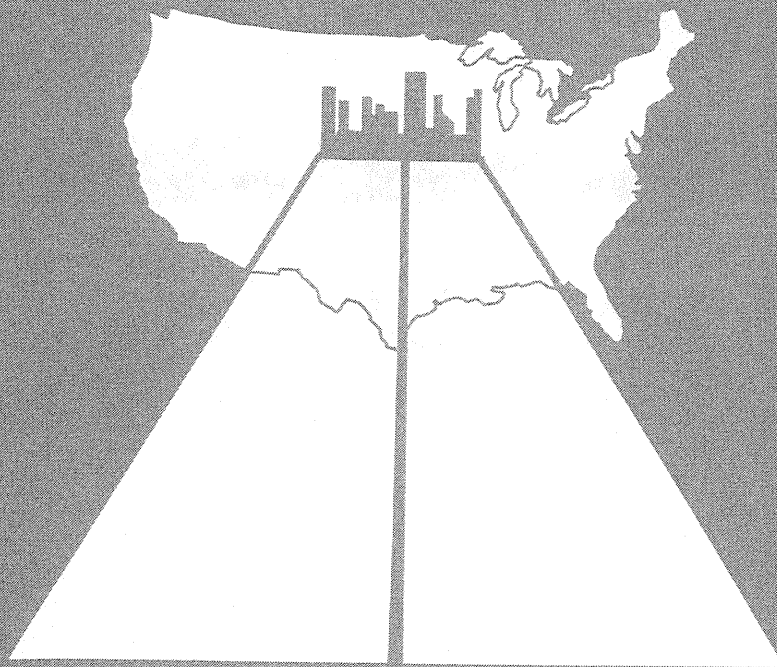
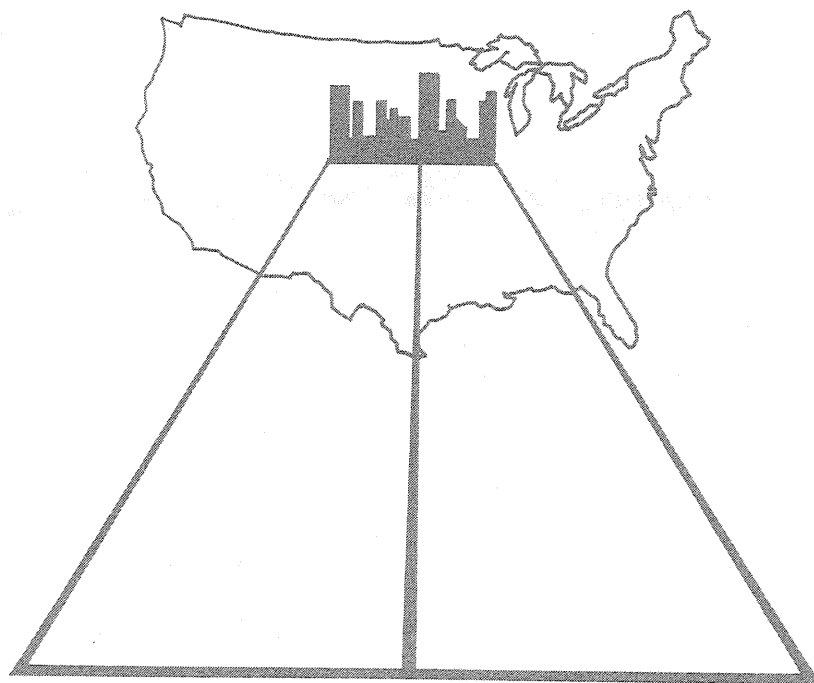


Controlling the Uninsured Motorist and Improving Highway Safety



National Association of Independent Insurers

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National Association of Independent Insurers

The National Association of Independent Insurers, founded in 1945, is a non-profit trade organization of over 550 property-casualty insurance companies of all sizes and types. Our members write about 40 percent of the automobile insurance in the U.S., a quarter of the homeowners coverage and lesser portions of other lines. Most of our companies are independent rate-filers, meaning they do not apply the rates recommended by rating bureaus, but develop their own individual rates to compete better. The NAII is also the largest repository of personal lines data in the insurance industry.

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Introduction

Promoting highway safety and compensating automobile accident victims are two of the most challenging and acute socio-economic and legal problems confronting our society today. Highway crashes cause nearly 50,000 deaths¹ annually, 3.4 million injuries, 45 million damaged vehicles and total economic costs in the range of \$80 billion dollars.² As a result of this ruinous toll and the consequent desire to improve traffic safety, state legislators have been preoccupied in recent years with reducing the dangers on the road and insuring the indemnification of crash victims.

The successful campaign against motorists driving under the influence (DUI/DWI) of alcohol or drugs is an outstanding example of the states' commitment to safer streets. In addition to improving safety, however, the new, tougher DUI/DWI laws also offer a model and method for attacking another vexing problem — the size of the uninsured motorist population.

Compulsory Auto Insurance Laws

Most policymakers in the states perceive liability insurance coverage as a reliable means of insuring that automobile crash injuries and damages are equitably compensated. In recent

years, state legislators have been engrossed in the enactment and enforcement of laws which establish a criminal penalty for failure to maintain automobile liability insurance. Today, 38 states plus the District of Columbia require compulsory insurance coverage, as illustrated on the chart at the left.

COMPULSORY AUTO LIABILITY INSURANCE LAWS		
State	Pure Compulsory Liability Insurance Statutes	Liability Insurance Mandated Under Comprehensive No-Fault Insurance Statute
Arizona	Ariz. Rev. Stat. Ann. §28-1170	
Arkansas	Ark. Stat. Ann. §27-13-102, 27-22-101 et seq.	
California	Cat. Vehicle Code §16020	
Colorado		Col. Rev. Stat. §10-4-705
Connecticut		Conn. Gen. Stat. Rev. §38-327
Delaware		Del. Code Ann. tit. 21, §2118
D of C		D.C. Code §35-2103
Georgia		Ga. Code Ann. §33-34-4
Hawaii		Haw. Rev. Stat. §294-10
Idaho	Idaho Code §49-233	
Illinois	Ill. Rev. Stat. Ch. 95½, §1-155	
Indiana	Ind. Stat. Ann. §9-1-4-3.5	
Kansas		Kan. Stat. Ann. §40-3104
Kentucky		Ky. Rev. Stat. Ann. §304.39-100
Louisiana	La. Rev. Stat. §32-861	
Maryland	Md. Vehicle Law §17-103	
Massachusetts		Mass. Ann. Laws ch. 90, §1A
Michigan		Mich. Comp. Laws Ann. §500-3101
Minnesota		Minn. Stat. §65B.48
Missouri	Mo. Rev. Stat. §303.025	
Montana	Mont. Code Ann. §61-6-301	
Nebraska	Neb. Rev. Stat. §60-523	
Nevada	Nev. Rev. Stat. §485.185	
New Jersey		N.J. Stat. Ann. §39-5B-1
New Mexico	N.M. Stat. Ann. §66-5-205	
New York	N.Y. Veh. & Traf. Law, art. 6, §310 et seq.	
North Carolina	N.C. Gen. Stat. §20-309	
North Dakota		N.D. Cent. Code Ann. §26-41-04
Ohio	Ohio Rev. Code Ann. §4509.101	
Oklahoma	Okla. Stat. tit. 47, §E.7-601	
Oregon	Ore. Rev. Stat. Ch. 486	
Pennsylvania	Pa. Stat. Ann. tit. 17 §75-1781	
South Carolina	S.C. Code §56-10-220	
South Dakota	S.D. Compiled Laws, §32-35-113	
Texas	Article 6701h Vernon's Texas Civil Statutes	
Utah		Ut. Code Ann. §31A-22-301
Vermont	Vt. Stat. Ann. tit. 23, §800	
West Virginia	Art. 2A, Ch. 17D W. Va. Code	
Wyoming	Wyo. Stat. §31-9-401	

Regrettably, these states have other things in common, as well as compulsory insurance laws. Despite the laws, substantial numbers of uninsured motorists are on the roads (in some states, estimates of the uninsured population are as high as 30 to 50 percent of the registered vehicles). The states face a variety of problems with the funding, administration, enforcement and public acceptance of compulsory laws. In addition, claim frequencies and other business expenses of insurance companies tend to be higher in compulsory law states and these extra costs are eventually passed on to the consumer in higher premiums.³

Hundreds of thousands of insured drivers in these states have been falsely accused of being uninsured in violation of the compulsory law and needlessly harassed because enforcement agencies have a difficult time matching their driver license and vehicle registration file data with insurance policyholder information submitted by insurance companies. The data maintenance and processing systems of state motor vehicle departments and private sector insurance companies were designed with different purposes in mind. Not surprisingly, compulsory insurance laws have generated unforeseen state (and taxpayer) expenses, which are usually attributable to the need to supple-

ment or upgrade motor vehicle department manpower and to reprogram their EDP systems.

The compulsory laws also produce uneven and unpredictable enforcement, public relations nightmares, and unanticipated legal exposures for insurance companies when terminating coverage, without significantly curtailing the uninsured motorist problem. In many states, including some already having compulsory laws, the search goes on for a more effective approach. In the absence of an alternative that works, states adopt mandated coverage laws or devise new enforcement systems for existing compulsory statutes, only to end up with an unrealistic or unworkable law that causes more or as many problems as it was supposed to solve.

A way out of this dilemma may involve exploiting the predecessor to the mandatory insurance law, a statute referred to as the financial responsibility law. This monograph will explore how financial responsibility laws can be resuscitated by adopting driver licensing procedures followed under the new DUI/DWI laws. But first, it is necessary to understand the operation of the financial responsibility laws.

Financial Responsibility Laws

Forty-nine⁴ states have a financial responsibility (FR) law — a law whose origin can be traced to the 1920s. Under these laws, a driver involved in a motor vehicle accident which results in personal injury or property damage exceeding a specified minimum amount and who does not carry liability insurance must file “security” with the state motor vehicle department. By depositing the security, an individual is establishing proof of ability to pay at least minimal damages as delineated by statute, arising out of the past accident which caused the law to be invoked. An FR law security deposit may take the form of cash, securities or a bond.

Financial responsibility laws are usually triggered by the filing of accident reports by citizens or police officers with the state motor vehicle department (MVD). Once a citizen’s report is received, officials try to match the report with reports presumably filed by other drivers involved in the collision, as well as with any reports submitted by law enforcement agencies. MVD staff also attempt to determine whether the involved vehicle operators maintain liability insurance. If a driver does not carry insurance, security must be deposited. If a civil judgment is returned unsatisfied, or if it can be established there is a reasonable possibility of a judgment being entered, the department will initiate driver license suspension (in some states) and vehicle registration suspension (unless the operator or owner has deposited security in the amount specified by the FR law).

In addition to addressing past accidents and civil liabilities that may arise, FR laws also promote the maintenance of liability insurance in the future. When a driver’s or owner’s license has been suspended for breach of an FR law security deposit requirement, failure to satisfy a judgment, or convictions stemming from serious traffic code violations, the filing of future proof of financial responsibility (“future proof”) is also required under a majority of FR laws. Future proof necessitates the purchase of an automobile liability policy, the existence of which is certified by the insurance company on a form which is filed with the MVD. In contrast to a standard insurance contract, such certified policies provide virtually unconditional liability coverage protection. Future proof filings generally last three years. Once a license has been suspended under the FR law, it will not be reinstated until the required security deposit has been posted and the operator has filed an appropriate certificate evidencing financial responsibility for the future.

