more than 30 days or both.

6. *Nonresidents:*

Nonresident's driving privilege subject to suspension by district magistrates in like manner and for like cause.

7. *Outside convictions:*

District magistrates of each county shall enter into reciprocal agreements with other counties, and the Governor of the state may enter into such agreements with any state or territory, for the purpose of reporting convictions or bail forfeitures in such jurisdictions by persons holding a license from such jurisdictions.

Such convictions or bail forfeitures for violations which if committed in Hawaii would be a violation of the state traffic laws or the ordinances of the several counties shall be recorded against the licensee as if committed in Hawaii.

8. *Appeals:*

In event of appeal from decision of district magistrate to circuit or supreme courts, or a trial in circuit court, such courts shall be governed by provisions of the point system and shall direct the district magistrate and the clerk of the magistrate to carry out their orders.

9. *Conviction reports —courts martial:*

Convictions by courts martial of any branch of armed services of the U. S., or by a U. S. Commissioner of a violation either on or off government property, which would be a violation of the state traffic laws or ordinances of the several counties, may be recorded against the licensee as if the convictions had been had in the courts of the state.

10. *Prima facie evidence of conviction:*

Photostatic or other copies of reports filed with district magistrates shall be deemed prima facie evidence of conviction or bail forfeiture when such copies are duly certified by issuing agencies as true copies of originals on file.

IDAHO

1. *Authority to Establish:*

Commissioner of lawenforcement directed to establish a violation point count system covering licensed resident drivers to apply to various moving traffic violations occurring within or outside the state.

2. *Point Values:*

Range of point values shall be one point on conviction for less serious violations to four points for more serious violations; conviction for only one violation arising from one arrest or citation shall be counted in determining violation point count.

3. *Action Level:*

Driver's license suspended when person has 12 or more points in any consecutive 12-month period or is a habitual violator of the traffic laws of the state. Habitual violator means a person who has a driving record showing a violation point count of 18 or more points in any consecutive 24-month period, or 24 or more points in any consecutive 36-month period.

4. *Hearings:*

Person suspended under point system (or for grounds covered in Tables 4-6) entitled to hearing.

IOWA

1. *Establishment of Point System:*

Commissioner is authorized to establish a point system for weighting traffic convictions or offenses by their seriousness and may change such weight scale from time to time as experience and accident frequency dictate.

Purpose of point system is to determine when the commissioner may suspend a license based on department records and other sufficient evidence, under his discretionary authority. (See Tables 4-6.)

2. *Credit points:*

After point system goes into effect under this authority, licensee shall receive a credit of one point for each year in which he had a valid license and during which no points were assessed against his license; such credit points shall not exceed five at any one time.

Credit points shall be subtracted from total points assessed against a licensee in determining when to suspend a license.

3. *Notice of Suspension — Appeals:*

Prior to suspension taking effect on the following grounds, licensee shall have 20 days advance notice of effective date of suspension and an appeal to the court shall stay suspension pending determination by the district court that licensee:

(1) Is a habitually reckless and negligent driver

(2) Is a habitual violator of the traffic laws

(3) Is incompetent to drive

(4) Has permitted an unlawful or fraudulent use of his license

(5) Has committed a serious violation of the state motor vehicle laws

4. *Notice of Point Assessment:*

Department must notify licensee when points are assessed and reasons therefor.

5. *Hearings:*

No license shall be suspended under the point system without notice of proposed suspension and without a preliminary hearing before members of the department "who shall have authority in meritorious cases to revoke the suspension." (Note: suspension before hearing under other law—see Table 4.)

6. *Equipment — Points not to be assessed:*

Warnings, summons, conviction or forfeiture of bail not vacated for a violation of the state law or municipal ordinance pertaining to vehicle equipment standards, except Sections 321.430 and 321.431 and local ordinances relating to brake requirements, shall not be considered in determining suspension or length of suspension. Nor does suspension action apply for violation of brake requirements if equipment is repaired within 72 hours of warning, summons, etc., and evidence of such repair has been sent to department.

7. *Occupational License:*

On application the commissioner may issue a temporary restrictive license to any person convicted, whose regular employment requires operation of a motor vehicle or who cannot perform his regular occupation without the use of a motor vehicle; such restrictive license does not entitle person to drive a vehicle for pleasure. Issuance of such license not applicable to person whose license is revoked for conviction requiring mandatory revocation of license. (See Tables 1-3.)

MARYLAND

1. *Number of points which authorizes suspension:*

Eight points within two years—initial suspension not less than two days and not more than 30 days; subsequent suspension not less than 15 days nor more than 90 days.

12 points within two years—license revoked (three months—under other law).*

If above action adversely effects employment or opportunity of employment of licensee, hearing officer authorized not to order suspension or revocation, or to cancel or modify suspension or revocation. In addition, if licensee is required to drive a motor vehicle in the course of his regular employment, suspension level shall be 15 points and revocation 18 points.

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Any moving violation not listed below and not contributing to an accident	1
(2) Violations contributing to an accident	3
(3) Exceeding posted speed limit by 10 mph or more	3
(4) Reckless driving	3
(5) Failure to report an accident	5
(6) Permitting unlicensed operator to operate a motor vehicle	4

**Period of revocation not specified but under other law (Section 106, Article 66 1/2) first revocation is three months; second or subsequent revocation is one year. (Sec. N1, Table 8) Point System law specifies that it shall not affect or apply to section 104 relating to mandatory suspension or revocation*

of license (see Tables 1-3) or to provisions of the motor vehicle financial responsibility law.

	Points
(7) Leaving after colliding:	
(a) No personal injury.....	8
(b) With personal injury.....	12
(8) Operating after suspension or revocation	12
(9) Obtaining or attempting to obtain permit by misrepresentation.....	12
(10) Loaning or altering a permit.....	12
(11) Conviction for any homicide or assault committed by motor vehicle..	12
(12) Driving under the influence of intoxicating liquor or narcotic drugs.	12
(13) Any felony involving use of motor vehicle	12

Note: Point system law specifies that it is in addition to, and not in substitution of, other law.

With regard to items (7b), (8), (11), (12) and (13) above, revocation upon conviction for such offenses is specified under other law, which also covers out-of-state convictions; provisions of the point system do not affect or apply to such out-of-state convictions.

3. *Interim Action:*

Warning letter to be sent upon accumulation of three points; licensee called in for conference upon accumulation of five points.

4. *Hearings:*

Licensee may request hearing within 10 days of notice of suspension (after eight points) or notice of revocation (after 12 points); suspension or revocation to be invoked at end of 10-day period unless licensee requests hearing. (Note: under other provisions of law, suspension is imposed only after a hearing is held—See Table 4.)

5. *Duration of Points:*

Points retained for two years and not counted thereafter.

6. *Out-of-state convictions:*

Applies only to convictions within the state.

7. *Two or more offenses arising out of single incident:*

Where multiple charges arise out of same incident, only the charge which has the highest point value is assessed upon conviction.

8. *Military Personnel:*

Points are assessed against service personnel for moving traffic violations, if after traffic case is turned over to military authority, commissioner is notified that such authority has taken disciplinary action.

9. *Appeals:*

Licensee has right of appeal as provided for under other provisions of law.

10. *Reinstatement following suspension, revocation:*

A licensee suspended or revoked under the point system shall not be reinstated unless he passes a reexamination which covers the tests given to all driver applicants (eyesight, ability to read and understand highway signs, knowledge of traffic laws and safe driving practices, driving test and such further physical or mental examinations as department finds necessary to determine fitness to operate a motor vehicle safely.)

11. *General Authority:*

Commissioner given authority to issue warning letters, conduct conferences, issue or modify orders of suspension and revocation, and hold hearings; a Driver Improvement section is established in the department to administer the point system.

MICHIGAN

1. *Number of points which authorizes suspension:*

12 points within two years—maximum suspension one year. (See Note, Table 4.)

2. *Violations and schedule of point values based upon convictions or probate court findings:*

	Points
(1) Manslaughter, negligent homicide or other felony resulting from operation of motor vehicle.....	6
(2) Operating under influence of intoxicating liquor or narcotic drug.....	6*
(3) Failure to stop and disclose identity at scene of accident.....	6
(4) Reckless operation in violation of Sec. 626 or similar state or municipal law within or without the state	6
(5) Exceeding speed limit by more than 15 mph or careless driving (state law or ordinance)	4
(6) Exceeding speed limit by more than	

*Under other law, four points are assessed upon conviction f operating a motor vehicle when due to consumption of i toxicating liquor or drugs, a person's driving ability is visib impaired. (Person charged with driving while under the i fluence of intoxicating liquor or drugs (Table 1) may found guilty under this provision).

(Note: Person convicted of driving while under influence intoxicating liquor or drugs (Table 1) has license suspend in addition to which six points are assessed under point s tem; 0.15% or more by weight of alcohol in blood constitu presumption that person was under influence of intoxicati liquor, whereas 0.10% or more by weight of alcohol in blo constitutes presumption that person's driving ability visibly impaired.)

	Points
10 but not more than 15 mph (state law or ordinance)	3
(7) Exceeding speed limit by 10 mph or less (state law or ordinance)	2
(8) Disobeying traffic signal, stop sign or improper passing	3
(9) All other moving violations	2
(10) Failure to answer a citation or notice to appear in court for any violation of Act or comparable ordinance	1*

No points shall be assessed for defective equipment when such defect consists of overweighted loads.

3. *Hearings:*

Department may conduct investigation and may require examination before action is taken; for failure to appear for reexamination, after proper notice, license revoked.

4. *Interim Action:*

Licensee may be called in for interview upon accumulation of nine points; for failure to appear after notice, three additional points are assessed.

5. *Appeals:*

Person aggrieved by action of department suspending or revoking license under point system may petition circuit court for order staying such action; court authorized to enter ex parte order staying suspension or revocation, subject to such terms and conditions as it may prescribe and for such time as it deems proper or until determination of any appeal to license appeal board or circuit court. (Also see Note under Table 11.)

6. *Duration of Points:*

Points retained for a two-year period. Every subsequent conviction date establishes new two-year period. Points accumulated are not erased until lapse of two years from latest conviction date. (However, driver's record maintained for seven years, and indefinitely for point convictions covering violations (1), (2), (3), and (4) in Item 2, above.)

7. *Out-of-State Convictions:*

No point values are assessed for bond forfeitures outside of state.

8. *Assessment of points when licensee subject to suspension under other law:*

Points are assessed against the driver's record for offenses under the point system even though offender is suspended or revoked for the same offense under other provisions of law.

9. *Multiple Convictions:*

If more than one conviction results from same incident, points assessed for more serious offense only.

Other law states that such failure shall constitute a misdemeanor but "shall not be considered a violation for any purpose under Sec. 320a" (point system) and provides that 30 days following failure to respond, court shall send notice to offender and upon his failure to appear within 14 days, department shall suspend offender's license and so notify him; suspension to remain in effect until matter adjudicated; on return of license, a reinstatement fee of $2.00 is imposed; such offender not subject to reexamination, as is required before reinstatement of licensees suspended or revoked.

MISSOURI

1. *Establishment of Point System:*

Director of revenue required to put into effect a point system for suspension and revocation of licenses (chauffeurs and operators). Points to be assessed only after a conviction or forfeiture of collateral.

2. *Number of Points Requiring Suspension — Revocation:*

Director shall:

Suspend operating privilege when driver has accumulated eight points within 18 months. Time of suspension shall be not less than 30 days nor more than 90 days. (Note: See Table 8)

Revoke operating privilege one year when driver has accumulated:

12 points in 12 months
18 points in 24 months
24 points in 36 months

3. *Violations and Schedule of Point Values:*

	Points
(1) Any moving violation of a state law or county or municipal traffic ordinance not listed herein, other than a violation of equipment provisions...	2
(Except any violation of a municipal stop sign ordinance where no accident is involved — 1 point)	
Note: Under definition of moving violation, excluded are driving a motor vehicle without a valid motor vehicle registration license and violations relating to sizes and weights of vehicles.	
(2) Speeding:	
In violation of state law	3
In violation of county or municipal ordinance	2
(3) Leaving scene of accident	
In violation of Sec. 564.450 RSMo..	12
In violation of county or municipal ordinance	6

	Points
(4) Careless and imprudent driving	
In violation of Sec. 304.016, sub-section 4, RSMo. (driving on left side of roadway under certain conditions)	4
In violation of county or municipal ordinance	2
(5) Operating without a license after suspension or revocation and prior to restoration of operating privileges	12
(6) Obtaining a license by misrepresentation	12
(7) Driving under the influence of intoxicating liquor or narcotic drugs	
In violation of state law	12
In violation of county or municipal ordinance	6
(8) Any felony involving use of a motor vehicle	12
(9) Knowingly permitting unlicensed person to operate a motor vehicle	4

An additional two points assessed when personal injury or property damage results from above violations and if found to be warranted and certified by the reporting court.

When any of the acts listed in subdivisions (2), (3), (4) or (7) above constitute both a violation of a state law and a violation of a county or municipal ordinance "points may be assessed for either violation but not for both."

4. *Interim Action:*

Director shall notify licensee of points charged against his record when record shows four or more points accumulated in 12-month period.

5. *Reduction of point values — Period of Safe Driving:*

For operation without conviction for a moving violation, point values reduced as follows:

For first full year	— reduced by one-third
For second consecutive full year	— reduced by one-half
For third consecutive full year	— points withdrawn

6. *Reinstatement — Suspension — Revocation:*

Suspended license returned to licensee upon termination of suspension and compliance with Safety Responsibility Law.

Upon termination of revocation, person shall apply for license in manner provided by law. (No new license granted until expiration of one year after revocation, See Note, Table S.)

Upon issuing a reinstated license accumulated point values are reduced to six points.

7. *Out-of-State Convictions:*

On notice of conviction in another state, which if committed in this state, would result in assessment of 12 points, director is authorized to assess points and revoke operating privilege.

8. *Hardship Cases — Livelihood:*

All circuit and magistrate courts located in counties which are part of multi-county judicial circuit have jurisdiction to hear applications for hardship driving privileges.

When court finds that operator or chauffeur suspended or revoked is required to operate a motor vehicle in connection with his business, occupation or employment, it may grant such limited driving privileges as circumstances warrant and if court finds undue hardship on such person to earn a livelihood; person so operating within the restrictions and limitation of such order shall not be guilty of operating a motor vehicle without a valid license.

Operators and chauffeurs may make application to court for hardship driving privilege, which shall be accompanied by copy of applicant's driving record for next preceding five years, as certified by department, and by proof of financial responsibility as required under the financial responsibility law; however, with respect to a chauffeur who fails to file such proof, court may grant hardship driving privilege solely for operating a commercial vehicle whose owner has complied with financial responsibility law; court's order to state such restriction and chauffeur must carry proof of owner's compliance.

Court order granting privilege shall indicate termination date, which shall not be later than end of suspension or revocation; copy of order sent to department, with copy to driver to carry on person when driving; a conviction resulting in assessment of points, other than a violation of a municipal stop sign ordinance where no accident involved, terminate order granting privilege; court in which such conviction occurs to immediately notify driver, the department and court which granted order.

Hardship driving privilege not to be extended to person whose license has been suspended or revoked for following reasons: convicted of any felony in commission of which motor vehicle was used or convicted for second time of driving while under the influence of intoxicating liquor (564.440); person ineligible for license issuance (under Sec. 302.060—grounds for license denial); operating a motor vehicle under influence of narcotic drugs, drugs (as defined in Sec. 195.220) or having left the scene of an accident (564.450); has been granted hardship driving pri

lege within a period of five years preceding application for such privilege, or who has refused to submit to a chemical test for intoxication (561.444) within a five-year period.

NEBRASKA

1. *Number of points requiring mandatory revocation:*

Twelve or more points within two years—mandatory revocation of license or driving privilege of nonresident for one year by department, unless longer period specified by court; period to commence from date of order of revocation or release from jail or penitentiary, whichever is later.

2. *Violations and schedule of point values based on files of department:*

	Points
(1) Felony resulting from operation of motor vehicle	12
(2) Third offense of drunk driving in violation of state, city or village law, whether or not court found same to be third offense	12
(3) Third offense of reckless driving or willful reckless driving or any combination of the two, in violation of state, city or village law whether or not court found same to be third offense	12
(4) "Hit and run" in accident resulting in death or injury of another	12
in death or injury of another	12
in property damage— if accident report within 12 hours	4
if not so reported (telephone call or other notification to appropriate peace officer deemed to be a report)	8
(5) "Hit and Run" in accident resulting alcoholic liquor or any drug in violation of state, city or village law	6
(6) Driving while under the influence of of state, city or village law	6
(7) Willful reckless driving in violation	
(8) Careless driving in violation of city or village law	4
(9) Negligent driving in violation of city or village law	3
(10) Reckless driving in violation of state, city or village law	5
(11) Speeding in violation of state, city or village law:	Points
a. Not more than five miles over speed limit	1
b. More than five miles but not more than 10 miles over speed limit	2
c. More than 10 miles over speed limit	3
(12) All other traffic violations for which reports to the department are required (not including parking violations, muffler violations or overloading of trucks)	2

In all cases the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the licensee was charged. Points assessed as of date of violation for which conviction was had.

3. *Hearings:*

No department hearing; aggrieved person may appeal to court; appeal does not stay revocation unless permitted by court, pending review.

4. *Interim Action:*

Not specified in law. (based on available information, warning letter sent upon accumulation of eight points, under administrative procedure).

5. *Notice of Revocation:*

Within 24 hours after revocation, department to notify person in writing; notice to contain list and date of convictions, courts in which convictions rendered, points charged, length of revocation and demand for return of license. Upon failure to return license, peace officer shall secure possession; refusal to surrender license on demand subjects offender, on conviction, to fine, imprisonment or both.

