selects to post a bond, bond must be filed before the appointment can become effective. (3-601) In any event, any interested person can prevent an informal appointment by filing a demand for notice and initiating a formal proceeding for probate or appointment. (3-204; 3-401) Interested persons are further protected against surprise by the requirement that five days delay after death precede any appointment. Thus, in a significant sense, the decedent, his creditors and survivors have important control of whether a bond requirement should be imposed at the time of appointment. To cover cases where it may appear from the detailed recitals required of every petition that interested persons may not know what is occurring, the registrar may deny an informal appointment, thus guaranteeing notice and judicial discretion concerning a possible bond requirement before any appointment

We seem to be left with a large controversy over a relatively small category of cases involving intestate decedents whose survivors either know or care too little to avail themselves of the opportunities given them by the Code for preventing appointment of an unbonded individual.

Here, we must face the questions of who these appointees are likely to be and whether the position of the Code that no bond is required unless desired by someone from the court office or with an interest in the estate is sound. Once the risk area is identified, we must ask whether a bond requirement for every individual personal representative is the appropriate remedy, as compared with the Code's flexible system of remedies, including personal liability of any defaulting fiduciary, liability of persons who receive erroneous distributions, and an on-going opportunity for any person to demand bond, or initiate supervised administration.

Perhaps, however, we should assume that Mr. Cohen also objects to the approach of the Code in testate cases which is that a testator may alter the basic rule of no bond by a provision in his will. In many states, the matter is the reverse of this with testators having power by will to alter the law's basic requirement of bond. In this posture, the response to Mr. Cohen's criticism should lead us to an inquiry about the usual habits of professional will draftsmen in regard to bonds and to an analysis of the proper role of legislation relating to a subject commonly covered by wills.

Summary of Position in Support of Code

The argument in support of the Code's position regarding bonds in intestate estates is relatively simple. It rests on the fact that the heavy majority of cases falling within the category in question will involve very small estates being administered by a close family member for himself and other members of the family, or by an attorney or other outsider who is agreed to by the survivors after the decedent's death. The Code accepts the proposition that succession to small, unplanned estates should not be made relatively more expensive or complicated than succession to larger estates. Thus, bond requirements which are routinely avoided by persons planning large estates, should not be imposed on successors to modest estates. It also reflects the belief that the value of probate bonds is sufficiently unclear to make it unwise for state law to require bonds for any category of cases.

Finally, the Code proceeds from the assumption that existing probate statutes relating to administration of intestate estates must be improved rather than perpetuated if the nation's probate problems are to be corrected. Too much existing law regarding estates reflects the interests and attitudes of estate planners and others whose professional interests have made them acutely aware of problems which have nothing to do with the vast majority of estates in probate. Too little thought has been given to the concern about probate of most citizens.

Sources of Data: The Cleveland Project and the ABA Survey

A book will be published soon called *The Family and Inheritance.* Its authors are Marvin Sussman, Judith Cates and David Smith. Drs. Sussman and Cates are sociologists; Prof. Smith teaches law. The book is the report of a research project financed by a grant by Russell Sage Foundation and conducted by the authors under Dr. Sussman's direction at Case-Western Reserve University in Cleveland, Ohio, during the period from 1965 to 1969. The project involved a detailed analysis of a random sample of one out of every twenty estates closed in Cuyahoga County, Ohio, during a one year period extending from a date in 1964 to a date in 1965. The sample, reflecting 13,180 estates, consisted of 659 estates. Data from probate records was collected and survivors of the decedents involved were systematically interviewed by trained persons.

The survey and the report were planned and accomplished by professional social scientists who sought only to produce solid data for use by lawmakers. The results should be of enormous utility to everyone who is concerned with the problems of probate law. For convenience, data appearing in the manuscript of the report book is referred to as resulting from the "Cleveland project".

During the year 1967-68, the Committee on Administration and Distribution of Decedents' Estates of the Real Property, ABA Probate and Trust Law Section, distributed a questionnaire about probate procedures to its 28 members. Returns were received from lawyers in 23 different states. A report of their answers appears in Vol. 3, No. 2, Real Property, Probate and Trust Journal (Summer 1968) at p. 142. References in this memorandum to the ABA survey are to the answers as tabulated from the returned questionnaires rather than as summarized in the published report.

Relevant Data

a) *Size of Estates*

Most estates in probate are relatively small estates. According to the Cleveland project, 68.7% of estates are testate and 31.3% are intestate. The *median* testate estate grossed $15,000; the median intestate estate grossed only $6,000. The average or mean worth of all intestate estates was only $8,599. None of the thirty-two decedents in the sample whose estates were taxed under the federal estate tax law were intestate. It is safe to conclude, therefore, that more than half of all estates in probate gross less than $15,000, and that most intestate estates having some contact with probate court are significantly smaller than $15,000 in gross value.

These same figures demonstrate that there is a positive correlation between the size of estates and the likelihood that the decedent left a will.

b) *Typical Survivor Patterns*

Of the 659 estates involved in the Cleveland project sample, the surviving heirs consisted of spouse and descendants, spouse only, or descendants only, in all but 87 or 13% of the cases. In 12 of the 87, or about 2% of the total, the decedent appeared to have left no relatives, and in 75 cases, or about 11% of the total, collateral kin were the survivors.

c) *Likelihood of Inheritance by Minors*

Though the Cleveland project did not focus on the age of inheritors, some of its data is relevant to the probability of inheritance by minors. First, as suggested by a) above, inheritance by collateral heirs, including minors, is relatively rare. Second, the age of the decedents identified in the sample averaged 67.9 years. It is unlikely that many persons of this age have minor children. Third, the commonest instance of wills altering the intestate pattern occurs where the decedent had a wife and children. The draft of the Cleveland report states: "Testators who are survived by spouse and lineal kin most often deviate from the statutes to bequeath the entire estate to the spouse. Decedents survived by spouse and lineal kin had a high rate of testacy (72.8%) despite the fact that they are six to ten years younger than the other groups." (Chapter IV)

d) Protection of Creditors

Confirming beliefs which many have held for a long time, the Cleveland project demonstrates that probate procedures have little real meaning for creditors of decedents. 38.5% of all estates list no debts other than funeral expenses. The report states "This does not necessarily mean that the decedent had no debts at the time of his decease. It is likely that his spouse or another survivor paid the lawful debts and did not bother to render an accounting. It will be remembered that the vast majority of our estates were small and no tax advantage would accrue to the heirs from careful bookkeeping and reporting. [The following table] indicates the smaller the estate size, the higher the percent of estates with no debts." The report then indicates no debts were listed in 90% of estates under $2,500, 45% of estates between $2,500 and $6,500, and 41% of estates between $6,500 and $10,500. The section on debts is concluded with the following observation: "In general, we do not find that debts constitute a significant problem in the settlement of an estate. First, the debts usually constitute a small proportion of the gross estate. Second, the survivors of the decedent usually make provision for payment without the necessity for court proceedings."

e) Cost of Probate Bonds

The cost of probate bonds varies markedly from state to state. Respondents to the ABA questionnaire answered as follows to the question "What is the usual cost of a fiduciary bond for each $10,000 of estate assets?":

Vermont	$10.00
Florida	$20.00
Ohio	$25.00
N. Hampshire	$30.00
Iowa	$40.00
Colorado	$40.00
N. Dakota	$40.00
Wisconsin	$40.00
Illinois	$50.00
Minnesota	$50.00
Mississippi	$50.00
N. Carolina	$50.00
Rhode Island	$55.00
Texas	$55.00
Maryland	$60.00
Washington	$60.00
Michigan	$60.00
Oregon	$60.00
Kansas	$72.50
Oklahoma	$100.00

Another fact about the price of probate bonds which has been conceded by industry representatives is that current price scales for probate bonds have been in effect since 1929 in many areas of the country.

One can only surmise that these curious features of probate bond prices are related to the fact that bonds have been required by statute for generations. Local history in each state rather than the law of supply and demand, has controlled prices.

f) Frequency of Claims on Probate Bonds

It is difficult to estimate how many estates must have been within the experience of the lawyers who responded to the ABA questionnaire. It is commonly assumed that practitioners identifying themselves as probate lawyers tend to have more years of experience than other categories of practitioners. Nonetheless, only 5 of 22 respondents answered affirmatively to the following question: "Have you or has any member of your firm ever been involved in a suit to recover on a fiduciary bond?" One respondent from Illinois wrote as follows: "Prior to engaging in probate work with my employer, I practiced privately a number of years and never observed a suit to recover on a fiduciary bond. I inquired recently of the largest law firm in Chicago and they reported they could not recall such a suit, and, indeed, was so rare they could only cite an instance which hit the newspapers a few years ago."

Argument and Conclusions

Testate Cases

Testate cases arising under the code normally will involve fiduciaries selected by the decedent. The code invites testators who believe that the person chosen should be bonded to require bond. No prospect of exercise of fiduciary power before the bond requirement is met exists where the decedent imposes the bond requirement.

No blanket bond requirement should relate to testate cases where the will is silent on the question of bond. The fiduciary usually will be selected by the testator. Provisions excusing executors from bond requirements are boiler plate in the forty-two states where testators now can control bond. The practice of draftsmen suggests what the law should infer to be the wish of the occasional testator who says nothing about bond.

Further, the option of formal or informal probate offered by the code should serve to bring the most tension-ridden situations before the judge in a formal proceeding. To the extent this occurs, it is also quite probable that appointment of the personal representative will be by the judge who will thus have an opportunity to impose a requirement of bond if it seems desirable under the circumstances.

Intestate Cases

If we pay any attention at all to the facts developed by the Cleveland project, we must conclude that the typical intestate estate is quite small and so, under the Code's scheme of intestate distribution likely to pass entirely to the surviving spouse if any, or to children where there is no spouse. The insurance industry's representative concedes that bond is inappropriate where the personal representatives takes the whole estate. Either he agrees that the possibility of claims against the decedent does not warrant a bond, or his concession is meaningless for the *possibility* of debts will exist in every estate. The Code's system of priorities for selection of administrators in intestacy is set forth in Section 3-203. The spouse has priority over other heirs. As among heirs having equal priority, each is entitled to notice of even an informal application of any other and each must concur in identifying some one or more of their group or some outsider who may be selected. (3-310) If an application is falsified to prevent the registrar from identifying persons with prior or equal right to appointment, the applicant may be charged with fraud, removed if appointed, or subjected to other appropriate remedies.

The argument recurs that bond must be imposed in every intestate estate in order to protect possible minor heirs, and persons who though presently unknown may turn up later and establish some right to the estate. These points need to be separately considered.

As to minors, we must remember that the average age of decedents is such as to make it unlikely that minors will be included in the usual circle of survivors. Secondly, unless there were children by a prior marriage, only relatively large (over $50,000) estates will devolve on children of the decedent if there is a surviving spouse. Third, the effect of Part 4 of Article II of the Code is to give a surviving spouse the first $14,000 or so of a gross estate ahead of the claims of creditors and any children by a prior marriage. Finally, under 5-103, the code approves of the idea that a parent or other adult with whom a minor resides may receive up to $5,000 per year from any person owing money to the minor. This section reflects the view that elaborate protective relationships can and should be avoided where relatively small property interests of minors are involved. It is a purpose of the Code to extend to small property interests the same flexibility and freedom from expensive and overly-elaborate protective arrangements which typical trust provisions and gifts to minors legislation indicate to be desired by wealthy persons.

Finally, we must not overlook the pressures built into the code which will tend to produce formal proceedings whenever significant values appear to be owned by minor or incompetent persons. As noted earlier, once formal proceedings occur, the court has discretionary power to require any appointee to post bond. Also, the court may appoint a guardian ad litem for any such person who appears to be interested in any formal proceeding and to be inadequately represented by parent, conservator or guardian. Remember, too, that the registrar has residual authority to decline informal applications and thus force formal proceedings. In this connection, it should be noted that applications are required to state the age of any minor heirs or devisees. There is a significant probability that any individual who undertakes to serve as personal representative where minors or incompetents are involved will want the protection of formal orders particularly if values of any consequence are involved. The Code encourages these persons to use formal proceedings by providing clear and flexible procedures and a competent, and possibly specialized, court.

A blanket requirement of bond cannot be justified as necessary to the protection of unknown heirs and devisees. Under the Code, a personal representative owes no duty to persons who might show up within the limitation period for probate or contest of wills and demonstrate that they are the true successors, unless they initiate proceedings before distribution is made. (3-703) Such persons have protected rights against those who received the estate but not against a fiduciary who acted in good faith. Thus, a bond insuring fidelity of the personal representative would not help them. The Code's position in this regard is defensible because it is keyed to the usual, rather than to the extraordinary case and is necessary to permit fiduciaries to distribute without court order.

Unknown persons who may appear as additional heirs or devisees entitled to share an estate as it is being administered have rights against the personal representative which are not cut off unless and until they are adjudicated to be nonexistent in formal proceedings. This will tend to move fiduciaries to the court for orders in formal proceedings in cases where there are important values or reasonable doubts. A bond requirement would add nothing to the absent person's ability to prevent a court order which cuts him off.