TABLE OF FINANCIAL RESPONSIBILITY LAWS

State	Statutory Citation	Classification*** of Law	Minimum Liability Limits	Accident Property Damage Reporting Threshold
Alabama	Ala. Code § 37-7-2	Proof/Security	20/40/10	\$ 250.00
Alaska	Alaska Stat. § 28.20.010	Proof/Security	50/100/25	\$ 500.00
Arizona	Ariz. Rev. Stat. Ann. § 28-1102	Proof/Nonpayment of Judgment	15/30/10	\$ 500.00
Arkansas	Ark. Stat. Ann. § 75-1402	Proof/Security	25/50/15	\$ 250.00
California	Cal. Vehicle Code § 16000	Proof/Security	15/30/5	\$ 500.00
Colorado	Colo. Rev. Stat. Ann. § 42-7-102	Proof/Security	25/50/15	\$ 500.00
Connecticut	Conn. Gen. Stat. Rev. § 14-112	Proof/Security	20/40/10	\$ 600.00
Delaware	Del. Code Ann. tit. 21, § 2901	Proof/Only	15/30/10	\$ 250.00
District of Columbia	D.C. Code § 40-401	Future Proof	10/20/5	\$ 100.00
Florida	Fla. Stat. § 324.011	Proof/Security	10/20/50	\$ 100.00
Georgia	Ga. Code of 1981 § 40-9-1	Proof/Security	15/30/10	\$ 250.00
Hawaii	Hawaii Rev. Stat. § 287.1	Proof/Security	25/Unlimited/10	\$ 300.00
Idaho	Idaho Code § 49-232	Proof/Security	25/50/15	\$ 250.00
Illinois	Ill. Rev. Stat. ch. 95-1/2, § 7-100	Proof/Security	15/30/10	\$ 250.00
Indiana	Ind. Stat. Ann. § 9-1-4-3.5	Proof/Security	25/50/10	\$ 200.00
Iowa	Iowa Code § 321A.1	Proof/Security	20/40/15	\$ 500.00
Kansas	No Law	—	25/50/10*	\$ 500.00
Kentucky	Ky. Rev. Stat. Ann. § 187.290	Proof	10/20/5	\$ 200.00
Louisiana	La. Rev. Stat. § 85.3	Proof/Security	10/20/10	\$ 100.00
Maine	Me. Rev. Stat. Ann. tit. 29, § 781	Proof/Security	20/40/10	\$ 500.00
Massachusetts	Mass. Ann. Laws ch. 90, § 901-340	Proof	10/20/5	\$1,000.00
Michigan	Mich. Comp. Laws Ann. § 257.501	Future Proof	20/40/10	\$ 200.00
Minnesota	Sec. 74.3 Admin. Rules	Proof	30/60/10	\$ 500.00
Mississippi	Miss. Code Ann. § 63-15-1	Security	10/20/5	\$ 250.00
Missouri	Mo. Rev. Stat. § 303.010	Proof/Security	25/50/10	\$ 500.00
Montana	Mont. Code Ann. § 61-6-101	Proof	25/50/5	\$ 250.00
Nebraska	Neb. Rev. Stat. § 60-501	Security	25/50/25	\$ 500.00

State	Statutory Citation	Classification*** of Law	Minimum Liability Limits	Accident Property Damage Reporting Threshold
Nevada	Nev. Rev. Stat. § 485.010	Proof/Security	15/30/10	\$ 350.00
New Hampshire	N.H. Rev. Stat. Ann. § .215A:28	Proof/Security	25/50/25	\$ 500.00
New Jersey	N.J. Stat. Ann. § .39:6-23	Proof/Security	15/30/5	\$ 500.00
New Mexico	N.M. Stat. Ann. § .66-5-201	Security	25/50/10	\$ 100.00
New York	N.Y. Veh. & Traf. Law, § 330	Proof/Security	10/20/5	\$ 600.00
North Carolina	N.C. Gen. Stat. § .20-279-1	Security	25/50/10	\$ 500.00
North Dakota	N.D. Cent. Code Ann. § 39-16-01	Security	25/50/25	\$ 600.00
Ohio	Ohio Rev. Code Ann. § 4509.01	Security Filings	12.5/25/7.5	\$ 400.00
Oklahoma	Okla. Stat. § 47-7-101	Proof/Security	10/20/10	\$ 300.00
Oregon	Or. Rev. Stat. § .801.280	Proof	25/50/10	\$ 400.00
Pennsylvania	Pa. Stat. Ann. § 75-1701	Hybrid**	15/30/5	None
Rhode Island	R.I. Gen. Laws Ann. § 31-31-6	Proof/Security	25/50/10	\$ 200.00
South Carolina	S.C. Code § 56-9-10	Security	15/30/5	\$ 200.00
South Dakota	S.D. Comp. Laws Ann. § 32-35-1	Proof	25/50/25	\$1,000.00
Tennessee	Tenn. Code Ann. § 55-12-101	Proof/Security	20/40/10	\$ 200.00
Texas	Tex. Rev. Civ. Stat. Ann., art. 6701h	Proof/Security	20/40/20	\$ 250.00
Utah	Utah Code Ann. § 41-12a-101	Security	20/40/10	\$ 400.00
Vermont	Vt. Stat. Ann., tit. 23, § 800	Security	20/40/10	\$ 500.00
Virginia	Va. Code Ann. § 46.1-388	Proof/Security	25/50/10	\$ 500.00
Washington	Wash. Rev. Code § 4-6-29.010	Proof/Security	25/50/10	\$ 500.00
West Virginia	W.Va. Code Ann. § 17D-1.1	Proof/Security	20/40/10	\$ 250.00
Wisconsin	Wis. Stat. Ann. § 344.0	Proof/Security	25/50/10	\$ 500.00
Wyoming	Wyo. Stat. Ann. § 31-9-101	Proof/Security	25/50/20	\$ 500.00

*In Kansas, liability insurance in limits of at least 25/50/10 is mandatory under a no-fault insurance act.
**Pennsylvania's law is a combination of financial responsibility, compulsory liability, and no-fault insurance reparation systems.
*** "Security" refers to the statutory obligation applicable to drivers whose fault or responsibility for an accident may lead to a judgment being entered in civil court against them for injuries to person or property. If the motor vehicle department believes a judgment against a driver is likely or probable, the driver must post security with the department in an amount deemed sufficient to cover such judgment. Failure to post the security deposit may initiate a license suspension action and usually triggers the future proof requirement.
"Proof" refers to the required filing of proof of financial responsibility for the future (future proof), generally effectuated through a certificate of insurance (SR-22) sent to the state motor vehicle department and kept on file for three years. The existence of the SR-22 or "proof" assumes there is a liability insurance policy in force for financial responsibility law violators. After a license is suspended under the FR law, driver license reinstatement ordinarily requires the filing of future proof.

The Shortcomings

Like compulsory laws, however, financial responsibility laws have been plagued with shortcomings. In most cases, these statutes can be invoked only upon a sufficient showing that there either was or will be an unsatisfied judgment. Frequently, the driver hit by an uninsured motorist lacks sufficient incentive to institute legal action or enforce a judgment. For example, the costs in retaining legal counsel and litigating a case are often too high to obtain a judgment and seek the release of any funds held by the MVD under the FR law as a security deposit. In these instances, being a judgment creditor or potential creditor does not guarantee that justice will be carried out. It is quite common for an otherwise blameless accident-involved driver to be uncompensated for his injuries or property damage. The uninsured driver will fail to make reparations, and without a debt that has been reduced to judgment, the motor vehicle department is often hesitant to suspend the uninsured operator's license or registration. Without the coercive threat of suspension or revocation, there is little incentive for the uninsured operator to reimburse the other driver.

Moreover, under many FR laws, if an accident occurs and non-compliance is established, the driver can still demand a pre-suspension hearing. Many MVD officials and state attorneys general agree that this is often a mere dilatory tactic, which generates an inordinate number of hearing requests and imposes a substantial financial and administrative burden on the states. In some jurisdictions, it takes more than a year to suspend a license for failure to comply with an FR law. These delays, as well as the ever-lengthening delays attributable to securing public compliance with accident report filing requirements, matching accident records, and verifying insurance by state motor vehicle departments prior to the suspension of driving privileges have removed much of the "sting" from the financial responsibility laws.

Finally, the rights, obligations and remedies under FR laws are probably among the most overlooked and misunderstood by the public. Many state governments either fail, or are not funded, to regularly disseminate information and educate the public on the FR law. Driver licensing tests typically ignore even the most fundamental citizen rights and responsibilities under the FR law.

The Unrealized Potential

Despite their drawbacks, FR laws offer the statutory framework from which to attack the uninsured motorist problem and foster highway safety at the same time. Rather than take the "shotgun approach" like compulsory laws which impose a standard of conduct (maintenance of liability insurance) on the entire motoring public, FR laws focus on a limited and logical subject group — those motor vehicle operators who are involved in significant damage or injury-causing traffic accidents, arguably the segment of the population most citizens would desire to be held to some minimal standards of financial accountability. Although aimed at the appropriate population group, present FR laws not only fail to insure that innocent accident victims will receive compensation from negligent operators, but they also fail to pose a significant deterrent to careless or financially irresponsible motorists. In some cases, defects or omissions in the FR statute impede MVD administrators from enforcing accident reparations or deterring unsafe, reckless or negligent driving in the first place. Whether a victim of ignorance, misunderstanding, or lack of publicity, the effectiveness of FR laws is hampered without justification.

Early License Suspension — The Drunk Driving Law Connection

Until recently, state laws against drunk driving were similarly ineffectual. The war of the 1980s against the drunk driver, however, has produced laws which, based on statistics and studies of motor vehicle departments and law enforcement agencies, have reduced alcohol-related accidents and traffic infractions. While raising the minimum drinking age, limiting plea bargaining, using roadblocks, and imposing incarceration sanctions more regularly no doubt have been partially responsible for curtailing drunk driving, the most innovative and successful countermeasure has been the administrative per se law.

Based on the concept of administrative or summary license withdrawal action, the laws allow state motor vehicle agencies to confiscate and suspend the driver's license more quickly if the operator fails an alcohol screening breath test or refuses to take one. The license sanctions apply regardless of whether there are any criminal charges [such as driving under the influence or while intoxicated (DUI/DWI) or driving with an unlawful blood alcohol level] filed in conjunction with the incident. Though the offending operator usually receives a temporary permit to drive and can request a limited administrative review and eventually a judicial hearing, the suspension action commonly occurs prior to any hearing. In legal parlance, the withdrawal of the license prior to a formal adjudication is referred to as "summary administrative suspension," a procedure that at times has been controversial. Nonetheless, highway safety experts have correlated the "suspend now, ask questions later" enforcement approach to an increase in DUI-related license suspensions or revocations in administrative per se law states. They say that swiftness and certainty rather than the severity of punishment are the key variables in developing a countermeasure that effectively deters a person from committing the proscribed conduct.

A growing body of research supports the lifesaving effectiveness of administrative license suspension laws. A number of highway safety authorities have observed and reported on declines in alcohol-related crashes over the last three-to-five years. In a February 1988 study, the Insurance Institute for Highway Safety (IIHS) conducted the first systematic statistical analysis of the relationship between specific impaired driver legislative solutions and reduced fatalities. IIHS researchers examined drivers involved in fatal crashes in the 48 contiguous states during the years 1978 to 1985. Their findings include a positive correlation between three types of drunk driving laws and fatality reductions: per se laws that define driving under the influence using blood alcohol concentration (BAC) thresholds; laws mandating jail or community service for a first drunk driving conviction; and administrative license suspension laws, which were linked to the most significant fatality reductions. The IIHS study reported that during evening, late night, and early morning hours, administrative license suspension laws are estimated to reduce the involvement of drivers in fatal crashes between 9-and-11 percent.⁵ The study also estimated that if all 48 states had and enforced such laws, another 2,600 fatal driver alcohol-related accidents could be prevented each year.

There is other corroboration for swift and certain driver license sanctions. For example, in the paper entitled "Administrative License Revocation in New Mexico, An Evaluation," H. Laurence Ross, Professor of Sociology at the University of New Mexico, made the following observation:

"By authorizing police officers to remove the license of drivers failing or refusing a required breath test for alcohol, on the spot, administrative license

revocation brings one of the most dreaded punishments for drunk driving forward to the point of the law violation, thus fulfilling the deterrence proposition's requirement of swiftness or celerity of punishment."

The New Mexico administrative license revocation law took effect on July 1, 1984. Professor Ross noted that any expected deterrent affect from the new law was rendered unlikely because the public was never made aware of the law in its first year, police in the two major cities in the state actually reduced their drunk driving enforcement activity after its enactment, and local judges were openly hostile toward the law. Despite these handicaps, Ross found an otherwise inexplicable 10 percent reduction in the percentage of New Mexico drivers and pedestrians in fatal crashes having illegal blood-alcohol concentrations. In summing up his study, Professor Ross made the following observation: "... the New Mexico experience supports the wisdom of wider adoption of deterrent measures focusing on increasing the swiftness of punishment, and of administrative license revocation for drunk driving specifically."⁶

On the proficiency of driver license sanctions generally, the National Highway Traffic Safety Administration (NHTSA) has concluded that license suspension produces a significant impact upon persons directly affected and also provides general deterrence to others who fear having their own license suspended. According to the safety agency, research in four states⁷ — Alabama, California, North Carolina, and Washington — has documented a highly significant effect from this very basic driver improvement action.

According to NHTSA, license suspension sanctions appear to make those losing their license privilege better drivers.

"In January 1986, California researchers reported that . . . persons who were suspended for test refusal were found to have 72.2 percent fewer crashes during the six-month suspension period than persons whose licenses were not suspended, and during the initial 18 months following the term of the suspension they continued to register 57.8 percent fewer crashes than the group that was not suspended."⁸

An evaluation of an administrative license revocation law in Oregon, where motor vehicle department officials automatically revoke the licenses of drivers who have committed three major traffic violations, in a five-year period indicates it limits the number of subsequent collisions and violations.

When compared with drivers who received only a warning that their licenses would be suspended if they committed another major violation, drivers whose licenses were revoked had significantly fewer subsequent collisions and violations, even though many obviously continued to drive without a valid license during the revocation period.⁹ The findings are particularly interesting because only half of the persons whose licenses were revoked actually received a revocation notice. According to the study, there is evidence that revoked drivers limit their exposure and make an effort to improve their behavior behind the wheel.