6. *Duration of Points:*

Points have full value for two-year period and are erased thereafter. Points which are used to suspend the driver are not considered as the basis for further action against the driver.

7. *Non-residents:*

Point system similarily applies to non-residents.

8. *Reinstatement:*

Person revoked under point system must give and maintain proof of financial responsibility for three years, as required under financial responsibility law.

9. *Driving while under Suspension — Revocation:*

Persons driving while under revocation or suspension and before reinstatement shall be subject to following penalties upon conviction under state law or local ordinance:

first offense—imprisonment in county jail for 30 days; court orders person not to drive for one year from date of discharge from jail

each subsequent offense—imprisonment for six months; court orders person not to drive for two years from date of discharge

In addition, person operating motor vehicle who tries to flee in order to avoid arrest for operating while under suspension or revocation and before reinstatement is subject to the following penalties upon conviction—

fine not exceeding $500, or imprisonment in county jail for not more than six months, or in Nebraska Penal and Correctional Complex for not less than one year nor more than three years, or by both such fine and imprisonment. Court also orders person not to drive motor vehicle for one year from date of release, or in case of fine only, from date of satisfaction of fine. (See also Tables 16 and 17).

NEVADA

1. *Authority to Establish:*

Provides that department shall establish a uniform system of demerit points for various traffic violations occurring in state to be assessed against holders of licenses issued by the department.

System to be a running system of demerits covering a period of 12 months next preceding any date on which licensee may be called by department to show cause why license should not be suspended.

Traffic violation defined as conviction on charge involving a moving traffic violation in any municipal, justice's or district court in state.

2. *Point Values:*

Department charged with responsibility of establishing points depending on gravity of offense, with one demerit point to be assessed for a minor traffic violation to eight points for an extremely serious one.

3. *Action Level:*

Details of violation to be submitted to department by court. Department may provide for a graduated system of demerits within each category of violations.

When licensee has accumulated 12 demerit points, the department shall suspend his license until the total demerits have dropped below 12 demerit points in the next preceding 12 months.

NEW JERSEY

Note: The point system has been established under general authority as a regulation by the Director of the Division of Motor Vehicles, Department of Law and Public Safety. It is summarized herein because of its inclusion in the state's pamphlet laws covering motor vehicles and traffic regulations, but more important, because it contains certain grounds for suspension or revocation not otherwise specifically covered in the law but which are the basis for such action in the UVC and laws of other states.

1. *Number of points which authorize action:*

Twelve points within a three-year period may subject driver to hearing before department to show cause why his driver's license should not be suspended, or driver may elect to attend department's Driver Improvement School.

Director may permit driver, subject to suspension under point system, to attend such school in lieu of all or part of period of suspension. The maximum period of suspension that may be credited is two months. If suspension period is longer than two months, driver to surrender license for such excess period; license returned at expiration of period in excess of two months if driver, in signed statement, agrees to attend school on following conditions:

(a) will attend designated school and each session to which he's assigned

(b) comply with rules governing attendance, conduct, instruction and examination

(c) will be subject to suspension of driver license privilege if he fails to attend sessions, fails to comply with rules or fails to successfully complete course.

2. *Violations and schedule of point values:*

	Points
(1) Leaving scene of an accident	8
(2) Reckless driving	6
(3) Racing on highways	6
(4) Speeding—20 mph or more over legal limit, providing speed is less than 60 mph	6
(5) Speeding — other	4
(6) Passing on curve or hill or otherwise unsafely	5
(7) Passing stopped school bus	5
(8) Following too closely	5
(9) Other moving violations	3

3. *Driver Improvement School — Suspended Drivers:*

Driver who accumulates 12 or more points and whose driver license privilege is suspended may be requested to attend and successfully complete course as a condition to restoration of license.

4. *Conditions following restoration of license:*

Restoration after suspension or official warning, or warning after successfully completing Driver Improvement School course following accumulation of 12 points, shall be made on express condition and under-

standing that conviction of any violator of motor vehicle laws of New Jersey or other states within one year thereof, may result in summary suspension of driving privilege, without a hearing for the following period:

when violation occurred within date of action as follows:

within six months — three months
after six months but
within nine months — two months
after nine months but
within one year — one month

5. *Out-of-state violations:*

Violations in other states or Canadian Provinces charged against a person's driving record and points assessed, as if the violation had occurred within State.

6. *Proof of Financial Responsibility:*

On suspension under point system, proof of financial responsibility for the future will be required if one or more violations for which points are assessed resulted in an accident.

7. *Affect on other Suspensions:*

Provision of point system regulations shall not be affected by any revocation or suspension imposed by the judge of a municipal court, except that no lesser period of revocation or suspension will be imposed than that directed by the court.

NORTH CAROLINA *

1. *Number of points which authorizes suspension:*

12 or more points within three-year period, or eight or more points within three-year period immediately following reinstatement of license suspended or revoked because of conviction for one or more traffic offenses.

1st suspension—maximum 60 days

2nd suspension—maximum 6 months

Subsequent suspension—maximum one year

2. *Violation and schedule of point values based upon convictions:*

	Points
(1) Passing stopped school bus.....	5
(2) Reckless driving	4
(3) Hit and run, property damage only.	4
(4) Following too closely.....	4
(5) Illegal passing	4
(6) Driving on wrong side of road.....	4
(7) Running through stop signs.....	3
(8) Speeding in excess of 55 mph.....	3
(9) Failing to yield right of way.....	3
(10) Running through red light.....	3
(11) No operator's license or license expired for more than one year.....	3
(12) Failure to stop for siren.....	3
(13) Driving through safety zone.....	3
(14) No liability insurance.....	3
(15) Failure to report accident where such report is required.....	3
(16) All other moving violations.....	2

No points shall be assessed for convictions of following offenses:

Over loads	Carrying concealed weapon
Over length	Improper plates
Over width	Improper registration
Over height	Improper muffler
Illegal parking	Public drunk within a vehicle

Possession of liquor

Improper display of license plates or dealer tags

Unlawful display of emblems and insignia

Failure to display current inspection certificate

3. *Hearings:*

With or without a hearing.

4. *Interim Action:*

Warning letter sent upon accumulation of four points; department may request licensee to attend conference upon accumulation of seven points, and may afford him an opportunity to attend the Driver Improvement Clinic; upon successful completion of course, three points are deducted from licensee's record; only one such deduction permitted for any one licensee.

5. *Appeals — Stay of Suspension:*

License not to be suspended pending appeal from conviction.

6. *Duration of Points:*

Points retain their full value for three-year period and are erased thereafter. Upon restoration of license suspended or revoked for conviction of a traffic offense, any accumulated points in a driver's record are erased.

7. *Out-of-State Convictions:*

Point system applies to violations and convictions within state only.

8. *Assessment of Points when licensee subject to suspension under other law:*

Points are not assessed for convictions resulting from suspension or revocation under other provisions of

*See Note, Table 12 on habitual offender.

law. Any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered as the basis for suspension or revocation of license. When person subject to suspension under point system and to suspension or revocation at the same time under other provisions of law, period of suspension or revocation to run concurrently.

9. *Two or more offenses arising out of single incident:*

Where multiple offenses occur on a single occasion, points assessed for one offense only; if offenses have different values, the highest point value is assessed.

10. *Probation:*

Department may substitute a period of probation for all or any unexpired period of suspension under the point system for period not exceeding one year; violation of probation results in suspension for original period ordered, or remainder of unexpired term; accumulation of three or more points during probation constitutes violation of probation.

OHIO

1. *Number of points which authorizes suspension:*

Twelve or more points within a two-year period.

2. *Procedure:*

Department notifies offender who has accumulated 12 points within two years from date of first conviction that his license will be suspended within 20 days of notice unless he files petition in court (juvenile court, if under 18 years of age) agreeing to pay cost of proceedings and alleging he can show cause why his driving privilege should not be suspended as follows: (Upon written request of petitioner department shall furnish him with copy of record of convictions; existence of such record showing 12 or more points shall be prima facie evidence that person is an habitual traffic law violator.)

a. Six months, if person not previously suspended under the point system

b. One year, if person had no more than one such previous suspension

c. Three years, if person had no more than two such previous suspensions

d. Five years, if person had three or more such previous suspensions.

At hearing court determines if person's license shall be suspended, based on record and other competent evidence. If court finds that person has failed to show cause why his license should not be suspended, court shall suspend as noted above, withhold such suspension or part thereof, or provide such conditions or probation as it deems proper; in such case, cost of proceedings to be paid of person; if person does show cause, cost to be paid out of county treasury.

3. *Violations and schedule of point values based on convictions.* (See item 7 below):

Courts of record or mayors' courts shall assess and transcribe to abstract of conviction report, furnished by and forwarded to the department, the points charged, according to following schedule:

	Points
(1) Violation of provisions (secs. 4507.38, 4507.39, or ordinance) prohibiting operation of motor vehicle while under suspension or revocation. (4507.38 prohibiting while license is suspended or revoked under driver license law; 4507.39 prohibits any "nonresident or other person" whose license or right of privilege to operate in the state has been suspended or revoked from operating with a license issued by another jurisdiction during period of suspension or within one year of date of such revocation)	6
(Also provides, with reference to above enumerated sections, for fine of not more than $500 and imprisonment for not less than two days nor more than six months; however, under point system (sec. 4507.40) penalty for driving while license suspended or revoked shall be a fine of not more than $500 and imprisonment for not less than three days nor more than six months; no court shall suspend the first three days of any sentence provided under the section.)	
(2) Violation of 4549.04 or ordinance prohibiting operation of a motor vehicle without consent of owner...	6
(3) Homicide by vehicle.....	6
(4) Violation of 4511.19 or ordinance prohibiting operation of a motor vehicle while under the influence of alcohol or drugs.....	6
(5) Failure to stop and disclose identity at scene of accident.....	6
(6) Violation of 4511.02 or any ordinance prohibiting the willful fleeing or eluding of a police officer.....	6
(7) Any crime punishable as a felony under the motor vehicle laws or any other felony in which motor vehicle is used	6
(8) Driving in violation of license restrictions	2
(9) Violation of 4511.251 or ordinance prohibiting reckless operation.....	4

	Points
(10) Violation of 4511.20 or ordinance prohibiting reckless operation.....	4
(11) Violation of speed regulations.....	2
(12) All other moving traffic violations, except 5577.01 through 5577.99 (size and weight of vehicles)	2

4. *Interim Action:*

Warning letter by regular mail sent when points assessed exceed five; letter to list reported violations, points charged for each, and to include outline of suspension provision. On accumulation of more than seven points person required to submit to license or physical examination, or both; such examination to determine if person is to be suspended or revoked, retain license or is issued restricted license. Failure or neglect to submit to exam is grounds for suspension or revocation.

5. *Duration of Points:*

Points retain their full value for two years; points used to suspend driver shall not be considered as the basis for any subsequent suspension under point system.

On notification from court, department shall delete points entered for bond forfeiture if person is acquitted of offense.

6. *Out-of-State Convictions:*

Not included under point system.

7. *Assessment of points when licensee subject to suspension under other law:*

When person's driving privilege is suspended by the court for specified offenses covered in Tables 1-3 and points are charged under the point system for such offenses, "that period of suspension shall be credited against the time of any subsequent suspension under this section for which such points were considered in making such subsequent suspension."

8. *Two or more offenses arising out of single incident:*

Where multiple offenses occur on a single occasion, points are assessed for one offense only; if offenses have different point values, the highest point value is assigned.

9. *Nonresidents:*

Nonresidents' driving privilege subject to suspension by department (registrar). (Note: See Item 2 above, covering court's authority.)

10. *Reinstatement:*

Person whose license is suspended, put "on probation, or granted limited or occupational driving" under the point system, is not reinstated until he has qualified by taking the required driver's examination and gives and maintains proof of financial responsibility in accordance with the provisions of the financial responsibility law.

PENNSYLVANIA

1. *Number of points which require suspension:*

Eleven points or more (Also see Interim Action, Item 3, below).

First suspension	— 60 days
Second suspension	— 90 days
Subsequent suspension	— 120 days to one year, at discretion of department

2. *Violations and schedule of point values based upon convictions:*

Section of Code		Points
1001 (1)	Reckless driving	5
1002 (a)	Driving too fast for conditions	5
1002 (b) (1)	Exceeding speed limit of 10 mph in passing any interurban or street car taking on or discharging passengers; at intersection where safety zone established; where traffic controlled by officer or traffic signal	4
1002 (b) (1.1)	Exceeding 15 or 20 mph limit in residence district	4
1002 (b) (2)	Exceeding speed limit of 15 mph in school zone	5
1002 (b) (3)	Exceeding speed limit 20 mph within 200 feet of RR grade crossing..	3
1002 (b) (4-7, 9)	Speed over legal limit:	
1002 (c)	6 to 10.....	3
	11 to 15.....	6
	16 to 20 (and 15 days suspension) ...	6
	21 to 29 (and 30 days suspension) ...	6

Section of Code		Points
	30 and over (and 60 days suspension) ...	6
1004	Driving to left of center of highway.....	3
1005	Passing at intersection of railroad crossing...	3
1006	Failure to drive on right half of highway..	3
1007	Improper overtaking .	3
1008 (a) (c) (d) (e)	Improper passing	3
1008 (b)	Improper passing on curve or crest of hill..	6
1009 (a)	Failure to yield to overtaking vehicle ...	3
1010 (a)	Following too closely..	5
1010 (b)	Following too closely (comm. vehicle)	5
1011 (a) (b) (d)	Improper turning	3
1012	Failure to give proper signals	3
1013 (a) (b) (d)	Right of way (two vehicles at intersection at same time)	3
1014 (a) (b) (c)	Exceptions to right of way	3
1016 (a) (b)	Driving through stop sign	5
1016.1	Failure to yield right of way	5
1018 (a-e)	Passing school bus loading or unloading..	6
1020 (a)	Stopping on highway.	3
1026	Coasting (passenger or commercial vehicle) ..	3
1028 (a)	Driving through traffic light	5
1036	Moving violations on Pennsylvania turnpike, other than speed.....	3
1113.1	Restricted zones for certain commercial vehicles	4

3. *Interim Action:*

When person's record shows as many as three points (note: no offense has lower point value) department shall notify offender by letter of nature and effect of point system; failure to receive notice shall not prevent suspension of license or learner's permit; where operator is a minor, a similar letter may also be sent to his parent or guardian.

When person's record for first time shows as many as six points, department shall require that he undergo a special examination (as provided in Sec. 608 (g)) attend an approved driver improvement school, or clinic, or any combination of foregoing. On successful completion of school, driver's record shall be credited with one point. On failure to attend and satisfactorily complete requirements of examination, school or clinic, an additional five points shall be assigned and license or learner's permit shall be suspended.

When person's record has been reduced below six points and for the second time shows as many as six points, action taken as above, except for reference to crediting driver's record with one point.

When person's record has been reduced below six points and for a third or subsequent time shows as many as six points, department shall require him to attend an interview, at which time the record is reviewed and department shall take such action as is deemed proper.

4. *Duration of Points:*

Points removed from record from date of last conviction at the rate of two points for each year person is not convicted of any violation of vehicle or tractor laws of Commonwealth. However, on restoration of driving privilege following suspension under point system, person's record shall show five points, which shall be removed as noted above.

5. *Credit Points:*

See Interim Action, Item 3 above.

6. *Two or More Offenses Arising out of Single Incident:*

On conviction of two or more offenses under point system committed on single occasion, points assessed only for offense with highest point value.

7. *Out-of-state convictions:*

Points may be assessed when such offense, if committed in Commonwealth, would result in poin assignment.

8. *Notice of Suspension:*

Upon suspension, department shall notify perso in writing to surrender license or learner's permit.

9. *Hearings:*

After a hearing which indicates person was at faul or partly at fault, in causing an accident, departme may require person to undergo special examinatic or attend driver improvement school or clinic. (S. under Interim Action, Item 3 above).

SOUTH CAROLINA

1. *Number of points which authorizes suspension:*

Twelve points within 12 months (which presumes to indicate a disrespect for law and disregard for safety of others)—maximum suspension six months.

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Reckless driving	6
(2) Passing stopped school bus	6
(3) Hit and run (property damage only)	6
(4) Driving too fast for conditions, or speeding	4
(5) Disobedience of official traffic control signals	4
(6) Disobedience of officer directing traffic	4
(7) Failing to yield right of way	4
(8) Driving on wrong side of road	4
(9) Passing unlawfully	4
(10) Turning unlawfully	4
(11) Driving through or within safety zone	4
(12) Failing to give signal (or giving improper signal) for stopping, turning or suddenly decreasing speed	4
(13) Shifting lanes without safety precaution	2
(14) Improper dangerous parking	2
(15) Following too closely	4
(16) Failing to dim lights	2
(17) Operating with improper lights	2
(18) Operating with improper brakes	4
(19) Operating vehicle in unsafe condition	2
(20) Driving in improper lane	2

3. *Hearings:*

Suspension before hearing; but licensee entitled to hearing.

4. *Interim Action:*

Not specified in law. (Note: under administrative procedures warning letter is sent upon accumulation of six points).

5. *Warning Tickets:*

Warning tickets not to be assigned a point value.

6. *Courts:*

Courts to report convictions to department as required under other law; action of department subject to judicial review.

7. *Other law not affected:*

Point system authority shall not affect action taken by department in suspending or revoking license when such action is mandatory under other law.

8. *Duration of Points:*

Points retain full value for 12 months; half value between 12-24 months; points not counted thereafter. Points which are used to suspend driver are not considered as basis for further action, under the point system or other law covering reckless driving (which provides for mandatory license suspension for three months on second or subsequent conviction for such offense within 5 years).

