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Automobiles and Highway Traffic

7A Am Jur 2d Automobiles and Highway Traffic Summary

Automobiles and Highway Traffic Summary

**Scope:**

This article covers the law relating to automobiles and other vehicles used on highways and streets, and vehicular and pedestrian traffic on highways and streets. It includes discussion of the ownership and registration of motor vehicles, the licensing of drivers, dealers, manufacturers, and transporters of motor vehicles, government regulation and control of motor vehicles and traffic, traffic and other offenses concerning motor vehicles and or their use, indemnity funds for reimbursement of losses caused by uninsured or unknown motorists, civil liability for injury and damage caused by the operation of motor vehicles, and actions based on such liability.

**Federal Aspects:**

This article discusses the Federal Motor Vehicle Safety Act, the federal statutes establishing a national driver registry, and those establishing a national automobile title information system. There is also a discussion of federal criminal offenses as to stolen motor vehicles, federal programs for developing consumer information on passenger motor vehicles, and various other federal statutes relating to motor vehicles and their use. For U.S.C.A. citations, see "Statutory References" below.

**Treated Elsewhere:**

Act of God defense, driver involved in motor vehicle accident after onset of illness, see Am. Jur. 2d, Act of God § 7  
Advertising: Federal Highway Beautification Act provisions as to outdoor advertising, see Am. Jur. 2d, Advertising § 25; validity of regulation of vehicles used for advertising purposes, see Am. Jur. 2d, Advertising §§ 19, 21  
Animals: duty to fence animal in lands bordering on highway, see Am. Jur. 2d, Animals § 62; liability for injuries caused by domestic animals on streets or highways, see Am. Jur. 2d, Animals §§ 126 to 130; liability for injuries to animals on highways or streets, see Am. Jur. 2d, Animals § 144  
Appropriations for buying, selling, or using passenger motor vehicles, see Am. Jur. 2d, Public Funds § 54  
Automobile dealers: regulation by municipal corporations, counties, or other political subdivisions, generally, see Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 428; automobile dealers' franchise acts, see Am. Jur. 2d, Private Franchise Contracts §§ 356 to 444  
Automotive efficiency, see Am. Jur. 2d, Energy and Power Sources §§ 154 to 168  
Automobile insurance, see Am. Jur. 2d, Automobile Insurance §§ 1 et seq.  
Bequest, automobile as within language of, or passing under, see Am. Jur. 2d, Wills §§ 1087, 1104  
Burglary of automobiles, see Am. Jur. 2d, Burglary § 13  
Blood or urine specimens, statutes requiring withdrawal of, after accidental death involving motor vehicle, see Am. Jur. 2d, Dead Bodies § 44  
Children, minors, and infants: motor vehicle as necessary for infant, see Am. Jur. 2d, Infants § 76; action of child against parent with regard to motor vehicle accidents, see Am. Jur. 2d, Parent and Child §§ 112, 119; statutory liability of parents for damage to vehicle caused by unemancipated minor driver, see Am. Jur. 2d, Parent and Child § 103  
Conversion, generally, see Am. Jur. 2d, Conversion §§ 1 et seq.

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Cross-examination of witnesses to automobile accidents, see Am. Jur. 2d, Witnesses § 793

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Dead man's statutes' applicability to testimony concerning motor vehicle accidents, see Am. Jur. 2d, Witnesses §§ 578, 581 to 587

Driver's license, application for, as required to be simultaneous with voter registration application under National Voter Registration Act, see Am. Jur. 2d, Elections § 191

Drivers' licenses issued by state, power of municipality regarding suspension or revocation of, see Am. Jur. 2d, Licenses and Permits § 89

Emissions standards applicable to motor vehicles, see Am. Jur. 2d, Pollution Control §§ 564 to 674

Expert and opinion evidence, identification and speed of vehicles, see Am. Jur. 2d, Expert and Opinion Evidence § 267

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Fraud, failure to disclose model year of car being sold as, see Am. Jur. 2d, Fraud and Deceit § 229

Garages and parking lots, generally, see Am. Jur. 2d, Garages, Service Stations, and Parking Facilities §§ 1 et seq.

Garage, service station, or parking lot owner's or operator's liability for injuries to persons or damage to vehicles, see Am. Jur. 2d, Garages, Service Stations, and Parking Facilities §§ 20 to 126

Guy wire, liability of electric company for collision of vehicle with, see Am. Jur. 2d, Energy and Power Sources § 346

Highways: use of, generally, see Am. Jur. 2d, Highways, Streets, and Bridges §§ 217 to 307; liability for damages or injuries resulting from work done in connection with improvement or maintenance of, see Am. Jur. 2d, Highways, Streets, and Bridges §§ 119 to 136; safety of, and injuries resulting from defects in, obstructions to, and nuisances as to, see Am. Jur. 2d, Highways, Streets, and Bridges §§ 379 to 682

Innkeeper's liability for loss or damage to motor vehicles, see Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 139, 140

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Judicial notice of driver reaction times, see Am. Jur. 2d, Evidence § 84

Judicial notice of facts relating to automotive industry, see Am. Jur. 2d, Evidence § 50

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Motor vehicle master keys as nonmailable matter, see Am. Jur. 2d, Post Office §§ 45, 111

Motor vehicle records, disclosure under Driver's Privacy Protection Act, see Am. Jur. 2d, Privacy § 122

Municipal, county, school, or state tort liability: as to operation or regulation of motor vehicles, generally, see Am. Jur. 2d, Municipal, County, School, and State Tort Liability §§ 187 to 209; for injury or damage to person whose vehicle police stopped, see Am. Jur. 2d, Municipal, County, School, and State Tort Liability § 446; for injury or damage to innocent pedestrian, occupant of vehicle, or vehicle as result of pursuit of criminal suspect, see Am. Jur. 2d, Municipal, County, School, and State Tort Liability §§ 441 to 443

National Motor Vehicle Theft Act, applicability as to aircraft, see Am. Jur. 2d, Aviation § 212

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Process, nonresident motorist statutes as providing for constructive or substituted service of nonresident motorists involved in accidents, see Am. Jur. 2d, Process § 167

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Punitive damages in motor vehicle accident cases, see Am. Jur. 2d, Damages §§ 572, 573

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Specific performance of contract to buy automobile, see Am. Jur. 2d, Specific Performance § 171

Survival of automobile accident or collision claims, see Am. Jur. 2d, Abatement, Survival, and Revival § 72

Teacher's driving under influence of alcohol and driving without valid driver's license as insufficient for dismissal, see Am. Jur. 2d, Schools § 225

Unemployment compensation: drivers of certain vehicles as "employees" eligible for benefits, see Am. Jur. 2d, Unemployment Compensation §§ 53, 54; revocation or suspension of driver's license of employee required to have valid license as affecting eligibility for benefits, see Am. Jur. 2d, Unemployment Compensation § 82

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8 U.S.C.A. §§ 1101 to 1107  
15 U.S.C.A. §§ 1231 to 1233 (disclosure of automobile information)  
18 U.S.C.A. §§ 13, 33 to 35, 511, 511A, 553, 2119, 2311 to 2322, 3118  
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Automobiles and Highway Traffic  
I. In General  
A. Definitions and Distinctions

## 7A Am Jur 2d Automobiles and Highway Traffic § 1

## § 1 Automobile

The word "automobile" expresses its own meaning,<sup>n1</sup> and generally it is to be taken and understood in its ordinary and popular sense.<sup>n2</sup> Basically, an automobile is a self-propelled vehicle which does not run upon fixed rails or tracks.<sup>n3</sup> Some definitions add the further requirement that the vehicle be designed for carrying persons or property on a highway.<sup>n4</sup> A further defining feature has been the number of wheels, it being said that to the average person and to the public mind it is common knowledge that the word "automobile" indicates a motor-driven vehicle mounted on four wheels.<sup>n5</sup>

**FOOTNOTES:**

n1 Mittelsteadt v. Bovee, 9 Wis. 2d 44, 100 N.W.2d 376, 74 A.L.R.2d 1259 (1960).

**Related References:**

As to the meaning of "automobile" or "motor vehicle" for purposes of an automobile liability insurer's coverage, see Am. Jur. 2d, Automobile Insurance §§ 193 to 221.

As to the meaning of "automobile" for no-fault insurance purposes, see Am. Jur. 2d, Automobile Insurance § 353.

n2 Jernigan v. Hanover Fire Ins. Co. of N. Y., 235 N.C. 334, 69 S.E.2d 847 (1952).

n3 In re Fall, 192 B.R. 16 (Bankr. D. N.H. 1995) (applying New Hampshire law); National Cas. Co. v. Thompson, 39 Ala. App. 199, 96 So. 2d 708 (1957); Merrill v. Packard, 395 So. 2d 285 (Fla. Dist. Ct. App. 3d Dist. 1981).

n4 In re Fall, 192 B.R. 16 (Bankr. D. N.H. 1995); Merrill v. Packard, 395 So. 2d 285 (Fla. Dist. Ct. App. 3d Dist. 1981); Jernigan v. Hanover Fire Ins. Co. of N. Y., 235 N.C. 334, 69 S.E.2d 847 (1952).

n5 Mittelsteadt v. Bovee, 9 Wis. 2d 44, 100 N.W.2d 376, 74 A.L.R.2d 1259 (1960).

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Proof of Negligence Causing Snowmobile Accident and Resulting Injuries, 62 Am. Jur. Proof of Facts 3d 447



7A Am Jur 2d Automobiles and Highway Traffic § 1

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Automobiles and Highway Traffic  
I. In General  
A. Definitions and Distinctions

## 7A Am Jur 2d Automobiles and Highway Traffic § 2

## § 2 Motor vehicles

A motor vehicle has been generally defined as every vehicle operated or driven upon a public highway which is propelled by power other than muscular power.<sup>n1</sup> It is an automobile, truck, bus, or similar motor-driven conveyance.<sup>n2</sup> However, "motor vehicle" is a broad term that has no universally accepted meaning.<sup>n3</sup> It has been considered to be much broader than the word "automobile," and to include various vehicles which cannot be classified as automobiles.<sup>n4</sup>

A motor vehicle must be self-propelled<sup>n5</sup> and must not operate on tracks or rails.<sup>n6</sup> Some jurisdictions exclude vehicles powered by human or animal power.<sup>n7</sup>

The term motor vehicle necessarily excludes trains<sup>n8</sup> or subways,<sup>n9</sup> but may either include<sup>n10</sup> or exclude trackless trolleys.<sup>n11</sup> Some jurisdictions limit the meaning of the phrase "motor vehicles" to transportation on land, not water<sup>n12</sup> or air,<sup>n13</sup> although it has been held that a motorboat is a motor vehicle within the meaning of federal bankruptcy law.<sup>n14</sup>

Some jurisdictions have a requirement that a vehicle, in order to be deemed a "motor vehicle," must have been designed for use upon a highway,<sup>n15</sup> or be commonly or generally used to transport persons and property over the public highways.<sup>n16</sup>

The term motor vehicle has been held to include --

- a utility van.<sup>n17</sup>
- an excavator operated in a solid waste transfer facility.<sup>n18</sup>
- an all terrain vehicle.<sup>n19</sup>
- an off-road recreation vehicle.<sup>n20</sup>
- a riding lawn mower.<sup>n21</sup>

A golf cart may be considered a motor vehicle<sup>n22</sup> if it is operated on the highways,<sup>n23</sup> but not when it is driven on a golf course.<sup>n24</sup>

A motorized wheelchair or scooter has been held not to be a motor vehicle for purposes of a statute requiring the operators of certain motor vehicles, such as motorcycles and motortricycles, to wear protective helmets.<sup>n25</sup>

Observation: A legislature can define motor vehicles one way for licensing requirements, and another way for infractions or financial responsibility.<sup>n26</sup>

**FOOTNOTES:**

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n1 *Mangra v. China Airlines, Ltd.*, 7 Misc. 3d 499, 790 N.Y.S.2d 370 (N.Y. City Civ. Ct. 2005).

n2 *Stanton v. City of Battle Creek*, 466 Mich. 611, 647 N.W.2d 508 (2002).

n3 *Williams v. Radivoj*, 111 B.R. 361 (S.D. Fla. 1989).

n4 *State v. Carpenter*, 113 Idaho 882, 749 P.2d 501 (Ct. App. 1988); *State v. Ridinger*, 364 Mo. 684, 266 S.W.2d 626, 42 A.L.R.2d 617 (1954); *Jernigan v. Hanover Fire Ins. Co. of N. Y.*, 235 N.C. 334, 69 S.E.2d 847 (1952); *State v. Sohn*, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).

As to what constitutes a "motor vehicle" within statutes making it an offense to drive while intoxicated or under the influence of alcohol, see § 338.

### Related References:

As to the meaning of "motor vehicle" for no-fault insurance purposes, see Am. Jur. 2d, Automobile Insurance § 353.

n5 *Bills v. U.S. Fidelity & Guar. Co.*, 280 F.3d 1231 (9th Cir. 2002) (applying Arizona law); *Nationwide Mut. Ins. Co. v. Worthey*, 314 Ark. 185, 861 S.W.2d 307 (1993); *Bertrand v. Board of County Com'rs of Park County*, 872 P.2d 223 (Colo. 1994); *State v. Weyer*, 831 N.E.2d 175 (Ind. Ct. App. 2005); *State v. Thomas*, 28 Kan. App. 2d 655, 20 P.3d 82 (2001); *Mike Eskew Motor Co., Inc. v. Kelley*, 583 So. 2d 95 (La. Ct. App. 3d Cir. 1991); *Mull v. Equitable Life Assur. Soc. of U.S.*, 444 Mich. 508, 510 N.W.2d 184 (1994); *Great American Ins. Co. v. Golla*, 493 N.W.2d 602 (Minn. Ct. App. 1992); *St. Louis Flying Club v. St. Louis County*, 866 S.W.2d 929 (Mo. Ct. App. E.D. 1993); *State v. Richardson*, 113 N.M. 740, 832 P.2d 801 (Ct. App. 1992); *State v. Heins*, 72 Ohio St. 3d 504, 1995-Ohio-208, 651 N.E.2d 933 (1995); *State v. Vasser*, 870 S.W.2d 543 (Tenn. Crim. App. 1993); *State v. Sohn*, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).

n6 *City and County of Denver v. Gonzales*, 17 P.3d 137 (Colo. 2001); *State v. Kaiser*, 2006 WL 2726836 (N.J. Super. Ct. App. Div. 2006); *State v. Sohn*, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).

n7 *State v. Delap*, 237 Mont. 346, 772 P.2d 1268 (1989); *County of Westchester v. Winstead*, 231 A.D.2d 630, 647 N.Y.S.2d 536 (2d Dep't 1996); *Putka v. Parma*, 90 Ohio App. 3d 647, 630 N.E.2d 380 (8th Dist. Cuyahoga County 1993); *State v. McGary*, 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).

n8 *Willson v. Cagle*, 694 F. Supp. 713 (N.D. Cal. 1988).

n9 *People v. Cephas*, 110 Misc. 2d 1075, 443 N.Y.S.2d 558 (Sup 1981).

n10 *Nationwide Mut. Ins. Co. v. Worthey*, 314 Ark. 185, 861 S.W.2d 307 (1993); *Mull v. Equitable Life Assur. Soc. of U.S.*, 444 Mich. 508, 510 N.W.2d 184 (1994); *State v. Richardson*, 113 N.M. 740, 832 P.2d 801 (Ct. App. 1992); *Lemon v. Federal Ins. Co.*, 111 Wis. 2d 563, 331 N.W.2d 379 (1983).

n11 *State v. Heins*, 72 Ohio St. 3d 504, 1995-Ohio-208, 651 N.E.2d 933 (1995); *Gallo v. J.C. Penney Cas. Ins. Co.*, 328 Pa. Super. 267, 476 A.2d 1322 (1984); *State v. Vasser*, 870 S.W.2d 543 (Tenn. Crim. App. 1993).

n12 *In re Fall*, 192 B.R. 16 (Bankr. D. N.H. 1995) (applying New Hampshire law); *State Farm Fire & Cas. Co. v. Berra*, 891 S.W.2d 150 (Mo. Ct. App. E.D. 1995); *Ozolins v. North Lake Community College, a Div. of Dallas County Community College Dist.*, 805 S.W.2d 614, 66 Ed. Law Rep. 852 (Tex. App. Fort Worth 1991); *State v. Martin*, 55 Wash. App. 275, 776 P.2d 1383 (Div. 1 1989).

n13 *General Aviation, Inc. v. Cessna Aircraft Co.*, 915 F.2d 1038, 14 U.C.C. Rep. Serv. 2d 73 (6th Cir. 1990); *State v. Heins*, 72 Ohio St. 3d 504, 1995-Ohio-208, 651 N.E.2d 933 (1995).

n14 *Willison v. Race*, 192 B.R. 949 (W.D. Mo. 1995).

n15 *Gonzales v. City and County of Denver*, 998 P.2d 51 (Colo. Ct. App. 1999), *aff'd*, 17 P.3d 137 (Colo. 2001);

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Mike Eskew Motor Co., Inc. v. Kelley, 583 So. 2d 95 (La. Ct. App. 3d Cir. 1991); Allstate Ins. Co. v. Department of Management & Budget, 259 Mich. App. 705, 675 N.W.2d 857 (2003); Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992); St. Louis Flying Club v. St. Louis County, 866 S.W.2d 929 (Mo. Ct. App. E.D. 1993).

n16 Bertrand v. Board of County Com'rs of Park County, 872 P.2d 223 (Colo. 1994); Mike Eskew Motor Co., Inc. v. Kelley, 583 So. 2d 95 (La. Ct. App. 3d Cir. 1991); MacLean v. Hingham Mut. Fire Ins. Co., 51 Mass. App. Ct. 870, 750 N.E.2d 494 (2001); Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992); St. Louis Flying Club v. St. Louis County, 866 S.W.2d 929 (Mo. Ct. App. E.D. 1993).

n17 State v. Vasser, 870 S.W.2d 543 (Tenn. Crim. App. 1993).

n18 Martinez v. Hitachi Const. Machinery Co., Ltd., 15 Misc. 3d 244, 829 N.Y.S.2d 814 (Sup 2006).

n19 State v. Weyer, 831 N.E.2d 175 (Ind. Ct. App. 2005).

n20 Van Guilder v. Collier, 248 Mich. App. 633, 650 N.W.2d 340 (2001).

n21 Stonger ex rel. Stonger v. Riggs, 85 S.W.3d 703 (Mo. Ct. App. W.D. 2002).

n22 Coker v. State, 261 Ga. App. 646, 583 S.E.2d 498 (2003); Case of Carey, 66 Mass. App. Ct. 749, 850 N.E.2d 610 (2006), review denied, 447 Mass. 1108, 853 N.E.2d 1059 (2006).

A golf cart was a motor vehicle; the cart was self-propelled, it was not operated exclusively on tracks, was not a motorized bicycle, was a mechanical device on wheels, and was used on a highway. Covert v. Fisher, 151 S.W.3d 70 (Mo. Ct. App. E.D. 2004).

n23 State v. Russell, 508 N.W.2d 697 (Iowa 1993).

n24 Kenton County Public Parks Corp. v. Modlin, 901 S.W.2d 876 (Ky. Ct. App. 1995).

n25 Burrell ex rel. Schatz v. O'Reilly Automotive, Inc., 175 S.W.3d 642 (Mo. Ct. App. S.D. 2005).

n26 State v. Meister, 849 So. 2d 1127 (Fla. Dist. Ct. App. 4th Dist. 2003).

## SUPPLEMENT:

### Cases

Whether a particular vehicle falls within a definition of a motor vehicle is normally a question of law. R.C. §§ 4503.01, 4503.11(A, B, D). State v. Eikleberry, 2009-Ohio-3648, 920 N.E.2d 394 (Ohio Ct. App. 9th Dist. Wayne County 2009).

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What is "motor vehicle" within automobile guest statute, 98 A.L.R.2d 543

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Automobiles and Highway Traffic  
I. In General  
A. Definitions and Distinctions

## 7A Am Jur 2d Automobiles and Highway Traffic § 3

## § 3 Construction and farm equipment

In some jurisdictions a front-end loader,<sup>n1</sup> a bulldozer,<sup>n2</sup> a cement pumper,<sup>n3</sup> and a machine used for plowing sidewalks<sup>n4</sup> have been determined to be motor vehicles. In other jurisdictions, a self-propelled crane,<sup>n5</sup> a wood chipper,<sup>n6</sup> and a backhoe<sup>n7</sup> have been found not to be motor vehicles.

Some courts will look at how the equipment is being used, finding that if the equipment is being operated on the public highways to travel between jobs, it should be considered a motor vehicle.<sup>n8</sup>

While a forklift has been found not to be a motor vehicle,<sup>n9</sup> under some statutes a forklift is included within the definition of motor vehicle.<sup>n10</sup>

A road grader operated on a highway is a motor vehicle for purposes of some statutes.<sup>n11</sup> However, it has been held that a road grader is not a motor vehicle since it is not used primarily for the transportation of persons or property and is only incidentally operated or moved over the highways.<sup>n12</sup>

**FOOTNOTES:**

n1 *Marrero v. State*, 921 So. 2d 748 (Fla. Dist. Ct. App. 5th Dist. 2006).

n2 *General Aviation, Inc. v. Cessna Aircraft Co.*, 915 F.2d 1038, 14 U.C.C. Rep. Serv. 2d 73 (6th Cir. 1990) (applying Michigan law); *Lambert v. Southern Counties Gas Co. of Cal.*, 52 Cal. 2d 347, 340 P.2d 608 (1959); *Carter v. State*, 2003 WL 1544216 (Tex. App. Dallas 2003).

n3 *Cleveland v. Gray*, 153 Ohio App. 3d 322, 2003-Ohio-3539, 794 N.E.2d 85 (8th Dist. Cuyahoga County 2003).

n4 *County of Westchester v. Winstead*, 231 A.D.2d 630, 647 N.Y.S.2d 536 (2d Dep't 1996).

n5 *Crane Rental of Orlando, Inc. v. Hausman*, 532 So. 2d 1057 (Fla. 1988).

n6 *Utility Equipment, Inc. v. Morbark Industries, Inc.*, 308 Or. 209, 779 P.2d 139 (1989).

n7 *M.J.S. v. State*, 453 So. 2d 870 (Fla. Dist. Ct. App. 2d Dist. 1984).

n8 *Putka v. Parma*, 90 Ohio App. 3d 647, 630 N.E.2d 380 (8th Dist. Cuyahoga County 1993) (backhoe).

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n9 Stanton v. City of Battle Creek, 466 Mich. 611, 647 N.W.2d 508 (2002); Mangra v. China Airlines, Ltd., 7 Misc. 3d 499, 790 N.Y.S.2d 370 (N.Y. City Civ. Ct. 2005).

n10 Drake-Lassie v. State Farm Ins. Cos., 129 Ohio App. 3d 781, 719 N.E.2d 64 (10th Dist. Franklin County 1998).

n11 Bertrand v. Board of County Com'rs of Park County, 872 P.2d 223 (Colo. 1994).

n12 Clark v. Randolph County, 71 Ark. App. 112, 36 S.W.3d 353 (2000).

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What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843

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Automobiles and Highway Traffic  
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7A Am Jur 2d Automobiles and Highway Traffic § 4

§ 4 Tractors

Some courts hold every tractor to be a motor vehicle,<sup>n1</sup> while others hold that no tractor is a motor vehicle.<sup>n2</sup> Still others hold that it depends on whether the tractor is being driven on the public roads,<sup>n3</sup> or whether the tractor is being operated as a motor vehicle.<sup>n4</sup>

**FOOTNOTES:**

n1 Harder v. Harder, 176 Mich. App. 589, 440 N.W.2d 53 (1989); State v. Richardson, 113 N.M. 740, 832 P.2d 801 (Ct. App. 1992); Davis v. Gamble, 55 N.C. App. 617, 286 S.E.2d 629 (1982); State v. Sohn, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).

n2 Cousins v. Dennis, 298 Ark. 310, 767 S.W.2d 296, 52 Ed. Law Rep. 1293 (1989); Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992).

n3 Heath v. Com., 761 S.W.2d 630 (Ky. Ct. App. 1988); People v. Canute, 8 A.D.3d 1125, 778 N.Y.S.2d 247 (4th Dep't 2004).

A tractor being operated on state university grounds, not roads, was a motor vehicle. People v. Ostermeier, 118 Misc. 2d 68, 460 N.Y.S.2d 238, 10 Ed. Law Rep. 285 (County Ct. 1983).

n4 Regan v. Washtenaw County Road Com'rs, 257 Mich. App. 39, 667 N.W.2d 57 (2003).

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Automobiles and Highway Traffic  
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7A Am Jur 2d Automobiles and Highway Traffic § 5

§ 5 Inoperable vehicles

The definition of a "motor vehicle" in terms of a self-propelled vehicle is concerned with the design, mechanism, and construction of the vehicle rather than with its temporary condition, and a motor vehicle does not cease to be such merely because it is temporarily incapable of self-propulsion.<sup>n1</sup>

Thus, a vehicle that is equipped with and propelled by an engine is a motor vehicle even though it is temporarily disabled or inoperable.<sup>n2</sup> However, an inoperable vehicle which is at no time drivable and whose owner lacks an immediate intention and ability to render the vehicle drivable or operable upon the public highway is not a motor vehicle.<sup>n3</sup>

**FOOTNOTES:**

n1 State v. McGary, 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).

n2 Dupra v. Benoit, 270 A.D.2d 856, 705 N.Y.S.2d 781 (4th Dep't 2000).

A motorcycle which was temporarily incapable of operation was a "motor vehicle" within meaning of statutory section making it a felony to take a motor vehicle without permission of the owner. State v. McGary, 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).

n3 People v. Carey, 120 Misc. 2d 862, 466 N.Y.S.2d 887 (County Ct. 1983).

An immobilized car that was not running or roadworthy was not a motor vehicle. Naranjo v. Southwest Independent School Dist., 777 S.W.2d 190, 56 Ed. Law Rep. 368 (Tex. App. San Antonio 1989), writ denied, (Apr. 18, 1990).

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Automobiles and Highway Traffic  
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A. Definitions and Distinctions

## 7A Am Jur 2d Automobiles and Highway Traffic § 6

## § 6 Motorcycles

A motorcycle is a motor vehicle,<sup>n1</sup> but it is not an automobile.<sup>n2</sup>

By express provision, or by construction, motor vehicle acts in many jurisdictions embrace motorcycles, making the drivers thereof subject to the penalties prescribed for failure to comply with such motor vehicle regulations.<sup>n3</sup>

A dirt bike is a motorcycle<sup>n4</sup> and may be considered a motor vehicle if it is operated on a public highway.<sup>n5</sup> Similarly, a minibike is a motorcycle.<sup>n6</sup> Also, a go-ped is a motorcycle.<sup>n7</sup>

Observation: A three-wheeled all-terrain vehicle is commonly considered a motorcycle<sup>n8</sup> and may be subject to motor vehicle laws when driven on the public roads.<sup>n9</sup> However, all-terrain vehicles are not considered motor vehicles where they are specifically exempted by statute.<sup>n10</sup>

**FOOTNOTES:**

n1 *Carner v. Farmers Ins. Co. of Arkansas*, 3 Ark. App. 201, 623 S.W.2d 859 (1981); *City and County of Denver v. Gonzales*, 17 P.3d 137 (Colo. 2001); *Vasaio v. Department of Motor Vehicles*, 42 Va. App. 190, 590 S.E.2d 596 (2004); *State v. McGary*, 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).

n2 *Katanik v. State Farm Mut. Auto. Ins. Co.*, 8 Ohio App. 3d 76, 455 N.E.2d 1340 (8th Dist. Cuyahoga County 1982).

As to the definitions of automobile and motor vehicle, see §§ 1, 2.

n3 *Nationwide Mut. Ins. Co. v. Worthey*, 314 Ark. 185, 861 S.W.2d 307 (1993); *State v. Rathburn*, 5 Conn. Cir. Ct. 219, 249 A.2d 262 (1968); *People v. Devlin*, 64 Misc. 2d 327, 314 N.Y.S.2d 670 (Dist. Ct. 1970); *Tipton v. Mullinix*, 1973 OK 37, 508 P.2d 1072 (Okla. 1973).

n4 *Guthrie v. State Farm Mut. Auto. Ins. Co.*, 382 So. 2d 1312 (Fla. Dist. Ct. App. 4th Dist. 1980).

n5 *Com., Dept. of Transp., Bureau of Driver Licensing v. Lear*, 151 Pa. Commw. 138, 616 A.2d 185 (1992).

n6 *Tyler v. Traveler's Ins. Co.*, 110 Misc. 2d 471, 442 N.Y.S.2d 746 (Sup 1981).

n7 *Cruz v. Trotta*, 363 N.J. Super. 353, 833 A.2d 72 (App. Div. 2003).

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n8 Nationwide Mut. Ins. Co. v. Riccadulli, 183 A.D.2d 111, 589 N.Y.S.2d 356 (2d Dep't 1992); Pelter v. Com., Dept. of Transp., Bureau of Driver Licensing, 663 A.2d 844 (Pa. Commw. Ct. 1995) (under uninsured motorist provision of automobile liability insurance policy).

n9 State v. Benolken, 838 P.2d 280 (Alaska Ct. App. 1992).

n10 Guay v. New York Cent. Mut. Fire Ins. Co., 144 Misc. 2d 785, 545 N.Y.S.2d 265 (Sup 1989).

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## 7A Am Jur 2d Automobiles and Highway Traffic § 7

## § 7 Trailers and mobile homes

In some jurisdictions, trailers or other vehicles intended to be drawn on the highway are considered motor vehicles even though they are not self-propelled.<sup>n1</sup> In other jurisdictions, because a trailer is not self-propelled it is not deemed to be a motor vehicle.<sup>n2</sup> According to some authority, a trailer is a vehicle, but not a motor vehicle.<sup>n3</sup>

Distinction: A distinction has been made between trailers and semi-trailers, the latter not being considered a motor vehicle because its weight rests on the towing vehicle.<sup>n4</sup>

While a mobile home may initially be considered a motor vehicle, once it becomes permanently attached to the land it is treated like realty and is no longer considered a motor vehicle.<sup>n5</sup> A mobile home without motor power is not a motor vehicle.<sup>n6</sup> Similarly, the house portion of a motor home is not a "motor vehicle."<sup>n7</sup>

**FOOTNOTES:**

n1 *In re Meade*, 174 B.R. 49 (Bankr. M.D. N.C. 1994) (applying North Carolina law); *Great American Ins. Co. v. Golla*, 493 N.W.2d 602 (Minn. Ct. App. 1992); *State v. Poncelet*, 463 N.W.2d 673 (S.D. 1990) (disk plow); *Matter of J.T., Jr.*, 824 S.W.2d 671 (Tex. App. Fort Worth 1992), writ denied, (May 20, 1992).

n2 *U.S. v. A Single Story Double Wide Trailer*, 727 F. Supp. 149 (D. Del. 1989) (applying Delaware law); *Newman v. Basin Motor Co.*, 98 N.M. 39, 644 P.2d 553, 34 U.C.C. Rep. Serv. 354 (Ct. App. 1982).

n3 *LePage v. Babcock*, 839 A.2d 1226 (R.I. 2004).

n4 *Arrigo's Fleet Service, Inc. v. State of Mich., Dept. of State, Bureau of Automotive Regulations*, 125 Mich. App. 790, 337 N.W.2d 26 (1983).

n5 *In re Washington*, 837 F.2d 455 (11th Cir. 1988) (applying Georgia law).

n6 *Newman v. Basin Motor Co.*, 98 N.M. 39, 644 P.2d 553, 34 U.C.C. Rep. Serv. 354 (Ct. App. 1982).

n7 *Pidcock v. Ewing*, 371 F. Supp. 2d 870, 58 U.C.C. Rep. Serv. 2d 129 (E.D. Mich. 2005) (applying Michigan law).

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Proof of Negligence Causing Snowmobile Accident and Resulting Injuries, 62 Am. Jur. Proof of Facts 3d 447

West's Key Number Digest, Automobiles [westkey]1

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7

A.L.R.4th 1016

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Automobiles and Highway Traffic  
I. In General  
A. Definitions and Distinctions

7A Am Jur 2d Automobiles and Highway Traffic § 8

§ 8 Bicycles and mopeds

Bicycles are regarded as vehicles.<sup>n1</sup> They are generally subject to the same regulation as motor vehicles, with certain express limitations.<sup>n2</sup>

A moped is a bicycle designed to be operated by human power with the assistance of a motor.<sup>n3</sup> While it has been held that a moped is not a motor vehicle,<sup>n4</sup> it has also been held that a moped is a vehicle,<sup>n5</sup> at least for purposes of the prohibition against driving while intoxicated.<sup>n6</sup>

**FOOTNOTES:**

n1 *Borromeo v. Shea*, 138 Wash. App. 290, 156 P.3d 946 (Div. 1 2007).

n2 *U.S. v. Dotson*, 34 F.3d 882, 32 A.L.R.5th 875 (9th Cir. 1994) (applying Washington law); *Lewis v. Brumbles*, 83 N.C. App. 90, 349 S.E.2d 323 (1986).

n3 *Crespo v. Topi*, 154 Md. App. 391, 840 A.2d 156 (2003).

n4 *Crespo v. Topi*, 154 Md. App. 391, 840 A.2d 156 (2003).

n5 *Jones v. State*, 721 So. 2d 320 (Fla. Dist. Ct. App. 2d Dist. 1998).

n6 *State v. Saiz*, 130 N.M. 333, 2001-NMCA-035, 24 P.3d 365 (Ct. App. 2001).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]1

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Bicycles

A.L.R. Index, Snowmobile

West's A.L.R. Digest, Automobiles [westkey]1

Proof of Negligence Causing Snowmobile Accident and Resulting Injuries, 62 Am. Jur. Proof of Facts 3d 447

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Operation of bicycle as within drunk driving statutes, 73 A.L.R.4th 1139

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Automobiles and Highway Traffic  
I. In General  
A. Definitions and Distinctions

7A Am Jur 2d Automobiles and Highway Traffic § 9

## § 9 Snowmobiles

A snowmobile is a self-propelled vehicle designed primarily for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts, or cleats.<sup>n1</sup> Snowmobiles are not generally considered motor vehicles, because they are separately regulated and not intended to be operated on the highways.<sup>n2</sup> However, under some statutes, the definition of "motor vehicle" includes a snowmobile.<sup>n3</sup> In some jurisdictions, when snowmobiles are operated on the public roads, as opposed to snowmobile trails, they are considered motor vehicles,<sup>n4</sup> while other jurisdictions hold that they are not subject to motor vehicle regulation even when operated on the public roads.<sup>n5</sup>

Observation: Riding a towed snowmobile with limited steering ability constitutes operating a motor vehicle.<sup>n6</sup>

**FOOTNOTES:**

n1 State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989); State v. Eden, 108 N.M. 737, 779 P.2d 114 (Ct. App. 1989).

n2 People v. Staton, 248 Ill. App. 3d 799, 189 Ill. Dec. 76, 619 N.E.2d 777 (2d Dist. 1993); State v. Gobeli, 342 N.W.2d 898 (Iowa Ct. App. 1983); State v. Senko, 457 A.2d 824 (Me. 1983); Melby v. Commissioner of Public Safety, 367 N.W.2d 527, 56 A.L.R.4th 1085 (Minn. 1985); State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989); State v. Eden, 108 N.M. 737, 779 P.2d 114 (Ct. App. 1989); People v. Davis, 178 A.D.2d 714, 576 N.Y.S.2d 947 (3d Dep't 1991).

n3 State v. Snyder, 634 N.W.2d 613 (Iowa 2001).

n4 People v. Rogers, 438 Mich. 602, 475 N.W.2d 717 (1991); Melby v. Commissioner of Public Safety, 367 N.W.2d 527, 56 A.L.R.4th 1085 (Minn. 1985); Gallo v. J.C. Penney Cas. Ins. Co., 328 Pa. Super. 267, 476 A.2d 1322 (1984).

n5 State v. Gobeli, 342 N.W.2d 898 (Iowa Ct. App. 1983); State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989).

n6 Conkey v. State, Dept. of Admin., Div. of Motor Vehicles, 113 P.3d 1235 (Alaska 2005).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]1

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Bicycles

A.L.R. Index, Snowmobile

West's A.L.R. Digest, Automobiles [westkey]1

Proof of Negligence Causing Snowmobile Accident and Resulting Injuries, 62 Am. Jur. Proof of Facts 3d 447

West's Key Number Digest, Automobiles [westkey]1

Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092

7A Am Jur 2d Automobiles and Highway Traffic § 9

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Automobiles and Highway Traffic  
I. In General  
B. Rights to Use Highways

7A Am Jur 2d Automobiles and Highway Traffic § 10

§ 10 In general

Ordinarily, every traveler has an equal right in the highway, and every part thereof, with every other traveler.<sup>n1</sup> The right to use public highways rests with the whole people of the state,<sup>n2</sup> and the public is entitled to the full and free use of all the territory embraced within a public roadway.<sup>n3</sup> Hence, a traveler, as such, may occupy and use any part of the public highway he or she desires, when not needed by another whose rights thereto are superior to his or her own.<sup>n4</sup>

**FOOTNOTES:**

n1 Grommet v. St. Louis County, 680 S.W.2d 246, 22 Ed. Law Rep. 578 (Mo. Ct. App. E.D. 1984); Work v. Philadelphia Supply Co., 95 N.J.L. 193, 112 A. 185 (N.J. Ct. Err. & App. 1920).

n2 New York State Public Employees Federation, AFL-CIO v. City of Albany, 269 A.D.2d 707, 703 N.Y.S.2d 573 (3d Dep't 2000).

n3 Grommet v. St. Louis County, 680 S.W.2d 246, 22 Ed. Law Rep. 578 (Mo. Ct. App. E.D. 1984).

n4 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Jeffords v. Florence County, 165 S.C. 15, 162 S.E. 574, 81 A.L.R. 313 (1932).

**Related References:**

As to use of way, generally, see Am. Jur. 2d, Highways, Streets, and Bridges §§ 217 to 307.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]4  
A.L.R. Index, Automobiles and Highway Traffic  
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Automobiles and Highway Traffic  
I. In General  
B. Rights to Use Highways

7A Am Jur 2d Automobiles and Highway Traffic § 11

§ 11 Motor vehicles, generally

The operation of a motor vehicle upon the public highways is not a fundamental right, but only a privilege.<sup>n1</sup>

Observation: Because the right to operate a motor vehicle is not a fundamental one, the state must show only a legitimate interest, rather than a compelling interest, to restrict or regulate the right.<sup>n2</sup>

Owners and operators of motor vehicles have the right to use the public highways on an equal footing with the owners and operators of other vehicles.<sup>n3</sup>

A farm tractor may be used on a highway if it is used solely for agricultural, farming, or manufacturing purposes.<sup>n4</sup>

**FOOTNOTES:**

n1 Satterlee v. State, 289 Ark. 450, 711 S.W.2d 827 (1986); People v. Peterson, 734 P.2d 118 (Colo. 1987); State v. Folda, 267 Mont. 523, 885 P.2d 426 (1994); City of Spokane v. Port, 43 Wash. App. 273, 716 P.2d 945 (Div. 3 1986); Brandmiller v. Arreola, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

n2 People v. Peterson, 734 P.2d 118 (Colo. 1987); Heying v. State, 515 N.E.2d 1125 (Ind. Ct. App. 1987).

n3 Slusher v. Safety Coach Transit Co., 229 Ky. 731, 17 S.W.2d 1012, 66 A.L.R. 1378 (1929); City of St. Paul v. Twin City Motor Bus Co., 187 Minn. 212, 245 N.W. 33 (1932).

n4 Ryan v. Pennsylvania Life Ins. Co., 123 S.W.3d 142 (Ky. 2003), as modified, (Jan. 28, 2004).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]4

A.L.R. Index, Automobiles and Highway Traffic

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What Constitutes "Use" or "Operation" Within Statute Making Owner of Motor Vehicle Liable for Negligence in its Use or Operation, 103 A.L.R.5th 339

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Automobiles and Highway Traffic  
I. In General  
B. Rights to Use Highways

7A Am Jur 2d Automobiles and Highway Traffic § 12

§ 12 Motorcycles and bicycles

Motorcycles are lawful vehicles, and their rights on the highway are the same as those of automobiles.<sup>n1</sup> So too, in the absence of any specific regulation to the contrary, a bicycle is a vehicle of such a nature that it may be properly used upon the highways and streets.<sup>n2</sup>

**FOOTNOTES:**

n1 Van Cise v. Lencioni, 106 Cal. App. 2d 341, 235 P.2d 236 (1st Dist. 1951); Curtis v. Perry, 171 Wash. 542, 18 P.2d 840 (1933).

n2 Lee v. City of Port Huron, 128 Mich. 533, 87 N.W. 637 (1901).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]4  
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Automobiles and Highway Traffic  
I. In General  
B. Rights to Use Highways

7A Am Jur 2d Automobiles and Highway Traffic § 13

§ 13 Vehicles engaged in transportation for hire

The use of highways for the purpose of transporting persons or property for hire, by the ordinary means, is incidental to and consistent with the primary purpose of their establishment, and is therefore a proper use, in the absence of any restrictive regulation.<sup>n1</sup> Such use is not, however, one which may be exercised as of right, but is a special or permissive use.<sup>n2</sup>

**FOOTNOTES:**

n1 Ex parte Dickey, 76 W. Va. 576, 85 S.E. 781 (1915); Park Hotel Co. v. Ketchum, 184 Wis. 182, 199 N.W. 219, 33 A.L.R. 351 (1924) (taxicab).

n2 Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]4  
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Automobiles and Highway Traffic  
I. In General  
B. Rights to Use Highways

7A Am Jur 2d Automobiles and Highway Traffic § 14

§ 14 Pedestrians

In the absence of a statute or ordinance to the contrary, a pedestrian has the right to use and travel upon any portion of a public highway or street at any time of the day or night.<sup>n1</sup> A pedestrian's rights and the rights of one operating a vehicle thereon are mutual, reciprocal, and equal.<sup>n2</sup> Neither may use the public way in disregard of the right of the other to use it, and each must accommodate his or her movements to the other's lawful use of it; each must anticipate the other's possible presence, and each must recognize the dangers inherent in the manner in which it may lawfully be used by the other.<sup>n3</sup>

**FOOTNOTES:**

n1 *Burk v. Extrafine Bread Bakery*, 208 Cal. 105, 280 P. 522 (1929); *Igo v. Smith*, 282 Ky. 336, 138 S.W.2d 497 (1940) (disapproved of on other grounds by, *Bettis v. Rickett*, 310 S.W.2d 775 (Ky. 1958)).

n2 *Williamson v. Garrigus*, 228 Ark. 705, 310 S.W.2d 8 (1958); *Layton v. Cook*, 248 Miss. 690, 160 So. 2d 685 (1964); *Deputy v. Kim-mell*, 73 W. Va. 595, 80 S.E. 919 (1914).

n3 *Mahan v. State, to Use of Carr*, 172 Md. 373, 191 A. 575 (1937).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]4  
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Automobiles and Highway Traffic  
I. In General  
C. Regulation, in General  
1. General Considerations

## 7A Am Jur 2d Automobiles and Highway Traffic § 15

## § 15 Generally

The regulation of motor vehicles on the highway is a legitimate exercise of the police powers of the government.<sup>n1</sup> In general, the goal of traffic regulations is to promote highway safety.<sup>n2</sup> Use of public highways and streets is subject to such reasonable and impartial regulations adopted pursuant to the police power as are calculated to secure to the general public the largest practical benefit from the enjoyment of the right of use,<sup>n3</sup> and to provide for their safety while they are upon such public ways in the enjoyment of such right.<sup>n4</sup>

However, the power to regulate vehicles and their use of the public ways may not be used indirectly to control and regulate the business of the user.<sup>n5</sup> Governmental regulations with respect to the operation of motor vehicles ordinarily are applicable only to operation on public streets and highways, and do not apply to operation on private premises.<sup>n6</sup> The regulation and control of the use of highways and streets by vehicular or pedestrian traffic will not be assumed by the courts, since such matters involve the exercise of legislative and administrative functions.<sup>n7</sup>

**FOOTNOTES:**

n1 Tapp v. Perciful, 2005 OK 49, 120 P.3d 480 (Okla. 2005).

n2 Lyndhurst v. McGinness, 138 Ohio App. 3d 617, 741 N.E.2d 976 (8th Dist. Cuyahoga County 2000).

n3 State v. Aldrich, 70 N.H. 391, 47 A. 602 (1900); Boone v. Clark, 214 S.W. 607 (Tex. Civ. App. Fort Worth 1919), writ refused, (Oct. 20, 1920); Park Hotel Co. v. Ketchum, 184 Wis. 182, 199 N.W. 219, 33 A.L.R. 351 (1924).

n4 State v. Skurdal, 235 Mont. 291, 767 P.2d 304 (1988); Shaffer v. Acme Limestone Co., Inc., 206 W. Va. 333, 524 S.E.2d 688 (1999).

n5 Levine v. Police Com'n of Town of Fairfield, 28 Conn. App. 344, 612 A.2d 787 (1992); Hertz Drivurself Stations v. Siggins, 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).

n6 Eberth v. County of Prince William, 49 Va. App. 105, 637 S.E.2d 338 (2006).

n7 Perlmutter v. Greene, 259 N.Y. 327, 182 N.E. 5, 81 A.L.R. 1543 (1932).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59  
U.S. Const. Art. I, § 8

7A Am Jur 2d Automobiles and Highway Traffic § 15

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Traffic Offenses and Violations

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Automobiles and Highway Traffic  
I. In General  
C. Regulation, in General  
1. General Considerations

7A Am Jur 2d Automobiles and Highway Traffic § 16

§ 16 Construction of laws regulating vehicles and use of highways

The general rules governing the interpretation and construction of statutes and ordinances generally are applicable to regulations governing vehicles and their use upon the public ways.<sup>n1</sup> Every provision of a motor vehicle code should be interpreted in light of its intent to promote public safety.<sup>n2</sup> It has been held that traffic regulations affecting safety should be liberally construed to effect their purpose.<sup>n3</sup> However, it has also been held that statutory authority to prescribe traffic rules is strictly construed,<sup>n4</sup> and that an ambiguity in a motor vehicle act should be read in favor of the motor vehicle operator because personal interests are at stake.<sup>n5</sup> Where the statute is clear on its face, no construction is warranted.<sup>n6</sup>

The central principle which runs through the cases dealing with statutes regulatory of highway traffic is that such statutes must have a practical or workable interpretation, not an arbitrary or unreasonable construction, and never one that would require an impossibility.<sup>n7</sup> Where a court is confronted with a statute, the literal construction of which would render it unconstitutional, the court must adopt such a construction, when reasonably possible, as will save the statute, and at the same time save every savable provision or term in it.<sup>n8</sup>

**FOOTNOTES:**

n1 *State v. Riley*, 638 So. 2d 507 (Fla. 1994); *Delzer v. Penn.*, 534 N.W.2d 58 (S.D. 1995); *Ludwick v. Doe*, 914 S.W.2d 522 (Tenn. Ct. App. 1995).

n2 *Com. v. DeFusco*, 378 Pa. Super. 442, 549 A.2d 140 (1988).

n3 *State v. Bissonette*, 445 N.W.2d 843 (Minn. Ct. App. 1989).

n4 *Save the Sunset Strip Coalition v. City of West Hollywood*, 87 Cal. App. 4th 1172, 105 Cal. Rptr. 2d 172 (2d Dist. 2001).

n5 *State v. Jersey Carting, Inc.*, 259 N.J. Super. 130, 611 A.2d 677 (Law Div. 1992).

n6 *Missouri Highway and Transp. Com'n v. Mauer*, 728 S.W.2d 722 (Mo. Ct. App. E.D. 1987).

n7 *Teche Lines, Inc., v. Danforth*, 195 Miss. 226, 12 So. 2d 784 (1943).

n8 *Teche Lines, Inc., v. Danforth*, 195 Miss. 226, 12 So. 2d 784 (1943).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59  
U.S. Const. Art. I, § 8  
23 U.S.C.A. §§ 161, 401 et seq., 410  
40 U.S.C.A. §§ 601 et seq., 17101 et seq.  
49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.  
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A.L.R. Index, Traffic Offenses and Violations  
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Automobiles and Highway Traffic  
I. In General  
C. Regulation, in General  
2. Who May Regulate Motor Vehicles

## 7A Am Jur 2d Automobiles and Highway Traffic § 17

## § 17 Federal regulation

The power of the federal government to regulate interstate commerce<sup>n1</sup> gives it control over motor vehicles engaged in business between one state and another in the same degree as such control exists as to any other class of vehicles engaged in the same occupation.<sup>n2</sup> Examples of such federal regulation include the Motor Vehicle Safety Act<sup>n3</sup> whose purpose is to reduce traffic accidents and deaths and injuries from traffic accidents.<sup>n4</sup> The Act states that it is necessary to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce,<sup>n5</sup> and to carry out needed safety research and development.<sup>n6</sup> The Highway Safety Act establishes various programs and improvements,<sup>n7</sup> including alcohol-impaired driving countermeasures.<sup>n8</sup> The National Driver Registry Act establishes a central national clearinghouse for information on drivers,<sup>n9</sup> and the National Motor Vehicle Title Information System establishes a national clearinghouse of information on motor vehicle titles.<sup>n10</sup> There are also statutes requiring state participation in an international registration plan and an international fuel tax agreement.<sup>n11</sup> Congress has also enacted legislation dealing with theft prevention of motor vehicles.<sup>n12</sup> In addition, under federal law the Secretary of Transportation must maintain a program for developing consumer information on passenger motor vehicles.<sup>n13</sup> In this connection, it should also be remembered that the purpose of the Consumer Product Safety Act is to protect the public against unreasonable risks of injury associated with consumer products, to assist consumers in evaluating the comparative safety of consumer products, to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations, and to promote research and investigation into the cause and prevention of product-related deaths, illnesses, and injuries.<sup>n14</sup>

There is also a statute providing for the withholding of apportionments to states that do not meet specified requirements regarding the operation of motor vehicles by intoxicated minors.<sup>n15</sup>

Congress, in the exercise of its power to regulate interstate commerce, can require a municipality to permit interstate commerce by motor vehicles to pass over its streets.<sup>n16</sup> However, Congress has no general power to enact police regulations operative within the territorial limits of a state, and it generally cannot take the power to enact such regulations from the states or attempt any supervision over regulations of the states established under the police power.<sup>n17</sup> Nonetheless, once it is assumed that the general subject of a controversy is properly within the scope of the enumerated powers granted to the federal government, that government has broad powers to prescribe police regulations concerning such subjects just as a state government would have concerning a subject within its reserved powers.<sup>n18</sup>

The federal government, through acts of Congress, may regulate and control the operation of motor vehicles insofar as they are acting as governmental agencies in performing governmental functions or duties.<sup>n19</sup> In this regard, there are statutes authorizing the establishment of pools and transportation systems for government motor vehicles,<sup>n20</sup> and statutes providing safety standards for motor vehicles acquired by the federal government.<sup>n21</sup>

Congress has properly delegated to the commissioners of the District of Columbia the power to regulate the movement of vehicles on the public streets thereof.<sup>n22</sup>

**FOOTNOTES:**

n1 U.S. Const. Art. I, § 8.

n2 *Adair v. U.S.*, 208 U.S. 161, 28 S. Ct. 277, 52 L. Ed. 436 (1908) (overruled in part on other grounds by, *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A.L.R. 1217 (1941)).

n3 49 U.S.C.A. §§ 30101 et seq.

n4 49 U.S.C.A. § 30101.

n5 49 U.S.C.A. § 30101(1).

Motor vehicle safety standards adopted pursuant to the Act, which must meet the need for motor vehicle safety and be stated in objective terms, are fundamentally performance requirements, not design requirements. *Great Dane Trailers, Inc. v. Estate of Wells*, 52 S.W.3d 737 (Tex. 2001).

n6 49 U.S.C.A. § 30101(2).

n7 23 U.S.C.A. §§ 401 et seq.

n8 23 U.S.C.A. § 410.

n9 49 U.S.C.A. §§ 30301 et seq.

n10 49 U.S.C.A. §§ 30501 et seq.

n11 49 U.S.C.A. §§ 31701 et seq.

n12 49 U.S.C.A. §§ 33101 et seq.

n13 49 U.S.C.A. § 32302.

n14 Am. Jur. 2d, Products Liability § 1990.

n15 23 U.S.C.A. § 161.

n16 *City of Chicago v. Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958).

n17 *U.S. v. Dewitt*, 76 U.S. 41, 19 L. Ed. 593, 1869 WL 11569 (1869).

n18 Am. Jur. 2d, Constitutional Law § 328.

n19 *Johnson v. State of Maryland*, 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920).

n20 40 U.S.C.A. §§ 601 et seq.

## 7A Am Jur 2d Automobiles and Highway Traffic § 17

n21 40 U.S.C.A. §§ 17101 et seq.

n22 *White v. District of Columbia*, 4 F.2d 163 (App. D.C. 1925).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

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West's Key Number Digest, Automobiles [westkey]5(1)

Judicial review of orders under National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C.A. secs. 1381 et seq.),

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## 7A Am Jur 2d Automobiles and Highway Traffic § 18

## § 18 Pre-emption of state and local regulation

The Motor Vehicle Safety Act<sup>n1</sup> does not generally pre-empt the field of regulation of motor vehicle safety,<sup>n2</sup> but it does pre-empt state standards relating to the same subject that are either more or less stringent than the federal standards.<sup>n3</sup> Only state statutes that conflict with federal safety standards are pre-empted.<sup>n4</sup> Thus, pre-emption should only occur where compliance with both the federal and local regulations is impossible.<sup>n5</sup> Moreover, while a state may be pre-empted from establishing its own standards, it is not pre-empted from enforcing the federal standards.<sup>n6</sup> Thus, federal safety standards on motorcycle helmets do not pre-empt state laws requiring motorcycle riders to wear helmets,<sup>n7</sup> but the state cannot prescribe helmets that differ from those in the federal regulations.<sup>n8</sup> State laws requiring proof of compliance with federal standards before automobiles not originally designed for the United States market may be licensed and registered are also not pre-empted by the federal regulations.<sup>n9</sup>

Observation: The United States has signed the United Nations Convention on Road Traffic. The Convention is part of federal law, and the provisions of the Convention supersede any contrary state law.<sup>n10</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. §§ 30101 et seq.

n2 *Chrysler Corp. v. Rhodes*, 416 F.2d 319 (1st Cir. 1969); *People v. Giese*, 95 Misc. 2d 792, 408 N.Y.S.2d 693 (Sup 1978), order aff'd, 68 A.D.2d 1019, 414 N.Y.S.2d 947 (2d Dep't 1979).

n3 *Sims v. State of Fla., Dept. of Highway Safety and Motor Vehicles*, 862 F.2d 1449 (11th Cir. 1989); *Great Dane Trailers, Inc. v. Estate of Wells*, 52 S.W.3d 737 (Tex. 2001).

n4 *Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777 (3d Cir. 1992); *State v. Oberlton*, 262 N.J. Super. 204, 620 A.2d 468 (Law Div. 1992).

n5 *Interstate Towing Ass'n, Inc. v. City of Cincinnati, Ohio*, 6 F.3d 1154 (6th Cir. 1993); *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), judgment aff'd, 698 F.2d 559 (1st Cir. 1983).

n6 *Sims v. State of Fla., Dept. of Highway Safety and Motor Vehicles*, 862 F.2d 1449 (11th Cir. 1989); *Juvenile Products Mfrs. Ass'n, Inc. v. Edmisten*, 568 F. Supp. 714 (E.D. N.C. 1983); *Bianco v. California Highway Patrol*, 24 Cal. App. 4th 1113, 29 Cal. Rptr. 2d 711 (4th Dist. 1994), as modified on other grounds on denial of reh'g. (May 24, 1994).

n7 *Com. v. Guest*, 12 Mass. App. Ct. 941, 425 N.E.2d 779 (1981); *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).

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n8 *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).

n9 *Sims v. State of Fla., Dept. of Highway Safety and Motor Vehicles*, 862 F.2d 1449 (11th Cir. 1989).

n10 *Busby v. State*, 40 P.3d 807 (Alaska Ct. App. 2002).

**SUPPLEMENT:****Cases**

"Financial responsibility" in savings clause of Graves Amendment, excluding from preemption state laws imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law, refers to insurance-like requirements under state law. 49 U.S.C.A. § 30106(b). *Meyer v. Nwokedi*, 777 N.W.2d 218 (Minn. 2010).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Traffic Offenses and Violations

West's A.L.R. Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

West's Key Number Digest, Automobiles [westkey]5(1), 9

Validity of traffic regulations requiring motorcyclists to wear helmets or other protective headgear, 72 A.L.R.5th 607

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## § 19 State regulation

The operation of a motor vehicle upon the public highways is not a fundamental right, but only a privilege.<sup>n1</sup> Under its police power, the state may control generally the operation of motor vehicles upon a public highway.<sup>n2</sup> State legislatures, by virtue of their inherent police powers and plenary jurisdiction over public ways, may enact reasonable regulations governing the conduct of the owners and drivers of vehicles operated thereon,<sup>n3</sup> and calculated to promote care on the part of highway users,<sup>n4</sup> which regulations may extend to nonresidents as well as residents.<sup>n5</sup> In regulating the use of public highways, the state has traditionally been afforded exceptionally broad discretion.<sup>n6</sup>

In the exercise of its power to regulate and control the public highways, a state legislature may prohibit the use on the highways of such vehicles as are dangerous to the general traveling public.<sup>n7</sup> The legislature cannot, however, prevent citizens from using the public highways in the ordinary manner, and the fact that the vehicle used for the movement of persons or things along the highways is novel will not justify its exclusion.<sup>n8</sup>

Observation: A state motor vehicle law may not apply to motor vehicle traffic on private property.<sup>n9</sup>

The fact that the federal government contributes to or assists the state in the building of highways does not take from or limit the power of the state in the exercise of its police power or other right to regulate and control the use of such highways by vehicular or other traffic.<sup>n10</sup>

**FOOTNOTES:**

n1 § 11.

n2 Cohen v. City of Hartford, 244 Conn. 206, 710 A.2d 746 (1998); D'Ambrosio v. State, 245 Ga. App. 12, 536 S.E.2d 218 (2000).

**Related References:**

As to the source of police power, generally, see Am. Jur. 2d, Constitutional Law § 314.

n3 Snavely v. City of Huntsville, 785 So. 2d 1162 (Ala. Crim. App. 2000);

Agomo v. Fenty, 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007); People v. Blackorby, 146 Ill. 2d 307, 166 Ill. Dec. 902, 586 N.E.2d 1231 (1992); Tapp v. Perciful, 2005 OK 49, 120 P.3d 480 (Okla. 2005); Shumpert v. South Carolina Dept. of Highways and Public Transp., 306 S.C. 64, 409 S.E.2d 771 (1991).

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n4 Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620, 35 A.L.R.2d 1003 (1952) (overruled in part on other grounds by, Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972)); Matter of Hansen, 298 N.W.2d 816 (S.D. 1980).

n5 Wuchter v. Pizzutti, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446, 57 A.L.R. 1230 (1928); State v. Justesen, 63 Or. App. 544, 665 P.2d 380 (1983).

As to application of regulations to vehicles in interstate traffic, see § 28.

n6 State v. French, 77 Haw. 222, 883 P.2d 644 (Ct. App. 1994); People v. Blackorby, 146 Ill. 2d 307, 166 Ill. Dec. 902, 586 N.E.2d 1231 (1992).

n7 Commonwealth v. Kingsbury, 199 Mass. 542, 85 N.E. 848 (1908).

n8 People v. Rosenheimer, 209 N.Y. 115, 102 N.E. 530 (1913).

n9 Commodities Export Co. v. City of Detroit, 116 Mich. App. 57, 321 N.W.2d 842 (1982).

n10 Morris v. Duby, 274 U.S. 135, 47 S. Ct. 548, 71 L. Ed. 966 (1927).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59  
U.S. Const. Art. I, § 8  
23 U.S.C.A. §§ 161, 401 et seq., 410  
40 U.S.C.A. §§ 601 et seq., 17101 et seq.  
49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.  
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## § 20 Municipal or local regulation

Although a city's authority to regulate traffic in some jurisdictions comes from the state constitution,<sup>n1</sup> unless expressly provided by the legislature, a city has no authority over vehicular traffic control.<sup>n2</sup> However, the police power of the state to regulate and control the use of its highways may be delegated to municipalities for exercise by them in the interest of public safety and the promotion of the general welfare.<sup>n3</sup> In this connection, a municipality's power to regulate traffic on a public street is an exercise of police power delegated from the state.<sup>n4</sup> For example, local authorities are permitted to place and maintain traffic control devices upon highways under their jurisdictions.<sup>n5</sup> A city may not attempt to regulate beyond its jurisdiction.<sup>n6</sup>

A county or municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.<sup>n7</sup> The grant of authority to a local government to regulate traffic is not exclusive and will not preclude state law.<sup>n8</sup> Moreover, a state may withdraw its delegation of authority to a city to regulate traffic.<sup>n9</sup>

Observation: Pursuant to its authority to limit traffic, a city may close a road to vehicular traffic.<sup>n10</sup>

By the enactment of a general law covering a specific phase of motor vehicle regulation, the state may impliedly deprive local authorities of the power to pass ordinances which would be inconsistent with such law.<sup>n11</sup> However, simply because a state undertakes to impose certain regulations applicable to the entire state, a municipality is not necessarily deprived of the power of imposing other regulations adapted to its own peculiar conditions, if these are not inconsistent with those of a general character prescribed for the entire state.<sup>n12</sup> Moreover, a state statute may expressly give a city authority to regulate in a certain area and indicate that the city's regulatory authority supersedes any inconsistent state law provisions.<sup>n13</sup>

**FOOTNOTES:**

n1 *Cleveland v. Martinez*, 126 Ohio Misc. 2d 36, 2003-Ohio-7046, 801 N.E.2d 938 (Mun. Ct. 2003).

n2 *Homes on Wheels v. City of Santa Barbara*, 119 Cal. App. 4th 1173, 15 Cal. Rptr. 3d 132 (2d Dist. 2004).

n3 *Transus, Inc. v. City of Dothan*, 497 So. 2d 179 (Ala. Civ. App. 1986); *City of Cedar Rapids v. State*, 478 N.W.2d 602 (Iowa 1991); *State v. Parker*, 68 Ohio St. 3d 283, 1994-Ohio-93, 626 N.E.2d 106 (1994); *Town of East Troy v. A-1 Service Co., Inc.*, 196 Wis. 2d 120, 537 N.W.2d 126 (Ct. App. 1995).

n4 *Teeter v. City of Edmond*, 2004 OK 5, 85 P.3d 817 (Okla. 2004).