The Minnesota Administrative Per Se Approach

Twenty-three states and the District of Columbia had administrative per se laws as of June 1, 1988, as illustrated on the accompanying chart. The State of Minnesota has had the most extensive experience with its law.¹⁰ In 1976, Minnesota became the first state to pass a law permitting a motor vehicle department official, rather than a judge, to revoke the driver's license of anyone who was asked to take a blood alcohol concentration (BAC) test and either tested at 0.10 or higher, or refused to take the test.

In Minnesota, when a person has 0.10 or higher BAC or refuses the test, the police officer picks up the license. As an agent of the Minnesota Department of Public Safety, the officer hands the person the order of revocation and a temporary license good for only seven days. After this time, the person's license is revoked. He or she can request a judicial review, but the license remains revoked until the issue is resolved. Any time during the seven-day temporary

ADMINISTRATIVE PER SE LICENSE SUSPENSION/REVOICATION LAW CITATIONS

Alaska	Alaska Stat. §28.5-15.165-166-181
Arizona	Ariz. Rev. Stat. Ann. §28.694 - 694B
Colorado	Colo. Rev. Stat. Ann. §42-4-1202
Delaware	Del. Code Ann. tit. 21, §2740-50
D.C.	18 D.C.M.R. 300.2, 301.1, 302, 306, 307, 308, 309, 1004, 1005
Illinois	Ill. Rev. Stat., ch. 95 1/2, §6.206 - 6.206.1
Indiana	I.C. 9-11-2-2, 2-3, 2-4, 9-11-3-1, 9-11-4-1 to 9-11-4-7
Iowa	Iowa Code Ann. §321B.16
Kansas	1988 Session Laws, S.B. - 111
Louisiana	La. Rev. Stat. §32:667(B)-1
Maine	Me. Rev. Stat. Ann. §29:13, 11, 29:2241-G(3)
Minnesota	Minn. Stat. Ann. §169.123
Mississippi	Miss. Code Ann. §63-11-23
Missouri	Mo. Rev. Stat. §302.309
Nevada	Nev. Rev. Stat. §484:383, 384, 385
New Mexico	N.M. Stat. Ann. §66-8-111B, 66-8-111C
North Carolina	N.C. Gen. Stat. §20-16.5
North Dakota	N.D. Cent. Code Ann. §39-20-04
Oklahoma	Okla. Stat. Ann. §47-754
Oregon	Or. Rev. Stat. §813:100, 420, 430, 520
Utah	Utah Code Ann. §41-2-19.5, 19.6, 20
West Virginia	W.Va. Code Ann. 17C-5A-1
Wisconsin	Wis. Stat. Ann. §33.34, 305
Wyoming	Wyo. Stat. Ann. §31-5-1205 (k) 31-6-102, 31-6-103, 31-7-138 (e)

license or after, the person also can request an administrative review. This is held by the Department of Public Safety and is conducted by Driver Analysts who are not attorneys. This review serves to determine if the officer had just cause to stop the person and if he complied with the other provisions required of him by the statute.

The officer is not required to appear, and only his written version and implied consent advisory forms are used. The individual also is required to submit his views, in writing, on a form furnished by the Department. He or she also may appear personally to give oral testimony.

The results of this review must be given to the person within 15 days. The review allows the person whose license was used by someone else or who proves that he or she was not the one involved, an opportunity to be heard. In addition to the administrative review, a person also has the right to a judicial review of the administrative revocation. However, the revocation itself is not stayed pending the outcome of either the administrative review or the court hearing.

The clear preference of local law enforcement officials for the summary revocation procedure over the criminal court adjudicated DWI offense is evident in the following numbers. In 1986, there were 42,586 combined civil and criminal alcohol-related driver license revocations in Minnesota. Of that total, 36,548 or 86% of the revocations were imposed under the administrative per se or civil law, 8,468 for refusing the test and 28,080 for failing the test. An administrative per se offense also means certainty of punishment. Only nine revocations were rescinded following an administrative review and 276 revocations were rescinded after a court hearing.¹³

Researchers and Minnesota officials credit the state's prompt and certain license revocation in DUI/DWI cases with a big share in sharp reductions in drunk driving, alcohol-involved crashes, and an all-time record low traffic death rate in Minnesota of 1.6 per 100 million vehicle miles.

Other states have experienced significant reductions in highway fatalities since the enactment of administrative license revocation laws. In 1982, the year Iowa's Operating While Intoxicated (OWI) Law took effect, Iowa's fatalities dropped from 612 to 480.¹² From 1972 through 1981, Iowa averaged over 700 highway fatalities annually. During the five years between 1982 and 1986, the state averaged only 465 highway fatalities each year.

In January 1986 an automatic license suspension law took effect in Illinois. During that year, 92 percent of drivers arrested for DUI/DWI who either failed or refused a chemical breath test lost their driving privileges. The high percentage reflects the degree of certainty of the statutory summary suspension. The Illinois Secretary of State's Office recorded 55,104 summary suspensions in 1986, almost four times the number of DUI/DWI suspensions in 1985.¹³

Currently, financial responsibility laws are utterly devoid of the swiftness and certainty of punishment which has made the new breed of drunk driving laws described above so effective. If their goal is to eliminate uninsured motorists, compulsory insurance and FR laws are ineffectual and costly weapons. Assuming a state is serious about the problem, a plausible solution might be the swift and certain punishment approach embodied in administrative per se laws. FR laws should be given the deterrent force of drunk driving laws.

Bell v. Burson

Many legal experts believe that implanting the summary administrative suspension feature into FR laws and thus instilling a more proactive, aggressive quality would be inconsistent with the landmark U.S. Supreme Court case of Bell v. Burson.¹⁴ This Georgia case was handed down prior to the enactment of Georgia's present No-Fault Insurance Act and arose out of the review of an FR-related license suspension. The U.S. Supreme Court held that, where the ultimate judicial determination of responsibility (accident liability) played a crucial role in the Georgia Motor Vehicle Safety Responsibility (FR) Act, the state must provide a forum (hearing) for determining the question of whether there is a reasonable possibility of judgment being rendered against a licensee as the result of an accident. The Georgia FR law provided that, if there was a release from liability or an adjudication of non-liability, no suspension would be imposed. Bell was an uninsured motorist and was involved in an accident. He requested a hearing before the Director of the Georgia Department of Public Safety and a hearing was held.

The hearing however was limited to considering three questions: (1) Was the petitioner or his vehicle involved in an accident? (2) Did the petitioner comply with the provisions of the FR law as provided? (3) Did the petitioner come within any of the exceptions to the law?¹⁵ Although the Georgia statute provided for a hearing, it did not recognize the question of civil liability as a permissible discussion topic at the hearing. The director refused the petitioner's pro-offer of evidence that he was not liable and gave the petitioner thirty days in which to comply with the security requirements under the Georgia FR law or suffer a suspension of his license.

The Supreme Court reasoned that without a determination of fault or liability by the Director of the Georgia Department of Public Safety, Bell's license could not be suspended without denying him procedural due process under the 14th Amendment to the U.S. Constitution. The Court also recognized the fact that once a driver's license has been granted to an individual he acquires a property interest in that license.

"Once licenses are issued, . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important rights of the licenses. In such cases the licenses are not to be taken away without the procedural due process required by the Fourteenth Amendment." Bell v. Burson 402 U.S. 539

While the Court elevated the privilege to drive to something closely approximating a constitutional right, the justices clearly did not categorically declare that all summary suspension actions are improper for lack of procedural due process. Many state authorities and legal observers are under the mistaken impression that the facts in Bell v. Burson had the petitioner losing his license without any hearing being afforded by the Georgia Department of Public Safety. But there was a pre-suspension hearing. The Supreme Court's principal objection concerned the Department's failure to consider fault at the hearing when fault (at the time) was at the very essence of FR law operation.¹⁶

The decision in Bell v. Burson would be dramatically different if the nation's high court were to hear the case today. First, the advent of no-fault insurance statutes, wherein accident culpability is of no real consequence, creates an entirely different legal environment in Georgia and in at least 14 other pure no-fault states. Second, and perhaps of greater significance, the legal doctrine of contributory negligence has been replaced by the doctrine of comparative fault in the vast majority of jurisdictions.

In an automobile accident analyzed under comparative fault principles, no driver will ever be held 100 percent accountable for causing the collision. Rather, each involved operator will likely be assessed a proportionate share of the responsibility. The significance is simply that fault determinations under contemporary comparative negligence standards are exceedingly more complex and less susceptible to immediate resolution by a MVD official. Since fault has evolved into a complicated and often abstract concept, the credibility of considering fault in an FR law hearing, and ultimately as a condition precedent to a license suspension, is highly suspect. Legal counsel to state motor vehicle departments already have speculated publicly whether the arrival of comparative fault has rendered financial responsibility laws technically and functionally obsolete.

In examining the intent of the Georgia FR law, the Court in Bell declared that liability through judicial determination of responsibility was quite germane to invoking sanctions under the FR statute in question. They pointed out that, if there was a release from liability, executed by the injured party, no suspension would occur. The same, of course, would be true if prior to the suspension there was an adjudication of non-liability. The Court also noted that, under Georgia law, they were not dealing with no-fault concepts. Summarizing their findings, the Court said that "since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his license, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing."¹⁷ It seems clear that the Supreme Court would be unable to reach the same conclusion if the state where the case originated had a no-fault insurance act, a comparative negligence law, or an FR law under which the offender was not automatically exonerated in the absence of a civil judgment against him.

Overcoming Bell v. Burson — 17 Years Later

While deciding what standards the U.S. Constitution dictated insofar as the content of the FR suspension hearing under Georgia law in 1971 was concerned, the Supreme Court in Bell also touched on the timing of the hearing, at least in an ancillary vein. In this regard, the Court emphasized:

"It is fundamental that, except in emergency situations, 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."¹⁸

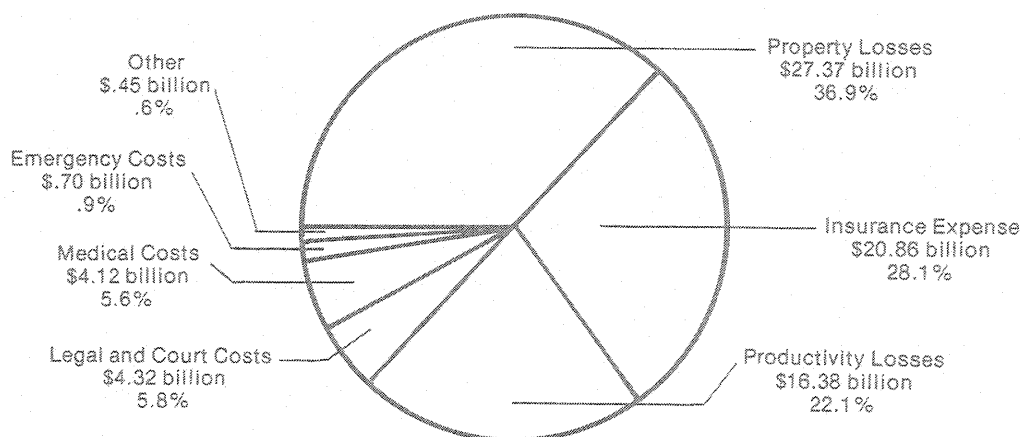
In 1971, based primarily on the narrow accident compensation purpose of the Georgia FR law, the Supreme Court in Bell strongly implied that a pre-suspension hearing is required by the due process clause. We are now 17 years down the road from Bell v. Burson. During those 17 years, conditions on our highways and in our legal environment have changed dramatically. As for road conditions, dependence on the automobile for mobility has increased, along with the number of vehicles using the roads. There were approximately 182 million¹⁹ motor vehicles registered in the U.S. in 1986. There were also approximately 158,600,000²⁰ licensed drivers in the U.S. during 1986.

Along with a dramatic rise in the automobile population has come a dramatic worsening in two attendant social problems related to automobile use: highway traffic safety and the uninsured or financially irresponsible motorist. There are no precise statistics on the number of uninsured motorists on a state by state basis, despite efforts by insurers and public officials to collect such data. Consumer surveys conducted by the insurance industry's All-Industry Research Advisory Council since 1980 indicate that about 9 percent to 10 percent of vehicles

registered for personal use are uninsured, on a countrywide basis. In Illinois, state driver licensing officials estimate that as many as 2 million out of 7 million registered vehicles in the state may be uninsured.

While U.S. drivers were driving a reported 1,861 billion miles in 1986, they were getting involved in 42,300 fatal accidents, 1,200,000 disabling injury producing accidents, and 16,500,000 accidents resulting in property damage and less serious injury. With the annual death count due to highway accidents approaching 50,000 (47,900 in 1986), safety has come to the forefront of public attention in recent years, as evidenced by the focus on the drunk or impaired driver, the safety of the automobile, and the advent of mandatory seatbelt usage laws.