9. *Out-of-State Convictions:*

Applies to out-of-state convictions of resident drivers for offenses covered under the point system provided that reciprocal agreements are entered into with other states.

10. *Nonresidents:*

Nonresident subject to suspension in same manner as resident driver.

11. *Military Personnel:*

Conviction by court martial of any branch of armed services of U. S. or by a U. S. Commissioner of a violation either on or off government property which if committed in South Carolina would be a violation of the laws of the state may, in discretion of department, be recorded against a driver the same as if conviction had been had in courts of South Carolina.

SOUTH DAKOTA

Department authorized to adopt a point system. See Note in Table 5.

UTAH

1. *Authority to Establish:*

Department authorized to assign point values to moving traffic violations, based on relationship between such violations and motor vehicle accidents. (See also Note in Table 5).

2. *Point Assessment:*

Persons convicted of such violations shall have assessed against their driving records the number of points assigned; but the number of such points assessed shall be decreased by 10% if on abstract of court record of conviction court has graded severity of violation as "minimum" and increased by 10% if court grades violation as "maximum." (See Note in Table 10.)

3. *Duration of Points:*

Points shall be valid for period of time determined by department, which time limit shall not exceed three years.

4. *Point Deletion — Violation-free Driving:*

Department authorized to delete points to reward violation-free driving for such period of time as it may determine.

5. *Public Notice:*

Notice of points assigned for violations, time limit for deletion of points, and point level at which department takes suspension action shall be published in two newspapers with general circulation throughout state; notice of changes made in point system shall be given in similar manner.

6. *Hearings:*

Upon suspending license under point system, department shall notify licensee and upon his request afford him an opportunity for a hearing, within 20 days after receipt of such request. After hearing, department shall either rescind suspension, or on good cause, may extend suspension or revoke license.

WISCONSIN

Department authorized to adopt a point system. (See Note 2 in Table 5.)

DISTRICT OF COLUMBIA

1. *Authority to establish point system:*

By order, Director of Motor Vehicles is required to put into effect a point system for suspension and revocation of operator's permits.

Points assessed only after conviction. With respect to persons under 18 years of age, points assessed only after adjudication by juvenile court or other court having jurisdiction or where such person has not denied charge to Juvenile Bureau of Metropolitan Police Department.

In his discretion, director may, after notice and opportunity for a hearing, suspend permit or driving privilege of any person without assessment of points for traffic charges pending in court, subject to final determination; on finding of guilt, points assessed. In cases where director proposes to revoke or continue an existing suspension following court proceeding, he shall afford operator opportunity for a hearing.

2. *Number of points authorizing suspension, revocation:*

Eight points for license suspension and 12 points for revocation, accumulated within a three-year period. Initial suspension period from two to 30 days with subsequent suspension from 15 to 90 days based on seriousness of case. Revocation period not specified, but under basic law is six months. When revocation action can be modified (in opinion of Hearing Officer or Director) to a suspension, suspension not limited to periods above; when limited permit is allowed as modification of suspension or revocation, effectiveness of permit also not limited to time periods noted above.

Suspension effective five days after notice, unless hearing requested; mandatory revocation effective immediately.

3. *Violations and schedule of point values:*

	Points
Any moving violation not listed below and not contributing to an accdent	2
Violations contributing to an accident	3
Speeding	4
Motor running unattended	4
Failure to lock ignition	4
Failure to report an accident	5
Failure to give the right of way to pedestrian	5
Leaving after colliding:	
No personal injury	8
With personal injury	12
Reckless driving	12
Operating without a District of Columbia permit prior to restoration of operating privileges which have been suspended	12
Operating in violation of restriction	12
Using permit of another	12
Operating after suspension or revocation.	12
Obtaining or attempting to obtain a permit by misrepresentation	12
Loaning or altering a permit	12
Conviction for any homicide or assault committed by means of an automobile	12
Driving under the influence of intoxicating liquor or narcotic drugs	12
Any felony involving use of an automobile	12

4. *Suspension under other conditions:*

Director, in his discretion, and after notice and op portunity for a hearing, may suspend or revoke perm or operating privilege of person who, in his opinio is not physically, mentally or morally qualified operate safely or has driven in manner which shows flagrant disregard for safety of persons or property.

In addition, when person is arrested for any of t following traffic violations, he shall be interviewed an official of the Metropolitan Police Department a served notice of possible suspension unless he appe for a hearing with department (motor vehicle) witl five days (10 days for nonresident) to show cause w permit should not be suspended or revoked. (cent driver file notified by phone to place "stop" in driv record). On failure to appear, permit or privilege

pended or revoked until restored by director. (special procedures set forth for persons, who because of physical or mental condition, cannot be served notice):

(1) Operation of a motor vehicle involved in an accident resulting in the death of another.

(2) Operation of a motor vehicle at a speed in excess of 30 miles per hour above the authorized speed limit.

(3) Operation of a motor vehicle involved in an accident as the result of a traffic violation for which, by order of the Municipal Court, collateral of $50 or more, or a bond in any amount, is required.

(4) Operation of a motor vehicle in disregard of any restriction which may have been imposed on the use of the permit of the operator of such vehicle, whether such permit be issued by the District of Columbia or by another jurisdiction.

(5) Operation of a motor vehicle while apparently under the influence of intoxicating liquor or a drug, or while apparently physically or mentally unqualified to operate a motor vehicle by reason of diabetic coma, or epileptic or other seizure.

(6) Leaving the scene of an accident, in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of the vehicle.

(7) Reckless driving involving bodily injury.

(8) Engaging in the commission of a felony in which a motor vehicle is involved.

Director also has authority, when justified, to require person to show cause why his license should not be revoked, when action has already been taken towards the suspension of the permit or privilege of such person.

5. *Interim Action:*

On first moving violation, warning letter sent unless points assessed are five or more; at five points, person to attend conference.

6. *Duration of Points:*

Points shall be erased only by a lapse of three years; upon issuance of a permit, following revocation, there may be additional periods of suspension or revocation for additional points obtained. In his discretion, director may cancel points assessed against traffic violator who elects to stand trial and where court finds such person not guilty or dismisses case.

7. *Out-of-state convictions — military personnel:*

For convictions, forfeitures and pleas of guilty certified to the District by other jurisdictions, points comparable to the District schedule will be assigned in the discretion of the Director.

In traffic cases turned over to military authorities, points will be assessed immediately upon notification to the Director that such military authorities have taken disciplinary action as the result of arrests of service personnel for moving traffic violations.

8. *Failure to respond to traffic citation:*

After notice and opportunity for a hearing, director may suspend resident arrested for traffic violation in another jurisdiction, which under agreement with D. C., permits violators to receive a traffic citation instead of posting bail or collateral to secure appearance for trial, and who fails to comply; suspension to remain in effect until person shows evidence of compliance with terms of citation. Also applicable with respect to moving traffic violations committed in D. C. by D. C. residents.

SB-296

PAUL J. BELL, JR., Petitioner,

v

R. H. BURSON, Director, Georgia Department of Public Safety

402 US 535, 29 L Ed 2d 90, 91 S Ct 1586

[No. 5586]

Argued March 23, 1971. Decided May 24, 1971.

SUMMARY

Under Georgia's motor vehicle safety responsibility statute, an uninsured motorist's motor vehicle registration and driver's license are subject to suspension if he is involved in an accident and he fails to post security to cover the amount of damages claimed by aggrieved parties. The petitioner, an uninsured motorist, was involved in an accident when a girl rode her bicycle into the side of his automobile. He did not post security for the damages claimed to have been suffered by the girl. At an administrative hearing, his offer to prove that he was not liable for the accident was rejected, and he was given 30 days to post security or to have his license and registration suspended. The administrative decision was upheld by the Georgia Court of Appeals (121 Ga App 418, 174 SE2d 235), and the Georgia Supreme Court denied review.

On certiorari, the United States Supreme Court reversed and remanded the case. In an opinion by BRENNAN, J., expressing the view of six members of the court, it was held that before the state could suspend the petitioner's license and registration, procedural due process required a determination whether there was a reasonable possibility of a judgment being rendered against him as a result of the accident, since liability, in the sense of an ultimate judicial determination of responsibility, played a crucial role under the state's statutory scheme for motor vehicle safety responsibility.

BURGER, Ch. J., and BLACK and BLACKMUN, JJ., concurred in the result.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Constitutional Law § 695 — motor vehicle licenses

1. The Fourteenth Amendment is not violated by a statute which bars the issuance of licenses to all motorists who do not carry liability insurance or who do not post security.

Constitutional Law § 695 — due process — motor vehicle license

2. A license issued to a motorist is not to be taken away by state action without that procedural due process required by the Fourteenth Amendment.

States § 18 — constitutional restraints

3. Relevant constitutional restraints limit state action to terminate an entitlement, whether the entitlement is denominated a "right" or a "privilege."

Constitutional Law § 695 — due process — motor vehicle license — suspension

4. In connection with the suspension of a license of an uninsured motorist who was involved in an accident, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability.

Constitutional Law § 695 — due process — motor vehicle license — suspension

5. Before a state may suspend the license and registration of an uninsured motorist who was involved in an accident and who did not post security to cover the amount of damages claimed by another party involved in the accident, procedural due process requires a determination whether there is a reasonable possibility of a judgment being rendered against the motorist as a result of the accident, where liability, in the sense of an ultimate judicial determination of responsibility, plays a crucial role under the state's statutory scheme for motor vehicle safety responsibility.

Constitutional Law § 695 — due process — motor vehicle license — suspension

6. A state's interest in protecting a

claimant from the possibility of an unrecoverable judgment is not, within the context of the state's fault-oriented scheme of motor vehicle safety responsibility, a justification for denying procedural due process by suspending the license and registration of an uninsured motorist who has failed to post security, where there is no reasonable possibility of a judgment being rendered against him in connection with an accident in which he has been involved.

Constitutional Law § 787 — due process — sufficiency of hearing

7. The fact that additional expense will be occasioned by an expanded hearing does not justify denying a hearing which meets the standards of procedural due process.

Constitutional Law § 695 — motor vehicle license — suspension

8. In reviewing state action in the area of suspension of motorists' licenses, the United States Supreme Court will look to substance, not to bare form, to determine whether constitutional minimums have been honored.

Constitutional Law § 803.5 — due process — hearing — suspension of license

9. Under a statutory scheme which makes liability an important factor in the state's determination to deprive an individual of his motor vehicle license, the state may not, consistently with due process, eliminate consideration of that factor in its hearing prior to the suspension of an uninsured motorist's license because he has been involved in an accident and has not posted security.

Constitutional Law § 787 — due process — sufficiency of hearing

10. The hearing required by the due process clause of the Fourteenth Amendment must be meaningful and appropriate to the nature of the case.

Constitutional Law § 803.5 — due process — notice — hearing

11. Due process requires that when a state seeks to suspend a motorist's license, it must afford, before the suspension becomes effective, notice and opportunity for hearing appropriate to the nature of the case.

APPEARANCES OF COUNSEL

Elizabeth R. Rindskopf argued the cause for the petitioner, pro hac vice, by special leave of Court.

Dorothy T. Beasley argued the cause for the respondent.

OPINION OF THE COURT

Mr. Justice Brennan delivered the opinion of the Court.

Georgia's Motor Vehicle Safety Responsibility Act provides that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident.[1] The administrative hearing conducted prior to the suspension excludes consideration of the motorist's fault or liability for the accident. The Georgia Court of Appeals rejected petitioner's contention that the State's statutory scheme, in failing before suspending the licenses to afford him a hearing on the question of his fault or liability, denied him due process in violation of the Fourteenth Amendment: the court held that " 'Fault' or 'innocence' are completely irrelevant factors." 121 Ga App 418, 420, 174 SE2d 235, 236 (1970). The Georgia Supreme Court denied review. App, at 27. We granted certiorari. 400 US 963, 27 L Ed 2d 383, 91 S Ct 376 (1970). We reverse.

Petitioner is a clergyman whose ministry requires him to travel by car to cover three rural Georgian communities. On Sunday afternoon, November 24, 1968, petitioner was involved in an accident when five-year-old Sherry Capes rode her bicycle into the side of his automobile. The child's parents filed an accident report with the Director of the Georgia Department of Public Safety indicating that their daughter had suffered substantial injuries for which they claimed damages of $5,000. Petitioner was thereafter informed by the Director that unless he was covered by a liability insurance policy in effect at the time of the accident he must file a bond or cash security deposit of $5,000 or present a notorized release from liability, plus proof of future financial responsibility,[2] or suffer the suspension of his driver's license and vehicle registration. App, at 9. Petitioner requested an administrative hearing before the Director asserting that he was not liable as the accident was unavoidable, and stating also that he would be severely handicapped in the performance of his ministerial duties by a suspension of his licenses. A hearing was scheduled but the Director informed petitioner that "[t]he only evidence that the Department can accept and consider is: (a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law." App, at 11.[3] At the

1. Motor Vehicle Safety Responsibility Act, Ga. Code Ann. §§ 92A-601 et seq. (1958). In pertinent part the Act provides that anyone involved in an accident must submit a report to the Director of Public Safety. Ga Code Ann § 92A-604 (Supp 1970). Within 30 days of the receipt of the report the Director "shall suspend the license and all registration certificates and all registration plates of the operator and owner of any motor vehicle in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient . . . to satisfy any judgments for damages or injuries resulting . . . and unless such operator or owner shall give proof of financial responsibility for the future as is required in section 92A-615.1. . . ." Ga Code Ann § 92A-605(a) (Supp 1970). Section 92A-615.1 (Supp 1970) requires that "such proof must be maintained for a one year period." Section 92A-605 (a) works no suspension, however, (1) if the owner or operator had in effect at the time of the accident a liability insurance policy or other bond, Ga Code Ann § 92A-605(c) (Supp 1970); (2) if the owner or operator qualifies as a self-insurer, ibid; (3) if only the owner or operator was injured, Ga Code Ann § 92A-606 (1958); (4) if the automobile was legally parked at the time of the accident, ibid.; (5) if as to an owner, the automobile was being operated without permission, ibid.; or (6) "[i]f, prior to the date that the Director would otherwise suspend license and registration . . . there shall be filed with the Director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments . . . ." Ibid.

2. Questions concerning the requirement of proof of future financial responsibility are not before us. The State's brief, at 4, states: "The one year period for proof of financial responsibility has now expired so [petitioner] would not be required to file such proof, even if the Court of Appeals decision were affirmed."

3. Ga Code Ann § 92A-602 (1968) provides:

"The Director shall administer and enforce the provisions of this Chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Director under the provisions of this Chapter. Such

ministrative hearing the Director jected petitioner's proffer of evi- nce on liability, ascertained that titioner was not within any of the tutory exceptions, and gave pe- ioner 30 days to comply with the curity requirements or suffer sus- nsion. Petitioner then exercised statutory right to an appeal de ve in the Superior Court. Ga Code n § 92A-602 (1958). At that aring, the court permitted peti- ner to present his evidence on li- ility, and, although the claimants re neither parties nor witnesses, nd petitioner free from fault. As esult, the Superior Court ordered at the petitioner's driver's license be suspended . . . [until] it is filed against petitioner for e purpose of recovering damages the injuries sustained by the ld . . . ." App, at 15. This der was reversed by the Georgia urt of Appeals in overruling pe- ioner's constitutional contention.

1-3] If the statute barred the is- nce of licenses to all motorists o did not carry liability insurance who did not post security, the tute would not, under our cases, late the Fourteenth Amendment. parte Poresky, 290 US 30, 78 L 152, 54 S Ct 3 (1933); Conti- tal Baking Co. v Woodring, 286 352, 76 L Ed 1155, 52 S Ct 595, ALR 1402 (1932); Hess v Paw- ki, 274 US 352, 71 L Ed 1091, 47 Ct 632 (1927). It does not follow, wever, that the Amendment also mits the Georgia statutory eme merely because not all mo- ists, but rather only motorists olved in accidents, are required to post security under penalty of loss of the licenses. See Shapiro v Thompson, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322 (1969); Frost & Frost Trucking Co. v Railroad Commission, 271 US 583, 70 L Ed 1101, 46 S Ct 605, 47 ALR 457 (1926). Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. Sniadach v Family Finance Corp. 395 US 337, 23 L Ed 2d 349, 89 S Ct 1820 (1969); Goldberg v Kelly, 397 US 254, 25 L Ed 2d 287, 90 S Ct 1011 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." Sherbert v Verner, 374 US 398, 10 L Ed 2d 965, 83 S Ct 1790 (1963) (disqualification for unemployment compensation); Slochower v Board of Higher Education, 350 US 551, 100 L Ed 692, 76 S Ct 637 (1956) (discharge from public employment); Speiser v Randall, 357 US 513, 2 L Ed 2d 1460, 78 S Ct 1332 (1958) (denial of a tax exemption); Goldberg v Kelly, supra (withdrawal of welfare benefits). See also Londoner v Denver, 210 US 373, 385-386, 52 L Ed 1103, 1112, 28 S Ct 708 (1908); Goldsmith v Board of Tax Appeals, 270 US 117, 70 L Ed 494, 46 S Ct 215 (1926); Opp Cotton Mills v Administrator, 312 US 126, 85 L Ed 624, 61 S Ct 524 (1941).

4, 5] We turn then to the nature of the procedural due process which must be afforded the licensee on the question of his fault or liability for the accident.[4] A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case. Thus, procedures adequate to determine a welfare claim may not suffice to try a felony charge. Compare Goldberg v Kelly, 397 US, at 270-271, 25 L Ed 2d at 300, with Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 93 ALR2d 733 (1963). Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee.