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n5 *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003).

n6 *City of East Lansing v. Yocca*, 142 Mich. App. 491, 369 N.W.2d 918 (1985).

n7 *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 243 Ill. Dec. 823, 724 N.E.2d 132 (1st Dist. 1999); *State ex rel. Scott v. Cleveland*, 166 Ohio App. 3d 293, 2006-Ohio-2062, 850 N.E.2d 747 (8th Dist. Cuyahoga County 2006), judgment aff'd, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923 (2006)

*State v. Greene*, 97 Wash. App. 473, 983 P.2d 1190 (Div. 1 1999).

Under a statute granting counties the same powers as municipalities, and under a statute granting municipalities the power to enact a traffic code, the county, like a municipality, had the authority to adopt local county traffic ordinances. *Board of Com'rs of Rio Arriba County v. Greacen*, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672 (2000).

n8 *People v. Murphy*, 169 Misc. 2d 357, 649 N.Y.S.2d 962 (App. Term 1996).

n9 *Trailways, Inc. v. City of Atlantic City*, 179 N.J. Super. 258, 431 A.2d 191 (Law Div. 1980).

n10 *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d 1008 (2005) (authority to open road for use by only pedestrians and bicyclists).

n11 *Brazier v. City of Philadelphia*, 215 Pa. 297, 64 A. 508 (1906).

n12 *City of Tell City v. Noble*, 489 N.E.2d 958 (Ind. Ct. App. 1986); *Mahoney v. Maxfield*, 102 Minn. 377, 113 N.W. 904 (1907); *Brazier v. City of Philadelphia*, 215 Pa. 297, 64 A. 508 (1906).

n13 *Corona Ready Mix, Inc. v. State Dept. of Motor Vehicles Traffic Violations Bureau Appeals Bd.*, 226 A.D.2d 630, 641 N.Y.S.2d 128 (2d Dep't 1996) (weight restrictions); *Burke v. Santoro*, 172 A.D.2d 579, 568 N.Y.S.2d 144 (2d Dep't 1991) (pedestrian traffic).

## SUPPLEMENT:

### Cases

While the regulation of traffic upon a public street is of special interest to the people of a municipality, it does not follow that such regulation is a municipal affair, and if there is a doubt as to whether or not such regulation is a municipal affair, that doubt must be resolved in favor of the legislative authority of the state. *Zack's, Inc. v. City of Sausalito*, 165 Cal. App. 4th 1163, 81 Cal. Rptr. 3d 797 (1st Dist. 2008).

An Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

A state statute takes precedence over a local ordinance, such that the ordinance will be determined to exceed municipality's powers under the Home Rule Amendment to State Constitution, when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

A municipality's regulation of traffic is an exercise of police power that relates to public health and safety, as well as to the general welfare of the public. *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d 906 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

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§ 21 Bicycles

Under properly delegated legislative authority, a municipality may enact such ordinances governing the use of its streets by bicycles and tricycles as are necessary, in its judgment, to protect the public.<sup>n1</sup> Thus, a municipal ordinance may prohibit riding bicycles on the sidewalks.<sup>n2</sup> The public safety and convenience may require regulations of this character, but they must not, unless made by virtue of specific authority, be unreasonable, or improperly in restraint of the exercise of personal rights or of the lawful use of private property.<sup>n3</sup>

**FOOTNOTES:**

n1 *City of Des Moines v. Keller*, 116 Iowa 648, 88 N.W. 827 (1902); *Gagnier v. City of Fargo*, 11 N.D. 73, 88 N.W. 1030 (1902).

n2 *McCrimmon v. State*, 505 So. 2d 13 (Fla. Dist. Ct. App. 5th Dist. 1987); *Schallenberger v. Rudd*, 244 Kan. 230, 767 P.2d 841 (1989).

n3 *Moore v. District of Columbia*, 12 App. D.C. 537, 41 L.R.A. 208, 1898 WL 15579 (App. D.C. 1898).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

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## § 22 Conflict with state statutes

A county or municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.<sup>n1</sup> However, such regulations are invalid if they are in conflict with statutes relating to the subject.<sup>n2</sup>

Where the state has retained the power to provide general laws regulating traffic on the highways of the state, legislation enacted pursuant to such right cannot be curtailed, infringed upon, or annulled by local authorities,<sup>n3</sup> and where there is conflict between such a state statute and a municipal ordinance, the statute prevails.<sup>n4</sup> This rule applies even in a jurisdiction where the municipality is granted the authority under the constitution to make and enforce laws respecting municipal affairs, subject only to the provisions of its charter, the regulation of traffic not being deemed a "municipal affair" within the meaning of the constitutional grant of authority.<sup>n5</sup> On the other hand, if the state statute, fairly construed, does not purport to be exclusive of the power of a municipality to make and enforce traffic regulations for the municipality, the fact that the municipal regulations are more stringent than the traffic regulations provided by statute does not invalidate them.<sup>n6</sup>

Whether or not a local government may enact an ordinance at variance with a state statute depends on whether the state intended to pre-empt the field.<sup>n7</sup> Generally, an ordinance should stand unless there is an actual conflict between the ordinance and the statute or unless the legislature has clearly pre-empted the field so as to preclude any municipal actions.<sup>n8</sup> A conflict exists when the local regulation is facially inconsistent with the state law,<sup>n9</sup> such as when the ordinance prohibits an act permitted by statute or permits an act prohibited by statute.<sup>n10</sup>

**FOOTNOTES:**

n1 § 20.

n2 *Morris v. Crumpton*, 259 Ala. 565, 67 So. 2d 800, 39 A.L.R.2d 58 (1953); *People v. Garth*, 234 Cal. App. 3d 1797, 286 Cal. Rptr. 451 (2d Dist. 1991); *Pacific Intern. Services Corp. v. Hurip*, 76 Haw. 209, 873 P.2d 88 (1994).

A biosolids impact fee imposed as part of a county ordinance was invalid to the extent that it was a local fee for road use, inasmuch as the fee violated a statutory provision prohibiting certain fees for using roads and highways; although the county asserted that the fee was imposed to recover costs for repairing damage or upgrading county roads due to the increase in truck traffic transporting biosolids, the fee was, at least in part, a fee imposed on road use. *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern*, 127 Cal. App. 4th 1544, 27 Cal. Rptr. 3d 28, 35 Env'tl. L. Rep. 20070 (5th Dist. 2005).

n3 *Winters v. Bisaillon*, 152 Or. 578, 54 P.2d 1169 (1936).

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n4 *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Where state legislation set a school zone speed limit, local authorities are prohibited from altering it. *People v. Goodrich*, 33 Cal. App. 4th Supp. 1, 39 Cal. Rptr. 2d 154, 97 Ed. Law Rep. 1116 (App. Dep't Super. Ct. 1994).

n5 *Pipoly v. Benson*, 20 Cal. 2d 366, 125 P.2d 482, 147 A.L.R. 515 (1942).

n6 *Ham v. Los Angeles County*, 46 Cal. App. 148, 189 P. 462 (2d Dist. 1920); *City of Des Moines v. Gruen*, 457 N.W.2d 340 (Iowa 1990).

n7 *City of Seattle v. Williams*, 128 Wash. 2d 341, 908 P.2d 359 (1995).

A local law purporting to fix a lower maximum speed limit for motor vehicles than stated by general state law is preempted by the state law. *Leslie v. Superior Court*, 73 Cal. App. 4th 1042, 87 Cal. Rptr. 2d 313 (2d Dist. 1999), as modified, (Aug. 17, 1999).

n8 *Pacific Intern. Services Corp. v. Hurip*, 76 Haw. 209, 873 P.2d 88 (1994); *City of Wichita v. Basgall*, 257 Kan. 631, 894 P.2d 876, 10 A.D.D. 887 (1995).

n9 *American Motorcyclist Ass'n v. Park Com'n of City of Brockton*, 412 Mass. 753, 592 N.E.2d 1314 (1992).

n10 *Des Moines Metropolitan Area Solid Waste Agency v. City of Grimes*, 495 N.W.2d 746 (Iowa 1993); *Seattle Taxi, Inc. v. King County*, 49 Wash. App. 617, 744 P.2d 1082 (Div. 1 1987).

## SUPPLEMENT:

### Cases

Ordinance establishing automatic traffic enforcement (ATE) system through which city leveled civil penalties against owners of vehicles that failed to obey red light traffic signals or violated speed laws did not conflict with, and was therefore not preempted by, state statute placing burden on municipality of proving all elements of a civil infraction by clear and convincing evidence; ordinance did not alter proof required in order to show that person cited was registered owner of vehicle photographed violating ATE ordinance. *City of Davenport v. Seymour*, 755 N.W.2d 533 (Iowa 2008).

For purposes of a challenge to a municipal ordinance under Home Rule Amendment to State Constitution, the regulation of traffic is an exercise of police power that relates to public health and safety, as well as the general welfare of the public, rather than an exercise of local self-government. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

When determining whether a conflict by implication exists between a municipal ordinance and a state statute, as requirement for invalidating ordinance under Home Rule Amendment to State Constitution, court examines whether the General Assembly indicated that the relevant state statute is to control a subject exclusively. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

Speed-limit statute was a "general law," such that city ordinance creating automated speed-limit enforcement system would exceed city's home rule powers if ordinance was in conflict with statute; statute applied to all citizens generally as part of a statewide regulation of traffic laws and motor vehicle operation. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

City ordinance that created automated speed-limit enforcement system imposing civil liability on violators did not conflict with state speed-limit statute but merely supplemented it, and thus did not exceed city's home rule powers under State Constitution; ordinance did not change speed limits established by state law or change the ability of police officers to cite offenders for traffic violations. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

If a city ordinance that is allegedly in conflict with state statute relates solely to self-government, the analysis as to whether the ordinance exceeds city's home rule powers stops, because State Constitution authorizes a municipality to

exercise all powers of local self-government within its jurisdiction. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

If a city ordinance that is challenged under Home Rule Amendment to State Constitution, based on an alleged conflict with a state statute, does not relate to local self-government, state statute is examined to determine whether it is a general law; if the statute is not a general law, the ordinance will not be invalidated. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

For purposes of a challenge to an ordinance under the Home Rule Amendment to the State Constitution, it is only when the municipality has not exercised a power of self-government and when a general state law exists that courts consider whether ordinance is in conflict with the general law. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Traffic Offenses and Violations

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Automobiles and Highway Traffic  
I. In General  
C. Regulation, in General  
2. Who May Regulate Motor Vehicles

## 7A Am Jur 2d Automobiles and Highway Traffic § 23

## § 23 Regulation by public officers and boards

A statute or ordinance placing discretionary power in an administrative agency must furnish standards for those who administer such power.<sup>n1</sup> Accordingly, legislative power to promulgate regulations governing motor vehicles and traffic upon public ways cannot be delegated to administrative officers or boards, to be exercised in their uncontrolled discretion.<sup>n2</sup> However, no unconstitutional delegation of legislative power to regulate motor vehicles and traffic upon public ways is involved in leaving it to the discretion of administrative officers or boards to accomplish in detail what is authorized or required by the law in general terms, so long as such discretion is limited with clearly defined standards and policies to be implemented.<sup>n3</sup> There are many regulations respecting motor vehicles and traffic upon public ways which may be prescribed or promulgated by a public officer or board acting under powers granted by the legislature.<sup>n4</sup> Courts will generally uphold provisions permitting public officers or boards to determine conditions under which a law respecting motor vehicles or traffic upon public ways may or may not apply or to alter such regulations to meet peculiar local conditions.<sup>n5</sup>

The exercise of functions of a ministerial character in connection with motor vehicle and traffic regulation may be delegated by the legislature to --

- the highway department.<sup>n6</sup>
- a state department of transportation.<sup>n7</sup>
- the motor vehicle commissioner or administration.<sup>n8</sup>
- park commissioners.<sup>n9</sup>
- police boards.<sup>n10</sup>
- or to the such other public officers or boards as it deems fit.<sup>n11</sup>

To the extent that the legislature has the power to delegate the power to perform an administrative function to a board or commission, it has also the power to revoke or change such delegation.<sup>n12</sup> However, local power to regulate cannot be taken away and conferred on another authority without clear statutory expression.<sup>n13</sup>

The fact that there is no provision for an appeal from the action of public authorities in promulgating regulations respecting motor vehicles or traffic upon public ways does not necessarily render them invalid.<sup>n14</sup>

**FOOTNOTES:**

n1 Am. Jur. 2d, Administrative Law § 51.

## 7A Am Jur 2d Automobiles and Highway Traffic § 23

n2 Cicero Lumber Co. v. Town of Cicero, 176 Ill. 9, 51 N.E. 758 (1898); Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604 (1930).

n3 People v. Peterson, 734 P.2d 118 (Colo. 1987); Springfield Park Dist. v. Buckley, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986).

n4 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Interstate Trucking Co. v. Dammann, 208 Wis. 116, 241 N.W. 625, 82 A.L.R. 1080 (1932).

n5 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).

n6 People v. Peterson, 734 P.2d 118 (Colo. 1987).

n7 American Bus Lines, Inc. v. Arizona Corp. Commission, 129 Ariz. 595, 633 P.2d 404 (1981); State v. Moore, 259 Ga. 139, 376 S.E.2d 877 (1989); Dartez v. Powell Oil Co., 499 So. 2d 1046 (La. Ct. App. 3d Cir. 1986).

n8 State v. Anonymous, 36 Conn. Supp. 551, 421 A.2d 867 (Super. Ct. Appellate Sess. 1980); Department of Transp., Motor Vehicle Admin. v. Armacost, 299 Md. 392, 474 A.2d 191 (1984).

n9 Shanks v. Forsyth County Park Authority, Inc., 869 F. Supp. 1231 (M.D. N.C. 1994); American Motorcyclist Ass'n v. Park Com'n of City of Brockton, 412 Mass. 753, 592 N.E.2d 1314 (1992).

n10 Commonwealth v. Plaisted, 148 Mass. 375, 19 N.E. 224 (1889).

As to police officers, see § 24.

n11 People ex rel. Curren v. Schommer, 392 Ill. 17, 63 N.E.2d 744, 167 A.L.R. 1347 (1945); Molony-Vierstra v. Michigan State University, 417 Mich. 224, 331 N.W.2d 473, 10 Ed. Law Rep. 359 (1983).

n12 Illinois Malleable Iron Co. v. Commissioners of Lincoln Park, 263 Ill. 446, 105 N.E. 336 (1914).

n13 Robinson v. Indianola Mun. Separate School Dist., 467 So. 2d 911, 24 Ed. Law Rep. 1077 (Miss. 1985).

n14 Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Traffic Offenses and Violations

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7A Am Jur 2d Automobiles and Highway Traffic § 24

## § 24 Police officers

There is some question as to the extent to which the power to direct traffic upon the public ways may be delegated to police officers.<sup>n1</sup> In any event, an ordinance which imposes upon police officers the duty of enforcing the provisions of a traffic ordinance, but gives them the discretion to direct traffic as public safety or convenience may demand in times of an emergency,<sup>n2</sup> or to expedite traffic or safeguard pedestrians,<sup>n3</sup> is valid and constitutional, and is not open to the objection that it is an unconstitutional delegation of legislative power to police officers, or that it deprives motorists of their liberty without due process of law. Such an ordinance is upheld on the theory that the subject is one which does not admit of rigid or fixed regulations which will operate automatically and with entire impartiality without the intervention of a directing intelligence.<sup>n4</sup> In some instances, however, provisions conferring such power of direction have been declared invalid upon the ground that they vested in the officer an unnecessary discretion and power of discrimination.<sup>n5</sup>

**FOOTNOTES:**

n1 City of Cleveland v. Gustafson, 124 Ohio St. 607, 11 Ohio L. Abs. 416, 180 N.E. 59, 79 A.L.R. 1325 (1932).

n2 City of Chicago v. Marriotto, 332 Ill. 44, 163 N.E. 369, 60 A.L.R. 501 (1928); Com. v. Harrison, 183 Pa. Super. 133, 130 A.2d 198 (1957).

n3 Com. v. Harrison, 183 Pa. Super. 133, 130 A.2d 198 (1957).

n4 City of Chicago v. Marriotto, 332 Ill. 44, 163 N.E. 369, 60 A.L.R. 501 (1928).

n5 City of St. Louis v. Allen, 275 Mo. 501, 204 S.W. 1083 (1918).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59  
U.S. Const. Art. I, § 8  
23 U.S.C.A. §§ 161, 401 et seq., 410  
40 U.S.C.A. §§ 601 et seq., 17101 et seq.  
49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 25

## § 25 Generally

The fixed rule and basic standard by which the validity of all exercises of the police power is tested is that the police power of the state extends only to such measures as are reasonable and that all police regulations must be reasonable under all the circumstances.<sup>n1</sup> Statutes and ordinances regulating vehicles and their use on the public highways and streets must be reasonable.<sup>n2</sup> Moreover, the regulation must be reasonably related to a proper legislative goal.<sup>n3</sup>

Whether such a statute or ordinance is reasonable is to be determined in view of the general conditions existing at the time the question arises,<sup>n4</sup> and neither exact precision nor scientific calculation is essential to render regulations of highway traffic reasonable.<sup>n5</sup> Such regulations may be reasonable notwithstanding that they operate harshly against particular persons,<sup>n6</sup> and, generally speaking, the burden of showing that they are unreasonable is on those who deny their validity.<sup>n7</sup>

Observation: Traffic ordinances are presumed to be valid.<sup>n8</sup>

Statutes and ordinances regulating vehicles and their use on the public highways and streets must also be definite in specifying the conduct which is condemned or prohibited, to the end that the persons concerned may know how to comply with the requirements of the statutes.<sup>n9</sup>

In determining the validity of local traffic regulations, it is necessary to balance the effect of the ordinance in promoting health, safety and welfare of the community against the hardships and difficulties it causes to individuals; an evidentiary hearing may be required.<sup>n10</sup> In making such determinations, the courts will take judicial notice of matters of common knowledge.<sup>n11</sup>

**FOOTNOTES:**

n1 Am. Jur. 2d, Constitutional Law § 331.

n2 *People v. Blackorby*, 146 Ill. 2d 307, 166 Ill. Dec. 902, 586 N.E.2d 1231 (1992); *State v. Folda*, 267 Mont. 523, 885 P.2d 426 (1994); *Board of Trustees of Inc. Village of Mineola v. Incorporated Village of East Williston*, 232 A.D.2d 443, 648 N.Y.S.2d 170 (2d Dep't 1996).

A township ordinance requiring commercial vehicles in excess of 10,001 pounds to use designated truck routes when passing through the township was a valid exercise of power granted by a state statute allowing townships to prohibit the operation of trucks or other commercial vehicles on designated highways or streets or provide that only certain highways or streets may be used by trucks or other commercial vehicles. *C & T Transport, Inc. v. York Tp.*, 252 Mich. App. 524, 652 N.W.2d 694 (2002).

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n3 *People v. Elkins*, 12 Cal. App. 4th Supp. 1, 16 Cal. Rptr. 2d 504 (App. Dep't Super. Ct. 1992); *Levine v. Police Com'n of Town of Fairfield*, 28 Conn. App. 344, 612 A.2d 787 (1992); *People v. Strawn*, 210 Ill. App. 3d 783, 155 Ill. Dec. 269, 569 N.E.2d 269 (4th Dist. 1991).

n4 *Snyder v. Campbell*, 145 Miss. 287, 110 So. 678, 49 A.L.R. 1402 (1926); *City of Seattle v. Larkin*, 10 Wash. App. 205, 516 P.2d 1083 (Div. 1 1973).

n5 *South Carolina State Highway Department v. Barnwell Bros.*, 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938); *State v. Moore*, 259 Ga. 139, 376 S.E.2d 877 (1989).

n6 *Department of Transp. v. Georgia Min. Ass'n*, 252 Ga. 128, 311 S.E.2d 443 (1984); *Des Moines Metropolitan Area Solid Waste Agency v. City of Grimes*, 495 N.W.2d 746 (Iowa 1993).

n7 *Department of Transp. v. Georgia Min. Ass'n*, 252 Ga. 128, 311 S.E.2d 443 (1984); *Springfield Park Dist. v. Buckley*, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986); *Brandmiller v. Arreola*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

n8 *Wenco Management Co. v. Town of Carrboro*, 53 N.C. App. 480, 281 S.E.2d 74 (1981); *City of Cincinnati v. Welty*, 64 Ohio St. 2d 28, 18 Ohio Op. 3d 211, 413 N.E.2d 1177 (1980).

n9 *City of Wichita v. Basgall*, 257 Kan. 631, 894 P.2d 876, 10 A.D.D. 887 (1995); *State v. Dillon*, 670 So. 2d 278 (La. Ct. App. 3d Cir. 1996).

n10 *White Plains Automotive Supply Co., Inc. v. City of Peekskill*, 98 A.D.2d 776, 469 N.Y.S.2d 487 (2d Dep't 1983).

n11 *City of Chicago v. Rhine*, 363 Ill. 619, 2 N.E.2d 905, 105 A.L.R. 1045 (1936) (congestion of street traffic in certain districts).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

A.L.R. Index, Automobiles and Highway Traffic

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West's A.L.R. Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7

Validity, construction, and effect of statutes or ordinances forbidding automotive "cruising" -- practice of driving repeatedly through loop of public roads through city, 87 A.L.R.4th 1110

Statute prohibiting reckless driving: Definiteness and certainty, 52 A.L.R.4th 1161

Indefiniteness of automobile speed regulations as affecting validity, 6 A.L.R.3d 1326

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7A Am Jur 2d Automobiles and Highway Traffic § 26

## § 26 Discrimination; classification

Statutes and ordinances regulating vehicles and their operation upon the public ways must not unjustly discriminate between individuals or classes.<sup>n1</sup> However, the applicability of such laws may be limited in accordance with a reasonable classification of persons, subjects, or places.<sup>n2</sup> Thus, for safety purposes, users of the highways may constitutionally be classified according to the character and extent of their use, and, if so classified, may be subjected to regulation.<sup>n3</sup> Also, a classification having a basis in practical convenience is not unconstitutional because it may be lacking in purely theoretical or scientific uniformity.<sup>n4</sup> Because most traffic ordinances do not create a suspect classification,<sup>n5</sup> the classifications will be upheld so long as they bear a rational relationship to a legitimate state purpose.<sup>n6</sup>

Motor vehicles have been recognized as properly and reasonably forming a separate class of instrumentalities for legislative purposes.<sup>n7</sup> Accordingly, a statute or ordinance is not unconstitutional as being special legislation merely because it legislates solely upon the question of the operation of automobiles, and does not attempt to regulate the operation of all vehicles using the public highways.<sup>n8</sup> Separate classifications for motorcycles have been upheld in many circumstances,<sup>n9</sup> although prohibitions of motorcycles on park roads have sometimes been struck down as unconstitutional classifications.<sup>n10</sup>

Separate classification of snowmobiles has also been upheld.<sup>n11</sup>

A distinction may also be made between private carriers who transport their own property for compensation and those who transport their own property without compensation.<sup>n12</sup>

**FOOTNOTES:**

n1 *Wilson v. City of Waynesville*, 615 S.W.2d 640 (Mo. Ct. App. S.D. 1981); *Board of Trustees of Inc. Village of Mineola v. Incorporated Village of East Williston*, 232 A.D.2d 443, 648 N.Y.S.2d 170 (2d Dep't 1996).

As to vehicle regulations discriminating against interstate commerce, see § 28.

**Related References:**

As to the guaranty of equal protection, generally, see Am. Jur. 2d, Constitutional Law §§ 777 to 868.

n2 *Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935); *Stanley v. Public Utilities Commission of Maine*, 295 U.S. 76, 55 S. Ct. 628, 79 L. Ed. 1311 (1935).

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n3 Automotive Parts & Accessories Ass'n v. Boyd, 407 F.2d 330 (D.C. Cir. 1968); Hertz Drivurself Stations v. Siggins, 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).

n4 Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

n5 Guttridge v. Com. of Va., 532 F. Supp. 533 (E.D. Va. 1982); City of Tulsa v. Martin, 1989 OK CR 24, 775 P.2d 824 (Okla. Crim. App. 1989).

n6 State v. Moore, 259 Ga. 139, 376 S.E.2d 877 (1989); Springfield Park Dist. v. Buckley, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986).

n7 Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

n8 Commonwealth v. Nolan, 189 Ky. 34, 224 S.W. 506, 11 A.L.R. 202 (1920); City of Tulsa v. Martin, 1989 OK CR 24, 775 P.2d 824 (Okla. Crim. App. 1989) (seat belts in passenger cars only).

n9 Warner v. Leslie-Elliott Constructors, Inc., 194 Conn. 129, 479 A.2d 231 (1984); Leonard v. Parrish, 420 N.W.2d 629 (Minn. Ct. App. 1988) (helmet law); American Motorcyclist Ass'n v. City of St. Louis, 622 S.W.2d 267 (Mo. Ct. App. E.D. 1981) (restriction on motorcycles in public parks); Toledo v. Wacenske, 95 Ohio App. 3d 282, 642 N.E.2d 407 (6th Dist. Lucas County 1994) (requiring use of headlights during daylight hours).

n10 Springfield Park Dist. v. Buckley, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986); American Motorcyclist Ass'n v. Park Com'n of City of Brockton, 412 Mass. 753, 592 N.E.2d 1314 (1992).

n11 People v. Staton, 248 Ill. App. 3d 799, 189 Ill. Dec. 76, 619 N.E.2d 777 (2d Dist. 1993).

n12 Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

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## 7A Am Jur 2d Automobiles and Highway Traffic § 27

## § 27 Regulations pertaining to vehicles engaged in transportation for hire

The use upon the public highways of motor vehicles engaged in transportation for hire may be prohibited, restricted, or conditioned by the controlling public authority.<sup>n1</sup> This rule applies to private contract carriers<sup>n2</sup> as well as to common carriers.<sup>n3</sup> Indeed, commercial motor carriers are highly regulated by the state.<sup>n4</sup>

Statutes and ordinances regulating vehicles and their operation upon the public ways must not unjustly discriminate between individuals or classes.<sup>n5</sup> Buses form a separate and distinct class of conveyance, and therefore regulations pertaining to such vehicles are not discriminatory because streetcars, taxicabs, and the like, are excluded from their operation.<sup>n6</sup> So too, as a general rule, "jitneys" may be subjected to different regulations than those applicable to privately owned automobiles,<sup>n7</sup> although an ordinance prohibiting jitneys has been held to be unconstitutional classification on the ground that it bore no substantial relationship to traffic safety.<sup>n8</sup> A distinction may also be made between private carriers who transport their own property for compensation and those who transport their own property without compensation.<sup>n9</sup>

**FOOTNOTES:**

n1 *Stephenson v. Binford*, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932); *Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

As to regulations affecting interstate commerce, see § 28.

n2 *Hicklin v. Coney*, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); *Stephenson v. Binford*, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

n3 *Mayor & Aldermen of Savannah v. Knight*, 172 Ga. 371, 157 S.E. 309, 73 A.L.R. 1289 (1931); *Village of Schaumburg v. Franberg*, 99 Ill. App. 3d 1, 54 Ill. Dec. 336, 424 N.E.2d 1239 (1st Dist. 1981).

n4 *State v. Bone*, 27 Kan. App. 2d 582, 6 P.3d 914 (2000).

n5 § 26.

n6 *Clem v. City of La Grange*, 169 Ga. 51, 149 S.E. 638, 65 A.L.R. 1361 (1929); *City of Memphis v. State*, 133 Tenn. 83, 179 S.W. 631 (1915).

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n7 City of Memphis v. State, 133 Tenn. 83, 179 S.W. 631 (1915).

n8 Santos v. City of Houston, Tex., 852 F. Supp. 601 (S.D. Tex. 1994).

n9 Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

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§ 28 Regulations affecting interstate commerce

In the absence of an act of Congress covering the subject, a state may impose upon vehicles using its highways in interstate commerce nondiscriminatory regulations for the purpose of insuring the public safety and convenience, and for the protection and conservation of the use of such highways.<sup>n1</sup> Even though a local regulation materially interferes with interstate commerce, great leeway is allowed local authorities where traffic control and the use of highways are involved and where there is no conflicting federal regulation.<sup>n2</sup> For example, state legislatures have great leeway in providing safety regulations for all vehicles, interstate as well as local,<sup>n3</sup> such measures carrying a strong presumption of validity when challenged in the courts.<sup>n4</sup>

If a statute is neutral on its face, has only indirect or incidental effects on interstate commerce, and regulates evenhandedly, the statute will be upheld unless the burden on such commerce is clearly excessive in relation to the putative local benefits.<sup>n5</sup> Thus, a state highway safety measure affecting interstate commerce will, absent federal entry into the field, be upheld, unless from the whole record it can be concluded that the total effect of the state law furthers the purpose of safety so marginally and interferes with commerce so substantially that it must be invalid.<sup>n6</sup>

Taken into consideration with other factors, the cost involved in complying with state regulations applicable to interstate commerce may be relevant to the issue of a burden on commerce.<sup>n7</sup> However, even though a state which adopts a safety measure requiring a motor carrier design which is out of line with the requirements of almost all other states may sometimes place a great burden of delay and inconvenience on those interstate motor carriers entering or crossing its territory, such a new safety measure may be so compelling that the innovating state need not be the one to give way.<sup>n8</sup>

Municipalities retain considerable authority to regulate how motor vehicles engaged in interstate commerce shall be operated over their streets,<sup>n9</sup> and may require that such vehicles obey traffic and other general safety regulations.<sup>n10</sup>

**FOOTNOTES:**

n1 *Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).

n2 *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959); *Railway Exp. Agency v. People of State of N.Y.*, 336 U.S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1949); *State v. Dillon*, 670 So. 2d 278 (La. Ct. App. 3d Cir. 1996).

n3 *Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).



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n4 Kassel v. Consolidated Freightways Corp. of Delaware, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981); Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).

n5 Government Suppliers Consolidating Services, Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992).

n6 Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959); People v. Strawn, 210 Ill. App. 3d 783, 155 Ill. Dec. 269, 569 N.E.2d 269 (4th Dist. 1991); State v. Dillon, 670 So. 2d 278 (La. Ct. App. 3d Cir. 1996).

n7 Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).

n8 Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).

n9 City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958); Atchison, T. & S. F. Ry. Co. v. Public Utilities Commission of Cal., 346 U.S. 346, 74 S. Ct. 92, 98 L. Ed. 51 (1953).

n10 City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(5), 7, 9, 59

U.S. Const. Art. I, § 8

23 U.S.C.A. §§ 161, 401 et seq., 410

40 U.S.C.A. §§ 601 et seq., 17101 et seq.

49 U.S.C.A. §§ 30101 et seq., 30301 et seq., 30501 et seq., 31701 et seq., 32302, 33101 et seq.

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Traffic Offenses and Violations

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Automobiles and Highway Traffic  
II. Title and Ownership; Transfers and Encumbrances  
A. Title

7A Am Jur 2d Automobiles and Highway Traffic § 29

§ 29 Generally

Certificates of title or registration of automobiles are indicia of their ownership and control, and, standing alone, raise an inference of legal title in the holder thereof, subject to contradiction of such fact under the ordinary rules of evidence.<sup>n1</sup> The mere fact that one has possession of a motor vehicle is not conclusive evidence of ownership and of the right of disposal,<sup>n2</sup> although a rebuttable presumption of ownership is created thereby.<sup>n3</sup>

Practice Tip: The question of ownership is one of fact to be decided by the factfinder.<sup>n4</sup>

**FOOTNOTES:**

n1 *Cincinnati Ins. Co. v. Moen*, 940 F.2d 1069 (7th Cir. 1991) (applying Indiana law); *Bowen v. Gardner*, 275 N.C. 363, 168 S.E.2d 47 (1969).

n2 *Matter of Stewart*, 9 B.R. 32 (Bankr. M.D. Ga. 1980) (applying Georgia law); *Forrest v. Benson*, 150 Ark. 89, 233 S.W. 916 (1921).

n3 *Penticost v. Massey*, 201 Ala. 261, 77 So. 675 (1917).

The true owner is the person who maintains possession and control of the automobile. *Verriest v. INA Underwriters Ins. Co.*, 142 N.J. 401, 662 A.2d 967 (1995).

n4 *Botsford General Hosp. v. Citizens Ins. Co.*, 195 Mich. App. 127, 489 N.W.2d 137 (1992); *Sosnowski v. Kolovas*, 127 A.D.2d 756, 512 N.Y.S.2d 148 (2d Dep't 1987).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]20

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Automobiles and Highway Traffic  
II. Title and Ownership; Transfers and Encumbrances  
A. Title

## 7A Am Jur 2d Automobiles and Highway Traffic § 30

## § 30 Certificates of title

In many states the statutes provide a system of registering the title to motor vehicles not unlike the Torrens system of registering title to real property.<sup>n1</sup> Such statutes constitute an authorized exercise of the police power on the part of the legislature, and do not violate any of the provisions of the Federal Constitution.<sup>n2</sup> Such a statute is a police regulation of the highest order and should be liberally construed to accomplish its purpose.<sup>n3</sup> The provisions of such statutes vary between jurisdictions, but they have in common an arrangement for the issuance of a certificate of title or similar instrument which, it is intended, shall show who is the owner of the vehicle.<sup>n4</sup>

Statutes providing a system for registering title are to be interpreted in accordance with the general purpose sought to be effectuated by them,<sup>n5</sup> which is to prevent theft and fraud in the transfer of title to motor vehicles.<sup>n6</sup> The requirement that vehicles be titled serves the purpose of protecting owners of motor vehicles, persons holding liens thereon, and the public in transactions involving vehicles.<sup>n7</sup> The function of a statutory scheme governing motor vehicle titles is to outline a single filing procedure for the notation of ownership and security interests in vehicles on the certificate of title.<sup>n8</sup> Under this unified system, parties to a commercial transaction may rely with practical certitude on the ownership and security interests inscribed on the certificate of title.<sup>n9</sup> A certificate of title statute is designed to allow buyers to readily and reliably ascertain the status of a seller's title without recourse to official state records.<sup>n10</sup>

Observation: Such statutes have no extraterritorial effect.<sup>n11</sup>

**FOOTNOTES:**

n1 Merchants Rating & Adjusting Co. v. Skaug, 4 Wash. 2d 46, 102 P.2d 227 (1940).

n2 State ex rel. City Loan & Savings Co. v. Taggart, 134 Ohio St. 374, 12 Ohio Op. 517, 17 N.E.2d 758 (1938).

n3 Reddish v. Heartland Auto Plaza, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006).

n4 Hicks v. Thomas, 516 So. 2d 1344, 6 U.C.C. Rep. Serv. 2d 105 (Miss. 1987); Martin v. Nager, 192 N.J. Super. 189, 469 A.2d 519, 38 U.C.C. Rep. Serv. 781 (Ch. Div. 1983).

n5 Theriac v. McKeever, 405 So. 2d 354 (La. Ct. App. 2d Cir. 1981); Shaffer v. Federated Mut. Ins. Co., 903 S.W.2d 600 (Mo. Ct. App. S.D. 1995).

n6 Reddish v. Heartland Auto Plaza, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006);

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Allan Nott Ents, Inc. v. Nicholas Starr Auto, L.L.C., 110 Ohio St. 3d 112, 2006-Ohio-3819, 851 N.E.2d 479 (2006); Gramercy Ins. Co. v. Arcadia Financial Ltd., 32 S.W.3d 402 (Tex. App. Houston 14th Dist. 2000); Concord General Mut. Ins. Co. v. Sumner, 171 Vt. 572, 762 A.2d 849, 43 U.C.C. Rep. Serv. 2d 875 (2000).

n7 Flynn v. Indiana Bureau of Motor Vehicles, 716 N.E.2d 988 (Ind. Ct. App. 1999); Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc., 92 Ohio St. 3d 513, 2001-Ohio-1274, 751 N.E.2d 1019, 45 U.C.C. Rep. Serv. 2d 478 (2001).

n8 First Nat. Bank of the North v. Automotive Finance Corp., 661 N.W.2d 668, 50 U.C.C. Rep. Serv. 2d 915 (Minn. Ct. App. 2003).

n9 First Nat. Bank of the North v. Automotive Finance Corp., 661 N.W.2d 668, 50 U.C.C. Rep. Serv. 2d 915 (Minn. Ct. App. 2003).

n10 Sachtjen v. American Family Mut. Ins. Co., 49 P.3d 1146 (Colo. 2002).

n11 Furches v. Ring, 171 Ga. App. 19, 318 S.E.2d 762 (1984); State ex rel. City Loan & Savings Co. v. Taggart, 134 Ohio St. 374, 12 Ohio Op. 517, 17 N.E.2d 758 (1938).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]20

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Am. Jur. Legal Forms 2d, Abandoned, Lost and Unclaimed Property § 1:20 (Affidavit -- Loss of certificate of title to vehicle)

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Automobiles and Highway Traffic  
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## § 31 As evidence of ownership

A certificate of title serves not only as a substitute recording system but also as evidence of ownership.<sup>n1</sup> Although it has been held that compliance with the transfer provisions of a motor vehicle title statute establishes incontrovertible evidence of vehicle ownership,<sup>n2</sup> generally the certificate of title is considered to be only prima facie evidence of ownership,<sup>n3</sup> or the primary indicia of ownership.<sup>n4</sup> It is not the exclusive method of proving ownership,<sup>n5</sup> nor does it necessarily provide conclusive evidence of ownership.<sup>n6</sup> It merely provides some evidence of ownership.<sup>n7</sup>

In many jurisdictions, a certificate of title is presumptive evidence of ownership.<sup>n8</sup> In some jurisdictions this presumption may only be rebutted by evidence of fraud, coercion, theft, forgery, or misrepresentation.<sup>n9</sup> Other jurisdictions require clear and convincing proof of actual ownership in order to rebut the presumption of ownership created by the certificate of title.<sup>n10</sup> Many jurisdictions find that the presumption may be rebutted by competent evidence of actual ownership<sup>n11</sup> arising from the particular facts and circumstances of the case.<sup>n12</sup>

Observation: In an action to recover for damages to a motor vehicle, a certificate of title may be the only acceptable proof of title to the damaged vehicle under the terms of the statute in a particular jurisdiction.<sup>n13</sup> This does not mean, however, that the parties may not stipulate as to the ownership of the motor vehicle, rendering proof unnecessary.<sup>n14</sup>

**FOOTNOTES:**

n1 *McDuffie v. Com.*, 49 Va. App. 170, 638 S.E.2d 139 (2006).

n2 *American Nat. General Ins. Co. v. Solum*, 631 N.W.2d 420 (Minn. Ct. App. 2001), *aff'd*, 641 N.W.2d 891 (Minn. 2002).

n3 *Schultz v. Security Nat. Bank*, 583 N.W.2d 886, 36 U.C.C. Rep. Serv. 2d 586 (Iowa 1998); *Hanson v. General Motors Corp.*, 241 Neb. 81, 486 N.W.2d 223 (1992); *Genesee Regional Bank v. Palumbo*, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005); *Unisun Ins. Co. v. First Southern Ins. Co.*, 319 S.C. 419, 462 S.E.2d 260 (1995); *Heinrich v. Titus-Will Sales, Inc.*, 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).

n4 *Van Hooser v. Banks*, 816 S.W.2d 25 (Mo. Ct. App. W.D. 1991).

n5 *Pekin Ins. Co. v. Charlie Rowe Chevrolet, Inc.*, 556 N.E.2d 1367, 14 U.C.C. Rep. Serv. 2d 125 (Ind. Ct. App. 1990); *Heinrich v. Titus-Will Sales, Inc.*, 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).

n6 *Cincinnati Ins. Co. v. Nelson*, 668 So. 2d 539 (Ala. 1995); *Matter of One 1985 Mercedes Benz Auto.*, 644 A.2d 423 (Del. Super. Ct. 1992); *Genesee Regional Bank v. Palumbo*, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005).

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n7 *In re Ambrose*, 148 B.R. 244 (Bankr. W.D. Pa. 1992) (applying Pennsylvania law); *Bank South, N.A. v. Zweig*, 217 Ga. App. 77, 456 S.E.2d 257 (1995); *Sterling v. Capital Financial Services Inc.*, 480 N.E.2d 605 (Ind. Ct. App. 1985); *Keyes v. Keyes*, 182 W. Va. 802, 392 S.E.2d 693 (1990).

n8 *Matter of One 1985 Mercedes Benz Auto.*, 644 A.2d 423 (Del. Super. Ct. 1992); *McCullough v. State*, 612 So. 2d 697 (Fla. Dist. Ct. App. 1st Dist. 1993); *Keller v. Judd*, 671 S.W.2d 604 (Tex. App. San Antonio 1984); *Lake Philgas Service v. Valley Bank & Trust Co.*, 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993).

n9 *In re Akron-Cleveland Auto Rental, Inc.*, 921 F.2d 659 (6th Cir. 1990) (applying Ohio law); *Nelson v. Cool*, 230 Neb. 859, 434 N.W.2d 32 (1989).

n10 *McCullough v. State*, 612 So. 2d 697 (Fla. Dist. Ct. App. 1st Dist. 1993).

n11 *Pekin Ins. Co. v. U.S. Credit Funding, Ltd.*, 212 Ill. App. 3d 673, 156 Ill. Dec. 789, 571 N.E.2d 769 (1st Dist. 1991); *Lee v. General Acc. Ins. Co.*, 106 N.M. 22, 738 P.2d 516 (1987); *Sosnowski v. Kolovas*, 127 A.D.2d 756, 512 N.Y.S.2d 148 (2d Dep't 1987); *Unisun Ins. Co. v. First Southern Ins. Co.*, 319 S.C. 419, 462 S.E.2d 260 (1995); *Keyes v. Keyes*, 182 W. Va. 802, 392 S.E.2d 693 (1990).

n12 *Colorado Farm Bureau Mut. Ins. Co. v. CAT Continental, Inc.*, 649 F. Supp. 49 (D. Colo. 1986) (applying Colorado law); *Cincinnati Ins. Co. v. Nelson*, 668 So. 2d 539 (Ala. 1995); *In re One 1983 Toyota Silver Four-Door Sedan, VIN No. JT2MX63E4D0004378*, 168 Ariz. 399, 814 P.2d 356 (Ct. App. Div. 1 1991); *Landshire Food Service, Inc. v. Coghill*, 709 S.W.2d 509, 1 U.C.C. Rep. Serv. 2d 729 (Mo. Ct. App. E.D. 1986); *Lake Philgas Service v. Valley Bank & Trust Co.*, 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993).

n13 *Mielke v. Leeberson*, 150 Ohio St. 528, 38 Ohio Op. 352, 83 N.E.2d 209, 7 A.L.R.2d 1342 (1948).

n14 *State Farm Mut. Auto. Ins. Co. v. Dicenzo*, 1 Ohio App. 3d 68, 439 N.E.2d 456 (10th Dist. Franklin County 1981).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]20

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Automobiles and Highway Traffic  
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§ 32 Issuance on basis of certificate from another state

A state has the authority to issue a certificate of title to an automobile from another state, based upon the evidence contained in the certificate of title issued by such other state.<sup>n1</sup> When an application for a certificate of title is made, a state may require the surrender of the out of state certificate of title.<sup>n2</sup>

**FOOTNOTES:**

n1 W.S. Maxwell Co. v. Southern Oregon Gas Corp., 158 Or. 168, 74 P.2d 594, 114 A.L.R. 697 (1937), opinion adhered to on reh'g, 158 Or. 168, 75 P.2d 9 (1938).

n2 In re Males, 999 F.2d 607, 21 U.C.C. Rep. Serv. 2d 108 (2d Cir. 1993) (applying New York law).

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## 7A Am Jur 2d Automobiles and Highway Traffic § 33

## § 33 Certificates of registration; license plates

In the sale of a used vehicle, the operative fact in the transfer of title is the assignment of title rather than the registration of title,<sup>n1</sup> and failure to secure registration as required by statute does not void the sale of a vehicle.<sup>n2</sup> It is sometimes stated, in this regard, that the registration of a motor vehicle creates a presumption or prima facie showing of ownership of a motor vehicle in the party in whose name the vehicle is registered,<sup>n3</sup> and that the presence of one's license plates upon a motor vehicle creates a presumption or prima facie showing that he or she is the owner of the vehicle.<sup>n4</sup> Although there is some authority for the contrary view,<sup>n5</sup> the presumptions arising from facts related to registration or licensing of a motor vehicle are generally not deemed conclusive but are considered to be rebuttable by the introduction of evidence to the contrary,<sup>n6</sup> which evidence must be undisputed, clear, and convincing.<sup>n7</sup> When there is competent and sufficient rebuttal evidence, ownership becomes a question of fact for the jury.<sup>n8</sup>

**FOOTNOTES:**

n1 *Schultz v. Murphy*, 596 S.W.2d 51 (Mo. Ct. App. E.D. 1980).

n2 *Zechlin v. Bridges Motor Sales*, 190 Mich. App. 339, 475 N.W.2d 60 (1991).

n3 *Finkbiner v. Mullins*, 532 A.2d 609 (Del. Super. Ct. 1987); *Safeco Ins. Co. v. Lapp*, 215 Mont. 196, 695 P.2d 1310, 40 U.C.C. Rep. Serv. 887 (1985); *Lake Philgas Service v. Valley Bank & Trust Co.*, 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993); *Heinrich v. Titus-Will Sales, Inc.*, 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).

n4 *Fulater v. Palmer's Granite Garage, Inc.*, 90 A.D.2d 685, 456 N.Y.S.2d 289 (4th Dep't 1982); *Henry v. Condit*, 152 Or. 348, 53 P.2d 722, 103 A.L.R. 131 (1936).

n5 *West Bend Mut. Ins. Co. v. Armstrong*, 419 N.W.2d 848 (Minn. Ct. App. 1988).

n6 *Lake Philgas Service v. Valley Bank & Trust Co.*, 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993); *Heinrich v. Titus-Will Sales, Inc.*, 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).

n7 *American Emp. Ins. Co. v. Zablosky*, 292 F.2d 412 (5th Cir. 1961) (applying Texas law); *Empire Gas & Fuel Co. v. Muegge*, 135 Tex. 520, 143 S.W.2d 763 (Comm'n App. 1940).

n8 *Doughty v. Johnson*, 155 A.D.2d 513, 547 N.Y.S.2d 373 (2d Dep't 1989).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]20



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West's Key Number Digest, Automobiles [westkey]20

Comment Note. -- Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739

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Automobiles and Highway Traffic  
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7A Am Jur 2d Automobiles and Highway Traffic § 34

§ 34 Bills of sale

In some jurisdictions statutes have been enacted which require the execution of bills of sale in connection with the sale or transfer of motor vehicles.<sup>n1</sup> Since such statutes are police measures and regulatory in character,<sup>n2</sup> neither compliance nor noncompliance with their terms, although persuasive,<sup>n3</sup> is regarded as conclusive of the question of title.<sup>n4</sup>

Where there is no statutory requirement that a bill of sale be executed in connection with the transfer of title to a motor vehicle, the absence of a bill of sale does not constitute evidence of nonownership.<sup>n5</sup>

**FOOTNOTES:**

n1 § 40.

n2 § 40.

n3 *Cincinnati Ins. Co. v. Nelson*, 668 So. 2d 539 (Ala. 1995); *Worley v. Schaefer*, 228 Neb. 484, 423 N.W.2d 748, 6 U.C.C. Rep. Serv. 2d 710 (1988).n4 *Worley v. Schaefer*, 228 Neb. 484, 423 N.W.2d 748, 6 U.C.C. Rep. Serv. 2d 710 (1988) (holding that proof of possession of vehicle together with a bill of sale is sufficient to prove ownership of the vehicle).n5 *General Ins. Co. v. Hughes*, 152 Tex. 159, 255 S.W.2d 193 (1953).**REFERENCE:** West's Key Number Digest, Automobiles [westkey]20

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West's A.L.R. Digest, Automobiles [westkey]20

Am. Jur. Legal Forms 2d § 1:20

Am. Jur. Legal Forms 2d §§ 33:15 to 33:19, 33:22

West's Key Number Digest, Automobiles [westkey]20

Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:15 to 33:19 (Bill of sale -- Of automobile)

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Automobiles and Highway Traffic  
II. Title and Ownership; Transfers and Encumbrances  
B. Sale, Transfer, and Encumbrances  
1. In General

## 7A Am Jur 2d Automobiles and Highway Traffic § 35

## § 35 Generally

The sale of motor vehicles is a lawful business which any person has a right to pursue, subject only to reasonable regulation.<sup>n1</sup> The regulation of the business of selling motor vehicles, under the state police power, for the purpose of preventing fraud and promoting the general welfare of the public, is a proper subject for legislative action.<sup>n2</sup> In adopting such regulations, the legislature may properly differentiate between dealers in new vehicles and dealers in used vehicles.<sup>n3</sup>

The state's power to regulate the sale of motor vehicles includes the power to license those in the business of selling motor vehicles and to impose a fee, tax, or bond requirement on such businesses.<sup>n4</sup>

Inasmuch as a contract of purchase and sale, or the encumbrance, of a motor vehicle is not ordinarily different from a contract relating to any other kind of personal property, any statute which limits or prescribes a different form of contract, or a different procedure, is in derogation of common right and of the freedom of contract, and for that reason the statute is subject to the rule of strict construction.<sup>n5</sup>

Practice Tip: While vehicles qualify as "goods" under the Uniform Commercial Code, the sale and recording of the sale of vehicles are regulated by the motor vehicle laws.<sup>n6</sup>

**FOOTNOTES:**

n1 *Nelsen v. Tilley*, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939); *In re Hinesley*, 82 S.D. 552, 150 N.W.2d 834 (1967) (statute limiting sales of new automobiles to franchised dealers held constitutional).

n2 *Faygal v. Shelter Ins. Co.*, 689 S.W.2d 724 (Mo. Ct. App. E.D. 1985); *Nelsen v. Tilley*, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939).

n3 *Louisiana Motor Vehicle Commission v. Wheeling Frenchman*, 235 La. 332, 103 So. 2d 464 (1958); *In re Hinesley*, 82 S.D. 552, 150 N.W.2d 834 (1967).

**Related References:**

As to business of selling second-hand property, generally, see Am. Jur. 2d, Occupations, Trades, and Professions §§ 48 to 53.

n4 § 161.

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n5 Clay v. Harris, 228 Ill. App. 3d 475, 170 Ill. Dec. 474, 592 N.E.2d 1154 (4th Dist. 1992); Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674 (1929).

n6 Quartz of Southern California, Inc. v. Mullen Bros., Inc., 151 Cal. App. 4th 901, 61 Cal. Rptr. 3d 54 (4th Dist. 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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A.L.R. Index, Automobiles and Highway Traffic

West's A.L.R. Digest, Automobiles [westkey]19, 20

Am. Jur. Legal Forms 2d § 33:14

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 7, 8, 10 to 12

West's Key Number Digest, Automobiles [westkey]19

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 A.L.R.4th 624

Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 U.S.C.A. secs. 1221 et seq.), 51 A.L.R. Fed. 812

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## 7A Am Jur 2d Automobiles and Highway Traffic § 36

## § 36 Requirements as to certificates of title

In many jurisdictions where provision is made for the issuance of certificates of title to motor vehicles, the sale or transfer of a motor vehicle is consummated by the assignment of the certificate of title to the purchaser or transferee in the method prescribed by statute.<sup>n1</sup> In most of these jurisdictions such statutory provisions are viewed as merely police measures, regulatory in character, and are not meant to establish an exclusive method of transfer of title to a motor vehicle.<sup>n2</sup> These statutes create a "registration" type system, under which a certificate of title creates a right to register and use a vehicle on the public roads, rather than an "ownership" type system, under which legal title does not pass until a title certificate passes.<sup>n3</sup> Accordingly, ownership may change hands without the necessity of transferring a title certificate by the seller and obtaining a new one in the name of the purchaser.<sup>n4</sup>

In other jurisdictions, however, the statutory provisions as to the assignment of the certificate of title to a motor vehicle upon the sale or transfer of the vehicle are viewed as absolute and mandatory and are rigidly enforced by the courts, and title does not pass without adherence to such provisions.<sup>n5</sup> In a strict title state, assignment of the certificate of title in the manner provided by statute is the exclusive and only method of transferring title to a motor vehicle.<sup>n6</sup> This is true regardless of whether the transfer from the owner is made by way of sale or gift or is effected by operation of law.<sup>n7</sup> Nevertheless, the mandates of the statute can be relaxed in appropriate circumstances.<sup>n8</sup>

Observation: Filling in an erroneous odometer reading in violation of a certificate of title statute does not void a transfer as to third parties later in the chain of title.<sup>n9</sup> It would be too onerous a burden on commerce if every purchaser of an automobile had to verify the odometer reading of every transfer in his or her chain of title or risk there being a void transaction.<sup>n10</sup>

**FOOTNOTES:**

n1 *Aetna Cas. & Sur. Co. v. A.L.J.A., Inc.*, 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); *In re Superior Ground Support, Inc.*, 140 B.R. 878, 18 U.C.C. Rep. Serv. 2d 576 (Bankr. W.D. Mich. 1992) (applying Michigan law); *Jones v. Mitchell*, 816 So. 2d 68, 46 U.C.C. Rep. Serv. 2d 1000 (Ala. Civ. App. 2001); *Libertyville Toyota v. U.S. Bank*, 371 Ill. App. 3d 1009, 309 Ill. Dec. 609, 864 N.E.2d 850 (1st Dist. 2007); *Kirkpatrick v. BankAmerica Housing Services, a Div. of Bank of America, FSB*, 799 So. 2d 831 (La. Ct. App. 2d Cir. 2001); *Oliver v. Cameron Mut. Ins. Co.*, 866 S.W.2d 865 (Mo. Ct. App. E.D. 1993); *Baydo's Trailer Sales, Inc. v. Department of Licensing*, 32 Wash. App. 332, 647 P.2d 55 (Div. 2 1982).

In order to effect the transfer of the ownership of a motor vehicle, the owner must actually deliver the endorsed certificate of title to the transferee, and the owner must deliver possession of the vehicle to the transferee. *Allstate Ins. Co. v. Atlanta Cas. Co.*, 260 Va. 148, 530 S.E.2d 161 (2000).

As to certificates of title, generally, see § 30.

## 7A Am Jur 2d Automobiles and Highway Traffic § 36

n2 Commercial Credit Co. v. McNelly, 36 Del. 88, 171 A. 446 (Super. Ct. 1934); Pekin Ins. Co. v. Charlie Rowe Chevrolet, Inc., 556 N.E.2d 1367, 14 U.C.C. Rep. Serv. 2d 125 (Ind. Ct. App. 1990); Wille v. Courtney, 943 So. 2d 515 (La. Ct. App. 5th Cir. 2006), writ denied, 948 So. 2d 167 (La. 2007).

n3 Madrid v. Bloomington Auto Co., Inc., 782 N.E.2d 386, 49 U.C.C. Rep. Serv. 2d 795 (Ind. Ct. App. 2003).

n4 Smith v. Hardeman, 281 Ga. App. 402, 636 S.E.2d 106, 61 U.C.C. Rep. Serv. 2d 304 (2006).

n5 Perry v. Goff Motors, Inc., 12 Kan. App. 2d 139, 736 P.2d 949, 3 U.C.C. Rep. Serv. 2d 1805 (1987); Rogers v. Wheeler, 864 S.W.2d 892 (Ky. 1993); Reddish v. Heartland Auto Plaza, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006); Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto., Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987).

n6 Jackson v. Cannon, 147 S.W.3d 168 (Mo. Ct. App. S.D. 2004).

n7 Jackson v. Cannon, 147 S.W.3d 168 (Mo. Ct. App. S.D. 2004).

n8 Rockwood Bank v. Camp, 984 S.W.2d 868 (Mo. Ct. App. E.D. 1999).

n9 Perry v. Breland, 16 S.W.3d 182 (Tex. App. Eastland 2000).

n10 Perry v. Breland, 16 S.W.3d 182 (Tex. App. Eastland 2000).

Noncompliance with statute as not precluding purchaser from asserting title against third person, see § 54.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 7, 8, 10 to 12

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7A Am Jur 2d Automobiles and Highway Traffic § 37

§ 37 Notation of liens or encumbrances

Statutory provision is also made for the notation upon the certificate of title to a motor vehicle of encumbrances to which the vehicle is subject.<sup>n1</sup> In some jurisdictions the notation of encumbrances upon the certificate of title in the manner required by statute is a substitute for the recording of such encumbrances in accordance with the general statutes relating to such encumbrances.<sup>n2</sup> The notation of the encumbrance upon the certificate of title in the proper manner operates as notice to subsequent purchasers or encumbrancers of the existence of such encumbrances.<sup>n3</sup>

**FOOTNOTES:**

n1 Aurora Nat. Bank of Aurora, Ill. v. Ed Fanning Chevrolet, Inc., 85 Ill. App. 2d 394, 229 N.E.2d 2 (2d Dist. 1967); Baydo's Trailer Sales, Inc. v. Department of Licensing, 32 Wash. App. 332, 647 P.2d 55 (Div. 2 1982).

n2 In re Brown, 55 B.R. 172 (Bankr. W.D. Mo. 1985) (applying Missouri law); Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867, 41 U.C.C. Rep. Serv. 1453 (1985); Milwaukee Mack Sales, Inc. v. First Wisconsin Nat. Bank of Milwaukee, 93 Wis. 2d 589, 287 N.W.2d 708, 28 U.C.C. Rep. Serv. 540 (1980) (exclusive means of enforcing).

n3 General Motors Acceptance Corp. v. Rupp, 951 F.2d 283, 16 U.C.C. Rep. Serv. 2d 510 (10th Cir. 1991) (applying Utah law); Barry & Associates, Inc. v. General Motors Acceptance Corp. of Canada, Limited, 262 So. 2d 891 (Fla. Dist. Ct. App. 2d Dist. 1972).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 10 (Answer -- Defense -- Lien not noted on certificate of title)

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## 7A Am Jur 2d Automobiles and Highway Traffic § 38

## § 38 Applicability to dealers and manufacturers

Statutes which require the procurement of a certificate of title as a condition precedent to the right to sell or transfer a motor vehicle frequently exempt therefrom manufacturers and dealers of new vehicles.<sup>n1</sup> These statutes usually exclude the necessity of applying for a certificate of title until after the first sale of a new vehicle to a user.<sup>n2</sup> Thereupon the dealer obtains the certificate of title in the name of the purchaser or user.<sup>n3</sup>

Caution: If a dealer wishes to effectively transfer ownership of a vehicle without simultaneously transferring possession of the certificate of title, the dealer must obtain the purchaser's consent to file the certificate of title and other documents on behalf of the purchaser, and the dealer must verify that the purchaser has obtained insurance on the vehicle before relinquishing possession.<sup>n4</sup>

If a transfer of a title in an automobile occurs and the buyer uses a forged title document, it constitutes a void transfer and does not convey title to the buyer.<sup>n5</sup>

**FOOTNOTES:**

n1 *Aetna Cas. & Sur. Co. v. A.L.J.A., Inc.*, 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995); *Bruckner Truck Sales, Inc. v. Farm Credit Leasing Services Corp.*, 909 S.W.2d 75 (Tex. App. Amarillo 1995); *Concord General Mut. Ins. Co. v. Sumner*, 171 Vt. 572, 762 A.2d 849, 43 U.C.C. Rep. Serv. 2d 875 (2000).

n2 *Aetna Cas. & Sur. Co. v. A.L.J.A., Inc.*, 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); *Commercial Securities Co. v. Hugh Roberson Motors, Inc.*, 229 La. 959, 87 So. 2d 306 (1956); *Bruckner Truck Sales, Inc. v. Farm Credit Leasing Services Corp.*, 909 S.W.2d 75 (Tex. App. Amarillo 1995).

n3 *Aetna Cas. & Sur. Co. v. A.L.J.A., Inc.*, 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); *Gibson v. Bolner*, 165 Ohio St. 357, 59 Ohio Op. 467, 135 N.E.2d 353 (1956).