Societal Cost of Motor Vehicle Accidents In 1986 by Cost Category



NHTSA estimates that the total economic cost to society of motor vehicle accidents was \$74.2 billion in 1986. Included in this loss are medical costs productivity losses, property damage, legal and court costs, insurance administration, emergency service costs, coroner and medical examiner costs, public assistance administration and government programs. The Economic Cost to Society of Motor Vehicle Accidents, Office of Plans and Policy — National Highway Traffic Safety Administration (September 1987).

A fool-proof solution to the uninsured driver problem, however, has eluded practically every state in the country. In vain, states have enacted laws compelling the purchase of liability insurance; laws requiring drivers to carry uninsured/underinsured motorist coverage; and laws requiring operators to carry minimum first-party coverage compensating for economic loss sustained by such person regardless of fault (no-fault insurance coverage). For a variety of reasons, these laws have had limited success in curtailing uninsured motorists and the problems they cause.

Constitutional Law Developments

Under the U.S. Constitution's due process provisions, the general rule is that before an individual is deprived of a significant property interest, such as a driver's license, he must be afforded an opportunity for a hearing, although the nature, extent, and formality of the proceeding may vary widely depending upon the circumstances of the particular case. There is, however, an exception to the preceding rule, which, in special situations, legitimizes the immediate seizure of a property interest where there is an important governmental or general public interest to be served.

In determining the propriety, under federal due process guarantees, of summary administrative action resulting in the deprivation of a property interest, the Supreme Court has scrutinized a number of factors. They include an examination of the private interest affected by the summary government action and an attempt to weigh the harm done. Similarly, the validity and importance of the government interest has often been the subject of considerable scrutiny. In cases where there has been a pre-hearing seizure, the court has acknowledged that such a procedure can be rescued from constitutional invalidity by the existence of a prompt post-deprivation hearing, through which adequate remedies are available for a mistaken deprivation. The Court has also examined whether there were sufficient safeguards within the administrative process itself that would reduce the risk of erroneous summary actions.

The U.S. Supreme Court has held that the public health and safety may justify summary administrative deprivations of private property interests. These cases substantiate that the need to provide for the safety of individuals who use the public highways justifies summary driver license action. Protection of the public health and safety is not the only compelling governmental interest recognized by the Supreme Court as warranting a summary deprivation of a property interest. For example, in Dixon v. Love,²¹ although holding that the state's interest in safety on the roads and highways was far more substantial, the Supreme Court declared that the state also possessed a valid public interest in administrative efficiency. Efficiency would be impaired by giving pre-termination hearings to drivers whose licenses were subject to suspension or revocation on the basis of accumulated traffic violations, and hence, it was sufficiently important for the initial decision to suspend the license to be made without a pre-deprivation administrative hearing.

The Mathews, Dixon and Mackey Decisions

Traditionally strict constitutional law principles relating to the seizure or deprivation of personal property have moderated during the last 17 years. Recent Supreme Court decisions have chipped away at Bell v. Burson and essentially have confined its holding to the specific facts in the case. The Bell v. Burson decision hinged in part on the compensation-oriented nature of the Georgia FR law. In Bell, the justices did not find a compelling governmental purpose for which Georgia could justify the limited scope of its FR law hearings. More recent cases have centered on the propriety of state government employing extraordinary legal remedies in the interest of promoting safety on its highway and roads. These cases have refined the balancing test which the Supreme Court will apply in order to determine whether a hearing is necessary prior to the deprivation of a property interest. Although the test originally applied in Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976) was used to determine what type of hearing was necessary prior to the deprivation of a property interest (Social Security benefits), later cases have used the same test in order to determine whether any hearing is needed before the government may act. The test is explained in the following language from Mathews:

"Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal or administrative burdens that the additional procedures would entail." Mathews, 424 U.S. at 334-35.

Mathews Criterion No. 1

Analyzing the three components of the Mathews test, the initial evaluation concerns the degree of the deprivation of a private interest. That is, to what extent may the private party be compensated for loss of the interest and how long will the party be deprived of that interest until some sort of post-deprivation hearing and resolution are provided. Where a driver's license has been suspended, there is no way in which the private party may be fully compensated for its loss during the period of the suspension. Although there is a possibility of some sort of recovery in damages, the fact remains that the licensee cannot be made whole for the loss of use of the motor vehicle for the period of suspension.

Nevertheless, government may be in a position to minimize the degree of deprivation by providing for some type of restricted permit during the suspension period. Similarly, the shorter the period of deprivation the stronger the position of the state grows in taking summary action. The Supreme Court sustained a potential 90-day pre-hearing loss of a driver's license for a motorist's refusal to submit to a breath test when arrested for drunken driving in the landmark case of Mackey v. Montrym, 443 U.S.1, 99 S.Ct 2612 (1979).

In accordance with the relevant Massachusetts statutory provision, the arresting officer in Mackey certified to the Registrar of Motor Vehicles that he had probable cause to believe that Montrym had been operating his automobile while under the influence of alcohol and that Montrym had refused a breathalyzer test. The Registrar then summarily suspended Montrym's license. Chief Justice Burger's opinion upheld the constitutionality of the Massachusetts law, holding it to be a valid exercise of legislative authority in the cause of highway safety.

While Mackey represents the most recent and on-point articulation of Supreme Court policy on the latitude states have in promoting highway safety, it follows and amplifies a line of reasoning the justices had previously embraced in Mathews and in Dixon v. Love.²² In the latter case, the Supreme Court similarly upheld a pre-hearing license revocation for an indefinite period where the same driver's license already had been suspended three times within a period of ten years.

In Dixon, a driver's license was revoked under an Illinois statute authorizing the Secretary of State of Illinois to suspend or revoke a driver's license, without a preliminary

Constitutional Procedural Due Process Standards Applicable to Pre-Hearing Personal Property Deprivations

Mathews v. Eldridge Criterion No. 1

The significance of the property interest and the compensability for its loss.

Mackey v. Montrym (1979)

Acknowledging importance of a driver's license, the U.S. Supreme Court nevertheless recognizes the propriety of pre-hearing driver license suspensions under a state's implied consent law.

hearing, upon a showing by official records or other evidence that the driver has been repeatedly convicted of traffic offenses to a degree indicating a lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and safety of other persons upon the highway. The statute also provided that a full evidentiary, administrative hearing would be held after the suspension or revocation, if requested in a timely manner by the person whose license has been suspended. The driver, Love, challenged the statute, and a federal trial court agreed with his contention that a driver's license could not be constitutionally suspended or revoked under the challenged statute until after a hearing was held to determine whether the alleged offender met the statutory criteria for suspension or revocation.

On a direct appeal, the U.S. Supreme Court reversed the lower court. They held that the Illinois statutory procedure was constitutionally adequate under the due process clause of the 14th Amendment to the U.S. Constitution since: (1) the private interest in a license to operate a motor vehicle was not so great as to require an evidentiary hearing prior to adverse administrative action, particularly in light of the state law's special provisions for hardship cases and for holders of commercial licenses; (2) the risk of an erroneous license deprivation in the absence of a prior hearing was not great, and requiring additional procedures would be unlikely to have significant value in reducing the number of erroneous license deprivations; and (3) the public interest in administrative efficiency and, particularly, in highway safety and the prompt removal of a safety hazard, were sufficient to make the state's summary initial decision effective without a pre-decision administrative hearing.

Mathews Criterion No. 2

The second Mathews factor concerns the risk of an erroneous deprivation of the property interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards. Where a summary license suspension is based on official records (e.g., prior traffic offense convictions) the U.S. Supreme Court has assumed that either the basic facts are not in dispute, that any dispute has been resolved, or that any opportunity to dispute them has been waived. Where the basic facts are disputed, the Court will address the question of whether the procedures followed in making an *ex parte* determination of the basic facts are sufficiently reliable to justify a delay in resolving issues of credibility and conflict in the evidence.

Despite many variables in the detection of illegal intoxication and the potential for error in roadside breath testing, the U.S. Supreme Court in Mackey and a growing number of state Supreme Courts have downplayed the erroneous deprivation factor while upholding summary license suspension laws for drunk driving offenses.

For example, in State v. Ankney 109 Idaho, 704 P. 2d 333 (1985), the Supreme Court of Idaho was asked to determine whether the state's administrative license revocation law, in calling for the immediate seizure of driver's license and suspension of driver's license, deprived a motorist of procedural due process. The Court concluded that the statute in question (I.C. §49-352) met the procedural due process requirements of both the Idaho and United States Constitutions. Citing the Mathews and Mackey opinions frequently, the judges summed up their findings as follows:

"... Although an individual does have a substantial right in his driver's license, the state's interest in preventing intoxicated persons from driving far outweighs the

individual's interest, particularly when the individual is entitled to the prompt post-seizure hearing mandated by I.C. §49-352(2)(c). This prompt post-seizure review, coupled with the requirement that the police officer requesting the evidentiary test have reasonable grounds to believe the driver is intoxicated, prevents a high risk of erroneous deprivation."

Tracking the rationale in Ankney, other courts throughout the country have clearly established the legal corollary that procedural due process does not require a hearing prior to revocation of a driver's license. People Ex Rel-Eppinger v. Edgar,²³ Heddan v. Dirkswager,²⁴ People Ex Rel. Hamilton v. Edgar,²⁵ Matter of Rev. of Driver License of Fischer.²⁶

So long as the procedures are designed to provide a reasonably reliable basis for concluding the facts are as a responsible government official warrants them to be, the Court has considered such procedures to be in accordance with the due process of law. Mackey v. Montrym, Barry v. Barchi, 443 U.S. 55, 99 S.Ct. 2643 (1979). As the Court noted in Mackey, the question of risk of error is to be controlled by the generality of cases and not by those cases which could be termed the "rare exceptions." Where the procedures indicate that the private interest is not being "baselessly compromised" the *ex parte* findings of fact generally will be accepted. This is true because due process of law does not mandate "perfect, error-free determinations." Mackey v. Montrym.

Mathews Criterion No. 3

The third test in Mathews focuses on the government's interest, including the function involved and the fiscal or administrative burdens that the additional procedures would entail. In practically every case involving a challenge to the law under which a drunk driving arrest and a pre-hearing license suspension was based, the U.S. Supreme Court was unanimous in agreeing that if a genuine emergency exists, the state may act summarily to suspend a license, provided post-suspension procedures meet due process standards. In Mackey, the Court declared:

"We have traditionally accorded the states great leeway in adopting summary procedures to protect public health and safety. States surely have at least as much interest in removing drunken drivers from their highways as in summarily seizing mislabeled drugs or destroying spoiled foodstuffs."

Constitutional Procedural Due Process Standards Applicable to Pre-Hearing Personal Property Deprivations

Mathews v. Eldridge Criterion No. 2

Controlling the risk of error in withdrawing the property interest.

Mackey v. Montrym (1979)

U.S. Supreme Court holds that due process of law does not mandate "perfect, error-free determinations."

In Miller v. City of Chicago,²⁷ the U.S. Court of Appeals for the Seventh Circuit on September 24, 1985 held that a city's practice of towing recovered stolen vehicles without prior notice to the owner, and then imposing towing and storage charges on the owner, did not violate the due process clause. Quoting from the opinion:

"The city has a substantial interest in promoting the public welfare by prompt removal of stolen cars to a safe place. The speedy removal of discovered stolen cars promotes the city's interests in terminating the thief's possession, preventing the illegal use of the car by the thief or other unauthorized person, preventing the illegal sale or dissection of the car, and preventing the operation of the car in a hazardous manner."

Surely, the interests of the state in summarily suspending the driver's licenses of accident-involved uninsured drivers under a financial responsibility law are every bit as important, acute, and compelling as the city government's purposes in impounding stolen cars.

In State v. Coire,²⁸ an Oregon Appellate Court considered whether a person whose driver's license had been suspended was denied procedural due process when the suspension notice was defective in informing the defendant of a pre-suspension hearing right but adequate to inform her of a right to a post-suspension hearing. Nothing as compelling as the public safety was involved in Coire. The suspension was based on a failure to appear in court. Distinguishing the case from Mackey, (supra) and Dixon, (supra), the judge noted that those decisions involved an important public interest in safety on the roads and highways, and in the prompt removal of a safety hazard (drunk drivers and habitual traffic offenders, respectively). In contrast, he pointed out the state's interest in Coire consisted of coercing defendants to appear in court on minor traffic offenses. The lack of the compelling state interest in highway safety did not dissuade the Court from upholding the suspension.

Reversing the lower court, the Appellate Court held Coire was not entitled to a pre-suspension opportunity to be heard. The judge articulated his reasoning as follows:

"Although the absence of a public safety justification brings this case closer to Bell v. Burson where the court required a hearing on potential liability before suspension for failure to comply with financial responsibility laws, we nonetheless believe that the other factors previously discussed (availability of occupational license pending post-suspension hearing), and particularly the lack of any real likelihood of erroneous deprivation, weigh against requiring a pre-suspension hearing of any type."

As noted previously, courts have not hesitated in upholding administrative or summary license suspension when the statutes empowering such actions promote a critical state interest such as public safety, removing drunk or dangerous drivers off the road, etc. The Miller and Coire decisions clearly indicate that pre-hearing suspensions in furtherance of a less compelling state interest are also quite proper under the right circumstances.