Doubts as to the Value of Probate Bonds

The National Conference should not accede to the demands of the insurance industry that their time-honored, legislatively guaranteed market be perpetuated without asking some obvious questions about the effectiveness of bonds in preventing disappointments in regard to inheritances and the relative cost of whatever salutory effect bonds may have.

Evidently, estate planning experts across the country think little of fidelity bonds as protection. Provisions in trusts requiring bonds of fiduciaries are quite uncommon. Will draftsmen routinely excuse bond requirements for testators whenever they can.

Receiverships and other extraordinary proceedings involving court-appointed business managers or liquidators bear little resemblance to succession of decedents' estates which is as natural as death itself and well accommodated by family traditions and community mores. The analogy the insurance industry attempts to draw between administration of decedents' estates and liquidation proceedings involving living debtors, though warranted in a superficial sense by our history of probate court supervision of decedents' estates, is inaccurate from a functional point of view.

The value of bonds as measured by their deterrent effect and cost is quite questionable. Some insurance industry spokesmen have indicated that there are no figures to indicate the relationship of bond premium income to losses covered by bonds. They also urge that figures as to dollars paid in claims are unimportant because they would not demonstrate the value of bonds in coercing proper discharge of fiduciary duties. Of course, it can be argued with equal force that since probate bonds have been routinely required by statute in intestate estates, we have no basis whatever for connecting the bond requirement to the behavior of individual fiduciaries. It could just as well be argued that the typical close relationship between individuals who serve as administrators, and the beneficiaries of intestate estates, totally explains the tendency for intestate estate settlements to be very routine and peaceful affairs so far as can be determined from the outside.

Surely, it is difficult to explain the variation in cost of bonds in the several states, other than as a phenomenon of forcing a market by statute.

Conclusion

Putting reasons for doubts about the value of probate bonds to one side, a blanket requirement of bond for every intestate estate being administered by any individual would be a clear instance of statutory overkill. It is submitted that statutory rules can and should be so cast that the routine requirements which apply to every estate will be relevant to facts usually to be anticipated in ordinary cases. Unusual situations should be the occasion for extraordinary procedures, rather than new routines for every estate. Present drafts of the proposed Code seek to achieve this ideal by making bond requirements fully responsive to the needs of a particular case as identified by interested persons and probate court personnel.

Finally, a statutory requirement of probate bonds in testate or intestate estates is inconsistent with the basic philosophy of the Uniform Probate Code that estates belong to survivors who are expected to look out for their own interests. The ancient idea that a probate court is a public agency through which all estates must pass in order that accuracy and honesty in regard to inheritances will be achieved has become intolerable to a vast majority of our people. It has outlived its usefulness and now deserves an honorable burial. Indeed, if it is not soon eliminated by forward looking legislation, the day when the overwhelming majority of dollars passing at death will be controlled by will and probate substitutes will be on us much sooner than might be imagined. As this day approaches, the estates left in probate to bear the expense of bond and other costs which better planned estates avoid, will come more and more to consist almost entirely of the little accumulations of the relatively poor and ignorant elements of our population. The Code must have the support of the average man and his organizations if it is to withstand the ordeal of battle in our legislatures. It should not be weakened by what is really an unnecessary concession.

SUGGESTIONS AND COMMENTS
ON THE
UNIFORM PROBATE CODE (SB 248)

(1) Suggestion

In sec. 13.11.125 et seq. the use of a description such as "Homestead Allowance" for the widow of decedent and for minor and dependent children might well be confused with the "Homestead Exemption" provided under AS 09.35.090, and the exemption provided in sec. 13.11.130 may be confused with the exemption provided by AS 09.35.080. We read the probate allowances and exemptions to be in addition to the homestead exemption and other exemptions as now provided under AS 09.35.080 and AS 09.35.090. We recommend that the probate code eliminate the description "Homestead Allowance". Likewise, we recommend the description "Exempt Property" be changed to "Personal Property Allowance".
(Alaska Bar Association)

Comment

I believe that the use of similar terms in two totally different and unrelated titles would not cause any confusion. Sections 13.11.125 et seq. relate to certain rights and values to which a surviving spouse and certain children of a deceased are entitled in preference over unsecured creditors of the estate and persons to whom the estate may be devised by will. AS 09.35.080 - 09.35.-090, on the other hand, specify what personal and real property cannot be taken from a judgment debtor by means of execution.

(2) Suggestion

p. 91

Sec. 13.16.450 in conformance with the uniform code allows four months for presentation of claims by creditors. We recommend this be changed to 90 days to conform to our present probate code. Ninety days is considered sufficient, and will shorten the length of the probate proceedings.
(Alaska Bar Association)

Comment

While at first glance it may appear that this suggestion to retain the existing 90-day period for creditors to present claims would seem to go ahead of the UPC to shorten the length of the probate proceedings this is not the case. Presently the law (AS 13.30.250) states that "The notice shall require all persons having claims against the estate to present them, with proper vouchers, within three months...." (Emphasis added.) However, AS 13.30.260 provides that "A claim not presented within three months after the first publication of notice is not barred, but it cannot be paid until the claims presented within that period have been satisfied...." (Emphasis added.) The result of these two existing sections is that creditors' claims can be presented as long as assets remain in the estate. This procedure would not shorten the probate proceeding.

On the other hand, two sections in SB 248 go far to reduce the time it would take to probate an estate. These two provisions read:

"Sec. 13.16.450. NOTICE TO CREDITORS. Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the judicial district announcing his appointment and address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred."

and

"Sec. 13.16.460. LIMITATIONS ON PRESENTATION OF CLAIMS. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the first publication of notice to creditors if notice is given in compliance with sec. 450 of this chapter; provided, claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state;

(2) within three years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or lien upon property of the estate; or

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance."

(Emphasis added.)

These sections make it mandatory that a creditor must submit his claim within four months after he has received notice or be forever barred. Thus the possibilities of closing an estate more quickly under SB 248 are much greater than under present probate procedures.

When this same issue was raised by the Legislative Council while it was preparing the bill for introduction, Professor Richard V. Wellman of the University of Michigan Law School and the prime drafter of the UPC made some very meaningful remarks on why these provisions should be retained. (See Appendix A.)

(3) Suggestion

p. 120

We disagree with the power given a foreign personal representative under sec. 13.21.015, which requires only that the nonresident fiduciary may secure removal of assets of a nonresident decedent from Alaska upon furnishing a copy of his appointment and an affidavit as to death, Alaska administration, and entitlement to payment. Nothing is said or provided concerning Alaska debts of the nonresident decedent, except that should a creditor in Alaska know of the death and the whereabouts of assets in Alaska, that creditor may object. This is considered inadequate and likely to result in no recovery in most cases. Suit against the foreign representative in the foreign jurisdiction is not a good remedy. We recommend that sec. 13.21.015 be expanded to require some notice to Alaska creditors before removal of the assets from Alaska. We would add the following additional requirement to sec. 13.21.015.

> In addition to the foregoing requirements the domiciliary foreign representative shall furnish to any person having possession or control of personal property, or other asset sought to be removed from Alaska, proof that notice has been published in a newspaper of general circulation in the borough or city where such assets are located, at least once a week for three weeks, that such property or other asset will be removed unless objections are made. The notice shall specify the personal property or asset and its location in Alaska.

(Alaska Bar Association)

Comment

While this suggestion in regard to sec. 13.21.015 would be of considerable merit if we were dealing with traditional concepts of administering multi-state estates, I would not think it is particularly necessary under the approach taken by the UPC.

Traditionally there has always been a reluctancy on the part of one state which has assets and creditors of a person who dies domiciled in another state to turn over those assets to the decedent's domiciliary estate without first paying off local creditors.

> "Whenever more than one state is involved, administration at the present time is complex and difficult. Assembling assets from several states is not easy. While jurisdictions increase arithmetically, difficulties seem to increase geometrically. Just as troublesome is the possibility that the personal representative or the assets of the estate may be the subject of litigation in several states." (Multiple-State Estates Under The Uniform Probate Code, 27 Wash. & Lee L. Rev. 74 (Spring 1970))

To avoid these problems and complexities which have plagued the several states since their existence, the UPC in ch. 21 has provided a system whereby a personal representative in the state of the decedent's domicile has the same power over the title to property of the estate as an absolute owner would have and thus an entire estate, wherever located, can be administered in one proceeding. At first it may seem that creditors in a foreign state are left to the mercy of another state for their payment. This, however, is not the true case because the property is held in trust for the benefit of the creditors and other individuals having an interest in the estate (sec. 13.16.390). The code treats all creditors alike whether they are in the domiciliary state or another state. Besides having the same protection offered all creditors by the code, local creditors who are apprehensive that the domiciliary personal representative will withdraw assets from the local state may notify persons owing the decedent or having possession of state property not to pay or turn over property on affidavit (sec. 13.21.025). The creditor could also petition for local administration ("interested person" for all code purposes includes creditors) in order to prevent the domiciliary foreign personal representative from proceeding without local appointment (sec. 13.-21.040). Finally, sec. 13.16.520 provides equal treatment of all creditors in an insolvent estate.

(4) <u>Suggestion</u>

p. 42

Sec. 13.11.315 provides for deposit of a will with any court. This should be restricted to the superior courts inasmuch as the inferior courts, particularly in sparsely settled areas will not have the personnel or facilities to administer this provision. Basically we feel that secs. 13.11.315 and 13.11.320 might well be eliminated since they will burden the courts with additional duties, although it is assumed that the rules of court would require a charge to be made. The commentary to the UPC suggests that a central filing system be established soon and a statute be enacted requiring the registrar of the will to notify the central bureau so that any inquiries could be directed to the central bureau. All this seems unnecessary, and will require no end of additional court rules, record keeping, etc.
(Alaska Bar Association)

<u>Comment</u>

At the present time, of course, there is no way of knowing how many people would avail themselves of this provision and the resulting cost to the state, but if the idea seems feasible, the recommendation that only superior courts be used would seem a very good one.

(5) <u>Suggestion</u>

p. 11

Sec. 13.06.110, regarding notices under paragraphs (1) and (2), it is suggested "10 days" rather than "14 days".
(Keifer L. Gray, Standing Master in Probate)

<u>Comment</u>

I cannot see any particular need for the change.

(6) Suggestion

Sec. 13.11.045(1), add "provided the Native rights through blood of any person so adopted may be retained if provided for in the decree of adoption".
(Keifer L. Gray, Standing Master in Probate)

p. 17

Comment

In regard to this suggestion, the question has been raised as to how adoption affects the rights of inheritance from the natural parents.

After researching this question I have come to the conclusion that neither under existing law (AS 20.10.120, see Appendix B) nor under sec. 13.11.045(1) of SB 248 would an adopted child be precluded from inheriting from both his natural as well as his adopting parents.

The general law on this matter is quite clear:

> "Consanguinity is fundamental in statutes of descent and distribution, and the right of a child to inherit from his natural parents or to share in the intestate personalty of their estates is affected by the legal adoption of the child by another only to the extent that such rights are taken away or limited by the terms of the applicable statutes of adoption and descent and distribution, or by necessary implication therefrom. To state the rule another way, an adopted child is, in a legal sense, the child both of its natural and of its adopting parents, and is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides. In any event, the adoption of a child after the death of its parents does not affect its status as the heir of such parents.
>
> "The adoption of a child does not destroy his status as one of the 'issue' of his natural ancestors. The fact that by the terms of the adoption statutes the natural parents lose all rights over a child when it is adopted by another does not necessarily imply that the child may not inherit from such parents, nor is that implication to be drawn from the fact that the child becomes the legal child of its adopting parent and sustains all the rights and is subject to all of the duties of that relationship. A statute which includes as its dominant and principal feature the establishing of the adopted child as the heir of the adopting parent, without reference to inheritance from natural parents, is not likely to be construed as depriving the child of that inheritance." (Emphasis added.) (2 Am Jur 2d, Adoption, sec. 103)

To deal with this question a specific provision must be adopted and this has been done in a number of states.

> "Some statutes expressly save the rights of an adopted child to inherit from its natural parents; others by their express terms bar adopted children of the right to inherit from their natural parents and natural kin. Rights of dual inheritance from the natural parent as well as from the adoptive parent are denied by a statutory declaration that all rights and duties between the adopted child and his natural parent shall cease and determine and that the child

shall thereafter be deemed and held to be for every purpose the child of his adoptive parents. Such statutes are not open to attack on the ground of discrimination between minors whose natural parents died before the effective date of the statute and those whose natural parents died thereafter, but such a statute does not prohibit a natural parent from bequeathing property by will to a child whom he has permitted to be adopted by another." (Id)

As can be seen from a reading of AS 20.10.120 (see Appendix B) and sec. 13.11.045(1) of SB 248 neither the existing nor proposed provision specifically provide that an adopted child cannot inherit from his natural parents. In view of the state of the law as cited above, I believe that whichever approach the legislature takes should be specially stated in the bill. The House Judiciary Committee has already expressed its support for allowing an adopted child, at least to some degree, to inherit from his natural parents by the introduction of HB 722 (see Appendix C).