For a dealer authorized to sell new vehicles, a "Manufacturer's Certificate of Origin" is the title document used to establish proof of ownership in a new vehicle as well as for filing purposes to issue a certificate of title to the buyer thereof. *Genesee Regional Bank v. Palumbo*, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005).

n4 *Gainsco Companies v. Gentry*, 191 S.W.3d 633 (Ky. 2006).

n5 *Genesee Regional Bank v. Palumbo*, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20



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15 U.S.C.A. §§ 1232, 1233

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West's Key Number Digest, Automobiles [westkey]19

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 A.L.R.4th 624

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 7 (Complaint, petition, or declaration -- By purchaser -- Failure to obtain transfer of title -- Against dealer and dealer's surety)

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7A Am Jur 2d Automobiles and Highway Traffic § 39

§ 39 Requirements as to certificates of registration

In most jurisdictions motor vehicles are required to be registered in the name of the owner, such requirement being in the nature of a police regulation for the purpose of identification.<sup>n1</sup> Registration ordinarily expires upon the transfer of ownership of the vehicle, and the seller of a registered motor vehicle is required to execute a transfer of registration so that the purchaser may obtain registration in his or her own name.<sup>n2</sup>

Insofar as a mortgage is not a transfer of the ownership of a motor vehicle or an interest therein, but merely a lien, the mortgagee not being entitled to either the certificate of registration or the possession of the vehicle, the requirements as to the transfer of a certificate of registration have no application to a mortgage.<sup>n3</sup>

**FOOTNOTES:**

n1 § 93.

n2 *Durbin v. Fletcher*, 165 Cal. App. 3d 334, 211 Cal. Rptr. 483 (5th Dist. 1985); *Red Bird Motors, Inc. v. Endsley*, 657 S.W.2d 954 (Ky. Ct. App. 1983).

n3 *In re Senetos*, 29 F.2d 854 (D. Cal. 1928) (applying California law).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117  
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7A Am Jur 2d Automobiles and Highway Traffic § 40

§ 40 Requirements as to bills of sale

In some jurisdictions statutes have been enacted which require the seller of a motor vehicle to furnish to the buyer a bill of sale and to note thereon any retained security interest.<sup>n1</sup> Such statutes do not seek to discourage or limit or control the volume or character of the business of selling motor vehicles, but rather to encourage it by affording additional protection from fraud and theft to those who deal in such property.<sup>n2</sup>

Such a statute is a penal statute which is not intended to affect the validity of contracts or titles or rights of property and is not designed to repeal or interfere with the statutes relating to conditional sales, chattel mortgages, or the uniform law of sales in transactions relating to motor vehicles. As a penal statute it should be strictly construed according to its exact and technical meaning, recognizing nothing that is not expressed, and limiting its application to cases clearly described within the words used.<sup>n3</sup>

**FOOTNOTES:**

n1 Securities Acceptance Corp. v. Perkins, 182 Kan. 169, 318 P.2d 1058 (1957); State v. Malstrom, 672 A.2d 448 (R.I. 1996).

n2 Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674 (1929).

n3 Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674 (1929).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
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7A Am Jur 2d Automobiles and Highway Traffic § 41

§ 41 Application of transfer requirements to involuntary transfers

In some jurisdictions, the statutory transfer requirements are inapplicable to involuntary transfers, such as repossessions for failure to make payments as required by a conditional sales agreement.<sup>n1</sup> The validity of such statutory provisions has been upheld, as against the contention that such provisions are unconstitutional as significant state acts which deprive a purchaser under a conditional sales contract of property without procedural safeguards.<sup>n2</sup>

**FOOTNOTES:**

n1 Kipp v. Cozens, 40 Cal. App. 3d 709, 115 Cal. Rptr. 423, 14 U.C.C. Rep. Serv. 1453 (1st Dist. 1974).

n2 Kipp v. Cozens, 40 Cal. App. 3d 709, 115 Cal. Rptr. 423, 14 U.C.C. Rep. Serv. 1453 (1st Dist. 1974).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 42

## § 42 Price control; disclosure of price information

A legislature may not, under the guise of regulation, indulge in what in effect is arbitrary price fixing or interference with lawful competition with respect to the business of selling motor vehicles.<sup>n1</sup>

By federal statute every manufacturer of new automobiles distributed in interstate or foreign commerce is required, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, to securely affix to the windshield or side window of such automobile a label on which such manufacturer must endorse clearly, distinctly, and legibly true and correct entries disclosing certain information about the vehicle, including, among other things, the model, make, and serial or identification number of the automobile, the manufacturer's suggested retail price for the vehicle and each item of optional equipment attached thereto, and the amount charged to the dealer, if any, for the transportation of such vehicle to the dealer.<sup>n2</sup> The purpose of such statute is to prevent misbranding, abuse of caravan car prices, and "packing" of prices.<sup>n3</sup> The failure of a manufacturer to affix the required label subjects it to a specified fine, such failure with respect to each automobile constituting a separate offense.<sup>n4</sup> Similarly, the failure of a manufacturer to endorse the label as required by the statute, or the making of a false endorsement, will also subject the manufacturer to a fine, with each failure or false endorsement with respect to each automobile constituting a separate offense.<sup>n5</sup> In addition, the willful removal or alteration of such a label prior to its delivery to the ultimate purchaser also constitutes an offense punishable by a fine or imprisonment or both.<sup>n6</sup>

**FOOTNOTES:**

n1 *Rebsamen Motor Co. v. Phillips*, 226 Ark. 146, 289 S.W.2d 170, 57 A.L.R.2d 1256 (1956).

n2 15 U.S.C.A. § 1232.

n3 *Plymouth Dealers' Ass'n of No. Cal. v. United States*, 279 F.2d 128 (9th Cir. 1960).

n4 15 U.S.C.A. § 1233(a).

n5 15 U.S.C.A. § 1233(b).

n6 15 U.S.C.A. § 1233(c).

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1. In General

## 7A Am Jur 2d Automobiles and Highway Traffic § 43

## § 43 Defects found before sale

Under the terms of a federal statute, if a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and prior to the distributor's or dealer's sale of the vehicle or equipment determines that the vehicle or equipment contains a defect related to safety or that does not comply with applicable safety standards, then the manufacturer or distributor must either: (1) repurchase the vehicle or equipment and incur transportation and other charges, or (2) in the case of a vehicle, provide, at the manufacturer's or distributor's expense, the part or equipment needed to make the vehicle comply with the standards or correct the defect.<sup>n1</sup> If the dealer or distributor installs the corrective part, he or she is entitled to reimbursement from the manufacturer of, among other things, the reasonable value of the installation.<sup>n2</sup> The statute also provides for civil actions for noncompliance with the terms of the statute.<sup>n3</sup>

It is further provided by federal statute that the Secretary of Transportation may require manufacturers of motor vehicles or motor vehicle equipment to provide technical information related to performance and safety to purchasers and prospective purchasers.<sup>n4</sup> Motor vehicle and tire manufacturers and, under certain circumstances, distributors and dealers, are also required to maintain a record of the name and address of the first purchasers of each automobile or tire.<sup>n5</sup> In addition, the Secretary is directed to develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program, and to carry out a program of conducting such tests.<sup>n6</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30116(a).

n2 49 U.S.C.A. § 30116(b).

n3 49 U.S.C.A. § 30116(c).

n4 49 U.S.C.A. § 30117(a).

n5 49 U.S.C.A. § 30117(b).

n6 49 U.S.C.A. § 30117(c).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233

7A Am Jur 2d Automobiles and Highway Traffic § 43

49 U.S.C.A. §§ 30116, 30117

A.L.R. Index, Automobile Dealers

A.L.R. Index, Automobiles and Highway Traffic

West's A.L.R. Digest, Automobiles [westkey]19, 20

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## Automobiles and Highway Traffic

## II. Title and Ownership; Transfers and Encumbrances

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## 2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

## 7A Am Jur 2d Automobiles and Highway Traffic § 44

## § 44 Generally

The sale, transfer, or encumbrance by a third person of a motor vehicle owned by another will not ordinarily operate to deprive the legal owner of his or her rights therein -- the mere entrusting of such third person with the possession of the motor vehicle does not constitute a holding out of such third person as owner so as to estop the true owner from claiming or asserting his or her rights therein.<sup>n1</sup> Nor will the sale, transfer, or encumbrance of a motor vehicle already subject to an encumbrance ordinarily operate to deprive the encumbrancer of his or her security interest in the vehicle.<sup>n2</sup> These rules are particularly applicable where the owner or encumbrancer has retained possession of the certificate of title to the motor vehicle, issued in accordance with statute.<sup>n3</sup> Implicit in such statutes is the idea that when one in possession of a motor vehicle is unable to exhibit a certificate of title therefore, artisans and others are charged with notice that the possessor of the vehicle may have no title thereto, or that his or her title may be subject to the prior rights and interests of others.<sup>n4</sup> Thus, where a repairer or other artisan fails to ascertain his or her customer's title to the motor vehicle by an inspection of the certificate of title, a conditional vendor's<sup>n5</sup> or chattel mortgagee's<sup>n6</sup> title or interest which could have been ascertained by such inspection will have priority over any lien of the repairer or artisan.

**FOOTNOTES:**

n1 *Forrest v. Benson*, 150 Ark. 89, 233 S.W. 916 (1921); *Bustin v. Craven*, 57 N.M. 724, 263 P.2d 392 (1953); *Kaminsky v. Karmin*, 187 A.D.2d 488, 589 N.Y.S.2d 588, 19 U.C.C. Rep. Serv. 2d 1073 (2d Dep't 1992).

The sale of a thing belonging to another is null and does not convey ownership. *Biggs v. Prewitt*, 669 So. 2d 441 (La. Ct. App. 1st Cir. 1995), writ denied, 674 So. 2d 264 (La. 1996).

n2 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953).

n3 *Standard Motor Co. v. American Loan System*, 120 Colo. 311, 209 P.2d 264 (1949); *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953); *Kaminsky v. Karmin*, 187 A.D.2d 488, 589 N.Y.S.2d 588, 19 U.C.C. Rep. Serv. 2d 1073 (2d Dep't 1992).

n4 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953); *Kaminsky v. Karmin*, 187 A.D.2d 488, 589 N.Y.S.2d 588, 19 U.C.C. Rep. Serv. 2d 1073 (2d Dep't 1992).

n5 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953).

n6 *Personal Finance Co. of Hammond v. Flecknoe*, 216 Ind. 330, 24 N.E.2d 694 (1940); *City Finance Co. v. Perry*, 195 Tenn. 81, 257 S.W.2d 1, 36 A.L.R.2d 224 (1953).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117  
A.L.R. Index, Automobile Dealers  
A.L.R. Index, Automobiles and Highway Traffic  
West's A.L.R. Digest, Automobiles [westkey]19, 20  
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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 7, 8, 10 to 12  
West's Key Number Digest, Automobiles [westkey]19  
Priority as between artisan's lien and chattel mortgage, 36 A.L.R.2d 229  
Priority as between lien for repairs and the like, and right of seller under conditional sales contract, 36 A.L.R.2d 198  
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 11 (Answer -- Defense -- Vehicle purchased in one state and sold in another state -- Lien not noted on certificate in either state)

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## Automobiles and Highway Traffic

## II. Title and Ownership; Transfers and Encumbrances

## B. Sale, Transfer, and Encumbrances

## 2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

## 7A Am Jur 2d Automobiles and Highway Traffic § 45

## § 45 Transfer by one in possession of certificate of title

Even though a certificate of title to a motor vehicle is generally not conclusive proof of ownership of such vehicle,<sup>n1</sup> purchasers and encumbrancers do place reliance thereon.<sup>n2</sup> Where the owner or an encumbrancer permits another to have possession of the motor vehicle and a certificate of title thereto, particularly one not indicating the rights of the former, the former may be estopped to assert his or her rights as against a subsequent purchaser or encumbrancer of such vehicle.<sup>n3</sup> Thus, where a mortgagee of a motor vehicle permits the mortgagor to retain possession of the vehicle and a certificate of title which does not show the lien of the mortgage, a purchaser for value without actual notice of the encumbrance who relies upon the certificate as indicating good title in the holder will generally be protected against the assertion of the mortgage lien.<sup>n4</sup> Filing of a motor vehicle chattel mortgage under the recordation statutes has often been held to be insufficient to charge with notice a purchaser for value without actual notice of the mortgage who in buying relies upon his or her seller's possession of a certificate of title showing no liens.<sup>n5</sup> However, where the statute providing for the endorsement of liens or encumbrances upon the certificate of title specifically excludes purchase-money mortgages from its operation, the recordation of such a mortgage constitutes notice to all the world, including a purchaser for value without actual knowledge of the mortgage who in buying relies upon his or her seller's possession of a certificate of title showing no liens.<sup>n6</sup>

The purchaser of a motor vehicle relying upon the fact that his or her seller displays a certificate of title showing no liens or encumbrances will not be protected as to prior lienholders if there were other circumstances charging the buyer with notice of irregularities in the seller's title.<sup>n7</sup>

The rule that a lienholder may be estopped to assert his or her rights as to an innocent purchaser by his or her failure to take advantage of a statutory provision for the notation of liens upon the certificate of title has also been applied to protect purchasers from a conditional vendee who has been permitted to retain a title certificate showing no liens.<sup>n8</sup> A conditional vendor of a motor vehicle will not, however, have his or her interest subjected to that of an innocent purchaser relying upon the conditional vendee's possession of such a certificate if the certificate was obtained without fault on the part of the conditional vendor.<sup>n9</sup> However, the mere fact that a conditional vendee acts fraudulently in obtaining a certificate of title showing no liens does not mean that the conditional vendor will be protected as against an innocent purchaser relying upon the certificate, if the conditional vendor's acts made the fraud possible.<sup>n10</sup>

In cases involving attempted sales of motor vehicles by persons who had obtained possession of the vehicles or the accompanying documents of title or both by outright theft, the rights of the true owners of the vehicles have been protected as against subsequent purchasers.<sup>n11</sup>

**FOOTNOTES:**

## 7A Am Jur 2d Automobiles and Highway Traffic § 45

n1 § 30.

n2 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953).

n3 *Karibian v. Paletta*, 122 Mich. App. 353, 332 N.W.2d 484, 36 U.C.C. Rep. Serv. 466 (1983); *Landshire Food Service, Inc. v. Coghill*, 709 S.W.2d 509, 1 U.C.C. Rep. Serv. 2d 729 (Mo. Ct. App. E.D. 1986) (if the subsequent purchaser has no notice of the owner's rights).

Where the daughter and father were co-owners of the vehicle and listed as such on the certificate of title, the daughter's attempted sale of the car was of no effect where the buyer could tell from the certificate of title in the daughter's possession of the father's ownership interest. *Latham Motors, Inc. v. Phillips*, 123 Idaho 689, 851 P.2d 985 (Ct. App. 1992).

n4 *Suburban Motors, Inc. v. State Farm Mut. Auto. Ins. Co.*, 218 Cal. App. 3d 1354, 268 Cal. Rptr. 16, 11 U.C.C. Rep. Serv. 2d 56 (3d Dist. 1990); *Reid v. Tinker Auto Sales, Inc.*, 1990 OK CIV APP 3, 786 P.2d 714 (Ct. App. Div. 4 1990); *South Texas Bank v. Renteria*, 523 S.W.2d 780 (Tex. Civ. App. Corpus Christi 1975).

n5 *Suburban Motors, Inc. v. State Farm Mut. Auto. Ins. Co.*, 218 Cal. App. 3d 1354, 268 Cal. Rptr. 16, 11 U.C.C. Rep. Serv. 2d 56 (3d Dist. 1990); *Commercial Credit Corp. v. Kemp*, 176 Kan. 350, 270 P.2d 209 (1954); *Mohr to Use of Universal C.I.T. Credit Corp. v. Sands*, 213 Md. 206, 131 A.2d 732 (1957).

n6 *Interstate Securities Co. v. Barton*, 236 Mo. App. 325, 153 S.W.2d 393 (1941).

n7 *Peper v. American Exchange Nat. Bank in St. Louis*, 357 Mo. 652, 210 S.W.2d 41 (1948); *Landshire Food Service, Inc. v. Coghill*, 709 S.W.2d 509, 1 U.C.C. Rep. Serv. 2d 729 (Mo. Ct. App. E.D. 1986).

n8 *Washington Lumber & Millwork Co. v. McGuire*, 213 Cal. 13, 1 P.2d 437 (1931); *Industrial Credit Co. v. Billion Motors, Inc.*, 74 S.D. 612, 57 N.W.2d 523 (1953).

n9 *Clanton v. Thigpen*, 226 S.W.2d 850 (Tex. Civ. App. Eastland 1950).

n10 *Hedger v. Hogle*, 89 Cal. App. 354, 264 P. 807 (1st Dist. 1928).

n11 *Winship v. Standard Finance Co.*, 40 Ariz. 382, 12 P.2d 282 (1932); *Northern Ins. Co. of New York v. Miller*, 256 Iowa 764, 129 N.W.2d 28 (1964) (innocent purchaser from thief gets no title although he received apparently valid certificate of title); *Hardware Mut. Cas. Co. v. Gall*, 15 Ohio St. 2d 261, 44 Ohio Op. 2d 448, 240 N.E.2d 502 (1968); *McKinney v. Croan*, 144 Tex. 9, 188 S.W.2d 144 (1945).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 8 (Complaint, petition, or declaration -- To enjoin sale of vehicle and application for and transfer of title -- By lienholder who possesses title certificate -- Against state official, seller, and buyer)

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7A Am Jur 2d Automobiles and Highway Traffic § 46

§ 46 Possession by purchaser who has given bad check

A situation frequently arises where the seller of a motor vehicle, after taking a check in payment, delivers the vehicle and a certificate of title to the purchaser, and the latter transfers it to an innocent purchaser for value before the seller learns that the check was forged or is otherwise bad. In such circumstances a preliminary issue is raised as to whether the original purchaser received any title which he or she could convey to an innocent purchaser. If it is found that he or she did receive even a voidable title, generally the innocent purchaser, relying upon the possession of the vehicle and the certificate of title, will be protected against the claims of the original seller.<sup>n1</sup> However, such purchaser will not be protected as against the original owner where he or she is put on notice by defects in the face of the certificate or by other circumstances, or is otherwise at fault.<sup>n2</sup>

Under a statute providing that no sale can divest the owner of rights to property obtained by larceny, an owner whose motor vehicle and certificate of title thereto are obtained by a forged check and false impersonation, constituting larceny, is entitled to recover the vehicle from an innocent purchaser; the doctrine of equitable estoppel is not applicable under such a statute.<sup>n3</sup>

**FOOTNOTES:**

n1 *Aclin v. Manhattan Credit Corp.*, 225 Ark. 1028, 287 S.W.2d 451 (1956); *General Credit Corp. v. Bill Olsen's Motor, Inc.*, 147 Colo. 227, 363 P.2d 489 (1961).

n2 *Wills v. Shepherd*, 241 Mo. App. 102, 231 S.W.2d 843 (1950).

n3 *Richardson v. Seattle-First Nat. Bank*, 38 Wash. 2d 314, 229 P.2d 341 (1951).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117  
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Am. Jur. Legal Forms 2d § 33:14  
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 7, 8, 10 to 12  
West's Key Number Digest, Automobiles [westkey]19

7A Am Jur 2d Automobiles and Highway Traffic § 46

Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813

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## 7A Am Jur 2d Automobiles and Highway Traffic § 47

## § 47 Possession by agent of owner

It is a fairly common practice for owners of motor vehicles to deliver them to dealers or other agents for the purpose of making a sale, and where the sales agent is also entrusted with the certificate of title and uses it to make an unauthorized sale or encumbrance of the vehicle, the question of estoppel based upon possession of indicia of ownership is presented. Since the actual purpose of such an arrangement is to a facilitate sale, the courts are inclined to protect innocent purchasers in such a situation, and an estoppel has frequently been raised to protect such purchasers.<sup>n1</sup> However, such a purchaser is not entitled to rely upon the possession of the vehicle and the certificate of title where the certificate itself is of such form as to cast doubt on the title offered, or other circumstances are such as to put the purchaser on notice.<sup>n2</sup> Possession by a dealer of the certificate of title alone, the actual owner retaining possession of the vehicle, is insufficient to justify reliance upon the dealer's ownership.<sup>n3</sup>

**FOOTNOTES:**

n1 *Karibian v. Paletta*, 122 Mich. App. 353, 332 N.W.2d 484, 36 U.C.C. Rep. Serv. 466 (1983); *Garbark v. Newman*, 155 Neb. 188, 51 N.W.2d 315 (1952); *Ruddy v. Oregon Auto. Credit Corp.*, 179 Or. 688, 174 P.2d 603 (1946).

n2 *Karibian v. Paletta*, 122 Mich. App. 353, 332 N.W.2d 484, 36 U.C.C. Rep. Serv. 466 (1983); *Rasmussen v. O. E. Lee & Co.*, 104 Mont. 278, 66 P.2d 119 (1937); *Swartz v. White*, 80 Utah 150, 13 P.2d 643 (1932).

n3 *San Joaquin Valley Sec. Co. v. Prather*, 123 Cal. App. 378, 11 P.2d 45 (4th Dist. 1932).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 12 (Answer -- Defense -- Estoppel -- Owner placed seller in position to transfer title)

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7A Am Jur 2d Automobiles and Highway Traffic § 48

§ 48 Transfer by one in possession of certificate of registration

In some cases, it has been held that where one having the legal ownership of a motor vehicle under some security arrangement permits the debtor to have possession of the vehicle and the registration certificate thereto, one buying the vehicle from the debtor in reliance upon such possession and without actual notice of the creditor's rights will be protected.<sup>n1</sup> Moreover, delivery of a motor vehicle and registration certificate to an agent for the purpose of negotiating a sale has sometimes been held to be such negligence as will justify raising an estoppel in favor of an innocent purchaser from the agent,<sup>n2</sup> although under the circumstances of other cases, the purchaser has been held not to be protected as against the true owner.<sup>n3</sup>

**FOOTNOTES:**

n1 Parke v. Franciscus, 194 Cal. 284, 228 P. 435 (1924).

n2 Commercial Credit Corp. v. Dassenko, 77 N.D. 412, 43 N.W.2d 299 (1950).

n3 Royle v. Worcester Buick Co., 243 Mass. 143, 137 N.E. 531 (1922); Moberg v. Commercial Credit Corp., 230 Minn. 469, 42 N.W.2d 54 (1950).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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West's Key Number Digest, Automobiles [westkey]19

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## 7A Am Jur 2d Automobiles and Highway Traffic § 49

## § 49 Transfer by one in possession of bill of sale or other ordinary document of title

Under proper circumstances the courts will protect the innocent purchaser of a motor vehicle relying upon the possession of the vehicle together with such evidences of title as a bill of sale, invoice, or other document indicating on its face that the purchase price has been paid and the title transferred to the purchaser.<sup>n1</sup> Thus, where one holding legal ownership of a motor vehicle as security permits his or her debtor to have possession of the vehicle and a bill of sale thereto indicating that ownership has passed, a purchaser from such a debtor is entitled to rely upon such possession as an indication of ownership.<sup>n2</sup> However, the fact that the bill of sale relied upon by the purchaser was obtained by the debtor without fault of the legal owner of the vehicle, or that, for various reasons, the purchaser was at fault in relying upon the bill of sale, will preclude the finding of an estoppel.<sup>n3</sup>

Delivery of a motor vehicle and bill of sale or invoice to a purchaser who gives a bad check in payment and then transfers it to an innocent purchaser for value who relies upon such possession is often a ground for estoppel as against the original seller, insofar as the fraudulent purchaser is regarded as having obtained at least a voidable title.<sup>n4</sup> However, there is some authority to the contrary.<sup>n5</sup>

**FOOTNOTES:**

n1 Walker v. Johnson, 354 So. 2d 792 (Miss. 1978).

n2 Weber & Beckett v. Le Clair, 118 Cal. App. 423, 5 P.2d 449 (1st Dist. 1931).

n3 Greene v. Carmichael, 24 Cal. App. 27, 140 P. 45 (3d Dist. 1914).

n4 Shockley v. Hill, 91 Colo. 451, 15 P.2d 623 (1932); Woods v. Thompson, 159 Fla. 112, 31 So. 2d 62 (1947); Crescent Chevrolet Co. v. Lewis, 230 Iowa 1074, 300 N.W. 260 (1941); Jeffrey Motor Co. v. Higgins, 230 La. 857, 89 So. 2d 369 (1956).

n5 Dobbins v. Martin Buick Co., 216 Ark. 861, 227 S.W.2d 620 (1950); Wallich v. Sandlovich, 111 Neb. 318, 196 N.W. 317 (1923).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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Automobiles and Highway Traffic  
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3. Noncompliance with Statute as to Sales, Transfers, or Encumbrances

7A Am Jur 2d Automobiles and Highway Traffic § 50

§ 50 Generally

Noncompliance with those statutory requirements which relate specifically to the sale, transfer, or encumbrance of a motor vehicle ordinarily subjects one to a specified fine or penalty.<sup>n1</sup> However, some certificate of title statutes do not prohibit or provide penalties for persons who have transferred interest in motor vehicles without compliance with the provisions thereof.<sup>n2</sup>

**FOOTNOTES:**

n1 *Aetna Cas. & Sur. Co. v. Duncan*, 972 F.2d 523 (3d Cir. 1992) (applying Pennsylvania law); *Dugdale of Nebraska, Inc. v. First State Bank*, Gothenburg, Neb., 227 Neb. 729, 420 N.W.2d 273, 6 U.C.C. Rep. Serv. 2d 111 (1988) (overruled on other grounds by, *Aken v. Nebraska Methodist Hosp.*, 245 Neb. 161, 511 N.W.2d 762 (1994)); *Robertson v. Fowler*, 197 W. Va. 116, 475 S.E.2d 116 (1996).

n2 *Hudson Buick, Pontiac, GMC Truck Co. v. Gooch*, 7 S.W.3d 191 (Tex. App. Tyler 1999).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117  
A.L.R. Index, Automobile Dealers  
A.L.R. Index, Automobiles and Highway Traffic  
West's A.L.R. Digest, Automobiles [westkey]19, 20  
Am. Jur. Legal Forms 2d § 33:14  
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Automobiles and Highway Traffic  
II. Title and Ownership; Transfers and Encumbrances  
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3. Noncompliance with Statute as to Sales, Transfers, or Encumbrances

## 7A Am Jur 2d Automobiles and Highway Traffic § 51

## § 51 Effect as between parties to transfer or their privies

In many jurisdictions the failure to comply with statutory requirements with respect to the sale or transfer of a motor vehicle has been held, under the particular statutes, not to render the sale or transfer void so as to affect title to or possession of the vehicle as between the parties thereto.<sup>n1</sup> Noncompliance does not affect a sale as between the parties, at least when the purposes of the statute are not defeated.<sup>n2</sup>

In other jurisdictions, legal title to an automobile cannot be considered transferred until the parties have strictly complied with the statutory directions for transferring title to motor vehicles.<sup>n3</sup> In this connection, a sale contrary to such statute is fraudulent and void.<sup>n4</sup> However, extrinsic evidence is admissible to prove ownership of a vehicle, if the parties to an alleged transfer fail to comply with statutory transfer requirements.<sup>n5</sup> Noncompliance with the statute does not override a clear showing of a valid and complete transfer of ownership of an automobile.<sup>n6</sup>

When a car sale becomes void through the operation of a statute requiring delivery of the vehicle title within a specified time after the vehicle's delivery, then title remains with the seller.<sup>n7</sup>

**FOOTNOTES:**

n1 *Aetna Cas. & Sur. Co. v. A.L.J.A., Inc.*, 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); *In re Davis*, 165 B.R. 327 (Bankr. N.D. Ga. 1994) (applying Georgia law); *Brasher's Cascade Auto Auction v. Valley Auto Sales and Leasing*, 119 Cal. App. 4th 1038, 15 Cal. Rptr. 3d 70, 53 U.C.C. Rep. Serv. 2d 990 (5th Dist. 2004); *Biggs v. Prewitt*, 669 So. 2d 441 (La. Ct. App. 1st Cir. 1995), writ denied, 674 So. 2d 264 (La. 1996); *Thorn v. Adams*, 125 Or. App. 257, 865 P.2d 417, 22 U.C.C. Rep. Serv. 2d 490 (1993); *Tyler Car & Truck Center v. Empire Fire & Marine Ins. Co.*, 2 S.W.3d 482 (Tex. App. Tyler 1999).

n2 *Gourrier v. Joe Myers Motors, Inc.*, 115 S.W.3d 570 (Tex. App. Houston 14th Dist. 2002).

n3 *Shivers v. Carr*, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007); *Progressive Group v. Hurtado*, 393 N.J. Super. 517, 924 A.2d 607 (App. Div. 2007) (providing an odometer reading).

n4 *Reddish v. Heartland Auto Plaza*, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006).

n5 *American Nat. General Ins. Co. v. Solum*, 631 N.W.2d 420 (Minn. Ct. App. 2001), *aff'd*, 641 N.W.2d 891 (Minn. 2002).

n6 *Hudson Buick, Pontiac, GMC Truck Co. v. Gooch*, 7 S.W.3d 191 (Tex. App. Tyler 1999).

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n7 Werdann v. Mel Hambelton Ford, Inc., 32 Kan. App. 2d 118, 79 P.3d 1081 (2003).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117  
A.L.R. Index, Automobile Dealers  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 52

## § 52 Rights as to purchase price or security

In a number of jurisdictions, a seller of a motor vehicle who, at the time he or she sues for the purchase price or to enforce a chattel mortgage or conditional sales contract, has not complied in a substantial respect with a statute requiring him or her to furnish a valid certificate of title or bill of sale, is not entitled to relief.<sup>n1</sup> However, it is sometimes held that where the statute does not make the sale void and does not prevent title from passing merely because the seller fails to comply with the statute on transfers of title to a motor vehicle, the seller's failure will not prevent him or her from suing for the purchase price or enforcing a mortgage on the vehicle where the buyer has not rescinded and the consideration has not failed.<sup>n2</sup> Compliance with the statute comes too late where the buyer rescinds or loses possession of the vehicle and brings suit for a refund of the purchase price before the certificate of title is tendered to him or her.<sup>n3</sup>

The view has been expressed by at least one court that a person who has purchased a note and chattel mortgage or conditional sales contract from the seller of a motor vehicle is a holder of the note in due course without notice of a violation of the law concerning transfer of title; he or she may enforce the note and mortgage or contract against the buyer even though the seller could not do so.<sup>n4</sup> There is also judicial support for the view that if the endorsee or assignee is not a holder in due course, as where he or she had notice of the failure to comply with the title law before he or she acquired the note and lien, and especially where he or she participated in the violation of the law, he or she is bound by the same equities that exist between the seller and the buyer.<sup>n5</sup>

**FOOTNOTES:**

n1 *Pacific Finance Corp. v. Gherna*, 36 Ariz. 509, 287 P. 304 (1930); *General Motors Acceptance Corp. v. Daigle*, 225 La. 123, 72 So. 2d 319 (1954); *A. Cresci & Son v. Steiker*, 7 N.J. Super. 76, 72 A.2d 222 (App. Div. 1950).

n2 *Equitable Credit Co. v. Cooper*, 146 Miss. 868, 111 So. 749 (1927); *Parrott v. Gulick*, 1930 OK 438, 145 Okla. 129, 292 P. 48 (1930).

n3 *Neosho Motor Corp. v. Patterson*, 1939 OK 165, 184 Okla. 540, 88 P.2d 632 (1939).

As to rescission, see § 53.

n4 *Smith v. G. F. C. Corp.*, 255 S.W.2d 69 (Mo. Ct. App. 1953).

n5 *General Motors Acceptance Corp. v. Daigle*, 225 La. 123, 72 So. 2d 319 (1954).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

7A Am Jur 2d Automobiles and Highway Traffic § 52

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 7, 8, 10 to 12

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## § 53 Buyer's right to rescind sale

Where the seller has failed to comply with a statute concerning transfer of title which declares that a sale shall be void or that no title shall pass unless and until the statute is complied with, or which is construed to have that legal effect, the buyer may repudiate the sale and recover the amount he or she has paid for the vehicle.<sup>n1</sup> This is so even though the statute makes it illegal to "buy" as well as to sell a vehicle without a transfer of the certificate of title and declares that such a sale is fraudulent and void.<sup>n2</sup>

Repudiation is premised upon the legal fiction that an executory contract existed between the parties until the certificate of title was delivered.<sup>n3</sup> Where the failure of the seller to comply with the law prevents the buyer from operating the vehicle on the highway, there is a failure of consideration<sup>n4</sup> which entitles the buyer to rescind and to recover the purchase price.<sup>n5</sup>

Caution: In order to exercise the remedy of repudiation, the purchaser is required to return the automobile in as good a condition as it was when it was received.<sup>n6</sup>

**FOOTNOTES:**

n1 *Tilson v. Newell*, 179 Kan. 73, 293 P.2d 227 (1956); *Bayer v. Jackson City Bank & Trust Co.*, 335 Mich. 99, 55 N.W.2d 746 (1952); *Shivers v. Carr*, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007).

n2 *Schroeder v. Zykan*, 255 S.W.2d 105 (Mo. Ct. App. 1953).

n3 *Shivers v. Carr*, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007).

n4 *Harlow v. Dick*, 245 S.W.2d 616 (Ky. 1952); *Bryant v. Hancock*, 287 S.W.2d 525, 58 A.L.R.2d 1348 (Tex. Civ. App. Waco 1956).

n5 *Clay v. Harris*, 228 Ill. App. 3d 475, 170 Ill. Dec. 474, 592 N.E.2d 1154 (4th Dist. 1992); *Fidelity and Deposit Co. of Maryland v. Greenlee*, 62 Or. App. 40, 660 P.2d 172 (1983).

n6 *Shivers v. Carr*, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117



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## 7A Am Jur 2d Automobiles and Highway Traffic § 54

## § 54 Effect as between party, or his or her privies, and third person

In a number of jurisdictions it has been held that noncompliance with statutory requirements in regard to the sale or transfer of a motor vehicle does not, under the terms of the particular statutes, preclude the purchaser or transferee from asserting title as against a third person, such as one who placed the vehicle with a dealer for purposes of sale,<sup>n1</sup> or a judgment creditor of the seller or transferor,<sup>n2</sup> or one who converted the vehicle to his or her own use.<sup>n3</sup> Moreover, the purchaser or transferee may legally contract with another for the sale of such vehicle.<sup>n4</sup>

In other jurisdictions it has been held that noncompliance with statutory requirements as to the sale or transfer of a motor vehicle precludes the purchaser or transferee from asserting title as against a third person,<sup>n5</sup> in particular, it has been stated that a seller of a motor vehicle who fails to comply with statutory requirements in regard to such sale may not be allowed to invoke the statute where, if allowed, an innocent purchaser will suffer from fraud and deceit practiced upon him or her by the seller.<sup>n6</sup>

**FOOTNOTES:**

n1 *Kenny v. Christianson*, 200 Cal. 419, 253 P. 715, 50 A.L.R. 1297 (1927).

n2 *Cerex Co. v. Peterson*, 203 Iowa 355, 212 N.W. 890 (1927); *Commercial Credit Co. v. Schreyer*, 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674 (1929); *Junkin v. Anderson*, 12 Wash. 2d 58, 120 P.2d 548 (1941), opinion supplemented on reh'g, 12 Wash. 2d 58, 123 P.2d 759 (1942).

n3 *Rankin v. Wyatt*, 335 Mo. 628, 73 S.W.2d 764, 94 A.L.R. 941 (1934).

n4 *Sargent v. Pendleton Auto Co.*, 121 Or. 677, 257 P. 23 (1927).

n5 *U.S. v. 1977 Porsche Carrera 911 VIN 9117201924, License No. 459 DWR*, 946 F.2d 30 (5th Cir. 1991) (applying Texas law); *Matter of Stewart*, 9 B.R. 32 (Bankr. M.D. Ga. 1980) (applying Georgia law); *Martin v. Nager*, 192 N.J. Super. 189, 469 A.2d 519, 38 U.C.C. Rep. Serv. 781 (Ch. Div. 1983); *Morey v. Page*, 802 S.W.2d 779 (Tex. App. Dallas 1990).

Failure to file registration procedures rendered sale of truck void as to creditor of seller seeking to enforce judgment where buyer did not take possession of the truck. *Kovacich v. Norgaard*, 221 Mont. 26, 716 P.2d 633 (1986).

n6 *Commercial Credit Co. v. McNelly*, 36 Del. 88, 171 A. 446 (Super. Ct. 1934).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20

7A Am Jur 2d Automobiles and Highway Traffic § 54

15 U.S.C.A. §§ 1232, 1233

49 U.S.C.A. §§ 30116, 30117

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7A Am Jur 2d Automobiles and Highway Traffic § 55

§ 55 For purposes of tort liability

When the question of ownership arises in a tort case, in some jurisdictions, a seller's failure to comply with the title or registration requirements may result in the seller being deemed the owner and liable for the tortious injuries caused by the buyer.<sup>n1</sup> However, where the buyer has the responsibility to obtain registration, his or her failure to do so will not invalidate the sale so as to render the seller liable in tort.<sup>n2</sup> Other jurisdictions will allow the evidence in the certificate of title to be rebutted when determining the owner for purposes of tort liability.<sup>n3</sup>

**FOOTNOTES:**

n1 *Durbin v. Fletcher*, 165 Cal. App. 3d 334, 211 Cal. Rptr. 483 (5th Dist. 1985); *Rogers v. Wheeler*, 864 S.W.2d 892 (Ky. 1993); *Oliver v. Cameron Mut. Ins. Co.*, 866 S.W.2d 865 (Mo. Ct. App. E.D. 1993).

n2 *Barr v. Gaines*, 103 Nev. 548, 746 P.2d 634 (1987).

n3 *Bank North v. Soule*, 420 N.W.2d 598 (Minn. 1988).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
15 U.S.C.A. §§ 1232, 1233  
49 U.S.C.A. §§ 30116, 30117  
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7A Am Jur 2d Automobiles and Highway Traffic § 56

§ 56 Failure to note liens upon certificate of title

Statutory provision is sometimes made for the notation upon the certificate of title to a motor vehicle of encumbrances to which the vehicle is subject.<sup>n1</sup> The failure to comply with such provision generally renders the liens unenforceable as against third persons without actual knowledge thereof.<sup>n2</sup> Thus, where the lien of a chattel mortgagee on a motor vehicle is not noted on the certificate of title as required by statute, a repair person performing work on the vehicle at the instance of the mortgagor is entitled to priority over the lien of the chattel mortgagee.<sup>n3</sup>

In some jurisdictions the recordation of the lien, without the notation, at the same time, of its existence on the certificate of title, is deemed not to convey notice to a third person,<sup>n4</sup> and the lien is not enforceable against a purchaser or encumbrancer without notice thereof.<sup>n5</sup>

**FOOTNOTES:**

n1 § 37.

n2 *First Nat. Bank of Arizona v. Carbajal*, 132 Ariz. 263, 645 P.2d 778, 33 U.C.C. Rep. Serv. 1523 (1982); *General Motors Acceptance Corp. v. Hodge*, 485 S.W.2d 894 (Ky. 1972); *Bank of Alamance v. Isley*, 74 N.C. App. 489, 328 S.E.2d 867, 41 U.C.C. Rep. Serv. 1453 (1985).

Seller of trucks failed to perfect security interest in trucks as against bank's subsequently acquired security interest in "all debtor's equipment," notwithstanding that seller's failure to properly register lien with motor vehicle department was due to buyer's fraudulent removal from title applications of seller's notices of security interest perfection. *Milwaukee Mack Sales, Inc. v. First Wisconsin Nat. Bank of Milwaukee*, 93 Wis. 2d 589, 287 N.W.2d 708, 28 U.C.C. Rep. Serv. 540 (1980).

n3 *San Jacinto Finance Corp. v. Kelley*, 239 S.W.2d 820 (Tex. Civ. App. Galveston 1951), writ refused n.r.e.n4 *Motor Inv. Co. v. Knox City*, 141 Tex. 530, 174 S.W.2d 482 (1943).n5 *Burtrum Bros. Motor Co. v. Dryden*, 38 So. 2d 88 (La. Ct. App. 1st Cir. 1948), opinion amended on reh'g, 40 So. 2d 525 (La. Ct. App. 1st Cir. 1949).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 20  
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7A Am Jur 2d Automobiles and Highway Traffic § 57

## § 57 Registration requirements

The purpose of vehicle registration requirements is identification and revenue.<sup>n1</sup>

Statutes in many states provide that it is illegal for any person to operate a motor vehicle on state's roads or highways unless the vehicle is registered.<sup>n2</sup> These statutes also provide for certain penalties for failure to register, such as police impoundment of vehicles that are improperly registered.<sup>n3</sup> Violation of motor vehicle registration statutes may also have other consequences. For example, where a statute requires a vehicle seller to forward applications for registration of certificates of title to the county treasurer within a certain time after the vehicle is sold, failure to forward those documents constitutes negligence per se.<sup>n4</sup>

In some jurisdictions, statutes have been enacted that make the payment of property taxes on motor vehicles a condition precedent to the licensing or registration of such vehicles.<sup>n5</sup>

**FOOTNOTES:**

n1 *In re Durette*, 228 B.R. 70, 37 U.C.C. Rep. Serv. 2d 1142 (Bankr. D. Conn. 1998).

n2 *Satterlee v. State*, 289 Ark. 450, 711 S.W.2d 827 (1986); *Redden v. State*, 1987 OK CR 142, 739 P.2d 536 (Okla. Crim. App. 1987); *State v. Griffin*, 183 Wis. 2d 327, 515 N.W.2d 535 (Ct. App. 1994).

n3 *U.S. v. Rios*, 88 F.3d 867 (10th Cir. 1996).

n4 *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611 (Iowa 1996).

n5 *State v. Mirabal*, 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 (1928).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 58

## § 58 Registration certificates and license plates

The statutes providing for the licensing of motor vehicles generally require the owners to procure a registration certificate and license plates, and to display the plates on the vehicle. Such a requirement does not violate the constitutional prohibitions against unreasonable searches, self-incrimination, or deprivation of property without due process of law,<sup>n1</sup> and are constitutional exercises of the police power.<sup>n2</sup> In fact, a stop of one's vehicle is justified by a police officer's observation of an expired license plate on the vehicle, which violates state law.<sup>n3</sup>

In the design and issuance of license plates, a state may not require an individual to participate in the dissemination of an ideological message by requiring the display of a license plate containing such a message for the express purpose that it be observed and read by the public.<sup>n4</sup>

Observation: Vehicle dealers are regulated apart from ordinary vehicle owners, and under some such regulations, they are permitted to demonstrate their vehicles held for sale under dealers' license numbers.<sup>n5</sup>

**FOOTNOTES:**

n1 *People v. Schneider*, 139 Mich. 673, 103 N.W. 172 (1905).

n2 *City of Billings v. Skurdal*, 224 Mont. 84, 730 P.2d 371 (1986).

n3 *U.S. v. Aguilar*, 301 F. Supp. 2d 1263 (D.N.M. 2004).

n4 *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977) (a state could not enforce criminal sanctions for obscuring the state motto "Live Free or Die," since the state's requirement that noncommercial vehicle license plates be embossed with such a motto invaded First Amendment rights).

As to citizens' rights to express themselves through vanity plates, see § 59.

n5 § 165.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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7A Am Jur 2d Automobiles and Highway Traffic § 58

West's A.L.R. Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108

Am. Jur. Legal Forms 2d §§ 33:14, 33:31

West's Key Number Digest, Automobiles [westkey]39 to 41, 86

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7A Am Jur 2d Automobiles and Highway Traffic § 59

## § 59 Vanity and special plates

Generally, cases addressing a state's right to regulate customized license plates are decided based on whether a viewpoint is being expressed through the plate and, if so, whether a restriction on the plate is viewpoint neutral.<sup>n1</sup>

Observation: In some jurisdictions, constitutional challenges to license plates bearing the words "Choose Life" have been permitted,<sup>n2</sup> while in others, such challenges have failed due to lack of standing.<sup>n3</sup> In another jurisdiction, an action by motorists and an abortion-rights organization seeking to enjoin, on First Amendment grounds, the state's statutory scheme for specialty license plates containing the words "Choose Life" and "Adoption Creates Families" but no abortion-rights counterpart, was not mooted by a legislative amendment that expanded the scheme by permitting applications for other specialty plates for any cause, as the amendment's requirement of 500 prepaid applications for the issuance of nonlisted plates was a discriminatory burden on abortion-rights supporters.<sup>n4</sup>

Proper standing to bring a constitutional challenge regarding the issuance or revocation of a special license plate is attained when it is shown that the alleged injury is concrete, specific, and not hypothetical.<sup>n5</sup>

Some courts have found that it is appropriate to revoke a license plate based on public complaints received, reasoning that such complaints are a good indication of what the public finds offensive,<sup>n6</sup> while other courts have held that the fact that a complaint has been received does not necessarily mean that the general public is offended.<sup>n7</sup>

**FOOTNOTES:**

n1 *Perry v. McDonald*, 280 F.3d 159 (2d Cir. 2001) (viewpoint neutral); *Planned Parenthood Of South Carolina Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004), cert. denied, 543 U.S. 1119, 125 S. Ct. 1036, 160 L. Ed. 2d 1067 (2005) (not viewpoint neutral); *Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commission of Virginia Dept. of Motor Vehicles*, 288 F.3d 610, 8 A.L.R.6th 797 (4th Cir. 2002) (not viewpoint neutral); *Byrne v. Terrill*, 2005 WL 2043011 (D. Vt. 2005) (viewpoint neutral); *Kahn v. Department of Motor Vehicles*, 16 Cal. App. 4th 159, 20 Cal. Rptr. 2d 6 (2d Dist. 1993) (viewpoint neutral).

n2 *Planned Parenthood Of South Carolina Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004), cert. denied, 543 U.S. 1119, 125 S. Ct. 1036, 160 L. Ed. 2d 1067 (2005) (enhanced standing is afforded to plaintiffs making facial First Amendment challenges to licensing or underinclusive statutes, and because the legislature selected one viewpoint over all others, the plaintiffs did not first have to apply for a license plate bearing a slogan of their own choice); *American Civil Liberties Union of Tennessee v. Bredesen*, 354 F. Supp. 2d 770 (M.D. Tenn. 2004), judgment rev'd on other grounds, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006).

n3 *Women's Emergency Network v. Bush*, 323 F.3d 937 (11th Cir. 2003) (until the appellants applied for a specialty license plate and were rejected, there was no injury in fact and, therefore, no standing).

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n4 Hill v. Kemp, 478 F.3d 1236 (10th Cir. 2007).

n5 Barnard v. Motor Vehicle Div. of Utah State Tax Com'n, 905 P.2d 317 (Utah Ct. App. 1995) (citizen seeking the revocation of license plates containing combination of letters reading "redskin," "redskn" and "rdskin" did not have standing as the petitioner had no personal stake in the outcome of the matter).

n6 Perry v. McDonald, 280 F.3d 159 (2d Cir. 2001); McMahon v. Iowa Dept. of Transp., Motor Vehicle Div., 522 N.W.2d 51 (Iowa 1994).

n7 Sons of Confederate Veterans, Inc. v. Glendening, 954 F. Supp. 1099 (D. Md. 1997).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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a. Power of State, in General

## 7A Am Jur 2d Automobiles and Highway Traffic § 60

## § 60 Generally

Motor vehicle registration is a traditional government function.<sup>n1</sup>

Because the operation of a motor vehicle is a privilege, the legislature of each state may, in the exercise of the police power, enact reasonable regulations requiring the licensing or registration of motor vehicles,<sup>n2</sup> including the private motor carriers of property,<sup>n3</sup> and public or common<sup>n4</sup> carriers of persons or property. Under some state constitutions, the imposition of licensing or registration fees under the police power will be upheld by the courts when plainly intended as police power regulation, so long as the revenue derived is not disproportionate to the cost of issuing the license and regulating the business to which it applies.<sup>n5</sup>

The state may also impose such a fee or tax for revenue purposes,<sup>n6</sup> such as constructing and maintaining the public highways.<sup>n7</sup> A fee or tax imposed for revenue purposes is not limited to the cost of administering the law.<sup>n8</sup>

**FOOTNOTES:**

n1 *Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818 (10th Cir. 2007) (applying Kansas law).

n2 *Ex parte Schuler*, 167 Cal. 282, 139 P. 685 (1914); *State v. Gish*, 168 Iowa 70, 150 N.W. 37 (1914); *State v. Folda*, 267 Mont. 523, 885 P.2d 426 (1994); *People v. McClean*, 167 Misc. 40, 3 N.Y.S.2d 314 (City Ct. 1938); *State v. Booher*, 978 S.W.2d 953 (Tenn. Crim. App. 1997).

n3 *Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

n4 *Ex parte Schuler*, 167 Cal. 282, 139 P. 685 (1914); *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs*, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); *State v. Lawrence*, 108 Miss. 291, 66 So. 745 (1914); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922); *Memphis St. Ry. Co. v. Rapid Transit Co.*, 133 Tenn. 99, 179 S.W. 635 (1915).

n5 *Merrelli v. City of St. Clair Shores*, 355 Mich. 575, 96 N.W.2d 144 (1959).

n6 *Mark v. District of Columbia*, 37 App. D.C. 563, 37 L.R.A.N.S. 440, 1911 WL 20154 (App. D.C. 1911); *Ex parte Schuler*, 167 Cal. 282, 139 P. 685 (1914); *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *City of Chicago v. Morell*, 247 Ill. 383, 93 N.E. 295 (1910).

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n7 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); State ex rel. Metropolitan Thoroughfare Authority of Marion County v. Nutting, 246 Ind. 105, 203 N.E.2d 192 (1964); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914).

n8 Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

As to the nature of a licensing or registration fee or tax, generally, see §§ 71 to 80.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 61

## § 61 Vehicles owned by nonresidents

It is well settled that the police power of a state to regulate the use of motor vehicles on its highways extends to nonresidents as well as residents,<sup>n1</sup> and that a state may prohibit the use of its highways by a foreign motor vehicle unless and until it is licensed in accordance with state laws.<sup>n2</sup> While states may allow nonresidents to use vehicles in-state for limited periods of time without complying with their licensing or registration laws, as a pure matter of state power, a state can stop a nonresident motorist at its boundaries and require him or her, as a condition of operating the motor vehicle on the highways of the state, to pay a reasonable license fee.<sup>n3</sup> Such a requirement may, under proper circumstances, be extended to one engaged in interstate commerce.<sup>n4</sup>

Under a state statute providing that a vehicle based in-state or primarily using in-state highways must be registered in-state, a vehicle owned by a resident but based out-of-state, and used primarily out-of-state, is not subject to the registration requirement.<sup>n5</sup>

Observation: A state's acceptance of an interstate registration reciprocity agreement with respect to motor vehicles constitutes a waiver of the right to impose registration fees in the form of retaliatory taxes on foreign-registered vehicles.<sup>n6</sup>

**FOOTNOTES:**

n1 § 19.

n2 *C. I. T. Corp. v. W. J. Crosby & Co.*, 175 Va. 16, 7 S.E.2d 107 (1940).

n3 *Harper v. England*, 124 Fla. 296, 168 So. 403 (1936); *State ex rel. Cronkhite v. Belden*, 193 Wis. 145, 214 N.W. 460, 57 A.L.R. 1218 (1927).

n4 § 62.

n5 *Jones v. Pierce*, 199 Cal. App. 3d 736, 245 Cal. Rptr. 149 (6th Dist. 1988).

n6 *Private Truck Council of America, Inc. v. State*, 128 N.H. 466, 517 A.2d 1150 (1986).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108

7A Am Jur 2d Automobiles and Highway Traffic § 61

49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704

50 App. U.S.C.A. §§ 501 to 596

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## 7A Am Jur 2d Automobiles and Highway Traffic § 62

## § 62 United States Constitution

A statute imposing a tax on interstate motor carriers that is fairly apportioned, not discriminatory, and uses a reasonable exercise of legislative judgment, is constitutional under the Privileges and Immunities, Commerce, and Equal Protection Clauses of the United States Constitution.<sup>n1</sup> However, a statute providing for a fee or tax on commercial vehicles is invalid under the Commerce Clause where it discriminates against out-of-state vehicles by subjecting them to a much higher charge per mile than in-state vehicles, where it does not purport to fairly approximate the cost or value of the use of the state's roads, where the amount owed does not vary directly with the number of miles traveled or with any other proxy for value obtained from the state, and where highway use taxes could be imposed by other states.<sup>n2</sup>

Practice Tip: When a motor carrier challenges a state's formula for apportioning franchise taxes under the Commerce Clause of the Federal Constitution, the burden of proof is not on the state to show that the formula is fair, but rather is upon the taxpayer to show that the formula attributes a disproportionate income to the state or leads to a grossly distorted result.<sup>n3</sup>

Under the Due Process Clause of the United States Constitution, proof of the habitual presence of a nonresident's vehicles in the state permits taxation by the state based on the average number of vehicles continuously present in the state.<sup>n4</sup>

**FOOTNOTES:**

n1 *Morf v. Bingaman*, 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936); *Bingaman v. Golden Eagle Western Lines*, 297 U.S. 626, 56 S. Ct. 624, 80 L. Ed. 928 (1936); *Hicklin v. Coney*, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); *American Trucking Ass'n, Inc. v. Com., Transp. Cabinet*, 676 S.W.2d 785 (Ky. 1984); *State v. Garford Trucking*, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950); *People v. Learnard*, 305 N.Y. 495, 114 N.E.2d 9 (1953); *Shirks Motor Exp. Corp. v. Messner*, 375 Pa. 450, 100 A.2d 913 (1953); *Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue*, 164 Wis. 2d 764, 477 N.W.2d 44 (1991).

n2 *American Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 107 S. Ct. 2829, 97 L. Ed. 2d 226 (1987); *American Trucking Associations, Inc. v. Secretary of Admin.*, 415 Mass. 337, 613 N.E.2d 95 (1993).

An individual may properly bring a claim under 42 U.S.C.A. § 1983 that the Commerce Clause is violated by certain allegedly retaliatory taxes and fees imposed by a state on motor carriers. *Dennis v. Higgins*, 498 U.S. 439, 111 S. Ct. 865, 112 L. Ed. 2d 969 (1991).

n3 *Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue*, 164 Wis. 2d 764, 477 N.W.2d 44 (1991).

n4 *State v. Richard L. Hodges, Inc.*, 420 A.2d 247 (Me. 1980).



7A Am Jur 2d Automobiles and Highway Traffic § 62

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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Am. Jur. Legal Forms 2d §§ 33:14, 33:31  
West's Key Number Digest, Automobiles [westkey]23, 28, 67 to 69, 73  
State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421

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## 7A Am Jur 2d Automobiles and Highway Traffic § 63

## § 63 Imposition of different fees or taxes on vehicles purchased out-of-state

A fee imposed on vehicles purchased out-of-state and then titled in-state, which may result in purchasers paying more tax on vehicles purchased out-of-state, is invalid as a violation of the Commerce Clause where it does not advance a legitimate local purpose that could not be adequately served by reasonable nondiscriminatory means.<sup>n1</sup> A state's use of a different method for determining the market value of vehicles purchased out-of-state to determine license fees and use taxes discriminates between interstate and local commerce, and therefore also violates the Commerce Clause.<sup>n2</sup> A state motor vehicle use tax statute violates the Equal Protection Clause of the 14th Amendment to the Federal Constitution when it grants a credit for sales tax paid to a reciprocating state on cars purchased by present residents of the state, even though the cars had been previously registered and used in the reciprocating state, but denies credit for sales tax paid by those who purchased and registered their cars outside of the state before becoming residents of the state.<sup>n3</sup>

Even assuming such statutes are valid, a tax on vehicles purchased out-of-state may not be applied to a vehicle that is used only occasionally in-state, as the connection with the state is too tenuous.<sup>n4</sup>

**FOOTNOTES:**

n1 Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994), as clarified, (Nov. 30, 1994).

n2 Woosley v. State of California, 3 Cal. 4th 758, 13 Cal. Rptr. 2d 30, 838 P.2d 758 (1992), as modified on denial of reh'g, (Dec. 31, 1992).

n3 Williams v. Vermont, 472 U.S. 14, 105 S. Ct. 2465, 86 L. Ed. 2d 11 (1985).

n4 McMahon v. Limbach, 65 Ohio St. 3d 310, 603 N.E.2d 996 (1992).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
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West's A.L.R. Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
Am. Jur. Legal Forms 2d §§ 33:14, 33:31  
West's Key Number Digest, Automobiles [westkey]28, 73  
Sales or use tax on motor vehicle purchased out of state, 45 A.L.R.3d 1270

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7A Am Jur 2d Automobiles and Highway Traffic § 64

## § 64 Sovereignty of and treaties with Indian tribes

A state's vehicle taxation laws may be preempted by the sovereignty of Indian tribes.<sup>n1</sup> This preemption may occur even if the tribal members in question do not live on a formal reservation.<sup>n2</sup> A state that recognizes the vehicle registrations of all other states, foreign countries, and out-of-state Indian tribes cannot refuse to grant recognition to motor vehicle registrations issued by a Native American tribe within the state, based on alleged safety concerns, as that amounts to impermissible discrimination.<sup>n3</sup> A state's motor vehicle and mobile home, camper, and trailer taxes, which impose an excise tax for the privilege of using a covered vehicle in the state, cannot be imposed on vehicles owned by tribes or their members and used both on and off reservations.<sup>n4</sup>

Observation: Whether a treaty exempts a tribe from state highway user fees depends on the intent of the parties when they signed the treaty.<sup>n5</sup>

**FOOTNOTES:**

n1 Oklahoma Tax Com'n v. Sac and Fox Nation, 508 U.S. 114, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993).

n2 Oklahoma Tax Com'n v. Sac and Fox Nation, 508 U.S. 114, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993) (it is enough that the member live in "Indian country," which is statutorily defined to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States (citing 18 U.S.C.A. § 1151)).

n3 Prairie Band Potawatomi Nation v. Wagon, 476 F.3d 818 (10th Cir. 2007) (applying Kansas law).

n4 Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).

n5 Cree v. Waterbury, 78 F.3d 1400 (9th Cir. 1996).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 65

## § 65 Preemption by federal legislation

A state statute imposing an annual registration fee on trucks registered in the state which operate entirely in interstate commerce is not preempted by a federal statute requiring that interstate motor carriers obtain a federal permit, and providing that the imposition of any additional state registration requirement is a burden on interstate commerce, where the state statute makes no reference to the federal permit, no state rules related to the state fee require the filing of information about a federal permit, state law imposed a separate fee on interstate trucks with state plates before the federal permit statute existed, state law provides that an interstate truck with state plates can comply with federal requirements without complying with the state fee requirement, and although the state gives a discount in the amount of the federal fee for trucks that pay the state fee, such a connection does not transform the fee into a requirement concerning the federal statute.<sup>n1</sup>

Federal legislation addresses commercial motor vehicle safety,<sup>n2</sup> commercial motor vehicle operators,<sup>n3</sup> and motor carrier safety.<sup>n4</sup> In passing federal motor carrier laws, Congress did not intend to occupy completely the field of safety regulations for the operation on interstate highways of commercial vehicles, and indeed contemplated the continued application and enforcement of state rules or regulations which might not be inconsistent or incompatible with federal regulations.<sup>n5</sup> In effect, Congress intended an accommodation with state regulation so long as that could be achieved without violating federal law or valid federal regulation.<sup>n6</sup>

**FOOTNOTES:**

n1 *Mid-Con Freight Systems, Inc. v. Michigan Public Service Com'n*, 545 U.S. 440, 125 S. Ct. 2427, 162 L. Ed. 2d 418 (2005) (applying federal and Michigan law).

n2 49 U.S.C.A. §§ 31101 to 31151.

n3 49 U.S.C.A. §§ 31301 to 31317.

n4 49 U.S.C.A. §§ 31501 to 31504.

n5 *Specialized Carriers & Rigging Assoc. v. Com. of Va.*, 795 F.2d 1152 (4th Cir. 1986).

Federal motor carrier safety regulations are not intended to preclude states from establishing or enforcing state laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto. *Brown v. Holiday Station-stores, Inc.*, 723 F. Supp. 396 (D. Minn. 1989).

7A Am Jur 2d Automobiles and Highway Traffic § 65

n6 Specialized Carriers & Rigging Assoc. v. Com. of Va., 795 F.2d 1152 (4th Cir. 1986).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 66

## § 66 Generally

Where a state statute providing for the licensing or taxation of motor vehicles provides that it is exclusive, a municipal corporation cannot legislate on this subject, and ordinances which fall within the exclusive domain of the state are null and void.<sup>n1</sup> On the other hand, in a state with home-rule provisions, a county may properly impose a road maintenance fee on all motor vehicles registered in the county, pursuant to the county's home rule authority, provided only that the fee is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided.<sup>n2</sup>

A statute providing for exclusive licensing by the state does not prevent a municipality from requiring a license in the course of a bona fide regulation of an occupation, even though the nature of the occupation implies the use of the streets by a motor vehicle.<sup>n3</sup> Unless the state licensing statute provides that it is exclusive, the mere fact that the state licenses motor vehicles does not, in and of itself, exclude the power of a municipality to require an additional license under the police power.<sup>n4</sup> In addition, so-called exclusive licensing statutes frequently reserve to local authorities the power to license vehicles for hire.<sup>n5</sup>

**FOOTNOTES:**

n1 Phenix City v. Putnam, 268 Ala. 661, 109 So. 2d 836 (1959); Anderson v. Wentworth, 75 Fla. 300, 78 So. 265 (1918).

n2 Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992).

n3 City of Buffalo v. Lewis, 192 N.Y. 193, 84 N.E. 809 (1908).

n4 Borough of Applewold v. Dosch, 239 Pa. 479, 86 A. 1070 (1913).

n5 Phenix City v. Putnam, 268 Ala. 661, 109 So. 2d 836 (1959); Anderson v. Wentworth, 75 Fla. 300, 78 So. 265 (1918).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Certificates of Title  
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## Automobiles and Highway Traffic

## III. Licensing and Registration

## A. Vehicles

## 2. Power to License or Tax

## c. Power of Municipalities or Political Subdivisions of the State

## 7A Am Jur 2d Automobiles and Highway Traffic § 67

## § 67 Delegation of power by state

In the absence of constitutional limitations, the legislature of each state may delegate to its municipalities or other political subdivisions the power to impose a fee or tax for the licensing or registration of motor vehicles generally,<sup>n1</sup> and of motor vehicles for hire engaged in intrastate<sup>n2</sup> or interstate commerce.<sup>n3</sup> The fee or tax may be used for revenue purposes generally,<sup>n4</sup> or for the improvement or maintenance of streets or roads.<sup>n5</sup>

Where a municipality has been delegated the power to regulate the use of its streets by vehicles, it may require a license for such use and impose a reasonable license fee.<sup>n6</sup> However, a municipality, under a delegated power to provide for the imposition of license fees or taxes upon the owners of motor vehicles, does not have the power to enact an ordinance imposing a fee or tax in excess of the amount that the state statute authorizes.<sup>n7</sup>

**FOOTNOTES:**

n1 *Duval Lumber Co. v. Slade*, 147 Fla. 137, 2 So. 2d 371 (1941); *Larson v. Seattle Popular Monorail Authority*, 156 Wash. 2d 752, 131 P.3d 892 (2006), as amended, (May 24, 2006).