Another collateral aspect of the Mathews "governmental interest" test concerns the fiscal and administrative burdens that additional or alternative procedures to the summary suspension/post-deprivation hearing would entail. In Dixon v. Love, the Court concluded that the administrative burden on the state in providing a pre-suspension hearing to habitual traffic law violators was a reasonable ground for avoiding the procedure. Quoting Justice Blackmun's opinion, "Giving licensees the choice thus automatically to obtain a delay in the effectiveness of a suspension or revocation would encourage drivers routinely to request full administrative hearings."²⁹

In order for an FR law to have any impact, the public must perceive enforcement, and they must perceive that apprehension virtually insures the punishment. Injecting swiftness and certainty into the FR license suspension process is therefore vital to deterring financially irresponsible drivers and making a state's highways safer. Although some would describe a pre-suspension hearing as a vital procedural due process safeguard, the timing of the hearing undermines the state interest in public safety by giving drivers insufficient incentive to avoid traffic accidents and maintain financial responsibility.

**Constitutional Procedural
Due Process Standards
Applicable to Pre-Hearing
Personal Property Deprivations**

**Mathews v. Eldridge
Criterion No. 3**

Assessing how compelling the government's reason for summarily withdrawing the property interest or privilege.

Miller v. City of Chicago (1985)

A U.S. Court of Appeals upholds a city's practice of seizing recovered stolen vehicles without prior notice to vehicle owner citing societal benefits from impounding stolen cars.

The Mandatory Responsibility Concept

The NAII Mandatory Safety Responsibility Act* (MSR), a model legislative proposal, differs greatly from a traditional FR law, in that its security and future proof sections are administered without any attempt at assessing fault for the accident. The security deposit requirement would be applied uniformly against all drivers identified and involved in "jurisdictional"³⁰ accidents unless they can demonstrate minimum financial responsibility. There are no exemptions under the NAII model legislation regardless of whether a release is procured or a preliminary adjudication of non-liability is obtained.

An equally important dimension in the model is the promotion of highway safety through its focus on drivers involved in accidents and the application of driver improvement measures. Beside fostering accident reparations or restitution, FR laws provide an excellent opportunity for state motor vehicle departments to identify those who are involved in accidents, and among them those motorists that are unsafe or accident-prone, and perhaps those drivers most needing to improve their driving skills. Coincidentally, research studies conducted by a number of state motor vehicle departments have found that uninsured or financially irresponsible motorists, as a group, tend to be involved in more accidents and receive more traffic law convictions than insured drivers.³¹ Uninsured drivers therefore would seem to be an appropriate target group for special driver license control and monitoring by the state.

A state's interest in public safety is substantially served in several ways by the summary suspension of those who fail to post security after an accident or fail to complete the requisite driver improvement curriculum. First, the very existence of the summary sanction of the statute serves as a new and meaningful deterrent to negligent, unsafe driving. Second, it provides a strong inducement for automobile operators to have and maintain some form of financial responsibility and thus effectuates the state's interest in curtailing reliance on state welfare agencies as a source of reimbursement for accident-related injuries or death. Third, in promptly removing MSR law offenders from the road, particularly those who have been involved in multiple accidents, the summary sanction of the statute contributes directly to the safety of public highways.

Details of the MSR model have been purposely left open in order that state legislatures, depending upon local conditions and attitudes, can tailor the legislation to their specific needs. Briefly, reviewing the Act, motorists involved in more

Objectives/Components

Objective 1 — Fast Settlement of Accident Claims

NAII FR Component — Mandatory Security Deposit

For all "jurisdictional" accidents (those meeting the injury or damages threshold) regardless of fault, motor vehicle operators must post security equivalent to the minimum FR limits under state law or provide proof of financial responsibility.

Advantages

- A. Accommodates comparative negligence/fault laws.
- B. Eliminates arbitrary judgment of MVD in determining whether security is required and, if so, the appropriate amount of deposit.
- C. Takes pressure off the civil court system by giving MVD additional leverage over uninsured operator, and obviating need for accident victim to bring suit in order to obtain reimbursement.
- D. Removing fault as a determinative factor in possible exemption from MSR Law clears the way for invocation of summary administrative enforcement measures such as confiscation of driver's license, immediate license suspension by motor vehicle agency, etc.

Objective 2 — Add FR Penalty That Deters Uninsured, Financially Irresponsible Vehicle Operation

NAII FR Component — Administrative License Suspension

For operators who fail to comply with the mandatory deposit, MVD must suspend the driver's license prior to any civil judgment or administrative hearing.

Advantages

- A. Eliminates customary delays in FR law suspensions, which can take as long as one year in some states and seriously impede the effectiveness of FR laws.
- B. Discourages reliance on civil courts as only source of redress for automobile crashes.
- C. The prospect of a swift and virtually certain license suspension is probably the best deterrent to uninsured or financially irresponsible vehicle operation.

serious injury-producing collisions or in significant property damage collisions on a repeated basis would automatically be required to successfully complete a driver improvement course administered by the state motor vehicle department as a condition for license retention. The purpose is two-fold. Accident-involved drivers will be forced to sharpen their driving skills and demonstrate their understanding of the rules of the road. If drivers avoid serious accidents, they will not be subjected to driver improvement intervention by the state. The specter of a meaningful driver education penalty should induce safer driving and deter accident involvement.

A mandatory safety responsibility enforcement scheme capitalizes on serious traffic accidents by using such occurrences as an opportunity to identify and take aggressive action against financially irresponsible motorists. Under the MSR approach, the financially irresponsible driver is not left off the hook if his role in causing the collision is less than the other driver. Although the pre-hearing suspension of MSR is admittedly a hard-line approach, the as yet insoluble uninsured motorist and highway safety problems argue for the same tough attitude embodied in recent drunk driving laws. Where the FR law is not strictly predicated on a fault concept and where such law serves an equally important purpose of promoting highway safety, it is highly doubtful that the *Bell v. Burson* decision would preclude state use of re-hearing driver license suspensions to induce driver safety and financial responsibility.

Text of Mandatory Safety Responsibility Act contained in Appendix.

Objective 3 — Enhance Financial Protection Against Future Accidents

NAII FR Component — Mandatory Certification of Future Proof

Operators who: fail to post the mandatory security deposit; fail to satisfy civil judgments; seek reinstatement of their driver's license after suspension/revocation for DUI/DWI, accumulation of points, other serious violations; etc. must have proof of financial responsibility for the future on file with the MVD for three years.

Advantages

- A. Through the mandatory certificate of insurance (future proof — SR-22) and the cancellation notice (SR-26) required in conjunction with certified policies, there is a compulsory insurance rule in effect with respect to violators of the FR law for at least three years.
- B. Contrary to the current FR law in many states, the targeted groups under our future proof requirement are expanded so that a certification of insurance is necessary from those motor vehicle operators most likely to be financially irresponsible or uninsured.

Objective 4 — Promote Continuing Driver Education and Safer Driving Habits, Especially Among Serious, Accident-Prone Motorists

NAII FR Component — Mandatory Safety Education

Operators involved in accidents resulting in significant bodily injury or death would be required to attend a defensive driver/safety education curriculum as established and administered by the MVD. Policymakers may also wish to consider requiring the mandatory driver improvement of operators demonstratively repeated involvement in property damage-only accidents as well.

Advantages

A function of financial responsibility law enforcement should be the identification, monitoring, and perhaps punishment of drivers who are involved in serious accidents. The safety or driver improvement dimension of FR laws has been lost over the years. Incorporating safety education as a condition in FR law compliance for at least those drivers involved in serious accidents should foster highway safety. It may also more effectively exploit the existing array of defensive driving courses marketed by private firms.

**NAI MANDATORY SAFETY RESPONSIBILITY (MSR)
— KEY ELEMENTS —**

FOSTERS ACCIDENT SETTLEMENTS

Rather than subjective determination of security deposit, and fault, all uninsured drivers post security equal to minimum FR limits.

Security posted is used to pay judgments, make out-of-court settlements.

Drivers: 1) Failing to post security; 2) Identified by MVD (accident report) face immediate, automatic license suspension, prior to judgment or hearing.

Hearing available upon request, but it does not postpone suspension. Hearing does not arbitrate fault, but assures no errors made.

PROMOTES SAFETY

MVD imposes driver improvement measures against certain SR law violators.

Operators in BI/death accident and reportable accident repeaters must take driver education "refresher" course.

Failure to fulfill course requirements — license/reg. suspension.

Police authorized to confiscate driver's license and vehicle tags of MSR Act violator.

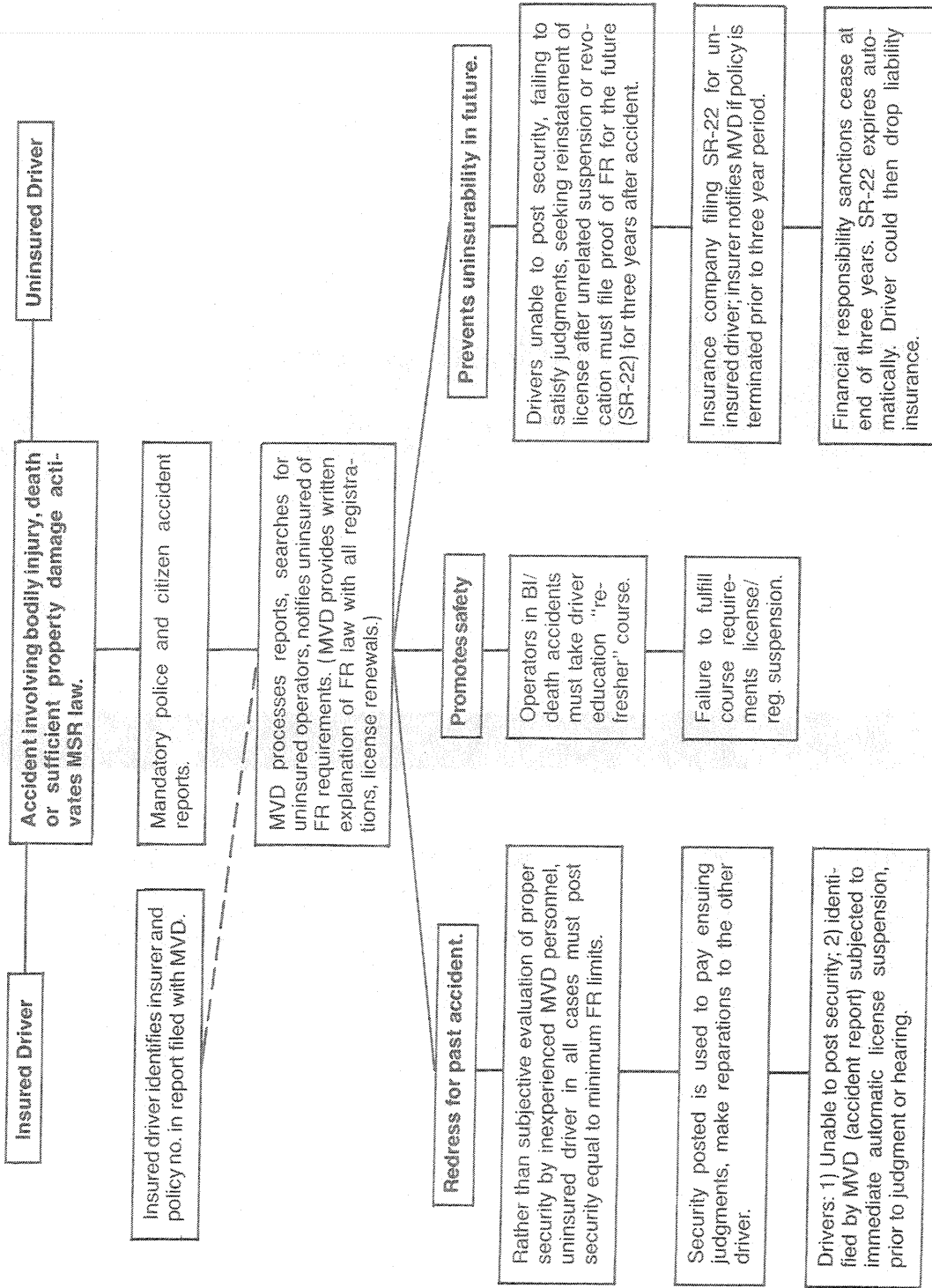
PREVENTS UNINSUR-ABILITY IN FUTURE

Drivers failing to post security or satisfy judgments, seeking reinstatement of license must file proof of FR for future (SR-22).

Insurance company files SR-22 for uninsured driver; insurer notifies MVD if policy is terminated for next three years.

Financial responsibility sanctions cease after three years. SR-22 expires automatically.