For a more extensive consideration of the entire question of how adoption affects the rights of inheritance through or from natural parents or other natural kin, please see annotations and cases in Appendix D.

(7) Suggestion

P. 25

Sec. 13.11.125, the homestead allowance should be a minimum of "$6,000" instead of "$5,000".
(Keifer L. Gray, Standing Master in Probate)

Comment

The Legislative Council changed this to $8,000 to correspond with present day needs in Alaska as reflected in existing law.

(8) Suggestion

Sec. 13.11.155, add a paragraph (a) which states:

P. 28 Relocate to 130

> (a) Wills other than self-proving wills under sec. 165 of this chapter may be proven by the affidavits of the two witnesses to the will or, if one witness is deceased or cannot be located, by the testimony of one subscribing witness and other proof satisfactory to the court.

(Keifer L. Gray, Standing Master in Probate)

Comment

This seems like a very practical suggestion.

(9) Suggestion

P. 42

Add a new sec. 13.11.325 to read:

> Sec. 13.11.325. PROCEDURE FOR NONINTERVENTION WILLS. If the last will and testament of a decedent provides that the estate shall be settled without the intervention of any

court, title of the decedent passes to the devisee or heirs on death. It is necessary only that the executor, or person or corporation nominated in his place if he fails to serve, submit the will to the court, prove it, secure letters testamentary, file an inventory, and submit proof of solvency. Thereafter, the estate shall be managed and settled without the intervention of any court. However, notice to creditors requiring them to submit their claims within three months shall be published once each week for four weeks in a newspaper of general circulation in the judicial district where the will is probated. The party probating the will may file a final account with the court if he desires and he shall make a report of any inheritance tax due the state or the United States and pay the same from estate funds. Nothing contained in this section shall be construed to prevent the court from ordering the filing of a final account if a petition demanding a final account is filed by an heir, devisee, legatee, creditor, the state or federal government or a person showing he is adversely affected by the failure to file the account. However, a full and complete report must be submitted to the court within one year from the date of filing such will for probate and proof of final distribution should be filed simultaneously. Extensions beyond this period of time may be granted only on the specific order by the court for good cause shown and then not to exceed six months.

(Keifer L. Gray, Standing Master in Probate)

Comment

In view of the fact that the UPC is based on the premise that a court should not intervene unless requested by an interested person, this suggested provision would seem unnecessary. Also, sec. 13.11.230 provides that "... the intention of the testator as expressed in his will controls...." The proposed amendment is drafted along the lines of existing law (AS 13.30.111) which reflects the traditional probate concepts.

(10) Suggestion

p. 49

Sec. 13.16.065, paragraph (1), substitute the figure "19" for the figure "21".
(Keifer L. Gray, Standing Master in Probate)

Comment

SB 248 has substitued "19" for "21".

(11) Suggestion

p. 62

Sec. 13.16.365, the last paragraph after the comma, instead of "he may file the original of the inventory with the court" it should read "he shall file the original of the inventory with the court", substituting the word "shall" for the word "may".
(Keifer L. Gray, Standing Master in Probate)

Comment

In regard to making the filing of an inventory permissive instead of mandatory, the drafters of the UPC seem to indicate that the worth of an estate should be the concern of only interested persons and not of the general public (Uniform Probate Code, sec. 3-706).

(12) Suggestion

P. 118

Sec. 13.16.680(1), change the value from "$5,000" to "$6,000". (Keifer L. Gray, Standing Master in Probate)

Comment

This suggestion would correspond with present day needs in Alaska as reflected in existing law.

(13) Suggestion

P. 119

Sec. 13.16.695, add paragraph (d) to read:

(d) The superior court may authorize the disposal in a manner it prescribes of personal property which has not been disposed of under this section by the end of six months if no heirs or claimants have been located.

(Keifer L. Gray, Standing Master in Probate and Superior Court Judge James M. Fitzgerald)

Comment

Because SB 248 is silent on this point and the necessity seems obvious, this suggestion should be added.

(14) Suggestion

Add a new sec. 13.16.700 to read:

P. 119

Sec. 13.16.700. SETTLEMENT DIRECTED BY COURT. When a judge receives information that a person has died in his judicial district leaving an estate of $6,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint some person, corporation, or attorney to settle the estate in the manner provided for in secs. 680 - 695 of this chapter or the appointee may administer the estate in the manner provided for in the administration of small estates.

(Keifer L. Gray, Standing Master in Probate)

Comment

This suggestion seems appropriate on the same basis as (13) above. However, because secs. 680 - 695 are the provisions for administering small estates, I would recommend deleting "or the appointee may administer the estate in the manner provided for in the administration of small estates".

(15) Suggestion

P. 125

Sec. 13.26.015(1), the age should be "19" and not "18". (Keifer L. Gray, Standing Master in Probate)

Comment

It should be changed to "19".

(16) Suggestion

8.126 Sec. 13.26.020, the time should be "not exceeding one year unless sooner revoked".
(Keifer L. Gray, Standing Master in Probate)

Comment

Considering the purpose underlying sec. 13.26.020, this suggestion would seem appropriate because of the cost and distance involved in Alaska travel. The drafters of the UPC have stated on this point:

> "This section permits a temporary delegation of parental powers. For example, parents (or guardian) of a minor plan to be out of the country for several months. They wish to empower a close relative (an uncle, e.g.) to take any necessary action regarding the child while they are away. Using this section, they could execute an appropriate power of attorney giving the uncle custody and power to consent. Then if an emergency operation were required, the uncle could consent on behalf of the child; as a practical matter he would of course attempt to communicate with the parents before acting. The section is designed to reduce problems relating to consents for emergency treatment." (Uniform Probate Code, sec. 5-104, Comment)

(17) Suggestion

8.127 Sec. 13.26.045, add "or has failed to properly exercise his duties as such".
(Keifer L. Gray, Standing Master in Probate)

Comment

This provision does not seem necessary in view of sec. 13.26.085 which provides specifically for the removal of guardians.

(18) Suggestion

Sec. 13.26.060, add an (e) to read:

8.127

> (e) A bond in the amount to be fixed by the court may be required of the guardian as the circumstances require.

(Keifer L. Gray, Standing Master in Probate)

Comment

Under the provisions of the UPC guardians are appointed to protect only the person of the minor and not his property or other assets. If problems of property management arise, then a conservator would be appointed and a bond may be required under sec. 13.26.215.

(19) Suggestion

8.129 Sec. 13.26.070(4), add "at least once every year unless ordered sooner".
(Keifer L. Gray, Standing Master in Probate)

Comment

I cannot see any harm in this suggestion but the benefit is also a little doubtful.

(20) Suggestion

p. 151

Sec. 13.26.280(a), change the age from "18" to "19".
(Keifer L. Gray, Standing Master in Probate)

Comment

This should be changed to "19".

(21) Suggestion

p. 2-3

Sec. 13.06.035, add a paragraph (3) to read:

(3) a person who is absent for a continous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; his death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(F.E. Kester, State Registrar of Vital Statistics)

Comment

This suggestion is very important and should definitely be incorporated into SB 248.

(22) Suggestion

Adopted

Either Title 9 or 13 should contain provisions for wrongful death and survival of actions.
(Herbert A. Ross, Attorney at Law)

Comment

This is a very good suggestion and should definitely be made a part of the bill. Because the provisions relate to causes of action and not probate, I suggest they be made a part of Title 9 (Civil Procedure).

(23) Suggestion

Various age requirements in the bill should be made uniform.
(R. G. Laube, Vice President and Trust Officer, National Bank of Alaska and Chairman, Legislative Committee, Anchorage Estate Planning Council)

Comment

The age of 19 either has been or will be substituted for 18 where appropriate.

Appendix A

Excerpt from letter dated December 13, 1971, addressed to Frederick O. Eastaugh from Professor Richard V. Wellman of the University of Michigan Law School:

Let me move to another point on the list of deviations from U.P.C. that are indicated in Russell E. Mulder's letter of October 4, 1971, to Members of the Alaskan Bar Association. I am somewhat concerned about point 5 dealing with bar on unsecured creditors claims.

First, let me focus on the proposal to extend the non-claim period on unsecured claims following first advertisement for claims from four months to one year. Statutory notes to the Model Probate Code (1946) indicate that in the early 1940's when research on the project was accomplished, twenty-six states had fixed time limits in non-claim provisions. In twelve states, the basic time period was six months; in four the basic period was three or four months; in four the period was eight, nine or eleven months; in six the period was one year. Section 142 of the Model Probate Code set the non-claim period at 4 months. The recently enacted Surrogates Court Procedure Act in New York established a three month period and Wisconsin's new probate code permits the court to fix a non-claim period as short as three months. The non-claim period in the new codes in Maryland and Oregon is set at four months. Idaho's version of U.P.C. preserved the four month limitation period, as does the Law Revision Commission's recommendation in Arizona.

The pattern across the states, influenced I am sure, by the criticism that probate is too long, is distinctly toward a period that is much shorter than the year that is mentioned in Mr. Mulder's letter.

It may be pertinent, also, to note that during the several years of drafting of U.P.C., the project did not receive a contact, much less a protest, from any group representing creditors. This significant silence corroborates the careful study of attitudes about probate reported in Sussman, Cates and Smith's book, The Family and Inheritance (Russell Sage, 1970) which reported that problems with creditors were a very unimportant aspect of the typical probate proceeding.

During the drafting process, the Reporters were informed by researchers who had probed Chicago merchants about protection through probate for unsecured creditors claims. The second-hand reports back indicated that merchants gave very little attention to problems of collection from deceased debtors. On some kinds of accounts, like fuel oil contracts, credit life insurance is used. In other situations, joint obligations bind husband and wife so that the death of either is of little concern to creditors. Statistically death is not a serious risk for age levels where borrowing or credit purchasing is most common. Finally, creditors appear to believe that survivors will pay valid small debts of family members, if for no other reason than to maintain their own reputation for honesty and good credit.

In point of fact, therefore, there is much to support the proposition that the usual concern about creditors in probate proceedings comes only from the minds of lawyers who for generations, have been taught that the principal purpose of probate is to protect creditors.

Finally, lawyers have a good deal to gain from moves that may serve to shorten the time for routine probates. The length of non-claim periods will have a direct bearing on the standard time during which estates probably will remain undistributed. With the optional valuation date and the filing deadline for federal estate tax purposes now moved closer to date of death, it would be paradoxical if long non-claim provisions continued to impede prompt closing of estates. Surely, Alaskans will not want to be out of line with national trends on this point.

Second, I am concerned about the proposal to change the code so that a creditor who had good cause for not presenting a claim in time might escape the bar of non-claim. I think that such a provision may do more harm than good. First, it should be noted that the four months claim period does not apply to unsecured tort claimants who seek to reach the decedents insurance. See 3-803(c) (2). When one thinks of contract debts, who are the creditors who will not know of the decedents death within four months? All a creditor needs to do to prevent non-claim from running is to mail his bill to the personal representative or to the court.

Appendix B

Sec. 20.10.120. ADOPTION TERMINATES RELATIONSHIP OF PARENT AND CHILD. (a) By a decree of adoption, the natural parents, other than a spouse of an adopter, are divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and is, as to all legal incidents, the child, legal heir, and lawful issue of his adopter, entitled to all rights and privileges, including the right of inheritance and the right to take testamentary disposition, and subject to all the obligations of a child of the adopter.

(b) An adopter and the spouse of an adopted child, and their respective kin, have the rights of inheritance from the child as prescribed by the statutes of descent and distribution for natural parents, spouse and their respective kin to the exclusion of the adopted child's natural parents and kin, and any prior adopter and his kin. Where a natural parent is the spouse of an adopter, the natural and adopted parent and kin inherit the same as natural parents and their kin.

Introduced: 3/7/72
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 722

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act clarifying inheritance rights of adopted children; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 20.10.120 is amended by adding a new subsection to read:

(c) An adopted child and his issue have the rights of inheritance from the natural parents and their respective kin as prescribed by the statutes of descent and distribution unless the decree of adoption specifically provides for termination of those rights of inheritance.

* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

In Villier v. Watson's Adm'x, 168 Ky 631, 182 SW 869, LRA1918A, 820, the statute of adoption under which the case was decided is much unlike ours and we deem the case not in point. The same may be said of the cases of Dreyer v. Schrick, 105 Kan 495, 185 P 30, and Coonradt v. Sailors, 186 Tenn 294, 209 SW2d 859, 2 ALR2d 880. In the case of In re Roderick's Estate, 158 Wash 377, 291 P 325, 80 ALR 1398, the court considered a statute of adoption and held an adopted child could inherit from both adoptive and natural parents. However, note that the statute of Washington and also the statutes of Minnesota, California, and South Dakota, cited on page 1401 of 80 ALR, do not contain the emphatic language as does our adoption statute, particularly Section 453.090, supra.