6, 7] The State argues that the licensee's interest in avoiding the suspension of his licenses is outweighed by countervailing governmental interests and therefore that this procedural due process need not be afforded him. We disagree. In cases where there is no reasonable possibility of a judgment being rendered against a licensee, Georgia's interest in protecting a claimant from the possibility of an unrecoverable judgment is not, within the context of the State's fault-oriented scheme, a justification for denying the process due its citizens. Nor is additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. " 'While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.' " Goldberg v Kelly, 397 US, at 261, 25 L Ed 2d at 295, quoting Kelly v Wyman, 294 F Supp 893, 901 (SDNY 1968).

8, 9] The main thrust of Georgia's argument is that it need not provide a hearing on liability because fault and liability are irrelevant to the statutory scheme. We may assume that were this so, the prior administrative hearing presently provided by the State would be "appropriate to the nature of the case." Mullane v Central Hanover Bank & Trust Co. 339 US 306, 313, 94 L Ed 865, 872, 70 S Ct 652 (1950). But "[i]n reviewing state action in this area . . . we look to substance, not to bare form, to determine whether constitutional minimums have been honored." Willner v Committee on Character, 373 US 96, 106-107, 10 L Ed 2d 224, 231, 83 S Ct 1175, 2 ALR3d 1254 (1963)

ring need not be a matter of record the decision as rendered by the ctor shall be final unless the aggrieved son shall desire an appeal, in which he shall have the right to enter an ap- l to the superior court of the county of his residence, by notice to the Director, in the same manner as appeals are entered from the court of ordinary, except that the appellant shall not be required to post any bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at term or in chambers or before a jury at the first term. The hearing on the appeal shall be de novo, however, such appeal shall not act as a supersedeas of any orders or acts of the Director, nor shall the appellant be allowed to operate or permit a motor vehicle to be operated in violation of any suspension or revocation by the Director, while such appeal is pending. A notice sent by registered mail shall be sufficient service on the Director that such appeal has been entered."

4. Petitioners stated at oral argument that while "it would be possible to raise [an equal protection argument] . . . we don't raise this point here." Tr. of Oral Arg., at 14.

(concurring opinion). And looking to the operation of the State's statutory scheme, it is clear that liability, in the sense of an ultimate judicial determination of responsibility, plays a crucial role in the Safety Responsibility Act. If prior to suspension there is a release from liability executed by the injured party, no suspension is worked by the Act. Ga Code Ann § 92A-606 (1958). The same is true if prior to suspension there is an adjudication of nonliability. Ibid. Even after suspension has been declared, a release from liability or an adjudication of nonliability will lift the suspension. Ga Code Ann § 92A-607 (Supp 1970). Moreover, other of the Act's exceptions are developed around liability related concepts. Thus, we are not dealing here with a no-fault scheme. Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in a prior hearing.

[10] The hearing required by the Due Process Clause must be "meaningful," Armstrong v Manzo, 380 US 545, 552, 14 L Ed 2d 62, 66, 85 S Ct 1187 (1965), and "appropriate to the nature of the case." Mullane v Central Hanover Bank & Trust Co., supra. It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.

[11] Finally, we reject Georgia's argument that it must afford the licensee an inquiry into the question of liability, that determination, unlike the determination of the matters presently considered at the administrative hearing, need not be made prior to the suspension of the licenses. While "many controversies have raged about . . . the Due Process Clause," Mullane v Central Hanover Bank & Trust Co. 339 US, at 313, 94 L Ed at 872, it is fundamental that except in emergency situations (and this is not one)[5] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective. Ibid. Opp Cotton Mills, Inc. v Administrator, 312 US, at 152-156, 85 L Ed at 639-641 (1941); Sniadach v Family Finance Corp., supra; Goldberg v Kelly, supra; Wisconsin v Constantineau, 400 US 433, 27 L Ed 2d 515, 91 S Ct 507 (1971).

[12] We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident. We deem it inappropriate in this case to do more than lay down this requirement. The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the de novo judicial proceedings in the Superior Court. Georgia may decide to withhold suspension until adjudication of an action for damages brought by the injured party. Indeed, Georgia may elect to abandon its present scheme completely and pursue one of the various alternatives in force in other States.[6] Finally, Georgia may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide: we hold only that the failure of the present Georgia scheme to afford the petitioner a prior hearing on liability of the nature we have defined denied him procedural due process in violation of the Fourteenth Amendment.

The judgment is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

The Chief Justice, Mr. Justice Black, and Mr. Justice Blackmun concur in the result.

5. See, e. g., Fahey v Mallonee, 332 US [illegible]; Ewing v Mytinger & Casselberry, Inc., 339 US [illegible]

6. The various alternatives include compulsory insurance plans, public or joint public-private unsatisfied judgment funds, and assigned claims plans. See R. Keeton & J. O'Connell, After Cars Crash (1967).

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be given, but notice is required when the point accumulation reaches ..... percent of the number at which suspension is authorized.[16] No points shall be assessed for violating a provision of this act or municipal ordinance regulating standing, parking, equipment, size or weight.[17] In case of the conviction of a licensee of two or more traffic violations committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have different point values, such licensee shall be assessed for the offense having the greater point value. The department is authorized to suspend the license of a driver, with or without preliminary hearing, when his driving record identifies him as an habitually reckless or negligent driver or as an habitual or frequent violator under this subsection. (NEW, 1968.)

(c) Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the department shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of such license or revoke such license. (REVISED, 1968.)

§ 6-207—Department may require re-examination

The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee re-

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[16] It is suggested that a percentage low enough to give the driver opportunity to protest any erroneous entry and to improve his driving habits prior to any suspension be specified. *Fifty* percent might be appropriate.

[17] In addition, it is suggested that no points be assessed for violations by pedestrians, passengers or bicycle riders, or for violations of provisions relating to the preservation of the condition of traffic-control devices or the highway.

cense of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;

2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

3. Is an habitually reckless or negligent driver of a motor vehicle, such fact being established by the point system in subsection (b), by a record of accidents, or by other evidence;

4. Is incompetent to drive a motor vehicle;

5. Has permitted an unlawful or fraudulent use of such license;

6. Has committed an offense in another state which if committed in this State would be grounds for suspension or revocation;

7. Has been convicted of fleeing or attempting to elude a police officer; or

8. Has been convicted of racing on the highways. (REVISED, 1968.)

(b) For the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic regulations governing the movement of vehicles, the department shall adopt regulations establishing a uniform system assigning demerit points for convictions of violations of chapter 11 of this act or of ordinances adopted by local authorities regulating the operation of motor vehicles. The regulations shall include a designated level of point accumulation which so identifies drivers.[15] The department may assess points for convictions in other states of offenses which, if committed in this State, would be grounds for such assessment. Notice of each assessment of points may

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[15] In formulating the administrative point system authorized by this section, each department is urged to consider, in the interest of interstate uniformity, authorizing suspension for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 13 or more points as a result of offenses committed during any 24-month period; assigning six points for convictions of reckless driving (willful and wanton disregard for the safety of persons or property, as in § 11-901) and for convictions of speeding when the licensee drove at least 20 miles per hour over the lawful limit; four points for convictions of relatively serious offenses; and three points for less serious offenses.

March, 1964

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Law Review Cites Rulings on Point Systems

This month Dr. Joseph P. Hennessee, AAMVA Counsel and Director, Uniform Laws Program, comments on the various court decisions and opinions affecting administrators' handling of cases involving "habitual violators" and their administration of the point system.

AAMVA members are invited to send Dr. Hennessee significant court decisions affecting all aspects of DMV administration for discussion in future issues of the BULLETIN.

Driver License Suspensions—Habitual Violators—Point Systems

Section 6-206 (a) (3) of the Uniform Vehicle Code provides that a department may suspend the license of any operator or chauffeur without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee: "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways."

On page 236 of *Driver Improvement—The Point System*, The American Association of Motor Vehicle Administrators, Chapel Hill, 1958, this writer suggested that this language would be sufficient to support the establishment of an administrative point system, and, *ergo*, by extension of this reasoning, suspensions under this authority.

A recent memorandum decision from the First Judicial District of North Dakota, *State of North Dakota v. Rheault*, December 31, 1963, casts a shadow of doubt on this conclusion. This court held that Section 39-06-32 (2) NDCC was void as uncertain. This statute, which is in the language of the Uniform Code provision, cited above, the court said, makes no itemization of what constitutes "serious offense" nor does it furnish any standards in determining the definition of "with such frequency." Further, the court said, it is left in the dark as to whether there has been such serious offenses or such frequency of violations as would "indicate" a disrespect for traffic laws. To follow this law each judge would be left to his own standards of what constitutes "serious offenses," what may be termed "such frequency," and what is indicative of "indicate."

To support its position the court cited 14 Am. Jur., Criminal Law, sec. 19, page 771, and *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 222 (1926), to the effect that a statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.

On March 5, 1961, the Supreme Court of Arizona handed down a decision, *Arizona v. Birmingham and Bradley* (not yet reported), upholding A.R.S. 28-446 (A) (3), which provides: "(A) The department is authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee: (3) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways," and the administrative point system established to implement this law.

This court agreed that standards for administrative action must be spelled out in the legislative enactment and that if they are negligible or nonexistent, there is an unconstitutional delegation of legislative powers. But when examined in this light, the court said, this statute "evidences five criteria or guides by which the responsible administrative officers are to determine when a driver's license shall be suspended. It requires (1) that the suspension be upon *conviction* of offenses against traffic regulations; (2) that there be *frequent* convictions; (3) that the offenses of which the operator has been convicted be *serious* offenses against traffic regulations; (4) that the offenses be against traffic regulations governing the *movement* of vehicles; and (5) that the convictions must be such as to show a disrespect for traffic laws and a disregard for the safety of other persons on the highway." "We think," the court said, "the criteria established by the legislature for the suspension of an operator's license is reasonably definite and certain involving a minimum of discretion, particularly where it is obviously impractical, as here, to lay down an exact comprehensive rule."

In upholding A.R.S. 28-446 (A) (3) and the point system established under it the court refused to follow *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 436 (1955), and *Harrell v. Scheidt*, 249 N.C. 690, 107 S.E. 2d 549 (1959), which held point systems unconstitutional because authority was granted without sufficient standards, and cited with approval *Stargill v. Beard*, 303 S.W. 2d 908 (Ky. 1957), which upheld Kentucky's point system and its supporting statute. None of these three statutes was four-square with the Arizona statute, however, and the difference in results may be distinguished on a difference in statutory language. A divergence in viewpoints expressed in these two lines of cases warrants a brief review of similar case holdings.

Statutes are coming in for increasing attack on the grounds that they are too vague and indefinite to constitute a sufficient definition of prohibited conduct or that they attempt to make an unconstitutional delegation of legislative authority to an administrative body. In *Brown v. Kelly*, 169 NYS 2d 203 (1957), the court ruled that a provision prohibiting operation of a motor vehicle "at such speed as to endanger life, limb or property of any person or at a rate of speed greater than will permit bringing vehicles to a stop without injury to another or his property" was too vague and indefinite and did not contain sufficient standards by which a driver's conduct could be tested, and therefore the statute was ineffective as a basis for revocation of a driver's license. By way of contrast, the Oklahoma court had no difficulty in upholding a statute which prohibited operation of a motor vehicle at a speed "in excess of maximum safe and prudent speed as determined and posted by the state highway department." *Ludwig v. Yancey*, 318 P. 2d 450 (Okla. 1957).

What constitutes an habitual violator has come in for some review by the courts. In *Lamb v. Rubin*, 198 Va. 628, 96 S.E. 2d 80 (1957), the court upheld a determination that a driver was habitually reckless and negligent where the record showed nine convictions in approximately six years. *Lambe v. Clark*, 199 Va. 371, 99 S.E. 2d 597, decided in the same year, held that five convictions from July 19, 1952, to May 6, 1955, plus three convictions from February 27, 1956, to June 1, 1956, to be sufficient

to support a finding by the commissioner that the licensee was habitually reckless and negligent. A New York court in *Ross v. McDuff*, 7 N.Y. 56, 127 N.E. 2d 836 (1955), upheld a statute permitting the commissioner to suspend a license for "habitual" or "persistent" violation of traffic laws against a charge that it was an unconstitutional grant of legislative authority to an administrative agency without providing criteria or standards defining the words "habitual" or "persistent." The North Carolina court on the other hand, voided its habitual violator statute because it did not contain any fixed standards or guides to which the department must conform in order to determine whether or not a driver is an habitual violator of the traffic laws, and because left to the sole discretion of the department to determine when a driver is an habitual violator of such laws. This, the court held, to be an unconstitutional grant of legislative powers. *Harvell v. Scheidt, supra*. This being true, the North Carolina court, like the South Carolina court, did not have to look at the system of points being used or at the record of the driver.

By way of a summary we can now report that administrative point systems have been upheld in two jurisdictions against attacks that their foundation statutes were void as an unconstitutional delegation of legislative authority, and in two jurisdictions they have been voided. Only one of these foundation statutes, however, in Arizona, was substantially similar to the language of Section 6-205 (a) (3) of the Uniform Vehicle Code. What other courts may do when presented with a similar question is open to conjecture. If the statute is in the language of the Uniform Code, Section 6-206 (a) (3), the Arizona decision stands alone in providing an interpretation. Divergent language may find support in the Beard decision. Opponents will cite the Harbin and Harvell decisions.

Perhaps the leading case on the delegation of legislative authority as it affects suspensions of the drivers' licenses is *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579, 581 A.L.R. 601 (1930). This court voided a city ordinance which permitted the chief of police to revoke the permit of any driver, who, in his opinion, became unfit to drive an automobile on the streets of the city. The court said that "the rights of men are to be determined by the law itself, and not by the lot or leave of administrative officers or bureaus. This principle ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legislative branch of the government may not divest itself of this function, or delegate it to executive officers."

Where does this leave an administrator who is charged with the duty and responsibility of administering habitual violator type and other general suspension authority statutes? The question, to a degree, suggests its own answer. A statute is presumed to be valid and enforceable unless and until it has been voided by a competent court. Until a statute has been voided, one charged with its administration and enforcement is entitled to rely upon it and to administer and enforce it.

By way of a caveat, however, it should be mentioned that the existence of a statute for a long period of years gives rise to no presumption as to its validity. *People v. Mendacqua*, 170 N.Y.S. 2d 423 (1958). Also, repassage of a statute may not act to approve or validate rules and regulations promulgated under it prior to its repassage. *Los Angeles County v. State Board of Health*, 322 P. 2d 968 (Calif. 1958).

What should be done if a foundation statute or a point system based upon it should be invalidated by the courts? The answer supplied by both South Carolina and North Carolina was the enactment of a statutory point system to replace the voided statutes. Other states have obviated this question by enactment of either a specific statutory authority to establish a system of points or a statutory point system.

Finally, how can an administrator predict how a court will hold when a habitual violator type statute or a point system established under its authority has been challenged? No definitive answer can be given. It may be helpful to know how the court has held as to similar questions. It is always helpful to know how courts of other jurisdictions have held. The results may hinge upon the skill and diligence with which a test case is prosecuted and defended. If the statute in question is in the language of Section 6-205 (a) (3) of the Uniform Code, the Arizona case stands alone as authority for its validity. No ruling case, interpreting the same language, exists to the contrary.

Georgia Financial Responsibility Law In Effect

A new law passed in 1963 dealing with financial responsibility of motorists went into effect this month, but only after the 1964 general assembly made various changes in the act.

The measure calls for stringent penalties against motorists convicted of any of seven major traffic violations. Changes in the law made by the present assembly modified some of the penalties. The bill's sponsors followed several recommendations of Colonel H. Lowell Conner, director of the Georgia Department of Public Safety.

Revisions in the original law before it became effective were made to avoid imposition of tremendous record-keeping burdens on the department, which would have required increased personnel.

Nova Scotia Eliminates Double Fee For Extra-Provincial Carriers

The Board of Commissioners of Public Utilities in the Canadian province of Nova Scotia has authorized motor carriers licensed in the province to plate any or all vehicles for extra-provincial use as well, for a fee of $2 per vehicle annually.

Previously a separate extra-provincial license had to be purchased at full price of from $10 to $28 per vehicle. The action followed collective discussion among Hon. Stephen Pyke, Minister of Highways, the Board of Commissioners of Public Utilities and representatives of the Maritime Motor Transport Association.

Traffic fatalities in Mississippi for the first two months of 1964 were 14 percent below the same period for 1963, according to Al Richburg, assistant director of the accident records division.

Motor Vehicle Law Review

In this issue of the BULLETIN, Dr. Joseph P. Hennessee, AAMVA Counsel and Director, Uniform Laws Program, reviews another "habitual violator" case, as well as the reasonable and prudent speed rule, safety glass and rulings of the attorney general of South Dakota.

AAMVA members are invited to send Dr. Hennessee significant court decisions affecting all aspects of DMV administration for discussion in future issues.

Habitual Violators

Since the March issue of the BULLETIN went to press another "habitual violator" case has come to our attention. In this case, *Anderson* v. *Commissioner of Highways* (not yet reported), handed down February 14, 1964, the Minnesota Court upheld the provisions of Minn. St. 171.18(4) which gives the commissioner authority to suspend the license of any person, without a preliminary hearing, upon a showing that such driver is an "habitual violator," against a contention that it was unconstitutional as vague in failing to provide a clear and precise standard for action by the commissioner.