NAI MANDATORY SAFETY RESPONSIBILITY (MSR)



Conclusion

Although the legitimacy of a state's interest in promoting highway safety through pre-hearing license suspensions under (administrative per se) drunk driving laws has been recognized by the U.S. Supreme Court in Mackey v. Montrym³² and by the Minnesota Supreme Court in Heddan v. Dirkswager,³³ would this same sanction be sustained under an FR Law? If it were in a traditional FR Law with victim restitution as its primary purpose and the year was 1971 instead of 1988, obviously a summary license suspension feature would cause an FR Law to fail the procedural due process test.

In 1988, however, the result might be different for at least a couple of reasons. Contemporary courts must take judicial notice of the appalling death, injury and damage tolls caused by the automobile. They must appreciate the complementary state interests of promoting highway safety and accident restitution. They must also note the abysmal failure of compulsory insurance laws, and the perpetual search by state legislators for workable solutions to the uninsured motorist problem. They must also be familiar with case law trends in constitutional law.

Furthermore, if summary license suspension were contained in a comprehensive driver improvement-financial responsibility measure such as the NAII MSR Act, the probability of its passing constitutional muster is even greater. The legislative model NAII created has "public safety-police power" aspirations far broader than the typical FR law, and accordingly, should be considered in a different light. That it incorporates summary license suspension penalties is secondary to the fact that NAII's MSR Act strives to link accident restitution principles with the goal of promoting safer driving habits.

Notes

- ¹ 47,900 persons died in motor vehicle related crashes in 1986. *Accident Facts 1987 Edition*, National Safety Council Statistics Department, 444 No. Michigan Avenue, Chicago, Illinois 60611.
- ² *The Injury Fact Book*, Baker, O'Neill and Karpf, Lexington Books, D.C. Heath & Company, Lexington, Mass, 1984.
- ³ NAIH member company uninsured motorist (UM) experience for calendar/accident years 1981 through 1985 shows that the average UM loss in 28 compulsory auto insurance states was \$7,928. The average UM loss in 17 noncompulsory insurance states over the same time period was \$6,018.
- ⁴ Kansas is the only state without a financial responsibility law.
- ⁵ "Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving," Paul L. Zador, Ardian K. Lund, Michele Fields, and Karen Weinberg, Insurance Institute for Highway Safety, February 1988.
- ⁶ "Administrative License Revocation in New Mexico: An Evaluation," Ross, p. 14, *Law & Policy*, Vol. 9, No. 1, January 1987.
- ⁷ **Alabama** — *Impact of the Revision of DUI Legislation in Alabama* Auburn University 1983, 1985; **California** — *Effectiveness of License Suspension or Revocation for Drivers Convicted of Multiple Driving-Under-The-Influence Offenses*, California Department of Motor Vehicles 1977; **North Carolina** — *An Initial Evaluation of the North Carolina Alcohol and Drug Education Traffic Schools*, North Carolinian Division of Motor Vehicles 1983; **Washington** — *License Revocation and Alcoholism Treatment Programs for Habitual Traffic Offenders*, Washington Department of Licensing 1981.
- ⁸ *An Evaluation of the Process Efficiency and Traffic Safety Impact of the California Implied Consent Program*, California Department of Motor Vehicles 1986.
- ⁹ *The Effectiveness of Habitual Traffic Offender License Revocation in Oregon*, Bernie Jones, Oregon Motor Vehicles Division, Salem, Oregon 97314.
- ¹⁰ Minnesota Statutes §169.123.
- ¹¹ Minnesota Driver & Vehicle Service Division (Joel Watne, Special Assistant Attorney General) St. Paul, Minnesota.
- ¹² "Operating While Intoxicated or Drugged: Iowa's OWI Law," Iowa Department of Transportation, July 1986.
- ¹³ "DUI Fact Book 1986," Report by Jim Edgar, Illinois Secretary of State.
- ¹⁴ *Bell v. Burson*, 402 U.S. 535, 91 S.Ct.1586, 29 L. Ed. 2d 90 (1971).
- ¹⁵ *Bell v. Burson*, *supra*, note 1, p. 1588.
- ¹⁶ As evidenced by the offender's exoneration under the Georgia FR law if a release or adjudication of non-liability were procured.
- ¹⁷ *Bell v. Burson*, *Id* at p. 1590.
- ¹⁸ *Bell v. Burson*, *Id* at p. 1591.
- ¹⁹ & ²⁰ U.S. Department of Transportation, Federal Highway Administration, 1986.
- ²¹ *Dixon v. Love*, 431 U.S. 105, 97 S.Ct. 1723 (1977).
- ²² *Dixon v. Love*, *supra*.
- ²³ *People Ex Rel. Eppinger v. Edgar* 112 Ill. 2d 101, 492 N.E. 2d 187 (Ill, 1986).
- ²⁴ *Heddan v. Dirkswager* (Minn. 1983).
- ²⁵ *People Ex Rel Hamilton v. Edgar* (Ill. 1987).
- ²⁶ 395 N.W. 2d 598 (S.D. 1986).
- ²⁷ 774 F. 2d 188 (1985).
- ²⁸ *State v. Coire*, 720 P. 2d 1323 (Or. App. 1986).
- ²⁹ *Dixon v. Love*, *Id* at p. 114.
- ³⁰ Under the NAIH MSR Act, a "jurisdictional accident" is one resulting in bodily injury, death, or significant property damages. The severity of the injury or property damage is intended to be determined by the state legislature.
- ³¹ (a) "A Profile of Uninsured Drivers in Oregon," Bernie Jones, Ph.D., Motor Vehicle Division, Department of Transportation, Oregon (September 1986). "Drivers in the uninsured accident group tended to have more prior traffic convictions, traffic accidents, and major traffic convictions. In the uninsured accident group, 69% had no prior accidents compared to 75% in the insured group, 29% had no convictions compared to 45% in the insured group, and 75% had no major convictions compared to 94% in the insured group. Drivers in the uninsured accident group are also more likely to have been required in the past to furnish proof of insurance (SR-22).
- (b) "Profile of the Uninsured Motorist." California Motor Vehicle Department (Research and Statistics Section, 1966). "Almost half the drivers in uninsured accidents had a criminal arrest record. Drivers with uninsured accidents had prior traffic convictions and accident records that were substantially worse than the records of average California drivers.

(c) A later California Motor Vehicle Department study, "A Profile of Uninsured Motorists in California," Kuan and Peck (Research and Development Section February, 1981) found similar characteristics in the prior driving records of uninsured drivers. "Uninsured motorists had 72% more accident involvements than the average of their counterparts in the general population. The uninsured group had approximately three times

as many traffic convictions, and eight times as many major convictions (i.e., drunk or impaired driving, reckless driving, and hit and run).

³² *Mackey v. Montrym*, Supra.

³³ *Haddan v. Dirkswager*, Supra.

Appendix



Drafters' Notes for NAII Mandatory Safety Responsibility Act

Use of the MSR legislation is predicated upon the replacement of an existing financial responsibility statute. The key provisions in NAII's Mandatory Safety Responsibility Act (MSR) are as follows:

1. **7-201. (MSR Act Monetary Threshold)** This is an extremely important provision, one that determines exactly how often the MSR law will be invoked against the motoring public and how much public funds will be necessary to administer it. Since the penalties at stake (license suspensions prior to hearing and mandatory driver education curriculum) may be controversial, the drafters recommend that the definition of a "jurisdictional accident" be very carefully circumscribed. To avoid the harassment of the public and the unnecessary expenditure of state resources, the MSR Act's jurisdiction can be restricted to accidents entailing serious bodily injury or significant property damage. The drafters strongly recommend that policymakers carefully consider the appropriate physical damage and bodily injury threshold, weighing such factors as the scope of the uninsured motorist problem, the resources available to enforce and administer the MSR Act, etc.
2. **7-202. (Damage Estimates)** Damages to the vehicles involved in an accident are extremely difficult to ascertain by law enforcement officers and/or by motor vehicle agency personnel. Under Section 7-202 an estimate of damage from a repair garage must accompany the accident report. This helps the motor vehicle department (MVD) staff to determine the amount of property damage loss incurred.
3. **7-204. (Mandatory Security Deposit)** The first paragraph in this section sets forth the security deposit obligation that arises in a jurisdictional accident. The security deposit feature is mandatory, and the operator must show financial accountability equivalent to at least the minimum FR limits in the state. Motor vehicle agency personnel have had difficulty in determining the appropriate amount of security necessary due to insufficient data from the police or citizens' accident reports. This provision makes it mandatory that a stipulated amount of security be posted in all cases, unless the individual has liability insurance with an authorized insurer in the state or can demonstrate other financial resources as specified under the Act.
4. **7-205. (Safety Education)** The MSR Act establishes a mandatory safety education program which is applicable to a resident operator involved in an accident causing serious bodily injury or death. It also may be prudent to require the driver improvement curriculum of operators who demonstrate chronic involvement in property damage accidents. This driver improvement dimension underscores the state's interest in promoting safety on its highways and is imperative in light of the administrative license suspension sanction.
5. **7-208. (Automatic License Suspension)** If an individual fails to deposit security within 20 days after receiving notice from the MVD, the department takes steps to impose an "immediate" suspension of the driver's license and the registrations of all vehicles owned by that person. In some instances, the immediate suspension could mean the removal of driving authority by the MVD prior to a hearing. In contrast to traditional FR law procedures, the MSR Act obviates the need for MVD staff to determine the probability of a civil action being filed or whether fault exists. With the comparative negligence doctrine in most states the

concept of fault as articulated in current FR laws has been rendered obsolete. Through swift and certain application of license penalties, it is expected that the law will more effectively deter unsafe driving and encourage maintenance of FR (insurance).

6. **7-209. (Due Process Protection)** This section delineates the rights and remedies of the offender under a summary license suspension, allowing a hearing if the request is submitted in writing within 14 days. These procedures afford the offender "procedural due process" — a Constitutional prerequisite whenever the state contemplates removing, without prior hearing, a privilege such as the driver's license. Although courts have disagreed over whether a license is a right or a privilege, they have consistently held that a licensee has at least a property interest in the driver's license. Accordingly, a suspension statute must guarantee the individual some basic procedural safeguards in order for due process standards to be met. Sections 7-208 and 7-209 track the procedural safeguards available under "Administrative Per Se" drunk driving-summary suspension laws now found in over 20 states.

7. **7-301. (Future Insurance Protection)** If an individual is proven to be uninsured, the MSR Act requires such operator to procure proof of financial responsibility for the future (SR-22 insurance certificate). The SR-22 would be filed with the MVD for a three-year period. The SR-22 could not be terminated without prior notice to the MVD. Hence, "future proof" helps the state keep track of bonafide uninsured drivers, thus ensuring the most efficient and practical expenditure of enforcement resources.

The drafters also recommend usage of the Insurance Industry Committee on Motor Vehicle Administration's new limited all-inclusive SR-22 form.* This certified coverage form automatically terminates at the end of three years.

8. **7-312.** Financial Responsibility laws ordinarily require 10 days notice of termination *prior* to the effective date of termination. Unfortunately, experience shows that insureds often do not pay their premium until the last possible moment. Insurers nevertheless are obligated by statute to file a notice of termination (SR-26) 10 days prior to the actual termination date and in many instances that means prior to the receipt of premium. Unless corrected, the state will assume the late-payment policyholder is no longer insured. According to industry estimates, in 38% of the SR-26 notices, payment is received prior to the termination date. In these cases, a new SR-22 (liability insurance certificate) notice must be filed by the insurer with the state. The net result is two additional pieces of paper must be processed by the state and insurance carriers. Section 7-312 eliminates this problem.

9. **7-401 (License, Vehicle Tag Confiscation)** Many of the administrative per se drunk driving laws on which the MSR Act is patterned require that police officers confiscate the driver's license immediately when the motorist refuses to take a blood-alcohol test or fails the test. The officer provides the violator with a temporary driving permit valid for 7-10 days. A state may wish to empower its law enforcement personnel to demand proof of insurance at the site of the accident. If the motorist could not produce proof of insurance, the officer would serve notice of license suspension and confiscate the driver's license as an agent for the state licensing agency.

Although an early license confiscation feature could be incorporated into the NAII MSR legislation, it would entail reliance on evidence of insurance documentation (insurance I.D. cards, binders, policy declaration pages, etc.) — the mere possession of which does not automatically guarantee that liability insurance is in force at the time of the accident.

* A specimen of the new simplified SR-22 form contemplated under section 7-301 is illustrated at the end of the Appendix.

The drafter has chosen instead to avoid the public harassment factor associated with requiring insurance documents on one's person or in the motor vehicle at all times. Under the MSR Act, the state's authority to confiscate both license and vehicle registration tags accrues, but not prior to some procedural safeguards. First, a violator's identity must be conclusively established after noncompliance with a demand for security deposit from the state driver licensing agency. After the suspension is then imposed, law enforcement authorities would be empowered to seize the license and vehicle registration tags if the motorist is apprehended driving while under suspension. The drafter also acknowledges that policymakers in some states have introduced legislation authorizing the seizure and impoundment of uninsured motor vehicles where such vehicle is titled/registered exclusively in the name of the suspended operator.