An island village which was granted legislative authority to regulate motor vehicles and which had been given the authority to impose fees on certain vehicles according to their weight, did not exceed its authority by imposing fees based on weight and width. *Bald Head Island, Ltd. v. Village of Bald Head Island*, 175 N.C. App. 543, 624 S.E.2d 406 (2006).

n2 *S.B. Carts, Inc. v. Put-in-Bay*, 161 Ohio App. 3d 691, 2005-Ohio-3065, 831 N.E.2d 1052 (6th Dist. Ottawa County 2005), appeal not allowed, 107 Ohio St. 3d 1409, 2005-Ohio-5859, 836 N.E.2d 1229 (2005); *Portland Van & Storage Co. v. Hoss*, 139 Or. 434, 9 P.2d 122, 81 A.L.R. 1136 (1932); *Hadfield v. Lundin*, 98 Wash. 657, 168 P. 516 (1917).

n3 *Buck v. People of State of Cal.*, 343 U.S. 99, 72 S. Ct. 502, 96 L. Ed. 775 (1952); *Sprout v. City of South Bend, Ind.*, 277 U.S. 163, 48 S. Ct. 502, 72 L. Ed. 833, 62 A.L.R. 45 (1928).

As to the power of the state itself to tax vehicles engaged in interstate commerce, see § 62.

n4 *Harder's Fireproof Storage & Van Co. v. City of Chicago*, 235 Ill. 58, 85 N.E. 245 (1908); *Ex parte Dickey*, 76 W. Va. 576, 85 S.E. 781 (1915).

n5 *City of Chicago v. Morell*, 247 Ill. 383, 93 N.E. 295 (1910); *City of Des Moines v. Bolton*, 128 Iowa 108, 102 N.W. 1045 (1905).

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n6 *People's Taxicab Co. v. City of Wichita*, 140 Kan. 129, 34 P.2d 545, 95 A.L.R. 1218 (1934); *Fiscal Court of Owen County v. F. & A. Cox Co.*, 132 Ky. 738, 117 S.W. 296 (1909).

n7 *City of Sikeston v. Marsh*, 110 S.W.2d 1135 (Mo. Ct. App. 1937).

**SUPPLEMENT:****Cases**

A state may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways, without violating the dormant commerce clause; this is so even where a statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental. U.S.C.A. Const. Art. 1, § 8, cl. 3. *American Bus Ass'n, Inc. v. District of Columbia*, 2 A.3d 203 (D.C. 2010).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Certificates of Title  
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West's Key Number Digest, Automobiles [westkey]27, 72, 73

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7A Am Jur 2d Automobiles and Highway Traffic § 68

§ 68 Conflict between state statutes and local regulations

Where state motor vehicle licensing or taxation statutes provide that they are exclusive, local ordinances requiring vehicle registration or taxation are invalid.<sup>n1</sup> In addition, even when a municipality or subdivision of the state has been delegated the power to impose license or registration fees or taxes upon the owners of motor vehicles, it has no power to enact an ordinance in such respect that conflicts with valid state statutes.<sup>n2</sup> However, not all ordinances providing for the licensing or taxing of motor vehicles conflict with state statutes regulating the licensing of motor vehicles.<sup>n3</sup>

Some ordinances relating to the licensing of motor vehicles for hire have been upheld, notwithstanding the provisions of statutes regulating such vehicles.<sup>n4</sup> However, where the state statute limits or prohibits the imposition of taxes by local authorities upon operators of motor vehicles for hire, a tax or license fee imposed by an ordinance is invalid.<sup>n5</sup>

**FOOTNOTES:**

n1 § 66.

n2 *City of Sikeston v. Marsh*, 110 S.W.2d 1135 (Mo. Ct. App. 1937); *C. D. Kenny Co. v. Town of Brevard*, 217 N.C. 269, 7 S.E.2d 542 (1940); *Western Auto Transports v. City of Cheyenne*, 57 Wyo. 351, 120 P.2d 590 (1942).n3 *State ex rel. Nelson v. Quigg*, 143 Fla. 227, 196 So. 417 (1940); *Sperling v. Valentine*, 176 Misc. 826, 28 N.Y.S.2d 788 (Sup 1941); *Continental Baking Co. v. City of Mt. Vernon*, 182 Wash. 68, 44 P.2d 821 (1935).n4 *Cooper v. Town of Greenwood*, 195 Ark. 26, 111 S.W.2d 452 (1937); *City of Chicago v. Hastings Express Co.*, 369 Ill. 610, 17 N.E.2d 576 (1938); *State v. Palmer*, 212 Minn. 388, 3 N.W.2d 666 (1942); *Covey Drive Yourself & Garage v. City of Portland*, 157 Or. 117, 70 P.2d 566 (1937).n5 *Talley v. City of Blytheville*, 204 Ark. 745, 164 S.W.2d 900 (1942); *Heartt v. Village of Downers Grove*, 278 Ill. 92, 115 N.E. 869 (1917).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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7A Am Jur 2d Automobiles and Highway Traffic § 68

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West's Key Number Digest, Automobiles [westkey]29, 30, 74, 75

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7A Am Jur 2d Automobiles and Highway Traffic § 69

§ 69 Regulation of nonresident vehicle owners

A nonresident of a municipality who merely passes through it occasionally with a motor vehicle and uses the streets in isolated instances cannot be made to pay a license fee or tax for operating the vehicle on the municipal streets.<sup>n1</sup> Statutes that empower municipalities to license and regulate motor vehicles for hire within their limits are not ordinarily construed to authorize the passage of ordinances attempting to impose a license or tax on vehicles that undertake to transport for hire between points within a municipality and points without, or that merely pass through the streets of a municipality in going to and from points without its limits.<sup>n2</sup>

The power of a municipality to impose license fees or taxes upon motor vehicles owned by nonresidents is particularly precluded by statutes which provide that, where an owner of a motor vehicle has properly registered the vehicle with the state, the owner may not be required by any municipality other than that within which he or she resides to pay any tax or license fee for the use of the vehicle.<sup>n3</sup>

**FOOTNOTES:**

n1 *City of Georgetown v. Morrison*, 362 S.W.2d 289 (Ky. 1962); *Western Auto Transports v. City of Cheyenne*, 57 Wyo. 351, 120 P.2d 590 (1942).

n2 *City of Argenta v. Keath*, 130 Ark. 334, 197 S.W. 686 (1917); *Metropolitan Convoy Corp. v. City of New York*, 2 N.Y.2d 384, 161 N.Y.S.2d 31, 141 N.E.2d 550 (1957).

n3 *City of Flora v. Borders*, 342 Ill. 208, 173 N.E. 784 (1930).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 70

## § 70 Double taxation

Constitutional provisions prohibiting double taxation are not violated by statutes imposing a license or registration fee or tax upon motor vehicles that are already subject to an ad valorem tax.<sup>n1</sup> Thus, without violating constitutional provisions against double taxation, a municipality may, when authorized by statute, impose a license tax for the use of its streets by vehicles, for the purpose of revenue, although such vehicles are already taxed as property at their full value.<sup>n2</sup>

In levying license fees upon automobiles for highway purposes, the state may exempt them from other taxation as against a municipality which might otherwise have levied a personal property tax on them, notwithstanding the whole revenue realized by the license tax is not to be expended on highways in the municipality.<sup>n3</sup>

While there is some contrary authority,<sup>n4</sup> a tax upon the operation of a vehicle on the public highways is not considered double taxation when imposed upon one who has already paid an occupation tax or privilege tax upon a business involving the use of the same vehicle, because the use of the highways is a privilege separate from that of the conduct of the business,<sup>n5</sup> or because the imposition of a fee upon the operation of the vehicle is an exercise of the police power.<sup>n6</sup>

A license fee imposed by a state is not rendered invalid by the fact that the owner of the vehicle is already required to pay a city license tax.<sup>n7</sup>

**FOOTNOTES:**

n1 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914).

n2 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

n3 State v. Wetz, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).

n4 City of Newport v. Fitzer, 131 Ky. 544, 115 S.W. 742 (1909).

Where an owner-operator has paid the tax imposed on his tractor, a trucking company may use the tractor without having to pay any further tax. B&T Express, Inc. v. Pub. Util. Comm., 145 Ohio App. 3d 656, 763 N.E.2d 1241 (10th Dist. Franklin County 2001).

n5 City of Enterprise v. Fleming, 240 Ala. 460, 199 So. 691 (1940); Derst Baking Co. v. Mayor and Aldermen of City of Savannah, 180 Ga. 510, 179 S.E. 763 (1935).

7A Am Jur 2d Automobiles and Highway Traffic § 70

n6 Hertz Drivurself Stations v. City of Louisville, 294 Ky. 568, 172 S.W.2d 207, 147 A.L.R. 306 (1943).

n7 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 71

## § 71 Nature of license fee or tax; distinction from property tax

Although motor vehicles may be taxed as property, the charge made in connection with the licensing and registration of motor vehicles generally is deemed to be a license fee or tax for the privilege of using the public highways, rather than a property tax, even where it is based on the vehicle's value,<sup>n1</sup> or where the fees go into a general fund, but are earmarked for use to maintain and improve local roads.<sup>n2</sup> Because they are not property taxes, such charges are not affected by constitutional provisions governing ad valorem taxes.<sup>n3</sup> The charge is designated as an excise,<sup>n4</sup> a license,<sup>n5</sup> or a privilege<sup>n6</sup> tax or fee, or as a service charge.<sup>n7</sup> Such a tax or fee has sometimes been said to be in the nature of a toll for using the highways.<sup>n8</sup> In some instances, the provisions of particular statutes imposing a charge in connection with the licensing or registration of motor vehicles have been held to impose a property tax,<sup>n9</sup> or a combination privilege<sup>n10</sup> or license<sup>n11</sup> and property tax.

While the intent of the legislature as to whether a fee exacted in connection with the licensing or registration of a motor vehicle constitutes an exercise of the state's police power or the state's taxation power is not absolutely controlling,<sup>n12</sup> it is an important factor in determining the nature of the fee.<sup>n13</sup> Where the legislation creating a charge assessed for the privilege of operating overweight or overdimensional vehicles on state highways designates the charge as a license fee, it has been considered to be a license fee, which cannot be excessive in relation to the cost of administering the permit program, rather than a tax.<sup>n14</sup>

**FOOTNOTES:**

n1 *Storaasli v. State of Minn.*, 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931); *Ingels v. Riley*, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936); *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Camas Stage Co. v. Kozler*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

A fee applied to trailers used in transporting goods to and from Puerto Rico is not a tax, where the fees paid are held separately from general state funds, are dedicated exclusively to reimbursing private parties and covering administrative expenses, are collected only from those seeking the privilege of driving on state highways, and are proportioned to compensate victims for specified damages resulting from that activity. *Trailer Marine Transport Corp. v. Rivera Vazquez*, 977 F.2d 1 (1st Cir. 1992).

As to the power to license or tax motor vehicles, generally, see §§ 60 to 70.

As to methods of determining the amount of the tax, generally, see §§ 74 to 80.

n2 *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).



## 7A Am Jur 2d Automobiles and Highway Traffic § 71

n3 Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); State v. Mirabal, 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 (1928); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

**Related References:**

As to the taxation of property on the basis of its value, generally, see Am. Jur. 2d, State and Local Taxation §§ 667 to 672.

n4 Storaasli v. State of Minn., 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).

n5 Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Commonwealth v. Boyd, 188 Mass. 79, 74 N.E. 255 (1905).

n6 Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

n7 Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992).

n8 Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

n9 Powell v. Gleason, 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937); Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933).

n10 Raymond v. Holm, 165 Minn. 215, 206 N.W. 166 (1925).

n11 State v. Wetz, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).

n12 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

n13 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

n14 Com. v. Thomas Heavy Hauling, Inc., 889 S.W.2d 807 (Ky. 1994).

As to the limitation of license fees to the cost of administering the program, generally, see § 72.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
 49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
 50 App. U.S.C.A. §§ 501 to 596  
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7A Am Jur 2d Automobiles and Highway Traffic § 72

§ 72 Amount of fee or tax; police power measures

To the extent that a motor vehicle license or registration fee is levied under the police power, its amount is limited to that necessary for the administration of the law;<sup>n1</sup> or, as it is sometimes said, the amount must not be disproportionate to the cost of issuing the license and the regulation of the subject matter to which it applies.<sup>n2</sup> The amount of a fee imposed under the police power rests to a certain extent in the sound discretion of the legislature, which takes into consideration all the circumstances and necessities of the case, and it will be presumed that the amount of the fee is reasonable unless the contrary appears upon the face of the law itself or is established by proper evidence.<sup>n3</sup>

**FOOTNOTES:**

n1 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930).

n2 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Minneapolis Street Ry. Co. v. City of Minneapolis, 229 Minn. 502, 40 N.W.2d 353 (1949).

n3 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 73

## § 73 Revenue measures

The amount of a motor vehicle license or registration fee or tax that may be levied for revenue purposes is largely within the control of the legislature, the legislature having plenary authority, subject to constitutional limitations, to determine the amount of the fee.<sup>n1</sup> Such a fee or tax is not limited, as is the imposition of a fee under the police power, to the cost of administration.<sup>n2</sup> Where, however, such a fee or tax is imposed by a municipality acting under taxing powers conferred upon it by the legislature, it must be reasonable in amount.<sup>n3</sup>

A licensing fee that is imposed as a tax may be graduated according to the legislative determination<sup>n4</sup> of what is required to be collected as compensation for the use of the highways and the deterioration of the highways that results from such use.<sup>n5</sup> Absolute or perfect equality and uniformity in taxation are impossible, and substantial compliance with the requirements of equality and uniformity in taxation laid down by the federal and state constitutions is all that is required.<sup>n6</sup> Likewise, not all discrimination or classification is forbidden in motor vehicle licensing or registration taxation,<sup>n7</sup> and statutes imposing graduated motor vehicle registration or license fees or taxes in the nature of revenue measures have been sustained as valid in many cases where they were attacked on the grounds of discrimination or improper classification.<sup>n8</sup>

**FOOTNOTES:**

n1 *Kane v. Titus*, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), *aff'd*, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

n2 *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915).

n3 *Waters-Pierce Oil Co. v. City of Hot Springs*, 85 Ark. 509, 109 S.W. 293 (1908); *Ex parte Cardinal*, 170 Cal. 519, 150 P. 348 (1915).

n4 *Carter v. State Tax Commission*, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).

n5 *Carley & Hamilton v. Snook*, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930); *Ex parte Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Carter v. State Tax Commission*, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).

As to particular methods of determining the amount of the fee, see §§ 74 to 80.

n6 *Am. Jur. 2d, State and Local Taxation* § 113.

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n7 State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).

n8 Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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§ 74 Flat fee on particular owners

A flat fee for road maintenance that is imposed on all motor vehicles registered in a particular county is valid; it does not violate equal protection, as the classification reasonably presumes that such owners are the persons who would most often use county roads.<sup>n1</sup> However, an ordinance imposing a flat per-plate fee on automobile dealer and wholesaler license tags for the purpose of county road improvements is not a valid uniform service charge, despite the county's claim that better roads would mean fewer "dings" from debris and fewer paint repairs, and hence a greater profit to automobile dealers, because the asserted benefit inures to all automobiles, and not just to those driven with dealer or wholesaler tags.<sup>n2</sup>

#### FOOTNOTES:

n1 *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

n2 *Fairway Ford, Inc. v. County of Greenville*, 324 S.C. 84, 476 S.E.2d 490 (1996).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 75

## § 75 Weight

A motor vehicle license or registration fee or tax which is in the nature of a revenue measure may properly be graduated according to the weight of the vehicle without rendering the fee or tax unconstitutional.<sup>n1</sup> A statute providing for such a fee or tax is not based on unreasonable classifications, as the ground of difference between the classes has a fair and substantial relation to the object of the legislation, that is, to regulation based upon the wear and tear to which the roads are subjected by the licensees.<sup>n2</sup>

A statute providing for a fee or tax based on vehicle weight is not invalid under the Commerce Clause if laid on motor carriers in interstate commerce, so long as there is no discrimination against them in contrast with those engaged in intrastate commerce.<sup>n3</sup> In graduating the amount of license or registration fees or taxes in accordance with the weight of vehicles, the state may exempt vehicles weighing less than a certain number of pounds, even though their loaded weight may be much more than that of vehicles not exempt. Such an exemption does not infringe the Equal Protection Clause of the 14th Amendment to the Federal Constitution or a similar provision of a state constitution.<sup>n4</sup>

Where the purpose of penalties imposed under a statutory excess weight provision is to deter damage to state highways, the owners of commercial vehicles who operate those vehicles at weights in excess of the gross weights provided on their registration certificates are properly subject to penalties.<sup>n5</sup> Under a statute basing the licensing or registration fee upon the weight of the vehicle, issuance of a license to transport declared weights does not bar the state from prosecuting for violations of the truck weight statute.<sup>n6</sup>

A state agency may require that trucking companies keep records by vehicle configuration and vehicle weight for the purposes of a use tax assessment, and if a trucking company fails to keep such records in a form acceptable to the department, the agency may assess the company at the highest registered maximum gross weight reported.<sup>n7</sup>

**FOOTNOTES:**

n1 *Carley & Hamilton v. Snook*, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

n2 *Carter v. State Tax Commission*, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).

n3 *Bode v. Barrett*, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953); *Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia*, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939).

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n4 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

n5 State v. Churchdale Leasing, Inc., 115 N.J. 83, 557 A.2d 277 (1989).

n6 Department of Public Safety v. Freeman Ready-Mix Co., 292 Ala. 380, 295 So. 2d 242 (1974).

As to weight limitations, generally, see §§ 208 to 213.

n7 D & D Trucking, Inc. v. Idaho Transp. Dept., 126 Idaho 417, 885 P.2d 376 (1994).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 76

§ 76 Load, carrying, or seating capacity

The amount of the fee or tax to be exacted in connection with the licensing or registration of a motor vehicle may properly be graduated according to the seating<sup>n1</sup> or load or carrying<sup>n2</sup> capacity of the vehicle, at least insofar as the statute providing for the fee or tax is a revenue measure enacted under the taxing power. Such a classification of vehicles is reasonable, proper, and valid, as it is based on a uniform, fair, and practicable standard.<sup>n3</sup> In addition, a motor vehicle license or registration fee or tax based upon seating<sup>n4</sup> or load or carrying<sup>n5</sup> capacity is not invalid when laid on motor carriers in interstate commerce, if there is no discrimination against them in contrast with those engaged in intrastate commerce.

**FOOTNOTES:**

n1 *Ayres v. City of Chicago*, 239 Ill. 237, 87 N.E. 1073 (1909); *Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs*, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); *Camas Stage Co. v. Kozer*, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

n2 *Richmond Baking Co. v. Department of Treasury*, 215 Ind. 110, 18 N.E.2d 778 (1939).

n3 *Pine Bluff Transfer Co. v. Nichol*, 140 Ark. 320, 215 S.W. 579 (1919).

n4 *Northern Kentucky Transp. Co. v. City of Bellevue*, 215 Ky. 514, 285 S.W. 241 (1926).

n5 *City of Chicago v. Willett Co.*, 344 U.S. 574, 73 S. Ct. 460, 97 L. Ed. 559 (1953); *Hicklin v. Coney*, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); *Bode v. Barrett*, 412 Ill. 204, 106 N.E.2d 521 (1952), *judgment aff'd*, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 77

§ 77 Value or age of vehicle

Statutes providing for fees or taxes to be levied in connection with the licensing or registration of motor vehicles in accordance with the value thereof have been held valid and not unconstitutionally discriminatory.<sup>n1</sup> However, an ad valorem tax on an entire vehicle fleet cannot be sustained in the absence of a showing that the fleet travels through the taxing jurisdiction at a fixed time and on regular routes, or that the fleet is habitually employed in that community throughout the tax year, or that it is otherwise protected or benefited by the taxing jurisdiction.<sup>n2</sup>

Statutes setting forth a schedule of motor vehicle license or registration fees or taxes based upon the age of the vehicle have been held valid as against the contention that they are arbitrary and unreasonable.<sup>n3</sup>

**FOOTNOTES:**

n1 Raymond v. Holm, 165 Minn. 215, 206 N.W. 166 (1925).

An excise tax on motor vehicles is calculated on the basis of the manufacturer's list price, rather than the price at which the vehicle was sold. Lily Transp. Corp. v. Board of Assessors of Medford, 427 Mass. 228, 692 N.E.2d 53 (1998).

n2 Hemingway Transport, Inc. v. Tax Assessor of City of East Providence, 105 R.I. 411, 252 A.2d 340 (1969).

n3 Dohns v. Holm, 152 Minn. 529, 189 N.W. 418 (1922).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 78

§ 78 Character of vehicle or its use of highways; mileage

Fees or taxes levied in connection with the registration or licensing of motor vehicles may properly be graduated in accordance with the class and character of the vehicles and their use of the public highways.<sup>n1</sup> Registration fees for fleet vehicles are sometimes based on the mileage traveled by the entire fleet, rather than by each vehicle.<sup>n2</sup> Statutes in some jurisdictions prohibit the netting of overpaid and unpaid commercial vehicle registration fees when liability for such fees is estimated.<sup>n3</sup>

Observation: Where vehicles that were registered under an automobile dealer's "U-drive-it" permit were not used for leasing or rental purposes, but rather, as customer courtesy cars or for various other business purposes, those vehicles were not eligible for alternative tax treatment that allowed the holder of a "U-drive-it" permit to pay a usage tax of five percent of the gross rental or lease charges instead of the regular motor vehicle usage tax.<sup>n4</sup>

**FOOTNOTES:**

n1 *Waters-Pierce Oil Co. v. City of Hot Springs*, 85 Ark. 509, 109 S.W. 293 (1908); *Ex parte Cardinal*, 170 Cal. 519, 150 P. 348 (1915).

n2 *American Trucking Ass'n, Inc. v. Gray*, 288 Ark. 488, 707 S.W.2d 759 (1986), judgment vacated on other grounds, 483 U.S. 1014, 107 S. Ct. 3252, 97 L. Ed. 2d 752 (1987); *In re Protest of Freymiller, Inc.*, 2005 OK CIV APP 94, 127 P.3d 615 (Div. 3 2005), cert. denied, (Nov. 21, 2005).

n3 *In re Adway Properties, Inc.*, 2006 OK CIV APP 14, 130 P.3d 302 (Div. 1 2006) (no exemption to the prohibition was permitted where the registrant's mileage records were accidentally destroyed).

n4 *Bob Hook Chevrolet Isuzu, Inc. v. Com. Transp. Cabinet*, 983 S.W.2d 488 (Ky. 1998).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 79

## § 79 Motor carriers

License or registration statutes may treat certain motor carriers as a special class for purposes of license or registration fees or taxes, such as motor carriers operating on fixed routes,<sup>n1</sup> motor carriers for whose services a direct charge is made,<sup>n2</sup> or motor carriers operating within the limits of municipalities.<sup>n3</sup> Classifications, in exacting license or registration fees, as between common motor carriers and private motor carriers,<sup>n4</sup> between motor carriers hauling products to and from farms and other motor carriers,<sup>n5</sup> or between motor carriers of passengers and motor carriers of property,<sup>n6</sup> have also been held not unconstitutionally discriminatory.

The International Registration Plan (IRP) is the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.<sup>n7</sup> It is intended to promote uniformity, proportionality, and equitability in rental car registration among member jurisdictions.<sup>n8</sup> Under this plan, a state that is not participating (after September 30, 1996) in the IRP may not establish, maintain, or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that state of a commercial motor vehicle that is not registered under the laws of the state, if the vehicle is registered under the laws of a state participating in the plan.<sup>n9</sup> A motor carrier's IRP fees are based on actual mileage traveled by the carrier in each jurisdiction during the preceding registration year.<sup>n10</sup>

**FOOTNOTES:**

n1 *Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs*, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930).

n2 *Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia*, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939); *Portland Van & Storage Co. v. Hoss*, 139 Or. 434, 9 P.2d 122, 81 A.L.R. 1136 (1932).

n3 *Ex parte Hoffert*, 34 S.D. 271, 148 N.W. 20 (1914).

As to the state's power to tax interstate motor carriers, see § 62.

n4 *Bekins Van Lines v. Riley*, 280 U.S. 80, 50 S. Ct. 64, 74 L. Ed. 178 (1929); *Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs*, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), *aff'd*, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); *Dresser v. City of Wichita*, 96 Kan. 820, 153 P. 1194 (1915).

n5 *McReavy v. Holm*, 166 Minn. 22, 206 N.W. 942 (1926).

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n6 State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).

n7 49 U.S.C.A. § 31701(4).

n8 Budget Rent A Car Corp. v. Washington State Dept. of Licensing, 100 Wash. App. 381, 997 P.2d 420 (Div. 1 2000).

n9 49 U.S.C.A. § 31704.

n10 In re Burlington Motor Holdings, Inc., 235 B.R. 741 (Bankr. D. Del. 1999).

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7A Am Jur 2d Automobiles and Highway Traffic § 80

## § 80 Receipts or earnings

Motor carrier license or registration fees or taxes based on the gross receipts or earnings of a motor transportation company have been upheld.<sup>n1</sup> In the case of a company engaged in interstate commerce, where such a fee or tax is based on the percentage of the gross receipts or earnings attributable to the operation of the company in the state, and thereby reasonably reflects the use made of the highways of the state, it does not violate the Commerce Clause of the United States Constitution.<sup>n2</sup> However, where such fees or taxes are imposed upon interstate motor carriers based upon the entire receipts of the motor transportation company, they place an invalid burden on interstate commerce in proportion to the mileage of the company outside the state.<sup>n3</sup>

**FOOTNOTES:**

n1 *Alward v. Johnson*, 282 U.S. 509, 51 S. Ct. 273, 75 L. Ed. 496, 75 A.L.R. 9 (1931); *Bekins Van Lines v. Riley*, 280 U.S. 80, 50 S. Ct. 64, 74 L. Ed. 178 (1929); *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

n2 *Public Service Coordinated Transport v. State Tax Commission*, 6 N.Y.2d 178, 189 N.Y.S.2d 137, 160 N.E.2d 448 (1959); *ET & WNC Transp. Co. v. Currie*, 248 N.C. 560, 104 S.E.2d 403 (1958), judgment aff'd, 359 U.S. 28, 79 S. Ct. 602, 3 L. Ed. 2d 625 (1959); *Shirks Motor Exp. Corp. v. Messner*, 375 Pa. 450, 100 A.2d 913 (1953).

As to the effect of the commerce clause on the state's power to tax interstate motor carriers, generally, see §§ 62 et seq.

n3 *Central Greyhound Lines of N. Y. v. Mealey*, 334 U.S. 653, 68 S. Ct. 1260, 92 L. Ed. 1633 (1948).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 81

## § 81 Collection

A penalty may be exacted for the nonpayment of license or registration fees and taxes on the owners of motor vehicles required by statute, although the penalty is not a substitute for the fee or tax itself, so that the proper authorities may have recourse to the usual civil remedies for the collection of a debt, notwithstanding the assessment of such a penalty.<sup>n1</sup> License or registration fees and taxes in some jurisdictions may become a lien upon the vehicle from the date on which they become due, and may be collected by seizure and sale of the vehicle.<sup>n2</sup> The validity of such statutes has been upheld as against various constitutional objections.<sup>n3</sup> Under this type of statute, all taxes due on the vehicle must be paid before a repossession title may be obtained in a secured creditor's foreclosure action.<sup>n4</sup>

**Practice Tip:** When the legislature grants the motor vehicle licensing body the right to collect fees for certain out-of-state motor vehicles, it also implicitly grants the agency the power to audit the records of those within the scope of the statute.<sup>n5</sup>

Where a statute provides that motor carrier tax liabilities abate where collection is barred by a statute of limitations, a tax warrant for delinquent motor carrier taxes becomes dormant and uncollectible after the proscribed time period has passed.<sup>n6</sup>

**FOOTNOTES:**

n1 State ex rel. Stubbs v. Wallace, 140 Ohio St. 166, 23 Ohio Op. 399, 42 N.E.2d 893 (1942).

n2 Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).

n3 International Harvester Cr. Corp. v. Goodrich, 350 U.S. 537, 76 S. Ct. 621, 100 L. Ed. 681 (1956); Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).

n4 First Federal Sav. Bank of South Dakota v. Trolinger, 441 N.W.2d 215 (S.D. 1989).

n5 In re DeCato Bros., Inc., 149 Vt. 493, 546 A.2d 1354 (1988).

n6 Director of Property Valuation, Div. of Property Valuation of Dept. of Revenue v. Golden Plains Exp., Inc., 13 Kan. App. 2d 48, 760 P.2d 1227 (1988).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108

7A Am Jur 2d Automobiles and Highway Traffic § 81

49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704

50 App. U.S.C.A. §§ 501 to 596

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Certificates of Title

West's A.L.R. Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108

Am. Jur. Legal Forms 2d §§ 33:14, 33:31

West's Key Number Digest, Automobiles [westkey]45, 48, 97, 100

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Automobiles and Highway Traffic  
III. Licensing and Registration  
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4. Collection, Disbursement, and Refund of Tax

## 7A Am Jur 2d Automobiles and Highway Traffic § 82

## § 82 Disbursement

In the absence of state constitutional limitations to the contrary, the proceeds from motor vehicle licensing or registration fees and taxes collected may be appropriated by the legislature to any public purpose, and by successive legislative acts, the appropriation of any particular fee or tax levy may be changed from one public purpose to another in the uncontrolled discretion of the legislature.<sup>n1</sup> The fact that the statute imposing licensing or registration fees or taxes designates the particular public purpose for which the proceeds may be used instead of calling for the allocation of the proceeds to the general funds of the state does not violate due process of law.<sup>n2</sup>

An annual fee exacted by the state for the registration of motor vehicles, the proceeds of which, after deductions for the support of the motor vehicle department, are devoted to the construction and maintenance of county and state roads, is not violative of the Due Process Clause as to motor vehicle owners operating principally or exclusively over city streets and paying a city license tax, the major portion of which is applied to the maintenance of city streets.<sup>n3</sup>

A state may provide that a portion of license plate revenue be disbursed to qualifying political parties without violating the licensee's First Amendment rights; such a provision does not condition the availability of a public benefit on the surrender of First Amendment rights.<sup>n4</sup>

**FOOTNOTES:**

n1 State ex rel. Brown v. Bates, 198 S.C. 430, 18 S.E.2d 346 (1941).

n2 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

n3 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

As to double taxation issues between state and municipalities imposing vehicle license tax or fees, see § 70.

n4 Libertarian Party of Indiana v. Packard, 741 F.2d 981 (7th Cir. 1984).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
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7A Am Jur 2d Automobiles and Highway Traffic § 82

West's A.L.R. Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108

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## Automobiles and Highway Traffic

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## 4. Collection, Disbursement, and Refund of Tax

## 7A Am Jur 2d Automobiles and Highway Traffic § 83

## § 83 Refund of fees erroneously paid

Where motor vehicle license and registration fees are paid under protest, registration fees collected in excess of those prescribed by law should be refunded.<sup>n1</sup> If the overpayment is made under pressure of severe statutory penalties or a disastrous effect upon one's business, such overpayment is "involuntary"; it may also be recovered to the extent that it is an overpayment.<sup>n2</sup> A state is precluded from collecting registration fees in excess of the amount charged for a designated registration year, thus entitling a taxpayer to a refund of the amount improperly collected.<sup>n3</sup>

Caution: Subjection of the taxpayer to a misdemeanor conviction for nonpayment of tax does not make a payment involuntary, as is required for recovery of taxes under common-law refund theory, where the taxpayer had available the alternatives of a declaratory judgment action or making payment "under protest."<sup>n4</sup> The "business compulsion" test requires a showing that the taxing statute imposes an onerous burden for nonpayment, which potentially deprives the taxpayer of the right to do business.<sup>n5</sup>

A payer of erroneous fees generally is not entitled to a refund where payment of such fees was not coerced.<sup>n6</sup> However, where the legislation under which a license tax has been collected is illegal and void, those who paid the license tax are entitled to a refund,<sup>n7</sup> regardless of whether the payment was involuntary. Unless statutorily authorized, refunds generally are not subject to the addition of interest.<sup>n8</sup>

Practice Tip: In seeking a refund, the procedural requirements for presentation of tax refund claims must be observed.<sup>n9</sup>

A state will not be allowed to remedy its collection of a tax on vehicles purchased out-of-state that is invalid under the Commerce Clause by imposing a similar tax retroactively against vehicles purchased in-state, because the state is unlikely to be able to collect the tax from a substantial percentage of owners of such vehicles; the only clear and certain remedy for the collection of such an invalid tax is a full refund to all who paid it.<sup>n10</sup>

**FOOTNOTES:**

n1 Department of Motor Vehicles v. Greyhound Corp., 247 Md. 662, 234 A.2d 255 (1967); Fifth Ave. Coach Co. v. State, 73 Misc. 498, 131 N.Y.S. 62 (Ct. Cl. 1911).

n2 People ex rel. Carpentier v. Treloar Trucking Co., 13 Ill. 2d 596, 150 N.E.2d 624 (1958).

n3 Yellow Transp., Inc. v. State, 257 Mich. App. 602, 669 N.W.2d 553 (2003).

## 7A Am Jur 2d Automobiles and Highway Traffic § 83

n4 Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 (1986).

n5 Texas Nat. Bank of Baytown v. Harris County, 765 S.W.2d 823 (Tex. App. Houston 14th Dist. 1988), writ denied, (July 12, 1989).

n6 Com. v. Green Motor Lines, Inc., 208 Va. 100, 155 S.E.2d 38 (1967).

n7 Devine v. Mantua Tp., Gloucester County, 28 N.J. Super. 299, 100 A.2d 563 (Law Div. 1953); Private Truck Council of America, Inc. v. Oklahoma Tax Com'n, 1990 OK 54, 806 P.2d 598 (Okla. 1990), cert. granted, judgment vacated on other grounds, 501 U.S. 1247, 111 S. Ct. 2882, 115 L. Ed. 2d 1048 (1991) and judgment reinstated, 1994 OK 96, 879 P.2d 137 (Okla. 1994).

n8 Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

n9 Dean v. State, 250 Kan. 417, 826 P.2d 1372 (1992); State ex rel. Brady Motorfrate, Inc. v. State Tax Commission, 517 S.W.2d 133 (Mo. 1974).

n10 Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994), as clarified, (Nov. 30, 1994).

As to the illegality of such a tax, see § 63.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
 49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
 50 App. U.S.C.A. §§ 501 to 596  
 A.L.R. Index, Automobiles and Highway Traffic  
 A.L.R. Index, Certificates of Title  
 West's A.L.R. Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
 Am. Jur. Legal Forms 2d §§ 33:14, 33:31  
 West's Key Number Digest, Automobiles [westkey]50, 51, 102, 103  
 Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80  
 A.L.R.2d 1040  
 Am. Jur. Legal Forms 2d § 33:31 (Application -- For refund of registration fees erroneously paid)

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Automobiles and Highway Traffic  
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## 5. Types of Vehicles Taxed; Exemptions and Definitions

## 7A Am Jur 2d Automobiles and Highway Traffic § 84

## § 84 Generally

Whether a particular vehicle is subject to licensing or registration requirements is dependent upon the terms of the licensing or registration enactments. Where the licensing or registration requirements are made applicable to "motor vehicles," there is usually a statutory definition of the term "motor vehicles," and only those vehicles that fall within the statutory definition, and were operated upon the highways during the licensing or registration period,<sup>n1</sup> are subject to the licensing and registration requirements.<sup>n2</sup>

An automobile that is not driven on the roads or highways, but is on stationary blocks in a garage,<sup>n3</sup> or is parked on private property for use as a storage shed,<sup>n4</sup> is not subject to registration.

A statute exempting certain vehicles from the motor vehicle registration provisions is not unconstitutional due to vagueness, where it is clear that the legislature's intent is to require registration of all vehicles capable of regular travel on the roads of the state.<sup>n5</sup>

**FOOTNOTES:**

n1 *Hein-Werner Corp. v. Jackson Industries, Inc.*, 364 Mass. 523, 306 N.E.2d 440 (1974); *Town of Ashland v. Board of Sup'rs for Hanover County*, 202 Va. 409, 117 S.E.2d 679 (1961).

n2 *People v. Bay Ridge Operating Co.*, 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).

n3 *Johnson v. Harris*, 2007 WL 1746918 (Ill. App. Ct. 3d Dist. 2007).

n4 *Meraz v. Farmers Ins. Exchange*, 92 Cal. App. 4th 321, 111 Cal. Rptr. 2d 804 (2d Dist. 2001), as modified on denial of reh'g, (Oct. 5, 2001) (inoperative van).

n5 *State v. Groves*, 232 Kan. 66, 653 P.2d 457 (1982).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
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7A Am Jur 2d Automobiles and Highway Traffic § 84

Am. Jur. Legal Forms 2d §§ 33:14, 33:31

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What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843

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## 7A Am Jur 2d Automobiles and Highway Traffic § 85

## § 85 Motor carriers

Licensing or registration enactments frequently are made applicable to motor carriers -- that is, to vehicles operated for compensation or for hire -- and the problem occasionally arises as to what vehicles are included within such provisions. Where a company transacts business in which trucks are used in delivering goods to customers without any direct charge for transportation, the cost of which is added to the overhead cost of the business, such transactions are not subject to a licensing or registration enactment intended to apply only to those who transport "for compensation."<sup>n1</sup> However, transactions in which a company delivering goods to customers makes a direct charge to them for the cost of transportation are within the contemplation of such a statute.<sup>n2</sup> A motor carrier licensing statute is applicable to a business that transports its customers' waste materials to landfills for disposal, despite the carrier's claim that collection is its primary business, and that the transportation is merely incidental to its collection activities.<sup>n3</sup>

An ordinance imposing a license fee upon persons operating motor trucks "for hire or compensation" on city streets does not impose such a fee with respect to trucks operated by a chain grocery concern merely in delivering stock to local stores from its warehouse in another city, and not transporting freight for others.<sup>n4</sup>

The existence of an adequate and satisfactory service by motor carriers already in the area completely negates the public need and demand for added service by another carrier.<sup>n5</sup>

**FOOTNOTES:**

n1 Collins-Dietz-Morris Co. v. State Corp. Com'n, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).

n2 Collins-Dietz-Morris Co. v. State Corp. Com'n, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).

n3 Browning-Ferris, Inc. v. Com., 225 Va. 157, 300 S.E.2d 603 (1983).

n4 Kroger Grocery & Baking Co. v. City of Cynthiana, 240 Ky. 701, 42 S.W.2d 904 (1931).

n5 Application of Nebraskaland Leasing & Associates, 254 Neb. 583, 578 N.W.2d 28 (1998).

**Related References:**

As to certificates of public convenience and necessity for carriers, generally, see Am. Jur. 2d, Carriers §§ 125 to 143.

7A Am Jur 2d Automobiles and Highway Traffic § 85

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
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West's A.L.R. Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 86

§ 86 Carriers of passengers

Municipalities generally are authorized to regulate and license taxi services within their borders.<sup>n1</sup>

In many jurisdictions, in order to receive authority to operate a motor vehicle passenger service, one must show that the public convenience and necessity require such service.<sup>n2</sup> Before the responsible state agency makes a finding of public convenience and necessity, it must determine that existing service is substantially inadequate.<sup>n3</sup>

**FOOTNOTES:**

n1 Atlanta Taxicab Co. Owners Ass'n, Inc. v. City of Atlanta, 281 Ga. 342, 638 S.E.2d 307 (2006); People v. Kadar, 14 Misc. 3d 857, 831 N.Y.S.2d 826 (City Ct. 2006).

n2 Am. Jur. 2d, Carriers §§ 125 to 143.

n3 Durango Transp., Inc. v. Colorado Public Utilities Com'n, 122 P.3d 244 (Colo. 2005); In re Robert's Tours & Transp., Inc., 104 Haw. 98, 85 P.3d 623 (2004).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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Automobiles and Highway Traffic  
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## 5. Types of Vehicles Taxed; Exemptions and Definitions

## 7A Am Jur 2d Automobiles and Highway Traffic § 87

## § 87 Farm vehicles

A statute that imposes taxes on motor carriers and provides special treatment for farm vehicles is not special or local legislation in violation of a state constitutional prohibition against such legislation; the classification of farm trucks as a separate class of motor carriers is a reasonable classification and a legitimate exercise of legislative judgment, in that farmers use vehicles to transport products and supplies necessary to and produced in the course of the farming operation, while other motor carriers use roads as the primary place on which their business is conducted.<sup>n1</sup>

Under statutes that exempt "implements of husbandry," or "farm machinery" from the registration requirements for motor vehicles, vehicles that are exempt include --

- motortrucks adapted for and used solely in delivering and applying anhydrous ammonia and liquid fertilizer<sup>n2</sup>
- trucks designed and used exclusively for the purpose of carting water for irrigation on the owner's land and the land of others which the owner of the trucks had contracted to irrigate<sup>n3</sup>
- tank trucks carrying oil and gasoline to tractors in the orchards and fields<sup>n4</sup>
- farm trailers.<sup>n5</sup>

However, other vehicles are not exempt from motor vehicle registration requirements under statutory exceptions for farm vehicles, implements of husbandry, machines used in agriculture, and the like, including --

- spray rigs used in a pest control business<sup>n6</sup>
- tank trailers used for the transportation of chemical fertilizer<sup>n7</sup>
- three-wheeled off-road vehicles<sup>n8</sup>
- single-axle semi-tractors<sup>n9</sup>
- trucks modified by the attachment of fertilizer-spreading equipment<sup>n10</sup>
- lawn tractors not used exclusively for agricultural purposes<sup>n11</sup>

**FOOTNOTES:**

n1 American Trucking Ass'n, Inc. v. Com., Transp. Cabinet, 676 S.W.2d 785 (Ky. 1984).

n2 State v. Bishop, 257 Iowa 336, 132 N.W.2d 455 (1965).

## 7A Am Jur 2d Automobiles and Highway Traffic § 87

- n3 Allred v. J.C. Engelman, Inc., 123 Tex. 205, 61 S.W.2d 75, 91 A.L.R. 417 (1933).
- n4 Allred v. J.C. Engelman, Inc., 123 Tex. 205, 61 S.W.2d 75, 91 A.L.R. 417 (1933).
- n5 State v. Herman, 87 Ohio L. Abs. 513, 181 N.E.2d 331 (Mun. Ct. 1958).
- n6 Sohner v. Mason, 136 Cal. App. 2d 449, 288 P.2d 616 (3d Dist. 1955).
- n7 Mid-South Chemical Corp. v. Carpentier, 14 Ill. 2d 514, 153 N.E.2d 72 (1958).
- n8 Conway v. Evans, 549 N.E.2d 1092 (Ind. Ct. App. 1990).
- n9 North Star Mut. Ins. Co. v. Carlson, 442 N.W.2d 848 (Minn. Ct. App. 1989).
- n10 State v. Conner, 13 Ohio App. 3d 179, 468 N.E.2d 320 (2d Dist. Darke County 1983).
- n11 People v. Canute, 8 A.D.3d 1125, 778 N.Y.S.2d 247 (4th Dep't 2004) (defendant was operating the lawn tractor en route from a bar to his home in the early morning hours).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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## 5. Types of Vehicles Taxed; Exemptions and Definitions

## 7A Am Jur 2d Automobiles and Highway Traffic § 88

## § 88 Equipment and machinery using roads only incidentally

Construction equipment mounted on wheels ordinarily is not subject to motor vehicle licensing or registration requirements, such equipment being expressly or impliedly exempted from such requirements.<sup>n1</sup>

Under an exemption for power shovels, a front-end loader is exempt.<sup>n2</sup> On the other hand, under an exemption for self-propelled cranes and road machinery, cement trucks are not included.<sup>n3</sup> Also, under an exemption for vehicles engaged exclusively in road construction, repair, and maintenance, maintenance trucks and dump trucks are not included where they are used by contractors temporarily engaged in rebuilding a road.<sup>n4</sup>

Vehicles such as certain large items of construction equipment,<sup>n5</sup> motor-driven, self-propelled forklifts used exclusively on private property,<sup>n6</sup> portable grinding mills mounted on vehicles,<sup>n7</sup> and electrically operated cranes permanently mounted on an electric truck with four small wheels,<sup>n8</sup> have been held exempt under exemptions for vehicles only incidentally or temporarily operated on the highway. Vehicles that have been held not exempt under such provisions include a mobile home,<sup>n9</sup> a forklift truck,<sup>n10</sup> the trailer-like structures known as relocatable offices,<sup>n11</sup> and concrete trucks.<sup>n12</sup>

**FOOTNOTES:**

n1 *People v. Bay Ridge Operating Co.*, 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).

n2 *People v. Felder*, 116 N.Y.S.2d 39 (Magis. Ct. 1952).

n3 *State v. Groves*, 232 Kan. 66, 653 P.2d 457 (1982).

n4 *White Bros. Const. Co. v. Oregon State Police*, 246 Or. 106, 424 P.2d 221 (1967).

n5 *Gibbons & Reed Co. v. Dept. of Motor Vehicles*, 220 Cal. App. 2d 277, 33 Cal. Rptr. 688 (1st Dist. 1963), opinion supplemented, 220 Cal. App. 2d 277, 33 Cal. Rptr. 927 (1st Dist. 1963) and (disapproved of on other grounds by, *Mass v. Board of Ed. of San Francisco Unified School Dist.*, 61 Cal. 2d 612, 39 Cal. Rptr. 739, 394 P.2d 579 (1964)) and (disapproved of on other grounds by, *Olson v. Cory*, 35 Cal. 3d 390, 197 Cal. Rptr. 843, 673 P.2d 720 (1983)).

n6 *Travelers Indem. Co. v. Transport Indem. Co.*, 242 Cal. App. 2d 227, 51 Cal. Rptr. 724 (1st Dist. 1966) (disapproved of on other grounds by, *Argonaut Ins. Co. v. Transport Indem. Co.*, 6 Cal. 3d 496, 99 Cal. Rptr. 617, 492 P.2d 673 (1972)) and (disapproved of on other grounds by, *State Farm Mut. Auto. Ins. Co. v. Jacober*, 10 Cal. 3d 193, 110 Cal. Rptr. 1, 514 P.2d 953 (1973)).

## 7A Am Jur 2d Automobiles and Highway Traffic § 88

n7 State v. Griswold, 225 Iowa 237, 280 N.W. 489 (1938).

n8 People v. Bay Ridge Operating Co., 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).

n9 Newell v. National Bank of Alaska, 646 P.2d 224, 34 U.C.C. Rep. Serv. 767, 27 A.L.R.4th 835 (Alaska 1982).

n10 Davis v. Pine Mountain Lumber Co., 273 Cal. App. 2d 218, 77 Cal. Rptr. 825 (3d Dist. 1969).

n11 Mobilease Corp. v. County of Orange, 42 Cal. App. 3d 461, 116 Cal. Rptr. 864 (4th Dist. 1974).

n12 Crown Concrete Co. v. Conkling, 247 Iowa 609, 75 N.W.2d 351 (1956); Davidson v. Hare, 351 Mich. 4, 87 N.W.2d 131 (1957).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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7A Am Jur 2d Automobiles and Highway Traffic § 89

§ 89 Motorcycles, dirt bikes, and all-terrain vehicles

Motorcycles generally are subject to motor vehicle licensing or registration statutes,<sup>n1</sup> with some licensing or registration statutes making specific requirements as to motorcycles.<sup>n2</sup>

A dirt bike (a motorcycle designed for off-road use) is a vehicle subject to the motor vehicle registration requirements when it is operated on a public highway, and the fact that the dirt bike cannot be registered because it lacks the required safety equipment does not excuse it from the registration requirement.<sup>n3</sup>

All-terrain vehicles are not subject to registration if used on an easement providing a right-of-way for access to property.<sup>n4</sup>

**FOOTNOTES:**

n1 Nationwide Mut. Ins. Co. v. Worthey, 314 Ark. 185, 861 S.W.2d 307 (1993).

n2 Landwehr v. Continental Life Ins. Co., 159 Md. 207, 150 A. 732, 70 A.L.R. 1249 (1930).

n3 Com., Dept. of Transp., Bureau of Driver Licensing v. Lear, 151 Pa. Commw. 138, 616 A.2d 185 (1992).

n4 Northern Sec. Ins. Co., Inc. v. Rossitto, 171 Vt. 580, 762 A.2d 861 (2000).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
A.L.R. Index, Automobiles and Highway Traffic  
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## § 90 Vehicles of nonresidents

It is customary for a state to permit nonresidents to operate their vehicles for limited periods within its boundaries without complying with its licensing or registration requirements, where such vehicles have been properly licensed or registered in the state of domicile of the owners.<sup>n1</sup> Reciprocal provisions are contained in state statutes, basing the exemption for nonresidents on the condition that the state of the nonresident make a similar provision as to residents of the state.<sup>n2</sup> Equal protection of the law is not denied by exempting nonresidents from a state tax on motor vehicles for the privilege of using the highways, provided that the states of their residence reciprocate and grant a like exemption to citizens of the taxing state.<sup>n3</sup>

A question of construction exists as to who is a resident or nonresident within the meaning of statutes exempting from motor vehicle licensing or registration requirements vehicles owned by nonresidents. Foreign corporations doing business in a state are not considered to be nonresidents within the meaning of such statutes,<sup>n4</sup> the effect of such an interpretation being to narrow the exemption in reference to motor carriers for hire.<sup>n5</sup> Nor is a domestic corporation doing business in the state whose motor vehicles are based in another considered to be a nonresident within the meaning of such statutes; rather, it must comply with the licensing or registration laws of the state of its incorporation insofar as such vehicles are operated upon the highways of that state.<sup>n6</sup> Nonresidents who have accepted employment or are engaged in any trade, profession, or occupation in the state are sometimes not entitled to exemptions from licensing or registration requirements accorded nonresidents.<sup>n7</sup>

In some jurisdictions, a foreign rental car agency that owns a vehicle that is registered and rented to an operator out-of-state does not have a duty to register the vehicle in a state to which the operator drives the vehicle.<sup>n8</sup>

**FOOTNOTES:**

n1 U.S. v. Mounts, 35 F.3d 1208 (7th Cir. 1994).

n2 Shuba v. Greendonner, 271 N.Y. 189, 2 N.E.2d 536 (1936).

n3 Bode v. Barrett, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

n4 Gondek v. Cudahy Packing Co., 233 Mass. 105, 123 N.E. 398 (1919).

n5 Reeves v. Deisenroth, 288 Ky. 724, 157 S.W.2d 331, 138 A.L.R. 1493 (1941).

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n6 State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).

n7 Harper v. England, 124 Fla. 296, 168 So. 403 (1936).

n8 Lopes v. Phillips, 680 A.2d 65 (R.I. 1996).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596

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Applicability of motor vehicle registration laws to corporation domiciled in state but having branch trucking bases in other states, 16 A.L.R.2d 1414

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§ 91 Governmental vehicles; vehicles transporting mail

The fact that a motor vehicle is owned by a governmental unit or is used in connection with governmental services does not necessarily exempt it from motor vehicle licensing or registration requirements.<sup>n1</sup> The state may impose a license fee or tax upon the motor vehicles of a municipality.<sup>n2</sup> One contracting to transport United States mail is not absolved from the duty of obtaining state licenses for motor trucks used in the business.<sup>n3</sup>

However, statutes relating to motor vehicle licensing or registration frequently exempt public or governmental vehicles or vehicles engaged in the performance of governmental services. For example, the state may properly exempt from its requirements as to the licensing or registration of motor vehicles those vehicles owned and operated by the federal government,<sup>n4</sup> and the right of a federal instrumentality to operate its vehicles on state highways in the conduct of its business without paying the state motor vehicle license tax has been judicially recognized.<sup>n5</sup> The exemption for vehicles used exclusively in carrying United States mail from the operation of a statute imposing a tax for revenue upon motor vehicles operating for hire is justified by the public interest.<sup>n6</sup> An exemption of the gross weight of United States mail transported in any motor vehicle from a ton-mile tax imposed upon contract motor carriers and private motor carriers for hire is not inimical to a constitutional requirement that all general laws have uniform operation.<sup>n7</sup>

#### FOOTNOTES:

n1 Ex parte Marshall, 75 Fla. 97, 77 So. 869 (1918).

n2 State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922).

n3 State v. Johnson, 75 Mont. 240, 243 P. 1073 (1926); State v. Wiles, 116 Wash. 387, 199 P. 749, 18 A.L.R. 1163 (1921).

n4 State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922).

n5 Roberts v. Federal Land Bank of New Orleans, 189 Miss. 898, 196 So. 763 (1940).

n6 Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

n7 Public Service Commission of Wyoming v. Grimshaw, 49 Wyo. 158, 53 P.2d 1, 109 A.L.R. 534 (1935).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108



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49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704

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§ 92 Vehicles of military personnel and veterans

The Servicemembers Civil Relief Act<sup>n1</sup> provides that for purposes of taxation, including licenses, fees, or excises imposed with respect to motor vehicles and their use, one is not deemed to have lost or acquired a residence or domicil in any state or political subdivision solely by reason of being absent therefrom in compliance with military orders, or to have acquired a residence in any other state or political subdivision while being so absent, provided that the license, fee, or excise required by the state of which the person is a resident or in which he or she is domiciled has been paid.<sup>n2</sup> A member of the Armed Forces who is on duty in a state or political subdivision thereof is not exempt from paying license fees where he or she has not paid the license fees of the domicil, but the host state may not impose taxes other than licenses, fees, or excises even though the member has not paid corresponding taxes to his or her home state.<sup>n3</sup> On the other hand, if the armed services member satisfies the requirements of another state with regard to the licensing and registration of a motor vehicle, he or she cannot be required to pay a registration fee to his or her domiciliary state.<sup>n4</sup>

The fact that a motor vehicle is owned by a veteran who is exempted from the payment of property taxes does not relieve him or her of the obligation of paying a motor vehicle license tax.<sup>n5</sup>

#### FOOTNOTES:

n1 50 App. U.S.C.A. §§ 501 to 596.

n2 50 App. U.S.C.A. § 571.

n3 California v. Buzard, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966).

n4 People v. Buzard, 61 Cal. 2d 833, 40 Cal. Rptr. 681, 395 P.2d 593 (1964), judgment aff'd, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966).

n5 Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 93

## § 93 Generally

Under motor vehicle licensing and registration statutes, the registration of a motor vehicle in the name of one other than the owner is illegal,<sup>n1</sup> and a motor vehicle so registered is unlawfully upon the highway.<sup>n2</sup>

The courts traditionally have been quite strict in their requirement as to the form of the name used to identify the owner of a motor vehicle under the licensing or registration laws.<sup>n3</sup> For example, the registration of a motor vehicle in the name of a child of a dealer, where the child actually conducts the business as agent for his or her father, is illegal,<sup>n4</sup> as is the registration of a motor vehicle in the maiden name of a married owner.<sup>n5</sup> Where the application for registration of a motor vehicle properly sets forth the name of the owner, but the registration is not completed until after the owner's death, the registration of such vehicle in the name of the deceased owner is illegal.<sup>n6</sup> However, the word "owner" as used in such statutes is not a technical term. It is not confined to the sole owner of, or a person having an absolute right in, a motor vehicle,<sup>n7</sup> and in some circumstances at least may apply to a part owner<sup>n8</sup> or a conditional purchaser<sup>n9</sup> of a motor vehicle. For some purposes, a person may be considered the owner of a vehicle even though he or she does not have legal title.<sup>n10</sup>

Where spouses own a vehicle, the fact that one of the spouses is excluded from the automobile liability policy does not prevent that spouse from obtaining registration in his or her own name.<sup>n11</sup>

Caution: Registration of a vehicle in a particular name creates a rebuttable presumption in some jurisdictions that the named entity is the owner of the vehicle.<sup>n12</sup>

**FOOTNOTES:**

n1 *Balian v. Ogassian*, 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).

n2 *Love v. Worcester Consol. St. Ry. Co.*, 213 Mass. 137, 99 N.E. 960 (1912).

n3 *Bacon v. Boston Elevated Ry. Co.*, 256 Mass. 30, 152 N.E. 35, 47 A.L.R. 1100 (1926).

n4 *Gould v. Elder*, 219 Mass. 396, 107 N.E. 59 (1914).

n5 *Bacon v. Boston Elevated Ry. Co.*, 256 Mass. 30, 152 N.E. 35, 47 A.L.R. 1100 (1926).

n6 *Fairbanks v. Kemp*, 226 Mass. 75, 115 N.E. 240 (1917).

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n7 Burns v. Winchell, 305 Mass. 276, 25 N.E.2d 752 (1940).

n8 § 94.

n9 § 97.

n10 Government Employees Ins. Co. v. Superior Court, 79 Cal. App. 4th 95, 93 Cal. Rptr. 2d 820 (4th Dist. 2000).

n11 Neale v. Wright, 322 Md. 8, 585 A.2d 196 (1991).

n12 Employers Cas. Co. v. Employers Commercial Union Ins. Co., 632 F.2d 1215 (5th Cir. 1980); Arneson v. Integrity Mut. Ins. Co., 344 N.W.2d 617 (Minn. 1984); Perry v. Breland, 16 S.W.3d 182 (Tex. App. Eastland 2000).

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§ 94 Part owners

Statutes that make no specific provision as to the registration of jointly owned motor vehicles, but require merely that registration be in the name of the owner, are not construed as absolutely excluding a valid registration in the name of a part owner.<sup>n1</sup> The fact that a motor vehicle is registered in the name of a person who is only part owner does not invalidate the registration -- his or her rights are protected so long as he or she operates or is present in the vehicle.<sup>n2</sup> For registration by a part owner to be lawful, it must be in the name of the part owner operating and having control of the car.<sup>n3</sup>

**FOOTNOTES:**

n1 Burns v. Winchell, 305 Mass. 276, 25 N.E.2d 752 (1940).

n2 Harlow v. Sinman, 241 Mass. 462, 135 N.E. 553 (1922).

n3 Balian v. Ogassian, 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).

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#### § 95 Partnerships

In jurisdictions in which a partnership is regarded as a legal entity distinct from the persons who comprise it,<sup>n1</sup> a partnership that owns or controls a motor vehicle should register it in the partnership name, and the registration of a motor vehicle owned by a partnership in the name of a single partner is illegal.<sup>n2</sup>

#### FOOTNOTES:

n1 Am. Jur. 2d, Partnership §§ 5 to 7.

n2 *Kilduff v. Boston Elevated Ry. Co.*, 247 Mass. 453, 142 N.E. 98 (1924).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
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§ 96 Unincorporated associations

In accord with the general rule that, in the absence of a statute providing otherwise, an unincorporated association has no legal existence and cannot take and hold property in its name,<sup>n1</sup> the registration of a motor vehicle owned by an unincorporated association must be made in the name of the members of the association, and the registration of such vehicle in the name of the association is illegal.<sup>n2</sup> Even assuming a registration embraces all the members at the time it is filed, it is invalidated by changes in the membership, under a statute making the registration expire upon a transfer of ownership.<sup>n3</sup>

**FOOTNOTES:**

n1 Am. Jur. 2d, Associations and Clubs § 13.

n2 Hanley v. American Ry. Exp. Co., 244 Mass. 248, 138 N.E. 323 (1923).

n3 Hanley v. American Ry. Exp. Co., 244 Mass. 248, 138 N.E. 323 (1923).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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7A Am Jur 2d Automobiles and Highway Traffic § 97

§ 97 Buyer or seller under conditional sales contract

The registration of a motor vehicle in the name of the buyer under a conditional sales contract generally is held to be a valid registration under statutes requiring registration to be in the name of the owner.<sup>n1</sup>

In some jurisdictions, however, the interest that the seller has in a motor vehicle sold under a contract of conditional sale is held to qualify the seller as an owner so as to permit a valid registration of the vehicle in the seller's name.<sup>n2</sup>

Statutes in some jurisdictions permit a buyer to use the dealer's license plates for a short period after the sale of the vehicle.<sup>n3</sup> A dealer who permits a buyer to use the dealer's plates for longer than the prescribed period is estopped from denying ownership of the vehicle and will be vicariously liable for negligence of the buyer in the vehicle's operation.<sup>n4</sup>

Practice Tip: The ownership of a motor vehicle passes to the buyer upon delivery of possession, even though the seller transfers the title some time after sale and the state issues a certificate of title some time after that.<sup>n5</sup>

**FOOTNOTES:**

n1 Bohmann v. Perrett, 97 Conn. 571, 118 A. 42 (1922); Humanen v. Nicksa, 228 Mass. 346, 117 N.E. 325 (1917).

n2 Temple v. Middlesex & B. St. R. Co., 241 Mass. 124, 134 N.E. 641 (1922).

n3 Getz v. Searles, 265 A.D.2d 839, 695 N.Y.S.2d 637 (4th Dep't 1999).

n4 Getz v. Searles, 265 A.D.2d 839, 695 N.Y.S.2d 637 (4th Dep't 1999).

n5 Webb v. Union Ins. Co., 1996 SD 141, 556 N.W.2d 669 (S.D. 1996).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
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## 7. Suspension or Revocation of Certificates of Registration

## 7A Am Jur 2d Automobiles and Highway Traffic § 98

## § 98 Generally

A motor vehicle license or certificate of registration may be revoked or suspended under proper legislation,<sup>n1</sup> for any reason that would have authorized a refusal to issue it in the first instance. Such licenses or certificates generally are subject to suspension or revocation where the motor vehicle does not pass inspection requirements or where the vehicle operates in violation of statutory weight and load limitations.<sup>n2</sup>

Practice Tip: In some jurisdictions where the suspension or revocation of a motor vehicle license or certificate of registration is based upon convictions for certain offenses, the courts are required to warn motorists that a plea of guilty to such offenses is equivalent to a conviction after trial and that if they are convicted, such licenses or certificates may be subject to suspension or revocation.<sup>n3</sup> In general, a motor vehicle license or certificate of registration may not be suspended or revoked in such jurisdictions because of a conviction unless such a warning has been given.<sup>n4</sup>

Once the state has established a prima facie case for suspending a vehicle registration, the burden shifts to the registrant, who must prove the applicability of certain exceptions to suspension.<sup>n5</sup>

An automatic suspension of vehicle registration for refusal to submit to a chemical breath test, without a hearing to allow the vehicle's driver to furnish proof of financial responsibility to avoid suspension, violates the driver's due process rights, even though the state could suspend the driver's license without a prior hearing, because permitting a potential traffic offender to maintain his or her vehicle registration does not trigger the state's interest in keeping highways safe that justifies the summary suspension of the drivers' licenses of suspected drunk drivers.<sup>n6</sup>

**FOOTNOTES:**

n1 Horger v. Flagg, 185 Or. 109, 201 P.2d 515 (1948); Butler v. Com., 189 Va. 411, 53 S.E.2d 152 (1949).

n2 §§ 218, 219.

n3 People v. Duell, 1 N.Y.2d 132, 151 N.Y.S.2d 15, 134 N.E.2d 106 (1956).

n4 People v. Duell, 1 N.Y.2d 132, 151 N.Y.S.2d 15, 134 N.E.2d 106 (1956); Brown v. Rhode Island Dept. of Transp., 638 A.2d 1052 (R.I. 1994).