This court recognized the general rule that a statute which vests discretion in a public official must prescribe precise rules of action but noted that this rule is subject to exceptions and qualifications. The modern tendency is to be more liberal in permitting grants of discretion to administrative officers in order to facilitate the administration of laws (Annotation, 92 A.L.R. 410). The rule which requires an expressed standard to guide the exercise of discretion is subject to the exception that where it is impracticable to lay down a definite comprehensive rule—such as, where the administration turns upon questions of qualifications of personal fitness, or where the act relates to the administration of a police regulation which is necessary to protect the general health, welfare and safety of the public—it is not essential that a specific standard be expressly stated on the legislation. (Annotations, 12 A.L.R. 1417; 54 A.L.R. 1119; 92 A.L.R. 410.) This, the court said, is in accord with its previous decisions.

In reaching its decision, however, the court noted that there is a division among the courts of the several states as to the validity of traffic and license laws using the term "habitual violator," as evidence by *Harrell* v. *Scheidt*, 249 N.C. 699, 706, 107, S.E. 2d 549, 554 (1959) interpreting an identical provision, and *State Highway Department* v. *Harbin*, 226 S.C. 585, 86 S.E. 2d 446 (1955). The court also noted that legislatures in other states have, by statute, enacted a more specific rule. Texas, Missouri and Florida have, for example, by statute defined an habitual violator in terms of the number of his offenses. North and South Carolina (as noted also in the March issue of the BULLETIN), following adverse court rulings, have established legislative point systems for guidance in determining the status of a licensee as an habitual violator.

This court also upheld the use of driver license provision convictions in determining when a driver is in fact an habitual violator. This holding was based in part on the wording of Minn. St. 171.16 which requires courts to forward reports of convictions of "any law of this state regulating the operation of motor vehicles on streets or highways,"—except parking violations. This is in line with a recent decision of the Supreme Court of Washington, *State ex rel. Ralston* v. *Department of Licenses*, 60 Wash. 2d 535, 374 P. 2d 575, which permitted the director there to consider reports of convictions of municipal ordinances and use them as a basis for ordering suspension.

Information for the above case was provided by G. A. Hatfield, Drivers License Director, Minnesota Department of Highways.

Safety Glass

A declaratory judgment action decision, April 30, 1963, in the Law and Equity Court of the City of Richmond, Virginia, although not a ruling case, may be of interest to administrators. This case, instituted by Windshield Glass Distributors, Inc., against the Virginia Superintendent of State Police, presented two questions: (1) does tempered glass qualify as a safety glass under Virginia Code Section 46.1-293 prior to its amendment in 1960; and (2) is the 1960 amendment an unconstitutional delegation of legislative authority to nongovernmental organizations, in this case, the American Standards Association.

After discussing at length the statutory authority involved and the qualities of both tempered glass and laminated glass the court concluded that tempered glass meets the statutory requirement of Sec. 46.1-293, both before and after the 1960 amendment thereto, and that the 1960 amendment to such section is not unconstitutional. In reaching this decision as to the constitutional question, in the absence of Virginia law on the subject, the court relied upon *Union Bridge Co.* v. *U. S.*, 204 U. S. 364, 51 L.Ed. 523, a landmark case. See also, *St. Louis, etc., Ry.* v. *Taylor*, 210 U. S. 251, 52 L.Ed. 1061.

In reference to the American Standards Safety Code, the court said the following:

> In December, 1935, a tentative draft of a safety code purporting to set forth the specifications and methods of testing for safety glass as used for all purposes, including windshields and windows of all types of motor vehicles, motorboats and aircraft was prepared by a subcommittee of the American Standards Association. This work was sponsored by the National Bureau of Standards and the National Bureau of Casualty and Surety Underwriters and was approved by the American Standards Association. The latter group was at that time and is at present composed of representatives from all of the interested organizations concerned with safety development over the country at large, including various testing laboratories as well as governmental agencies. This safety code was formally approved in 1938 and as revised in 1950 has substantially the same specifications and testing standards as when originally adopted. This code contains the "standards and specifications" of American Standards Association, which are referred to in the 1960 Amendment to 46.1-293. This code differentiates between windshields and other windows in motor vehicles and approves only laminated glass for the former, but tempered glass for all others. With this single exception it accepts tempered glass as safety glass for all other motor vehicle glazing purposes. This separation of functions

MOTOR VEHICLE LAW REVIEW

In this issue of the Bulletin, Joseph P. Hennessee, Association Counsel, comments adversely on a "point system" decision from Kentucky and contrasts early land-mark decisions which upheld Kentucky's administrative Point System and voided a comparable point system in South Carolina.

Point System Suspension Voided

Kentucky's Administrative Point System for Driver Improvement, based upon KRS 186.570, was upheld by the Kentucky Court of Appeals in a landmark case in 1957. *Sturgill, Acting Commissioner of Public Safety* v. *Beard*, 303 S.W. 2d 908.

Doubts as to the validity of driver license suspensions—under Kentucky's point system, have been raised by the Kentucky Court of Appeals in another case, *Kentucky Department of Public Safety* v. *Glasscock*, decided on October 28, 1966, which affirmed a decision of the Jefferson Quarterly Court that voided a suspension under this self-same point system.

Under facts of the case, as reported by the Court, on May 20, 1965, the Department of Public Safety suspended Glasscock's license on the basis of his having accumulated twelve "points" within three years (KRS 186.570 (d) and PSfty regulations DI-5-1, DI-9, and DI-10). On June 14, 1965, Appellee Glasscock advised the Department pursuant to KRS 186.580 (2), Kentucky's Appeal statute, that he was "aggravated" by the suspension but did not advise as to the grounds for his grievance. On June 16 he petitioned for relief in the Jefferson Quarterly Court from the suspension and this relief was granted and the Department's order of suspension was set aside on grounds unspecified in this opinion.

The Department appealed, first, ostensibly to the Jefferson Circuit Court, which apparently affirmed the Quarterly Court order setting the suspension order aside. Upon appeal to the Court of Appeals the Department argued (1) that the judgment setting aside the suspension was void because the court lacked jurisdiction, (2) the proceedings were a void collateral attack upon another court's judgment, and (3) the scope of judicial review was exceeded.

The Department's first contention was that the Jefferson Quarterly Court acquired no jurisdiction because the Appellee was untimely in prosecuting his appeal there. This contention was based on the language of KRS 186.580 (2), which directs that the appeal to the Quarterly Court be filed "(i)n not less than fifteen nor more than thirty days . . ." The difficulty is that the statute is vague as in fixing the event from which the computation of time is to be made. The Department's position is that the computation is to be made not less than fifteen nor more than thirty days after the licensee reports his grievance to the Department; Glasscock's, that it means not less than fifteen nor more than thirty days after the Department's order of suspension. This Court agreed that the appeal was timely in that the "not less than fifteen, nor more than thirty days" dated from the date of the suspension, and held that failure of appellee to state his grounds for grievance was not fatal since this requirement is merely directive and not mandatory.

As to the second position advanced by the Department, a point relied upon by appellee (and apparently accepted by the Quarterly Court), was that the third violation for which points were assessed was not based upon a conviction by any court (although a fine was paid) although he availed himself of provisions of a city ordinance which permitted remittance of a prescribed fine and appointment of an attorney-in-fact to enter appellee's appearance and plea of guilty.

Appellee's position was based on language in *Sturgill* v. *Beard*, 303 S.W. 2d 908 (Ky. 1957) supra to the effect that a license may not be suspended (under the point system) except for "points" assessed pursuant to *convictions* of certain named moving traffic violations.

On this point the Court said it could concede, without deciding, that for purposes of this opinion, there was no "conviction" of appellee incident to his payment of a fine at the Louisville traffic bureau, but this concession would not be dispositive as, in the opinion of the Court, a "conviction" is not required as a condition precedent to the assessment of points. This is based on the Department's regulation PSfty-DI-4, which specifically provides that use of the "convenience" fine-paying procedure, as used here, was to be regarded as a "conviction" insofar as it relates to whether the operator may be considered to be a "reckless" one; and because the relevant statute (KRS 186.570) does not make the operator's "conviction" a condition precedent to Departmental action, but does specifically provided that the license may be suspended" . . . with or without a hearing, *and with or without receiving a record of conviction of that person of a crime*, whenever the Department had reason to believe: . . . (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws (emphasis supplied)". In the view of this Court, the use in *Beard* of the term "conviction" was an inadvertence and a dictum, and a "conviction" is not required. This apparently upheld the Department's contention that the proceedings below constituted an indirect attack on the police court judgment under which appellee waived appearance and paid a fine.

Up to this point the Court, while liberally construing the appeals provisions (KRS 186.580 (2), had done no violence to the Department's position. Through the second point, the Court seemed headed toward a reversal of the lower court and a confirmation of the Department's suspension order. Then without other explanation the Court said that the judgments of the Quarterly Court and of the Circuit Court recite that evidence was heard. "The evidence is not in the record before us. We must assume, therefore, that the evidence heard was sufficient to sustain the judgments of the Courts."

In affirming the judgments setting aside the suspension order the Court said "What we have said disposes of appellant's contention that the proceedings constituted an indirect attack on the police court judgment . . . , as well as the claim that the scope of judicial review was misconceived. The basic scope of the judicial review is concerned with the question of arbitrariness . . ."

If the basic scope of judicial review of departmental suspension orders comes down to a question of arbitrariness, as it may do, and as it does in the instant

decision, it is difficult to see how this Court could decide that the Department's suspension order was arbirary from a record of two judgments which contained no evidence and no apparent allegation of evidence or arbitrariness. The apparent effect of this decision is to require that a departmental hearing be afforded before suspension under the point system in order to avoid reversal on the grounds of arbitrary action by the Department.

Kentucky's point system was created on December 20, 1956, by a series of three administrative regulations, PSfty DI-1, DI-2, and DI-3, which (1) established a point system for driver improvement, (2) set out a schedule of points, and (3) provided a mandatory suspension upon an accumulation of 12 points within a three year period.

Suspension under this point system was first upheld in *Sturgill, Acting Commissioner of Public Safety* v. *Beard*, 303 S.W. 2d 908 (Ky. 1957). A review of that decision follows.

Beard's license was suspended under the point system. In seeking a return of his license Beard contended that (1) KRS 186.570 upon which the point system regulations were based, was an unconstitutional delegation of legislative power without any criteria or standards for an administrative agency to follow; (2) the point system, as applied to him in the suspension of his license violated the due process provisions of the Fourteenth Amendment to the Constitution of the United States; and (3) action in suspending his license based upon violations occurring prior to the effective date of the regulations establishing the point system was void as an *ex post facto* application of the law.

In upholding this suspension and the point system on which it was based the Kentucky Court of Appeals rejected the contention that KRS. 186.570 was unconsitutional as a delegation of legislative powers without providing any criteria or standards. In holding that there was no violation of due process in the suspension of Beard's license under the point system the court said it was too late to contend, as was done here, that one had a natural right to operate a motor vehicle because it is a privilege granted by a license of the state, subject to reasonable regulation by the state in the exercise of its police powers, and when the conditions imposed by the license are violated (as here), the suspension of the license is not a denial of "due process".

Beard's claim that the regulation had been used retroactively against him was given short shrift. This claim evaporates, the Court said, when the provisions of KRS 186.570, enacted in 1936, are applied to the facts. It is obvious that there was no ex post facto application of the law and the mere fact that the Department used the point system in making its determination to suspend did not make the application of the regulation retroactive. The Court did imply, however, that application of the regulations so as to assign points to violations occurring prior to the 1936 enactment of KRS 186.570 might constitute a retroactive or *ex post facto* application of this statute.

By way of contrast, the opinion of the South Carolina Court in *South Carolina State Highway Department* v. *Harbin*, 226 S.C. 585, 86 S.E. 2d 466 (1955), should be noted.

This case, like the *Beard* case in Kentucky, turned initially on whether the Department had any legal authority to promulgate a point system.

On November 24, 1953, the South Carolina State Highway Department, relying upon the authority contained in Section 46-172 of the 1952 Code, established a point system by administrative rule. This section provided that "For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year."

Following issuance of this order Harbin accumulated a total of 12 points. After a personal interview (hearing), as provided in the point system order, Harbin's license was suspended for five months. Upon his petition for a court review of this suspension the trial court held that the Department was without authority to put a point system into effect and revoked its action in suspending Harbin's license.

Upon appeal to the South Carolina Supreme Court the Department conceded that it was not "expressly" empowered to adopt a point system but contended that the power to do so was contained in the broad powers to refuse, suspend or revoke a license contained in Section 46-172. This, the Department said, gave it authority to set up a point system which embodied reasonable criteria to be used in the exercise of its discretionary power, and that a point system is in accord with the legislative policy expressed in that section.

Harbin, on the other hand, contended among other things that 46-172 fixed no standards and laid down no intelligible guides to which the Department must conform but left the right to revoke or suspend in the unrestricted and uncontrolled discretion of the Department, and that this rendered the section void as an unconstitutional delegation of legislative authority.

In reaching a decision the Court noted that it was unnecessary to go beyond the basic issue of whether the power granted in 46-172 was unconstitutional on the grounds that suspensions are left to the absolute, unregulated and undefined discretion of the Department.

It is accepted, the Court said, that although a legislature cannot delegate its legislative power it can authorize an administrative agency to fill in details by prescribing rules and regulations. "It is necessary, however, that the law declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the public interest."

When the authority of the State Highway Department to suspend or revoke a license for cause which it deems satisfactory is considered in the light of the principles enunciated above, the Court said, such provisions must be held invalid as an unconstitutional delegation of legislative powers. Thus, having held that the statute relied on to support the point system was unconsitutional it followed, and the Court so held, that the Department was "without authority" to establish a point system and such a system was without force or effect.

Left unsettled were the questions as to "reasonableness" of the South Carolina system, and whether suspensions under such system would be violative of due process.

1967 Program

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In addition to the specific programs outlined, much staff time and effort will be devoted to intensified work in keeping informed of international, federal and jurisdiction developments, and increased service to members through visits by regional representatives and staff specialists, development of legislative guidelines, participation in in-service training, and correspondence.

CHAPTER EIGHT

A LEGAL STUDY OF POINT SYSTEMS

By JOSEPH P. HENNESSEE
Assistant Director, Institute of Government

INTRODUCTION

As was to be expected of any new system, especially a system which affects upwards of half the driving populations of the United States and Canada, public reaction to point systems has been widespread and varied. In general it may be said that the reaction of the public has been favorable; the reaction of those whose licenses have been affected by a point system, something less than favorable.[1] There is nothing to indicate, however, that this reaction is essentially different from the reaction to license sanctions applied under any other system.

Significant of the public and legal acceptance of the theory and application of point systems is the paucity of cases reaching the appellate courts in which point systems have been challenged on legal grounds. This is not to say that there is no case law applicable to point systems other than that found in cases in which point systems have been challenged. That would be an implication that point systems are to be gauged and judged by a body of law peculiar to point systems. That is not the case. In fact, point systems are subject to the same legal rules and principles that govern other systems of license suspensions and revocations. This fact is borne out in a study of the two available point system cases.[2] We can go further and say that there exists no separate body of legal precepts and principles applicable peculiarly to drivers license suspensions. Rather, all systems of license suspensions are governed by general principles of constitutional law and statutory construction. It is the purpose of this study to examine these general principles of law, compare their application in

1. *See* Kneipp, *The Traffic Point System as used in the District of Columbia*. 8 Traffic Quarterly 235 (1954).

2. *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 466 (1955); *Sturgill, Acting Commissioner of Public Safety v. Beard*, 303 S.W. 2d 908 (Ky. 1957).

applicable cases, and measure existing point systems against them.

BASIS FOR REGULATION

It no longer permits of doubt that the legislature in the exercise of its police powers may regulate and control drivers through licensing procedures. This premise has been upheld in the courts so many times that it no longer requires citation of legal authority.

POLICE POWERS

What do we mean by "police powers"? It is generally recognized that it is impossible to give an exact definition of the term. Many attempts at definition, however, have been made. Blackstone defined it as "the due regulation and domestic order of the kingdom, whereby the individual of the states, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, good manners, and to be decent, industrious and inoffensive in their respective stations."[3]

It has been said that the police power is merely another name for the authority which every sovereignty possesses to pass all laws for the internal regulation and government of the state, and that it embraces and comprises all that portion of the sovereignty of the states not surrendered by the terms of the Federal Constitution to the Federal Government.[5] Others have said that it is the inherent and plenary power in a state over persons and property which enables the people to prohibit all things thought to be harmful to the comfort, safety, health and welfare of society.[6] It has been broadly defined by the United States Supreme Court as "that power, inherent in the state, whereby it may enact and enforce all laws for the protection, maintenance or advancement of the health, safety, morals, comfort, quiet, convenience, welfare, and prosperity of the people."[7]

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3. 11 Am. Jur. 971-972

4. *Mutual Loan Company v. Martell*, 222 U.S. 225, 32 S. Ct. 74, 56 L. Ed. 175, Ann. Cas. 1913B, 520 (1915).

5. *Slaughter House Cases*, 16 Wall. (U. S.) 36, 21 L. Ed. 394 (1873).

6. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

7. *C. B. & Q. R. R. v. State of Illinois*, 200 U. S. 561, 26 S. Ct. 341, 50 L. Ed. 596 (1906).