We find no fault with the result reached in the cases of St. Louis Union Trust Co. v. Kaltenbach and Mississippi Valley Trust Co. v. Palms, supra. We limit our disapproval to the expressions and language which we deem obiter dictum contained in the opinions which lend support to the theory that persons legally adopted under the provisions of Chapter 453, supra, may inherit from their natural parents. After a full consideration of the case, we are convinced that the case of Shepherd v. Murphy, supra, was correctly decided and we find no sound reason that the same rule should not apply in this case.

The judgment of the trial court is reversed and the cause remanded with directions to enter a decree in conformity with this opinion. It is so ordered.

Bohling and Barrett, CC., concur.

Per Curiam.

The foregoing opinion by Westhues, C., is adopted as the opinion of the court.

All concur.

The Divisional opinion has been adopted as the opinion of the court en banc.

All the Judges concur, except Hyde, J., who dissents.

ANNOTATION

Adoption as affecting right of inheritance through or from natural parent or other natural kin

[See ALR Digests, Descent and Distribution § 28.]

INDEX

✦ Consult ALR2d SUPPLEMENT SERVICE for subsequent cases ✦

§ 1. In general.

This annotation supersedes 80 ALR 1403, and the supplement thereto in 123 ALR 1038, being division III of the latter annotation, at pp 1042 et seq.

The following annotations related to the present one may be noted:

Conflict of laws as to adoption as affecting descent and distribution of decedent's estate, 73 ALR 964, supplemented in 154 ALR 1179.

Status of child under contract to adopt not fully performed, 27 ALR 1325, supplemented in 142 ALR 84 and 171 ALR 1315.

Descent and distribution of property of adopted child, 170 ALR 742.

✦

The question whether an adopted child inherits from his natural parents is "one of statutory construction." Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581.

"Since adoption is wholly statutory, all its incidents must be." Young v. Bridges (1933) 86 NH 135, 165 A 272.

So, except as the statutes otherwise provide, the adoption of a child does not deprive him of the right subsequently to inherit from his natural parents or to share in intestate personalty of their estates.

Arkansas.—Shaver v. Nash (1930) 181 Ark 1112, 29 SW2d 298, 73 ALR 961 (involving Texas law); Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733.

California.—Re Darling (1916) 173 Cal 221, 159 P 606.

Colorado.—Re Wilson (1934) 95 Colo 159, 33 P2d 969.

Connecticut.—Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79.

Delaware.—Glanding v. Industrial Trust Co. (1946) 29 Del Ch 517, 46 A2d 881 (saying right to inherit not lost unless by "clear intent" of statute).

District of Columbia.—Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622.

Illinois.—Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24.

Indiana. — Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788; Head v. Leak (1916) 61 Ind App 253, 111 NE 952.

Iowa.—Wagner v. Varner (1879) 50 Iowa 532.

Kansas.—Dreyer v. Schrick (1919) 105 Kan 495, 185 P 30; Re Yates's Estate (1921) 108 Kan 721, 196 P 1077 (arguendo); Bertram v. Holcomb (1921) 109 Kan 87, 198 P 192.

Kentucky.—Villier v. Watson (1916) 168 Ky 631, 182 SW 869, LRA1918A 820.

Michigan. — Re Klapp's Estate (1917) 197 Mich 615, 164 NW 381, LRA 1918A 818.

Minnesota. — Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581.

Mississippi.—Sledge v. Floyd (1925) 139 Miss 398, 104 So 163.

Missouri. — Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635 (saying that the child was not deprived of the right to inherit from natural parents "unless expressly so provided by statute"); St. Louis Union Trust Co. v. Kaltenbach (1945) 353 Mo 1114, 186 SW2d 578 (repeating the language of the Clarkson Case, supra).

South Dakota.—Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488.

Tennessee. — Coonradt v. Sailors (1948) 186 Tenn 294, 209 SW2d 859, 2 ALR2d 880 (obiter).

Texas.—Shaver v. Nash (1930) 181 Ark 1112, 29 SW2d 298, 73 ALR 961 (involving Texas law).

Utah.—Re Benner (1946) 109 Utah 172, 166 P2d 257.

Washington.—Re Roderick (1930) 158 Wash 377, 291 P 325, 80 ALR 1398.

Wisconsin.—Re Sauer (1934) 216 Wis 289, 257 NW 28.

The right of a natural child to inherit from its blood parents "should not be taken from an adopted child unless clearly required by statute." Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24.

Similarly, unless the statutes otherwise provide, the adopted child does not lose his right to inherit from natural kin or to share in intestate personalty of their estates.

California.—Re Darling (1916) 173 Cal 221, 159 P 606.

Colorado.—Re Wilson (1934) 95 Colo 159, 33 P2d 969.

District of Columbia.—Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622.

Iowa.—Wagner v. Varner (1879) 50 Iowa 532.

New York.—Re Landers (1917) 100 Misc 635, 166 NYS 1036; Re Monroe (1928) 132 Misc 279, 229 NYS 476; Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122.

North Carolina.—Grimes v. Grimes (1935) 207 NC 778, 178 SE 573.

The child's right to inherit from blood relatives having been once given by statute "can be taken away only by statute," except, of course, as the act of the individual or individuals involved may end it. Re Landers (1917) 100 Misc 635, 166 NYS 1036. This seems to be the generally prevailing view.

In Re Darling (1916) 173 Cal 221, 159 P 606, the court stated that it appeared to be well settled in all jurisdictions in which the common law constitutes the rule of decision, that the right of inheritance of a child is affected by its adoption "only to the extent that the statutes bearing on the matter in terms or by implication provide." (But that adoption was unknown to the common law, see infra.)

In Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488, the court quoted with approval the language of Hockaday v. Lynn (1906) 200 Mo 456, 98 SW 585, 8 LRA NS 117, 118 Am St Rep 672, 9 Ann Cas 775, to the effect that consanguinity is so fundamental in statutes of descent and distribution "that it may only be ignored by construction when courts are forced so to do, either by the terms of express statute or by inexorable implication."

As late as the year 1917, a New York judge declared that his attention had been called to no authority in that or any other state, nor had he been able to find any, "which even hints at the possibility of an adopted child losing his rights of inheritance from natural kindred by reason of adoption." Re Lander's Estate (1917) 100 Misc 635, 166 NYS 1036. But see certain of the cases infra, §§ 2 and 3.

According to Young v. Bridges (1933) 86 NH 135, 165 A 272, the statutes regulating inheritance and the adoption statutes touching the same matter are in pari materia and should be construed together as if they were one law. In that case, which did not on its facts involve any question of the right of an adopted child to take two portions from a single estate (one as an adopted person and one as blood kin), the court nevertheless made use of the possibility of such a dilemma as arguing that the whole idea of dual heirship should be rejected and the child confined to the adopted inheritance. The court was of the opinion that any supposition of a legislative purpose to reserve the right to inherit from blood relatives was "negatived by the predominant policy of the inheritance statute against dual heirship." The court noted that the adoption statute provided that an adoption should make the child "the child of the petitioner to all legal intents and purposes," and concluded therefrom that, giving language its ordinary meaning and giving weight to the policy the statute disclosed, the result which followed was that an adoption establishes "a change of status by which in general the relatives become strangers in legal aspect and others take their place." Further as to the statute there in question, see the same case, infra, § 3.

✦

Since the right of adoption was unknown to the common law and exists in this country, in those states having that law as the basis of their jurisprudence only by virtue of statute (1 Am Jur, Adoption of Children § 3), but since it did exist under the civil law, the cases sometimes make reference to the civil law on the subject.[1]

In Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788, where the question decided was not within the present subject, the court noted that the rule there followed did not cut off the child from inheriting from its natural relatives, and said that "it may inherit from them and from its adoptive parents. This was the rule of the civil law," citing Sandars' Justinian, 105. The opinion explained that the common law made no provision for the adoption of children and consequently no light could be obtained from that source, but that the Roman law did make provisions for adoption and that, as revised and changed by Justinian, formed a complete system whereby the adopted child was declared "assimilated, in many points, to a son born in lawful matrimony," and that at the same time "that law preserved to the child all the family rights resulting from his birth."

However, it has been said that the civil law's reservation of inheritance from the adopted child's natural relatives "does not shed much light to show the reservation in a statutory adoption," and that if the civil-law system of adoption may be of aid in determining the incidents of a statutory adoption, because of the absence of any common law on the subject, it can be so only on the theory that the statute was enacted with the design of incorporating in some measure the system. Young v. Bridges (1933) 86 NH 135, 165 A 272.

✦

This annotation is of course concerned only with the rights which an adopted person may possess as an heir or distributee by reason of the death of an intestate occurring subsequently to the adoption.

In Re Pillsbury (1917) 175 Cal 454, 166 P 11, 3 ALR 1396, the court declared that "unquestionably" since the adoption of the three minors followed the death of their father it did not affect their status as his heirs and that whatever rights had thus descended to them they retained.

§ 2. Inheritance from immediate parents.

The child will be entitled to take as heir or distributee of his natural parent dying intestate subsequently to the adoption save only as the statutes have in some form otherwise provided —see general citations touching this point, supra, § 1.

In the following cases the right to inherit from the natural parent was upheld.

United States. — For federal cases involving state law, see state headings infra.

Arkansas. — Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733 (express statutory provision).

Delaware. — Glanding v. Industrial

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1. The English Adoption of Children Act, of 1926 (16 & 17 Geo V, ch 29) was the first English statute to provide for the adoption of children. 17 Halsbury's L of Eng p 679, ¶1407. The effect of an adoption order thereunder is not to deprive the child of any right to or interest in property to which he would have been entitled without the adoption. Id. pp 687, 688, ¶1422.

Trust Co. (1946) 29 Del Ch 517, 46 A2d 881.

Florida. — Re Hewett's Estate (1943) 153 Fla 137, 13 So2d 904 (express statutory provision).

Georgia. — Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE2d 280 (per plain intent of statute).

Illinois.—Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24.

Indiana. — Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788; Patterson v. Browning (1896) 146 Ind 160, 44 NE 993.

Kansas. — Dreyer v. Schrick (1919) 105 Kan 495, 185 P 30; Bartram v. Holcomb (1921) 109 Kan 87, 198 P 192.

Kentucky.—Villier v. Watson (1916) 168 Ky 631, 182 SW 869, LRA1918A 820.

Michigan. — Re Klapp's Estate (1917) 197 Mich 615, 164 NW 381, LRA1918A 818; Re Carpenter's Estate (1950) 327 Mich 195, 41 NW2d 319; Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79 (so held under Michigan law).

Minnesota. — Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581.

Mississippi.—Sledge v. Floyd (1925) 139 Miss 398, 104 So 163.

Missouri. — Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635 (so stating); Leeper v. Leeper (1941) 347 Mo 442, 147 SW2d 660, 133 ALR 586 (obiter); Rumans v. Lighthizer (1952) 363 Mo 125, 249 SW2d 397 (obiter); Burnes v. Burnes (1904, CC Mo) 132 F 485, affd (CA8th) 137 F 781, cert den 199 US 605, 50 L ed 330, 26 S Ct 746. But, contra, see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3 (involving the later Missouri statute).

Montana. — Re Kay's Estate (1953) — Mont —, 260 P2d 391.

South Dakota.—Sorenson v. Churchill (1927) 51 SD 113, 212 NW 188.

Tennessee. — Coonradt v. Sailors (1948) 186 Tenn 294, 209 SW2d 859, 2 ALR2d 880.

Utah. — Re Benner (1946) 109 Utah 172, 166 P2d 257; Hendrich v. Anderson (1951, CA10th Utah) 191 F2d 242.

Washington. — Re Roderick (1930) 158 Wash 377, 291 P 325, 80 ALR 1398.

Wisconsin. — Re Sauer (1934) 216 Wis 289, 257 NW 23.

As indicated, the problem is ordinarily merely one of the construction of the adoption statute.

In Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581, it was held that the right to inherit from the natural father was retained notwithstanding the adoption statute provided that an adopted child should become the legal child of the persons adopting him and they should become his legal parents, with all the rights and duties between them of natural parents and legitimate child, and that the child should inherit from the adopting parents or their relatives as though he were the legitimate child of such parents, and should not owe his natural parents or their relatives any legal duty, and that in case of his death intestate the adopting parents and their relatives should inherit his estate, as if they had been his parents and relatives in fact. From the opinion in that case it appears that at the time of the adoption, in the year 1898, the adoption statute contained a provision that no person by being adopted should lose his right to inherit from his natural parents or kindred, but that that saving provision had not been carried over into the revision of the statutes in 1905 and did not appear in the later statute; from which matters, viewed in connection with the explicit provisions of the adoption statute in force at the death of the decedent, which went so far as to disinherit the natural parents and relatives of the child, it would seem that a strong argument might have been constructed to the effect that by the later statutes the legislature intended to displace the natural parent-and-child relationship with the adopted one and not to save rights of inheritance from natural parents or kindred. In that case the adopted person claimed nothing under the express res-

[§ 2]

ervation of rights of inheritance contained in the statute as it existed at the time of the adoption proceeding.