As to the annulment of suspension or revocation where a warning is not given, see § 99.

n5 Johnson v. Com., 816 A.2d 1257 (Pa. Commw. Ct. 2003).

7A Am Jur 2d Automobiles and Highway Traffic § 98

n6 Levesque v. Rhode Island Dept. of Transp., 626 A.2d 1286 (R.I. 1993).

As to suspension of drivers' licenses for failure to submit to an intoxication test, see §§ 124 to 137.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
50 App. U.S.C.A. §§ 501 to 596  
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7. Suspension or Revocation of Certificates of Registration

7A Am Jur 2d Automobiles and Highway Traffic § 99

§ 99 Judicial review

Statutory provision has been made for judicial review of administrative acts suspending or revoking motor vehicle licenses or certificates of registration -- the statutes requiring courts, for example, to sustain the determination of the suspending or revoking officers as to the suspension or revocation of such licenses or certificates where there is substantial evidence to support the determination, but annulling the determination where such evidence is lacking.<sup>n1</sup> In addition, where it is found that the court in convicting a motorist of a certain offense upon which the revocation of his or her motor vehicle license or certificate of registration is based did not give him or her warning of the consequences of such conviction as required by law, any order suspending or revoking such license or certificate must be annulled.<sup>n2</sup>

In reviewing the trial court's judgment regarding a state agent's decision to suspend an owner's vehicle registration for submitting false proof of insurance, an appellate court reviews the trial court's judgment and not the decision of the state agent.<sup>n3</sup> An appellate court's review of a trial court order that sustained a statutory appeal from a suspension of motor vehicle registration for lack of insurance is limited to determining whether the court committed a reversible error of law, abused its discretion, or made necessary findings of fact that are not supported by substantial evidence.<sup>n4</sup>

Practice Tip: Where an administrative law judge sits as a finder of fact and renders a determination on the revocation of a license after an evidentiary hearing, a reviewing court should not consider evidence that was not presented at the administrative hearing.<sup>n5</sup>

**FOOTNOTES:**

n1 *Almgren v. Fletcher*, 304 N.Y. 547, 110 N.E.2d 396 (1953).

**Related References:**

As to court review of administrative decisions, generally, see Am. Jur. 2d, Administrative Law §§ 402 to 585.

n2 *De Martino v. Mealey*, 284 N.Y. 231, 30 N.E.2d 486 (1940).

As to the requirement of a warning, see § 98.

n3 *Hudson v. Director of Revenue, State of Missouri*, 216 S.W.3d 216 (Mo. Ct. App. W.D. 2007).

N4 *Fell v. Com., Dept. of Transp., Bureau of Motor Vehicles*, 925 A.2d 232 (Pa. Commw. Ct. 2007).

7A Am Jur 2d Automobiles and Highway Traffic § 99

n5 McMahan v. Iowa Dept. of Transp., Motor Vehicle Div., 522 N.W.2d 51 (Iowa 1994).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]21 to 57, 65 to 87, 96 to 108  
49 U.S.C.A. §§ 31101 to 31151, 31301 to 31317, 31501 to 31504, 31701, 31704  
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B. Drivers or Operators  
1. In General

7A Am Jur 2d Automobiles and Highway Traffic § 100

### § 100 Generally

The legislature is permitted to place conditions on the privilege to drive on the state's highways and roads.<sup>n1</sup> As such, statutes have been enacted in the states requiring drivers or operators of motor vehicles to obtain a license as a condition of the right to drive on the public highways.<sup>n2</sup> Such statutes are designed to promote safe driving and to protect the traveling public.<sup>n3</sup>

Licensing requirements are to be liberally construed so that the greatest force and effect may be given them.<sup>n4</sup>

### FOOTNOTES:

n1 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

n2 *City of Miami v. Aronovitz*, 114 So. 2d 784 (Fla. 1959); *City of Cincinnati v. Wright*, 77 Ohio App. 261, 33 Ohio Op. 23, 47 Ohio L. Abs. 89, 67 N.E.2d 358 (1st Dist. Hamilton County 1945); *Taylor v. State*, 151 Tex. Crim. 568, 209 S.W.2d 191 (1948).

As to civil liability arising from a driver's failure to comply with such statutes, see §§ 724 to 728.

n3 *Wysock v. Borchers Bros.*, 104 Cal. App. 2d 571, 232 P.2d 531, 29 A.L.R.2d 948 (1st Dist. 1951); *State, Dept. of Motor Vehicles and Public Safety v. Miles*, 111 Nev. 681, 895 P.2d 1316 (1995); *State ex rel. Schwartz v. Kennedy*, 120 N.M. 619, 904 P.2d 1044 (1995).

n4 *Padgett v. Thompson*, 158 Fla. 138, 27 So. 2d 909 (1946).

### REFERENCE: West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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Automobiles and Highway Traffic  
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1. In General

7A Am Jur 2d Automobiles and Highway Traffic § 101

## § 101 Liability for negligent licensing

Licensing a motor vehicle operator does not render a government entity issuing such a license a guarantor of the driver's competence to drive a motor vehicle.<sup>n1</sup> When reasonable procedures to examine the relevant qualifications and fitness of applicants for motor vehicle operator licenses are followed, there is no reason for predicating liability on the issuance of a driver's license.<sup>n2</sup> However, where the licensing agency fails to follow the procedures adopted for issuance of licenses by failing to examine the competence of an applicant before issuing such a license, the agency's conduct constitutes negligence so as to render it liable for contribution to a settlement of claims arising out of a fatal accident involving such a licensee.<sup>n3</sup> Thus, the state may be held liable for contributing to an injury where the driver's physical condition should have put the agency on notice that a thorough driving test was warranted when he or she applied for a license.<sup>n4</sup>

The failure to revoke one's driver's license is too remote and insubstantial a factor to impose liability for that person's drunk driving on the licensing agency, even though the driver is subject to license revocation, where no special relationship or privity exists between the government agent and either the intoxicated driver or the victim of the driver's negligence.<sup>n5</sup> Government officials have been found to have absolute immunity from tort liability for allegedly negligently issuing a license to a driver who is incapacitated, where those officials act as agents of the state motor vehicle department in collecting and transmitting applications for licenses.<sup>n6</sup>

**FOOTNOTES:**

n1 First Ins. Co. of Hawaii, Ltd. v. International Harvester Co., 66 Haw. 185, 659 P.2d 64 (1983).

n2 First Ins. Co. of Hawaii, Ltd. v. International Harvester Co., 66 Haw. 185, 659 P.2d 64 (1983).

The motor vehicle department has no duty to make periodic inquiries into a driver's medical condition. Johnson v. Department of Public Safety, 627 So. 2d 732 (La. Ct. App. 2d Cir. 1993), writ denied, 635 So. 2d 1107 (La. 1994).

n3 First Ins. Co. of Hawaii, Ltd. v. International Harvester Co., 66 Haw. 185, 659 P.2d 64 (1983).

n4 White v. State Through Dept. of Public Safety & Corrections, 644 So. 2d 684 (La. Ct. App. 1st Cir. 1994), writ denied, 648 So. 2d 927 (La. 1995).

n5 Hartley v. State, 103 Wash. 2d 768, 698 P.2d 77 (1985).



n6 Rutledge v. Baldwin County Com'n, 495 So. 2d 49 (Ala. 1986).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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## 7A Am Jur 2d Automobiles and Highway Traffic § 102

## § 102 Power to license; constitutional limitations

The state has the power to require the procurement of a license before one may operate a motor vehicle on the public highways.<sup>n1</sup> This power to license carries with it the power to prescribe reasonable conditions precedent to the issuance of such licenses,<sup>n2</sup> and to classify drivers for special regulation, provided such classifications are not unreasonable or arbitrary.<sup>n3</sup>

Regulations pertaining to the issuance of motor vehicle drivers' licenses constitute an exercise of the police power to regulate the use of the highways in the interest of the public safety and welfare.<sup>n4</sup> In accepting a driver's license from a state, one must accept and agree to abide by all reasonable conditions imposed by the state.<sup>n5</sup>

A statute mandating that every person who operates a motor vehicle on public roads must have a valid operator's license, unless he or she is exempted by statute, does not impermissibly infringe upon a citizen's right to travel.<sup>n6</sup> Such statutes are not unconstitutional on the ground that they abridge the privileges of citizens.<sup>n7</sup>

A statute requiring the surrender of all valid operator's licenses issued by other jurisdictions as a prerequisite to issuance of a new driver's license is not violative of due process.<sup>n8</sup>

A licensing requirement for drivers does not constitute an unconstitutional burden on the free exercise of religion where it is the least restrictive means for achieving the compelling state interest in the reasonable regulation of the public roadways.<sup>n9</sup> However, a driver's licensing requirement that an applicant submit to having a color photograph taken for affixing on the license may unconstitutionally burden an applicant's free exercise of sincerely-held religious beliefs.<sup>n10</sup>

**FOOTNOTES:**

n1 *Lite v. State*, 617 So. 2d 1058 (Fla. 1993); *State v. Stuart*, 544 N.W.2d 158 (N.D. 1996); *Price v. Reed*, 1986 OK 43, 725 P.2d 1254 (Okla. 1986); *Hanson v. State*, 673 P.2d 657 (Wyo. 1983).

n2 *Sheehan v. Division of Motor Vehicles of State of California*, 140 Cal. App. 200, 35 P.2d 359 (4th Dist. 1934); *Maumee v. Anistik*, 69 Ohio St. 3d 339, 1994-Ohio-157, 632 N.E.2d 497 (1994); *Smith v. Cox*, 609 P.2d 1332 (Utah 1980).

n3 *Ex parte Stork*, 167 Cal. 294, 139 P. 684 (1914).

n4 *State ex rel. Majerus v. Carter*, 214 Mont. 272, 693 P.2d 501 (1984); *Hanson v. State*, 673 P.2d 657 (Wyo. 1983).

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- n5 *Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- n6 *City of Bismarck v. Stuart*, 546 N.W.2d 366 (N.D. 1996); *State v. Booher*, 978 S.W.2d 953 (Tenn. Crim. App. 1997).
- n7 *Stevens v. State*, 319 Ark. 640, 893 S.W.2d 773 (1995).
- n8 *State v. Mitchell*, 115 N.H. 720, 349 A.2d 862 (1975).
- n9 *Coyle v. State*, 775 S.W.2d 843 (Tex. App. Dallas 1989).
- n10 *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984), judgment aff'd, 472 U.S. 478, 105 S. Ct. 3492, 86 L. Ed. 2d 383 (1985) (allowing an applicant with such beliefs to have a license without a photo does not violate the Establishment Clause).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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7A Am Jur 2d Automobiles and Highway Traffic § 103

§ 103 Application for, and issuance or refusal of, license

In order to procure a driver's license, a person needs to meet statutory requirements, such as filing an application with designated officials and paying a specified fee.<sup>n1</sup> Under some statutes, the application needs to be verified.<sup>n2</sup> An applicant is required to establish his or her qualifications for the driver's license, such as showing general fitness and driving ability.<sup>n3</sup> In addition, a state may require the submission of a fingerprint as part of the license application process without violating substantive due process, because such a requirement bears a reasonable and rational relationship to the goal of promoting the safe and lawful use of the state's highways by deterring dangerous drivers whose licenses have been revoked from obtaining new licenses using false identification, and this is a proper legislative objective to which the fingerprint requirement is reasonably related.<sup>n4</sup>

The issuance of a driver's license is considered an administrative function,<sup>n5</sup> and a qualified person may not be deprived the privilege of obtaining a license by the arbitrary action of administrative officials.<sup>n6</sup>

**FOOTNOTES:**

n1 State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

n2 People v. Barrowclough, 39 Cal. App. 3d 50, 113 Cal. Rptr. 852 (2d Dist. 1974).

n3 §§ 112 to 115.

n4 Perkey v. Department of Motor Vehicles, 42 Cal. 3d 185, 228 Cal. Rptr. 169, 721 P.2d 50 (1986).

n5 Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604 (1930).

n6 Com. v. Irwin, 345 Pa. 504, 29 A.2d 68 (1942).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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5 C.F.R. §§ 930.101 to 931.115

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## 7A Am Jur 2d Automobiles and Highway Traffic § 104

## § 104 Nature of license; license as privilege

Although there is also authority to the contrary, most courts view the procurement of a driver's license not as a right, but as a privilege.<sup>n1</sup> In such jurisdictions, a license may be taken away or encumbered as a means of meeting a legitimate legislative goal,<sup>n2</sup> or when the interest of public safety or welfare is at stake.<sup>n3</sup>

On the other hand, a license cannot be taken away without due process of law, whether it is viewed as a right<sup>n4</sup> or a privilege.<sup>n5</sup>

**FOOTNOTES:**

n1 *State v. Cifelli*, 214 Ariz. 524, 155 P.3d 363 (Ct. App. Div. 1 2007); *Tolces v. Trask*, 76 Cal. App. 4th 285, 90 Cal. Rptr. 2d 294 (4th Dist. 1999); *Colorado Dept. of Revenue v. Garner*, 66 P.3d 106 (Colo. 2003); *Lite v. State*, 617 So. 2d 1058 (Fla. 1993); *State v. Vogel*, 548 N.W.2d 584 (Iowa 1996); *State v. Becker*, 36 Kan. App. 2d 828, 145 P.3d 938 (2006), review denied, (Feb. 13, 2007); *Pletcher v. Com.*, 992 S.W.2d 852 (Ky. Ct. App. 1998); *State v. Jackson*, 764 So. 2d 64 (La. 2000); *State v. Savard*, 659 A.2d 1265 (Me. 1995); *Luk v. Com.*, 421 Mass. 415, 658 N.E.2d 664 (1995); *State v. Fish*, 280 Minn. 163, 159 N.W.2d 786 (1968); *State v. Hansen*, 249 Neb. 177, 542 N.W.2d 424 (1996); *Zamarripa v. First Judicial Dist. Court*, 103 Nev. 638, 747 P.2d 1386 (1987); *State v. Oliver*, 343 N.C. 202, 470 S.E.2d 16 (1996); *State v. Ertelt*, 548 N.W.2d 775 (N.D. 1996); *State v. Uskert*, 85 Ohio St. 3d 593, 1999-Ohio-289, 709 N.E.2d 1200 (1999); *Commonwealth v. Zimmick*, 539 Pa. 548, 653 A.2d 1217 (1995); *State v. Smet*, 288 Wis. 2d 525, 2005 WI App 263, 709 N.W.2d 474 (Ct. App. 2005), review denied, 2006 WI 23, 289 Wis. 2d 13, 712 N.W.2d 37 (2006).

n2 *Lite v. State*, 617 So. 2d 1058 (Fla. 1993).

n3 *Maumee v. Anistik*, 69 Ohio St. 3d 339, 1994-Ohio-157, 632 N.E.2d 497 (1994).

As to the suspension and revocation of a driver's license, generally, see §§ 116 to 118.

n4 *Elizondo v. State, Dept. of Revenue, Motor Vehicle Division*, 194 Colo. 113, 570 P.2d 518 (1977).

n5 *Pringle v. Wolfe*, 88 N.Y.2d 426, 646 N.Y.S.2d 82, 668 N.E.2d 1376 (1996); *North Dakota Dept. of Transp. v. DuPaul*, 487 N.W.2d 593 (N.D. 1992); *Plowman v. Com., Dept. of Transp., Bureau of Driver Licensing*, 535 Pa. 314, 635 A.2d 124 (1993).

A driver's license is a special privilege which carries with it certain due process rights; the licensee has no absolute right of ownership in a motor vehicle operator's license, and the driver's right to use the license is specifically conditioned on observing specified operating standards. *State v. Savard*, 659 A.2d 1265 (Me. 1995).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145  
U.S. Const. Art. I, § 10, cl. 3

## 7A Am Jur 2d Automobiles and Highway Traffic § 104

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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§ 105 Carrying and display of license

Statutory provisions may require drivers to have their driver's license in their possession at all times when operating a motor vehicle and to display such license upon demand of a police officer or other person authorized to make such demand,<sup>n1</sup> and criminal liability is specifically imposed in some states for noncompliance with such provisions.<sup>n2</sup> Such statutes have been held to constitute a valid exercise of the police power of the state, as such legislation inures to the general safety and welfare of the public.<sup>n3</sup>

**FOOTNOTES:**

n1 *City of Miami v. Aronovitz*, 114 So. 2d 784 (Fla. 1959); *State v. Farren*, 140 Ohio St. 473, 24 Ohio Op. 493, 45 N.E.2d 413, 143 A.L.R. 1016 (1942); *Cox v. State*, 181 Tenn. 344, 181 S.W.2d 338, 154 A.L.R. 809 (1944).

n2 § 259.

n3 *Morgan v. Town of Heidelberg*, 246 Miss. 481, 150 So. 2d 512 (1963); *State v. Campbell*, 95 R.I. 370, 187 A.2d 543, 6 A.L.R.3d 499 (1963).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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7A Am Jur 2d Automobiles and Highway Traffic § 106

## § 106 Lawfulness of police demand for driver's license

A police officer's action in stopping an automobile and detaining the driver to check the driver's license and the registration of the automobile constitutes an unreasonable seizure under the Fourth and 14th Amendments, except in those situations in which there is at least an articulable and reasonable suspicion that a motorist is unlicensed, that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law.<sup>n1</sup> This rule against random stops and detentions, however, does not preclude a state from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion, such as, for example, the questioning of all oncoming traffic at roadblock-type stops.<sup>n2</sup> Such a practice does not constitute an unlawful arrest or restraint or an illegal search contrary to the United States Constitution.<sup>n3</sup> However, some courts have held that the right to demand and inspect a driver's license is not an arbitrary right and requires some initial cause.<sup>n4</sup>

Although there is authority to the contrary,<sup>n5</sup> it has been held that a police officer who stops to assist a vehicle that is at a rest stop or apparently disabled and on the roadside may lawfully demand to see a driver's license.<sup>n6</sup>

**FOOTNOTES:**

n1 Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

n2 Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

n3 State v. Fish, 280 Minn. 163, 159 N.W.2d 786 (1968).

If stopping motorists indiscriminately by police officers for the good-faith purpose of inspecting or asking for the exhibition of a driver's license were not permitted, the licensing law would break down and become a nullity, and the objective of promoting public safety from irresponsible automobile drivers would be seriously impeded; there would be but few occasions where an officer could otherwise learn that the law was being violated. Com. v. Mitchell, 355 S.W.2d 686 (Ky. 1962).

As to what constitutes arrest, see Am. Jur. 2d, Arrest § 2.

As to search of motor vehicles, generally, see Am. Jur. 2d, Searches and Seizures § 55 to 57.

n4 People v. McPherson, 191 Colo. 81, 550 P.2d 311 (1976); People v. James, 44 Ill. App. 3d 300, 3 Ill. Dec. 88, 358 N.E.2d 88 (2d Dist. 1976).

n5 State v. DeArman, 54 Wash. App. 621, 774 P.2d 1247 (Div. 1 1989).

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n6 O'Donnell v. State, 200 Ga. App. 829, 409 S.E.2d 579 (1991); Com. v. Evans, 436 Mass. 369, 764 N.E.2d 841 (2002); State v. Ellenbecker, 159 Wis. 2d 91, 464 N.W.2d 427 (Ct. App. 1990).

**SUPPLEMENT:****Cases**

The existence of probable cause to arrest vehicle's driver for driving with a suspended license did not authorize the arrest of vehicle passengers. U.S.C.A. Const.Amend. 4. Com. v. Levy, 459 Mass. 1010, 947 N.E.2d 542 (2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 107

§ 107 Judicial review of refusal to issue or renew license

In most jurisdictions, provision is made for judicial review of the determination of administrative officers to refuse to issue<sup>n1</sup> or renew<sup>n2</sup> a driver's license after a proper application. However, in the absence of a statute providing otherwise, there is no right to a hearing with respect to the refusal of the authorities to renew a driver's license.<sup>n3</sup>

The only issue presented to the court making such a review is whether or not the action of the administrative body in refusing to issue or renew the driver's license is reasonably supported by substantial evidence.<sup>n4</sup> In other words, unless the refusal of the administrative officials is shown to be unlawful, unreasonable, arbitrary, or capricious, the administrative determination is deemed conclusive.<sup>n5</sup>

**FOOTNOTES:**

n1 *Com. v. Irwin*, 345 Pa. 504, 29 A.2d 68 (1942); *Department of Public Safety v. Robertson*, 203 S.W.2d 950 (Tex. Civ. App. Eastland 1947).

n2 *Nelson v. Kelly*, 4 A.D.2d 596, 168 N.Y.S.2d 74 (1st Dep't 1957).

n3 *Nelson v. Kelly*, 4 A.D.2d 596, 168 N.Y.S.2d 74 (1st Dep't 1957); *Craft v. Texas Dept. of Public Safety*, 306 S.W.2d 739 (Tex. Civ. App. Amarillo 1957).

N4 *Garrison v. Smith*, 306 S.W.2d 244 (Tex. Civ. App. Fort Worth 1957).

n5 *Department of Public Safety v. Robertson*, 203 S.W.2d 950 (Tex. Civ. App. Eastland 1947).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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§ 108 Generally

A driver's license usually is a prerequisite to the privilege of driving a motor vehicle on the highways,<sup>n1</sup> and no person except those individuals who are specifically exempted by law may drive or operate any motor vehicle on the highways of the state without a proper license to do so.<sup>n2</sup>

A statute permitting unlicensed operators of trail bikes to pass "across" public highways does not apply to a motorist who operates an off-highway recreational vehicle along the side of the road.<sup>n3</sup>

**FOOTNOTES:**

n1 § 100.

n2 Taylor v. State, 151 Tex. Crim. 568, 209 S.W.2d 191 (1948).

n3 State v. Hart, 130 N.H. 325, 540 A.2d 859 (1988).

As to registration and licensing requirements for motorcycles and dirt bikes, generally, see § 89.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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§ 109 Public officers and employees

Unless expressly exempted, public officers and employees in the operation of public or private vehicles in the performance of governmental services are required to have drivers' licenses.<sup>n1</sup> The fundamental purpose of drivers' license acts requires the inclusion of public officers and employees as well as other persons, since there is just as much danger to the public in the operation of vehicles engaged in governmental services as in the operation of vehicles engaged in private ventures.<sup>n2</sup> However, the state may not require qualifications in addition to those which the federal government has pronounced sufficient -- for example, by requiring a post-office employee to cease driving a government truck in the transportation of mail over a post road until he or she obtains a license by submitting to examination before a state official and paying a fee.<sup>n3</sup>

**FOOTNOTES:**

n1 *Croson v. District of Columbia*, 2 F.2d 924 (App. D.C. 1924); *Department of Penal Institutions v. Wymore*, 350 Mo. 127, 165 S.W.2d 618 (1942).

As to federal statute concerning state and local licenses for operators of federal vehicles, see § 112.

n2 *Department of Penal Institutions v. Wymore*, 350 Mo. 127, 165 S.W.2d 618 (1942).

n3 *Johnson v. State of Maryland*, 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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## § 110 Chauffeurs

Chauffeurs generally are required to obtain special licenses in order to operate motor vehicles, such licenses being commonly referred to as "chauffeur licenses."<sup>n1</sup>

Unreasonable and arbitrary restrictions cannot be placed upon the right to obtain a public chauffeur's license,<sup>n2</sup> but the fact that driving is necessary to a driver's employment does not render a state's automatic revocation system violative of due process for providing a hearing only after the revocation has taken effect.<sup>n3</sup>

Definition: The term "chauffeur" has both a restricted and a general meaning, and in the former sense it applies to persons driving motor vehicles principally for salary or compensation.<sup>n4</sup> It is this restricted meaning that generally has been adopted by the statutes in defining the term "chauffeur."<sup>n5</sup> As thus defined, an employee who receives compensation principally for services other than the operation of motor vehicles is not required to obtain a chauffeur's license, although in performing such services the employee may incidentally operate a motor vehicle.<sup>n6</sup> Even under a statute that defines the term "chauffeur" to include every person operating a motor vehicle for hire or as an employee of the owner of the vehicle, it has been held that one who is not employed primarily as the driver of a motor vehicle, but merely operates a motor vehicle of the employer incidentally to the purposes of the employment, is not required to obtain a chauffeur's license.<sup>n7</sup>

**FOOTNOTES:**

n1 *Des Moines Rug Cleaning Co. v. Automobile Underwriters*, 215 Iowa 246, 245 N.W. 215 (1932).

n2 *Miller v. Carter*, 547 F.2d 1314 (7th Cir. 1977), judgment aff'd, 434 U.S. 356, 98 S. Ct. 786, 54 L. Ed. 2d 603 (1978) (a city ordinance that permanently bars a person convicted of certain felonies from obtaining a public chauffeur's license violates the Equal Protection Clause, as existing licensees do not automatically lose their licenses if convicted of a felony, which undercuts the reasonableness of the contention that a felon is per se likely to create a serious risk that cannot be sufficiently evaluated to protect the public through individualized hearings).

n3 *Burgess v. Ryan*, 996 F.2d 180 (7th Cir. 1993).

As to prehearing revocations, generally, see §§ 146 to 150.

n4 *Amalgamated Ass'n of St. and Elec. Ry. and Motor Coach Emp. of America v. Morley*, 219 Ark. 53, 239 S.W.2d 745 (1951); *State v. Depew*, 175 Md. 274, 1 A.2d 626 (1938).

n5 *Des Moines Rug Cleaning Co. v. Automobile Underwriters*, 215 Iowa 246, 245 N.W. 215 (1932).

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n6 Des Moines Rug Cleaning Co. v. Automobile Underwriters, 215 Iowa 246, 245 N.W. 215 (1932); Matthews v. State, 85 Tex. Crim. 469, 214 S.W. 339 (1919).

n7 State v. Depew, 175 Md. 274, 1 A.2d 626 (1938).

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7A Am Jur 2d Automobiles and Highway Traffic § 111

## § 111 Nonresidents

The state, under the police power, has the right to require licenses from nonresidents for the operation of motor vehicles on its highways,<sup>n1</sup> including nonresidents operating motor vehicles engaged in interstate or foreign commerce.<sup>n2</sup>

In some jurisdictions, statutes have been enacted that exempt nonresidents from driver's license requirements, provided they are residents of states that require drivers' licenses and they have complied with that requirement.<sup>n3</sup> Such a statute does not deprive residents of states whose laws do not require drivers' licenses of the equal protection of the laws.<sup>n4</sup> In other jurisdictions, nonresidents are exempted from driver's license requirements on a reciprocal basis: where they have complied with the license laws of their place of residence and the laws of their place of residence accord a like or reciprocal exemption to residents of such jurisdictions.<sup>n5</sup> If one's driver's license has been suspended or revoked in one state, that person cannot claim that a license granted to him or her in another state permits him or her to drive in the former state.<sup>n6</sup>

Observation: A domiciliary of another state, while residing in Virginia, can use his or her commercial driver's license, issued by the other state, to drive noncommercial vehicles in Virginia.<sup>n7</sup>

**FOOTNOTES:**

n1 Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915).

n2 Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915).

**Related References:**

As to government regulation of interstate motor carriers, see Am. Jur. 2d, Carriers §§ 21 to 33.

n3 State v. Chandler, 131 Me. 262, 161 A. 148, 82 A.L.R. 1389 (1932).

n4 State v. Chandler, 131 Me. 262, 161 A. 148, 82 A.L.R. 1389 (1932).

n5 Plunkett v. Heath, 1 N.Y.S.2d 778 (City Ct. 1938).

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n6 State v. Dalton, 13 Wash. App. 94, 533 P.2d 864 (Div. 3 1975).

n7 Meierotto v. Com., 50 Va. App. 1, 646 S.E.2d 1 (2007).

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## § 112 Generally

It is within the police power of the state to make provisions designed to limit the operation of motor vehicles to those who are competent to do so.<sup>n1</sup> Regulations in the various states prescribe, either directly or indirectly, the qualifications for a driver's license, and these generally require that an applicant therefor be of a certain age,<sup>n2</sup> that he or she demonstrate an ability to drive by passing an examination or driver's test,<sup>n3</sup> and that he or she not have a currently suspended or revoked license in that state or any other state.<sup>n4</sup> Pursuant to some regulations, an applicant for a driver's license must also furnish proof of fitness, including a showing that he or she is free from physical defects or mental disabilities or conditions that incapacitate him or her to operate a motor vehicle.<sup>n5</sup> Under such a statute, it has been held that in determining the fitness of an applicant for a driver's license, the authorities are not restricted to a determination of the applicant's ability to operate a motor vehicle, but may consider the applicant's previous criminal activities, such as convictions for bookmaking, reckless driving, and speeding, and revocations of his or her license.<sup>n6</sup> Many states also require applicants to prove that they are insured or have made other arrangements to pay for any damages they may cause while driving.<sup>n7</sup>

The Director of the Office of Personnel Management is charged with prescribing regulations to govern executive agencies in authorizing civilian personnel to operate government-owned motor vehicles for official purposes, with such regulations prescribing standards of physical fitness for authorized operators; such regulations may also require operators and prospective operators to obtain such state and local licenses or permits as would be required for the operation by them of similar vehicles for other than official purposes.<sup>n8</sup>

**FOOTNOTES:**n1 *Lowe v. Simmons*, 185 Miss. 88, 187 So. 214 (1939).

n2 § 113.

n3 § 115.

n4 *Wilczewski v. Neth*, 273 Neb. 324, 729 N.W.2d 678 (2007).n5 *Com. v. Irwin*, 345 Pa. 504, 29 A.2d 68 (1942); *State v. Campbell*, 99 R.I. 57, 205 A.2d 576 (1964).n6 *Bernola v. Fletcher*, 280 A.D. 870, 114 N.Y.S.2d 152 (2d Dep't 1952).

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n7 §§ 167 to 170.

n8 40 U.S.C.A. § 606.

As to federal regulations affecting government motor vehicle operators, see 5 C.F.R. §§ 930.101 to 931.115.

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7A Am Jur 2d Automobiles and Highway Traffic § 113

## § 113 Age requirements

Statutes providing for the issuance of drivers' licenses, either directly or by clear implication, may prohibit the issuance of drivers' licenses to persons under the prescribed age.<sup>n1</sup> Such statutes generally have been held valid as against the contention that they violate due process<sup>n2</sup> or the Equal Protection Clause of the Constitution.<sup>n3</sup> The state may, as an exercise of the police power, deny drivers' licenses to those under 16 years of age.<sup>n4</sup>

One of the objects of such statutes is to protect users of the highways from inexperienced and immature drivers; the statutes in effect declare that persons under the ages specified do not possess the requisite care and judgment to operate motor vehicles on the public highways without endangering others.<sup>n5</sup>

Some states have enacted statutes that require an applicant for a minor's driver's license to have a sponsor, that limit sponsors to persons who are likely to be able to exercise some control over the minor's driving, and that impose financial responsibility on the sponsor for damages caused by the minor's operation of a motor vehicle.<sup>n6</sup> Such statutes are intended to afford other users of the road some protection from minor drivers.<sup>n7</sup>

**FOOTNOTES:**

n1 *Wagoner v. Fidelity & Casualty Co. of New York*, 215 A.D. 170, 213 N.Y.S. 188 (3d Dep't 1926), aff'd, 253 N.Y. 608, 171 N.E. 803 (1930).

n2 *State v. Graunke*, 119 Neb. 440, 229 N.W. 329 (1930).

n3 *Berberian v. Petit*, 118 R.I. 448, 374 A.2d 791, 86 A.L.R.3d 468 (1977).

n4 *State v. Graunke*, 119 Neb. 440, 229 N.W. 329 (1930).

n5 *Sedlacek v. Ahrens*, 165 Mont. 479, 530 P.2d 424 (1974); *Charbonneau v. MacRury*, 84 N.H. 501, 153 A. 457, 73 A.L.R. 1266 (1931).

n6 *Ynocencio v. Fesko*, 114 Wis. 2d 391, 338 N.W.2d 461 (1983).

n7 *Ynocencio v. Fesko*, 114 Wis. 2d 391, 338 N.W.2d 461 (1983).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145



U.S. Const. Art. I, § 10, cl. 3  
8 U.S.C.A. §§ 1101 to 1107  
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§ 114 Identification requirements affecting illegal aliens

A state statute restricting or denying driver's licenses to illegal aliens has been held neither to create an unconstitutional classification under the Equal Protection Clause based on alienage or national origin,<sup>n1</sup> nor to violate one's right to travel.<sup>n2</sup> A statutory scheme requiring the production of a social security number or documentation authorizing a foreign national's presence in the country is rationally related to the legitimate state interest of not allowing its governmental machinery to be a facilitator for the concealment of illegal aliens.<sup>n3</sup>

Observation: In July 2006, a federal statute became effective which, according to at least one court,<sup>n4</sup> shows the implicit federal recognition that states can legally issue drivers' licenses without a person being in a position to establish his or legal presence in the United States.<sup>n5</sup>

**FOOTNOTES:**

n1 John Doe No. 1 v. Georgia Dept. of Public Safety, 147 F. Supp. 2d 1369 (N.D. Ga. 2001) (applying Georgia law); League of United Latin American Citizens (LULAC) v. Bredesen, 2004 WL 3048724 (M.D. Tenn. 2004); Sanchez v. State, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).

n2 John Doe No. 1 v. Georgia Dept. of Public Safety, 147 F. Supp. 2d 1369 (N.D. Ga. 2001).

n3 Sanchez v. State, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).

n4 State v. Lopez, 948 So. 2d 1121 (La. Ct. App. 4th Cir. 2006).

n5 8 U.S.C.A. §§ 1101 to 1107 ("Real ID Act of 2005").

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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Frantz, Undocumented Workers: State Issuance of Driver Licenses Would Create a Constitutional Conundrum, 18 Geo. Immigr. L.J. 505 (2004)

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7A Am Jur 2d Automobiles and Highway Traffic § 115

## § 115 Driving examination or re-examination

Drivers' licenses applicants generally are required to pass an examination demonstrating their ability to operate a motor vehicle.<sup>n1</sup> Such an examination need not be taken in a motor vehicle owned by the applicant, but may be taken in a motor vehicle owned and furnished by another for that purpose, including a motor vehicle owned by a driving school.<sup>n2</sup>

In some jurisdictions, drivers involved in accidents or in certain traffic offenses may be required to be re-examined as to their ability to operate a motor vehicle.<sup>n3</sup> The right to require a licensee to submit to re-examination and to cancel his or her license if he or she fails to do so depends upon the existence of statutory authority to take such action.<sup>n4</sup> It exists only where the agency imposing the requirement has reasonable grounds for the belief that the operator is unqualified to drive.<sup>n5</sup>

**FOOTNOTES:**

n1 Leder v. Harnett, 252 N.Y. 619, 170 N.E. 166 (1930).

n2 Leder v. Harnett, 252 N.Y. 619, 170 N.E. 166 (1930).

n3 Carnegie v. Department of Public Safety, 60 So. 2d 728 (Fla. 1952); Wignall v. Fletcher, 303 N.Y. 435, 103 N.E.2d 728 (1952).

n4 Carnegie v. Department of Public Safety, 60 So. 2d 728 (Fla. 1952).

n5 Berger v. Melton, 100 Misc. 2d 262, 418 N.Y.S.2d 880 (Sup 1979).

Given that an 87-year-old driver had numerous health problems and was on many medications, the DMV had reason to believe that the driver was not qualified to drive a motor vehicle, justifying the DMV's request that the driver take a road test. Femia v. Administrative Appeals Bd. of New York State Dept. of Motor Vehicles, 839 N.Y.S.2d 396 (App. Div. 4th Dep't 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

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## § 116 Generally

Statutes and ordinances regulating the granting of drivers' licenses in particular jurisdictions may contain provisions for their suspension or revocation under stated circumstances.<sup>n1</sup> The suspension or revocation of a driver's license is not intended as a punishment to the driver, but is designed solely for the protection of the public in the use of the highways,<sup>n2</sup> and is one of the most effective measures to compel observance of the traffic laws.<sup>n3</sup>

Observation: A state agency cannot suspend the driver's license of a nonresident; rather, it is limited to revoking or suspending the nonresident's privilege of driving a motor vehicle on the highways of the state.<sup>n4</sup>

Once issued, a driver's license becomes a property interest that may not be suspended or revoked without the procedural due process guaranteed by the 14th Amendment.<sup>n5</sup> Statutes and regulations governing the cancellation of driving privileges based on a motorist's failure to pass driver's tests are not unconstitutionally vague, in violation of the constitutional rights of equal privileges and immunities and against ex post facto laws, where they enumerate the qualifications for eligibility and specify what will render the motorist ineligible for driver's privileges.<sup>n6</sup> Drivers' licenses may not, however, be suspended or revoked arbitrarily or capriciously, but only in the manner and on the grounds provided by law.<sup>n7</sup>

**FOOTNOTES:**

n1 *Maumee v. Anistik*, 69 Ohio St. 3d 339, 1994-Ohio-157, 632 N.E.2d 497 (1994); *Price v. Reed*, 1986 OK 43, 725 P.2d 1254 (Okla. 1986).

As to specific grounds for suspension or revocation, see §§ 119 to 145.

n2 *Prillaman v. Com.*, 199 Va. 401, 100 S.E.2d 4 (1957).

n3 *City of Miami v. Aronovitz*, 114 So. 2d 784 (Fla. 1959).

n4 *McHugh v. State*, 285 Ga. App. 131, 645 S.E.2d 619 (2007).

n5 *State v. Pyette*, 2007 MT 119, 337 Mont. 265, 159 P.3d 232 (2007).

As to the need for pretermination notice and hearing, generally, see §§ 147 to 150.

n6 *Richardson v. Driver and Motor Vehicle Services Div. (DMV)*, 213 Or. App. 18, 159 P.3d 1227 (2007).

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As to driving examinations, generally, see § 115.

n7 *Carnegie v. Department of Public Safety*, 60 So. 2d 728 (Fla. 1952); *Application of Wignall*, 278 A.D. 28, 103 N.Y.S.2d 7 (4th Dep't 1951), order aff'd, 303 N.Y. 435, 103 N.E.2d 728 (1952); *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604 (1930).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 117

§ 117 Who may suspend or revoke licenses

Where a driver's license is generally considered a privilege and not a property or contract right,<sup>n1</sup> there is no denial of due process of law resulting from placing the power to suspend or revoke in an administrative officer.<sup>n2</sup> The licensee's right of review, as provided by law, is sufficient protection that suspension or revocation powers will be reasonably and fairly administered.<sup>n3</sup> However, legislative authority to suspend or revoke a driver's license may not be delegated to administrative officials without some definite and fixed standard as to what shall constitute grounds for the suspension or revocation.<sup>n4</sup>

Caution: A statute authorizing the director of a state's motor vehicle department to suspend or revoke a driver's license "for any cause which he may deem sufficient" is an unconstitutional delegation of legislative authority in some states, as it fails to declare a general policy and prescribe standards for the director to utilize in deciding whether to suspend or revoke a license.<sup>n5</sup>

**FOOTNOTES:**

n1 § 104.

n2 *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620, 35 A.L.R.2d 1003 (1952) (overruled in part on other grounds by, *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972)); *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960).n3 *Anderson v. Commissioner of Highways*, 267 Minn. 308, 126 N.W.2d 778, 9 A.L.R.3d 746 (1964); *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960).n4 *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960).n5 *Guillou v. State, Div. of Motor Vehicles*, 127 N.H. 579, 503 A.2d 838 (1986).

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§ 118 Power of municipality to suspend or revoke licenses

In the absence of a state statute expressly or impliedly authorizing municipal revocation of state-issued driver's licenses, a municipal ordinance providing for such revocation is invalid.<sup>n1</sup> A statute authorizing municipalities to enact traffic regulations does not impliedly authorize the municipalities to enact ordinances providing for the suspension or revocation of state-issued drivers' licenses.<sup>n2</sup> A statute that specifically empowers municipal courts to suspend driver's licenses for nonpayment of nontraffic fines is constitutional where the coercive effect of the threat of suspension is a valid exercise of the police power to promote the general welfare through a range of enforcement devices.<sup>n3</sup>

**FOOTNOTES:**

n1 *Poynter v. Walling*, 54 Del. 409, 177 A.2d 641 (Super. Ct. 1962); *Briggs v. City of Union City*, 531 S.W.2d 106 (Tenn. 1975); *City of Bellingham v. Schampera*, 57 Wash. 2d 106, 356 P.2d 292, 92 A.L.R.2d 192 (1960).

n2 *Poynter v. Walling*, 54 Del. 409, 177 A.2d 641 (Super. Ct. 1962); *Gembler v. City of Seward*, 136 Neb. 916, 288 N.W. 545 (1939).

n3 *City of Milwaukee v. Kilgore*, 185 Wis. 2d 499, 517 N.W.2d 689 (Ct. App. 1994), decision *aff'd*, 193 Wis. 2d 168, 532 N.W.2d 690 (1995).

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7A Am Jur 2d Automobiles and Highway Traffic § 119

#### § 119 Generally

Driver's licenses may be made subject to suspension or revocation on any ground that would justify a refusal to issue the license in the first instance,<sup>n1</sup> along with any other reasons enumerated in the applicable statutes or regulations.<sup>n2</sup> Some statutes provide very general grounds for the motor vehicle department to apply, such as providing that a driver's license may be revoked whenever the department believes that failure to revoke the license will compromise public safety.<sup>n3</sup>

Caution: At least one statute has been held unconstitutionally vague because it authorized a state motor vehicle department to suspend a driver's license without a preliminary hearing upon a showing that the driver had been involved as a driver in an accident resulting in the death or personal injury of another. The court stated that the statute failed to set forth a standard to be used when determining if a license should be revoked.<sup>n4</sup>

#### FOOTNOTES:

n1 *Barbieri v. Morris*, 315 S.W.2d 711 (Mo. 1958).

n2 As to the state's power to require motor vehicle drivers' licenses, and to condition those licenses, generally, see §§ 100 to 107.

n3 *Luk v. Com.*, 421 Mass. 415, 658 N.E.2d 664 (1995).

n4 *Fitzpatrick v. Pare*, 568 A.2d 1012 (R.I. 1990).

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## § 120 Generally

A statute may prevent the licensing agency from issuing a license to any person whom the agency has good cause to believe would not be able to operate a motor vehicle with safety upon the highways by reason of physical or mental disability.<sup>n1</sup> Some statutory provisions avoid the naming of specific diseases or defects the affliction with which would necessitate automatic disqualification, instead making the determining criterion a broad one of results, such as whether the individual in question would, in view of his or her physical condition, be unable to operate a motor vehicle safely,<sup>n2</sup> or with reasonable and ordinary control.<sup>n3</sup>

An administrative deprivation of driving privileges based solely on a suspicion that the motorist is suffering from a disabling infirmity will not be sustained in the absence of substantial evidence, and thus a revocation based exclusively upon an otherwise-healthy motorist's advanced age,<sup>n4</sup> and a suspension predicated solely upon a police accident report indicating that the motorist in question stated that he or she had suffered a mental lapse,<sup>n5</sup> have not been upheld.

In resolving the critical question of whether an individual's alleged impaired condition does or could adversely affect his or her ability to drive safely, the courts have considered a variety of factors. For example, a court may look at past driving proficiency, so that the fact that a driver has never, or at least only rarely, been involved in a traffic accident has contributed toward the reversal of administrative action in several cases.<sup>n6</sup>

Practice Tip: A verbal representation by a driver of his or her own medical condition is a reliable source for a good cause belief in the need to obtain further information concerning the driver's ability to safely control and operate a vehicle.<sup>n7</sup>

Multiple sclerosis may interfere with a driver's ability to control and safely operate a motor vehicle, so a driver's statement that he or she has this condition is reasonable grounds for a motor vehicle department to request a questionnaire from the driver's physician to determine if the condition does interfere with his or her driving ability.<sup>n8</sup> A driver with an unrepaired aneurysm is not qualified to hold a commercial driver's license, despite a doctor's giving the driver medical clearance.<sup>n9</sup>

Under some statutes, a motor vehicle department may require a driver to submit to a physical examination if the department has good cause to believe that the driver may be physically or mentally incapable of operating a motorized vehicle safely.<sup>n10</sup> Under such a statute, the motor vehicle department may, in lieu of an examination, solicit the driver's physician's response to a questionnaire.<sup>n11</sup>

**FOOTNOTES:**

## 7A Am Jur 2d Automobiles and Highway Traffic § 120

n1 Mangan v. Department of Public Safety, 258 Iowa 359, 138 N.W.2d 922 (1965); City of Spokane v. McGoldrick, 21 Wash. App. 255, 584 P.2d 471 (Div. 3 1978).

n2 Mangan v. Department of Public Safety, 258 Iowa 359, 138 N.W.2d 922 (1965).

n3 Ormond v. Garrett, 8 N.C. App. 662, 175 S.E.2d 371, 38 A.L.R.3d 448 (1970).

n4 § 123.

n5 Lashway v. Hults, 36 Misc. 2d 1012, 234 N.Y.S.2d 47 (Sup 1962).

n6 Ormond v. Garrett, 8 N.C. App. 662, 175 S.E.2d 371, 38 A.L.R.3d 448 (1970) (epilepsy and approximately 225,000 miles without accident).

n7 State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).

n8 State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).

n9 Commissioner, Dept. of Revenue v. Fort, 760 N.E.2d 1103 (Ind. Ct. App. 2001).

n10 State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).

n11 State, Dept. of Motor Vehicles and Public Safety v. Miles, 111 Nev. 681, 895 P.2d 1316 (1995).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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5 C.F.R. §§ 930.101 to 931.115

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7A Am Jur 2d Automobiles and Highway Traffic § 121

§ 121 Visual impairment

A rule prohibiting the issuance of a driver's license to anyone who must wear bioptic telescopic lenses does not violate a statute regarding the right of physically disabled persons to use the public highways, in light of evidence that such lenses are unsafe for operating motor vehicles.<sup>n1</sup> Such a rule does not violate equal protection or deny such drivers due process.<sup>n2</sup>

Absent a showing that the visual acuity standards provided in the regulations governing renewal of a driver's license are unreasonable, arbitrary, unnecessary, or invalid, the regulation sets the minimum standard, which cannot be deviated from by application of a broad general concept of safe driving ability as set forth in the authorizing statute or by a showing that the driver could be capable of driving a vehicle safely.<sup>n3</sup>

**FOOTNOTES:**

n1 Gooch v. Iowa Dept. of Transp., 398 N.W.2d 845 (Iowa 1987).

n2 Gooch v. Iowa Dept. of Transp., 398 N.W.2d 845 (Iowa 1987).

n3 Vandever v. Kansas Dept. of Revenue, 243 Kan. 693, 763 P.2d 317 (1988).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 122

§ 122 Sudden losses of consciousness; epilepsy and diabetes

In reviewing discretionary denials of licenses in cases involving conditions characterized by sudden attacks that could result in a loss of consciousness, such as epilepsy, insulin-treated diabetes, and certain neurological disorders, the courts have placed particular emphasis on the driver's medical history, the relative infrequency with which the motorist suffered attacks in the past being a factor contributing toward the reversal of a license suspension in a number of cases.<sup>n1</sup> While licensing authorities may refuse to renew a driver's license where the applicant has a past history of epilepsy, under the statutory power to refuse to renew drivers' licenses where they deem the applicants not qualified to receive such licenses,<sup>n2</sup> the reversal of several administrative license withdrawals has been predicated, at least in part, upon the fact that the motorist's recurring condition was controlled, through proper dosages of an appropriate medication or other methods,<sup>n3</sup> although that has not been the result where it has been shown that the motorist has failed to take medication on occasions in the past and has suffered at least one apparent attack while driving.<sup>n4</sup> Where an administrative agency is afforded discretion in determining driving qualifications, it may properly refuse to license a person suffering from a recurring condition that is medicinally controlled and, instead, make the criterion the absence of attacks, without the benefit of medication, for a specified period of time.<sup>n5</sup> However, where a regulation provides for the suspension of a driver's license for a period of one year upon the occurrence of a single epileptic seizure, without giving the licensee an opportunity to present medical evidence in an effort to establish his or her competency to drive, it creates an irrebuttable presumption in violation of due process.<sup>n6</sup>

**FOOTNOTES:**

n1 *Smith v. Department of Motor Vehicles*, 163 Cal. App. 3d 321, 209 Cal. Rptr. 283 (1st Dist. 1984); *Higgins v. Department of Public Safety*, 138 So. 2d 530 (Fla. Dist. Ct. App. 3d Dist. 1962); *Derouchie v. Kelly*, 1 A.D.2d 921, 149 N.Y.S.2d 694 (3d Dep't 1956).

n2 *Nelson v. Kelly*, 4 A.D.2d 596, 168 N.Y.S.2d 74 (1st Dep't 1957).

n3 *Chesnutt v. Peters*, 300 N.C. 359, 266 S.E.2d 623 (1980).

n4 *Mangan v. Department of Public Safety*, 258 Iowa 359, 138 N.W.2d 922 (1965).

n5 *Derouchie v. Kelly*, 1 A.D.2d 921, 149 N.Y.S.2d 694 (3d Dep't 1956).

## 7A Am Jur 2d Automobiles and Highway Traffic § 122

n6 Com. Dept. of Transp., Bureau of Driver Licensing v. Clayton, 546 Pa. 342, 684 A.2d 1060 (1996).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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5 C.F.R. §§ 930.101 to 931.115

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7A Am Jur 2d Automobiles and Highway Traffic § 123

§ 123 Advanced age

An administrative deprivation of driving privileges based solely on a suspicion that the motorist is suffering from a disabling infirmity, based exclusively upon an otherwise-healthy motorist's advanced age, will not be sustained;<sup>n1</sup> to deprive a person of a substantive right solely on the basis of age is clearly arbitrary.<sup>n2</sup> A hearing officer's routine observations of a driver's age and hand tremors cannot constitute the requisite reasonable cause to require a vehicle operator to submit to a physical examination or lose his or her license.<sup>n3</sup>

**FOOTNOTES:**

n1 Feely v. Hulst, 27 A.D.2d 953, 279 N.Y.S.2d 249 (2d Dep't 1967).

n2 Berger v. Melton, 100 Misc. 2d 262, 418 N.Y.S.2d 880 (Sup 1979).

n3 Berger v. Melton, 100 Misc. 2d 262, 418 N.Y.S.2d 880 (Sup 1979).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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5 C.F.R. §§ 930.101 to 931.115

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7A Am Jur 2d Automobiles and Highway Traffic § 124

§ 124 Generally

Implied consent laws all across the United States provide that a person who operates a motor vehicle in a given state is deemed to have given his or her consent to a chemical test of breath, blood, urine, or saliva, for the purpose of determining the alcoholic content of his or her blood, and that the refusal of a motorist to submit to such a test upon a proper request generally constitutes grounds for the suspension or revocation of his or her driver's license.<sup>n1</sup> Since a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing, a drunk driver has no right to resist or refuse such a test, notwithstanding statutory sanctions for a driver's refusal to submit to chemical tests.<sup>n2</sup> However, in some instances involving mental incapacity of the driver, refusal to take a chemical test has been deemed justified.<sup>n3</sup>

To uphold the revocation of a driver's license for refusal to take a breathalyzer test, a court must determine only that the driver was arrested, that the arresting officer had reasonable grounds to believe the driver was driving while intoxicated, and that the driver refused to submit to the test;<sup>n4</sup> the state has the burden of proof on all these issues,<sup>n5</sup> and failure to prove all three elements will result in the reinstatement of the driver's license.<sup>n6</sup>

**FOOTNOTES:**

n1 *People v. Thompson*, 38 Cal. 4th 811, 43 Cal. Rptr. 3d 750, 135 P.3d 3 (2006), cert. denied, 127 S. Ct. 446, 166 L. Ed. 2d 317 (U.S. 2006); *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007); *Matter of Suazo*, 117 N.M. 785, 877 P.2d 1088 (1994); *Village of Oregon v. Bryant*, 188 Wis. 2d 680, 524 N.W.2d 635 (1994); *Escarcega v. State ex rel. Wyo. Dept. of Transp.*, 2007 WY 38, 153 P.3d 264 (Wyo. 2007).

n2 *People v. Thompson*, 38 Cal. 4th 811, 43 Cal. Rptr. 3d 750, 135 P.3d 3 (2006), cert. denied, 127 S. Ct. 446, 166 L. Ed. 2d 317 (U.S. 2006).

n3 *State v. Superior Court of Pima County*, 155 Ariz. 403, 747 P.2d 564 (Ct. App. Div. 2 1986), decision approved, 155 Ariz. 408, 747 P.2d 569 (1987) (driver's suspended license was reinstated after she presented evidence by her psychiatrist that she was incapable of voluntarily refusing the test); In *Matter of Griffiths*, 113 Idaho 364, 744 P.2d 92 (1987) (driver's fear of needles was sufficient to justify a refusal to take a blood test); *Wessell v. State, Dept. of Justice, Motor Vehicle Div.*, 277 Mont. 234, 921 P.2d 264 (1996) (a disabling and disclosed fear of needles is the functional equivalent of a physical disability and may excuse refusal of a blood test); *Gordon v. Com., Dept. of Transp., Bureau of Driver Licensing*, 707 A.2d 1195 (Pa. Commw. Ct. 1998) (driver's refusal to take the test was due to her mental incapacity, not to alcohol).

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n4 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

As to lawful arrest in a drunk driving case, generally, see §§ 129, 130.

As to review by a lower court, generally, see § 140.

n5 § 153.

n6 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

## SUPPLEMENT:

### Cases

Police officer was not required to inform driver, when advising driver, upon driver's arrest for driving under the influence of alcohol, of the consequences for refusing an alcohol breath test, the sanctions for having a blood alcohol concentration in excess of the statutory limit, and the administrative review process, of the potential that driver could be referred to the Medical Advisory Board (MAB) for review; referral to the MAB was not a potential administrative sanction for driving while intoxicated. *Motor Vehicle Admin. v. Delawter*, 403 Md. 243, 941 A.2d 1067 (2008).

Deputy had probable cause to arrest motorist for driving under influence of alcohol, as required for continued suspension of motorist's driver's license for failure to submit to a chemical test, even in absence of sobriety testing; deputy knew that motorist had been traveling westbound in eastbound lane of interstate highway for at least half an hour, motorist was unaware that she was passing oncoming traffic in her lane, deputy chased motorist for more than six miles, motorist was oblivious to deputy's emergency signals, siren, and spotlight, motorist did not stop until another officer joined chase, and motorist had to be forcibly removed from her vehicle. *In re License Suspension of Cybulski*, 2008 MT 128, 343 Mont. 56, 183 P.3d 39 (2008).

Deputy had particularized suspicion that motorist was driving under influence of alcohol, as required for continued suspension of motorist's driver's license for failure to submit to a chemical test; motorist drove on wrong side of major interstate highway for more than 40 miles and was oblivious to traffic traveling in opposite direction, pursuing officers knew that motorist had been driving on wrong side for at least half an hour, and motorist failed to promptly respond to deputy's emergency signals and directives to pull over and instead continued to drive for six miles. *In re License Suspension of Cybulski*, 2008 MT 128, 343 Mont. 56, 183 P.3d 39 (2008).

Evidence supported finding that motorist arrested for driving under the influence failed to timely cure his refusal to take blood alcohol test, and thus was not unable to avoid revocation of driver's license for refusal to submit to test; while motorist claimed that his statement of "I did not refuse" at police station was sufficient to signify he had changed his mind and requested a blood test, motorist gave no indication that he was then willing to take the blood test, either verbally or non-verbally, and motorist, who earlier had claimed he did not understand the *Miranda* warning, swore and mumbled when asked to submit to testing, and then, after he overheard a conversation between the officer and a jailer, responded with his ambiguous statement of "I did not refuse". *Grosgebauer v. North Dakota Dept. of Transp.*, 2008 ND 75, 747 N.W.2d 510 (N.D. 2008).

A motorist arrested for driving under the influence is able to cure a prior refusal to take a blood alcohol test, and thereby avoid revocation of driver's license for refusal to submit to test, if he changes his mind and requests the test. *Grosgebauer v. North Dakota Dept. of Transp.*, 2008 ND 75, 747 N.W.2d 510 (N.D. 2008).

If motorist was truly incapable of providing a knowing refusal to submit to a breath or blood test as a result of a medical incapacity due to emotional distress, it was his burden to document the incapacity with credible medical testimony; self-serving statements provided at trial would not suffice. *Hollis v. State ex rel. Dept. of Public Safety*, 2008 OK 31, 183 P.3d 996 (Okla. 2008).

Because officer was not an authorized individual to draw blood and because there was no indication that officer requested an authorized individual to carry out the drawing of the blood specimen of motorist, who was suspected of driving while intoxicated, officer did not comply with statutory requirements to properly request a blood specimen so as to enable Department of Public Safety to suspend motorist's driver's license for his purported refusal to submit a blood specimen. *Texas Dept. of Public Safety v. Hutcheson*, 235 S.W.3d 312 (Tex. App. Corpus Christi 2007), reh'g overruled, (Sept. 27, 2007) and petition for review filed, (Dec. 31, 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support, 30 A.L.R.6th 483

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7A Am Jur 2d Automobiles and Highway Traffic § 125

§ 125 Purpose; characterization as civil, administrative action

The purpose of implied-consent statutes is to protect the public<sup>n1</sup> by obtaining the best evidence of drivers' blood-alcohol content while insuring the cooperation of the person arrested,<sup>n2</sup> and by inhibiting driving under the influence.<sup>n3</sup> These purposes are nonpunitive and nonretributive.<sup>n4</sup>

Practice Tip: An appeal from an order suspending a driver's license because of the driver's refusal to take a breathalyzer examination is a civil case in which the state, as well as the motorist, is entitled to a jury.<sup>n5</sup>

Because an implied-consent statute is not a criminal statute, but a statute that confers an administrative penalty, it is not strictly construed in the driver's favor.<sup>n6</sup> The burden of proving the invalidity of the test, as an excuse for refusal, is upon the licensee,<sup>n7</sup> and the state does not have the burden of proving that an approved test would have been ready and available if the driver had elected to take the test; in the absence of evidence to the contrary, the hearing officer may presume that the police had an approved test available.<sup>n8</sup>

**FOOTNOTES:**

n1 *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 923 A.2d 100 (2007); *Leduc v. Com.*, 421 Mass. 433, 657 N.E.2d 755 (1995); *Com. v. Charles*, 270 Pa. Super. 280, 411 A.2d 527 (1979).

n2 *Burnett v. Municipality of Anchorage*, 806 F.2d 1447 (9th Cir. 1986); *Rice v. Pierce*, 203 Cal. App. 3d 1460, 250 Cal. Rptr. 832 (1st Dist. 1988); *Furthmyer v. Kansas Dept. of Revenue*, 256 Kan. 825, 888 P.2d 832 (1995); *State v. Christopherson*, 217 Mont. 449, 705 P.2d 121 (1985); *State v. Nordness*, 128 Wis. 2d 15, 381 N.W.2d 300 (1986).

n3 *Burnett v. Municipality of Anchorage*, 806 F.2d 1447 (9th Cir. 1986); *Rice v. Pierce*, 203 Cal. App. 3d 1460, 250 Cal. Rptr. 832 (1st Dist. 1988); *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 923 A.2d 100 (2007); *McKay v. Davis*, 99 N.M. 29, 653 P.2d 860 (1982).

n4 *Leduc v. Com.*, 421 Mass. 433, 657 N.E.2d 755 (1995).

n5 *Lacey v. Motor Vehicles Division*, 45 Or. App. 419, 608 P.2d 599 (1980).

n6 *State v. Turner*, 913 S.W.2d 158 (Tenn. 1995).

## 7A Am Jur 2d Automobiles and Highway Traffic § 125

n7 Meyer v. State, Dept. of Public Safety License Control and Driver Improvement Division, 312 So. 2d 289 (La. 1975).

n8 State, Dept. of Highway Safety and Motor Vehicles v. Berry, 619 So. 2d 976 (Fla. Dist. Ct. App. 2d Dist. 1993).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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18 U.S.C.A. § 3118

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7A Am Jur 2d Automobiles and Highway Traffic § 126

§ 126 Validity of statutes; constitutional questions

Statutes providing for the suspension or revocation of a driver's license because of the holder's refusal to submit to an intoxication test have been held to constitute a valid exercise of the police power of the state, and not to violate constitutional due process, equal protection, or self-incrimination protections.<sup>n1</sup>

These kinds of mandatory revocation of license statutes are not invalid as bills of attainder,<sup>n2</sup> and do not violate the right to religious freedom of persons who object on religious grounds to having blood taken because of the state's compelling interest in maintaining safety on its highways.<sup>n3</sup>

The right to challenge the validity of an implied-consent statute may be waived by the licensee.<sup>n4</sup>

A statutory provision that unconscious persons are deemed not to have withdrawn their consent to blood alcohol tests does not violate either the Fourth Amendment or the Equal Protection Clause of the United States Constitution.<sup>n5</sup>

A driver's prosecution for refusing to take a chemical breath test, after the state has revoked his or her driver's license for the same refusal, does not violate the Double Jeopardy Clause, since the civil statute providing for license revocation is not so punitive in purpose or effect as to be punishment under double jeopardy principles.<sup>n6</sup>

**FOOTNOTES:**

n1 *South Dakota v. Neville*, 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1983); *State v. Bodden*, 877 So. 2d 680 (Fla. 2004); *State, Dept. of Motor Vehicles, Adm'r v. Hiatt*, 112 Nev. 868, 920 P.2d 116 (1996); *Pringle v. Wolfe*, 88 N.Y.2d 426, 646 N.Y.S.2d 82, 668 N.E.2d 1376 (1996).