It is not to be supposed from the foregoing that the police power is unlimited. Speaking of this power, the United States Supreme Court has said that it can be used to interfere with the conduct of individuals and the use of their property only, in-so-far as may be required to effect the peace, good order, morals and health of the community.[8] Expressed another way, the Supreme Court has said that before the power may be invoked it must be made to appear that the interest of the public in general as distinguished from a particular class or group requires such interference, and that the means chosen must be reasonably necessary to accomplish the desired purpose, and not be unduly oppressive upon individuals.[9] These are affirmations of the guarantees contained in the Fourteenth Amendment that no state may make or enforce any laws which will "deny to any person within its jurisdiction the equal protection of the laws" nor shall any state "deprive any person of life, liberty or property without due process of law." For example, the Court has pointed out that the Fourteenth Amendment requires that governmental regulations be accomplished by methods consistent with due process and that the due process clause is a limitation upon an improper exercise of the police power by the states in that it prevents an arbitrary or unreasonable exercise of the power either through laws or regulations.[10] In considering the relationship between the equal protection clause of the Fourteenth Amendment and the police power of the states, it is well settled that the police power is subordinate to the constitutional guarantee of equal privilege and that any attempted exercise of the police power which results in a denial of the equal protection of the law is invalid.[11]

Another limitation upon the exercise of the police power is the prohibition, contained in Section 10 (1), Article I, of the Constitution of the United States, against the passage of any *ex post facto* laws.

Summarizing, we can say that the legislature, in the exercise of its police powers, may properly regulate the conduct of individuals and the use of their property but that the methods chosen must have some reasonable relationship to the object sought to

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8. *Munn v. Illinois*, 94 U. S. 113, (1877).

9. *Lawton v. Steele*, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385 (1893).

10. *Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469 (1934).

11. *Smith v. Cahoon*, 283 U. S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931).

be obtained, be consistent with due process, apply in a like manner to all persons similarly situated, and be prospective rather than retroactive in their application and effect.

DUE PROCESS

Writers on the subject state almost without exception that a license to operate a motor vehicle is a "privilege" and not a "property right" and that being a "privilege" it is subject to regulation under the police powers of the states. This has been accepted as the weight of authority in the American court jurisdictions. This distinction was meaningful because it assumed that the due process clause of the federal constitution did not apply unless a license to drive was a "property right." This distinction has lost much of its meaningfulness in view of a holding in the federal courts that whether you call it a "privilege" or a "property right," the freedom to make use of one's property, in this instance a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty," which, under the Fourteenth Amendment cannot be curtailed or denied by a state without due process of law.[12]

This line of thought is being adopted by state courts as well. The question of whether a license to operate a motor vehicle was a property right within the meaning of the Fourteenth Amendment was thought to have been put to rest, in Rhode Island, at least, in the classic case of *La Plante v. State Board of Public Roads*, decided in 1926.[13] At that time the court held that a "license" to operate an automobile, being a permit to do that which would otherwise be unlawful, was merely a "privilege" and not a "property right" within the meaning of the "due process" clauses of the United States and Rhode Island Constitutions, and that provisions for revocation of such license by the State Board of Public Roads without a hearing did not operate so as to deprive the driver of his property without due process

12. *Wall v. King*, 206 F. 2d 878 (First Circuit, 1953); *certiorari* denied Dec. 14, 1953.

13. 47 R. I. 258, 131 A. 641 (1926).

of law. In *Berberian v. Lussier*,[14] decided this year, the Rhode Island Court has retreated from this position with these words:[15]

> We have, however, come to the conclusion that we can no longer completely subscribe to the proposition for which the *La Plante* case stands. The use of the automobile as a necessary adjunct to the earning of a livinghood in modern life requires us in the interest of realism to conclude that the right to use an automobile on the public highways partakes of the nature of a *liberty* (emphasis supplied) within the meaning of the constitutional guarantees of which the citizen may not be deprived without due process of law. In *State v. Dalton*, 22 R. I. 77, at page 86, 46 A. 234, at page 237, 47 L. R. A. 775, this court pointed out that the liberty which is guaranteed to every person by both our state and federal constitution includes the right to be free from unreasonable interference in the pursuit of a livelihood. In the *Dalton* case at page 86, of 22 R. I., at page 237 of 46 A., quoting from *People v. Gillison*, 109 N.Y. 389, at 399, 17 N.E. 343, at page 345, we stated: "Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." The Court of Appeals of Louisiana in the case of *Hughes v. Department of Public Safety*, 79 So. 2d 129, recognized that although an operator's license was not a property right it was a right which was protected by the due process clause. In that case the court stated at page 130: "A license to operate a vehicle upon the highways of the state is a privilege and not a property right, although a state may not deny this privilege to any of its citizens arbitrarily or capriciously." The proposition that a license to operate motor vehicles and to use them on the public highways is something more than a mere privilege was also recognized in *Thompson v. Smith*, 155 Va. 367, 154 S. E. 539, 71 A. L. R. 604, and in *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P. 2d 1.

But, whatever may be its nature, the court concluded, the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the legislature in the valid exercise of the police powers of the state.

North Carolina, in 1948, joined the list of states in which it is

14. — R. I. —, 139 A. 2d 869 (1958).

15. Because of the implications contained in this decision, and in the cases cited therein, it was thought advisable to quote applicable parts of the decision verbatim.

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16. *In re Wrig*
17. *Winnett*
18. 12 Am. J.
19. *Dartmouth*
629 (1819).
20. *King v. Pa*
L. Ed. 227; (189

recognized that a license is something more than a mere privilege, with a holding by the Supreme Court that "a license to operate a motor vehicle is a privilege in the nature of a right of which the license may not be deprived save in the manner and upon the conditions prescribed by statute."[16] This view was expanded in 1954 when the court said "the right to operate a motor vehicle on the highways by a licensed operator is granted by the state, and one should not be deprived of this right except as authorized by statute, in accordance with prescribed procedure, and in accord with the established rules of law."[17]

Implicit in these holdings is a warning that while operation of a motor vehicle upon the public highways and the licensing of drivers may properly be regulated by the legislatures under the police powers, the manner in which the use of the highways may be restrained or licenses refused or withdrawn must be consistent with the principles of due process.

What is meant by "due process"? As a practical matter due process is a protection against arbitrary and capricious actions affecting an individual's life, liberty and property. In a legal sense the essential ingredients of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case.[18] Daniel Webster said that by due process of law is meant "a law that hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."[19] It generally implies and includes regular allegations and opportunity for one to answer to the charges, to be confronted by the witnesses against him, to be able to offer testimony in his own behalf, and a trial according to some settled course of judicial proceedings.[20]

What may constitute due process in one situation may not constitute due process in another. For example, in the field of privileges, such as driver licenses, the legislature may provide a mandatory revocation upon conviction for specified offenses without making any provision for a hearing. In such a case, however,

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16. *In re Wright*, 228 N. C. 584, 46 S. E. 2d 696 (1948).

17. *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. 2d 501 (1954).

18. 12 Am. Jur. 267-268 and cases cited therein.

19. *Dartmouth College v. Woodward*, 4 Wheat. (U. S.) 518, 4 L. Ed. 629 (1819).

20. *King v. Panther Lumber Company*, 171 U. S. 437, 18 S. Ct. 573, 43 L. Ed. 227; (1898) *and see* Annotations, 13 L. R. A. 305.

convictions must be consistent with due process. When, however, an administrative agency has been authorized to suspend a license for specified reasons, due process requires that a licensee be given an opportunity for an administrative hearing upon the matter together with the right to have a judicial review of any administrative determination. The concept of due process does not, however, require that a hearing be granted prior to the taking of official action in exercise of the police power.[21]

Thus far we have considered in a general manner only, what constitutes due process. Moving from the general to the specific, the Pennsylvania Court in construing applicable provisions of the Pennsylvania statutes for the enforcement of regulations governing the operation of motor vehicles through revocation and suspension said:

> (but) If the constitutional provisions of due process were here applicable, they would be fully satisfied by the procedural steps specified in §§ 615 and 616 of the Vehicle Code. As we have seen, they require a hearing before the Secretary of Revenue or his representative. Suspension of the licensee's operating privilege is authorized only when the secretary finds upon sufficient evidence that the offenses enumerated have been committed. Section 616 allows an appeal to the Court of Common Pleas wherein the licensee resides. The licensee is given an opportunity to be heard and to produce witnesses in his behalf. Here the Secretary of Revenue fulfilled the statutory mandate by holding the hearing and by finding that the appellee had violated the motor vehicle laws of this Commonwealth. The appellee then availed himself of his right to be heard anew by the Common Pleas Court. This system sets up every requirement of due process of law, and an operator whose license has been revoked or suspended cannot complain that he has been arbitrarily deprived of the enjoyment of the privilege.[22]

The Idaho Supreme Court, on the other hand, has held that a statute which attempted to authorize the Commissioner to suspend the license of an operator without preliminary hearing, if the operator had been involved in an accident resulting in death, personal injury or serious property damage, irrespective of negli-

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21. *Berberian v. Lussier*, — R. I. —, 138 A. 2d 869 (1958).
22. *Commissioner v. Funk*, 322 Pa. 390, 186 A. 65 (1936).

gence or responsibility, and without provision for review of the Commissioner's action in a court of competent jurisdiction, was unconstitutional as a taking of property without due process.[23]

Summarizing, it is still the numerical weight of authority in American jurisdictions that a license to drive is a privilege and not a property right, and therefore without the constitutional guarantees of due process. However, there is a discernible tendency among state courts to hold to the federal view that a license to drive is something more than a privilege, and that the due process provisions of the federal constitution do apply.

EX POST FACTO LAWS PROHIBITED

Section 10 (1), Article I, of the Constitution contains a prohibition against passage or enforcement of any *ex post facto* law by any state. Authorities differ as to whether the prohibition against *ex post facto* laws applies to license suspensions based on convictions antedating the statutory authority to suspend for specified violations. Illinois, for example, held that an act authorizing the Secretary of State to revoke the driver's license of anyone convicted of driving while intoxicated did not apply to offenses committed before the act became effective.[24] California, on the other hand, has held that Section 309 of the Vehicle Code, which provided that the probationer's prior convictions should be considered as convictions for the purposes of revocation and suspension, was not invalid as an *ex post facto* law as applied to a motorist who, before that section was enacted, was twice convicted of drunken driving.[25]

A slightly different question was presented in a recent Kentucky decision. There the question was whether a suspension under the Kentucky point system based in part on violations occurring prior to the effective date of the point system regulations was an *ex post facto* or retroactive application of the regulations. In reaching a decision the court said that the claim that there was an *ex post facto* application evaporated when the provisions of KRS 186.570 were applied to the case. This statute, enacted in 1936, upon which the point system regulations were grounded, authorized the Department to suspend summarily the

23. *State v. Kouni*, 58 Idaho 493, 76 P. 2d 919 (1938).

24. *Monczak v. Carpenter*, 3 Ill. 2d 556, 121 N. E. 2d 762 (1953).

25. *Ellis v. Department of Motor Vehicles*, 51 Cal. App. 2d 753, 125 P. 2d 521 (1942).

license of any person whenever the Department had reason to believe that a person is an habitually reckless or negligent driver or has committed a serious violation of the motor vehicle laws. The mere fact that the Department used a point system in making its determination that he was an habitually reckless driver did not make the application of the regulation retroactive.[26] The careful manner in which the Kentucky Court limited its answer suggests that had such violations occurred prior to the effective date of the foundation statute a different answer would have been forthcoming.

SEPARATION OF POWERS

Both the federal and the various state governments operate under a separation of powers doctrine. Under this system specific powers are delegated to the legislative, executive and judicial branches of the government. For example, the sole authority to declare what the law shall be, subject to constitutional limitations, is vested in the legislative branch of the government;[27] the power to administer and enforce the law, in the executive branch;[28] and the judicial powers in the courts.[29]

American courts universally agree that no part of the legislative power may be delegated to a non-legislative body. There is no universality of agreement, however, as to what constitutes a delegation of legislative authority. Generally speaking, a law which confers discretion on executive officers without establishing any standards for guidance is a delegation of legislative powers and therefore unconstitutional. Where the discretion, however, relates to a police regulation for the protection of public morals, welfare, and safety, and it is impossible or impracticable to provide such standards, and to do so would defeat the legislative object, legislation conferring such jurisdiction may be upheld without such restrictions or limitations.[30] The United States Supreme Court has laid down this rule. The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to

26. *Sturgill, Acting Commissioner v. Beard*, 303 S.W. 2d 908 (Ky. 1957).
27. Article I, Constitution of the United States.
28. Article II, Constitution of the United States.
29. Article III, Constitution of the United States.
30. *Benjamin v. City of Columbus*, 148 N.E. 2d 695 (Ohio, 1958).

which the policy and conditions apply."[31] In the final analysis, what constitutes an unconstitutional delegation of legislative powers must depend upon the individual facts in each situation.

Thompson v. Smith,[32] decided in Virginia in 1930, is perhaps the leading state case relative to an unconstitutional delegation of legislative authority in the drivers license field. A Virginia ordinance provided that the chief of police was authorized and directed to revoke the permit of any driver, who, in his opinion, became unfit to drive an automobile on the streets of the city. After Thompson was convicted of two speeding charges within one year, Smith, the police chief, purported to suspend Thompson's license under the authority above. In an action for the return of his license, Thompson alleged that the chief was without authority to revoke his permit because "(2) The provisions authorizing the chief of police to revoke the permit of any driver, *who, in his opinion*, becomes unfit to drive an automobile on the streets of the city is void because it is a delegation of legislative powers to an administrative agency in that it authorizes the chief of police to revoke a permit whenever *in his opinion* the holder thereof has done or omitted to do something the doing or the omission of which the chief thinks renders the holder unfit to drive an automobile on the streets, without prescribing any uniform rule, applicable to all persons alike, as to what constitutes unfitness to drive an automobile on the streets of the city, or laying down any rule for the guidance and control of the chief of police in determining what constitutes unfitness to drive an automobile on the streets of the city."

In holding that the lower court was in error in dismissing Thompson's action for the return of his license, the Supreme Court of Virginia said that it was a fundamental principle of our system of government that "the rights of men are to be determined by the law itself, and not by the lot or leave of administrative officers or bureaus. This principle," the court stated, "ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legis-

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31. *Mutual Film Corp. v. Ohio Industrial Comm.*, 236 U.S. 230, 35 S. Ct. 387, 59 L. Ed. 552, Ann. Cas. 1916C, 296 (1915).

32. 155 Va. 367, 154 S.E. 579 (1930).

lative branch of the government may not divest itself of this function, or delegate it to executive officers."

This does not mean, the court explained, that no discretion can be left to administrative officers in administering the law.

> Government could not be efficiently carried on if something could not be left to the judgment and discretion of administrative officers to accomplish in detail what is required by law in general terms. Without this power legislation would become either oppressive or inefficient. There would be confusion in the laws, and, in an effort to detail and particularize the law would miss sufficiency both in provisions and detail. This is particularly true where the discretion to be exercised by administrative officers relates to police regulations designed to protect the public morals, health, safety, and general welfare. A city may, in the execution of its police powers invest its administrative and executive officers with a reasonable discretion in the performance of duties devolved upon them to the end, whenever it is necessary for the safety and welfare of the public. *But, it should be added, the reasonable discretion which may be vested in its administrative officers is limited to a discretion in its essence ministerial and not legislative though it may be such as may be exercised by the legislature.*
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> In principle, legislation and administration are quite distinct powers; but in practical application the line which separates their exercise is not clearly marked or easily defined. However, in their definition in practical application, lies the difference between government by legislation and government by bureaucracy. . . .
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> The decisions of the various courts and sometimes of the same court, are in conflict as to what constitutes a delegation of legislative powers. The majority of cases lay down the rule that statutes or ordinances vesting discretion in administrative officers and bureaus must lay down rules and tests to guide and control them in the exercise of the discretion granted in order to be valid; but several courts apply the rule with varying degrees of strictness. Other cases go so far in sustaining, especially in cases involving police regulations, grants of discretionary powers to administrative officers and bureaus without prescribing any definite rule or specified condition to which the officers must conform, as, in effect, to substitute for government by legislation government by administrative officers and bureaus. For a collection of cases on this subject, see note in 12 *A.L.R.*, page 1435 and *seq.*
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> Where a statute or ordinance assumes to regulate the exercise of a common right, such as here involved, by requiring a permit for the exercise thereof, which is to be

granted or refused, and may be revoked, by an administrative officer in his discretion, the correct principles for determining whether it is void because it delegates legislative powers to the administrative officers are stated by the court in *Mutual Film Corporation v. Ohio Industrial Comm.*, 236 U.S. 239, 35 S.Ct. 387, 392, 59 L.Ed. 552, Ann. Cas. 1916C, 296,[33] in the following language: 'The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply.'

The Court then looked to the terms of the ordinance, and measured them against the foregoing principles and stated:

> . . . but when we come to examine the provisions with reference to revocation of permits by the chief of police, the policy of the law and the legal principles which are to control the action of the chief of police are not determined or determinable from the terms of the ordinance. . . It fails to state to what standard of conduct the holder of a permit must conform to be immune from the official ax.

In 1956[34], the Wyoming Courts had occasion to pass upon a statute which provided: "Upon the termination of such investigation, the person or persons holding such investigation shall prepare findings based upon the evidence received and considered. The Department upon review of such findings may dismiss the proceedings or it may suspend or revoke the license of such person . . . ." Plaintiff contended that this provided for revocation or suspension of license upon grounds other than the wrongdoing, fault, negligence, crime, misdemeanor, incompetence, mental or physical infirmities or disabilities of the driver, or stated another way, that the statute provided no standards for the licensee, the violation of which would be cause for revocation.

The court stated that since this statute was unique among the 48 states that there was no value in reviewing decisions or statutes from other states. Then after citation of cases, it quoted with approval the language of *State v. Grimshaw*, 49 Wyo. 192, 53 P.2d 13, 16, that "if the legislature leaves to administrative officers the determination of what the law shall be; or to determine what acts are necessary to effectuate the law, such delegation of authority is void." The court held this to be the law in the instant case and held that the statute was an unconstitutional delegation of legislative power.

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33. See note 31, supra.

