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For Suspension of Driver's License to be Ordered under the Motor Vehicle Security Responsibility Law, It Must be Determined Whether There Is Reasonable Possiblity That Judgment May be Recovered against the Driver in Question.

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AUTOMOBILES—FINANCIAL RESPONSIBILITY STATUTE—FOR SUSPENSION OF DRIVER'S LICENSE TO BE ORDERED UNDER THE MOTOR VEHICLE SECURITY RESPONSIBILITY LAW, IT MUST BE DETERMINED WHETHER THERE IS REASONABLE POSSIBILITY THAT JUDGMENT MAY BE RECOVERED AGAINST THE DRIVER IN QUESTION. *Williams v. Sills*, 260 A.2d 505 (N.J. 1970).

Plaintiff sought to have the Motor Vehicle Security Responsibility Law, N.J.S.A. 39:6-25, declared unconstitutional and to have its enforcement restrained. While stopped in a traffic line, the plaintiff, owner and operator of an automobile, was involved in an accident. Her car was struck in the rear and it in turn struck the car ahead. The plaintiff's automobile was not covered by liability insurance, and the Division of Motor Vehicles notified her that pursuant to N.J.S.A. 39:6-25 her license would be suspended unless she did one of the following: (1) deposited $400.00 security to cover any judgment or judgments for damages resulting from the accident (that amount evaluated as damages to one of the automobiles and its occupants); or (2) filed a release from liability; or (3) filed a settlement agreement. The plaintiff neither deposited security nor filed a release or a settlement agreement. It was not until after the Division of Motor Vehicles notified the plaintiff that her license would be suspended that they advised her that she would be afforded an administrative hearing if she desired. The lower court found the statute to be constitutional and plaintiff appealed. Held—*Reversed and remanded.* For suspension of driver's license to be ordered under the Motor Vehicle Security Responsibility Law, it must be determined whether there is reasonable possibility that judgment may be recovered against the driver in question.

At the present time, Massachusetts,[1] New York,[2] and North Carolina[3] are the only states that require every motorist to carry liability insurance as a condition precedent to obtaining a driver's license. Practically all of the remaining states have chosen to enact financial responsibility laws in place of the specific requirement that the motorist carry liability insurance. It is virtually impossible and would serve little purpose to set out the differences in the financial responsibility acts of the individual states. Suffice to say that the majority of statutes enacted among the states were patterned after early financial responsibility legislation, the Vehicle Code of 1932, and its later revision in 1956, the Uniform Vehicle Code.[4]

1 ANN. LAWS OF MASSACHUSETTS, ch. 90, § 34A-L (1967).
2 NEW YORK VEHICLE AND TRAFFIC LAWS § 312 (McKinney 1960).
3 NORTH CAROLINA GEN. STATS. §§ 20-309 to 20-319 (Supp. 1957).
4 NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS & ORDINANCES, UNIFORM VEHICLE CODE §§ 7-101 to 7-505 (1956).

Financial responsibility legislation had its beginning in the state of Connecticut[5] at about the time the automobile began playing an important role in transportation in America. Financial responsibility statutes have as their primary purposes the protection of the public who may suffer as a result of a person's inability to meet his future obligations;[6] the furnishing of a means providing security for damages pending determination of negligence and liability;[7] and the protection of citizens from negligent operation of vehicles by motorists without insurance or adequate insurance.[8] These laws have generally been upheld as constitutional, satisfying due process requirements[9] and not being discriminatory as an unreasonable classification of uninsured motorists.[10]

The authority of the states to suspend an uninsured motorist's driver's license has been upheld as a valid exercise of the police power of the state for the general welfare of the public.[11] Must the requirements of procedural due process be met before the state has the authority to suspend an owner's driver's license? Specifically, are notice and hearing required? The question of whether owning a driver's license is a privilege or a right has been answered in several different ways. In an early New Jersey case, *Garford Trucking Co. v. Hoffman,* the court held that a motor vehicle license is a mere privilege and may be revoked without first giving the person notice or the right to a hearing.[12] Later, the New Jersey Supreme Court held that possession of a driver's license, although a privilege, is entitled to the same protection afforded to property rights.[13] In Arizona, the driver's license is considered a property right,[14] and in Texas, although a privilege, the principle of due process is applicable to driver's licenses by virtue of the Texas Constitution:

> No citizen of this State shall be deprived of life, liberty, property, *privileges* or in any manner disenfranchised, except by the due course of the law of the land.[15] (Emphasis added.)

To fulfill these procedural due process requirements, the different

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5 CONNECTICUT PUBLIC ACTS, ch. 183 (1925).
6 Gray v. Citizens Casualty Co. of New York, 286 F.2d 625 (4th Cir. 1960).
7 Oliveira v. Department of Public Safety, 309 S.W.2d 557 (Tex. Civ. App.—Dallas 1958, no writ).
8 Monk v. Ramsey, 443 S.W.2d 653 (Tenn. 1969).
9 Kesler v. Department of Public Safety of Utah, 369 U.S. 153, 82 S. Ct. 807, 7 L. Ed.2d 641 (1962); Reitz v. Mealey, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21 (1941).
10 Farmer v. Killingsworth, 424 P.2d 172 (Ariz. 1967).
11 Schecter v. Killingsworth, 380 P.2d 136 (Ariz. 1963); Gillaspie v. Department of Public Safety, 152 Tex. 459, 259 S.W.2d 177 (1953), *cert. denied,* 347 U.S. 933, 74 S. Ct. 625, 98 L. Ed. 1084 (1954); State v. Stehlek, 56 N.W.2d 514 (Wis. 1953).
12 Garford Trucking Co. v. Hoffman, 177 A. 882 (N.J. 1935).
13 Bechler v. Parsekian, 176 A.2d 470 (N.J. 1961).
14 Schecter v. Killingsworth, 380 P.2d 136 (Ariz. 1963).
15 TEX. CONST. art. I, § 19.