Administrative license revocation statutory provisions pertaining to motorists who refuse to submit to chemical testing to detect intoxication do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. *Betterman v. State, Dept. of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

n2 *Daly v. State, Dept. of Highways*, 296 Minn. 238, 207 N.W.2d 541 (1973).

n3 *People v. Sukram*, 142 Misc. 2d 957, 539 N.Y.S.2d 275 (Dist. Ct. 1989).

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n4 State v. Higgins, 338 A.2d 159 (Me. 1975).

n5 Filmon v. State, 336 So. 2d 586 (Fla. 1976).

n6 Rivera v. Pugh, 194 F.3d 1064 (9th Cir. 1999).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 127

§ 127 Sufficiency of police officer's report

Where a statute provides that the administrative agency must revoke a license to drive upon its receipt of a sworn report of a law enforcement officer that he or she had reasonable grounds to believe that the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highway while under the influence of intoxicating liquor and that the person refused to submit to a test for intoxication, the filing of such sworn report is jurisdictional,<sup>n1</sup> but where such a report is in fact filed, the fact that the arresting officer did not raise his or her right hand or recite an oath does not render the report ineffective.<sup>n2</sup> An arresting officer's sworn report which does not include information required by an administrative license revocation statute cannot be supplemented by evidence offered at a subsequent administrative license revocation hearing.<sup>n3</sup>

In some jurisdictions, an officer's report about a driver's refusal to take an intoxication test must be endorsed by a third party witness to the refusal.<sup>n4</sup>

**FOOTNOTES:**

n1 *McLeod v. State of Dept. of Motor Vehicles*, 16 Wash. App. 400, 556 P.2d 563 (Div. 1 1976).

n2 *Blackburn v. Motor Vehicles Division, Dept. of Transp.*, 33 Or. App. 397, 576 P.2d 1267 (1978); *McLeod v. State of Dept. of Motor Vehicles*, 16 Wash. App. 400, 556 P.2d 563 (Div. 1 1976).

n3 *Yenney v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 446, 729 N.W.2d 95 (2007), review overruled, (May 17, 2007).

As to evidence at a license termination hearing, see § 153.

n4 *Winsor v. Commissioner of Motor Vehicles*, 101 Conn. App. 674, 922 A.2d 330 (2007) (a police dispatcher who witnessed the driver's refusal over closed circuit television was not a proper witness to the refusal, rendering the officer's report inadmissible in evidence).

**SUPPLEMENT:**

**Cases**

Department of Motor Vehicles (DMV) was authorized in administrative license revocation (ALR) proceeding to return the original sworn report to arresting officer for the purpose of soliciting a sworn addendum including additional information necessary to cure a jurisdictional deficiency. West's Neb.Rev.St. § 84-901. *Murray v. Neth*, 279 Neb. 947, 783 N.W.2d 424 (2010).

Failure to swear oath before notary did not render arresting officer's report regarding circumstances surrounding arrest for driving under influence (DUI) invalid so as to deprive Department of Motor Vehicles of jurisdiction to revoke motorist's driver's license; rather, fact that officer signed report in presence of notary was adequate as oath or affirmation. *Moyer v. Nebraska Dept. of Motor Vehicles*, 275 Neb. 688, 747 N.W.2d 924 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 128

## § 128 Effect of acquittal or reduction of criminal charge

The fact that a motorist is acquitted after trial of the charge of driving while intoxicated does not preclude motor vehicle officials from revoking or suspending his or her driver's license for refusal to submit to a chemical test for the purpose of determining the alcoholic content of his or her blood.<sup>n1</sup> This is an application of the general rule that a prior acquittal in a criminal proceeding does not have a res judicata effect in a later civil proceeding.<sup>n2</sup> However, there is authority that suspension cannot occur if the driver is not convicted of driving under the influence.<sup>n3</sup>

A department of motor vehicles is not collaterally estopped from revoking a motorist's driver's license for his or her refusal to complete a blood alcohol test when requested to do so by a police officer where, in an underlying prosecution, the motorist agreed to plead guilty in exchange for the parties' stipulated finding that the motorist had taken and completed a chemical test.<sup>n4</sup>

**FOOTNOTES:**

n1 Opinion of the Justices, 255 A.2d 643 (Me. 1969); Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75, 88 A.L.R.2d 1055 (1961); Marquardt v. Webb, 1976 OK 8, 545 P.2d 769 (Okla. 1976); Matter of Hansen, 298 N.W.2d 816 (S.D. 1980).

n2 Lofthouse v. Department of Motor Vehicles, 124 Cal. App. 3d 730, 177 Cal. Rptr. 601 (2d Dist. 1981).

n3 McDonald v. Ferguson, 129 N.W.2d 348 (N.D. 1964).

n4 Betyar v. Pierce, 205 Cal. App. 3d 1250, 252 Cal. Rptr. 907 (4th Dist. 1988).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 129

## § 129 Lawful arrest

Under some statutes, the request to submit to a test for intoxication, refusal of which will result in the suspension or revocation of a driver's license, must be made pursuant to a lawful arrest.<sup>n1</sup> However, some jurisdictions hold that the revocation of a driver's license for refusal to submit to a chemical test is proper, even though the arrest is illegal; the validity of the arrest is irrelevant, these cases say, because the rule excluding illegally-obtained evidence does not apply in civil proceedings.<sup>n2</sup> In other jurisdictions, the arrest necessary before the reading of implied consent rights, regarding chemical testing for alcohol or drug intoxication, to a motorist who has not been involved in a traffic accident resulting in serious injuries or fatalities does not have to be a formal arrest in which the officer explicitly states to the motorist that he or she has been arrested; implied consent is triggered at the point that the motorist is not free to leave and a reasonable person in his or her position would not believe that the detention is temporary, regardless of whether a formal arrest has occurred.<sup>n3</sup>

Where the applicable statute requires that an arrest precede the officer's request for a sobriety test, an "arrest" generally is held to occur when there is a physical restraint on the person's personal freedom.<sup>n4</sup>

Observation: The federal implied-consent statute<sup>n5</sup> applies only in instances in which an arrest of the suspect occurs.<sup>n6</sup>

**FOOTNOTES:**

n1 *Ayala v. Colorado Dept. of Revenue, Motor Vehicle Division*, 43 Colo. App. 357, 603 P.2d 979 (1979).

n2 *Matter of Gardner*, 39 N.C. App. 567, 251 S.E.2d 723 (1979); *Corry v. Com.*, 59 Pa. Commw. 324, 429 A.2d 1229 (1981).

n3 *Hough v. State*, 279 Ga. 711, 620 S.E.2d 380 (2005).

n4 *Corry v. Com.*, 59 Pa. Commw. 324, 429 A.2d 1229 (1981).

n5 18 U.S.C.A. § 3118.

n6 *U.S. v. Chapel*, 55 F.3d 1416 (9th Cir. 1995).

**SUPPLEMENT:****Cases**

Refusing a chemical test is not a crime, unless it can be proven beyond a reasonable doubt that an officer had probable cause to believe the person was driving, operating, or in physical control of a motor vehicle while impaired. M.S.A. §§ 169A.20(2), 169A.51(1)(b). *State v. Koppi*, 798 N.W.2d 358 (Minn. 2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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## § 130 Probable cause

While some state statutes have required that an arrest for driving while intoxicated, and a subsequent proceeding for suspension of the driver's license for failure to submit to a sobriety test, is permissible only if the arresting officer personally observes the licensee driving the vehicle,<sup>n1</sup> other statutes have allowed an arrest for driving under the influence when not committed in the presence of an officer upon probable cause.<sup>n2</sup> Probable cause to believe a motorist was driving while intoxicated, as would support the revocation of license under implied consent law for a motorist's refusal of breath test, is based upon the facts viewed by a prudent, cautious and trained police officer and not the officer's subjective belief.<sup>n3</sup>

Suspensions or revocations of driver's licenses for refusal to take a sobriety test have also been sustained under varying circumstances as against the contention that an arrest was made without probable cause.<sup>n4</sup> Some courts apply a reasonable suspicion standard rather than probable cause,<sup>n5</sup> and others view the issue of validity of the arrest (and, therefore, the issue of probable cause for the arrest) as irrelevant to the suspension proceedings.<sup>n6</sup>

At a revocation hearing under an implied-consent statute, the trial court, for the purpose of the probable cause determination, is not allowed to weigh the evidence between the parties; instead, the trial court simply must ascertain the plausibility of the police officer's account.<sup>n7</sup>

**FOOTNOTES:**

n1 *Mercer v. Department of Motor Vehicles*, 53 Cal. 3d 753, 280 Cal. Rptr. 745, 809 P.2d 404 (1991).

n2 *Turner v. State, Dept. of Public Safety*, 350 So. 2d 984 (La. Ct. App. 2d Cir. 1977); *Vanderpool v. Director of Revenue*, 226 S.W.3d 108 (Mo. 2007); *June v. Tofany*, 34 A.D.2d 732, 311 N.Y.S.2d 782 (4th Dep't 1970); *Com. Dept. of Transp. Bureau of Traffic Safety v. Shultz*, 25 Pa. Commw. 598, 360 A.2d 754 (1976).

n3 *Steele-Danner v. Director of Revenue*, 2007 WL 737767 (Mo. Ct. App. S.D. 2007), reh'g and/or transfer denied, (Apr. 2, 2007) (not released for publication).

n4 *Freeman v. Department of Motor Vehicles*, 70 Cal. 2d 235, 74 Cal. Rptr. 259, 449 P.2d 195 (1969); *Bath v. Heckers*, 522 P.2d 108 (Colo. Ct. App. 1974); *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976); *Marben v. State, Dept. of Public Safety*, 294 N.W.2d 697 (Minn. 1980); *Smith v. Spradling*, 536 S.W.2d 776 (Mo. Ct. App. 1976); *Witte v. Hjelle*, 234 N.W.2d 16 (N.D. 1975).

n5 *State v. Jenkins*, 673 A.2d 1094 (R.I. 1996).

n6 § 129.

n7 *State v. Nordness*, 128 Wis. 2d 15, 381 N.W.2d 300 (1986).

## SUPPLEMENT:

### Cases

Because an officer's training and experience is the lens through which the fact-finder must evaluate the reasonableness of an officer's determination of probable cause to believe a person was driving, operating, or in physical control of a motor vehicle while impaired, which is required for an officer to request that a person submit to a chemical test under implied consent law, probable cause incorporates the individual characteristics and intuitions of the officer to some extent; nonetheless, the reasonableness of the officer's actions is an objective inquiry, even if reasonableness is evaluated in light of an officer's training and experience. *State v. Koppi*, 798 N.W.2d 358 (Minn. 2011).

Motorist did not take an action to affect the functioning of his vehicle in a manner that would enable the vehicle's use by sleeping in the car with the front seat reclined, the car in park, the lights off, and the engine running solely for the purpose of air conditioning, while parked in a parking lot behind his place of employment, and, thus, motorist was not "operating" his vehicle while intoxicated, for purposes of suspension of license for refusal of test. *V.T.C.A., Transportation Code § 724.042. Texas Dept. of Public Safety v. Allocca*, 301 S.W.3d 364 (Tex. App. Austin 2009), petition for review filed, (Jan. 28, 2010).

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§ 131 Reasonable grounds for request to take the test

For a refusal to take a sobriety test to constitute grounds for suspension or revocation of a driver's license under an implied-consent statute, the officer requesting the test must have reasonable grounds to believe that the offense of driving under the influence of alcohol has been committed by the driver.<sup>n1</sup> "Reasonable grounds" means a reasonable articulable suspicion and not preponderance of the evidence or probable cause.<sup>n2</sup> Such reasonable grounds to believe that the offense has been committed have been found in a number of cases under varying circumstances.<sup>n3</sup>

Under some statutes, a passenger's license may be suspended for failure to take a breath test, despite the fact that the passenger was not operating the vehicle, if the court finds that the officer had reasonable grounds to believe that the passenger was operating or controlling the vehicle.<sup>n4</sup> A vehicle occupant's insertion of a key into a vehicle's ignition while seated in the driver's seat constitutes "operation" of a motor vehicle within the meaning of an implied consent law.<sup>n5</sup>

#### FOOTNOTES:

n1 *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 923 A.2d 100 (2007); *Foks v. Andrews*, 55 Ohio App. 2d 253, 9 Ohio Op. 3d 391, 380 N.E.2d 756 (6th Dist. Lucas County 1977).

As to the requirement of an arrest for driving under the influence and probable cause for that arrest, see §§ 129, 130.

n2 *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 923 A.2d 100 (2007).

n3 *Johnson v. Motor Vehicle Division, Dept. of Revenue*, 38 Colo. App. 230, 556 P.2d 488 (1976); *State v. Gustafson*, 55 Haw. 65, 515 P.2d 1256 (1973); *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 923 A.2d 100 (2007).

n4 *Shaw v. Vermont Dist. Court, Unit No. 3, Franklin Circuit*, 152 Vt. 1, 563 A.2d 636 (1989).

n5 *Sengchanthong v. Commissioner of Motor Vehicles*, 281 Conn. 604, 917 A.2d 942 (2007).

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§ 132 In general

Under most statutes, a suspension or revocation of an operator's license for refusal to submit to an intoxication test is unwarranted unless the licensee was warned, at the time of the request to take the test, of the consequences of his or her refusal to do so. Under such statutes, the driver must be clearly warned that the mere refusal to take the prescribed test would be the cause of revocation or suspension of the license,<sup>n1</sup> and that a subsequent conviction or dismissal of the charge of driving while intoxicated is immaterial.<sup>n2</sup>

A license cannot be properly revoked or suspended where the licensee is advised that the test is not mandatory.<sup>n3</sup> In giving this notice, the arresting officer is not required to attempt repeatedly to admonish a person arrested for driving under the influence until the arrestee is willing to listen, despite interruptions and other uncooperative conduct.<sup>n4</sup> In the case of a person who resists arrest strongly enough that assistance is required to detain him or her, and the officer reasonably believes that offering the test would be futile, an officer is not required to do so.<sup>n5</sup> The required notice may be properly given by an officer other than the arresting officer, such as where the defendant is arrested by one officer, but the notice is given by a second officer while the defendant is being transported to a police station for testing.<sup>n6</sup>

Practice Tip: A prima facie showing that the proper notification was given to the driver may be made by presenting the arresting officer's certification and order of suspension, along with an advice of rights form, where both items are signed by the motorist.<sup>n7</sup>

When an officer is aware that the person he or she is arresting for driving under the influence holds a commercial vehicle operator's license, the officer must inform the arrestee, at the time of his or her arrest, of the commercial vehicle provisions of the implied consent law, or that person's driver's license cannot be suspended under the implied consent law,<sup>n8</sup> though there is authority to the contrary.<sup>n9</sup> On the other hand, an officer who delivers the commercial vehicle warnings to an arrestee who does not have a commercial license does give a warning that fulfills the notice requirements of such statutes.<sup>n10</sup>

**FOOTNOTES:**

n1 Luk v. Com., 421 Mass. 415, 658 N.E.2d 664 (1995); Proulx v. Director, New Hampshire Div. of Motor Vehicles, 154 N.H. 350, 910 A.2d 1208 (2006); State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

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n2 Thompson v. Department of Motor Vehicles, 107 Cal. App. 3d 354, 165 Cal. Rptr. 626 (5th Dist. 1980); Harrington v. Tofany, 59 Misc. 2d 197, 298 N.Y.S.2d 283 (Sup 1969); State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

n3 Sweeney v. Tofany, 30 A.D.2d 934, 293 N.Y.S.2d 876 (4th Dep't 1968); Peppelman v. Com., 44 Pa. Commw. 262, 403 A.2d 1041 (1979).

n4 Morphew v. Department of Motor Vehicles, 137 Cal. App. 3d 738, 188 Cal. Rptr. 126 (1st Dist. 1982); Department of Public Safety v. Weinrich, 263 N.W.2d 690 (S.D. 1978).

n5 State v. Entzel, 116 Wash. 2d 435, 805 P.2d 228 (1991).

N6 Werner v. Department of Public Safety, 288 N.W.2d 82 (S.D. 1980).

n7 Motor Vehicle Admin. v. Karwacki, 340 Md. 271, 666 A.2d 511 (1995).

n8 State v. Geraldson, 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993).

n9 Robinson v. Kansas Dept. of Revenue, 37 Kan. App. 2d 425, 154 P.3d 508 (2007), review denied, (June 21, 2007) (an officer was not required to advise the driver of a noncommercial vehicle, holder of a commercial driver's license, that if he failed a sobriety test or if he refused testing, his commercial driver's license could be suspended for one year); Escarcega v. State ex rel. Wyo. Dept. of Transp., 2007 WY 38, 153 P.3d 264 (Wyo. 2007).

n10 Village of Elm Grove v. Landowski, 181 Wis. 2d 137, 510 N.W.2d 752 (Ct. App. 1993).

## **SUPPLEMENT:**

### **Cases**

Police officer had no obligation under the implied-consent law to inform defendant that, due to his prior record, a conviction for refusal to submit to a chemical test would be a felony. AS 28.35.032. Olson v. State, 260 P.3d 1056 (Alaska 2011).

When the arresting officer informs the driver that refusal to submit to chemical testing could result in the suspension of the person's driver's license, due process does not require that the arresting officer inform the driver of all the consequences of refusing to submit to testing; the officer has made it clear that refusing the test is not a "safe harbor," free of adverse consequences. Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008).

Failure to warn motorist arrested for driving under the influence that his refusal to submit to chemical testing would result in his lifetime disqualification from having a commercial driver's license did not violate motorist's due process rights; it was sufficient that officer informed motorist that refusal could result in suspension of his driver's license. Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008).

Motorist who was driving his personal vehicle when he was arrested for driving under the influence was properly read implied consent warning for suspects over 21, and not warning for commercial motor vehicle driver suspects, even though motorist only held commercial driver's license; legislature intended for warning for commercial motor vehicle driver suspects to be read to drivers of commercial vehicles, not to drivers of private vehicles who happen to hold commercial driver's licenses. Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008).

Police officer had reasonable grounds to arrest driver for driving while intoxicated, as required to revoke driver's license under the implied consent law, where driver was driving erratically and not using his headlights, he moved two tequila bottles from cab to bed of the truck after being stopped, he repeatedly refused to obey the officer's instructions, he smelled of alcohol, and he admitted he had been drinking. Guhr v. Director of Revenue, 228 S.W.3d 581 (Mo. 2007).



Reasonable grounds to believe that a person is driving while intoxicated, for purposes of statute authorizing revocation of driver's license for refusing to submit to chemical test after arrest on suspicion of driving while intoxicated, must be based on information in the arresting officer's possession at the time of the arrest, not on information acquired after the fact. *Scholes v. Director of Revenue State of Missouri*, 228 S.W.3d 62 (Mo. Ct. App. W.D. 2007), as modified, (July 31, 2007).

Drivers who are prosecuted for offense of refusing to submit to breath test and who claim that they were not informed of the consequences of refusing to submit to a breath test because they do not speak or understand English must bear the burden of production and persuasion on that issue. N.J.S.A. 39:4-50.2(e), 39:4-50.4a(a). *State v. Marquez*, 202 N.J. 485, 998 A.2d 421 (2010).

Failure by arresting officer to provide motorist with written copy of implied consent notice did not invalidate suspension of driver's license due to motorist's refusal to provide blood sample upon arrest for driving under influence (DUI); nothing in statute required reinstatement of license for failure to provide written notice, and motorist was not prejudiced by such failure because officer had read notice aloud to him. *Taylor v. South Carolina Dept. of Motor Vehicles*, 382 S.C. 567, 677 S.E.2d 588 (2009).

Refusal to submit to a chemical test for intoxication cannot result in revocation of operating privileges unless the person has first been adequately informed of his rights under the law. *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

Driver improperly refused to submit to chemical testing under state implied consent statute, where law enforcement officer correctly conveyed all information required by applicable statute and correctly informed driver of penalties he faced under Wisconsin law, any error on part of officer involved information in addition to that required by statute, and driver failed to make prima facie showing that any erroneous information caused him to refuse to submit to test; abrogating *State v. Schirmang*, 210 Wis.2d 324, 565 N.W.2d 225.W.S.A. 343.305(4). *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

Law enforcement officer advising out-of-state driver of his rights under state implied consent law was not required to inform driver of consequences of failing or refusing chemical test under laws of state in which driver was licensed. *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

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7A Am Jur 2d Automobiles and Highway Traffic § 133

§ 133 Substantial compliance with notification requirements

If the licensee is not misled, substantial compliance with the notification provisions of an implied-consent statute is sufficient.<sup>n1</sup> Where the penalties of the implied-consent statute are overstated by the police officer the overstatement constitutes substantial compliance with the law, unless the overstatement prejudices the defendant, and a revocation is justified.<sup>n2</sup> On the other hand, if the arresting officer fails to substantially comply with the notification requirement, the driver's license cannot be suspended under the implied consent law.<sup>n3</sup>

**FOOTNOTES:**

n1 *Connors v. Tofany*, 37 A.D.2d 402, 326 N.Y.S.2d 365 (3d Dep't 1971); *Asbridge v. North Dakota State Highway Com'r*, 291 N.W.2d 739 (N.D. 1980); *State v. Sutton*, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

n2 *State v. Sutton*, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

n3 *State v. Sutton*, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

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## 7A Am Jur 2d Automobiles and Highway Traffic § 134

## § 134 Right to counsel

While some courts have found that the refusal to take a sobriety test until after consultation with an attorney does not constitute a justifiable or reasonable refusal to take such test,<sup>n1</sup> other courts have found that a motorist has a right to consult with counsel before deciding whether to submit to testing; and refusal to take such a test until after consultation with an attorney is a justifiable and reasonable refusal, and may not result in the suspension or revocation of a license.<sup>n2</sup> In some jurisdictions in which the implied consent law mandates that a driver arrested for DWI be advised of certain information upon being requested to submit to a chemical test, it does not require the arresting officer to inform the motorist that he or she has the right to consult an attorney before submitting to the test.<sup>n3</sup> However, a driver arrested for driving while intoxicated may request to speak to an attorney and must be given a certain amount of time in which to attempt to contact an attorney; after that time has elapsed, if the driver still refuses to take the alcohol breath test, the refusal is final.<sup>n4</sup> If the driver is not given the mandated time period in which to contact his or her attorney, the refusal of an alcohol breath test is invalid.<sup>n5</sup>

A motorist's mistaken belief that he or she has a right to see an attorney prior to deciding whether to submit to testing does not excuse a refusal to take the test, where the police have adequately explained that there is no such right.<sup>n6</sup> However, where the police fail to make it clear that there is no right to counsel, a motorist's refusal to be tested before conferring with counsel may not be the basis for a suspension.<sup>n7</sup>

**FOOTNOTES:**

n1 *State v. Severino*, 56 Haw. 378, 537 P.2d 1187 (1975) (rejected by, *Whisenhunt v. State, Dept. of Public Safety, Div. of Motor Vehicles*, 746 P.2d 1298 (Alaska 1987)); *Winter v. Peterson*, 208 Neb. 785, 305 N.W.2d 803 (1981) (rejected by, *Whisenhunt v. State, Dept. of Public Safety, Div. of Motor Vehicles*, 746 P.2d 1298 (Alaska 1987)); *Haas v. State, Dept. of Licensing*, 31 Wash. App. 334, 641 P.2d 717 (Div. 1 1982) (rejected by, *Whisenhunt v. State, Dept. of Public Safety, Div. of Motor Vehicles*, 746 P.2d 1298 (Alaska 1987)); *Mills v. Bridges*, 93 Idaho 679, 471 P.2d 66 (1970); *Nolan v. Adduci*, 166 A.D.2d 277, 564 N.Y.S.2d 118 (1st Dep't 1990); *Cavaness v. Cox*, 598 P.2d 349 (Utah 1979).

n2 *Roberts v. State of Me.*, 48 F.3d 1287 (1st Cir. 1995); *Whisenhunt v. State, Dept. of Public Safety, Div. of Motor Vehicles*, 746 P.2d 1298 (Alaska 1987); *Dain v. Spradling*, 534 S.W.2d 813 (Mo. Ct. App. 1976); *Kuntz v. State Highway Com'r*, 405 N.W.2d 285 (N.D. 1987).

n3 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

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n4 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007) (20 minutes).

n5 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).

n6 *Gaunt v. Motor Vehicle Div., Dept. of Transp., State of Ariz.*, 136 Ariz. 424, 666 P.2d 524 (Ct. App. Div. 1 1983).

n7 *State v. Taniguchi*, 72 Haw. 235, 815 P.2d 24 (1991).

**SUPPLEMENT:****Cases**

A person arrested for driving under the influence (DUI) does not have the right to consult with counsel before deciding whether to submit to a breath test. U.S.C.A. Const.Amends. 5, 6. *Kurecka v. State*, 67 So. 3d 1052 (Fla. Dist. Ct. App. 4th Dist. 2010).

Motorist who was arrested for driving while intoxicated (DWI) was not entitled to condition his consent to submit to chemical test on first consulting with his attorney. *Clark v. New York State Dept. of Motor Vehicles*, 55 A.D.3d 1284, 864 N.Y.S.2d 810 (4th Dep't 2008).

A person arrested for driving under the influence of alcohol (DUI) has a limited statutory right to consult with an attorney before deciding whether to submit to a chemical test for intoxication. NDCC 29-05-20. *Kasowski v. Director, North Dakota Dept. of Transp.*, 2011 ND 92, 797 N.W.2d 40 (N.D. 2011).

An arrested driver's request to consult an attorney may, at times, be reasonably seen as a refusal to submit a specimen for alcohol testing, so as to support a suspension of a driver's license. V.T.C.A., Transportation Code §§ 724.032(a), 724.042, 724.043, 724.061. *Texas Dept. of Public Safety v. Schleisner*, 343 S.W.3d 292 (Tex. App. Houston 14th Dist. 2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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§ 135 Choice of type of test to be taken

The validity of a suspension or revocation under an implied-consent statute generally is not affected by the failure to give the motorist a choice regarding which of the possible kinds of tests he or she will submit to.<sup>n1</sup>

A defendant's conviction for refusal to take a breath test after he was arrested for driving while intoxicated did not violate due process because the defendant volunteered to take a blood test instead, where the government had an interest in the orderly and expeditious processing of arrestees by having motorists submit to breath tests at a police station, rather than demanding transport to a medical facility for a blood test.<sup>n2</sup>

Under some statutes, the arresting officer makes the choice of which test will be administered, and a refusal to take the type of test specified is grounds for suspension, regardless of the driver's offer to submit to another type of test.<sup>n3</sup> Under such a statute, the driver has no control over the type of test to be administered, and the police officer may request an additional or different test after choosing the type of test to be used.<sup>n4</sup> Under other statutes, a choice must be made available to the licensee.<sup>n5</sup> These type of statutes, however, have been interpreted as not allowing the arrestee to determine when the chosen test will be administered.<sup>n6</sup> Under a statute giving the driver a choice of the type of test to be performed, a driver who refuses to take a blood or breath test and consents to a urine test, but fails to produce a urine sample, is treated as having refused to submit to testing.<sup>n7</sup>

**FOOTNOTES:**

n1 Hill v. Otte, 258 Ind. 421, 281 N.E.2d 811 (1972); Raine v. Curry, 45 Ohio App. 2d 155, 74 Ohio Op. 2d 171, 341 N.E.2d 606 (10th Dist. Franklin County 1975).

n2 Hamilton v. Municipality of Anchorage, 878 P.2d 653 (Alaska Ct. App. 1994).

n3 State v. Christopherson, 217 Mont. 449, 705 P.2d 121 (1985); State v. Turner, 913 S.W.2d 158 (Tenn. 1995); Elliott v. Dorius, 557 P.2d 759 (Utah 1976).

n4 State v. Pawlow, 98 Wis. 2d 703, 298 N.W.2d 220 (Ct. App. 1980).

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n5 Buchanan v. Department of Motor Vehicles, 100 Cal. App. 3d 293, 160 Cal. Rptr. 557 (2d Dist. 1979); State Dept. of Highways v. McWhite, 286 Minn. 468, 176 N.W.2d 285 (1970).

n6 Buchanan v. Department of Motor Vehicles, 100 Cal. App. 3d 293, 160 Cal. Rptr. 557 (2d Dist. 1979).

n7 Noli v. Department of Motor Vehicles, 125 Cal. App. 3d 446, 178 Cal. Rptr. 5 (5th Dist. 1981); Mackey v. Director of Dept. of Motor Vehicles, 194 Neb. 707, 235 N.W.2d 394 (1975).

**SUPPLEMENT:****Cases**

The police may obtain a defendant's blood for a driving while intoxicated (DWI) investigation through a search warrant. Farhat v. State, 337 S.W.3d 302 (Tex. App. Fort Worth 2011), petition for discretionary review filed, (May 11, 2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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## § 136 Right to independent test

Some statutes provide that a person required to submit to sobriety testing under an implied consent law has the right to have additional tests administered by a qualified person of his or her own choice.<sup>n1</sup> Such statutes have been interpreted as not allowing a motorist to refuse to submit to the test selected by the police until he or she has taken the test of his or her choosing.<sup>n2</sup>

The right to an independent test of one kind may be waived by submitting to a second test of another type during booking,<sup>n3</sup> and an arresting officer complies with a statute giving drivers arrested for driving under the influence the right to an independent test, where the officer transports the defendant to a hospital, but defendant declines to go forward with an independent blood test after talking to a nurse.<sup>n4</sup>

**FOOTNOTES:**

n1 *Litts v. Melton*, 57 A.D.2d 1027, 395 N.Y.S.2d 264 (3d Dep't 1977); *North Dakota Dept. of Transp. v. DuPaul*, 487 N.W.2d 593 (N.D. 1992); *Greenwood v. Department of Motor Vehicles*, 13 Wash. App. 624, 536 P.2d 644, 98 A.L.R.3d 566 (Div. 1 1975).

n2 *Litts v. Melton*, 57 A.D.2d 1027, 395 N.Y.S.2d 264 (3d Dep't 1977); *Greenwood v. Department of Motor Vehicles*, 13 Wash. App. 624, 536 P.2d 644, 98 A.L.R.3d 566 (Div. 1 1975).

Under the implied-consent statute, a custodial suspect has the right to an independent blood-alcohol-level test only after first submitting to the police-administered BAC test. *State v. Larivee*, 656 N.W.2d 226 (Minn. 2003).

n3 *Morgan v. State*, 212 Ga. App. 394, 442 S.E.2d 257 (1994).

n4 *Crawford v. City of Forest Park*, 215 Ga. App. 234, 450 S.E.2d 237 (1994).

**SUPPLEMENT:****Cases**

Defendant who was arrested for driving while having an unlawful alcohol concentration (DUI per se) did not withdraw her request for an independent blood test after arresting officer advised defendant that she would have to pay for the test



but failed to allow her the opportunity to make other payment arrangements; officer could not escape duty to reasonably accommodate defendant's request for an independent blood test simply because defendant failed to insist on alternatives. West's Ga.Code Ann. § 40-6-391(a)(5). *State v. Davis*, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

In prosecution for alcohol-related driving offense, whether the officer made a reasonable effort to accommodate an accused's request to take an independent blood test by a qualified person of the accused's own choosing is a determination which depends largely on local circumstances, circumstances which the trial court can adjudge far better than the appellate court. West's Ga.Code Ann. § 40-6-391(a)(1). *State v. Davis*, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

The factors to be considered by the trial court in determining whether an officer reasonably accommodated an accused person's request for an additional chemical test include, but are not limited to: (1) availability of or access to funds or resources to pay for the requested test; (2) a protracted delay in the giving of the test if the officer complies with the request; (3) availability of police time and other resources; (4) location of the requested facilities, e.g., whether the requested facility is in a different jurisdiction; and (5) opportunity and ability of accused to make arrangements personally for the testing. West's Ga.Code Ann. § 40-6-392(a)(3). *Ritter v. State*, 306 Ga. App. 689, 703 S.E.2d 8 (2010).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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## Automobiles and Highway Traffic

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## b. Grounds for Suspension or Revocation

## (3) Refusal to Submit to Intoxication Test

## (d) Type and Administrator of Test; What Constitutes Refusal

## 7A Am Jur 2d Automobiles and Highway Traffic § 137

## § 137 What constitutes refusal

In determining whether a driver has refused a breath alcohol test, the driver's entire conduct, not merely words expressing consent or refusal, informs the determination.<sup>n1</sup> Anything short of an unqualified, unequivocal assent by an arrested motorist to an officer's request that the arrested motorist take the chemical test to detect intoxication constitutes a refusal to do so, as basis for administrative license revocation.<sup>n2</sup> If an arrested driver is requested to submit to a breath test and, after the statutorily required advice is given, he or she does not promptly do so, he or she has refused to submit, subject to a flexible regard for arrested persons' freedom to communicate, that is, communicate with another person, such as an attorney; but a refusal to submit need not be explicit, as any attempts to delay or impose conditions on testing amount to a refusal of the test.<sup>n3</sup> A refusal of a driver to submit to chemical tests for intoxication has been interpreted to mean a volitional failure to do what is necessary in order that chemical tests can be performed.<sup>n4</sup> Under statutes providing for the suspension or revocation of a driver's license because of the refusal of the holder to submit to an intoxication test, various actions or positions have been held to be a refusal, or an unreasonable refusal, to take such test, among which are refusal to accompany a police officer to a distant hospital for the purpose of the test,<sup>n5</sup> conditioning consent upon the test being given at a hospital of the driver's choice,<sup>n6</sup> and an assertion, by the motorist, of physical incapacity,<sup>n7</sup> or because, by reason of some physical ailment or disability, submission to the test would cause discomfort to the driver.<sup>n8</sup> An unreasonably-delayed consent to testing,<sup>n9</sup> a refusal to take the test followed by a request for the test after an unreasonable delay,<sup>n10</sup> continually avoiding or ignoring the arresting officer's request for a test after numerous opportunities to comply,<sup>n11</sup> a consent to take the test "under protest,"<sup>n12</sup> intentionally preventing accurate testing,<sup>n13</sup> a failure to follow an officer's directions concerning performance of the test,<sup>n14</sup> fleeing the scene,<sup>n15</sup> or an ambiguous reply, may also constitute refusal.<sup>n16</sup> An arrested motorist "refuses" to submit to a chemical test to detect intoxication when the motorist's conduct, demonstrated under the circumstances confronting the officer requesting the chemical test, justifies a reasonable person's belief that the motorist understood the officer's request for a test and manifested a refusal or unwillingness to submit to the requested test.<sup>n17</sup>

Certain severe physical injuries may excuse a driver's refusal to be tested.<sup>n18</sup>

**FOOTNOTES:**

n1 *DePoutot v. Raffaely*, 424 F.3d 112 (1st Cir. 2005) (applying New Hampshire law).

n2 *Betterman v. State, Dept. of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

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- n3 Davis v. Driver and Motor Vehicle Services Div. (DMV), 209 Or. App. 39, 146 P.3d 378 (2006), review denied, 342 Or. 344, 153 P.3d 123 (2007).
- n4 Arnold v. Director of Dept. of Revenue, 593 S.W.2d 624 (Mo. Ct. App. S.D. 1980).
- n5 Beck v. Tofany, 70 Misc. 2d 273, 332 N.Y.S.2d 938 (Sup 1972).
- n6 Morgan v. Iowa Dept. of Public Safety, 227 N.W.2d 155 (Iowa 1975).
- n7 State v. Rajala, 54 Ala. App. 502, 310 So. 2d 223 (Civ. App. 1975); Com., Dept. of Transp., Bureau of Traffic Safety v. Kelly, 18 Pa. Commw. 490, 335 A.2d 882 (1975).
- n8 Pfeffer v. Department of Public Safety, 136 Ga. App. 448, 221 S.E.2d 658 (1975).
- n9 Covington v. Department of Motor Vehicles, 102 Cal. App. 3d 54, 162 Cal. Rptr. 150 (2d Dist. 1980).
- n10 Morgan v. Department of Motor Vehicles, 148 Cal. App. 3d 165, 195 Cal. Rptr. 707 (3d Dist. 1983); Hess v. Tice, 43 Colo. App. 47, 598 P.2d 536 (1979); Matter of Suazo, 117 N.M. 785, 877 P.2d 1088 (1994); Reed v. New York State Dept. of Motor Vehicles, 59 A.D.2d 974, 399 N.Y.S.2d 332 (3d Dept 1977).
- n11 Obrigewitch v. Director, North Dakota Dept. of Transp., 2002 ND 177, 653 N.W.2d 73 (N.D. 2002).
- n12 Payne v. Department of Motor Vehicles, 235 Cal. App. 3d 1514, 1 Cal. Rptr. 2d 528 (1st Dist. 1991).
- n13 DePoutot v. Raffaelly, 424 F.3d 112 (1st Cir. 2005) (applying New Hampshire law), (the driver expressed consent and then prevented testing);; Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006), cert. denied, (Sept. 8, 2006) (motorist gave breath samples which were insufficient to cause breath analyzer to register an alcohol concentration).
- n14 Tedder v. Hodges, 119 N.C. App. 169, 457 S.E.2d 881 (1995); Brinkerhoff v. Com., Dept. of Transp. Bureau of Traffic Safety, 59 Pa. Commw. 419, 430 A.2d 338 (1981).
- n15 Purcell v. Com., Dept. of Transp., Bureau of Driver Licensing, 689 A.2d 1002 (Pa. Commw. Ct. 1997) (officer had requested that driver take test and had issued Miranda warning).
- n16 Carrey v. Department of Motor Vehicles, 183 Cal. App. 3d 1265, 228 Cal. Rptr. 705 (2d Dist. 1986); Beck v. Cox, 597 P.2d 1335 (Utah 1979).
- n17 Betterman v. State, Dept. of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).
- n18 McQuaide v. Com. Dept. of Transp., Bureau of Driver Licensing, 166 Pa. Commw. 683, 647 A.2d 299 (1994).

**SUPPLEMENT:****Cases**

Arrested motorist's conduct in remaining silent and refusing to choose a chemical test of blood alcohol content after police officer repeatedly asked motorist which test he wanted at the scene of the arrest, alone, was sufficient to constitute refusal to submit to a chemical test, thus supporting suspension of motorist's driving privileges. West's Ann.Cal.Vehicle Code § 13353(a)(1). Garcia v. Department of Motor Vehicles, 185 Cal. App. 4th 73, 109 Cal. Rptr. 3d 906 (1st Dist. 2010).

A driver's initial refusal to submit to chemical testing in accordance with express consent law may be rectified by later, though timely, consent and cooperation; however, where the officer has requested the test, determined that the driver is refusing testing, completed his duties prescribed by statute to deal with a refusal, and left the presence of the driver, the time period during which the driver must show cooperation has come to an end. *Gallion v. Colorado Dept. of Revenue*, 171 P.3d 217 (Colo. 2007).

Motorist's initial refusal to submit to chemical testing in accordance with express consent law could not be rectified by her later attempt to consent and cooperate, where, although motorist's attempt to recant her refusal came within two hours of driving as contemplated by express consent statute, the arresting officer had already completed his statutory obligations in dealing with a driver that refuses testing, the officer had left to resume duty and was no longer present to administer the test, and defendant was in the custody of an entirely different law enforcement agency that was not responsible for administering or directing the completion of her chemical test. *Gallion v. Colorado Dept. of Revenue*, 171 P.3d 217 (Colo. 2007).

Warning to driver that driving privileges would be suspended if he refused to submit to a "breath, blood, or urine test," was valid, even though warning was given under circumstances in which a request for a blood test was not authorized. West's F.S.A. §§ 316.1932(1)(a)(1)(a), 322.2615. *State, Dept. of Highway Safety and Motor Vehicles v. Freeman*, 63 So. 3d 23 (Fla. Dist. Ct. App. 3d Dist. 2011).

Requirement that a person rescinding a prior refusal to consent to breath or blood alcohol testing had been in the custody of the arresting officer and under observation, for the whole time since arrest, was satisfied, even though driver rescinding prior refusal was escorted by jail staff to booking area of law enforcement center after he refused to consent to testing, arresting officer remained in the receiving area for roughly 20 to 30 minutes to complete paperwork, and from his location in the receiving area, arresting officer could not see driver in the booking area, where driver was personally searched for contraband upon arrival at the jail, which presumably included any alcoholic beverages, and driver was in the custody of jail personnel for the purpose of completing the booking process; it was not unreasonable to impute to arresting officer the jailers' observational knowledge, i.e., that driver was not drinking alcohol during the booking process. West's K.S.A. 8-1001. *McIntosh v. Kansas Dept. of Revenue*, 237 P.3d 1243 (Kan. 2010).

A driver who submits to a breath test is obligated to submit to a blood or urine test if the breath testing machine does not work if he does not want to lose his license. *State v. Sterling*, 782 N.W.2d 579 (Minn. Ct. App. 2010).

Substantial evidence supported finding that motorist refused to submit to chemical test of her breath, thus supporting revocation of motorist's driving privileges for refusal to submit to breath test analysis; motorist provided two-to-three second burst of air into breath test instrument and stopped blowing thereafter, motorist mimicked actions from first attempt on her second attempt, and motorist did not appear to suffer from condition preventing her from understanding instructions or providing adequate breath sample. V.A.M.S. § 577.041(4)(3). *Wei v. Director of Revenue*, 335 S.W.3d 558 (Mo. Ct. App. S.D. 2011), reh'g and/or transfer denied, (Mar. 21, 2011) and transfer denied, (Apr. 26, 2011).

If a person arrested for driving under the influence of alcohol (DUI) is asked to submit to a chemical test and responds with a request to speak with an attorney, the failure to allow the arrested person a reasonable opportunity to contact an attorney prevents the revocation of his license for refusal to take the test. NDCC 29-05-20. *Kasowski v. Director, North Dakota Dept. of Transp.*, 2011 ND 92, 797 N.W.2d 40 (N.D. 2011).

A motorist's silence can be construed as a refusal to submit to a breath or blood test; to allow a licensee to simply stand mute and refuse to answer would effectively nullify the implied consent law. *Hollis v. State ex rel. Dept. of Public Safety*, 2008 OK 31, 183 P.3d 996 (Okla. 2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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7A Am Jur 2d Automobiles and Highway Traffic § 138

§ 138 Generally

A number of motor vehicle statutes have provisions for the suspension or revocation of a drivers' license where the licensee is convicted of certain offenses relating to motor vehicles,<sup>n1</sup> such as where a licensee is convicted of --

- leaving the scene of an accident without reporting<sup>n2</sup>
- driving with a suspended license<sup>n3</sup>
- reckless driving<sup>n4</sup>
- negligent driving<sup>n5</sup>
- speeding<sup>n6</sup>
- driving while intoxicated.<sup>n7</sup>

Under some statutes, provision is made for the suspension or revocation of drivers' licenses where the licensees are convicted of a specified number of violations of the laws relating to motor vehicles within a specified period of time.<sup>n8</sup> Under other statutes, revocation or suspension may be imposed for a violation of any law intended to make travel on the highways safe.<sup>n9</sup>

The revocation of a driver's license is mandatory under some statutes if the licensee is convicted of one of certain kinds of offenses relating to the operation of motor vehicles,<sup>n10</sup> including driving under the influence of drugs or alcohol<sup>n11</sup> or using a motor vehicle in the commission of a felony.<sup>n12</sup> Under such a statute, it has been held that the licensee is not entitled to a hearing prior to the suspension.<sup>n13</sup>

Observation: Revocation of motorist's driver's license was not warranted following his conviction for operating an uninsured vehicle, where the motorist was unaware that his insurance had been mistakenly cancelled by his insurer after he requested that the insurer cancel insurance on another vehicle that he no longer owned, lack of insurance was discovered when the motorist returned to scene to report an automobile accident, and the insured immediately reinstated his insurance.<sup>n14</sup>

**FOOTNOTES:**

## 7A Am Jur 2d Automobiles and Highway Traffic § 138

n1 Emmertson v. State Tax Commission, 93 Utah 219, 72 P.2d 467, 113 A.L.R. 1174 (1937); State v. Wayne, 134 Wash. App. 873, 142 P.3d 1125 (Div. 3 2006).

n2 Application of Eckerson, 284 A.D. 56, 130 N.Y.S.2d 367 (4th Dep't 1954); Appeal of Brennan, 344 Pa. 209, 25 A.2d 155 (1942).

n3 Noyes v. Peters, 40 N.C. App. 763, 253 S.E.2d 584 (1979).

n4 Donahue v. Fletcher, 299 N.Y. 227, 86 N.E.2d 574 (1949); Anglin v. Joyner, 181 Va. 660, 26 S.E.2d 58 (1943).

n5 State v. Gatchell, 150 N.H. 642, 843 A.2d 332 (2004).

n6 De Martino v. Mealey, 284 N.Y. 231, 30 N.E.2d 486 (1940).

A driver, who had forfeited collateral furnished for tickets for excessive speed on three occasions within one year, could not collaterally attack the final order of the director of motor vehicles revoking his privilege to operate a motor vehicle. Fiske v. England, 243 A.2d 682 (D.C. 1968).

n7 May v. Lingo, 277 Ala. 92, 167 So. 2d 267 (1964); Goats v. State, 211 Tenn. 249, 364 S.W.2d 889 (1963); Emmertson v. State Tax Commission, 93 Utah 219, 72 P.2d 467, 113 A.L.R. 1174 (1937); Bolio v. Malloy, 126 Vt. 424, 234 A.2d 336 (1967); Com. v. Ellett, 174 Va. 403, 4 S.E.2d 762 (1939).

n8 §§ 143 to 145.

n9 North Dakota Dept. of Transp. v. DuPaul, 487 N.W.2d 593 (N.D. 1992).

n10 Commonwealth v. Harris, 278 Ky. 218, 128 S.W.2d 579 (1939); Emmertson v. State Tax Commission, 93 Utah 219, 72 P.2d 467, 113 A.L.R. 1174 (1937).

n11 State v. Madrigal, 110 Nev. 1005, 879 P.2d 746 (1994); Crosswy v. State, 157 Tenn. 363, 8 S.W.2d 486 (1928).

n12 State v. Griffin, 126 Wash. App. 700, 109 P.3d 870 (Div. 1 2005).

n13 Risner v. State, 45 Ohio App. 2d 5, 74 Ohio Op. 2d 9, 340 N.E.2d 433 (1st Dist. Butler County 1975).

n14 Meola v. New York State Dept. of Motor Vehicles, 39 A.D.3d 1011, 833 N.Y.S.2d 716 (3d Dep't 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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## 7A Am Jur 2d Automobiles and Highway Traffic § 139

§ 139 Constitutional issues; distinction between civil and criminal proceedings

It is not double jeopardy to subject a driver subject to criminal court proceedings for driving under the influence to administrative proceedings for the revocation or suspension of his or her license in connection with the same incident,<sup>n1</sup> as license suspension is not a criminal punishment because it is not punitive, deterrent, or retributive.<sup>n2</sup> Suspension or revocation of a driver's license is considered to be a separate, civil penalty distinct from a criminal trial for driving under the influence.<sup>n3</sup>

License revocation or suspension statutes have been upheld as against an argument that they violate equal protection.<sup>n4</sup> A statute providing for a longer suspension for drivers under the age of 18 who are convicted of such an offense does not violate due process of law, because such a provision bears a rational relationship to the state's legitimate interest in preventing highway deaths.<sup>n5</sup>

**FOOTNOTES:**

n1 Covington v. Department of Motor Vehicles, 102 Cal. App. 3d 54, 162 Cal. Rptr. 150 (2d Dist. 1980).

n2 Ellis v. Pierce, 230 Cal. App. 3d 1557, 282 Cal. Rptr. 93 (1st Dist. 1991).

n3 Blake v. Department of Motor Vehicles, 2002 WL 32680 (Cal. App. 4th Dist. 2002), unpublished/noncitable; In re Bowman, 135 Idaho 843, 25 P.3d 866 (Ct. App. 2001); Com. Transp. Cabinet v. Mohny, 107 S.W.3d 907 (Ky. Ct. App. 2003) (applying Florida law); Com. v. Wolf, 534 Pa. 283, 632 A.2d 864 (1993); Matter of Revocation of Driver License of Fischer, 395 N.W.2d 598 (S.D. 1986); Minchenko v. Vermont Com'r of Motor Vehicles, 164 Vt. 624, 672 A.2d 478 (1995); Cash v. Com., 251 Va. 46, 466 S.E.2d 736 (1996).

n4 Bath v. Colorado Dept. of Revenue, Motor Vehicle Div., 758 P.2d 1381 (Colo. 1988).

n5 Manatt v. State, 311 Ark. 17, 842 S.W.2d 845 (1992); In re Arthur W., 171 Cal. App. 3d 179, 217 Cal. Rptr. 183 (2d Dist. 1985).

**SUPPLEMENT:****Cases**

Mandatory suspension of driver's license if defendant received court supervision for underage consumption of alcohol was not arbitrary as applied to defendants whose offenses did not involve use of alcohol, in alleged violation of due process, in that statute did not allow for exercise of discretion by Secretary in any circumstances. U.S.C.A. Const.Amend. 14;S.H.A. 625 ILCS 5/6-206(a)(43). *People v. Boeckmann*, 238 Ill. 2d 1, 342 Ill. Dec. 537, 932 N.E.2d 998 (2010).

Statute requiring defendant who had been convicted of driving while intoxicated to pay cost of installing ignition interlock device, absent court determination that defendant is unable to do so, did not violate defendant's due process or equal protection rights by virtue of fact that cost of interlock was not set by statute; mechanisms existed to determine whether a particular defendant had ability to bear cost of interlock, and for a defendant to obtain post-sentencing modification of order to pay cost of interlock. U.S.C.A. Const.Amend. 14; McKinney's Vehicle and Traffic Law § 1198(5); McKinney's CPL § 420.10(5). *People v. Pedrick*, 926 N.Y.S.2d 269 (City Ct. 2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 140

§ 140 What amounts to conviction

The question has frequently arisen as to what amounts to a conviction or a showing of conviction within the meaning of statutes making a conviction of certain offenses grounds for the suspension or revocation of a driver's license. Some jurisdictions have taken the view that a plea or finding of guilty<sup>n1</sup> or nolo contendere (no contest)<sup>n2</sup> is sufficient to satisfy the requirements of the pertinent statute, though there is authority to the contrary.<sup>n3</sup> In some jurisdictions, even a forfeiture of collateral posted to secure an appearance at a trial has been deemed the equivalent of a conviction for the purpose of a statute authorizing the suspension or revocation of a driver's license.<sup>n4</sup> However, other jurisdictions have adopted the view that a sentence must be imposed before it can be said that a motorist was "convicted" of a traffic offense within the meaning of a statute authorizing the suspension or revocation of a driver's license.<sup>n5</sup>

**FOOTNOTES:**

n1 Jones v. Kelly, 9 A.D.2d 395, 194 N.Y.S.2d 585 (4th Dep't 1959).

n2 Howe v. Cofer, 144 Ga. App. 589, 241 S.E.2d 472 (1978).

n3 Davis v. State, 269 Ga. 276, 496 S.E.2d 699 (1998) (first offender's guilty plea did not constitute a conviction sufficient to serve as basis for suspension of driver's license).

n4 Lamb v. Parsons, 195 Va. 353, 78 S.E.2d 707 (1953).

n5 Barbour v. Scheidt, 246 N.C. 169, 97 S.E.2d 855 (1957).

**SUPPLEMENT:****Cases**

Six-month suspension of juvenile's driver's license was mandatory upon his entry of no contest plea to offense involving possession of marijuana, notwithstanding adjudication of guilt; suspension statute mandated suspension in cases in which a no contest plea is entered, adjudication is withheld, and the underlying offense is one enumerated under the statute. State v. S.S., 8 So. 3d 425 (Fla. Dist. Ct. App. 2d Dist. 2009).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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West's A.L.R. Digest, Automobiles [westkey]129 to 145

Proof of Physical Disability of Driver of Motor Vehicle, 53 Am. Jur. Proof of Facts 3d 67

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 19, 20, 24 to 26, 28, 31, 32

West's Key Number Digest, Automobiles [westkey]144.1(1)

What amounts to conviction of adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 79 A.L.R.2d 866

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7A Am Jur 2d Automobiles and Highway Traffic § 141

#### § 141 Generally

Under some statutes, provision is made for the suspension or revocation of drivers' licenses when a licensee is convicted of specified offenses relating to motor vehicles outside the state.<sup>n1</sup> The validity of such statutes has generally been sustained as against various kinds of constitutional objections.<sup>n2</sup>

Under statutes providing for the revocation or suspension of a driver's license for an out-of-state conviction of an offense which, if committed in the licensing state, would be grounds for suspension or revocation of the license there, it has been held that the licensing authority should not suspend or revoke the license where the information contained in the notice of conviction shows, or indicates the possibility that, the motorist had been convicted of an offense that is no ground for suspension or revocation in the licensing state.<sup>n3</sup> However, suspension on the basis of such a conviction is valid under such a statute even though the evidentiary standards in the convicting state differ from those in the licensing state.<sup>n4</sup>

The revocation of a driver's license based upon a conviction under the motor vehicle laws of another state does not violate the driver's constitutional rights to extent that the other state did not advise the driver what would happen to his or her in-state license, and the revoking state did not brief its drivers on the risks of violating the laws of other states.<sup>n5</sup>

#### FOOTNOTES:

n1 *Farrell v. Strelecki*, 88 N.J. Super. 221, 211 A.2d 398 (App. Div. 1965); *In re Oates*, 18 N.C. App. 320, 196 S.E.2d 596 (1973).

n2 *Burgess v. Ryan*, 996 F.2d 180 (7th Cir. 1993); *Witsch Motor Vehicle Operator's License Case*, 194 Pa. Super. 384, 168 A.2d 772, 87 A.L.R.2d 1015 (1961); *Beaudoin v. Petit*, 122 R.I. 469, 409 A.2d 536 (1979).

n3 *Moore v. Macduff*, 309 N.Y. 35, 127 N.E.2d 741 (1955).

n4 *Anderson v. State, Dept. of Public Safety and Dept. of Transp.*, 305 N.W.2d 786 (Minn. 1981).

n5 *Burgess v. Ryan*, 996 F.2d 180 (7th Cir. 1993).

#### SUPPLEMENT:

**Cases**

Statute which prohibited Motor Vehicle Administration (MVA) from issuing a Maryland driver's license to an individual during any period in which the individual's license to drive was revoked, suspended, refused, or cancelled in Maryland or any other state did not contain exception for when the revocation, suspension, or cancellation in the other state was for conduct that would not warrant that result in Maryland; court would not create exception that the legislature chose not to create. *Alavez v. Motor Vehicle Admin.*, 402 Md. 727, 939 A.2d 139 (2008).

Date on which motorist's prior out-of-state conviction for driving under the influence (DUI) was entered, rather than date on which offense occurred, controlled for purposes of determining whether motorist had a prior conviction within past ten years such that his driver's license was subject to suspension upon instant DUI conviction; although motorist's prior DUI offense occurred almost 20 years prior to entry of conviction in Maine, over which 20-year period motorist was accepted into Accelerated Rehabilitative Disposition (ARD) program and subjected to various collateral consequences, ten-year lookback period, under license suspension statute, accrued on date conviction was entered. 75 Pa.C.S.A. § 3804(e)(2). *Dick v. Com., Dept. of Transp., Bureau of Driver Licensing*, 3 A.3d 703 (Pa. Commw. Ct. 2010).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 19, 20, 24 to 26, 28, 31, 32

West's Key Number Digest, Automobiles [westkey]144.1(1), 144.1(3)

Validity, construction, and application of provision for revocation or suspension of driver's license because of conviction of traffic violation in another state, 87 A.L.R.2d 1019

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7A Am Jur 2d Automobiles and Highway Traffic § 142

## § 142 Interstate compacts

Under a driver license compact, each member state is required to treat a conviction in a sister state in the same manner as it would an in-state conviction.<sup>n1</sup> For a driver license compact to apply so that convictions of driving under the influence in party states to the compact will be given reciprocal effect, there must be sufficient evidence of conviction under a substantially similar statute.<sup>n2</sup> The out-of-state offense must be similar to a license-revoking or license-suspending offense in the driver's home state in order to result in revocation or suspension of his or her license.<sup>n3</sup> Such a compact does not violate the constitutional provision forbidding, absent congressional approval, agreements among states that tend to enlarge political powers of states,<sup>n4</sup> where the participating states may withdraw from the compact at will, as each member state has a substantial police power interest in identifying and regulating traffic violators.<sup>n5</sup>

Where an out-of-state conviction is entered into a electronic database pursuant to an interstate compact, it is admissible as part of a certified abstract of the defendant's driving record in a proceeding for the suspension of the driver's license.<sup>n6</sup>

**FOOTNOTES:**

n1 *Miller v. White*, 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007); *State ex rel. Landon v. Macek*, 208 Mont. 172, 676 P.2d 228 (1984); *Siekierda v. Com., Dept. of Transp., Bureau of Driver Licensing*, 580 Pa. 259, 860 A.2d 76 (2004); *Shell v. Bechtold*, 175 W. Va. 792, 338 S.E.2d 393 (1985).

n2 *Moles v. Gourley*, 112 Cal. App. 4th 1049, 5 Cal. Rptr. 3d 555 (6th Dist. 2003).

n3 *New Jersey Div. of Motor Vehicles v. Ripley*, 364 N.J. Super. 343, 835 A.2d 1252 (App. Div. 2003).

n4 U.S. Const. Art. I, § 10, cl. 3.

n5 *State v. Kurt*, 802 S.W.2d 954 (Mo. 1991).

n6 *McDonald v. State, Dept. of Revenue and Taxation*, 846 P.2d 694 (Wyo. 1993).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

## 7A Am Jur 2d Automobiles and Highway Traffic § 142

U.S. Const. Art. I, § 10, cl. 3  
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## 7A Am Jur 2d Automobiles and Highway Traffic § 143

## § 143 Habitual or persistent violations, generally

Statutes and regulations authorizing the revocation or suspension of an operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations generally have been sustained as against various constitutional attacks directed against their validity, the clear majority of courts having rejected challenges based on alleged due process<sup>n1</sup> and equal protection violations,<sup>n2</sup> as well as challenges based on alleged violations of the prior jeopardy bar.<sup>n3</sup>

Proceedings to determine whether a driver is an habitual traffic offender are civil, not criminal, in nature, and such statutes are to be liberally construed to effectuate their purpose to remove dangerous drivers from the highway, in the interest of public safety.<sup>n4</sup> However, there is some authority that traffic offenses that are not specifically enumerated in an habitual traffic offender statute as predicates for license suspension may not be considered in support of an habitual traffic offender adjudication,<sup>n5</sup> and that nonmoving violations are also excluded from the analysis.<sup>n6</sup>

**FOOTNOTES:**

n1 Doe v. Edgar, 721 F.2d 619 (7th Cir. 1983); People v. Shaver, 630 P.2d 600 (Colo. 1981); State v. Kamalski, 429 A.2d 1315 (Del. Super. Ct. 1981); Wheeler v. Department of Highway Safety and Motor Vehicles, 297 So. 2d 128 (Fla. Dist. Ct. App. 2d Dist. 1974); Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458 (1980); Clark v. Secretary of State, 483 A.2d 708 (Me. 1984); State v. Sinner, 207 N.W.2d 495, 60 A.L.R.3d 350 (N.D. 1973); State v. James, 78 Or. App. 433, 717 P.2d 214 (1986); Yeckley v. Com., Dept. of Transp., 81 Pa. Commw. 576, 474 A.2d 71 (1984).

n2 Doe v. Edgar, 721 F.2d 619 (7th Cir. 1983); Van Gerpen v. Peterson, 620 P.2d 714 (Colo. 1980); Owens v. State ex rel. VanNatta, 178 Ind. App. 406, 382 N.E.2d 1312 (1978); Yeckley v. Com., Dept. of Transp., 81 Pa. Commw. 576, 474 A.2d 71 (1984); State v. Kent, 87 Wash. 2d 103, 549 P.2d 721 (1976).

n3 State v. Kamalski, 429 A.2d 1315 (Del. Super. Ct. 1981); Johnston v. State, 236 Ga. 370, 223 S.E.2d 808 (1976) (overruled on other grounds by, Barnes v. State, 275 Ga. 499, 570 S.E.2d 277 (2002)); Hardin v. State ex rel. Van Natta, 176 Ind. App. 514, 376 N.E.2d 518 (1978); In re France, 147 Mont. 283, 411 P.2d 732 (1966); State v. Bowles, 113 N.H. 571, 311 A.2d 300 (1973); State v. Carlisle, 285 N.C. 229, 204 S.E.2d 15 (1974); State v. Sinner, 207 N.W.2d 495, 60 A.L.R.3d 350 (N.D. 1973); State v. Conley, 639 S.W.2d 435 (Tenn. 1982).

n4 People v. Able, 200 Colo. 115, 618 P.2d 1110 (1980); Villa v. State, 456 A.2d 1229 (Del. 1983); Johnston v. State, 236 Ga. 370, 223 S.E.2d 808 (1976) (overruled on other grounds by, Barnes v. State, 275 Ga. 499, 570 S.E.2d 277 (2002)); Haswell v. Powell, 38 Ill. 2d 161, 230 N.E.2d 178 (1967); Hamilton v. State ex rel. Van Natta, 163 Ind. App. 342, 323 N.E.2d 659 (1975); Sueppel v. Eads, 261 Iowa 923, 156 N.W.2d 115 (1968); State v. Boos, 232 Kan. 864, 659 P.2d 224 (1983); Clark v. Secretary of State, 483 A.2d 708 (Me. 1984); State v. Ponce, 93 Wash. 2d 533, 611 P.2d 407 (1980).