34. *Eastwood v. Highway Department*,—Wyo.—, 301 P. 2d 318 (1956).

Statutes are often attacked on the grounds that they are too vague and indefinite to constitute a sufficient definition of criminal conduct. In a case decided this year[35] the New York courts held that a provision relating to operating motor vehicles "at such speed as to endanger life, limb or property of any person or at a rate of speed greater than will permit bringing vehicle to a stop without injury to another or his property" was too vague and indefinite and did not contain sufficient standards by which a driver's conduct could be tested and therefore the statute was ineffective as basis for revocation of a driver's license. By way of contrast, the Oklahoma court had no difficulty in upholding a statute which prohibited operation of a motor vehicle at a speed "in excess of maximum safe and prudent speed as determined and posted by the State Highway Department."[36]

What constitutes an habitual violator has come in for some review by the courts. In *Lamb v. Rubin*,[37] decided in 1957, the Virginia court upheld a determination that a driver was an habitually reckless and negligent driver where the record showed nine convictions in approximately six years. In another Virginia case,[38] a record of five convictions from July 19, 1950, to May 6, 1955, plus three convictions from February 27, 1956 to June 1, 1956, was held to be sufficient to support a finding by the Commissioner that licensee was habitually reckless and negligent. New York courts have upheld a statute permitting the Commissioner to suspend a license for "habitual" or "persistent" violation of traffic laws and ordinances against a contention that the statute was unconstitutional on the grounds that legislative functions had been delegated to an administrative body without providing any criteria or standards defining the words "habitual" or "persistent."[39]

A Virginia statute[40] provided "Upon any reasonable ground appearing in the records of the division, the Commissioner may, when he deems it necessary for the safety of the public on the highways of this state, and after notice and hearing as herein-

35. *Brown v. Kelly*, 169 NYS 2d 20[illegible] (1958).
36. *Ludwig v. Yancey*, 318 P. 2d 450 (Okla. 1957).
37. 198 Va. 628, 96 S.E. 2d 80 (1957).
38. *Lambe v. Clarke*, 199 Va. 274, 99 S.E. 2d 597 (1957).
39. *Ross v. McDaff*, 309 N. Y. 56, 127 N.E. 2d 806 (1955).
40 *Michie* 1942 Code Supplement, Sec. 2154 (a 19).

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41. *Butler* [illegible]
42. See note

before provided, suspend or revoke for a period not to exceed five years, . . . the . . . license of any person who is a violator of the provisions of the Motor Vehicle Code." In upholding this section against an attack on the grounds that the section constituted an unconstitutional delegation of legislative power without providing any standards or controls to guide the actions of the Commissioner, the Virginia court pointed out that the section contained the following controls and limitations of the Commissioner's actions:[41]

(1) The Commissioner must deem the suspension or revocation "necessary for the safety of the public on the highways of this state."

(2) The ground upon which the conclusion of the Commissioner is based—that the safety of the public will be jeopardized unless the license is suspended—must appear "In the records of the Division" of Motor Vehicles.

(3) The grounds for the suspension must be "reasonable" both as to necessity therefor and duration thereof.

(4) The Commissioner must grant a hearing and give notice of the time and place. The right of review by a circuit court is provided for any person deeming himself aggrieved thereby.

(5) An appeal to the Supreme Court from the final judgment of the reviewing court is granted as a matter of right.

Here, the court said, "Under the general terms employed in the statute, it is clear that the cardinal principle or standard by which the exercise of the power conferred on the Commissioner must be guided and controlled is that the revocation of the operator's license . . . must be necessary for the safety of the public on the highways of this state."

Summarizing, we can say that under the doctrine of separation of powers the legislature may not divest itself of its duty to say what the law shall be, although it may, within prescribed limits, permit a non-legislative body to promulgate rules and regulations for the enforcement of the law. This rule, stated in the *Mutual Film* case[42] is clear enough, but the degree of strictness with which the rule will be applied by the various courts,

41. *Butler v. Commonwealth*, 189 Va. 411, 53 S.E. 2d 152 (1949).

42. See notes 31 and 33, *supra*.

and within a particular court, is subject to conjecture.

STATUTORY CONSTRUCTION

It is a general rule of statutory construction that a statute is presumed to be valid and will not be overthrown as unconstitutional if it can be sustained on any reasonable basis, and the burden is on the party attacking the constitutionality of a statute to establish the invalidating facts and its invalidity must be clearly shown.[43] This rule is limited, however, by another general rule that those sections of the constitution which provide for separation of the powers of the government, which constitute the keystone of our form of government, must be strictly construed. In this line, the Indiana Court has declared that "reasonable standards" must be imposed whenever the legislature delegates discretionary powers to an administrative officer or body.[44]

The Ohio Court states the rule to be that statutes must be read and interpreted in the light of those fundamental principles which protect a citizen in his private rights and guard him against arbitrary action of government.[45]

Generally speaking, the constitutional validity of a law is to be tested, not by what has been done under it, but by what may, by its authority be done.[46] But, like all legislation, statutes authorizing suspension and revocation of drivers must be interpreted in the light of their general purpose.[47]

Until a statute has been declared by a competent court to be unconstitutional, however, an administrative agency charged with the administration of the law is entitled to rely and act upon the statute as written and interpreted by the courts. In fact, in individual instances the statute may require that certain

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43. *In re Village of Lich Harbor*, — N. J. —, 135 A. 2d 869 (1957); *Book v. State Office Building Commission*, — Ind. —, 143 N.E. 2d 273 (1958); *In re Bloomer's Estate*, — Wisc. —, 87 N.W. 2d 781 (1958).

44. *Book v. State Office Building Commission*, — Ind. —, 143 N.E. 2d 273 (1958).

45. *In re Appropriation for Highway Purposes*, — Ohio —, 142 N.E. 2d 242 (1958).

46. *Cluett, Peabody & Co. v. Mays Inc.*, 170 N.Y.S. 2d 271 (1958). This view was also expressed in *South Carolina State Highway Department v. Harbin*, 226 S. C. 585, 86 S.E. 2d 466 (1955) and in the dissenting opinion in *Sturgill, Acting Commissioner v. Beard*, 303 S.W. 2d 82 (Ky. 1957).

47. *Commonwealth v. Bristow*, — Pa. —, 138 A. 2d 439 (1958).

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action be taken under given circumstances. Thus, where the statutes provide for a mandatory revocation it is the duty of the administrative agency to perform the purely ministerial function of imposing the revocation. Likewise, when the statutes give the administrative agency discretionary authority to take specified action upon receipt of notice of conviction, for example, for specified offenses, it is authorized to give full faith and credit both to the statute and to the conviction report.[48]

It is a well recognized principle of statutory construction that a court will not pass on the constitutionality of a law unless the constitutional issues are clearly presented and not even then if the decision can be made to turn upon some other factor. Thus, in *Winch v. Register of Motor Vehicles*, 135 N.E. 2d 17 (Mass. 1956), the court refused to pass on the constitutionality of a statute which imposed penalties for points upon failure of appellant to show imminent danger of harm from the statute or that he had a substantial controversy with the administrator and without his first having exhausted his administrative remedies.

The existence of a statute over a long period of years gives no certain assurance of its validity[49] and repassage of a statute may not act to approve or validate rules and regulations promulgated under it prior to its re-passage.[50]

In conclusion, we can say that statutes will be construed in the light of their stated purposes and that they are presumed to be valid. This conclusion is limited by the general rule that the constitutional provisions calling for separation of powers will be strictly construed.

COURT DECISIONS

A careful study of reported cases discloses only two instances in which point systems have been considered by ruling appellate courts in the American jurisdictions.[51] A study of the Dominion

48. See *In re Wright*, 228 N. C. 301, 45 S.E. 2d 370 (1947) and *In re Wright* 228 N. C. 584, 46 S.E. 2d 696 (1948).

49. *People v. Mamlacqua*, 170 N.Y.S. 2d 423 (1958).

50. *Los Angeles County v. State Board of Public Health*, 322 P. 2d 968 (Cal. App. 1958).

51. *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 466, (1955). *Sturgill, Acting Commissioner of Public Safety v. Beard*, 303 S.W. 2d 903 (1957).

Reports discloses no Canadian point system cases.

Of the two American cases, both concerned point systems created by administrative regulation without express legislative authority. No ruling cases have been found wherein the legality of statutory or permissive point systems have been considered. In the first of these, from South Carolina, the statute relied upon as authority for setting up the system was voided as an unconstitutional delegation of legislative powers. In the second, from Kentucky, the Kentucky Court of Appeals upheld the constitutionality of the statutory authority relied upon and the reasonableness of the system. Although reaching opposite conclusions, the cases are distinguishable on the basis of differences in the language of the statutory authority relied upon. Considering this difference in statutory phraseology, it is submitted that the decisions are not in conflict.

On November 24, 1953, the South Carolina State Highway Department, relying upon the authority contained in Section 46-172 of the 1952 Code,[52] established a point system by administrative rule.[53] This rule, among other things, recited that the

52 §46-172.—For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year.

53. In order to do everything within reason to reduce traffic accidents the Department will commence immediately to charge each violation committed and reported to the Department against the record of each offending driver. Each violation will be graded as to seriousness in accordance with the following table which is based on violations involved in accidents during 1952.

Moving Violation	*Violation Points*
Disregarding sign or signal	3½
Driving under influence	10
Entering highway without stopping	3½
Following too closely	2
No right-of-way	3½
Improper passing	2
Passing stopped school bus	3½
Reckless Driving	5
Driving too fast for conditions	3½
Improper turning	2
Driving on wrong side of road	2
Failure to dim lights	2
Improper lights	2
No signal or improper signal	2

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point system was created for the purpose of reducing traffic accidents, set forth a detailed schedule of points for violations and warnings, and provided that upon an accumulation of 10 points a driver was to be brought in for a personal interview by the highway patrol to determine if his license should be taken. A further violation, where a driver was permitted to keep his license, was deemed sufficient grounds for immediate suspension.

Following the issuance of this order Harbin accumulated a total of 12 points, 10 for speeding violations and 2 for a warning. Following notice to appear for an interview, as provided in the order, an interview, and a recommendation that a suspension issue, Harbin's license was suspended for a period of five months. Upon Harbin's petition for a court review of the Department's action in suspending his license the lower court held that the

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Improper parking 2
Responsibility for accident involving personal injury and/or property damage in excess of $100 5
If while driving under the influence 10
Responsibility for accident involving no personal injury and property damage of $100 or less (or point violation value, whichever is higher) 2
All warnings and minor violations 2

When the total of violation points charged against a driver reaches a minimum of 10 the driver will be personally interviewed by a member of the Highway Patrol for the purposes of determining whether the offender's license to drive should be suspended or whether it appears from the circumstances that he should be allowed another chance. In cases where the driver is permitted to retain his license after the interview any additional violation committed by him will be deemed sufficient grounds for an immediate suspension of his license. The Department, of course, has no discretion where cases involve driving under the influence of intoxicants or narcotic drugs, reckless homicide, and two convictions for reckless driving. The suspension of drivers' licenses under these circumstances is required by law.

Highway Patrol personnel conducting the personal interview will approach the work in a spirit of helpfulness and with utmost courtesy. The primary purpose of the program is to make better and safer drivers, and not to suspend licenses except where other efforts in this direction have failed.

In order to give this program maximum effectiveness members of the highway patrol should exert every effort to encourage local enforcement officers to send to the Department copies of all violation warnings and summonses issued by them, and copies of reports of all accidents they investigate.

Department was without authority to put a point system into effect and revoked its action in suspending Harbin's license.

Upon appeal to the South Carolina Supreme Court the Department conceded that it was not "expressly" empowered to adopt a point system but contended that the power to do this was contained in the broad powers to refuse, suspend or revoke a license contained in Act number 603, April 4, 1930, 36 St. at Large, 1057, then codified in Chapter 2 of Title 46 of the 1952 Code as Section 46-172. This section read as follows:

> §46-172.—For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year . . . .

This, the Department contended, gave it the authority to set up a point system which it said embodied reasonable criteria to be used in the exercise of its discretionary power, and that all of the violations mentioned therein have a direct bearing on highway safety, and that a point system is in accordance with the legislative policy expressed in the above section.

Harbin contended that Section 46-172 fixed no standards and laid down no intelligible guide to which the Department must conform but left the right to revoke or suspend in the unrestricted and uncontrolled discretion of the Department, and that this rendered the section void as an unconstitutional delegation of the legislative power. In addition he questioned the reasonableness of some of the points, asserting that some were contrary to legislative enactments, and pointed out that the system permitted a suspension solely upon warnings issued.

In reaching a decision the court said that it was unnecessary to go beyond the constitutional issue of whether the power granted in Section 46-172 was unconstitutional on the grounds that suspensions and revocations are left to the absolute, unregulated, and undefined discretion of the Department.

"It is accepted," the Court stated, "that while the legislature cannot delegate its legislative authority it can authorize an administrative body to fill in the details by prescribing rules and regulations for the complete operation and enforcement of a law within its expressed general purpose. It is necessary, however, that the law declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the public interest."

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Thus, the court held, when the authority of the State Highway Department to suspend or revoke a license for cause which it deems satisfactory is considered in the light of the above principle, such provisions must be held invalid as an unconstitutional delegation of legislative powers. It sets up no standards to guide the Department and contains no limitations. It is that which an act permits that determines the issue, not what action an administrative official may or may not take, and delegation of unrestricted discretion cannot be saved by any presumption that an officer will exercise sound judgment and good faith.[54]

Having concluded that Section 46-172 of the 1952 Code, the foundation stone for the establishment of the point system, was void as an unconstitutional delegation of legislative powers, it followed that the Department was "without authority" to establish a point system, and that such a system, therefore, was without force and effect. Left unsettled were the questions as to the "reasonableness" of the South Carolina system, and the question of whether suspensions based on "warnings" wholly or in part would be violative of the "due process" requirements of the federal constitution.

A point system was created in Kentucky on December 20, 1956, by a series of three administrative regulations.[55] In order,

54. The court, by way of dicta, acknowledged that a license to drive is a privilege and not a property right but stated that such privilege could not be taken away arbitrarily or capriciously.

55.

PUBLIC SAFETY
DRIVER IMPROVEMENT

PSfty-DI-1
Establishment of Point System for Driver Improvement
Relates to KRS 186.570 (d)
Pursuant to the Authority of KRS 186.400.

To assist the Department of Public Safety in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle for the purpose of denying, suspending, or revoking that person's license in accordance with KRS 186.570, a schedule of penalty points established by administrative regulations shall govern. Such schedule shall assign point value points for the different classifications of traffic violations and shall be assessed according to such schedule for all drivers. Information concerning convictions of traffic violations may be secured from any official source or records available to public or departmental inspection. Complete records of point system assessments shall be maintained in the Department of Public Safety.

these regulations (1) established a point system for driver improvement, (2) set out a schedule of points, and (3) provided that upon an accumulation of from 6 to 9 points within any three year period, a motorist was to be given a warning; for an accumulation of 12 points within a three year period, a mandatory six months suspension. Under this system one Beard's license was suspended for a period of six months. In reaching a decision as to the suspension of Beard's license the Department considered only one violation occurring following the adoption

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Filed, 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

PSfty-DI-2
Schedule of Points for Driver Improvement
Relates to KRS 186.570 (d)
Pursuant to Authority of KRS 186.400

The schedule by which points will be assessed for convictions of traffic violations is as follows:

Misrepresenting or falsifying application	12
Racing	6
Reckless Driving	4
Passing on curve or on hill (no passing zone) or passing school bus loading or unloading children	4
Violation contributing to accident	4
Exceeding speed limits	3
Other hazardous moving violations	3

Filed 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

PSfty-DI-3
Enforcement of the Point System For Convictions of Traffic Violations
Relates to KRS 186.570 (d)
Pursuant to Authority of KRS 186.400

(1) On the accumulation of six to nine points against any one driver within a three year period, the driver shall be apvised and cautioned regarding his point status and such other matters as the Commissioner of Public Safety deems necessary.

(2) On the accumulation of twelve scheduled points against any one driver within a three year period, it is mandatory that the Commissioner of Public Safety suspend the operator's license for a period of six months.

(3) Periods of suspension resulting from additional accumulation of points shall be governed by provisions of KRS 186.560.

Filed, 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

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f the point system. The other violations, for which points were ssigned, occurred prior to the adoption of a point system, but all within a three year period.

In seeking a return of his license Beard contended (1) that KRS 186.570[56] upon which the point system regulations were based, was an unconstitutional delegation of legislative power without any criteria or standards for an administrative agency to follow; (2) that the point system, as applied to him in the suspension of his license violated the due process provisions of the Fourteenth Amendment of the Constitution of the United States; and (3) that the action in suspending his license based on violations occurring prior to the effective date of the administrative regulations establishing the point system contravened Article I, Section 10, of the Constitution of the United States, Section 19 of the Constitution of the State of Kentucky, and KRS 446.080, which prohibit *ex post facto* laws and retroactive application of statutes.

In upholding the Kentucky point system, the Kentucky Court of Appeals rejected the contention that KRS 186.570 was unconstitutional as a delegation of legislative powers without providing any criteria or standards and held that the point system was constitutionally sound because it believed that the administration of traffic rules could be lawfully delegated to administrative officials.

In holding that there was no violation of due process in the suspension of Beard's license under the point system the court said that it was too late to contend that one had a natural right to operate a motor vehicle because it is now a privilege granted by a license of the state, subject to reasonable regulation by the

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56. KRS 186.570.—Discretionary suspension or denial of license; surrender of certificates. (1) The Department or its agents designated in writing for that purpose may deny any person a license or may suspend the license of any person, or, in the case of a non-resident, withdraw the privilege of operating a motor vehicle in this state, with or without a hearing, and with or without receiving a record of conviction of that person, whenever the department has reason to believe that:

(d) that person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.