Mandatory Safety Responsibility Act

Preamble

The U.S. DOT estimates that auto crashes cost our society 50,000 lives annually, 3.4 million injuries, 45 million damaged vehicles, and total economic costs in the range of \$80 billion dollars. By enacting into law this Chapter (Article), the Legislature responds to the increasingly serious problem caused by uninsured and financially irresponsible motor vehicle operators. Accident report studies compiled in this state suggest that as many as 000% of the local driving population are uninsured or financially irresponsible. These irresponsible motorists often inflict injury and serious financial hardship on other motorists and pedestrians. In shaping the security deposit requirements and suspension penalties under this Act, the Legislature must reemphasize the fact that driving remains a privilege in this state and that privilege may be withdrawn if a motorist fails to operate their vehicle in a safe and responsible manner. The Legislature deems financial responsibility to be a condition precedent to the privilege of operating a motor vehicle.

While the Legislature could have enacted an unlimited compulsory insurance law, no-fault insurance law or other statute to provide a remedy for victims of uninsured or financially irresponsible motorists, it noted that passage of such legislation has failed to eliminate uninsured and financially irresponsible motorists in other states. Since the civil court system in this state fails to provide the victims of uninsured or financially irresponsible motor vehicle operators an accessible, timely, and effective remedy and since operators involved in or causing traffic accidents have increased to an alarmingly high proportion of the total registered vehicle population in this State, this Legislature declares emergency conditions prevail as respects the proliferation of uninsured, financially irresponsible drivers. The Legislature therefore determines these conditions warrant the extraordinary driver license sanctions called for under this Act.

Article I — Administration

7-101 — Short title.

This chapter shall be known as the "Mandatory Safety Responsibility Act."

7-102 — Commissioner to administer chapter.

1. The commissioner shall administer and enforce the provisions of this chapter. The commissioner may make rules, regulations, and prescribe suitable forms necessary for its administration. Under the direction of the Commissioner, the department shall

develop and regularly make available to motor vehicle registrants written information explaining this Chapter, including an easily understandable recitation of rights and responsibilities under the act.

2. The commissioner shall receive and consider any pertinent information upon request of persons aggrieved by his or her orders or acts under any of the provisions of this chapter.

Article II — Security Following Accident

7-201 — Application of Article II.

The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, shall apply to the owner and driver of any vehicle of a type subject to registration under the motor vehicle laws of this State which is involved in an accident within this State, which has resulted in bodily injury to or death of any person or damage to the property of any one person in excess of \$_____.

7-202 — Written report of accident by owners or drivers.

- *1. Except as provided in subsection (2), the owner or driver of a vehicle involved in an accident as specified in 7-201, shall, within 10 days after the accident, forward a written report of the accident, including details concerning any bodily injury or death, to the department of motor vehicles. Whenever damage occurs to a motor vehicle, the owner or driver shall attach to the accident report an estimate of damage from a repair garage or an insurance adjuster qualified to do business in this state. The department may require the owner or driver of the vehicle to file supplemental written reports whenever the original report is deemed to be insufficient.
2. A written accident report is not required from any person who is physically incapable of making a report.

7-203 — Failure to report, false reports, penalties.

1. If an owner or driver fails, refuses, or neglects to make a report of any accident in accordance with the provisions of this chapter, that person's driving privilege and registrations of all vehicles owned by such person shall be immediately suspended. These suspensions are to remain in effect until the report is received by the department or for one year following the date of suspension, whichever is earlier.
2. Any owner or driver who provides information in a report required by this chapter knowing or having reason to believe that such information is false, is guilty of a Class _____ misdemeanor.

7-204 — Security deposit required, notices.

- *1. Each owner or driver of a vehicle involved in an accident as specified in 7-201 and identified by the department through a written report of the accident as provided in 7-202 or through a report filed by a law enforcement officer shall be required to deposit security with the department in an amount sufficient to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such operator or owner, but in no event shall the security be less than the limits specified in section 7-210.1, with respect to the minimum limits of a policy or bond.

The department shall promptly notify owners or drivers subject to this act of the security filing requirements of this section in writing after their identity has been established through

an accident report or any other reliable written notice. Such written notice shall advise the operator or owner that he/she has 20 days in which to file the requisite security.

2. The department may increase the amount of security deposit ordered in any case within six months after the date of the accident if in its judgment the amount ordered is insufficient. If the minimum security called for under subsection (1) above has been deposited, such deposit shall be adjusted accordingly.
3. The security deposited in accordance with this section shall be distributed:
 - (a) For the payment of any settlement of a claim arising out of the accident at the discretion of the department; or
 - (b) For the payment of a judgment or judgments rendered against the person required to make the deposit for damages arising out of the accident.
 - (c) As respects accidents resulting in bodily injury or death, to the commissioner in an amount not to exceed \$_____, to offset administrative expenses in carrying out the mandatory safety education program set forth in Section 7-205.
4. Any deposit in excess of a judgment against such person shall be returned provided there are no suits pending, judgments outstanding or unsatisfied claims arising out of the same accident.
5. Any security remaining on deposit after two years from the date of the deposit shall be returned to the person that made it upon presentation of satisfactory evidence to the department that:
 - (a) No action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made; or
 - (b) There is no existing unpaid judgment rendered against any person on whose behalf the deposit was made.

The provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of this chapter authorizing a return.

7-205 — Mandatory safety education.

Every resident motor vehicle operator involved in an accident causing bodily injury (specify degree of injury here) or death, or involved in multiple property damage accidents within (span of time to be set by motor vehicle department), in addition to complying with the mandatory security deposit requirements set forth in 7-204, shall also be required to attend a (driver safety education — defensive driver course) as established and administered by the department. Should any person obligated under this section fail to complete such safety education course, the department shall immediately suspend:

1. The driver's license of that person;
2. The registrations of all vehicles owned by that person.

7-206 — Exceptions to requirement of security deposit.

Notwithstanding the provisions of 7-201, the security deposit and suspension requirements of 7-204 and 7-208 shall not apply:

1. To the owner or driver if either had in effect at the time of the accident one of the forms of financial responsibility defined in 7-207. A driver shall be exempt from the security and suspension requirements of this chapter if the vehicle was being operated with the owner's permission;

2. To the owner or driver of a vehicle if at the time of the accident the vehicle was owned by or leased to the United States, this State or its political subdivisions or a municipality;
3. To the owner or driver of a vehicle if at the time of the accident the vehicle was being operated by or under the direction of a police officer in the performance of official duties.

***7-207 — Financial responsibility defined.**

For the purposes of this article, the term "financial responsibility" shall mean:

1. A automobile liability insurance policy which meets the specifications of 7-210;
2. A certificate of insurance as defined in 7-307;
3. A bond which meets the specifications of 7-210 and 7-307;
4. A certificate of deposit of money or securities which meets the specifications of 7-307;
or
5. A certificate of self-insurance which meets the specifications of 7-307.

***7-208 — Failure to deposit security and satisfy judgments — suspensions.**

Should any owner or driver required to deposit security fail to do so within 20 days after receipt of notice as provided in 7-204, the department shall immediately suspend:

1. The driver's license of that person.
2. The registrations of all vehicles owned by that person.
3. If a non-resident, the operating privilege of that person.

The department shall also impose immediate suspension when it receives written notice from any judge or clerk in this state that a judgment arising out of a reportable accident as defined in 7-202 has remained unsatisfied for _____ days.

***7-209 — Suspension — right to a hearing, notice, request for hearing, waiver, scope of hearing.**

1. Should any owner or driver required to deposit security fail to do so within 20 days after receipt of a notice as provided in 7-204, the department shall serve immediate notification on such person that his or her driver's license, the registrations of all vehicles owned by that person, and if a non-resident, the operating privilege of that person in the state, will be suspended in 21 days from the date of the suspension notice.
2. The notice of suspension shall be mailed to the person at the address shown on a written accident report if available, a written report of a law enforcement officer if available, or to the last known address shown on the department's records. The notice shall be deemed received three days after mailing, unless returned by postal authorities.
3. The notice of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made. The notice shall also inform the person that unless a hearing is requested he or she will be responsible for turning over their driver's license and the registration plates for all owned vehicles to the department on the effective date of the suspension.
4. If a hearing is desired by the person who is the subject of the suspension action, the request must be submitted in writing to the department within 14 days. Failure to do so

waives the right to a hearing. If a timely request for a hearing is not made, the department shall carry out the suspension of driver's license and vehicle registration on the date specified in the notice. The commissioner shall have discretionary authority to waive the 14 day filing requirement if in the interest of justice or in light of extenuating circumstances, such action is warranted.

5. If the subject of the suspension notice requests a hearing in accordance with the above provisions, the department shall afford such person a hearing within 30 days of the date written notice is received. The commissioner shall give at least 10 days' advance written notice of the hearing to all interested parties. The notice must contain a brief explanation of the proceedings to be taken and the possible consequences of an adverse determination.
6. The hearing shall determine:
 - (a) If the accident is subject to the provisions of 7-201;
 - (b) If the provisions of 7-206 apply; and
 - (c) If the person against whom the suspension action is being taken has in fact failed to deposit the security requested by the department in compliance with the provisions of 7-204.

7-210 — Requirements of policy or bond.

1. No policy or bond shall be effective unless issued by an insurance or surety company authorized to do business in this State, except as provided in subdivision 2. of this section, and unless the policy or bond is subject to a limit, exclusive of interest and costs, of not less than \$_____ because of bodily injury to or death of one person in any one accident and, to a limit of not less than \$_____ because of bodily injury or death of two or more persons in any one accident, and to a limit of not less than \$_____ because of injury to or destruction of property of others in any one accident.
2. If an insurance or surety company is not authorized to do business in this State, it must execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon a policy or bond arising out of the accident.
3. The department may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless or until the department has reason to believe the information is erroneous.
4. An owner or operators' policy of liability insurance shall be as defined by law.

7-211 — Application to nonresidents, unlicensed drivers, unregistered vehicles and accidents in other states.

1. If the owner or driver of a vehicle subject to registration in this State is involved in an accident and has no license or registration in this State, the driver shall not be allowed a license, nor shall the owner be allowed to register any vehicle in this State, until the requirements of this chapter have been complied with.
2. When a nonresident's operating privilege is suspended under 7-205, the department shall transmit a certified copy of the record of the action to the appropriate official in the state in which the nonresident resides or is licensed or both.
3. Upon certification that the operating privilege of a resident of this State has been suspended or revoked in any other state for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, the department shall suspend the

license of the resident driver, and the registration of the motor vehicle involved in the accident if known. The suspension shall continue until the resident furnishes evidence of compliance with the law of the other state relating to the deposit of security.

7-212 — Agreements for payment of damages.

1. Any two or more of the persons involved in or affected by an accident as described in 7-201 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of these persons because of bodily injury, death or property damage arising from an accident. The agreement may provide for payment in installments.
2. The department, to the extent provided by any written agreement, shall not require the deposit of security and shall terminate any prior order of suspension. If security has previously been deposited in accordance with 7-204.5, the department shall immediately return such security to the depositor or his or her personal representative.
- *3. On notice of a default in any payment under an agreement, the department shall suspend the driver's license, registration(s), or if a non-resident, the driving privilege of the person in default. The suspension shall remain in effect until:
 - (a) Security is deposited as required under this chapter;
 - (b) The person in default has paid the balance of the agreed amount; or
 - (c) At least one year has elapsed following the effective date of the suspension and evidence satisfactory to the department has been filed with it that during the period no action at law upon the agreement is pending.

Article III — Proof of Financial Responsibility For the Future

7-301 — Application of article III.

The provisions of this article requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply:

1. to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws;
- *2. uninsured, when involved in an accident as defined under 7-201; or
3. who have failed to pay judgments arising out of ownership, maintenance or use of vehicles subject to registration under the laws of this State.

7-302 — Definitions.

The following words and phrases when used in this article mean:

1. Motor vehicle liability policy.
 - (a) Certification — A motor vehicle liability policy shall mean an owner's or operator's policy of liability insurance, certified in accordance with 7-307 or 7-308 as proof of financial responsibility for the future, and issued, except as otherwise provided in 7-307, by an insurer duly authorized to transact business in this state. An owner's or operator's policy shall be as defined by law.
 - (b) Excess or Additional Coverage — Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy. Excess or additional coverage shall not be subject to the provisions of this chapter. With

respect to a policy which grants the excess or additional coverage, the term "motor vehicle liability policy," shall apply only to that part of the coverage which is required by this section.

2. Proof of financial responsibility for the future — Wherever used in this article the terms "proof" or "proof of financial responsibility" shall be synonymous with the term "proof of financial responsibility for the future." The methods of giving proof specified in 7-307 shall be required as proof of financial responsibility for the future. Such proof shall provide liability coverage for accidents arising out of the ownership, maintenance or use of a motor vehicle subject to registration, in amounts specified in 7-210, occurring subsequent to the effective date of the proof.
3. Judgment: Judgment means any final judgment rendered by a court of competent jurisdiction.
4. State: The word "state" includes any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any province of Canada.

7-303 — Proof required upon certain convictions.