In Re Sauer (1934) 216 Wis 289, 257 NW 28, where the pertinent section of the adoption statute provided, *in the first sentence*, that the adopted child should be deemed, "for the purposes of inheritance and succession and for all other legal consequences and incidents of the natural relation of parents and children," the same to all intents and purposes as if he had been born in lawful wedlock of the adoptive parents, but should not be capable of taking property expressly limited to the heirs of the body of an adoptive parent, and provided, *in the second sentence*, that the adoptive parents and their heirs and next of kin should be deemed for purposes of inheritance and succession by such parents, their heirs and next of kin, the same to all intents and purposes as if the child had been born in lawful wedlock of such adoptive parents, and should take in accordance with the general statutory provisions regulating inheritance and succession as between a parent and a child dying without issue, with the proviso that if no heirs or next of kin are found in the line of the adoptive parents the property of the deceased should go to the natural parents, and in case they shall have died, then "in their line of descent," and provided, *in the third sentence*, that the natural parents by the order of adoption should be deprived of such legal rights, if any, of whatsoever nature they may have had respecting the child and its property, and provided, *in the fourth sentence*, that the child should be free from all legal obligations of maintenance and obedience to the natural parents, subject to a further proviso clearly not of significance in the present inquiry—the court was of the opinion that the legislature did not by those provisions intend to deny to an adopted child the right to inherit from his natural parents. The court conceded that there would have been considerable force in the opposing contention if the section had contained no more than the first sentence, since had the legislature by that sentence intended the meaning argued for by the appellant it would have been unnecessary to have enacted much of the remainder of the section. It should be noted, however, that that ruling was made in view of a prior decision (Re Estate of Bradley (1924) 185 Wis 393, 201 NW 973, 38 ALR 1) which was stated to be to the effect that a statute which interferes with the descent of property to blood kindred or interrupts the natural course of descent should be strictly construed, especially since the established doctrine in Wisconsin is "that the right to inherit property is a natural right which the legislature cannot destroy." The court, in the Sauer Case, pointed out that in the adoption statute there was certainly no explicit and unmistakable language compelling a conclusion contrary to the one reached, and the court considered that under the Wisconsin decisions a child could not be deprived of the natural right of inheritance without the use of explicit and unmistakable language. But see Re Ries's Estate (1951) 259 Wis 453, 49 NW2d 483, 50 NW2d 397, infra, § 3.

In Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24, the court was of the opinion that in regard to the right of an adopted child to inherit from its natural mother the changes which had been made in the adoption and descent statutes effected no change in result, and in particular that the descent provision declaring that when a decedent leaves a surviving spouse and also a descendant, two-thirds of the property shall go "to the decedent's descendants per stirpes" was to be construed as including a child of decedent who had been adopted by a stranger, notwithstanding, as to adoptions, the statutes declared that a child lawfully adopted "is deemed a descendant of the adopting parent for purposes of inheritance." The court applied the principle that an adopted child is not deprived of the right to inherit from blood parents "unless clearly required by statute," and stressed that neither the prior statute of adoption, nor the probate act involving the adoption language in question, nor the descent provisions, contained any language to the effect that a child should be incapable of inheriting from its natural parents.

In Re Kay's Estate (1953) — Mont —, 260 P2d 391, it was held that inasmuch as the statutes of descent provided that if a decedent left no surviving husband or wife but left issue, the whole estate should go to such issue "unless otherwise expressly provided by the laws of Montana," and there was in fact nothing to be found in the constitution or statutes expressly providing that because of their adoption by another the bodily issue of a natural parent should lose the right to inherit, the adopted child in question was entitled to take equally with his brother the entire estate of the natural father where the same passed as in case of intestacy.

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Some of the statutory language in question has seemingly been concerned with the personal and family relationships rather than with any matter implying a cessation of the child's rights of inheritance.

In Glanding v. Industrial Trust Co. (1946) 29 Del Ch 517, 46 A2d 881, the court said that the language of the Delaware adoption statute (providing that by the final order of adoption the natural parents should be divested of all legal rights and obligations in respect to the child and the child should be free from all legal obligations of obedience and maintenance respecting them) dealt with nothing more than the usual rights and obligations of parent and child while the latter remains a member of the family, and that thereby the natural status was not changed, the child continuing to be a child and heir at law and next of kin of his natural parents and the latter continuing to be the parents of the child with the same rights of inheritance as theretofore, save only for the proviso of the statute covering the case of an adopted child surviving the adoptive parent and dying without issue, when the property which came from the adopting parent and remains undisposed of shall pass to his or her next of kin and not to the next of kin of the adopted child. The court expressed the opinion that an adoption statute taken in connection with an inheritance statute should not be construed to change the devolution of intestate property "unless it shows a clear intent on the part of the legislature to do so."

In Sledge v. Floyd (1925) 139 Miss 398, 104 So 163, where the report does not set out the language of the adoption statute but the court stated that the act did not provide "in terms" that the adopted child should cease to be regarded as the child of his natural parents but divested the natural parents of the custody and control without in terms relieving them from the legal obligations imposed on them by law and without in terms providing that the child should cease to be regarded as their child, the court said that the adoption proceeding conferred on the child "such rights" as were therein "mentioned," and it was held that since neither the statute nor the proceeding purported to deprive the child of her right to inherit from her blood relatives such right was retained, and in particular that she was entitled to inherit from her natural father notwithstanding the adoption. The court remarked that it did not think that the adoption statute intended to deprive children of their rights to inherit from their blood parents and blood relatives, since to do so "would raise grave questions where a child having expectations should be adopted against its consent or without its power to consent during the tender years of minority."

In Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488, the court said that the pertinent sections of the South Dakota adoption statutes were similar to those in question in Re Darling (1916) 173 Cal 221, 159 P 606, infra, yet the South Dakota court declined to follow the Darling Case. The court observed that the adoption statute fixed the status of the adopting person and of the adopted child and defined the rights and obligations of each to the other, without making any mention of the interests either might have in the estate of the other, and concluded, therefore, that notwithstanding the adoption the child was entitled to take the entire estate of his natural mother to the exclusion of the latter's brothers and sisters.

In Re Benner (1946) 109 Utah 172, 166 P2d 257, wherein the court said that the adoption statute in question was similar to the statute of South Dakota dealt with in Sorenson v. Churchill (1927) 51 SD 113, 212 NW 483, supra, the court quoted with approval language of the latter opinion to the effect that the adoption statute did not so limit that part of the succession statute in question as to cause an adopted child to lose the right to inherit from his natural parents, and that that conclusion was fortified by the consideration that under the law of adoption the consent of both natural and adopting parent is essential, and by his consent each is bound, whereas, "no one consents for the innocent and helpless subject of the transfer that he shall lose the right to inherit from his natural parent."

In Re Roderick (1930) 158 Wash 377, 291 P 325, 80 ALR 1398, where the court stated that Washington adoption statutes were substantially the same as those of California, Minnesota, and South Dakota, and the Washington provisions were that by the adoption the natural parents should be divested of "all legal rights and obligations" in respect of the child and the child should be free from all legal obligations of maintenance and obedience respecting them, and should be to all intents and purposes the child and legal heir of his or her adopter or adopters, and be entitled to all the rights and privileges and subject to all the obligations of a child of such person or persons begotten in lawful wedlock, with the proviso that in case of the decease of persons who have adopted a child and the subsequent decease of the child without issue, property coming from the adopting parents should descend to their next of kin and not to the next of kin of the child, it was held that a child of the decedent who had been adopted by a stranger remained entitled to inherit from the decedent and that the consequence was that since he had made no provision for her in his will and did not mention her therein, he in law died intestate as to her and she became entitled to share in the estate in the same manner as though he had died intestate. The latter consequence followed from the statute providing that if a person shall make his last will and die leaving a child, not named or provided for therein, who was born after the making of the will or the death of the testator, the testator as to such child shall be deemed to have died intestate, etc.

In Hale v. Department of Labor & Industries (1944) 20 Wash2d 14, 145 P2d 285 (where it was held that a child who had been receiving compensation from the department of labor and industries on account of the death of her father did not lose the right to further monthly amounts because of having been adopted by another) the court stated it was committed to the rule that an adoption does not effect a dissolution of the natural relationship between kindred, and that an adopted child is not deprived of the benefits arising therefrom, citing the Roderick Case (Wash) supra.

But compare the California cases, infra.

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A statute which includes as a principal or dominant feature the establishing of the child as an heir of the adopting parent, without making reference to the inheritance from natural parents, is not likely to be construed as depriving the child of that inheritance.

In Shaver v. Nash (1930) 181 Ark 1112, 29 SW2d 298, 73 ALR 961, the court declared, arguendo, that under the Texas statute (providing that any person wishing to adopt another "as his legal heir" should file in a designated office a written statement of a character described and that when made and recorded the statement should entitle the adopted child to all the rights and privileges of "a legal heir" of the adoptive parent) an adopted child retains all his rights to the protection "and to the estate of, his natural parent."

In Burnes v. Burnes (1904, CC Mo) 132 F 485, affd (CA8th) 137 F 781, cert den 199 US 605, 50 L ed 330, 26 S Ct 746, the court stated that under the Missouri statutes then applying, no judicial proceeding was needed for the adoption of children and that all the statutes seemed to require was a signing by the adopting parent of a specified instrument, its due acknowledgment, and its recording, and that the effect of it was that the child could inherit from its foster parent, even though adopted without his knowledge or consent; in fact could inherit "both from his natural father and the adopting father. Such is and has been the law of Missouri." But see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3, involving a very different statute.

In Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79, involving an adoption in Michigan under a statute declaring that the person adopting a child shall stand in the place of a parent to the child and be liable to all the duties and entitled to all the rights of a parent, and that the child shall thereupon become an heir at law of the person adopting him the same as if he were in fact the child of the adopting person, the court said that, under that statute as construed in Michigan, the person adopted would inherit from both natural and adopting parents even though the statute did not specify that the child should retain the inheritance from his natural parents. The ruling made was that the child was entitled to inherit as a child of his natural parent in Connecticut notwithstanding, the court stated, it had seemed wise to the Connecticut legislature to debar a child adopted under the Connecticut statutes from inheriting from his natural parents.

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Various cases disclose statements or intimations to the effect that the child retains the right of inheritance from his natural parents notwithstanding the adoption.

In Villier v. Watson (1916) 168 Ky 631, 182 SW 869, LRA1918A 820, the court stated that "all the authorities agree, that the fact of adoption does not lose the adopted child's right of inheritance from his parents," and the court reasoned therefrom that it was "difficult to see why a child could not inherit from two or more persons who might by adoption bestow that right upon him."

In Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, the court went so far as to say that by the adoption the child becomes, in a legal sense, the child of the adopting parents, and at the same time remains the child of his natural parents, and is not deprived of his rights of inheritance from them "unless expressly so provided by statute." That language, however, was doubtless used obiter. Compare the ruling in Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3.

In Rumans v. Lighthizer (1952) 363 Mo 125, 249 SW2d 397, a contest between the blood kin of the adopted child on the one side and the blood kin of the adoptive parent on the other, both child and parent having died intestate (and therefore not involving the right of an adopted child to inherit from its natural parents or kin), the court cited the Clarkson Case (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, supra, as authority for the proposition that the adopted child inherits "from its adoptive parents and from its natural parents." Yet at the same time the court observed that the Missouri adoption statute of 1917 differed materially from the prior law, and the court quoted language of the 1917 Act, including the provision that when a child is adopted under and in accordance with the act "all legal relationship, and all rights and duties, between such child and its natural parents shall cease and determine," and moreover, the court quoted the language of St. Louis Union Trust Co. v. Hill (1934) 336 Mo 17, 25, 76 SW2d 685, 689, to the effect that under the later law an adopted child's relations with its natural parents cease and by

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law it becomes the child of its adopting parents "for every purpose as fully as though born to the adopting parents in lawful wedlock," and that the adopted child "is taken out of the blood stream of its natural parents" and placed, by operation of law, in the blood stream of its adopting parents.

In Re Klapp's Estate (1917) 197 Mich 615, 164 NW 381, LRA1918A 818, the court conceded, with reference to an adoption statute declaring that upon the adoption taking effect the child should become an heir at law of the adoptive parent or parents, the same as if he or she were in fact the child of such person or persons, that it was "pretty well settled by the adjudicated cases that an adopted child may inherit from both his natural and adoptive parents." However, the matter there to be decided was whether the adopted child lost the right to inherit from the adoptive parent when he was thereafter adopted by another.

In Re Carpenter's Estate (1950) 327 Mich 195, 41 NW2d 349, where the matter to be decided was whether the child remained an heir at law of the first adoptive parents notwithstanding a second adoption (the ruling being in the negative), the court incidentally stated that "there is no question but that the child will always remain an heir at law of her natural parents."

In Patterson v. Browning (1896) 146 Ind 160, 44 NE 993, the court, in holding that the right of an adopted child to inherit from the adoptive parent was not destroyed by a second adoption occurring after the death of the first adoptive parent, relied, arguendo, upon the fact that an adopted child may inherit from both the natural and the adoptive parents.

In Dreyer v. Schrick (1919) 105 Kan 495, 185 P 30, the court, in holding that the fact that a child is the subject of a second adoption does not cut off the capacity to inherit under the former one, asserted that an adopted child may inherit from both the natural and the adoptive parents.