## 7A Am Jur 2d Automobiles and Highway Traffic § 143

n5 State v. Carter, 45 Or. App. 301, 608 P.2d 570 (1980).

n6 State v. Strassburg, 120 Wis. 2d 30, 352 N.W.2d 215 (Ct. App. 1984).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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West's Key Number Digest, Automobiles [westkey]144.1(1), 144.1(3)

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 32 (Complaint, petition, or declaration -- To set aside order suspending operator's license -- To set aside judgment that plaintiff is habitual traffic violator)

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7A Am Jur 2d Automobiles and Highway Traffic § 144

§ 144 Habitual violations under point system

In some states, motor vehicle officials have established a so-called "point system" to single out habitual or persistent violators, whereby points are charged against a driver's record for violations of laws relating to motor vehicles, and upon accumulation of a specified number of such points, such officials may suspend or revoke the violator's license.<sup>n1</sup> The validity of such a point system has been upheld.<sup>n2</sup> Suspension of a minor's license after he or she has accumulated fewer points than is required for suspension of an adult's license is constitutionally permissible.<sup>n3</sup>

Regulations establishing a point system as regards suspension or revocation of driving licenses generally have been regarded by the courts as not being for the purpose of punishment, but instead for the purpose of increasing public safety on highways.<sup>n4</sup> Such regulations do not violate equal protection,<sup>n5</sup> do not constitute an unlawful delegation of legislative power,<sup>n6</sup> are not an unreasonable exercise of the police power,<sup>n7</sup> and are not invalid as ex post facto applications.<sup>n8</sup> Drivers have also been viewed receiving due process under such regulations.<sup>n9</sup>

A suspension based on a driver's accumulation of excess points may include points that have served as the basis for a prior suspension.<sup>n10</sup>

Although some delay is acceptable, a motor vehicle department must act with reasonable promptness in suspending a driver's license on the basis of excess point accumulation<sup>n11</sup> and out-of-state traffic violations.<sup>n12</sup>

**FOOTNOTES:**

n1 Kriesel v. McCarthy, 214 Cal. App. 2d 69, 29 Cal. Rptr. 256, 5 A.L.R.3d 684 (2d Dist. 1963); Harper v. Director of Revenue, 118 S.W.3d 195 (Mo. Ct. App. W.D. 2003); Ross v. Macduff, 309 N.Y. 56, 127 N.E.2d 806 (1955).

n2 Zaba v. Motor Vehicle Division, Dept. of Revenue, 183 Colo. 335, 516 P.2d 634 (1973); Wolfe v. Com. Dept. of Transp. Bureau of Traffic Safety, 24 Pa. Commw. 261, 355 A.2d 600 (1976).

n3 Lopez v. Motor Vehicle Division, Dept. of Revenue, 189 Colo. 133, 538 P.2d 446 (1975).

n4 Kriesel v. McCarthy, 214 Cal. App. 2d 69, 29 Cal. Rptr. 256, 5 A.L.R.3d 684 (2d Dist. 1963); Jones v. Kirkman, 138 So. 2d 513 (Fla. 1962); Rudd v. David, 444 S.W.2d 457 (Mo. 1969); Durfee v. Ress, 163 Neb. 768, 81 N.W.2d 148 (1957); South Carolina State Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955).

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n5 Smith v. Charnes, 649 P.2d 1089 (Colo. 1982); Zarsky v. State, 300 So. 2d 261 (Fla. 1974); Phipps v. Schaffner, 505 S.W.2d 89 (Mo. 1974); Com., Dept. of Transp., Bureau of Traffic Safety v. Huff, 10 Pa. Commw. 261, 310 A.2d 435 (1973).

n6 State v. Birmingham, 95 Ariz. 310, 390 P.2d 103 (1964), on reh'g, 96 Ariz. 109, 392 P.2d 775 (1964); Campbell v. State, Dept. of Revenue, Division of Motor Vehicles, 176 Colo. 202, 491 P.2d 1385, 60 A.L.R.3d 419 (1971); Jones v. Kirkman, 138 So. 2d 513 (Fla. 1962); Ross v. Macduff, 309 N.Y. 56, 127 N.E.2d 806 (1955).

n7 Zaba v. Motor Vehicle Division, Dept. of Revenue, 183 Colo. 335, 516 P.2d 634 (1973); Brown v. Sullivan, 195 Neb. 729, 240 N.W.2d 51 (1976).

n8 Casci v. State, 293 So. 2d 403 (Fla. Dist. Ct. App. 2d Dist. 1974), judgment aff'd, 307 So. 2d 446 (Fla. 1975); Durfee v. Ress, 163 Neb. 768, 81 N.W.2d 148 (1957).

n9 Reese v. Kassab, 334 F. Supp. 744 (W.D. Pa. 1971); Campbell v. State, Dept. of Revenue, Division of Motor Vehicles, 176 Colo. 202, 491 P.2d 1385, 60 A.L.R.3d 419 (1971); Zarsky v. State, 300 So. 2d 261 (Fla. 1974); State v. Hanson, 493 S.W.2d 8 (Mo. Ct. App. 1973); Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972).

n10 Mancini v. Secretary of State, 203 Mich. App. 569, 512 N.W.2d 859 (1994).

n11 Berlowitz v. Department of Motor Vehicles, 210 Neb. 843, 317 N.W.2d 93 (1982).

n12 Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486 (1980).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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7A Am Jur 2d Automobiles and Highway Traffic § 145

§ 145 Habitual recklessness or negligence in driving

One's driver's license is subject to suspension or revocation under some statutes where he or she is a habitually reckless or negligent driver.<sup>n1</sup> Such statutes have been held valid as against the contention that they fail to contain any fixed standard or guide to which the suspending or revoking officials must conform to determine whether or not a driver is habitually reckless or negligent.<sup>n2</sup> It has been said that the terms "habitual," "reckless," and "negligent" are well known to all and the suspending or revoking officials have thereby a definite and tangible standard to guide them in their determination.<sup>n3</sup>

**FOOTNOTES:**

n1 U.S. v. Fox, 60 F.3d 181 (4th Cir. 1995); Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

n2 Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

n3 Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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7A Am Jur 2d Automobiles and Highway Traffic § 146

## § 146 Generally

A proceeding to suspend or revoke a driver's license is considered administrative rather than judicial.<sup>n1</sup> The revocation of a driver's license is a civil, and not a criminal, sanction; therefore, constitutional guarantees do not apply to such proceedings to the same extent that they apply to criminal trials,<sup>n2</sup> though because the administrative suspension of a license to drive involves state action that adjudicates important interests of the licensee, licenses are not to be taken away without the procedural due process required by the 14th Amendment.<sup>n3</sup> However, drivers whose licenses are to be suspended or revoked are entitled to some protection under the Due Process Clause of the United States Constitution, including, in many cases, pretermination notice and hearing.<sup>n4</sup>

A limitation of the time within which a driver may request a hearing on his or her license suspension does not violate due process,<sup>n5</sup> and a driver who fails to request a hearing in that time thereby waives his or her right to a hearing.<sup>n6</sup> Where such a waiver has occurred, a court does not have discretion to refuse to suspend a license, and cannot vacate an order suspending the license under the rule providing relief from a judgment on the ground of mistake, inadvertence, or excusable neglect.<sup>n7</sup>

The statutory time frame for holding an administrative license revocation hearing is directory, not mandatory, and the failure to hold a hearing within the time frame does not invalidate the proceedings unless the motorist can show that he or she was prejudiced by the delay.<sup>n8</sup> Although the department of motor vehicles must act with reasonable promptness in revoking or suspending a driver's license,<sup>n9</sup> the right to a speedy trial does not apply to such civil, administrative actions. Neither is there a right to a determination of the facts by a jury in such an administrative proceeding.<sup>n10</sup> However, the licensee has the right to be confronted with the witnesses at such hearing, and must be given an opportunity to cross-examine them.<sup>n11</sup>

**FOOTNOTES:**

n1 *Wolney v. Secretary of State*, 77 Mich. App. 61, 257 N.W.2d 754 (1977); *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960); *Com. v. Cronin*, 336 Pa. 469, 9 A.2d 408, 125 A.L.R. 1455 (1939).

n2 *People v. Smith*, 172 Ill. 2d 289, 216 Ill. Dec. 658, 665 N.E.2d 1215 (1996); *Ruge v. Kovach*, 467 N.E.2d 673 (Ind. 1984); *Luk v. Com.*, 421 Mass. 415, 658 N.E.2d 664 (1995); *State ex rel. Majerus v. Carter*, 214 Mont. 272, 693 P.2d 501 (1984).

n3 *Robinson v. Kansas Dept. of Revenue*, 37 Kan. App. 2d 425, 154 P.3d 508 (2007), review denied, (June 21, 2007).

## 7A Am Jur 2d Automobiles and Highway Traffic § 146

n4 § 147.

n5 Giberson v. Quinn, 445 A.2d 1007 (Me. 1982).

n6 State ex rel. Ruddlesden v. Roberts, 175 W. Va. 161, 332 S.E.2d 122 (1985).

n7 Ausman v. State, 124 Idaho 839, 864 P.2d 1126 (1993).

n8 Betterman v. State, Dept. of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

n9 In re Arndt, 67 N.J. 432, 341 A.2d 596 (1975).

n10 City of Cincinnati v. Wright, 77 Ohio App. 261, 33 Ohio Op. 23, 47 Ohio L. Abs. 89, 67 N.E.2d 358 (1st Dist. Hamilton County 1945).

n11 Application of Kafka, 272 A.D. 364, 71 N.Y.S.2d 179 (1st Dep't 1947).

#### **SUPPLEMENT:**

##### **Cases**

Motorist whose commercial driver's license was suspended for life received meaningful hearing on the issue, and thus motorist was afforded the procedural due process to which he was entitled to under the Fourteenth Amendment. Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008).

Because the continued possession of a driver's license, once issued, may become essential in the pursuit of a livelihood, suspension of an issued license involves state action that adjudicates important interests of the licensee and the license is not to be taken away without that procedural due process required by the Fourteenth Amendment. Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008).

##### **REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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5 C.F.R. §§ 930.101 to 931.115

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Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 26 (Demand for hearing -- On proposed revocation or suspension of operator's license or vehicle registration)



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7A Am Jur 2d Automobiles and Highway Traffic § 147

## § 147 Generally

Drivers whose licenses are to be suspended or revoked are entitled to some protection under the Due Process Clause of the United States Constitution.<sup>n1</sup> Except in emergency situations, due process requires that when a state seeks to terminate an interest such as a driver's license, it must provide the driver with notice and an opportunity for a hearing appropriate to the nature of the case before the termination becomes effective.<sup>n2</sup> A predeprivation hearing must be meaningful, and a court in analyzing the sufficiency of a hearing should be guided by considerations of fundamental fairness.<sup>n3</sup> A meaningful hearing must include consideration of all elements essential to a decision as to whether a license may be suspended.<sup>n4</sup>

Some courts have held that a judicial hearing, following appeal of a suspension or revocation order, cures any procedural defect caused by the lack of a hearing prior to the suspension order, at least where the court conducting the hearing orders a stay of the suspension until the judicial hearing has been conducted.<sup>n5</sup> It has also been held that the mandatory revocation of a driver's license based on a conviction of a criminal motor vehicle offense does not violate due process, although a hearing is not provided either prerevocation or postrevocation, where the defendant has an opportunity during the criminal proceedings establish his or her innocence.<sup>n6</sup>

Resolution of the question of what process is due to protect against the state's erroneous deprivation of a driver's protectible due process property interest in a driver's license in regard to the state's procedures for suspension of licenses requires consideration of:<sup>n7</sup>

- (1) the private interest that will be affected by the official action;
- (2) the risk of an erroneous deprivation through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

The statutory scheme which permits an initial summary decision to suspend a person's driving privilege without a hearing based on objective statutory criteria involving public safety does not violate due process, provided that a full, post-deprivation hearing is available to challenge the suspension.<sup>n8</sup>

**FOOTNOTES:**

## 7A Am Jur 2d Automobiles and Highway Traffic § 147

n1 State v. Pyette, 2007 MT 119, 337 Mont. 265, 159 P.3d 232 (2007); North Dakota Dept. of Transp. v. DuPaul, 487 N.W.2d 593 (N.D. 1992).

n2 Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).

n3 Javed v. Department of Public Safety, Div. of Motor Vehicles, 921 P.2d 620 (Alaska 1996).

n4 Jarvis v. Director of Revenue, 804 S.W.2d 22 (Mo. 1991).

n5 Grindlinger v. Com., Dept. of Transp., Bureau of Traffic Safety, 7 Pa. Commw. 347, 300 A.2d 95 (1973).

n6 State v. Jennings, 150 Ariz. 90, 722 P.2d 258 (1986).

n7 Mackey v. Montrym, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979); State v. Hochhausler, 76 Ohio St. 3d 455, 1996-Ohio-374, 668 N.E.2d 457 (1996).

n8 Jarvis v. Director of Revenue, 804 S.W.2d 22 (Mo. 1991); State v. Hochhausler, 76 Ohio St. 3d 455, 1996-Ohio-374, 668 N.E.2d 457 (1996); Matter of Revocation of Driver License of Fischer, 395 N.W.2d 598 (S.D. 1986).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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7A Am Jur 2d Automobiles and Highway Traffic § 148

§ 148 Under a point system or for habitual or persistent violations of motor vehicle laws

With respect to suspension or revocation of a driver's license under a point system or for habitual or persistent violations of motor vehicle laws, notice and hearing generally are necessary prior to the effective date of any such suspension or revocation,<sup>n1</sup> and, in a number of such cases, it has been held that the procedures failed to comply with the standards of due process<sup>n2</sup> as required when a state seeks to terminate an interest such as a driver's license.<sup>n3</sup> In a number of other cases, courts have held, despite arguments concerning the alleged lack of notice and hearing, that the procedures for suspension or revocation under the point systems in question satisfied due process, because current due process standards when a state seeks to terminate an interest such as a driver's license<sup>n4</sup> do not apply to point system cases,<sup>n5</sup> or because the drivers in question had been given an opportunity for a hearing before their revocations or suspensions had become effective,<sup>n6</sup> or because the suspension was based on a point system that involved no discretion on the part of the administrator.<sup>n7</sup>

A state statute and regulations providing for suspension of a driver's license for repeated violations of traffic regulations are constitutionally adequate under the Due Process Clause because: (1) the private interest in a license to operate a motor vehicle is not so great as to require an evidentiary hearing prior to adverse administrative action, particularly in light of the state laws' special provisions for hardship cases and for holders of commercial licenses; (2) the risk of an erroneous deprivation in the absence of a prior hearing is not great, and requiring additional procedures would be unlikely to have a significant value in reducing the number of erroneous deprivations; and (3) the public interests in administrative efficiency and, particularly, in highway safety and the prompt removal of a safety hazard, are sufficient to make the state's summary initial decision effective without a predecision administrative hearing.<sup>n8</sup>

**FOOTNOTES:**

n1 Reese v. Kassab, 334 F. Supp. 744 (W.D. Pa. 1971) (applying Pennsylvania law); Souter v. Department of Highway Safety and Motor Vehicles, 310 So. 2d 314 (Fla. Dist. Ct. App. 1st Dist. 1975); State v. Petersen, 16 Wash. App. 77, 553 P.2d 1110 (Div. 2 1976).

n2 Wheeler v. Department of Highway Safety and Motor Vehicles, 297 So. 2d 128 (Fla. Dist. Ct. App. 2d Dist. 1974); State v. Petersen, 16 Wash. App. 77, 553 P.2d 1110 (Div. 2 1976).

n3 § 147.

N4 § 147.

## 7A Am Jur 2d Automobiles and Highway Traffic § 148

n5 *State v. Hanson*, 493 S.W.2d 8 (Mo. Ct. App. 1973).

n6 *Cappadona v. Keith*, 290 So. 2d 545 (Fla. Dist. Ct. App. 4th Dist. 1974), judgment aff'd, 306 So. 2d 515 (Fla. 1975); *Price v. State*, Dept. of Public Safety, License Control and Driver Imp. Division, 325 So. 2d 759 (La. Ct. App. 1st Cir. 1976); *State ex rel. Ruddlesden v. Roberts*, 175 W. Va. 161, 332 S.E.2d 122 (1985).

n7 *Elizondo v. State*, Dept. of Revenue, Motor Vehicle Division, 194 Colo. 113, 570 P.2d 518 (1977).

n8 *Dixon v. Love*, 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977).

**SUPPLEMENT:****Cases**

Department of Transportation's suspension of licensee's noncommercial driving privileges following his arrest for driving under the influence (DUI) was a "conviction," so as to support lifetime suspension of licensee's commercial driving privileges after his second DUI conviction, although licensee had accepted the suspension of his driving privileges prior to dismissal of the DUI charge; "conviction" was defined, in part, as a determination that a person has violated or failed to comply with the law in an authorized administrative tribunal, and Department's decision to suspend licensee's driving privileges was a determination made by an authorized administrative tribunal. *Bienek v. Department of Transp.*, 2007 ND 117, 736 N.W.2d 492 (N.D. 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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5 C.F.R. §§ 930.101 to 931.115

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Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361

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7A Am Jur 2d Automobiles and Highway Traffic § 149

§ 149 For conviction of certain specific offenses; driving under the influence

The modern due process standard when a state seeks to terminate an interest such as a driver's license<sup>n1</sup> has received attention in cases concerning suspensions or revocations of a driver's license following the conviction of certain offenses (other than under point systems or habitual offender statutes). Courts in certain cases have held that statutes under consideration, providing for the suspension or revocation of a driver's license for being convicted of certain offenses or for committing an offense the conviction of which required revocation under another statute, unconstitutionally denied due process by allowing the termination of a driver's license without prior notice and hearing.<sup>n2</sup> In certain other cases, courts have held, despite allegations concerning lack of notice and hearing, that statutory schemes for suspension or revocation upon convictions of enumerated offenses satisfied due process, the courts reasoning either that the convictions in question constituted emergencies allowing suspension or revocation without prior notice and hearing, or that the drivers in question had in fact been given an opportunity for a hearing at some point before the suspension or revocation had become effective.<sup>n3</sup>

#### FOOTNOTES:

n1 § 147.

n2 *Harris v. State of Colo.*, 516 F. Supp. 1128 (D. Colo. 1981); *Quick v. Department of Motor Vehicles*, 331 A.2d 319 (D.C. 1975); *Matter of Revocation of Driver License of Fischer*, 395 N.W.2d 598 (S.D. 1986); *Smith v. Speir*, 504 S.W.2d 936 (Tex. Civ. App. Fort Worth 1974).

n3 *People v. Gerke*, 123 Ill. 2d 85, 121 Ill. Dec. 262, 525 N.E.2d 68 (1988); *Risner v. State*, 45 Ohio App. 2d 5, 74 Ohio Op. 2d 9, 340 N.E.2d 433 (1st Dist. Butler County 1975); *Com. Dept. of Transp. Bureau of Traffic Safety v. Hahn*, 23 Pa. Commw. 540, 353 A.2d 74 (1976); *Wells v. Roberts*, 167 W. Va. 580, 280 S.E.2d 266 (1981).

#### SUPPLEMENT:

##### Cases

To convict a defendant for driving while license revoked as a habitual offender, three elements must be proved: (1) the Department of Motor Vehicles (DMV) had revoked defendant's driver's license as a habitual offender; (2) DMV gave defendant notice of the revocation of his license; and (3) defendant operated a motor vehicle upon a highway of the state while the license was revoked. *State v. Alhindi*, 971 So. 2d 222 (Fla. Dist. Ct. App. 4th Dist. 2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 Am. Jur. Proof of Facts 3d 229

Rubenzer, The Standardized Field Sobriety Tests: A Review of Scientific and Legal Issues, 32 Law &amp; Hum. Behav. 293 (2008)

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7A Am Jur 2d Automobiles and Highway Traffic § 150

§ 150 Refusal to take sobriety test under "implied consent" statute

In general, in cases concerning suspension or revocation for refusal to take a chemical intoxication test, courts have held, despite arguments concerning the alleged lack of notice and hearing, that the procedures in question satisfied due process, either because due process did not require a prior hearing in such cases, or because in fact the driver had an opportunity for a hearing before the suspension or revocation actually went into effect.<sup>n1</sup> However, several cases concerning suspension or revocation of a driver's license for refusal to submit to a chemical intoxication test following an arrest for driving while intoxicated have held that a statute providing for revocation or suspension on such a ground was unconstitutional for not affording a motorist a hearing prior to revocation, the courts in those cases rejecting the state's contention that the statute met the requirements of an emergency situation<sup>n2</sup> to relieve the need for a pretermination hearing under current due process standards when a state seeks to terminate an interest such as a driver's license.<sup>n3</sup>

**FOOTNOTES:**

n1 *Vigil v. Motor Vehicle Division of Dept. of Revenue*, 184 Colo. 142, 519 P.2d 332 (1974); *State v. Ankney*, 109 Idaho 1, 704 P.2d 333 (1985); *Harrison v. State Dept. of Public Safety, Drivers License Division*, 298 So. 2d 312 (La. Ct. App. 4th Cir. 1974), writ denied, 300 So. 2d 840 (La. 1974); *Davis v. Commissioner of Public Safety*, 517 N.W.2d 901 (Minn. 1994); *Lavinghouse v. Mississippi Highway Safety Patrol*, 620 So. 2d 971 (Miss. 1993); *Jones v. Schaffner*, 509 S.W.2d 72 (Mo. 1974); *Application of Ventura*, 108 Misc. 2d 281, 437 N.Y.S.2d 538 (Sup 1981).

n2 *Chavez v. Campbell*, 397 F. Supp. 1285 (D. Ariz. 1973) (applying Arizona law); *Slone v. Kentucky Dept. of Transp.*, 379 F. Supp. 652 (E.D. Ky. 1974), judgment aff'd, 513 F.2d 1189 (6th Cir. 1975) (applying Kentucky law); *Cogdill v. Department of Public Safety*, 135 Ga. App. 339, 217 S.E.2d 502 (1975); *Green v. Department of Public Safety*, 308 So. 2d 863 (La. Ct. App. 4th Cir. 1975).

n3 § 147.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145  
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7A Am Jur 2d Automobiles and Highway Traffic § 151

§ 151 Nature and sufficiency of notice

Where the adequacy of a notice of proposed action that is given pursuant to a statute providing for the revocation of a driver's license is at issue, a court is to consider the following three factors:<sup>n1</sup>

- (1) the private interest that will be affected by the official action;
- (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In a number of cases, where the motorist failed to receive notice of a presuspension or prerevocation hearing, or failed to receive notice of a proposed suspension or revocation which would have given the driver a chance to apply for a hearing, the courts, applying and construing particular statutory requirements as to notice, have held the suspension or revocation unlawful.<sup>n2</sup> On the other hand, despite the motorist's allegation of failure to receive notice of a presuspension hearing or notice of a proposed suspension which would have given the motorist an opportunity to apply for a hearing, courts have held the suspension of the driver's license lawful, either on the ground that the statutory procedures for giving notice were complied with, or on the ground that any defect in the notice was cured by the de novo hearing in a court following appeal of the suspension.<sup>n3</sup> Defective notice also is cured where the driver appears at the hearing and is heard on the merits, or files an appeal.<sup>n4</sup>

**Practice Tip:** The state, in seeking to establish that a driver's license has been properly suspended, has the burden of establishing that notice of the hearing has been sent to the address on the traffic citation, and that burden may be satisfied by use of certified mail.<sup>n5</sup>

**FOOTNOTES:**

n1 State v. Pyette, 2007 MT 119, 337 Mont. 265, 159 P.3d 232 (2007).

n2 Lopez v. Motor Vehicle Division, Dept. of Revenue, 189 Colo. 133, 538 P.2d 446 (1975); State v. Hammond, 116 N.J. Super. 244, 281 A.2d 819 (County Ct. 1971).

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n3 Cutlip v. Connecticut Motor Vehicles Com'r, 168 Conn. 94, 357 A.2d 918 (1975); People v. Liddell, 19 Ill. App. 3d 794, 313 N.E.2d 248 (1st Dist. 1974); Harrison v. State Dept. of Public Safety, Drivers License Division, 298 So. 2d 312 (La. Ct. App. 4th Cir. 1974), writ denied, 300 So. 2d 840 (La. 1974); State v. Tininenko, 371 N.W.2d 762 (N.D. 1985); State v. Bass, 98 Or. App. 266, 778 P.2d 993 (1989).

n4 Shumate v. Department of Revenue of State of Colo., Motor Vehicle Div., 781 P.2d 181 (Colo. Ct. App. 1989); Wollenburg v. Conrad, 246 Neb. 666, 522 N.W.2d 408 (1994).

n5 State v. Addleman, 388 So. 2d 1230 (Fla. 1980).

**SUPPLEMENT:****Cases**

Motorist was deprived of the opportunity to present a meaningful defense in Department of Motor Vehicles (DMV) proceeding to suspend his driving privileges such that his due process rights were violated, where motorist's counsel requested blood alcohol test results approximately one month before suspension hearing but initially received the results only minutes before the hearing, and DMV hearing officer denied counsel's request for a continuance. U.S.C.A. Const. Amend. 14; West's Ann. Cal. Gov. Code §§ 11507.6, 11513; West's Ann. Cal. Vehicle Code § 14112. Petrus v. State Dept. of Motor Vehicles, 194 Cal. App. 4th 1240, 2011 WL 1348356 (4th Dist. 2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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7A Am Jur 2d Automobiles and Highway Traffic § 152

§ 152 Scope of hearing

Under some implied-consent statutes, the determination of whether the licensee was the actual driver of the car is not at issue in a hearing for revocation for failure to consent to testing,<sup>n1</sup> though at least one such statute has been held unconstitutional because it prohibits such an inquiry.<sup>n2</sup> However, it has also been held that the legislature may define the range of inquiry to be conducted in proceedings for the temporary revocation of a driver's license.<sup>n3</sup>

**FOOTNOTES:**

n1 State v. Nordness, 128 Wis. 2d 15, 381 N.W.2d 300 (1986).

n2 Javed v. Department of Public Safety, Div. of Motor Vehicles, 921 P.2d 620 (Alaska 1996).

n3 Price v. Reed, 1986 OK 43, 725 P.2d 1254 (Okla. 1986).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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§ 153 Evidence; burden of proof

Because license revocation or suspension proceedings are civil, rather than criminal,<sup>n1</sup> the measure of evidentiary persuasion to be used in such proceedings is a preponderance of the evidence.<sup>n2</sup>

Observation: The implied consent law applies broadly and generally to those who drive, and does not require proof of actual driving immediately prior to a lawful arrest for driving while under the influence; thus, under a statute providing for the suspension or revocation of a driver's license based on the refusal to submit to chemical testing under an implied consent law, proof that the arrestee was driving immediately prior to the arrest was not required.<sup>n3</sup>

The burden of proof is on the state in an administrative hearing to make a prima facie case for the revocation of a driver's license for driving under the influence of intoxicating liquor, but once the arresting officer's sworn report is provided, then the administrative order of revocation has prima facie validity, and revocation is presumed to occur unless the motorist establishes grounds for reversal by a preponderance of evidence.<sup>n4</sup> Once the state makes a prima facie case, the driver is entitled to present rebuttal evidence that raises a genuine issue of fact regarding the validity of the blood alcohol test results; the rebuttal evidence should challenge the presumption of validity established by the state's prima facie case.<sup>n5</sup> The driver's burden in presenting rebuttal evidence is one of production, not persuasion; the state retains the burden of proof throughout the proceeding.<sup>n6</sup> The revoking agency's findings and conclusions on questions of fact in proceedings to revoke a driver's license are prima facie true and correct and if anything in the record fairly supports the agency's decision, that decision is not against the manifest weight of the evidence.<sup>n7</sup> When a court is reviewing the revocation of a driver's license for refusal to take a breathalyzer test,<sup>n8</sup> the state must prove the elements of the case.<sup>n9</sup>

Due process prohibits suspension of a driver's license on the basis of hearsay statements in an accident report.<sup>n10</sup>

Practice Tip: The margin of error in a blood alcohol content test result is a relevant factor to be weighed in considering the evidence supporting revocation of a driver's license.<sup>n11</sup>

**FOOTNOTES:**

n1 § 146.

n2 Price v. Reed, 1986 OK 43, 725 P.2d 1254 (Okla. 1986); Shaw v. Vermont Dist. Court, Unit No. 3, Franklin Circuit, 152 Vt. 1, 563 A.2d 636 (1989).

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- n3 *Troppman v. Valverde*, 40 Cal. 4th 1121, 57 Cal. Rptr. 3d 306, 156 P.3d 328 (2007).
- n4 *State v. Hansen*, 249 Neb. 177, 542 N.W.2d 424 (1996).
- n5 *Schroeder v. Director of Revenue*, 216 S.W.3d 711 (Mo. Ct. App. E.D. 2007).
- n6 *Schroeder v. Director of Revenue*, 216 S.W.3d 711 (Mo. Ct. App. E.D. 2007).
- n7 *Miller v. White*, 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007).
- n8 § 140.
- n9 *Staggs v. Director of Revenue*, 223 S.W.3d 866 (Mo. Ct. App. W.D. 2007), reh'g and/or transfer denied, (May 29, 2007) and transfer denied, (June 26, 2007).
- n10 *Carlton v. Department of Motor Vehicles*, 203 Cal. App. 3d 1428, 250 Cal. Rptr. 809 (2d Dist. 1988).
- n11 *Lara v. Tanaka*, 83 Haw. 24, 924 P.2d 192 (1996).

**SUPPLEMENT:****Cases**

In proceeding to suspend motorist's driver's license for his refusal to take a chemical alcohol test, motorist's admission that he was operating the vehicle that witnesses had seen being operated erratically was not necessary to establish that motorist was the "operator" of the vehicle because operation could be proven by direct or circumstantial evidence. *Finley v. Commissioner of Motor Vehicles*, 113 Conn. App. 417, 966 A.2d 773 (2009).

At a hearing on a petition to rescind a summary suspension of driving privileges, if the driver establishes a prima facie case for rescission, the burden shifts to the state to come forward with evidence justifying the suspension. *People v. Wear*, 229 Ill. 2d 545, 323 Ill. Dec. 359, 893 N.E.2d 631 (2008).

Burden was on state, in statutory refusal hearing pursuant to the implied consent law, to present evidence sufficient to establish officer's probable cause to believe that driver was operating a motor vehicle while under influence of an intoxicant. *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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§ 154 Review by lower court

The suspension or revocation of a driver's license is an administrative act<sup>n1</sup> that is generally subject to judicial review.<sup>n2</sup> However, under some statutes, there is no right of appeal in cases where the suspension or revocation of a driver's license is automatic, based upon the conviction of the licensee of certain offenses.<sup>n3</sup> A statute authorizing a court to review a driver's license revocation is not an unconstitutional delegation of legislative power, though it fails to specify any standards applicable on review, where the court would implicitly be bound by the same standards applied by the agency that suspended or revoked the license.<sup>n4</sup>

The proceedings in a suit challenging an administrative revocation of a driver's license are civil in nature.<sup>n5</sup>

Statutory provision is usually made for the time within which the review must be instituted.<sup>n6</sup> A person contending that his or her license has been improperly revoked has the burden of proof, by a preponderance of evidence, to show that the state has acted improperly.<sup>n7</sup>

Practice Tip: A driver's license record submitted with a certiorari petition challenging a license suspension was devoid of evidence indicating the date of rendition of the order suspending the motorist's license, which was necessary to determine whether the petition was timely filed and, in turn, whether the trial court had jurisdiction to review the petition.<sup>n8</sup>

#### FOOTNOTES:

n1 § 146.

n2 *Miller v. White*, 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007); *Wilczewski v. Neth*, 273 Neb. 324, 729 N.W.2d 678 (2007).

n3 *Department of Public Safety v. Koonce*, 147 Fla. 616, 3 So. 2d 331 (1941); *Gilbert v. State*, 152 Tex. Crim. 200, 212 S.W.2d 182 (1948).

n4 *Guillou v. State, Div. of Motor Vehicles*, 127 N.H. 579, 503 A.2d 838 (1986).

n5 *People v. Gerke*, 123 Ill. 2d 85, 121 Ill. Dec. 262, 525 N.E.2d 68 (1988); *Gothard v. Spradling*, 561 S.W.2d 448 (Mo. Ct. App. 1978); *State ex rel. Majerus v. Carter*, 214 Mont. 272, 693 P.2d 501 (1984).



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n6 Woodard v. Macduff, 5 A.D.2d 26, 169 N.Y.S.2d 87 (4th Dep't 1957).

n7 People v. Smith, 172 Ill. 2d 289, 216 Ill. Dec. 658, 665 N.E.2d 1215 (1996); Russell v. State, Dept. of Motor Vehicles, 247 Neb. 885, 531 N.W.2d 212 (1995).

n8 Wibbens v. State, Dept. of Highway Safety and Motor Vehicles, Bureau of Driver Improvement, 956 So. 2d 503 (Fla. Dist. Ct. App. 1st Dist. 2007).

**SUPPLEMENT:****Cases**

Driver's license holder who pled, in petition for judicial review of agency ruling to suspend his driver's license, that there was "insufficient reasonable suspicion or probable cause" to arrest him for driving under the influence, and that protocol for breath test had been violated," failed to strictly comply with statutory pleading requirements requiring allegation of facts supporting judicial review; license holder pled only legal conclusions and omitted factual information describing the specific circumstances of his arrest, such as the way in which arresting officer violated breath test procedure. Kuentler v. Kansas Dept. of Revenue, 40 Kan. App. 2d 1036, 197 P.3d 874 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

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§ 155 Trial de novo

In a number of cases, statutes providing for judicial review of a license suspension or revocation have been construed as requiring a trial de novo,<sup>n1</sup> such statutes in many cases expressly stating that it is the duty of the reviewing court to take testimony, examine the facts of the case, and determine whether the motorist is entitled to a license or is subject to suspension, cancellation, or revocation.<sup>n2</sup> A statute providing for de novo review of an administrative revocation does not violate due process.<sup>n3</sup>

Observation: Remand of a trial court's decision, in a trial de novo, to reinstate a driver's driving privileges, which privileges were revoked following an arrest for driving while intoxicated and leaving the scene of an accident, was required, due to the trial court's failure to preserve a record of the proceeding.<sup>n4</sup>

Some statutes expressly provide that the court may hear new or additional evidence.<sup>n5</sup>

Caution: A motorist who chooses a summary administrative review of his or her license suspension, and thus waives his or her right to an evidentiary hearing below, is not entitled to a de novo trial of the facts on appeal from an administrative order upholding a suspension for driving under influence of alcohol.<sup>n6</sup>

**FOOTNOTES:**

n1 *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976); *Martin v. Kansas Dept. of Revenue*, 2006 WL 4671357 (Kan. Ct. App. 2006); *Derrick v. State ex rel. Dept. of Public Safety*, 2007 OK CIV APP 56, 2007 WL 1652554 (Div. 3 2007), cert. denied, (May 21, 2007); *Liebler v. Com., Dept. of Transp. Bureau of Traffic Safety*, 83 Pa. Commw. 270, 476 A.2d 1389 (1984); *Matter of Petree*, 520 N.W.2d 610 (S.D. 1994); *Ledgering v. State*, 63 Wash. 2d 94, 385 P.2d 522 (1963).

In an appeal of a denial of a motor vehicle operator's license, the district court hears the appeal as in equity without a jury and determines anew all questions raised before the revoking agency. *Wilczewski v. Neth*, 273 Neb. 324, 729 N.W.2d 678 (2007).

n2 *Carnegie v. Department of Public Safety*, 60 So. 2d 728 (Fla. 1952); *Stehle v. State Dept. of Motor Vehicles*, 229 Or. 543, 368 P.2d 386, 97 A.L.R.2d 1359 (1962).

n3 *Jarvis v. Director of Revenue*, 804 S.W.2d 22 (Mo. 1991).

n4 *Acevedo v. Director of Revenue*, 220 S.W.3d 476 (Mo. Ct. App. E.D. 2007).

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n5 Wollenburg v. Conrad, 246 Neb. 666, 522 N.W.2d 408 (1994); Atkinson v. Parsekian, 37 N.J. 143, 179 A.2d 732, 96 A.L.R.2d 602 (1962); Lamb v. Rubin, 198 Va. 628, 96 S.E.2d 80 (1957).

**Related References:**

As to trial de novo in judicial review of administrative agency decisions, generally, see Am. Jur. 2d, Administrative Law § 512.

n6 Bucciarelli v. Arizona Dept. of Transp., 166 Ariz. 67, 800 P.2d 54 (Ct. App. Div. 2 1990).

**SUPPLEMENT:****Cases**

A trial court judgment, after trial de novo on judicial review of the Director of Revenue's administrative suspension or revocation of a motorist's license to drive, which suspension or revocation was based on the motorist's arrest on probable cause to believe that the motorist was driving with a blood alcohol content of .08 percent or more, is reviewed as any court-tried civil case. V.A.M.S. §§ 302.505(1), 302.535(1). White v. Director of Revenue, 321 S.W.3d 298 (Mo. 2010).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

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## § 156 Restricted review

The scope of judicial review of the action of a motor vehicle administrator is very restricted.<sup>n1</sup> The trial court's decision is limited to a determination of whether: (1) the individual was arrested, (2) the arresting officer had reasonable grounds to believe the individual was driving while intoxicated, and (3) the individual refused to submit to the test.<sup>n2</sup> Courts in some jurisdictions have expressly stated that a trial de novo is not allowed,<sup>n3</sup> and in other jurisdictions, the proper method of review is by writ of certiorari.<sup>n4</sup>

In some jurisdictions, the reviewing court is limited to a determination of whether there is substantial evidence in the record to support the administrative order.<sup>n5</sup> The reviewing court may not substitute its judgment for the agency's in determining the credibility of the witnesses in such a hearing.<sup>n6</sup>

**FOOTNOTES:**

n1 Winsor v. Commissioner of Motor Vehicles, 101 Conn. App. 674, 922 A.2d 330 (2007).

n2 Hagler v. Director of Revenue, 223 S.W.3d 907 (Mo. Ct. App. W.D. 2007).

n3 Hough v. McCarthy, 54 Cal. 2d 273, 5 Cal. Rptr. 668, 353 P.2d 276 (1960); Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So. 2d 446 (1958).

n4 Higgins v. Department of Public Safety, 138 So. 2d 530 (Fla. Dist. Ct. App. 3d Dist. 1962); City of Rochester v. Falk, 170 Misc. 238, 9 N.Y.S.2d 343 (City Ct. 1939).

n5 Johnson v. Department of Motor Vehicles, 177 Cal. App. 2d 440, 2 Cal. Rptr. 235 (4th Dist. 1960); Winsor v. Commissioner of Motor Vehicles, 101 Conn. App. 674, 922 A.2d 330 (2007); Shahan v. Landing, 643 A.2d 1357 (Del. 1994); Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960); Pincus v. Hults, 11 N.Y.2d 709, 225 N.Y.S.2d 963, 181 N.E.2d 218 (1962).

n6 Motor Vehicle Admin. v. Karwacki, 340 Md. 271, 666 A.2d 511 (1995).

On review of an administrative order revoking a police captain's license to drive based upon his alleged refusal to consent to a blood-alcohol test, the court could not disturb, as not supported by substantial evidence, a determination by an administrative law judge that the police captain refused to consent to a chemical test after being clearly warned of the consequences, where the determination was supported by the tes-

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timony of arresting officer; the administrative law judge was free to accept the testimony of the arresting officer and to reject the testimony of other officers. *Iovino v. Martinez*, 39 A.D.3d 311, 835 N.Y.S.2d 36 (1st Dep't 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

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7A Am Jur 2d Automobiles and Highway Traffic § 157

§ 157 Review by appellate court

On review of a district court's decision on a driver's license suspension, it has been held that an appellate court reviews the record of the administrative agency, rather than the district court's ruling,<sup>n1</sup> and that the appellate court reviews the administrative hearing records for abuse of discretion, error of law, or findings not supported by substantial evidence.<sup>n2</sup> However, it has also been held that an appellate court reviews the trial court's findings of fact in such an appeal to determine whether they are clearly erroneous, and reviews the trial court's conclusions of law to determine whether they are correct.<sup>n3</sup>

A trial court's decision as to the admission of evidence in a driver's license suspension case is reviewed for abuse of discretion.<sup>n4</sup> An appellate court will affirm the trial court's judgment in a driver's license suspension case unless there is no substantial evidence to support it, unless the decision is contrary to the weight of the evidence, or unless the trial court erroneously declares or applies the law.<sup>n5</sup> If the trial court erroneously declared or applied the law in a revocation of a driver's license case, its judgment will be afforded no deference on appeal.<sup>n6</sup> The appellate court will not disturb a trial court's decision to deny a petition to rescind a statutory summary driver's license suspension unless that decision was against the manifest weight of the evidence.<sup>n7</sup>

**FOOTNOTES:**

n1 *Miller v. White*, 372 Ill. App. 3d 661, 311 Ill. Dec. 311, 868 N.E.2d 311 (4th Dist. 2007); *Payson v. Secretary of State*, 634 A.2d 1278 (Me. 1993); *Chadwick v. Moore*, 551 N.W.2d 783 (N.D. 1996).

n2 *Payson v. Secretary of State*, 634 A.2d 1278 (Me. 1993).

n3 *Rupp v. State, Dept. of Justice, Motor Vehicle Div.*, 279 Mont. 247, 927 P.2d 1 (1996).

n4 *Vanderpool v. Director of Revenue*, 226 S.W.3d 108 (Mo. 2007).

n5 *Vanderpool v. Director of Revenue*, 226 S.W.3d 108 (Mo. 2007).

n6 *Schroeder v. Director of Revenue*, 216 S.W.3d 711 (Mo. Ct. App. E.D. 2007).

n7 People v. Shafer, 372 Ill. App. 3d 1044, 311 Ill. Dec. 359, 868 N.E.2d 359 (4th Dist. 2007).

## **SUPPLEMENT:**

### **Cases**

Appellate Court reviews a ruling on a petition to rescind the summary suspension of a driver's license using the same standard of review applicable to suppression rulings. *People v. Dittmar*, 2011 IL App (2d) 91112, 954 N.E.2d 263 (Ill. App. Ct. 2d Dist. 2011).

Defendant's contention that his driver's license could not be taken away without due process was not properly before appellate court, on appeal of conviction for driving while license revoked, because it was outside the scope of the judgment being appealed; appeal was taken only from the final judgment of conviction, not the decision of Department of Motor Vehicles (DMV) to revoke defendant's license. U.S.C.A. Const.Amend. 14; Rules App.Proc., Rule 3(a). *State v. Leyshon*, 710 S.E.2d 282 (N.C. Ct. App. 2011), appeal dismissed, 2011 WL 3849746 (N.C. 2011).

Whether probable cause to arrest exists in a given driver's license revocation case is a question of law that the supreme court determines independently of the circuit court and court of appeals but benefiting from their analyses. *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

Interpretation and application of the state implied consent law to undisputed facts is a question of law that the supreme court determines independently of the circuit court and court of appeals but benefiting from their analyses. *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

When it is claimed that a law enforcement officer failed to provide a driver with the information required under the state implied consent statute, the circuit court determines whether the officer failed to furnish the statutorily required information, and if it so determines, the circuit court orders that no action be taken on the operating privilege; abrogating *County of Ozaukee v. Quelle*, 198 Wis.2d 269, 542 N.W.2d 196.W.S.A. 343.305(4). *In re Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008).

### **REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

U.S. Const. Art. I, § 10, cl. 3

8 U.S.C.A. §§ 1101 to 1107

18 U.S.C.A. § 3118

40 U.S.C.A. § 606

5 C.F.R. §§ 930.101 to 931.115

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§ 158 Costs and attorney's fees

A statute that allows the prevailing party to recover reasonable fees and expenses under some circumstances in certain types of litigation with the state has been interpreted as not applying to driver's license proceedings.<sup>n1</sup> Also, motorists who challenge license suspensions are not entitled to an imposition of costs against the motor vehicle department where the court has not promulgated rules governing such awards.<sup>n2</sup>

Observation: The imposition of a fee for license reinstatement following administrative license suspension upon conviction for driving under the influence of alcohol (DUI) does not violate the Double Jeopardy Clause.<sup>n3</sup>

**FOOTNOTES:**

n1 Eubanks v. Director of Revenue, State of Mo., 895 S.W.2d 274 (Mo. Ct. App. S.D. 1995).

n2 Com., Dept. of Transp., Bureau of Driver Licensing v. Hruska, 156 Pa. Commw. 139, 625 A.2d 1339 (1993).

n3 State v. Lewis, 85 Ohio St. 3d 632, 1999-Ohio-327, 710 N.E.2d 699 (1999).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]129 to 145

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8 U.S.C.A. §§ 1101 to 1107

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#### § 159 Generally

Once suspended, a driver's license remains suspended until it is reinstated;<sup>n1</sup> restoration of driving privileges is not automatic.<sup>n2</sup> An individual whose license has been suspended is required to complete the proper administrative steps to restore the license after the suspension has ended, before being entitled to drive without restriction.<sup>n3</sup>

In cases of motorists who refuse to submit to chemical testing to detect intoxication, the statutory scheme for administrative license revocation does not operate to reinstate the motorist's administratively revoked driver's license if he or she is acquitted of the criminal refusal charge.<sup>n4</sup>

The action of administrative authorities in refusing to reinstate a revoked driver's license usually is subject to judicial review, although such a determination will not be set aside unless it is shown that it was arbitrary or capricious.<sup>n5</sup>

Some statutes require that a driver whose license has been suspended for driving under the influence, in order to obtain reinstatement, prove that he or she has been through a treatment program or is participating in an ongoing support program to deter alcohol abuse.<sup>n6</sup>

#### FOOTNOTES:

n1 State v. Bettenhausen, 460 N.W.2d 394, 2 A.L.R.5th 1127 (N.D. 1990).

n2 Jones v. White, 352 Ill. App. 3d 316, 287 Ill. Dec. 895, 816 N.E.2d 1106 (4th Dist. 2004).

n3 Rossi v. Com., 580 Pa. 238, 860 A.2d 64 (2004).

n4 Betterman v. State, Dept. of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

n5 Bernola v. Fletcher, 280 A.D. 870, 114 N.Y.S.2d 152 (2d Dep't 1952).

n6 Nebergall v. Ryan, 245 Ill. App. 3d 1063, 185 Ill. Dec. 875, 615 N.E.2d 745 (4th Dist. 1993); State v. Bettenhausen, 460 N.W.2d 394, 2 A.L.R.5th 1127 (N.D. 1990).

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7A Am Jur 2d Automobiles and Highway Traffic § 160

§ 160 Grounds for issuance of probationary, hardship, or restricted license

Some statutes limit the court's discretion to grant drivers probationary, hardship, or restricted licenses.<sup>n1</sup> Such limits on the court's discretion do not violate the separation of powers doctrine,<sup>n2</sup> equal protection,<sup>n3</sup> or due process.<sup>n4</sup>

In some states in which a restricted license can be issued to one convicted of driving while under the influence of alcohol,<sup>n5</sup> the installation of an interlock system on all of the driver's vehicles by the licensee is required before issuance of the restricted license.<sup>n6</sup>

#### FOOTNOTES:

n1 Bowen v. Mullin, 182 Ind. App. 325, 395 N.E.2d 314 (1979); Butler v. Groce, 880 S.W.2d 547 (Ky. 1994).

n2 Pringle v. Wolfe, 88 N.Y.2d 426, 646 N.Y.S.2d 82, 668 N.E.2d 1376 (1996).

n3 State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980).

n4 Moreno v. State, Dept. of Revenue and Taxation, 775 P.2d 497 (Wyo. 1989).

n5 Martz v. Com., Dept. of Transp., Bureau of Driver Licensing, 924 A.2d 745 (Pa. Commw. Ct. 2007).

n6 Martz v. Com., Dept. of Transp., Bureau of Driver Licensing, 924 A.2d 745 (Pa. Commw. Ct. 2007).

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 25 (Petition or application -- For judicial driving permit to relieve undue hardship)

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 28 (Complaint, petition, or declaration -- For occupational license to meet essential need while license suspended)

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7A Am Jur 2d Automobiles and Highway Traffic § 161

## § 161 Validity

The state's power to regulate the sale of motor vehicles includes the power to license those in the business of selling motor vehicles and to impose a fee, tax, or bond requirement on such businesses.<sup>n1</sup> In establishing the amount of license fees or taxes, dealers and manufacturers may properly be placed in separate classes without creating unlawful discrimination.<sup>n2</sup> However, license fees or taxes imposed upon motor vehicle dealers may not be measured according to whether the dealer was engaged in the business during the preceding calendar year.<sup>n3</sup> Discrimination against nonresident manufacturers or other persons selling automobiles within the state by imposing a higher license fee or other burdens invalidates a licensing statute or ordinance.<sup>n4</sup> Regulatory measures affecting the sale of motor vehicles may properly differentiate between dealers in new vehicles and dealers in used vehicles.<sup>n5</sup>

There is a difference of opinion as to the validity of statutes requiring as a prerequisite to the granting of a license to sell motor vehicles that the business be carried on in a permanent building, some courts holding such statutes valid,<sup>n6</sup> and others holding them invalid.<sup>n7</sup>

An automobile manufacturer or dealer does not have a liberty interest protected by the Due Process Clause of the 14th Amendment to locate a dealership wherever it pleases.<sup>n8</sup>

**FOOTNOTES:**

n1 Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939).

n2 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914).

n3 City of Cape Girardeau v. Fred A. Groves Motor Co., 346 Mo. 762, 142 S.W.2d 1040 (1940).

n4 Bethlehem Motors Corporation v. Flynt, 256 U.S. 421, 41 S. Ct. 571, 65 L. Ed. 1029 (1921).

n5 In re Hinesley, 82 S.D. 552, 150 N.W.2d 834 (1967).

n6 A B C Auto Sales v. Marcus, 255 Wis. 325, 38 N.W.2d 708 (1949).

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n7 Killingsworth v. West Way Motors, Inc., 87 Ariz. 74, 347 P.2d 1098 (1959); New Jersey Used Car Trade Ass'n v. Magee, 1 N.J. Super. 371, 61 A.2d 751 (Ch. Div. 1948).

n8 New Motor Vehicle Bd. of California v. Orrin W. Fox Co., 434 U.S. 1345, 98 S. Ct. 359, 54 L. Ed. 2d 439 (1977).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 35

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7A Am Jur 2d Automobiles and Highway Traffic § 162

§ 162 Who is subject to licensing as seller, dealer, or salesperson

The president of a car dealership is a "dealer," and therefore individually liable for a violation of a statute regulating dealers, where a "dealer" is defined as every person engaged in the business of buying, selling or exchanging vehicles, and who has an established place of business for that purpose in the state.<sup>n1</sup> A bank that sells automobiles which have been transferred to it as collateral security for a debt, for the purpose of satisfying the debt, is within the operation of a statute imposing a license tax on corporations engaged in selling automobiles, at least where the debtor has not paid the tax.<sup>n2</sup> Referral agents employed by an automobile referral sales business, which arranges for its customers to purchase new motor vehicles from various dealers at discounted prices, receiving as compensation a fixed fee from the dealer on each sale, are "vehicle salesmen" under a statute requiring vehicle salesmen to be licensed.<sup>n3</sup>

**FOOTNOTES:**

n1 People v. Joseph, 94 Ill. App. 3d 1014, 50 Ill. Dec. 400, 419 N.E.2d 508 (1st Dist. 1981).

n2 American Exchange Nat. Bank v. Lacy, 188 N.C. 25, 123 S.E. 475, 36 A.L.R. 680 (1924).

n3 Automobile Trade Ass'n of Maryland v. Harold Folk Enterprises, Inc., 301 Md. 642, 484 A.2d 612 (1984).

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7A Am Jur 2d Automobiles and Highway Traffic § 163

§ 163 Application for, and issuance of, license; requirement of bond

The details of the procedure to be followed in connection with applications for, and the issuance of, motor vehicle dealers' licenses generally are set forth by statute. In some states, requirements as to the licensing of motor vehicle dealers are accompanied by requirements that they furnish a bond providing for indemnity for any loss suffered by reason of fraud or fraudulent representations made, or failure of title; and the validity of such requirements has been upheld or recognized.<sup>n1</sup> A financier of a motor vehicle dealer's business is within the class of persons intended to be protected by such a statute.<sup>n2</sup>

In some jurisdictions, an application for a new dealership cannot be granted unless notice is given to other dealers of the same type of vehicle in the same area,<sup>n3</sup> and an applicant for a new license must demonstrate that current dealers are not providing adequate representation within the proposed dealership's target area.<sup>n4</sup>

A statute which directs the secretary of state to examine and grant or deny applications for motor vehicle dealers' licenses within a reasonable time is not invalid as an improper delegation of legislative authority to an executive officer.<sup>n5</sup>

**FOOTNOTES:**

n1 General Motors Corp. v. Blevins, 144 F. Supp. 381 (D. Colo. 1956) (applying Colorado law); Massachusetts Bonding & Ins. Co. v. Central Finance Corp., 124 Colo. 379, 237 P.2d 1079 (1951); Butler v. Peters, 52 N.C. App. 357, 278 S.E.2d 283 (1981).

n2 Lawrence v. Ward, 5 Utah 2d 257, 300 P.2d 619 (1956).

n3 Milano Imported Motors, Inc. v. Alfa Romeo, Inc., 373 So. 2d 722 (Fla. Dist. Ct. App. 1st Dist. 1979).

n4 Dave Zinn Toyota, Inc. v. Department of Highway Safety and Motor Vehicles, 432 So. 2d 1320 (Fla. Dist. Ct. App. 3d Dist. 1983).

n5 People ex rel. Carpentier v. Goers, 20 Ill. 2d 272, 170 N.E.2d 159 (1960).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 35  
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§ 164 Denial, suspension, or revocation of license

Statutory grounds for the denial of an application for a motor vehicle dealer's or manufacturer's license, or for the suspension or revocation of such a license already existing include instances where the dealer has --

- been guilty of a clear and consistent course of tax evasion<sup>n1</sup>
- been convicted of a crime arising out of fraud or misrepresentation in the sale or financing of a motor vehicle<sup>n2</sup>
- failed to comply with a statutory requirement that if new motor vehicles are to be sold, the application has to indicate the make of vehicles to be handled<sup>n3</sup>
- habitually and willfully made excessive trade-in allowances, or discriminated in prices as between different purchasers, for the purpose of lessening competition or destroying a competitor's business.<sup>n4</sup>

In connection with the denial of applications for motor vehicle dealers' or manufacturer's licenses, or the suspension or revocation of such licenses, statutory provision generally is made for a hearing.<sup>n5</sup> Where such a hearing is held, it must comply with the fundamental principles of due process in order to be valid.<sup>n6</sup> However, the fact that the statute does not provide for a hearing in such connection does not invalidate it, insofar as judicial review is provided.<sup>n7</sup>

**FOOTNOTES:**

n1 Powers v. Dignan, 312 Mich. 315, 20 N.W.2d 203 (1945).

n2 Metropolitan Motors v. State of N. J., Division of Motor Vehicles, 39 N.J. Super. 208, 120 A.2d 776 (App. Div. 1956).

n3 Ron Best Motors, Inc. v. Ohio Motor Vehicle Dealers' and Salesmen's Licensing Bd., 113 Ohio App. 195, 17 Ohio Op. 2d 149, 90 Ohio L. Abs. 554, 177 N.E.2d 625 (10th Dist. Franklin County 1960).

n4 Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939).

n5 General Motors Corp. v. Blevins, 144 F. Supp. 381 (D. Colo. 1956); Ford Motor Co. v. Pace, 206 Tenn. 559, 335 S.W.2d 360 (1960).

n6 State ex rel. Ellis v. Kelly, 145 W. Va. 70, 112 S.E.2d 641 (1960).

7A Am Jur 2d Automobiles and Highway Traffic § 164

n7 Metropolitan Motors v. State of N. J., Division of Motor Vehicles, 39 N.J. Super. 208, 120 A.2d 776 (App. Div. 1956).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 35  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Certificates of Title  
West's A.L.R. Digest, Automobiles [westkey]19, 35  
Am. Jur. Legal Forms 2d § 33:5  
West's Key Number Digest, Automobiles [westkey]19  
Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay  
Child Support, 30 A.L.R.6th 483

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1. Dealers and Manufacturers

7A Am Jur 2d Automobiles and Highway Traffic § 165

§ 165 Certificates of registration; license plates

Under statutes governing certificates of registration and license plates for motor vehicles in connection with the business of selling motor vehicles, it is usually provided that a motor vehicle dealer may secure a certificate of registration and license plates for all such vehicles,<sup>n1</sup> without the separate registration of each vehicle.<sup>n2</sup> Statutes and regulations sometimes also provide that a company acquiring motor vehicles before obtaining a permit to operate as a vehicle leasing company must apply for a title and/or a license for each vehicle and pay applicable registration fees and sales taxes, but that, after obtaining a permit to operate as a vehicle leasing company, the company does not have to pay registration fees or sales tax.<sup>n3</sup>

If, as an incident to demonstration of the vehicle, the use to which it is put is in furtherance of the prospective purchaser's business, the use of the dealer's plates on the vehicle is legal;<sup>n4</sup> but when the vehicle is not being used for demonstration, but for ordinary commercial purposes, then dealers' license plates may not be used.<sup>n5</sup>

Some states allow either the buyer or dealer to apply for registration and a certificate of title following the sale of a vehicle, in order to promote the efficient and smooth transfer of titles of motor vehicles bought and sold throughout the state.<sup>n6</sup>

**FOOTNOTES:**

n1 *People v. Christensen & Weiss*, 250 A.D. 470, 294 N.Y.S. 591 (2d Dep't 1937); *Lennon v. L.A.W. Acceptance Corp. of R.I.*, 48 R.I. 363, 138 A. 215 (1927).

n2 *Hill v. Harrill*, 203 Tenn. 123, 310 S.W.2d 169 (1957).

n3 *National Fleetway, Inc. v. Director of Revenue*, 614 S.W.2d 258 (Mo. 1981).

n4 *People v. Christensen & Weiss*, 250 A.D. 470, 294 N.Y.S. 591 (2d Dep't 1937).

n5 *State v. Tucker*, 61 N.J. Super. 161, 160 A.2d 295 (App. Div. 1960); *People v. Christensen & Weiss*, 250 A.D. 470, 294 N.Y.S. 591 (2d Dep't 1937).

The daughter of an employee of a dealer, who drove a car with dealer plates for private, noncommercial use, violated the statute regulating use of dealer plates where the statute allowed the use of such plates by the dealer only for vehicles on display, for sale, or subject to certain commercial uses. *City of Maumee v. Prebeg*, 41 Ohio Misc. 52, 70 Ohio Op. 2d 111, 322 N.E.2d 380 (Mun. Ct. 1974).

n6 Kelly v. McFarland, 243 F. Supp. 2d 715 (E.D. Ky. 2001) (applying Kentucky law).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 35  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Certificates of Title  
West's A.L.R. Digest, Automobiles [westkey]19, 35  
Am. Jur. Legal Forms 2d § 33:5  
West's Key Number Digest, Automobiles [westkey]19, 35  
Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 A.L.R.4th 624

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7A Am Jur 2d Automobiles and Highway Traffic § 166

## § 166 Generally

In a number of states, statutes have been enacted which require a license or impose a tax with regard to the transportation of motor vehicles for the purpose of sale. In seeking to impose a tax upon motor vehicles transported upon the highways for gain, state legislatures have the constitutional power to place all such vehicles in one class and to place all vehicles not operated for gain in another class, and to impose a greater tax upon the former than upon the latter.<sup>n1</sup> It is not necessary for the legislature, to achieve such a classification, to find that there is a difference in wear, tear, and upkeep of the highways, or in the hazards involved; these are proper, but not requisite, factors for the legislature to take into consideration and to appraise, if it sees fit to subdivide the class or create proper exceptions to it.<sup>n2</sup>

A state statute exacting a reasonable permit fee for the privilege of transporting motor vehicles over the highways of the state for the purpose of sale, which applies alike to all motor vehicles transported for sale, whether moving intrastate or interstate, does not impose an unconstitutional burden on interstate commerce.<sup>n3</sup> Interstate commerce is, however, unconstitutionally burdened by a state's imposition of a permit fee for the movement, from without the state, over its highways, of motor vehicles for the purpose of selling or offering them for sale where the amount of the fee is shown greatly to exceed the cost of administering the act and the additional cost of policing traffic necessitated by such movement.<sup>n4</sup>

**FOOTNOTES:**

n1 Lord v. Henderson, 105 Cal. App. 2d 426, 234 P.2d 197 (2d Dist. 1951).

n2 Lord v. Henderson, 105 Cal. App. 2d 426, 234 P.2d 197 (2d Dist. 1951).

n3 Morf v. Bingaman, 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936).

n4 Ingels v. Morf, 300 U.S. 290, 57 S. Ct. 439, 81 L. Ed. 653 (1937).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]19, 35  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Certificates of Title  
West's A.L.R. Digest, Automobiles [westkey]19, 35  
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7A Am Jur 2d Automobiles and Highway Traffic § 167

## § 167 Generally

Statutes known as financial responsibility laws are intended to discourage careless driving or to mitigate its consequences<sup>n1</sup> by making proof of financial responsibility a condition of the granting of a driver's license or certificate of registration,<sup>n2</sup> or by providing for the suspension or revocation of a driver's license or certificate of registration for failure to satisfy a final judgment or furnish proof of responsibility after an accident<sup>n3</sup> or a violation of a motor vehicle statute.<sup>n4</sup> Although some of these statutes have features which are common to those provided in so-called compulsory insurance acts, they are different; a financial responsibility act, for example, does not require that every motorist carry insurance.<sup>n5</sup>

**FOOTNOTES:**

n1 Kesler v. Department of Public Safety, Financial Responsibility Division, State of Utah, 369 U.S. 153, 82 S. Ct. 807, 7 L. Ed. 2d 641 (1962) (overruled in part on other grounds by, Swift & Co. v. Wickham, 382 U.S. 111, 86 S. Ct. 258, 15 L. Ed. 2d 194 (1965)) and (overruled in part on other grounds by, Perez v. Campbell, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971)); Woods v. Department of Motor Vehicles, 211 Cal. App. 3d 1263, 259 Cal. Rptr. 885 (4th Dist. 1989); Russell v. State, Dept. of Motor Vehicles, 247 Neb. 885, 531 N.W.2d 212 (1995).

n2 § 170.

n3 §§ 171, 172.

n4 § 172.

n5 Best v. Auto-Owners Ins. Co., 540 So. 2d 1381 (Ala. 1989); Allstate Ins. Co. v. Starke, 797 P.2d 14 (Colo. 1990); Bob-Boyd Lincoln Mercury v. Hyatt, 32 Ohio St. 3d 300, 513 N.E.2d 331 (1987); Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055 (R.I. 1991).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
49 U.S.C.A. §§ 13102, 13906, 31138, 31139  
49 C.F.R. 387.1, 387.5  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Driver's Licenses  
A.L.R. Index, Traffic Offenses and Violations  
West's A.L.R. Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)



7A Am Jur 2d Automobiles and Highway Traffic § 167

Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 54

West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

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7A Am Jur 2d Automobiles and Highway Traffic § 168

§ 168 Validity; constitutional issues

Financial responsibility acts or provisions of such acts constitute a proper exercise of the police power of the state,<sup>n1</sup> and courts generally have upheld the validity of various state motor vehicle financial responsibility acts against objections of all varieties. Such acts have been held not to violate --

- constitutional equal protection clauses<sup>n2</sup>
- due process clauses<sup>n3</sup>
- provisions against self-incrimination<sup>n4</sup>
- prohibitions of imprisonment for debt<sup>n5</sup>
- prohibitions against ex post facto laws<sup>n6</sup>
- provisions protecting the privileges and immunities of citizens<sup>n7</sup>
- provisions relating to the titles<sup>n8</sup> and definiteness and certainty of statutes.<sup>n9</sup>

Such acts have also been sustained as against the contention that they infringe on the power of municipalities.<sup>n10</sup>

#### FOOTNOTES:

n1 *Reitz v. Mealey*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21 (1941) (overruled in part on other grounds by, *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971)); *Farmer v. Killingsworth*, 102 Ariz. 44, 424 P.2d 172 (1967); *Turmon v. Department of Public Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967); *Boykin v. Ott*, 10 Or. App. 210, 498 P.2d 815 (1972); *VanMarter v. Royal Indem. Co.*, 556 A.2d 41 (R.I. 1989).

n2 *Hadden v. Aitken*, 156 Neb. 215, 55 N.W.2d 620, 35 A.L.R.2d 1003 (1952) (overruled in part on other grounds by, *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972)); *Berberian v. Lussier*, 87 R.I. 226, 139 A.2d 869 (1958).

n3 *Reitz v. Mealey*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21 (1941) (overruled in part on other grounds by, *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971)) (applying New York law); *Larson v. Warren*, 132 So. 2d 177 (Fla. 1961).

n4 *Surtman v. Secretary of State*, 309 Mich. 270, 15 N.W.2d 471 (1944); *Riggle v. State*, 778 S.W.2d 127 (Tex. App. Texarkana 1989).