KRS 186.400.—Duties of Departments of Revenues and Public Saf administration of laws. (1) . . . The Department of Public Safety may prescribe regulations for the enforcement of KRS 186.400 to 186.640, . . .

state in the exercise of its police powers, and when the conditions imposed by the license are violated, the suspension of the privilege to operate a motor vehicle is not a denial of "due process."

Likewise the court gave short shrift to Beard's claim that the regulation had been applied retroactively by the Department in suspending his license. This claim, the court said, evaporates when the provisions of KRS 186.570 are applied to the case. the statute enacted in 1936, authorized the Department to suspend summarily the license of any person whenever the Department has "reason to believe" the person in question "is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws." Beard's license was suspended under this statute upon a determination by the Department that he was "an habitually reckless driver." The mere fact that the Department used the point system in making this determination did not make the application of the regulation retroactive as to Beard.

It is important to note that in both the South Carolina and the Kentucky cases the initial question confronting the court was "did the Department or Agency have any legal authority to promulgate a point system?" In the South Carolina case this was answered in the negative and the court did not progress to a consideration of any further questions. In the Kentucky case the Court held that there was sufficient statutory authority to support the establishment of a point system and proceeded to uphold the reasonableness of the point system and to rule that under the fact situation presented, there was no *ex post facto* application of the law.

CONCLUSIONS

In the field of legal precedents there is a danger in attempting to draw specific conclusions from generalities in the law and no attempt is here made to do so. Rather, some broad generalizations will be attempted from the application of specific principles of law. Such generalizations may or may not be applicable in a given jurisdiction. In fact, their application may hinge upon subtle fact variations and upon the skill or lack of skill with which a test case is prosecuted and defended. Almost certainly their application will depend upon the judicial climate. Whether or not such generalities may be valid may depend in some meas-

ure on the community of thought within a jurisdiction. In the final analysis, legal questions arising out of the establishment and application of a point system, like other legal questions, can only be answered by a competent court, and then the answer may not be final, for, powerful as the doctrine of *Stare Decisis*[57] may be, a change in personnel on the court, militant public thought, or changed conditions may result in a reversal of a prior decision by the same court. Thus the best that can be done is to draw from available decisions and conjecture as to what the courts of a given state, using accepted measuring standards and principles, will conclude when presented with a given factual situation. It is quite impossible to gauge adequately the imponderable intangibles such as factual differences, skill and persistence of an advocate, judicial climate, and force of community thought. Such generalities should, however, prove efficacious in acquainting Motor Vehicle Administrators with possible pitfalls in establishing a point system and in providing a measuring rod whereby existing systems may be gauged.

Specific principles of law against which our generalizations are drawn include:

(1) Operation of a motor vehicle upon the highways, including the licensing of drivers, is a proper subject for regulation and control by the legislature in the exercise of its police powers.

(2) Regulations under the police power must have some "reasonable" relationship to the object sought to be accomplished.

(3) The legislature, in the exercise of its police powers is limited by both the "equal protection of the laws" and the "due process" clauses of the federal constitution and by similar provisions of state constitutions.

(4) The federal constitution prohibits a state from passing any *ex post facto* laws.

(5) The legislative power is vested in the legislature and any attempt to delegate legislative power without standards for

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57. Policy of courts to stand by precedent and not to disturb a settled point. *Neff v. George*, 364 Ill. 306, 4 N.E. 2d 388 (1936); Doctrine that when a court has once laid down a principle of law as applicable to a certain state of facts it will adhere to it and apply it to all future cases where facts are substantially identical, *Moore v. City of Albany*, 98 N. Y. 396 (1885).

guidance to a non-legislative body is void as an unconstitutional delegation of legislative power.

(6) There is a presumption that statutes are valid.

Measuring now, the factual situations presented in both the South Carolina and the Kentucky cases against the specific principles of law outlined above, the following generalities may be expressed:

(1) A legislature, in the exercise of its police powers, may regulate the operation of motor vehicles through licensing procedures and prescribe through statute the manner in which a license to drive may be granted, refused, or taken away. This being true, no serious legal obstacles stand in the way of the creation of a point system by statute. Such a system would be subject to the same legal rules and regulations as other statutory license regulations.

(2) Subject to the rule that the legislature must declare what the law shall be, although it may delegate to a non-legislative body the authority to promulgate rules and regulations for the administration of the law, a legislature may properly authorize an administrative agency to promulgate a point system for license suspensions together with a schedule of points.

(3) Discretionary point systems will stand or fail depending upon the foundation statutes upon which they are grounded. Thus a point system which is in itself reasonable and provides full protection under the "due process" and "equal protection" provisions of the Fourteenth Amendment may be voided because of the invalidity of its foundation statutes.

(4) Where the foundation statutes provide no standards or guides they will probably be voided as an unconstitutional delegation of legislative powers to a non-legislative body. Where, however, there are any standards or guides, however rudimentary, the probabilities are that they will be sustained.

(5) Once the validity of a foundation statute has been determined, the validity of a point system is subject to the same criteria as to reasonableness, et cetera, as statutory point systems and other license regulatory legislation.

(6) Application of a point system to violations committed prior to the adoption of the system will not be held to be an *ex post facto* application of the law unless the violations occurred prior to the adoption of the statute or statutes on which a point system is founded.

(7) Whenever a Department has authority to suspend, as for "habitually reckless and negligent driving," it probably has the authority to use a system of points in reaching a determination as to whether a particular driver was in fact "habitually reckless and negligent." Perhaps the most significant language contained in either the South Carolina or the Kentucky cases was the language of the Kentucky court to the effect that the foundation statute being valid, it made no difference that the Department used a system of points in reaching its determination that Beard was an habitually reckless driver.

RECOMMENDATIONS

It is not within the province of the legal study of point systems to recommend one method of establishing a point system over any other method, since, in the opinion of this writer, that constitutes a question of policy only. Assuming however, *arguendo*, that it is desired to establish a point system, and that such a system can be established in the manner in which the appropriate administrative agency may choose, certain legal factors should be re-iterated. Namely:

(1) A point system, including schedule of points, written into the statutes through legislative enactments, presents fewer legal questions than systems authorized by statute or permitted by statute. Such a system, however, results in a loss of flexibility.

(2) From a legal standpoint, statutory authority for establishment of a point system, presents fewer legal difficulties than establishment of such a system based upon "broad discretionary" powers. Such authority is subject, however, to the general rule of law that the legislature must provide sufficient standards to govern and limit the department in its establishment of such system.

(3) Point systems based upon broad discretionary powers must meet a twofold test in addition to the other questions raised by such point systems. First, are the foundation statutes themselves valid, and second, do they in fact authorize the establishment of a point system?

Whenever a decision has been made that it is desirable to establish a point system based upon the broad discretionary powers of the appropriate administrative agency, it is recommended that the statutes that are to be relied upon to support the establishment of such a system be measured against the

general rules of law herein presented, and if there is reasonable doubt that such statutes will support the establishment of such a system, that such supporting statutes first be strengthened.

While no attempt can be made to specify all the possible statutory words that will presumably withstand an attack on constitutional grounds, it has been demonstrated that the usual "habitual violator" and "habitually reckless and negligent operator" statutes will probably withstand an attack on the grounds that they are invalid as an unconstitutional delegation of legislative powers. It is suggested that a statute which authorizes the department to suspend the license of any person who "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highway,"[58] would be sufficient in any jurisdiction to support the establishment of a point system.

58. *Driver Improvement Through Licensing Procedures*, American Association of Motor Vehicle Administrators (1956) p. 22.

SB-310

TO: House Judiciary

SUBJECT: CSSB 310
Venue Bill

HISTORY

In December 1970 a number of legislators, native leaders, members of the judiciary, State Police, Health, Education and Welfare officials, and officials of the Division of Corrections met at Mt. Alyeska near Anchorage, Alaska, to discuss criminal justice in the rural areas of Alaska. This became commonly known as the "Bush Justice Conference." One of the results of this conference was a recommendation that criminal trials in Alaska be held in areas other than the three or four major urban cities.

The First Session of the Seventh Alaska Legislature amended AS 22.10.030 and in effect decreed a change in the Criminal Rules, in that the place of trial for any crime committed in the state was to be in the Election District. Shortly thereafter the supreme court handed down a decision in Cloyd Alvarado v. State of Alaska (Exhibit A) in which they indicated that the law of Alaska required that a man accused of a crime in the State of Alaska should be tried by a jury of his peers, and should be tried in an area that would reasonably insure that the same ethnic group to which the accused belong would be represented in the jury selection.

As time passed it became readily apparent that as a practical matter this statute created many hardships because in vast areas of this great state there are absolutely no facilities available for holding criminal trials. In order to relieve this problem to a certain extent, the supreme court issued Supreme Court Order No. 136 (Exhibit B). Among other things in the Supreme Court Order, they directed the Administrative Director of Courts to investigate and report to the presiding superior or district court judge in the judicial district in which the trial was to be held, the availability of appropriate facilities in the area. It is to be pointed

~~only~~ OUT that the order could not and did not supersede the statute and that if a crime was committed in a rural district and there was no facility available, then the court was required to move to that area and attempt to set up some type of temporary quarters in which to hold the trial. This not only was a hardship on the court and jurors, but became a tremendous expense to the taxpayers of this state. Fortunately no lengthy trial has been required in a remote area as yet. However, the potential is always there.

CSSB 310

CSSB 310 would amend the present statute in two major areas. The present statute states that trials must be held in "election districts," this being the House Election Districts. The present bill would change this to a senate district, which would encompass a much larger area (see attached map). In addition to expanding this geographical area it states that if a crime is committed within the boundaries of a borough, then the location shall be at a place within the borough that will best serve as a place for trial. This will also take into consideration some problem areas such as the city of Anchorage, where there are four senate districts, and in areas adjacent to Fairbanks which is a separate senate district. The second point is that the Administrative Director of Courts may move a trial to the next closest senate district if he feels that there are absolutely no reasonably suitable facilities within a senate district.

The Senate Judiciary Committee has had under consideration CSSB 310 since the beginning of the session and has contacted members of the judiciary, the Administrative Director of Courts, members of this body representing the rural areas of our state, and the committee feels that this bill will preserve the spirit of the Bush Justice Conference, the decision of Alvarado v. State, and the feelings and desires of the citizens of rural Alaska, but yet be flexible enough to take away the financial burden imposed by the former statute.

SB. 310

JAN 19 1972

Superior Court

State of Alaska

SECOND JUDICIAL DISTRICT

FEDERAL BUILDING

NOME, ALASKA

99762

WILLIAM H. SANDERS, PRESIDING JUDGE

January 17, 1972

The Honorable Robert C. Erwin
Associate Justice of the Supreme Court
Alaska Court System
941 Fourth Avenue
Anchorage, Alaska 99501

Re: Reapportionment and Judicial Districts

Dear Bob:

It is my understanding that you are the court system's liaison with the legislature and for that reason am sending you this request to have the legislature straighten out our judicial district. We have criminal law problems in this area with present boundaries.

Please note that AS 22.10.010 is in part as follows:

> "There shall be one superior court for the state. The court shall consist of four districts bounded as follows: . . . Second District: the area within election district numbered 21 to 24, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959."

Would suggest that if the present proposed reapportionment is approved that this particular portion of the statute be amended as follows:

> "There shall be one superior court for the state. The court shall consist of four districts bounded as follows: . . . Second District: the area within the election districts numbered 18, 19 and 20."

You will note that the statute was passed setting up these districts March 19, 1959. No amendment was made to this statute

after reapportionment in 1962.

The legislature in 1959 followed election district in establishing judicial districts. There are sound reasons for following this procedure. At the present time a Superior Court Judge or District Judge running for re-election would have to follow the old election district boundaries set in 1959. This would create problems with the election supervisors in distributing the judicial ballots and tallying the judicial vote.

The constitutional provision that allows the legislature to establish judicial districts is as follows: (Art. IV, §1)

> "The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law."

It may be that you will want to amend AS 22.10.010 to cover all four judicial districts.

Sincerely,

Bill

William H. Sanders

WHS:dj
cc: Honorable Jay A. Rabinowitz
Associate Justice

Robert N. Reeves
Administrative Director of Courts

SB-377

whether such purchaser is an underwriter or dealer in securities, and, if not, whether the purchase of such a block of securities for investment is consistent with its general operations; and (3) the length of time elapsing between the acquisition of the securities by the initial purchaser and the date of their proposed resale.

Of course, if the securities in question were in fact purchased by the initial purchaser for investment rather than for resale, dealers' sales thereof to the public would not necessitate registration under the Securities Act.

In conclusion, I feel that I should point out that even though a dealer is satisfied that a particular block of unregistered securities was bought by an initial purchaser for investment, he nevertheless takes the risk that, if his determination is incorrect, sales by him of such securities will be in violation of the registration requirements of the Act.

[Release No. 33-603, December 16, 1935, 11 F. R. 10955.]

[¶ 2755] Public Offerings of Investment Contracts Providing for the Acquisition, Sale or Servicing of Mortgages or Deeds of Trust

This release refers to the Act as in effect prior to the 1964 amendments. CCH.

Release Nos. 33-3892 and 34-5633. January 31, 1958, 23 F. R. 840.

Reg. § 231.3892 (§ 241.5633). Statement of the Commission regarding public offerings of investment contracts providing for the acquisition, sale or servicing of mortgages or deeds of trust.

Questions are presented to the Securities and Exchange Commission from time to time as to the application of the federal securities laws to offerings of whole or fractional interest in mortgages or deeds of trust under arrangements which provide for a variety of services to the investor. In the opinion of the Commission such an arrangement frequently constitutes an "investment contract", which is a "security" within the meaning of the federal securities laws. The public offering and sale of these investment contracts may invoke the registration provisions of the Securities Act of 1933 and other provisions of the federal securities laws. It should be emphasized, in this connection, that exemptions from registration provided by section 4 (1) of the Securities Act of 1933 and Regulation A-R* thereunder, usually relied upon for the underlying mortgage and deed of trust notes, would not be available for a public offering of the investment contracts. Recently the Commission has obtained injunctions against sellers who failed to register such investment contracts offered through nationwide advertising.[1]

[¶ 2756] [Services and Other Attributes of Arrangement]

Among the more common services and other attributes of the arrangements, offered in relation to the mortgages or deeds of trust, which have come to the attention of the Commission and which in the opinion of the Commission may give rise to the creation of "investment contracts" within the meaning of the securities laws are:

(a) Complete investigation and placing service.

(b) Servicing collection, payments, foreclosure, etc.

[1] See *SEC v. Mortgage Clubs, Inc.*, D. Mass. Civ. Act. No. 57-385-N, Litigation Release No. 1106 and *SEC v. Backers Discount and Finance, Inc.*, D. N. J. C. A. No. 14-58, Litigation Release No. 1200.

* [Regulation A-R was rescinded December 8, 1960 (¶ 70,732). CCH.]

In *In re Natural Resources Corporation*, 8 S. E. C. 635, 637, the Commission stated that "* * * transactions which in form appear to involve nothing more than the sale of real estate, chattels, or services have been held to be investment contracts where in substance they involve the laying out of money by the investor on the assumption and expectation that the investment will return a profit without any active effort on his part, but rather as the result of the efforts of someone else."

It should also be noted that persons engaged in the business of buying and selling mortgage or trust notes would ordinarily be brokers or dealers, or both, within the meaning of the Securities Exchange Act of 1934, and absent an exemption would be required to be registered as such with the Commission under the provisions of section 15 of the Act. Rule 15a-1 would not provide an exemption for such a broker or dealer who is offering investment contracts of the type referred to above. Moreover, such a broker or dealer usually would be subject to the Commission's Rule 15c3-1 whether or not he is registered. A broker or dealer subject to this rule could not use the mails or federal instrumentalities to effect a transaction in a non-exempt security otherwise than on a national securities exchange if his "aggregate indebtedness" exceeds 20 times his "net capital" as those terms are defined in the rule.

In addition to all of the foregoing, it should be emphasized that the antifraud provisions of the Acts and regulations administered by the Commission (including specifically section 17 (a) of the Securities Act of 1933 and Rules 10b-5 and 15c1-2 under the Securities Exchange Act of 1934) would apply to advertisements, literature, and any other statements and representations made in connection with the offer or sale of any of the securities referred to herein.

Persons engaging in this type of business should consult with the nearest regional office of the Commission or with the headquarters office in Washington, D. C.

NOTE: The text of § 241.5633 is identical with that appearing in § 231.3892.

This release becomes effective January 31, 1958.

[Release No. 33-3892, January 31, 1958, 23 F. R. 840.]

[¶ 2765] Real Estate Investment Trust

This release refers to the Act as in effect prior to the 1964 amendments. CCH.

Release Nos. 33-4298, 34-6419, and IC-3140. November 18, 1960, 25 F. R. 12177.

Reg. § 231.4298 (§§ 241.6419 and 271.3140). Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.

The Securities and Exchange Commission has received a number of inquiries as to the applicability of the Federal securities laws to real estate investment trusts as defined in a recent amendment to the Internal Revenue Code (Public Law 86-779, September 14, 1960). This amendment provides substantially the same tax treatment for qualified trusts which are substantially limited to investments in real estate and real estate mortgages as is provided for "regulated investment companies", but it does not amend any of the statutes administered by this Commission. A real estate investment trust may be subject to the provisions of the Federal securities laws, depending upon the circumstances involved in offering its securities for sale, the nature of such securities, and the character of the trust's investments.

The amendment, among other things, requires that, in order to qualify for the special tax treatment provided, the trust's securities must be bene-