Re Anderson's Estate (1935) 23 Pa D & C 332, involved the construction of a will rather than of statutes of descent or adoption. It was there held that the child was entitled to share in the corpus of a testamentary trust established for the benefit of the natural parent for life, to be paid at his decease "to his child or children living," notwithstanding during the lifetime of his natural parent the child was adopted by a stranger. It is true that at one point the auditing judge said that the question involved the determination of the status of an adopted person "as respects inheritance" from or through a natural parent, but in his ruling he in effect departed from that language. The opinion in confirmation placed no reliance on the mere inheritance laws.

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The adoption statutes of certain states have expressly saved the child's right to inherit from his natural parents.

Arkansas. — Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733.

Florida.—Re Hewett's Estate (1943) 153 Fla 137, 13 So2d 904.

Massachusetts. — Delano v. Bruerton (1889) 148 Mass 619, 20 NE 308, 2 LRA 698.

New York. — Re Landers (1917) 100 Misc 635, 166 NYS 1036; Re Monroe (1928) 132 Misc 279, 229 NYS 476; Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122; Re Ferris' Estate (1943, Sur) 79 NYS2d 12; Re Fodor (1952) 202 Misc 1100, 117 NYS2d 331.

Ohio. — National Bank of Lima v. Hancock (1948) 85 Ohio App 1, 88 NE 2d 67 ("nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin"); Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving Ohio statute).

Pennsylvania. — Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving express provision of Ohio statute).

Wisconsin.—Re Ries's Estate (1951) 259 Wis 453, 49 NW2d 483, 50 NW2d 397.

In Re Hewitt's Estate (1943) 153 Fla 137, 13 So2d 904, a case involving the right of an adopted child to inherit from kindred of the adoptive parent or parents, and therefore not on its facts within this annotation, the Florida statute of 1933 in question provided that an adopted child "shall inherit the estate of its blood parents, but such blood parents shall not inherit from such adopted child."

In Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733, the court said it was the settled law of Arkansas that an adopted child "can inherit from its natural parents," and moreover, that by the adoption statute of 1947 it had been expressly provided that "the adopted child should inherit from its natural parents."

In Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE2d 280, not involving rights of inheritance but a question whether the adopted child remained the child of his natural father so as to be able to recover for the latter's wrongful death, the adoption statute provided that the adoption decree should declare the child to be the adopted child of the adoptive parent and capable of inheriting his estate, and that as between them the relation of parent and child should exist "except that the adoptive father shall never inherit from the child. To all other persons the adopted child shall stand as if no such act of adoption had been taken."

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Notwithstanding the general judicial tendency to uphold the child's right to inherit from his natural parents where the adoption statute may be construed as establishing a personal and family status without intent to affect existing rights of inheritance (see generally the cases supra, especially Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488), the California courts have proceeded to an opposite conclusion.

In Re Darling (1916) 173 Cal 221, 159 P 606, the court declared that the adoption statute specifying that the parents of an adopted child are from the time of the adoption "relieved of all parental duties" toward and "all responsibility" for the child and have "no right over it" had the effect of providing that the adopted child could no longer inherit from his parents because so far as they were concerned "he is no longer their child." The question presented, however, was whether the adopted child could inherit from his grandfather, representatively in the place of his father deceased, and it was held that he could.

In Re Tilliski's Estate (1945) 390 Ill 273, 51 NE2d 24, the court commented that in the Darling Case (Cal) supra, "The somewhat illogical result was reached that an adopted child could not inherit from its natural parents, but could inherit from its natural grandparents." And notice in this connection Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488, supra.

In Re Hunsicker (1923) 65 Cal App 114, 223 P 411, where the adoption occurred in Pennsylvania under statutes merely providing that it should be lawful for any person desirous of adopting any child "as his or her heir" to present a petition declaring such desire and that he or she would perform the duties of a parent to the child, etc., and that the court, if satisfied that the welfare of the child would be promoted by the adoption, might with the consent of the parents of the child decree that the child assume the name of the adopting parent and have all the rights of a child and heir of such adopting parent and be subject to the duties of such a child, and further, that if the adopting parent shall have other children the adopted one shall share the inheritance only as one of them, and that he, she, or they shall respectively inherit from and through each other "as if all had been the lawful children of the same parent," it was held that a natural daughter of the decedent, the will not mentioning her or her children, nor containing any language to indicate that the omission was intentional, could not claim the estate as a pretermitted child (by virtue of the California statute declaring that when any testator omits to provide in his will for any of his children or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, shall take the same share in the

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estate of the testator as if he had died intestate), for the court was of the opinion that the daughter of the decedent was not one of his children under that statute, the relation of parent and child existing between her and her father having, in the view of the court, been supplanted by a new relation created by the adoption. It seems that the principal contention of the daughter was that upon the death of the adoptive parent the natural relation of parent and child between herself and father had been restored. One might have supposed that the import of the Pennsylvania adoption statute was simply to establish the relation of parent and child between the child and the adopting parent and entitle the child to share by inheritance with the natural children of the adoptive parent in case of intestacy, and that it disclosed no intent to destroy any right to inherit from other persons.

In Re Martin's Estate (1948) 86 Cal App2d 474, 195 P2d 839, where the theory of appellant was that respondent was not entitled to inherit as a daughter of the decedent because she had been adopted out of the family in the year 1910 by a Minnesota adoption decree, the court seemed to assume that had the adoption been valid the result contended for would have followed, but held that the adoption decree was without effect for want of proper notice.

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A few statutes very plainly deprive the child of the right to inherit from the natural parents.

In Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79, where the court quoted with evident approval the language of Re Darling (1916) 173 Cal 221, 159 P 606, to the effect that it is well settled in all jurisdictions in which the common law constitutes the rule of decision that "the right of inheritance of a child is affected by its adoption only to the extent that the statutes bearing on the matter in terms or by implication provide," the court, without quoting or paraphrasing the Connecticut adoption statute, remarked that it had "seemed wise to our legislature to debar a child adopted under our statute from the right of inheritance from his natural parents, and it has to this extent established our public policy."

In Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24, the court noted that Connecticut had "an express statute precluding inheritance from the natural parent."

And notice the District of Columbia statute in question in Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622, infra, § 3.

Apparently by a recent Minnesota statute (Laws 1951, ch 508, MSA §§ 259.21 et seq) it is expressly provided that an adopted child (perhaps simply that an adopted illegitimate child) shall not inherit from his natural father, since in O'Dell v. Hingeveld (1951) 235 Minn 223, 50 NW2d 476, the opinion states that prior to that statute, an illegitimate child, adopted by a stranger inherited from its natural father just as did a legitimate child—the court citing Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581, supra.

The Missouri statute, which contains strong language touching the point, has been construed as cutting off the natural inheritance—see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3.

In Re Hampton's Estate (1942) 55 Cal App2d 543, 131 P2d 565, it was conceded that the daughter of the testatrix would have no standing to contest the will if her adoption by another in Kansas was valid, the court stating in reference to that point that the California Probate Code provided that "an adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by the adoption," citing Re Darling's Estate (1916) 173 Cal 221, 159 P 606, supra. But in the Darling Case the court distinctly stated: "There is no provision in any of our statutes of succession or those relating to adoption that in terms refers to the matter of inheritance."

§ 3. Inheritance from grandparents or other natural kin.

The right of the child to inherit from his grandparents or other natural kin, or to share in the distribution of personalty of intestate persons so related, is not affected by the adoption except as the statutes otherwise provide—see the general citation of cases touching this point, supra, § 1.

In the following cases, such right was upheld:

California.—Re Darling (1916) 173 Cal 221, 159 P 606.

Colorado.—Re Wilson (1934) 95 Colo 159, 33 P2d 969.

District of Columbia.—Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622.

Georgia.—Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE2d 280.

Indiana. — Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788; Billings v. Head (1916) 184 Ind 361, 111 NE 177; Head v. Leak (1916) 61 Ind App 253, 111 NE 952.

Iowa.—Wagner v. Varner (1879) 50 Iowa 532.

Kansas. — Bartram v. Holcomb (1921) 109 Kan 87, 198 P 192.

Missouri.—St. Louis Union Trust Co. v. Kaltenbach (1945) 353 Mo 1114, 186 SW2d 578. But see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, this section.

New York.—Re Landers (1917) 100 Misc 635, 166 NYS 1036; Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122.

Utah. — Re Benner (1946) 109 Utah 172, 166 P2d 257.

In Re Landers (1917) 100 Misc 635, 166 NYS 1036, the right of the child, a half sister of the decedent, to share equally in the distribution of personalty with a sister of the whole blood was held unaffected by the adoption statutes (which, as first enacted, declared that the adopted child and the adoptive parent should sustain toward each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation, "excepting the right of inheritance," but which as amended, left out the words "excepting the right of inheritance," and substituted the words "including the right of inheritance," and further declared that the heirs and next of kin of the adopted child should be the same as they would be were he the legitimate child of the adopting parent, and also that "his rights of inheritance and succession from his natural parents remain unaffected by such adoption"), for although the statutes made no reference to other kin of the adopted child the court concluded that this simply indicated that "there is no altered relation created by statute."

The grandchildren of an intestate have frequently been allowed to share as heirs or distributees notwithstanding adoption by a stranger.

In Re Darling (1916) 173 Cal 221, 159 P 606, the view taken was that the California adoption statute (providing simply for an order of adoption declaring that the child "shall thenceforth be regarded and treated in all respects as the child of the person adopting," and that the child and the person adopting shall sustain toward each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation, and further, that the parents of an adopted child shall from the time of adoption be "relieved of all parental duties" toward and all responsibility for the child and have "no right over it") did not have the effect of providing in any manner, either expressly or by implication, that an adopted child should not inherit from blood relatives, and accordingly it was held that the child was entitled to share in the estate of his grandfather, representatively through his deceased father, under that provision of the code declaring that if a decedent leaves no surviving husband or wife but leaves issue, the whole estate shall go to such issue and that if such issue consists of more than one child living, "or one child living and the lawful issue of one or more deceased children," then the estate should go in equal shares to the children living, "or to the child living

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and the issue of the deceased child or children by right of representation." In short, the adopted child in that case remained the "issue" of his grandfather under the law succession notwithstanding the adoption.

In St. Louis Union Trust Co. v. Kaltenbach (1945) 353 Mo 1114, 186 SW2d 578, the court, in holding that the child remained capable of inheriting from his grandfather, that is, the court said, "through his own father," notwithstanding the California adoption proceeding, noted that the Missouri statute did not expressly provide that an adopted child should not inherit from his natural parents, and in that connection the court referred to the language of Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, to the effect that an adopted child remains the child of its natural parents "and is not deprived of its rights of inheritance from them unless expressly so provided by statute." However, in the Kaltenbach Case the specific ruling was simply that the minor child did not lose his rights of inheritance through his own father by a proceeding of which the father had been given no notice and in which no guardian ad litem had been appointed to represent and protect the child's interests.

In Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122, it was held, upon the authority of Re Landers (1917) 100 Misc 635, 166 NYS 1036, supra, and seemingly under the same or similar statutory provisions, that a child adopted in New Jersey was entitled to share in New York in the distribution of New York assets of which the child's natural grandfather had died possessed.

And, in general, see the cases infra, § 4.

It may be noted that in Re Esposito's Estate (1943) 57 Cal App2d 859, 135 P2d 167, it was held that a granddaughter of the testator, notwithstanding her adoption by a stranger, could claim under the will, substitutionally, an interest in the estate left to her father, the father having predeceased the testator, for notwithstanding her adoption the granddaughter was a "lineal descendant" of her grandfather within the meaning of the statute providing that if a devisee or legatee dies during the lifetime of the testator the testamentary disposition to him fails unless an intention appears to substitute another, except that when any estate is devised or bequeathed "to any kindred" of the testator and the devisee or legatee dies before the testator "leaving lineal descendants," such descendants shall take the estate in the same manner as the devisee or legatee would have done had he survived the testator. The argument to the contrary was largely based on a further statute which dealt with the rights of illegitimate children, but which the court held did not apply and did not control the plain language of the statute first above referred to. The court noted that the granddaughter's claim was not founded upon the succession laws but arose under the laws relating to wills.

It may be noted that in Taylor's Estate (1946) 57 Pa D & C 311, it was held that the child, an illegitimate son of a daughter of one William McDaniels, could take under the provision of a will directing distribution "to the issue of William McDaniels"; this notwithstanding the child had been adopted by a stranger and the adoption statute provided that adopted persons should not be entitled "to inherit or take from or through their natural parents, grandparents, or collateral relatives."