Whenever, under any law of this State, the driver's license of any person is suspended or revoked because of a conviction or forfeiture of bail under this section, the department shall suspend the registrations of all vehicles registered in the name of that person except that if the owner gives and maintains proof with respect to all owned vehicles, the department shall not suspend the registrations unless otherwise required by law.

No license shall be issued and no motor vehicle shall be registered in the name of a person unless he or she gives and maintains proof of financial responsibility when that person is convicted of or forfeits bail for:

1. Any offense requiring the suspension or revocation of a license;
2. Driving a motor vehicle without being licensed to do so; or
3. Driving an unregistered vehicle on the highways.
- *4. No license shall be issued and no motor vehicle shall be registered in the name of a person unless such persons tenders and maintains proof of financial responsibility when that person is at fault and uninsured when involved in a reportable accident as defined in 7-204 of this chapter.

7-304 — Suspension until proof furnished.

A suspension of revocation shall remain in effect and the department shall not issue any new or renewal license or register or reregister in the name of such person any vehicle until permitted under the motor vehicle laws of this State, and not then until the person gives and maintains proof of financial responsibility.

7-305 — Action in respect to nonresidents.

When the department suspends or revokes a nonresident's operating privilege because of a conviction or forfeiture of bail, the privilege shall remain suspended or revoked unless that person gives and maintains proof of financial responsibility.

If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment or a certificate of facts relative to the judgment to the motor vehicle administrator in the state where the defendant is a resident or is licensed.

7-306 — Proof to be furnished for each registered vehicle.

No vehicle shall be registered or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof has been furnished to the department.

7-307 — Methods of giving proof.

Proof may be given by filing:

1. A certificate of insurance;
2. A bond;
3. A certificate of deposit of money or securities; or
4. A certificate of self-insurance, as provided by statute.

Certificate of insurance

1. Proof may be furnished by filing with the department the written certificate of an insurer authorized to do business in this State that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof. The certificate shall specify the certificate effective date and by appropriate reference all vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle. The department may provide that any certificate filed under provisions of this chapter shall terminate at the end of 3 years from the date the proof was required or as provided in 7-312 if the insurer terminates before the expiration of 3 years. A nonresident may give proof by filing with the department a written certificate of an insurer, provided the certificate otherwise conforms with the provisions of this chapter. The department shall accept the same upon condition that the insurer complies with the following provisions with respect to the policies so certified:
 - (a) The insurer executes a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State;
 - (b) The insurer agrees in writing that such policies shall be deemed to conform with the laws of this State. If an insurer, not authorized to transact business in this State but qualified to furnish proof, defaults in any undertakings or agreements, the department shall not accept as proof any certificate of the insurer so long as the default continues.

Bond as proof

2. Proof may be evidenced by the bond of a surety company authorized to transact business in this State, or a bond with at least two individual sureties each owning real estate in this State and together having equities equal in value to at least twice the amount of the bond. The real estate shall be scheduled in the bond approved by a judge of a court of record and the bond shall be conditioned for payment of the amounts specified in this chapter. The bond shall be filed with the department and shall not be cancelled except after 10 days written notice to the department.

A bond shall constitute a lien in favor of the State upon the scheduled real estate of any surety upon the filing of notice to that effect by the department in the office of the proper court of the county or city where such real estate is located. The lien shall exist in favor of any holder of a final judgment against the person who has filed the bond, for damages because of bodily injury to or death of any person, or for damage because of injury to or destruction of property resulting from the ownership, maintenance, use or operation of a vehicle subject to registration under the laws of this State after the bond is filed.

(Here add provisions, in conformity with local practice, to regulate the recording of such liens.)

If a judgment, rendered against the principal on a bond, is not satisfied within 30 days after it has become final, the judgment creditor may, for his own use and benefit and at his expense, bring an action or actions in the name of the State against the company or persons executing the bond, including an action to foreclose any lien that may exist on the real estate of a person who has executed the bond.

Money or securities as proof

3. Proof may be evidenced by a certificate of the (State Treasurer) that the person named therein has deposited as required by statute with him or her \$_____ in cash, or securities which may be legally purchased by savings banks or trust funds of a market value of \$_____. (The State Treasurer) shall not accept any deposit and issue a certificate and the department shall not accept the certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

A deposit shall be held by the (State Treasurer) to satisfy, any execution on a judgment issued against the person making the deposit, for damages because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, resulting from the ownership, maintenance, use or operation of a vehicle subject to registration under the laws of this State after the deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless the attachment or execution arises out of a suit for damages.

Self-insurers

4. Any person in whose name more than 25 vehicles are registered in this State may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in this subsection.

The department may upon the application of a person, issue a certificate of self-insurance when it is satisfied that the person has and will continue to have the ability to satisfy a judgment.

On not less than 30 days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after the judgment has become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

7-308 — Owner may give proof for others.

The owner of a motor vehicle may give proof on behalf of his or her employee or a member of the immediate family or household of the owner.

7-309 — Substitution of proof.

The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the (State Treasurer) shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof.

7-310 — Other proof may be required.

Whenever any proof filed under the provisions of this article no longer fulfills the purposes for which it is required, the department shall require other proof in accordance with this article and shall suspend the license and registration pending the filing of other proof.

7-311 — Duration of proof — when proof may be cancelled or returned.

1. A certificate of insurance shall terminate; a bond shall be allowed to be cancelled; any money or securities deposited as proof shall be returned or the requirements for filing proof shall be waived in any of the following situations:
 - (a) After three years from the date the proof is required if during the preceding three year period the department has not received notice of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or registration of the person by or for whom the proof was furnished;
 - (b) In the event of the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; or
 - (c) If the person who has given proof surrenders his license and registration to the department. If the person reapplies for a license or registration within three years from the date proof was originally required, the application shall be refused unless the person establishes proof for the remainder of the three year period.
2. The department shall not consent to the cancellation of any bond or the return of any money or securities if any action for damages covered by the proof is pending or any judgment is unsatisfied, or if the person who has filed a bond or deposited money or securities has within one year preceding the request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit from the applicant as to the nonexistence of such action, or that the applicant has been released from all liability, or has been finally adjudicated not to be liable, shall be sufficient evidence in the absence of evidence to the contrary.

***7-312 — Notice of termination of a motor vehicle liability policy.**

An insurer may not terminate a motor vehicle liability policy unless the insurer files with the department a notice of termination within 10 days after the effective date of the termination. A motor vehicle liability policy subsequently procured shall on the effective date of its certification terminate the insurance previously certified.

Article IV — General Provisions

7-401 — Confiscation of license and registration tags.

1. If, during, a lawful arrest, a routine traffic stop, a vehicle equipment inspection, or in conjunction with the issuance of a traffic law citation, a law enforcement officer discovers that a owner or operator of a motor vehicle has failed to report an "accident" as defined in 7-202, failed to deposit security as required in 7-204, failed to file and maintain proof as required in 7-303, or otherwise violated the provisions of this article, such officer shall, on behalf of the department, serve immediate notice of suspension personally on such owner or operator.
2. When the law enforcement officer serves the notice of suspension, the officer shall take possession of any driver's license issued by this state held by the owner or operator and all vehicle registration tags issued by this state and affixed to such person's motor vehicle. When the officer takes possession of a valid driver's license issued by this state or valid vehicle registration tags issued by this state, the officer, acting on behalf of the department, shall issue a temporary license/vehicle title which is effective for 24 hours after its date of issuance.

7-402 — Reporting and nonpayment of judgments.

When a person fails within 30 days to satisfy any judgment arising out of a reportable accident as defined in 7-202, it shall be the duty of the court in which the judgment is rendered to send to the department immediately a certified copy of the judgment and a certificate of facts relative to the judgment on a form provided by the department. The certificate shall be prima facie evidence of the facts stated therein.

The department upon receipt of the certified copy of the judgment or a certificate of facts relative to a judgment shall suspend the license, registration, and any nonresident's operating privilege of any person against whom the judgment is rendered. The department, when applicable, shall also require such person to comply with the requirements to 7-205.

The provisions of the above paragraph shall not apply with respect to any judgment arising out of an accident caused by the ownership or operation of a vehicle owned by or leased to the United States, this State or any political subdivision of this State or a municipality thereof.

7-403 — Exception when consent granted by judgment creditor or when insurer liable.

1. If the judgment creditor consents in writing, in a form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, it may be allowed by the department until the consent is revoked in writing, notwithstanding default in the payment of the judgment, or of any installments, provided the judgment debtor furnishes proof.
2. No license, registration or nonresident's operating privilege of any person shall be suspended if the department finds that an insurer was obligated to pay the judgment upon which suspension is based, to the extent and for the amounts required in this chapter, but has not paid the judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment shall not be binding except for the purpose of administering this section. If in any judicial proceedings it is determined that an insurer is not obligated to pay a judgment, the department, regardless of any contrary finding previously made, shall suspend the license and registration and any nonresident's operating privilege of any person against whom the judgment was rendered.

7-404 — Suspension to continue until judgments paid and proof given.

A license, registration and nonresident's operating privilege shall remain suspended and shall not be renewed, nor shall any license or registration be issued in the name of the person, including any person not previously licensed, until every judgment is satisfied and until the person gives proof subject to the exemptions stated in this chapter.

7-405 — Payments sufficient to satisfy requirements.

1. Judgments may, for the purpose of this chapter only, be deemed satisfied when the amounts specified in 7-210 have been credited even if the judgment or judgments are rendered in excess of those amounts.
2. Payments made in settlement of any claims because of bodily injury, death or property damage arising from an accident shall be credited to reduce the amounts specified in 7-204.

7-406 — Installment payment of judgments — default.

1. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in

installments. The court may without prejudice to any other legal remedies which the judgment creditor may have, order and fix the amounts and times of payment of the installments.

2. The department shall not suspend a license, registration or nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege which has been suspended following nonpayment of a judgment, when the judgment debtor gives proof and obtains an order permitting the payment of the judgment in installments.
3. If the judgment debtor fails to pay an installment, upon notice of default the department shall suspend the license, registration or nonresident's operating privilege of the judgment debtor until the judgment is fully satisfied.

7-407 — Discharge of bankruptcy.

A discharge in bankruptcy or any by other insolvency law, following the rendering of any such judgment, shall relieve the judgment debtor from any of the requirements of this chapter, except the deposit of proof of financial responsibility for the future for any judgment debtor who wishes to exercise the privilege of operating a motor vehicle in this state.

Article V — Violation of Provisions of Chapter 7

7-501 — Transfer of registration to defeat purpose of act prohibited.

1. If an owner's registration has been suspended, the registration shall not be transferred nor the vehicle to which such registration was issued be registered in any other name until the department is satisfied that the transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.
2. Nothing in this section shall in any way affect the rights of any lienholder, conditional vendor, chattel mortgagee or lessor of a vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.
3. The department shall suspend the registration of any vehicle transferred in violation of the provisions of this section.

7-502 — Surrender of license and registration.

1. Any person whose license or registration has been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, has been terminated, shall immediately upon lawful demand return license and registration to the department.
2. Any person willfully failing to return license or registration as required in paragraph 1. of this section shall be guilty of a Class _____ misdemeanor.

7-503 — Forged proof.

Any person who forges, or, without authority, signs any evidence of proof of financial responsibility for the future, or who files or offers for filing any evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a Class _____ misdemeanor.

Article VI — Miscellaneous Provisions Relating to Financial Responsibility

7-601 — Exception in relation to vehicles insured under other laws.

Except for 7-308, the provisions of this chapter shall not apply with respect to any vehicle which is subject to the requirements of (insert reference to provisions of the existing law requiring insurance or other security on certain types of vehicles).

7-602 — Past application of chapter.

This chapter shall not apply with respect to any accident or judgment arising from it or violation of the motor vehicle laws of this State, occurring prior to the effective date of this chapter.

7-603 — Chapter not to prevent other process.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

SR-22	AAMVA UNIFORM FINANCIAL RESPONSIBILITY FORM		
Insured	Name _____		
	Last	First	Middle
	Address _____		
Case Number	Driver's License Number	Birth Date	Social Security Number
Current Policy Number _____			
<p>This certification is effective from _____ and continues until the filing requirement is terminated by the state or until cancelled in accordance with the financial responsibility laws and regulations of the state. The insurance hereby certified is provided by an:</p> <p><input type="checkbox"/> OWNER'S POLICY: Applicable to all owned vehicles insured by the signatory company named on this certificate.</p> <p><input type="checkbox"/> OPERATOR'S POLICY: Applicable to any non-owned vehicle.</p>			
<p>_____ (State) FINANCIAL RESPONSIBILITY INSURANCE CERTIFICATE</p> <p>The company signatory hereto certifies that it has issued to the above named insured a motor vehicle liability policy as required by the financial responsibility laws of this State, which policy is in effect on the effective date of this certificate.</p> <p>Name of Insurance Company _____</p> <p>Date _____ By _____</p> <p style="text-align: right; margin-right: 50px;">Signature of Authorized Representative</p>			