financial responsibility statutes of the several states provide for notice[16] and hearing.[17] Specifically, N.J.S.A. 39:6-25 provides that when an uninsured motorist is involved in an automobile accident, he must do one of three things. He must either deposit security with the director of the Division of Motor Vehicles; file a release from liability; or file a settlement agreement. Otherwise, his license will be suspended within 90 days after receipt of the accident report by the director of the Division of Motor Vehicles.[18]

In the principal case, the New Jersey Supreme Court questioned the procedure allowing the superintendent of the Motor Vehicle Division to determine the amount of security required to be deposited without taking into consideration the innocence or guilt of the uninsured motorist involved in the accident. Although the majority of the states have upheld such actions by the directors of the various motor vehicle divisions,[19] the court instead rested its holding on later decisions of the courts of Arizona[20] and California.[21]

The court based its decision primarily on *Orr v. Superior Court for the City and County of San Francisco.*[22] In *Orr*, the California court held that the department of motor vehicles must, to a certain extent, consider culpability, in that a driver's license may not be suspended unless there is reasonable possibility that judgment may be recovered.[23] The rationale of the *Orr* decision was drawn from an earlier California decision holding that the security deposit was not mandatory for every uninsured motorist, but was mandatory for those from whom a judgment *might* be recovered.[24] In Arizona, the security requirement is based on the fact that a judgment *may* be recovered against the uninsured motorist.[25] The court considered the legislative intent rather than strictly construing the words of the statute to determine if culpability was a prerequisite.

In the principal case the legislature must have considered culpability as a prerequisite, especially when one contemplates the wording of the entire act. Those uninsured motorists whose accident occurred while

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16 N.J. REV. STAT. 39:6-25b (1961); TEX. REV. CIV. STAT. ANN. art. 6701h § 5b (1969); COLO. REV. STAT. § 13-7-7(1) (1964).

17 N.J. REV. STAT. 39:6-50a (1961); TEX. REV. CIV. STAT. ANN. art. 6701h § 2a (1969); COLO. REV. STAT. § 13-7-7(2) (1964).

18 N.J. REV. STAT. 39:6-25b (1961).

19 Gillaspie v. Department of Public Safety, 152 Tex. 459, 259 S.W.2d 177 (1953), *cert. denied*, 347 U.S. 933, 74 S. Ct. 625, 98 L. Ed. 1084 (1954); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); Rosenblum v. Griffin, 197 A. 701 (R.I. 1938).

20 Schecter v. Killingsworth, 380 P.2d 136 (Ariz. 1963).

21 Orr v. Superior Court for the City and County of San Francisco, 454 P.2d 712 (Cal. 1969).

22 *Id.*

23 *Id.*

24 Escobedo v. State Department of Motor Vehicles, 222 P.2d 1 (Cal. 1950).

25 Schecter v. Killingsworth, 380 P.2d 136 (Ariz. 1963).

legally parked,[26] or while the vehicle was driven without their consent,[27] are excused from the requirements of the Act.

By comparison, the Texas and New Jersey financial responsibility acts are almost identical. The only variation in the two acts relating to security deposits and suspension of licenses is the period of time allowed in which compliance with the conditions of the statute must be had before the uninsured's driver's license is suspended. In *Gillaspie v. Department of Public Safety*, the constitutionality of the Texas act was upheld, and the suspension of one's license was not based on the fault of the uninsured motorist.[28] The motorist is required to deposit security with the Department of Public Safety regardless of whether he is at fault.[29]

Although the weight of authority does not consider culpability, recent decisions in Colorado,[30] Arizona,[31] California,[32] and Pennsylvania[33] have required that a security deposit must be based on more than the mere fact a motorist is not carrying liability insurance.

Should suspension of an uninsured motorist's driver's license be based on culpability? In requiring a release of liability, the departments of public safety are presupposing a legal cause of action against the uninsured motorist. The possibility exists that the innocent uninsured motorist may have his license suspended after an accident, while the careless insured motorist is left completely free to continue driving on the public streets and highways. Such a policy in no way promotes safety and responsibility.

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26 N.J. REV. STAT. 39:6-26b (1961).
27 N.J. REV. STAT. 39:6-26c (1961).
28 Gillaspie v. Department of Public Safety, 152 Tex. 459, 259 S.W.2d 177 (1953), *cert. denied*, 347 U.S. 933, 74 S. Ct. 625, 98 L. Ed. 1084 (1954).
29 Janssen v. Department of Public Safety, 322 S.W.2d 313 (Tex. Civ. App.—San Antonio 1959, no writ).
30 People v. Nothaus, 363 P.2d 180 (Colo. 1961).
31 Schecter v. Killingsworth, 380 P.2d 136 (Ariz. 1963).
32 Orr v. Superior Court for the City and County of San Francisco, 454 P.2d 712 (Cal. 1969).
33 Miller v. Depuy, 307 F. Supp. 166 (E.D. Penn. 1969).