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But in Re Ries's Estate (1951) 259 Wis 453, 49 NW2d 483, 50 NW2d 397, where it appeared that in the year 1947 the Wisconsin legislature had rephrased and condensed the language of the adoption statute which was in question in Re Sauer (1931) 216 Wis 289, 257 NW 289, supra, § 2, although generally it seems without intent to change the meaning, but there was added the distinct provision: "The adopted person does not lose the right to inherit from his natural parent," it was held that the addition of that provision, which had been included to codify the ruling made in the Sauer Case, had the effect of preventing any extension of the doctrine of inheritance from natural relatives additional to parents, and that consequently the child in question by reason of her adoption was prevented from inheriting from her father's aunt. The court conceded that but for the added provision of the statute the Sauer Case might have become a precedent for decisions allowing adopted children to inherit from their natural relatives generally, but, the court said, "now the amendment has intervened," so as to set as a limit the point of decision in the Sauer Case. The language of the first sentence of that section of the adoption statute in question, as altered by the legislative condensation and rephrasing, contained the words that the effect of the order of adoption should be to "completely change the legal status" of the adopted person, language which seems to readily lend itself to the construction that the adopted relationship was to be substituted for the former one.

In Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, the first Missouri case to require a decision of the question whether an adopted child may inherit from or through its natural parents, the question was answered in the negative, this on the strength of the language of the Missouri adoption statute of 1917 providing that when a child is adopted in accordance with the provisions thereof all legal relationships "and all rights and duties between such child and his natural parents . . . shall cease and determine" and such child shall thereafter be deemed and held to be "for every purpose" the child of his parent or parents by adoption as fully as though born to him or them in lawful wedlock. The court stressed that it required "some ingenuity to reason that 'all rights' means all except one." There the precise question was whether the adopted children were the heirs of their grandparents, and therefore could be pretermitted heirs entitled to take notwithstanding the joint will of the grandparents, made no mention of them and they were the only children of the only child of such persons and such child had predeceased the decedents. The conclusion reached was that the children, having been validly adopted by strangers, were not heirs of their grandparents, and, therefore, could not be pretermitted heirs of such persons. The court cited Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, as indicating that prior to the 1917 change in the adoption law of Missouri an adopted child might inherit from both adoptive and natural parents.

In Young v. Bridges (1933) 86 NH 135, 165 A 272, the child, who was born in wedlock, had unquestionably inherited her mother's interest in the real estate in question, since that interest had come to the mother upon the death of the grandmother and had passed to the child upon the mother's death and was clearly unaffected by the subsequent adoption proceeding. The adoption then occurred, after which the maternal grandfather, who owned an interest in the same real estate, died. The ruling made under those circumstances was that the child could not share in the real estate as an heir of the grandfather, notwithstanding the statutes as amended made illegitimates "heirs of the mother and her kindred," for the court was of the opinion that the adoption statute in making the adopted child "the child of the petitioner to all legal intents and purposes," fairly disclosed an intention that the adoption should establish a "change of status by which in general the relatives become strangers in legal aspect and others take their place." The court took the view that the general purpose of the statute was to free the child from his status arising from his relationships by blood and to give him a new status and that he was to be regarded as "taken in legal contemplation from his natural family and made a member of a new family." As supporting that conclusion the court examined the dilemmas which can arise when the dual inheritance is preserved, by which striking

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inequalities can result, and the court said that when no dual inheritance has been explicitly enacted "the argument against its implication is reinforced by the unnatural and abnormal possibilities to which it leads." It is to be noted that the adoption statute there in question contained no terms peculiarly decisive of the problem, for it merely provided in not unusual terms that the child should bear the same relationship to the adopting parents and their kindred in respect to the inheritance of property, and all other incidents pertaining to the relation of parent and child, that he would bear were he the natural child of such parents, except that he should not take property expressly limited to the heirs of the body or bodies of the adopting parents, and should he die under age or intestate, leaving property received by gift "or inheritance from his natural kindred," such property should be distributed as if there had been no decree of adoption. As to the language last quoted from the statute, the court was of the opinion that any supposed implication thereof contrary to the conclusion reached could be explained by the possibility that at the time of adoption a child might have become the owner of property received by inheritance from natural kindred.

In Re Hunsicker (1923) 65 Cal App 114, 223 P 411, where the Pennsylvania adoption statute (declaring it to be lawful for any person desirous of adopting any child as his or her heir to present a petition, etc., and stipulating that the decree of adoption should provide that the child should assume the name of the adopting parent and have all the rights of a child and heir of such parent and be subject to the duties of a child and that in case the adoptive parent has other children, he, she, or they should respectively inherit from and through each other "as if all had been the lawful children of the same parent") was held not to entitle the daughter of the decedent to take as a pretermitted child by virtue of the California statute providing that when any testator omits to provide in his will for any of his children, or for "the issue of any deceased child," unless it appears that such omission was intentional, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, since the daughter had been adopted by a stranger, the further conclusion reached was that the children of the daughter were not entitled to share since they could not be described as "the issue of any deceased child" within the language of the California pretermission statute.

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Some of the statutes expressly save the right of the child to inherit from his natural kin.

Georgia.—See Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE 2d 280, supra, § 2.

Massachusetts.—Delano v. Bruerton (1889) 148 Mass 619, 20 NE 308, 2 LRA 698.

Ohio.—National Bank of Lima v. Hancock (1949) 85 Ohio App 1, 88 NE 2d 67 ("nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin"); Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving Ohio statute).

Pennsylvania.—Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving Ohio statute).

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Pennsylvania and District of Columbia statutes have expressly cut off the child's right of inheritance from natural kin. Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622; Re Zoell's Estate (1942) 345 Pa 413, 29 A2d 31, cert den 318 US 778, 87 L ed 1146, 63 S Ct 855; Re Crossley (1939) 135 Pa Super 524, 7 A2d 539; Re Fisher (1942, Pa) 58 Montg Co LR 134; Re Wessman (1944, Pa) 29 North Co R 242; Re Kallenberger's Estate (1946, Pa) 36 Del Co 389.

The Pennsylvania statute of 1917, in question in Re Zoell's Estate (1942) 345 Pa 413, 29 A2d 31, cert den 318

US 773, 87 L ed 1146, 63 S Ct 855, contained the express provision that adopted persons "shall not be entitled to inherit or take from or through their natural parents, grandparents, or collateral relatives." Thereunder it was held that appellant, a niece of the intestate, who had been adopted by another in New Jersey, was not entitled to share in the estate even though the New Jersey decree purported to save to the child rights of natural inheritance.

In Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622, it was held that a Nevada adoption decree of March, 1922, did not exclude the adoptee from receiving as next of kin of a decedent personal property in the District of Columbia, notwithstanding the code of the District, becoming effective August 25, 1937, declared that all rights and duties "including those of inheritance and succession between the adoptee, his or her natural parents, their issue, collateral relatives, etc., shall be cut off," for the statute also provided that it should have no retroactive effect and should not be construed as affecting in any way the rights and relations obtained "by any decree of adoption entered prior to August 25, 1937."

The ruling in Stamford Trust Co. v. Lockwood (1922) 98 Conn 337, 119 A 218, did not involve the question whether an adopted child may take by inheritance from his natural parent or kin, but whether the testamentary words "the lawful issue," as applied to children of a son of the testator, included one who was born after testator's death and was adopted by a stranger. It was held that, by force of the adoption statute, the grandchild ceased to be the child of her father and became the child of her parents by adoption and could not take as "lawful issue." The report does not set out or paraphrase the statutory language construed to have had that effect, but seemingly it was language explicitly cutting off the right of inheritance—see Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79, supra, § 2.

§ 4. Inheritance in two capacities from one estate.

Decisions from Colorado, Iowa, Kansas, and Utah have allowed a child adopted by his grandparent to take as a "child" of the grandparent and also to take as a grandchild representing the stock of the immediate parent deceased, the latter recovery (except in Utah) having been allowed under statutes of descent and distribution manifestly designed to avoid the inequality which would result from an entire exclusion of the stock of the immediate parent, where a brother or sister of the latter survives, and seemingly not with any intent to produce a double inheritance.

In Wagner v. Varner (1879) 50 Iowa 532, where the intestate had adopted the two children of a deceased daughter, and was survived by them and also by certain children, it was held that the adoptees were entitled to share in the estate as children and also as grandchildren, taking in the latter capacity the share their mother would have taken had she outlived the decedent—this because the adoption statute declared that the rights, duties, and relations between parent and child by adoption should in all respects, including the right of inheritance, "be the same that exist by law between parent and child by lawful birth," and the descent statute provided that in case a child of the decedent be dead the heirs of such child shall inherit the share such child would have taken had he outlived his parent. The court said that there was no escape from the conclusion announced unless it could be said that a child by the adoption becomes disinherited by its natural parent, and the court noted that in certain contingencies adoption could be had without the consent of the natural parents, so that, in the view of the court, under the contention made an adopted child might be "disinherited by the natural parent without the consent of the latter." The further argument of the opinion was that by the adoption the child acquires certain additional rights and there was nothing in the act of adoption which in and of

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itself took away existing rights or any which might subsequently accrue, except as by statute provided, that the grandchildren in question remained the children of their natural parents, and the act of adoption did not deprive them of the statutory right of inheriting from their natural parents; in fact the court said: "We think the contrary is expressly provided." It may be noted, however, that in such a situation as that presented, no right to inherit from the natural parent is involved, the latter having predeceased the intestate; the question arising is simply whether the adopted child may share twice in the one estate.

In Bartram v. Holcomb (1921) 109 Kan 87, 198 P 192, where the intestate had had two children, one of whom died in his lifetime leaving an only child, and such child was then adopted by the intestate and survived him and eventually claimed one share in the estate as the representative of his mother and another as adopted son, the court in allowing the double sharing regarded it as the logical result of the rule that an adopted child may inherit from both the natural and the adopted parents, the court in that connection stating that the only question presented was whether the grandson could inherit from his grandfather as an adopted child "and at the same time as the sole surviving heir of his mother." The court did not set out or paraphrase the language of the descent statute, but evidently it was one in the familiar form dividing the estate of an intestate into as many shares as there are children surviving and children deceased who have left issue surviving.

In Re Wilson (1934) 95 Colo 159, 33 P2d 969, where, following the decease of both natural parents, the child was adopted by his grandfather, it was held that upon the latter's death the child was entitled to inherit from his grandfather both as an adopted child and as a grandchild, since the statutes of descent and distribution provided that intestate property should go to the decedent's children surviving and to the descendants of his children who were dead, while the adoption statute simply provided that to all intents and purposes legally adopted children should be children and legal heirs of the persons adopting them and was to be construed as depriving an adopted child of nothing but as conferring on him certain additional rights of inheritance.

In Re Benner (1946) 109 Utah 172, 166 P2d 257, the only surviving heirs of the intestate were three grandchildren, the issue of a deceased daughter, and the intestate had adopted one of those grandchildren. It was held that the child did not thereby lose the right to inherit from and through his mother, for in its bearing on that question the adoption statute merely provided that the adopted person and the adoptive parent should sustain the legal relation of parent and child and have all the rights and be subject to all the duties of that relation and that the natural parents should be relieved of all parental duties toward and all responsibility for the child and should have "no further rights over it," and the court was of the opinion that the reasonable construction of that language was that it did not touch the matter of inheritance but had reference rather to custody and control. Moreover, the conclusion which was held to follow (one judge dissenting) was that since the statute of descent and distribution provided that if a decedent leaves no husband or wife but leaves issue, the whole estate should go to such issue, the child was entitled to take a one-third share as "issue," besides the greater share he was entitled to as adopted child.

But in Billings v. Head (1916) 184 Ind 361, 111 NE 177, where the decedent left as his heirs a widow, four children, and a grandchild (the latter being the daughter of a deceased son who had been adopted by the grandfather), it was held with reference to the statutes of descent providing that an intestate's land should descend one-third to his widow and the remainder to his children equally, and that if a child be dead leaving a child surviving the latter should take the share which the parent would have inherited if living, and also with reference to the adoption statute providing that an adopted child should be entitled to all the rights in the estate of the adopting father or mother, by descent or otherwise, that the child would be entitled to if a natural heir of the adopting father or mother, that the grandchild in question was entitled to take either two-fifteenths of the estate as the representative of her father or two-fifteenths as the adopted daughter of the intestate but was not entitled to take a double share. The court conceded that the statutes contained no language dealing with the situation presented, placing the decision upon the broad ground that it was "not the legislative purpose" that an adopted grandchild should ever inherit more of the adopting parent's estate than would one of his natural children. It was not decided in that case whether the grandchild took as adopted child or on the contrary through her father, although the court pointed out that in the future it might be important to know under which statute, the adoption statute or the descent statute, the interest was taken, for by an express provision of the adoption statute if an adopted child should die the owner of property acquired through the adoption, rather than as a blood descendant, the same should descend to the heirs of the adopting father or mother and not otherwise. Later in Head v. Leak (1916) 61 Ind App 253, 111 NE 952, involving a distribution of the surplus of personal estate of the deceased adoptive parent, the grandfather of the adopted child, it was held that the principle to be followed in determining in which capacity the child took from her grandfather was that she should be held to take in that capacity which would give her the greatest interest and that since there was no proviso attaching to the further descent of property taken as a natural heir and it would descend according to the general laws of descent, and the child's rights in the property would consequently be greater as a natural heir than as an adopted child, the conclusion indicated was that she took as a natural heir through her deceased father.

In Morgan v. Reel (1905) 213 Pa 81, 62 A 253, it was held that the adoption statute, providing that the adopted child should have the rights of a child and heir of the adopting parent, although if the latter should have other children the adopted child could share only as one of them, and that in case of intestacy, he, she, or they, should respectively inherit from and through each other as if all were the lawful children of the same parent, certainly did not expressly provide for the case of a grandparent adopting his grandchild, yet that nevertheless the intent was plain that the status of the adopted child should be equal but not superior to that of the others and that such intent was enough to indicate that the child could share in the grandfather's estate only as his child by adoption and could not also share as a representative of her deceased mother. The result was that the estate was held to descend in four stocks: one to each of the two actual daughters, another to the adopted daughter, and the remaining one to the son of the deceased daughter. Said the court: "Thus, and thus only, can the equality intended by the statute be maintained." In Reel's Estate (1902) 12 Pa Dist 608, involving the same estate and adopted child and right of inheritance as were in question in Morgan v. Reel (Pa) supra, it had been held (contrary to the later ruling in the Morgan Case) that the grandchild of decedent having been adopted by him was entitled to take a fourth share of the estate as his child and also an eighth as a natural grandchild, the latter by virtue of the statute of inheritance entitling issue of a deceased child to take the share of the parent, representatively.

In Delano v. Bruerton (1889) 148 Mass 619, 20 NE 308, 2 LRA 698, where the intestate, who left as his heirs at law and distributees five daughters and also a grandson, the latter the only child of a deceased son, and he

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had adopted the grandson, and the adoptee claimed a share in the personal estate as an adopted son and also a further like amount as a grandson representing his deceased father, relying upon a provision of the adoption statute that "no person shall, by being adopted, lose his right to inherit from his natural parents or kindred," the court was of the opinion that in making the latter provision the legislature was not to be understood as intending that the word "kindred" should include the adopting parent, the intent having been rather to save the right of inheritance "from other parties," after having provided for the right of inheritance from the adopting parent. The court stressed that it was not dealing with the question whether the grandson could inherit as a son by adoption and at the same time inherit as a son of his own father, but the sole question was as to the right to inherit from the grandfather in two capacities. The court did not cite the statutes of descent, which evidently provided for the division of personalty of an intestate into as many shares as he leaves children surviving and children deceased who have left issue surviving.

In Burnes v. Burnes (1904, CC Mo) 132 F 485, affd (CA8th) 137 F 781, cert den 199 US 605, 50 L ed 330, 26 S Ct 746, the court, although conceding that under the then Missouri statute (which seemed to require no judicial proceeding but simply the signing by the adopting parent of a certain instrument, and its due acknowledgment and recording) the effect of an adoption was that the child could inherit both from the natural father and the adoptive one, said that the child could not inherit "from one person's estate in the dual capacity of a blood relation and as an adopted child."

In Grimes v. Grimes (1935) 207 NC 778, 178 SE 573, involving the rights of an adopted child in the estate of his grandfather who had died intestate, it was apparently not disputed that the child was entitled to share in the interest which his mother, a daughter of the intestate, would have taken had she not predeceased him, but the child's additional claim that since he had been adopted by his uncle, a son of the intestate, and the uncle, too, had predeceased the intestate, claimant was entitled to take a further share, representatively, through the uncle, was disallowed, this upon the ground that the effect of the adoption was simply to create in the child a right to inherit from the adoptive parent and not to inherit through him from the latter's kin. The fact that a blood relationship existed between the child and the adoptive parent and the latter's father was held not to alter the result.

It may be noted that in Einstein v. Michaelson (1919) 107 Misc 661, 177 NYS 474, the ruling made was simply that the only child of the testator's deceased son, which child had been adopted by the testator, could not take under the will both as a child and as a grandchild.

And in Mississippi Valley Trust Co. v. Palms (1950) 360 Mo 610, 229 SW2d 675, involving the right of grandchildren of the testator to take under his will as "heirs at law," so designated by the instrument, and consequently not in strictness within the scope of this annotation, the conclusion reached was that since the will manifested throughout its provisions the testator's intention to provide equally for his children, and also for his grandchildren per stirpes, the two grandchildren in question could not take as such, and also as adopted children of their mother's sister, although the court seemed to concede that despite their adoption the children remained heirs of their natural mother and, had their grandfather died intestate, might have been entitled to share in his estate through her.

W. W. Allen.

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No. 7

The United States LAW WEEK
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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.

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38-296 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.—Kiley, J.

—CA 7; Sinclair Oil Corp. v. Oil—Chemical Workers, 10/6/71.

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

(Rev. ed. 1970) Highway Users Federation for Safety and Mobility,
1776 Massachusetts Ave., N.W., Washington, D.C. 20036

Section III

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Statutory Point Systems

(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.

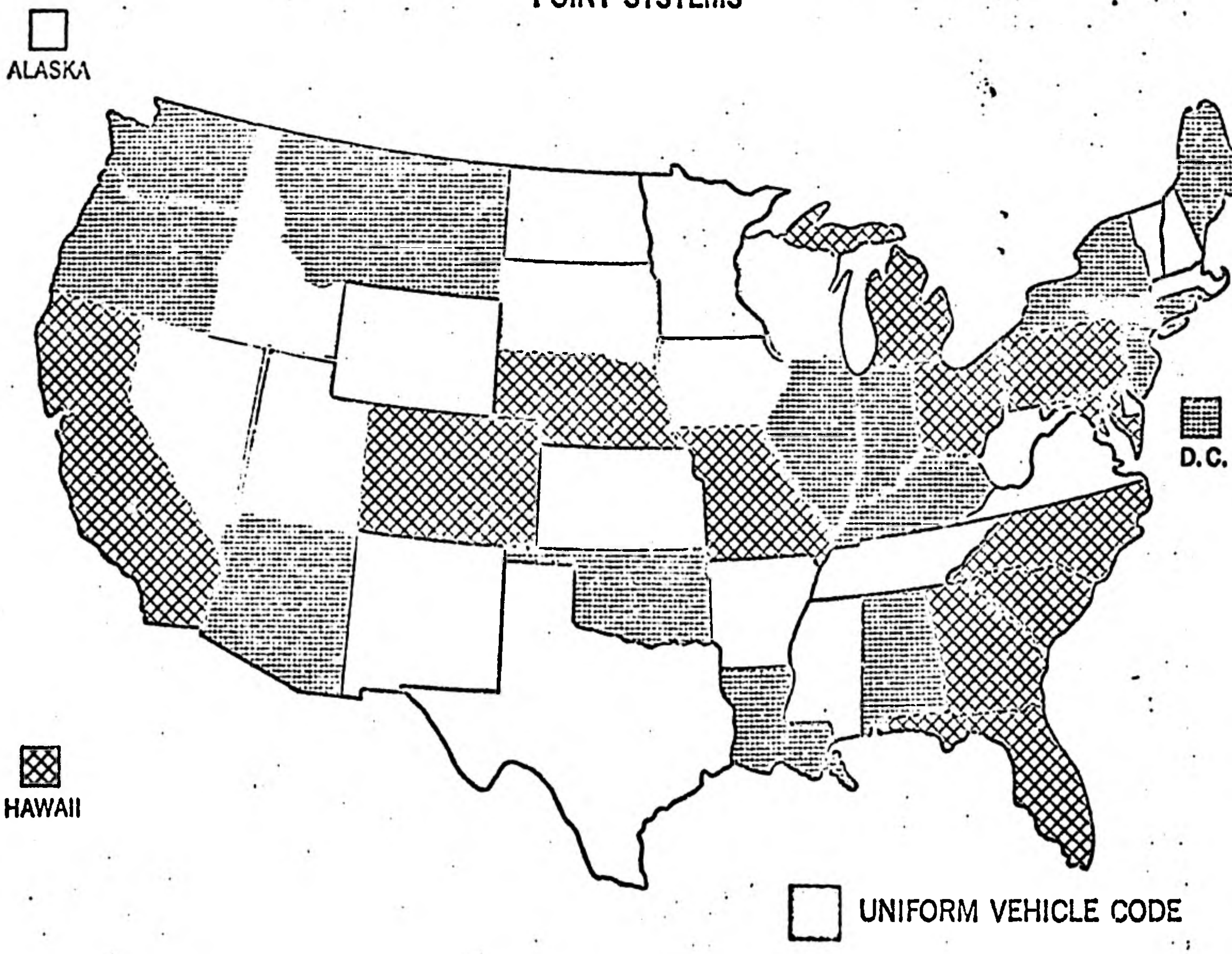
In most states, after the accumulation of a certain number of points below the action level, the department as a matter of law or under administrative procedures, sends out a warning letter or requests the licensee to submit to an interview, or both, but the point levels at which such steps are taken 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 accumulation 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 3 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 (68-2113), 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 fortfeiture 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 law enforcement 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 addicion 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 re-examination 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 fo operating a motor vehicle when due to consumption of in toxicating liquor or drugs, a person's driving ability is visib impaired. (Person charged with driving while under the in fluence of intoxicating liquor or drugs (Table 1) may l 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 u 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, terminates 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:	
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 Fir--ncial 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 prohibits driving 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 com mitted 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 o[illegible] portunity for a hearing, may suspend or revoke perm[illegible] or operating privilege of person who, in his opinio[illegible] is not physically, mentally or morally qualified [illegible] 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[illegible] following traffic violations, he shall be interviewed [illegible] an official of the Metropolitan Police Department a[illegible] served notice of possible suspension unless he appe[illegible] for a hearing with department (motor vehicle) wit[illegible] five days (10 days for nonresident) to show cause [illegible] permit should not be suspended or revoked. (cent[illegible] driver file notified by phone to place "stop" in driv[illegible] record). On failure to appear, permit or privilege [illegible] 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.

58-296

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

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7 AM JUR 2d, Automobiles and Highway Traffic § 138

3 AM JUR PL & PR FORMS, Automobiles and Highway Traffic, Forms 51-54

US L ED DIGEST, Constitutional Law §§ 695, 787, 803.5

ALR DIGESTS, Automobiles and Highway Traffic §§ 47, 48

L ED INDEX TO ANNO, Constitutional Law; Motor Vehicles and Carriers

ALR QUICK INDEX, Automobile Insurance; Due Process of Law

FEDERAL QUICK INDEX, Automobile Insurance; Due Process of Law

ANNOTATION REFERENCE

Validity of Motor Vehicle Financial Responsibility Act. 35 ALR2d 1011.

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

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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
atutory exceptions, and gave pe-
ioner 30 days to comply with the
curity requirements or suffer sus-
nsion. Petitioner then exercised
s statutory right to an appeal de
vo in the Superior Court. Ga Code
nn § 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,
und petitioner free from fault. As
esult, the Superior Court ordered
hat the petitioner's driver's license
t be suspended . . . [until]
it is filed against petitioner for
e purpose of recovering damages
the injuries sustained by the
ild . . . ." 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-
ance 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-
i, 274 US 352, 71 L Ed 1091, 47
Ct 632 (1927). It does not follow,
vever, 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,

ring need not be a matter of record
the decision as rendered by the
ector shall be final unless the aggrieved
son shall desire an appeal, in which
he shall have the right to enter an ap-
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

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)

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 o the operation of the State's statitory scheme, it is clear that liabilty, in the sense of an ultimate juicial determination of responsibilty, plays a crucial role in the Safety Responsibility Act. If prior to susension there is a release from liability executed by the injured arty, no suspension is worked by he Act. Ga Code Ann § 92A-606 1958). The same is true if prior o suspension there is an adjudication of nonliability. Ibid. Even fter suspension has been declared, release from liability or an adjudiation of nonliability will lift the uspension. Ga Code Ann § 92A-07 (Supp 1970). Moreover, other f the Act's exceptions are develped around liability related conepts. Thus, we are not dealing here ith a no-fault scheme. Since the atutory scheme makes liability an nportant factor in the State's determination to deprive an individual f his licenses, the State may not, onsistently with due process, elimate consideration of that factor in s prior hearing.

[10] The hearing required by the ue Process Clause must be "meaningful," Armstrong v Manzo, 380 US 15, 552, 14 L Ed 2d 62, 66, 85 S Ct 187 (1965), and "appropriate to the ature of the case." Mullane v Cenal Hanover Bank & Trust Co., sua. It is a proposition which hardly eems to need explication that a earing which excludes consideraon of an element essential to the ecision whether licenses of the nare here involved shall be suspended oes not meet this standard.

[11] Finally, we reject Georgia's rgument that it must afford the censee 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).

[5] 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 adjudi-

5. See, e. g., Fahey v Mallonee, 332 US [illegible]

Ewing v Mytinger & Casselberry, Inc., 339 [illegible]

cation 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.

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 18 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.

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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 773, 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, 1964, 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 466 (1955), and *Harrell v. Scheidt*, 249 N.C. 693, 107 S.E. 2d 549 (1959), which held point systems unconstitutional because authority was granted without sufficient standards, and cited with approval *Sturgill 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, 1950, 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. MacDuff*, 309 N.Y. 56, 127 N.E. 2d 806 (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 it 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. *Harrell 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. Mentlacqua*, 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.