## 7A Am Jur 2d Automobiles and Highway Traffic § 168

n5 Sullins v. Butler, 175 Tenn. 468, 135 S.W.2d 930 (1940).

n6 Jewell v. Carpentier, 22 Ill. 2d 445, 176 N.E.2d 767 (1961).

n7 Stevens v. State, 319 Ark. 640, 893 S.W.2d 773 (1995).

n8 Jewell v. Carpentier, 22 Ill. 2d 445, 176 N.E.2d 767 (1961).

n9 State ex rel. Sullivan v. Price, 49 Ariz. 19, 63 P.2d 653, 108 A.L.R. 1156 (1937); State, Through and for Use and Benefit of Wells v. Conner, 158 So. 2d 321 (La. Ct. App. 1st Cir. 1963).

n10 Surtman v. Secretary of State, 309 Mich. 270, 15 N.W.2d 471 (1944).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
49 U.S.C.A. §§ 13102, 13906, 31138, 31139  
49 C.F.R. 387.1, 387.5  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Driver's Licenses  
A.L.R. Index, Traffic Offenses and Violations  
West's A.L.R. Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52  
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7A Am Jur 2d Automobiles and Highway Traffic § 169

§ 169 What constitutes operation of a motor vehicle on public roads

Financial responsibility acts generally apply to only to the operation of vehicles on public roads. Activities that have been held to constitute such operation include the incidental use of golf carts to cross public roads (where use of the carts is required to play the course and use of public roads by the carts is unavoidable due to the course's design),<sup>n1</sup> a transit authority's use of vehicles,<sup>n2</sup> and the use of a pickup truck to tow a farm trailer during hay-baling operations.<sup>n3</sup>

It has been held that a motorcycle that is designed primarily for off-road use is not a "motor vehicle" under the financial responsibility act of at least one state, and the owner of such a vehicle is not required to maintain liability insurance on it for such use.<sup>n4</sup> However, it has also been held that a motorcycle fits within the definition of a "motor vehicle" as used in a state's financial responsibility act.<sup>n5</sup>

A motor vehicle that remains operable cannot be voluntarily placed "out of service" by the owner by simply not driving it, so that owner would be exempt from a financial responsibility requirement for vehicle registration and driving privileges.<sup>n6</sup>

**FOOTNOTES:**

n1 Del E. Webb Cactus Development, Inc. v. Jessup, 176 Ariz. 541, 863 P.2d 260 (Ct. App. Div. 2 1993).

n2 Dotts v. Taressa J.A., 182 W. Va. 586, 390 S.E.2d 568 (1990).

n3 Melchert v. Melchert, 519 N.W.2d 223 (Minn. Ct. App. 1994).

n4 Carguillo v. State Farm Mut. Auto. Ins. Co., 529 So. 2d 276 (Fla. 1988).

n5 State v. Damman, 244 Kan. 487, 769 P.2d 662 (1989); Myers v. Cline, 190 W. Va. 103, 437 S.E.2d 267 (1993).

As to the applicability of motor vehicle statutes to motorcycles, generally, see § 89.

n6 State ex rel. Wright v. Ohio Bur. of Motor Vehicles, 87 Ohio St. 3d 184, 1999-Ohio-17, 718 N.E.2d 908 (1999).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

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49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

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West's A.L.R. Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52

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7A Am Jur 2d Automobiles and Highway Traffic § 170

§ 170 Proof of financial responsibility as condition of granting license or registration

It is within the power of the legislature to enact a statute requiring proof of financial responsibility as a condition of the obtaining of a license to operate a motor vehicle on the highways of the state.<sup>n1</sup>

The proof of financial responsibility requirement for registration and driving privileges is not restricted to persons who actually operate a vehicle, but also applies to persons to whom a certificate of registration or driver's license has been issued.<sup>n2</sup>

**FOOTNOTES:**

n1 Escobedo v. State Dept. of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950) (overruled on other grounds by, Rios v. Cozens, 7 Cal. 3d 792, 103 Cal. Rptr. 299, 499 P.2d 979 (1972)).

n2 State ex rel. Wright v. Ohio Bur. of Motor Vehicles, 87 Ohio St. 3d 184, 1999-Ohio-17, 718 N.E.2d 908 (1999).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Driver's Licenses

A.L.R. Index, Traffic Offenses and Violations

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Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52

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Am. Jur. Legal Forms 2d § 33:37 (Bond -- For payment of damages arising out of ownership and use of motor vehicle -- By principal and surety company)

Am. Jur. Legal Forms 2d § 33:39 (Certificate -- By insurer -- Liability policy in effect)

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7A Am Jur 2d Automobiles and Highway Traffic § 171

§ 171 Generally; after accident, for failure to satisfy judgment

In some states, statutes have been enacted which provide for the suspension or revocation of the driver's license and certificate of registration of any person against whom a final judgment based upon his or her involvement in a motor vehicle accident is rendered, unless the judgment is satisfied or discharged. Such a statute has been held to constitute a legitimate exercise of the police power to ensure competence and care in the use of the highways by drivers.<sup>n1</sup>

The validity of such statutes has been upheld against attacks based on due process provisions<sup>n2</sup> and prohibitions against ex post facto laws,<sup>n3</sup> as well as against contentions that such statutes result in imprisonment for debt,<sup>n4</sup> that they violate the Equal Protection Clause,<sup>n5</sup> and that they are indefinite or uncertain.<sup>n6</sup>

Caution: A provision in a state motor vehicle safety responsibility statute under which the fact that an automobile accident judgment against a motorist remains unsatisfied is a ground for suspending his or her license and registration, even if the motorist receives a discharge in bankruptcy following the rendering of such judgment, has both the effect and the purpose of frustrating federal law and is therefore invalid under the Supremacy Clause of the Constitution.<sup>n7</sup>

#### FOOTNOTES:

n1 *Reitz v. Mealey*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21 (1941) (overruled in part on other grounds by, *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971)).

n2 *Reitz v. Mealey*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21 (1941) (overruled in part on other grounds by, *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971)); *State ex rel. Sullivan v. Price*, 49 Ariz. 19, 63 P.2d 653, 108 A.L.R. 1156 (1937).

As to the necessity of notice and a hearing prerequisite to the suspension or revocation of a license or registration for violation of financial responsibility or security requirements, see § 173.

n3 *Jewell v. Carpentier*, 22 Ill. 2d 445, 176 N.E.2d 767 (1961).

n4 *Sullins v. Butler*, 175 Tenn. 468, 135 S.W.2d 930 (1940).

n5 *Shultz v. Heyison*, 439 F. Supp. 857 (M.D. Pa. 1975); *Keenan v. Hardison*, 245 Ga. 599, 266 S.E.2d 205 (1980).

n6 *State ex rel. Sullivan v. Price*, 49 Ariz. 19, 63 P.2d 653, 108 A.L.R. 1156 (1937).

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n7 Perez v. Campbell, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971); Weaver v. O'Grady, 350 F. Supp. 403, 33 Ohio Misc. 97, 62 Ohio Op. 2d 150 (S.D. Ohio 1972).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

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Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 54

West's Key Number Digest, Automobiles [westkey]144.1(4), 144.2(7)

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 A.L.R.5th 725

Am. Jur. Legal Forms 2d § 33:51 (Affidavit -- In support of application for reinstatement of suspended driver's license -- By owner or operator of uninsured motor vehicle involved in accident)

Am. Jur. Legal Forms 2d § 33:52 (Bond -- For payment of damages arising out of ownership and use of motor vehicle -- To effect reinstatement of suspended driver's license)



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b. Suspension or Revocation of License or Registration

7A Am Jur 2d Automobiles and Highway Traffic § 172

§ 172 Suspension or revocation of license after accident, unless security furnished

Statutes have been enacted in some states providing for the suspension or revocation of the driver's license and certificate of registration of any person involved in a motor vehicle accident which results in personal injury or property damage (usually of a specified amount), unless that person deposits or posts security in an amount sufficient to satisfy any judgment which may be obtained against him or her as a result of the accident.<sup>n1</sup> These so-called "motor vehicle safety responsibility laws" are remedial in nature, and should be liberally construed in order to accomplish the greatest public good.<sup>n2</sup> However, they do not apply to anyone unless his or her vehicle is involved in an accident.<sup>n3</sup> Such legislation is a proper exercise of the police power<sup>n4</sup> and is neither discriminatory nor a denial of the equal protection of the laws.<sup>n5</sup>

Because such legislation specifies the statutory remedy to be applied, it prevents courts from fashioning extrastatutory equitable remedies in such cases.<sup>n6</sup>

Some of the statutes providing for the posting of security after an accident contain the further provision that the license and registration certificate shall remain suspended or revoked until the operator or owner involved furnishes proof of financial responsibility for future accidents. The validity of such statutes has been sustained.<sup>n7</sup>

Such statutes have been held to apply to drivers of commercial vehicles, even where the driver does not own the vehicle involved in the accident.<sup>n8</sup>

Practice Tip: At a hearing to determine whether a driver is required to furnish proof of financial security under such a statute, it is not the function of the hearing officer to weigh the alleged negligence or comparative negligence of the parties involved, but to determine, based on the reports, whether a reasonable possibility of liability exists, supporting a suspension of a driver's license for failure to show proof of financial responsibility.<sup>n9</sup>

#### FOOTNOTES:

n1 Clayton v. Nebraska Dept. of Motor Vehicles, 247 Neb. 49, 524 N.W.2d 562 (1994); City of Toledo v. Bernoir, 18 Ohio St. 2d 94, 47 Ohio Op. 2d 241, 247 N.E.2d 740 (1969); Tavegia v. Bromley, 67 Wyo. 93, 214 P.2d 975 (1950).

n2 City of St. Louis v. Carpenter, 341 S.W.2d 786, 87 A.L.R.2d 1219 (Mo. 1961).

n3 State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189 (Miss. 1988).

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n4 Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951).

n5 Llamas v. Department of Transp., Division of Motor Vehicles, 320 F. Supp. 1041 (E.D. Wis. 1969).

n6 Clayton v. Nebraska Dept. of Motor Vehicles, 247 Neb. 49, 524 N.W.2d 562 (1994).

n7 Rosenblum v. Griffin, 89 N.H. 314, 197 A. 701, 115 A.L.R. 1367 (1938); Kopf v. State Through Dept. of Transp., 158 Wis. 2d 208, 461 N.W.2d 813 (Ct. App. 1990).

n8 Russell v. State, Dept. of Motor Vehicles, 247 Neb. 885, 531 N.W.2d 212 (1995).

n9 Wollenburg v. Conrad, 246 Neb. 666, 522 N.W.2d 408 (1994).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

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A.L.R. Index, Driver's Licenses

A.L.R. Index, Traffic Offenses and Violations

West's A.L.R. Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 54

West's Key Number Digest, Automobiles [westkey]144.1(4), 144.2(7)

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 A.L.R.5th 725

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1. In General  
b. Suspension or Revocation of License or Registration

7A Am Jur 2d Automobiles and Highway Traffic § 173

§ 173 Necessity of notice and hearing before suspension or revocation

Most courts have recognized statutory or constitutional rights to a hearing to determine whether there is a reasonable possibility of judgment being rendered against a motorist arising out of an accident prior to suspension or revocation of the motorist's operator's license for failure to comply with the provisions of a financial responsibility statute.<sup>n1</sup> Statutory notice and hearing procedures of specific financial responsibility statutory schemes have been found to fail to comply with the required due-process standards,<sup>n2</sup> while others have been upheld against due process challenges, generally holding either that the driver in question in fact had the opportunity for a sufficient hearing prior to the effective suspension of his or her license, or that the particular financial responsibility law under consideration, by not being fault-oriented, was sufficiently distinguishable from cases requiring certain federal constitutional due-process requirements.<sup>n3</sup>

**FOOTNOTES:**

n1 *Kilfoyle v. Heyison*, 417 F. Supp. 239 (W.D. Pa. 1976) (applying Pennsylvania law); *Beazley v. Armour*, 420 F. Supp. 503 (M.D. Tenn. 1976) (applying Tennessee law); *Thomas v. District of Columbia Bd. of Appeals and Review*, 355 A.2d 789 (D.C. 1976); *Randle v. Spradling*, 556 S.W.2d 10 (Mo. 1977).

n2 *Ortiz v. Depuy*, 444 F.2d 429 (3d Cir. 1971) (applying Pennsylvania law); *Pollion v. Lewis*, 332 F. Supp. 777 (N.D. Ill. 1971) (applying Illinois law); *Wright v. Malloy*, 373 F. Supp. 1011 (D. Vt. 1974), judgment aff'd, 419 U.S. 987, 95 S. Ct. 297, 42 L. Ed. 2d 261 (1974) (applying Vermont law); *State v. Pueschel*, 30 Conn. Supp. 556, 303 A.2d 117 (C.P. App. Div. 1973); *Young v. Williams*, 249 So. 2d 684 (Fla. 1971); *Pope v. Cokinos*, 232 Ga. 425, 207 S.E.2d 63 (1974) (no meaningful hearing on fault or liability prior to suspension or revocation); *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972); *Flory v. Department of Motor Vehicles*, 84 Wash. 2d 568, 527 P.2d 1318 (1974).

n3 *Leonhart v. McCormick*, 395 F. Supp. 1073 (W.D. Pa. 1975) (applying Pennsylvania law); *Brown v. Superior Court*, 22 Ariz. App. 72, 523 P.2d 799 (Div. 1 1974) (requiring hearing to determine whether procedural requirements were followed in petitioners' cases); *Department of Public Safety v. Irby*, 232 Ga. 384, 207 S.E.2d 23 (1974); *Cross v. Waguespack*, 308 So. 2d 321 (La. Ct. App. 4th Cir. 1975); *Hurt v. Austin*, 42 Mich. App. 554, 202 N.W.2d 554 (1972); *Merced v. Fisher*, 83 Misc. 2d 755, 372 N.Y.S.2d 855 (Sup 1975); *State v. Harm*, 200 N.W.2d 387 (N.D. 1972); *State v. Figueroa*, 31 Or. App. 431, 570 P.2d 680 (1977).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

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7A Am Jur 2d Automobiles and Highway Traffic § 173

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West's A.L.R. Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

Am. Jur. Legal Forms 2d §§ 33:37, 33:39, 33:51, 33:52

Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic § 54

West's Key Number Digest, Automobiles [westkey]144.1(4), 144.2(7)

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361

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7A Am Jur 2d Automobiles and Highway Traffic § 174

## § 174 Generally

Minimum levels of financial responsibility are set forth by federal law for the transporting of passengers<sup>n1</sup> and property<sup>n2</sup> by motor carriers. The purpose of federal regulations setting forth minimum levels of financial responsibility for motor carriers is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.<sup>n3</sup> A motor carrier is also required to file a bond, insurance policy, or other type of security which is sufficient to pay for each final judgment against the motor carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.<sup>n4</sup> The purpose underlying the proof of insurance requirement for motor carriers is to ensure that the carrier has independent financial responsibility to pay for losses sustained by the general public arising out of its trucking operations.<sup>n5</sup>

Definition: A motor carrier is a person providing commercial motor vehicle transportation for compensation.<sup>n6</sup> A motor carrier can be a for-hire motor carrier or a private motor carrier of property by motor vehicle.<sup>n7</sup>

In the exercise of their police power, state legislatures have enacted statutes requiring motor vehicle carriers of passengers or goods for hire, as a prerequisite to the obtaining of a license or certificate to use the public highways, to furnish security in the form of a bond or a policy of insurance for the benefit of persons injured by the carrier's operations.<sup>n8</sup> A bond or insurance policy issued for the protection of passengers and members of the public who may be injured by the negligence of the operators of such conveyances must be construed most strongly against the surety or insurer<sup>n9</sup> so as to accomplish the purpose of state financial responsibility laws.<sup>n10</sup> A bond or insurance policy procured by a motor carrier as required by statute will not be construed to be more restrictive in its coverage than that required by statute, but may be broader in its scope of coverage than the statute requires.<sup>n11</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 31138.

n2 49 U.S.C.A. § 31139.

n3 49 C.F.R. 387.1.

n4 49 U.S.C.A. § 13906.

## 7A Am Jur 2d Automobiles and Highway Traffic § 174

n5 Northland Ins. Co. v. New Hampshire Ins. Co., 63 F. Supp. 2d 128 (D.N.H. 1999).

n6 49 U.S.C.A. § 13102(14).

n7 49 C.F.R. 387.5.

n8 Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932); Miller v. Harco Nat. Ins. Co., 241 F.3d 1331 (11th Cir. 2001), certified question answered, 274 Ga. 387, 552 S.E.2d 848 (2001) (applying Georgia law); Northland Ins. Co. v. New Hampshire Ins. Co., 63 F. Supp. 2d 128 (D.N.H. 1999); Ex parte Cardinal, 170 Cal. 519, 150 P. 348 (1915); State v. Dillon, 82 Fla. 276, 89 So. 558, 22 A.L.R. 227 (1921); City of Memphis v. State, 133 Tenn. 83, 179 S.W. 631 (1915); International Ins. Agency, Inc. v. Railroad Com'n of Texas, 893 S.W.2d 204 (Tex. App. Austin 1995), writ denied, (Aug. 30, 1995); Puget Sound Traction, Light & Power Co. v. Grassmeyer, 102 Wash. 482, 173 P. 504 (1918); Ex parte Dickey, 76 W. Va. 576, 85 S.E. 781 (1915).

As to persons protected, and damage or injury covered, by a bond or insurance, see § 178.

n9 Tulchinsky v. Public Service Mut. Cas. Ins. Corp., 245 A.D. 382, 282 N.Y.S. 944 (2d Dep't 1935); Utilities Ins. Co. v. Potter, 1940 OK 127, 188 Okla. 145, 105 P.2d 259, 154 A.L.R. 512 (1940); Ott v. American Fidelity & Cas. Co., 161 S.C. 314, 159 S.E. 635, 76 A.L.R. 4 (1931).

n10 City of Detroit v. Blue Ribbon Auto Drivers' Ass'n, 254 Mich. 263, 237 N.W. 61, 74 A.L.R. 1306 (1931).

n11 Haser v. Maryland Cas. Co., 78 N.D. 893, 53 N.W.2d 508, 33 A.L.R.2d 1018 (1952).

## SUPPLEMENT:

### Cases

Testing procedures administered to motorist following his arrest for driving under the influence (DUI), which subsequently provided basis for administrative suspension of license to drive, substantially complied with the "immediate presence" requirement for an alcohol breath test; officer stepped out of testing room for only a few seconds each time he left room, and although motorist coughed and cleared his throat several times during testing period, motorist did not suggest that his breath sample was contaminated or breath test machine malfunctioned. *Martin v. Kansas Dept. of Revenue*, 38 Kan. App. 2d 1, 163 P.3d 313 (2006).

In proceeding to suspend motorist's driver's license for driving with an excessive blood-alcohol content (BAC), motorist failed to rebut Director of Revenue's prima facie case concerning validity of breath alcohol test results, where motorist failed to present any evidence that he smoked, vomited, or orally took other materials during the 15-minute observation period before test was administered. *White v. Director of Revenue*, 227 S.W.3d 532 (Mo. Ct. App. E.D. 2007).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

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7A Am Jur 2d Automobiles and Highway Traffic § 175

§ 175 Validity of statutes and ordinances

The validity of statutes and ordinances requiring motor carriers for hire to furnish bonds or policies of insurance for the protection of persons who may be injured in the operation of their conveyances has been upheld as against various constitutional objections.<sup>n1</sup> Such statutes have been held not to violate the constitutional requirement of due process of law or amount to the taking of property without just compensation,<sup>n2</sup> even where the carriers are unable to furnish the required security<sup>n3</sup> or to obtain it at a reasonable premium.<sup>n4</sup>

**FOOTNOTES:**

n1 Packard v. Banton, 264 U.S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924); People's Taxicab Co. v. City of Wichita, 140 Kan. 129, 34 P.2d 545, 95 A.L.R. 1218 (1934).

n2 Hadfield v. Lundin, 98 Wash. 657, 168 P. 516 (1917); Public Service Commission of Wyoming v. Grimshaw, 49 Wyo. 158, 53 P.2d 1, 109 A.L.R. 534 (1935).

n3 People's Taxicab Co. v. City of Wichita, 140 Kan. 129, 34 P.2d 545, 95 A.L.R. 1218 (1934); Puget Sound Traction, Light & Power Co. v. Grassmeyer, 102 Wash. 482, 173 P. 504 (1918).

n4 Packard v. Banton, 264 U.S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
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7A Am Jur 2d Automobiles and Highway Traffic § 176

§ 176 Carriers engaged in interstate commerce

Federal law prescribes certain minimum levels of financial responsibility sufficient to cover public liability and property damage for the transportation of passengers by commercial motor vehicle<sup>n1</sup> and sufficient to cover public liability, property damage, and environmental restoration for the transportation of property by commercial motor vehicle<sup>n2</sup> in the United States between a place in a State and --<sup>n3</sup>

- (1) a place in another State;
- (2) another place in the same State through a place outside of that State; or
- (3) a place outside the United States.

Evidence of financial responsibility for the transporting of passengers may be established by evidence of one or a combination of the following:<sup>n4</sup>

- (1) insurance, including high self-retention;
- (2) a guarantee; or
- (3) a surety bond issued by a bonding company authorized to do business in the United States.

Similarly, evidence of financial responsibility for the transporting of property may be established by evidence of one or a combination of:<sup>n5</sup>

- (1) insurance;
- (2) a guarantee;
- (3) a surety bond issued by a bonding company authorized to do business in the United States; or
- (4) qualification as a self-insurer.

Federal laws requiring common carriers to maintain adequate insurance do not conflict with state laws providing remedies to persons injured as a result of vehicle accidents involving common carriers; instead, such federal laws enhance the likelihood of recovery of any damages that may be awarded under state law.<sup>n6</sup> State agencies rules regarding proof of liability insurance for intermittent international commercial carriers are not preempted by federal law where there is no overlap between carriers to which federal requirements apply.<sup>n7</sup> However, state laws which require carriers of hazardous materials to submit more documentation than contemplated by federal law are preempted by federal law.<sup>n8</sup>

**FOOTNOTES:**



n1 49 U.S.C.A. § 31138(a).

n2 49 U.S.C.A. § 31139(b).

n3 49 U.S.C.A. §§ 31138(a), 31139(b).

n4 49 U.S.C.A. § 31138(c).

n5 49 U.S.C.A. § 31139(f).

n6 *Carway v. Progressive County Mut. Ins. Co.*, 183 B.R. 769 (S.D. Tex. 1995).

n7 *International Ins. Agency, Inc. v. Railroad Com'n of Texas*, 893 S.W.2d 204 (Tex. App. Austin 1995), writ denied, (Aug. 30, 1995).

n8 *Colorado Public Utilities Com'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991).

#### **SUPPLEMENT:**

##### **Statutes**

49 U.S.C.A. § 31138(a) was redesignated in 2008 as 49 U.S.C.A. § 31138(a)(1) with the following change: the subsection applies to the transportation of passengers for compensation by a motor vehicle and no longer to the transportation of passengers by a commercial motor vehicle. 49 U.S.C.A. § 31138(a)(2), as added in 2008, provides that the Secretary may prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for commercial purposes, but not for compensation, by a motor vehicle in the United States between a place in a state and: (a) a place in another state; (b) another place in the same state through a place outside of that state; or (c) a place outside the United States.

49 U.S.C.A. § 31139(b), as amended in 2008, replaced the phrase "commercial motor vehicle" with "motor carrier or motor private carrier (as such terms are defined in section 13102 of this title)."

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

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§ 177 Vehicles and carriers subject to statutes and ordinances

A Department of Transportation's interpretation of a certificate of insurance filing required for licensed motor carriers, as covering all vehicles that a carrier operates, including any owner-operated or leased vehicles which operate under authority granted by the Department of Transportation to an authorized carrier, is not irrational or unreasonable.<sup>n1</sup>

The federal statute setting forth minimum financial responsibility for transporting passengers<sup>n2</sup> does not apply to motor vehicles:<sup>n3</sup>

- (1)transporting only school children and teachers to or from school;
- (2)providing taxicab service;
- (3)carrying not more than 15 individuals in a single, daily, round trip to and from work; or
- (4)providing transportation service within specified transit service areas.

Likewise, the federal statute setting forth minimum financial responsibility for the transporting of property<sup>n4</sup> does not apply to motor vehicles under a gross specified weight of 10,000 pounds if the vehicle is not used to transport in interstate or foreign commerce:<sup>n5</sup>

- (1)class A or B explosives;
- (2)poison gas; or
- (3)a large quantity of radioactive material.

Counties and municipalities have discretion to procure liability insurance for the operation of motor vehicles owned by them.<sup>n6</sup> In this regard, a transit authority created pursuant to a state act is not a "political subdivision" of the state within the meaning of a statute exempting from its provisions motor vehicles owned by the state or any of its political subdivisions.<sup>n7</sup>

An ordinance of a city requiring various types of liability insurance in various amounts to be maintained on a vehicle for hire as a condition to the issuance of a certificate of public necessity and convenience is properly made a basis for city officials to refuse to issue such a certificate to a cab company on nonoperational, uninsured vehicles.<sup>n8</sup>

The duty to file proof of financial responsibility with respect to a for-hire vehicle is limited to owners of vehicles that are registered in state or that are required to be registered in state.<sup>n9</sup> Accordingly, a foreign rental car agency which owns a vehicle that is registered in one state and rented to an operator in another state does not have a duty to file proof of financial responsibility in a third state.<sup>n10</sup> A state statute requiring carriers to keep in force all liability insurance or

bonds in the amount required by a state agency and limiting the agency's authority to require insurance in greater amounts than required by statute does not govern uninsured motorist coverage and does not exclude carriers from statutory requirements of uninsured motorist coverage.<sup>n11</sup>

#### FOOTNOTES:

n1 American Nat. Fire Ins. Co. v. Levy, 156 Misc. 2d 608, 594 N.Y.S.2d 118 (Sup 1992).

n2 49 U.S.C.A. § 31138, discussed in § 176.

n3 49 U.S.C.A. 31138(e).

n4 49 U.S.C.A. 31139, discussed in § 176.

n5 49 U.S.C.A. 31139(h).

n6 Logue v. Wright, 260 Ga. 206, 392 S.E.2d 235 (1990).

n7 Dotts v. Taressa J.A., 182 W. Va. 586, 390 S.E.2d 568 (1990).

n8 Johnson v. Peachtree Cab Co., Inc., 251 Ga. 708, 309 S.E.2d 616 (1983).

n9 Fratus v. Amerco, 575 A.2d 989 (R.I. 1990).

n10 Lopes v. Phillips, 680 A.2d 65 (R.I. 1996).

n11 Bray v. Insurance Co. of State of Pennsylvania, 917 F.2d 130 (4th Cir. 1990).

#### SUPPLEMENT:

##### Cases

Rental car company had no duty to refuse to rent a car to a driver who failed to produce proof that he was insured under his own automobile liability insurance and, thus, could not be held liable for negligence per se or negligent entrustment to a motorist who was struck by a rental car, where company was acting in accordance with financial responsibility statutes and was operating as a self-insurer. Enterprise Leasing Co. South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

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7A Am Jur 2d Automobiles and Highway Traffic § 178

§ 178 Persons protected, and damage or injury covered, by bond or insurance

Motor carrier indemnity insurance is for the sole benefit of those who may have a cause of action for damages for the negligence of the motor common carrier. It is analogous to the purpose of automobile liability insurance under an assigned risk plan in that it creates liability in the insurer regardless of the insured's breach of the conditions of the policy.

<sup>n1</sup> A trip that results in a collision between an automobile and a truck leased by a federally registered motor carrier expressly for purposes of engaging in interstate transportation is covered by federal motor carrier regulations, including the prescribed form endorsement contained in the motor carrier's excess liability policy, which provides coverage for final judgments recovered against the motor carrier for public liability resulting from negligent operation, maintenance, or use of the motor vehicle subject to the Motor Carrier Act's financial responsibility requirements, notwithstanding the excess liability insurer's contention that the particular trip involved solely intrastate travel and thus did not trigger the Act's financial requirements, inasmuch as the carrier explicitly intended to procure the services of the truck's owner and operator for interstate transport.<sup>n2</sup>

Observation: A holding company is not the "owner" of taxicabs, for purposes of a statute which permits "owners" of taxicabs to set up a sinking fund in lieu of obtaining insurance for the taxicabs where the holding company has no legal interest in the taxicabs operated by six different taxicab organizations controlled by the parent corporations.<sup>n3</sup>

**FOOTNOTES:**

n1 *Ross v. Stephens*, 269 Ga. 266, 496 S.E.2d 705 (1998).

n2 *Travelers Indem. Co. of IL v. Western Amer. Spec. Transp. Serv., Inc.*, 235 F. Supp. 2d 522 (W.D. La. 2002).

n3 *Office of People's Counsel v. Public Service Com'n of District of Columbia*, 520 A.2d 677 (D.C. 1987).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
49 U.S.C.A. §§ 13102, 13906, 31138, 31139  
49 C.F.R. 387.1, 387.5  
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§ 179 Vehicles within coverage of bond or insurance

Under some statutes requiring a motor carrier to furnish a bond or policy of insurance for the benefit of persons sustaining damages from the operation of its vehicles as a prerequisite to operation upon the public highways, the obligation of the surety or insurer is limited to the particular vehicles named in the bond or policy and cannot be extended, without its consent, to cover other vehicles.<sup>n1</sup> However, under other statutes it has been held that such a bond or policy of insurance covers vehicles not named therein -- even though it provides that it only covers vehicles named therein and any vehicles substituted therefor, but not additional motor vehicles -- where the statutory provision requiring coverage of all motor vehicles operated by motor carriers is, in effect, written into the bond or policy of insurance.<sup>n2</sup> A state administrative rule requiring an insurance policy, surety bond, or certificate of insurance providing liability coverage for a motor carrier, whether or not the vehicle is specifically described in the policy, does not mandate coverage for liability resulting from the negligent use or maintenance of undescribed or unscheduled vehicles in excess of the minimum limits.<sup>n3</sup>

There is no question that such a bond or policy of insurance covers all vehicles of the motor carrier used in its business, where the bond or policy is a blanket bond or policy covering all vehicles used in the business of the carrier whether or not particularly identified in the bond or policy.<sup>n4</sup>

**FOOTNOTES:**

n1 *Downs v. Georgia Cas. Co.*, 271 F. 310 (D.N.J. 1921).

**Related References:**

As to vehicles within the coverage of automobile liability insurance policies, generally, see Am. Jur. 2d, Automobile Insurance §§ 193 to 221.

n2 *Fidelity & Casualty Co. of New York v. Jacks*, 231 Ala. 394, 165 So. 242 (1936).

n3 *Kinard v. National Indem. Co.*, 225 Ga. App. 176, 483 S.E.2d 664 (1997), judgment aff'd, 269 Ga. 266, 496 S.E.2d 705 (1998).

n4 *Whitlock v. Individuals, Firms and Corporations, Subscribers at and Inter-Insurers under the name of U.S. Inter-Insurance Ass'n*, 138 Or. 383, 6 P.2d 1088 (1932); *Paul v. Dutton*, 55 S.W.2d 606 (Tex. Civ. App. Beaumont 1932).

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A commissioner of revenue was required to approve a single \$ 50,000 surety bond filed by the owner of a fleet of taxicabs, rather than requiring a single bond for each taxicab, if the bond form provided \$ 50,000 for each occurrence, so that the bond would be available for the full amount of every accident. *C.I.R. v. Black & White Cab Co., Inc.*, 290 Ark. 575, 720 S.W.2d 911 (1986).

**SUPPLEMENT:****Cases**

Although motor carrier, who operated dump truck business, failed to obtain the permit required to operate as a motor carrier and although carrier's insurance policy did not include a Form F endorsement, these facts were not dispositive as to the applicability of Motor Carrier Act to carrier and its insurer. *West's Ga.Code Ann. § 46-7-1 et seq. Sapp v. Canal Ins. Co.*, 288 Ga. 681, 706 S.E.2d 644 (2011).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
49 U.S.C.A. §§ 13102, 13906, 31138, 31139  
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## § 180 Operations of carrier covered by bond or insurance

The question as to whether the surety or insurer under a bond or insurance policy furnished as a condition of operating a motor carrier on the public highways is liable for damages or injuries sustained as the result of the operation of the carrier at a time when not actually engaged in transportation for hire has arisen in a number of cases where the carrier was operating for private purposes. Where the statute and the bonds or insurance issued pursuant thereto are intended to cover only liability for damages or injuries resulting from the operation of the carrier in public transportation, such liability has been denied.<sup>n1</sup> However, in other cases liability has been held to attach, in view of the liberal provisions of the bond or policy of insurance<sup>n2</sup> or the statute pursuant to which the bond or policy was issued.<sup>n3</sup> Liability has been held to attach under such a bond or policy of insurance even though the damage or injury arose at a time when the carrier was not engaged in public transportation, but was nevertheless being operated for a purpose necessary and incident to carrier operations,<sup>n4</sup> such as loading and unloading.<sup>n5</sup>

**FOOTNOTES:**

n1 *Great West Cas. Co. v. Norris*, 734 F.2d 697 (11th Cir. 1984); *Basta v. U. S. Fidelity & Guar. Co.*, 107 Conn. 446, 140 A. 816 (1928); *Holder v. Haynes*, 193 S.C. 176, 7 S.E.2d 833 (1940); *Stewart v. Hoffmeister*, 16 Tenn. App. 495, 65 S.W.2d 220 (1932); *Sordelett v. Mercer*, 185 Va. 823, 40 S.E.2d 289 (1946).

n2 *Travelers Mut. Cas. Co. of Des Moines, Iowa v. Thornsby*, 276 Ky. 762, 125 S.W.2d 229 (1939); *Zelber v. Com. Cas. Co.*, 106 N.J.L. 611, 150 A. 243 (N.J. Ct. Err. & App. 1930).

n3 *Rusch v. Mielke*, 234 Wis. 380, 291 N.W. 300 (1940).

n4 *Mitchell v. Great Eastern Stages*, 140 Ohio St. 137, 23 Ohio Op. 359, 42 N.E.2d 771, 141 A.L.R. 624 (1942).

n5 *Mullenberg v. Kilgust Mechanical, Inc.*, 2000 WI 66, 235 Wis. 2d 770, 612 N.W.2d 327 (2000).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)  
49 U.S.C.A. §§ 13102, 13906, 31138, 31139  
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## § 181 Territorial coverage

Where a bond or policy of insurance required to be furnished as a condition of operating a motor carrier on the public highways or streets specifies the route or territory of the carrier covered, which is coextensive with the route or territorial authorization of the carrier, liability on such bond or policy is limited to injuries or damages resulting from the operation of such carrier on that route or within that territory,<sup>n1</sup> and there is no liability on such bond or policy for injuries or damages resulting from the operation of such carrier on a route distant from the authorized route, particularly where the driver at the time is deviating from his or her course of employment.<sup>n2</sup> However, where the surety or insurer contracts, directly or indirectly, to obligate itself to answer for damages sustained as a result of the operation of the motor carrier in an area more extensive than that in which the carrier is authorized to operate, its liability is not limited to such damages as result from the operation of the carrier within its authorized territory, but it is liable for such damages as result from the operation of the carrier outside such territory,<sup>n3</sup> particularly where there is nothing in the statute which bars the surety or insurer from extending its liability.<sup>n4</sup>

Where a bond or policy of insurance of a motor carrier limits the liability of the surety or insurer to injuries or damages resulting from the operation of the carrier in a territory less extensive than the area within which the carrier is permitted to operate, the territorial coverage of the bond or policy is deemed coextensive with the authorized area of carrier operations.<sup>n5</sup>

**FOOTNOTES:**

n1 *Great West Cas. Co. v. Norris*, 734 F.2d 697 (11th Cir. 1984); *American Fidelity & Cas. Co. v. Williams*, 34 S.W.2d 396 (Tex. Civ. App. Amarillo 1930), writ refused, (May 16, 1931).

n2 *Interstate Cas. Co. of Birmingham v. Martin*, 234 S.W. 710 (Tex. Civ. App. Beaumont 1921).

n3 *Smith v. California Highway Indem. Exchange*, 218 Cal. 325, 23 P.2d 274 (1933).

Where an insurance policy filed by a motor carrier pursuant to statute, in order to obtain permission to operate on the highways of a state, provided general coverage, although it contained a reference to the statute under which it was issued, it provided protection against liability for damages resulting from injuries sustained in an accident in another state. *Car & General Ins. Corp. v. Novodoczky*, 101 Ind. App. 509, 200 N.E. 83 (1936).

n4 *North West Cab Co., for Use of Chamberlain v. Central Mut. Ins. Co.*, 266 Ill. App. 192, 1932 WL 2803 (1st Dist. 1932); *MacClellan v. General Cas. & Sur. Co.*, 4 N.J. Misc. 926, 134 A. 911 (Sup. Ct. 1926), aff'd, 103 N.J.L. 702, 137 A. 917 (N.J. Ct. Err. & App. 1927) and aff'd, 103 N.J.L. 704, 137 A. 918 (N.J. Ct. Err. & App. 1927) and aff'd, 103 N.J.L. 713, 137 A. 918 (N.J. Ct. Err. & App. 1927).

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n5 American Fidelity & Cas. Co. v. McWilliams, 55 Ga. App. 658, 191 S.E. 191 (1937); Utilities Ins. Co. v. Potter, 1940 OK 127, 188 Okla. 145, 105 P.2d 259, 154 A.L.R. 512 (1940); Ott v. American Fidelity & Cas. Co., 161 S.C. 314, 159 S.E. 635, 76 A.L.R. 4 (1931).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

49 C.F.R. 387.1, 387.5

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§ 182 Extent of, and actions to invoke, surety's or insurer's liability

The liability of a surety or insurer under a bond or policy of insurance furnished by a motor carrier as a condition of the privilege of operating upon the public highways, is limited, in general, to the amount specified in the bond or policy.<sup>n1</sup> Under such a bond or policy the surety's or insurer's liability usually extends up to the full amount of the bond or policy for each person injured by reason of the operation of the carrier, regardless of number.<sup>n2</sup> Under some statutes, the liability of the surety or insurer is further limited to a specified maximum amount on all claims arising out of the same transaction.<sup>n3</sup>

Under a bond or policy of insurance furnished by a motor carrier as a condition of the privilege of operating upon the public highways, which is in form a liability bond or policy, a person injured by reason of the operation of the carrier may, as a rule and in accordance with statutory and policy provisions which generally give such a right of action, invoke the liability of the surety or insurer by an action directly against it without first securing a judgment against the carrier.<sup>n4</sup> The obligation of such a bond or policy rests on the surety or insurer from the time of the accident resulting in injury.<sup>n5</sup> However, where the bond or policy of insurance is in form and substance an indemnity bond or policy, as distinguished from a liability bond or policy, the injured party must first, as a rule, secure a judgment against the carrier, and where the judgment is returned unsatisfied, the judgment creditor may then bring an action against the surety or insurer based upon the judgment.<sup>n6</sup>

**FOOTNOTES:**

n1 *Devlin v. New York Mut. Cas. Taxicab Ins. Co.*, 213 A.D. 152, 210 N.Y.S. 57 (1st Dep't 1925).

n2 *People v. Martin*, 203 A.D. 423, 197 N.Y.S. 28 (1st Dep't 1922), *aff'd*, 235 N.Y. 550, 139 N.E. 730 (1923); *Salo v. Pacific Coast Cas. Co.*, 95 Wash. 109, 163 P. 384 (1917).

n3 *Bleimeyer v. Public Service Mut. Cas. Ins. Corp.*, 250 N.Y. 264, 165 N.E. 286 (1929).

n4 *Dunn v. Jones*, 143 Kan. 218, 53 P.2d 918 (1936); *Bryant v. Blue Bird Cab Co.*, 202 S.C. 456, 25 S.E.2d 489 (1943).

n5 *Dunn v. Jones*, 143 Kan. 218, 53 P.2d 918 (1936).

n6 *Tulchinsky v. Public Service Mut. Cas. Ins. Corp.*, 245 A.D. 382, 282 N.Y.S. 944 (2d Dep't 1935).

**Related References:**

As to the distinction between indemnity insurance and liability insurance, generally, see Am. Jur. 2d, Insurance §§ 683 to 686.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]88 to 95, 144.1(4), 144.2(7)

49 U.S.C.A. §§ 13102, 13906, 31138, 31139

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§ 183 Generally; federal safety standards

Congress has determined that to reduce traffic accidents and the deaths and injuries resulting therefrom, it is necessary both to prescribe safety standards for motor vehicles and motor vehicle equipment in interstate commerce and to carry out needed safety research and development.<sup>n1</sup> The result of this determination is the enactment of the Motor Vehicle Safety Act (Act).<sup>n2</sup> The Act requires the Secretary of Transportation to prescribe motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.<sup>n3</sup> In addition, the secretary must establish, and periodically review and update, a five-year plan for testing motor vehicle safety standards.<sup>n4</sup>

Under the Act, the secretary must prescribe special motor vehicle safety standards for school buses and school bus equipment manufactured in, or imported into, the United States.<sup>n5</sup>

The Act neither exempts from antitrust laws conduct that is unlawful under those laws nor prohibits under the antitrust laws conduct that is lawful under those laws.<sup>n6</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30101.

n2 49 U.S.C.A. §§ 30101 to 30170.

n3 49 U.S.C.A. § 30111(a).

n4 49 U.S.C.A. § 30111(e).

n5 49 U.S.C.A. § 30125(b).

n6 49 U.S.C.A. § 30103(c).

**SUPPLEMENT:****Statutes**

49 U.S.C.A. § 30111 Note § 3(a), approved January 4, 2011, requires the Secretary of Transportation not later than 18 months after the date of enactment of the Act to initiate rulemaking, pursuant to the Motor Vehicle Safety Act to prom-

ulgate a motor vehicle safety standard (1) establishing performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby electric or hybrid vehicle operating below the cross-over speed, if any; and requiring new electric or hybrid vehicles to provide an alert sound conforming to the requirements of the motor vehicle safety standard established under this subsection. The motor vehicle safety standard so established must not require either driver or pedestrian activation of the alert sound and shall allow the pedestrian to reasonably detect a nearby electric or hybrid vehicle in critical operating scenarios including, but not limited to, constant speed, accelerating, or decelerating. The Secretary must allow manufacturers to provide each vehicle with one or more sounds that comply with the motor vehicle safety standard at the time of manufacture. Further, the Secretary must require manufacturers to provide, within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model and is required to prohibit manufacturers from providing any mechanism for anyone other than the manufacturer or the dealer to disable, alter, replace, or modify the sound or set of sounds, except that the manufacturer or dealer may alter, replace, or modify the sound or set of sounds in order to remedy a defect or non-compliance with the motor vehicle safety standard. The Secretary is required to promulgate the required motor vehicle safety standard pursuant to the provision not later than 36 months after the date of enactment of this Act.

49 C.F.R. § 575.302, as added effective August 29, 2011, deals with mandatory vehicle labeling of safety rating information for the 2012 model year and later, with the purpose of aiding potential purchasers in the selection of new passenger motor vehicles by providing them with safety rating information developed by the National Highway Traffic Safety Administration (NHTSA) in its New Car Assessment Program (NCAP) testing.

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115  
49 U.S.C.A. §§ 30101 to 30170  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Highways and Streets  
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## § 184 Validity of federal safety standards

A safety standard issued under the federal Motor Vehicle Safety Act (Act) after informal rulemaking procedures of the Administrative Procedure Act is valid, and it is not necessary to comply with formal rulemaking procedures under the latter Act.<sup>n1</sup> In promulgating valid standards under the Act, the Secretary of Transportation, through the National Highway Traffic Safety Administration (NHTSA), must proceed in a manner which negates the dangers of arbitrariness, irrationality, and capriciousness.<sup>n2</sup>

A federal safety standard will be deemed invalid where there has been a failure to inquire adequately into certain important topics and to evaluate relevant, available data.<sup>n3</sup> Also, the suspension of certain standards will be found arbitrary and capricious where the secretary fails to pursue available alternatives which might correct the deficiencies giving rise to the suspension.<sup>n4</sup> A promulgated standard may also be held invalid on the basis of insufficiency of notice.<sup>n5</sup>

If the primary thrust of a rule issued under the Act clearly is to meet the need for motor vehicle safety, the fact that the rule promotes collateral interests will not lead to a finding that statutory authority has been exceeded.<sup>n6</sup>

**FOOTNOTES:**

n1 *Automotive Parts & Accessories Ass'n v. Boyd*, 407 F.2d 330 (D.C. Cir. 1968).

n2 *B. F. Goodrich Co. v. Department of Transp.*, 541 F.2d 1178 (6th Cir. 1976); *Center for Auto Safety v. Peck*, 751 F.2d 1336 (D.C. Cir. 1985).

n3 *H & H Tire Co. v. U. S. Dept. of Transp.*, 471 F.2d 350 (7th Cir. 1972).

The NHTSA is responsible for ensuring that its regulations do not produce more dangerous highway conditions than existed prior to regulation; where there was substantial evidence that the in-use performance required by safety standard for brakes on trucks, trailers, and buses was not consistently met and that large numbers of antilock systems failed within a short time of delivery, creating greater hazards, the agency's failure to conduct more intensive testing was an abuse of its discretion. *Paccar, Inc. v. National Highway Traffic Safety Administration*, 573 F.2d 632 (9th Cir. 1978).

n4 *Public Citizen v. Steed*, 733 F.2d 93 (D.C. Cir. 1984).

n5 *Wagner Elec. Corp. v. Volpe*, 466 F.2d 1013 (3d Cir. 1972).

n6 *Vehicle Equipment Safety Commission v. National Highway Traffic Safety Administration*, 611 F.2d 53 (4th Cir. 1979) (amended rule on vehicle identification numbers with collateral interest of promoting international standardization).



**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115  
49 U.S.C.A. §§ 30101 to 30170  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Highways and Streets  
A.L.R. Index, Motor Vehicles  
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§ 185 Judicial review of orders establishing federal safety standards

Under the federal Motor Vehicle Safety Act, a person adversely affected by an order prescribing a motor vehicle safety standard may apply for review of the order by filing a petition for review, in the United States Court of Appeals for the circuit in which the person resides or has its principal place of business, not later than 59 days after the order is issued.<sup>n1</sup> The court will examine whether the Secretary of Transportation acted in an arbitrary or capricious manner in promulgating a standard or regulation.<sup>n2</sup> The rescission or modification of a motor vehicle safety standard is subject to the same judicial review as the promulgation of a standard.<sup>n3</sup>

There is a presumption in favor of the validity of a safety standard issued under the Act, and parties who seek to stay the standard's imposition have the burden of showing a probability of success on the merits.<sup>n4</sup>

A withdrawal of advanced notice of proposed rulemaking under the Act by the National Highway Traffic Safety Administration (NHTSA) has been regarded as rulemaking subjecting the NHTSA's action to judicial review, even if the NHTSA did not denominate such action as a rule.<sup>n5</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30161(a).

n2 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983); *National Tire Dealers & Retreaders Ass'n, Inc. v. Brinegar*, 491 F.2d 31 (D.C. Cir. 1974).

n3 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983) (holding that the rescission of a motor vehicle safety standard requiring new automobiles to be equipped with either air bags or passive seatbelts was subject to judicial review as arbitrary and capricious).

The National Highway Traffic Safety Administration's elimination of tire treadwear-grading requirements, tantamount to rescission, was subject to judicial review and could not be sustained if it was arbitrary and capricious. *Public Citizen v. Steed*, 733 F.2d 93 (D.C. Cir. 1984).

n4 *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 96 S. Ct. 845, 47 L. Ed. 2d 67 (1976) (per Rehnquist, J., as Circuit Justice).

n5 *Center for Auto Safety v. National Highway Traffic Safety Admin.*, 710 F.2d 842 (D.C. Cir. 1983).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115  
49 U.S.C.A. §§ 30101 to 30170  
A.L.R. Index, Automobiles and Highway Traffic

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A.L.R. Index, Highways and Streets

A.L.R. Index, Motor Vehicles

A.L.R. Index, Safety Codes and Standards

A.L.R. Index, Traffic Offenses and Violations

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§ 186 Effect of federal safety standards on state or local law

When a motor vehicle safety standard is in effect under the federal Motor Vehicle Safety Act (Act), a state or political subdivision of a state may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to that prescribed under the Act.<sup>n1</sup> Thus, as a rule, state regulations that are not identical to federal safety standards applicable to the same aspect of motor vehicle and motor vehicle equipment performance are preempted by the federal standards.<sup>n2</sup> However, a lack of express preemption by the Act can be interpreted to permit certain claims under state law to proceed,<sup>n3</sup> although courts have sometimes found implied preemption under the Act.<sup>n4</sup> In particular, in view of a provision of the Act stating that various sections thereof do not establish or affect warranty obligations under state law, and that a remedy under those sections is in addition to other rights and remedies under state laws,<sup>n5</sup> it has been said that Congress did not intend for the Act to completely preempt state law causes of action relating to motor vehicle defects.<sup>n6</sup>

Compliance with a motor vehicle safety standard prescribed under the Act does not exempt one from common-law liability,<sup>n7</sup> although there is authority for the view that a common-law liability claim is not preserved to the extent that it involves a direct conflict with a federal safety standard.<sup>n8</sup> Proof of such compliance may be admitted as evidence that a vehicle is not defective, but is not conclusive and does not provide a complete defense to a state law claim.<sup>n9</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30103(b) (adding, however, that a state or political subdivision thereof may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under the Act).

n2 *Chlorine Institute, Inc. v. California Highway Patrol*, 29 F.3d 495 (9th Cir. 1994); *Colorado Public Utilities Com'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991); *City of Bremerton v. Spears*, 134 Wash. 2d 141, 949 P.2d 347 (1998).

n3 *Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777 (3d Cir. 1992); *Myrick v. Freuhauf Corp.*, 13 F.3d 1516 (11th Cir. 1994), judgment aff'd, 514 U.S. 280, 115 S. Ct. 1483, 131 L. Ed. 2d 385 (1995); *Wohl v. Spalding & Evenflo Companies, Inc.*, 136 Or. App. 503, 901 P.2d 929 (1995).

n4 *Montag by Montag v. Honda Motor Co., Ltd.*, 75 F.3d 1414, 43 Fed. R. Evid. Serv. 1065 (10th Cir. 1996); *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989).

The combined effect of the Act's express preemption clause, defining the preemptive reach of the Act, and the Act's savings clauses did not bar the workings of implied preemption principles, and thus did not bar conflict preemption of claims seeking the judicial recall of automobile tires based on state law. In re *Bridgestone/Firestone, Inc. Tires Products Liability Litigation*, 153 F. Supp. 2d 935 (S.D. Ind. 2001).

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n5 49 U.S.C.A. § 30115(d).

n6 Farkas v. Bridgestone/Firestone, Inc., 113 F. Supp. 2d 1107 (W.D. Ky. 2000).

n7 49 U.S.C.A. § 30103(e).

n8 Boyle v. Chrysler Corp., 177 Wis. 2d 207, 501 N.W.2d 865 (Ct. App. 1993).

n9 Contini v. Hyundai Motor Co., 840 F. Supp. 22 (S.D. N.Y. 1993); General Motors Corp. v. Edwards, 482 So. 2d 1176 (Ala. 1985).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115

49 U.S.C.A. §§ 30101 to 30170

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Highways and Streets

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A.L.R. Index, Safety Codes and Standards

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West's A.L.R. Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115

West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 9, 11, 115

Admissibility in evidence, on issue of negligence, of codes or standards of safety issued or sponsored by governmental body or by voluntary association, 58 A.L.R.3d 148

Federal pre-emption of state common-law products liability claims pertaining to motor vehicles, 97 A.L.R. Fed. 853

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§ 187 Compliance with federal safety standards; certification and exemptions

Generally, the federal Motor Vehicle Safety Act (Act) prohibits the manufacture for sale, selling, offering for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard takes effect unless the vehicle or equipment complies with the standard and is covered by a certification.<sup>n1</sup> The Secretary of Transportation may exempt a motor vehicle or equipment from this requirement in some situations,<sup>n2</sup> or on terms which the secretary decides are necessary for research, investigations, demonstrations, training, competitive racing events, show, or display.<sup>n3</sup>

The Act also requires a manufacturer or distributor of a motor vehicle or motor vehicle equipment to certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable federal motor vehicle safety standards; a person may not issue such a certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect.<sup>n4</sup> The certification is shown by a label or tag on the vehicle or equipment,<sup>n5</sup> and the Act specifies requirements for the content of such certification labels.<sup>n6</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30112(a)(1).

n2 49 U.S.C.A. § 30113.

n3 49 U.S.C.A. § 30114.

n4 49 U.S.C.A. § 30115(a).

n5 49 U.S.C.A. § 30115(a).

n6 49 U.S.C.A. § 30115(b).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115  
49 U.S.C.A. §§ 30101 to 30170  
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## § 188 Making safety devices inoperative

The federal Motor Vehicle Safety Act (Act) prohibits a manufacturer, distributor, dealer, or motor vehicle repair business from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or similar purposes during maintenance or repair) when the device or element is inoperative.<sup>n1</sup> The Act permits the Secretary of Transportation to exempt a person from compliance with this statute if the secretary decides that the exemption is consistent with motor vehicle safety,<sup>n2</sup> and states that the statute does not apply to certain safety belt interlocks or buzzers.<sup>n3</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30122(b).

Businesses which tinted automobile windows did not knowingly render them inoperative, and the fact that the tinting reduced visible light transmittance below the level acceptable under a federal safety standard was not, in itself, proof that the businesses knowingly lessened the safety performance of the windows. *U.S. v. Blue Skies Projects, Inc.*, 785 F. Supp. 957 (M.D. Fla. 1991).

n2 49 U.S.C.A. § 30122(c).

n3 49 U.S.C.A. § 30122(d).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115  
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## § 189 State and local regulation

A state may, pursuant to its police power, enact regulations to promote highway safety and provide for the state's general welfare.<sup>n1</sup> In most jurisdictions, statutes or local laws have been enacted which regulate in detail the equipment, weight, and size of motor vehicles,<sup>n2</sup> and they often provide for the inspection of such vehicles as a means of enforcing compliance with those statutory requirements.<sup>n3</sup> Where it is the intent of a state legislature to create uniform, statewide motor vehicle equipment regulations, municipalities may not enact ordinances relating to the equipment covered in those state regulations.<sup>n4</sup>

For a state statute regulating motor vehicle equipment or safety to pass constitutional muster, its language must have a clear meaning.<sup>n5</sup> A state law which, while incorporating the federal safety standard relating to light transmission into a motor vehicle, prohibits the driving of such a vehicle with material applied to the windshield so as to obstruct or reduce the driver's clear view, or applying any such material to the windshield, is valid because it promotes legitimate highway safety concerns and does not unconstitutionally burden interstate commerce.<sup>n6</sup>

**FOOTNOTES:**

n1 Consolidated Freightways Corp. of Delaware v. Kassel, 730 F.2d 1139 (8th Cir. 1984) (abrogated on other grounds by, Dennis v. Higgins, 498 U.S. 439, 111 S. Ct. 865, 112 L. Ed. 2d 969 (1991)).

n2 §§ 190 to 213.

n3 §§ 218, 219.

n4 People v. Huchstep, 114 Cal. App. Supp. 769, 300 P. 448 (App. Dep't Super. Ct. 1931); People v. City of Buffalo, 152 Misc. 375, 274 N.Y.S. 74 (Sup 1934).

n5 State v. Carpenter, 231 Kan. 235, 642 P.2d 998 (1982) (portion of state statute making it misdemeanor to drive motor vehicle which is in "unsafe condition" held unconstitutionally vague).

n6 People v. Niebauer, 214 Cal. App. 3d 1278, 263 Cal. Rptr. 287 (4th Dist. 1989).

**SUPPLEMENT:****Cases**

Evidence adduced at trial was insufficient to sustain a conviction for having a false or secret compartment in a motor vehicle; arresting officer testified that the compartment was open when he approached defendant's vehicle and he failed to cite any measures defendant had taken to prevent its discovery, defendant testified that the air bag had already been removed when he purchased the vehicle, and no evidence was adduced to contradict that assertion. *People v. Carpenter*, 228 Ill. 2d 250, 320 Ill. Dec. 888, 888 N.E.2d 105 (2008).

Statute making it a crime to have a false or secret compartment in a motor vehicle is facially invalid on due process grounds; the statute potentially criminalizes innocent conduct, as it visits the status of a felon upon anyone who owns or operates a vehicle he or she knows to contain a false or secret compartment, defined as one intended and designed to conceal the compartment or its contents from law enforcement officers, and the contents of the compartment do not have to be illegal for a conviction to result. *People v. Carpenter*, 228 Ill. 2d 250, 320 Ill. Dec. 888, 888 N.E.2d 105 (2008).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6 to 11, 115  
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## § 190 Seat belts

In the Motor Vehicle Safety Act (Act), Congress has declared that it is in the public interest for each state to adopt and enforce mandatory seat belt use laws and for the federal government to adopt and enforce mandatory seat belt use regulations.<sup>n1</sup> States that do not have in effect mandatory seat belt use laws are subject to penalties imposed by the Secretary of Transportation,<sup>n2</sup> while states that have such laws are eligible for grants given by the secretary,<sup>n3</sup> which can be used for a number of purposes, including educating the public about seat belt and child restraint system usage,<sup>n4</sup> training law enforcement officers in the enforcement of seat belt laws,<sup>n5</sup> and enforcing state seat belt laws.<sup>n6</sup> The Act prohibits states from requiring occupant safety restraints that are in conflict with federal standards.<sup>n7</sup>

A motor vehicle safety standard prescribed under the Act may not require or allow a manufacturer to comply with the standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt or a buzzer designed to indicate a safety belt is not in use, except a buzzer that operates only during the eight-second period after the ignition is turned to the start or on position.<sup>n8</sup>

Many states have upheld as constitutional mandatory seat belt laws, on the ground that they serve the compelling interest of the state in saving lives and promoting the welfare of its citizens,<sup>n9</sup> or on the ground that they bear a rational relationship to the legitimate legislative purpose of reducing injuries and fatalities in traffic accidents.<sup>n10</sup> However, it has been held invalid for a state to impose a duty on nondealers of motor vehicles to install seat belts in used cars before selling them, as such would impair the freedom of contract, unduly burden the seller in this type of transaction, and hinder prevalent and useful as is sales of used cars.<sup>n11</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30127(d).

n2 23 U.S.C.A. § 153(h).

n3 23 U.S.C.A. § 153(a)(2).

n4 23 U.S.C.A. § 153(b)(1).

n5 23 U.S.C.A. § 153(b)(2).

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n6 23 U.S.C.A. § 153(b)(4).

n7 Boyle v. Chrysler Corp., 177 Wis. 2d 207, 501 N.W.2d 865 (Ct. App. 1993).

n8 49 U.S.C.A. § 30124.

n9 People v. Coyle, 204 Cal. App. 3d Supp. 1, 251 Cal. Rptr. 80 (App. Dep't Super. Ct. 1988).

n10 State v. Swain, 92 N.C. App. 240, 374 S.E.2d 173 (1988); Richards v. State, 743 S.W.2d 747 (Tex. App. Houston 1st Dist. 1987), petition for discretionary review refused, 757 S.W.2d 723 (Tex. Crim. App. 1988).

n11 Krawitz v. Rusch, 209 Cal. App. 3d 957, 257 Cal. Rptr. 610 (4th Dist. 1989).

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## § 191 Airbags

The Motor Vehicle Safety Act (Act) requires that 100% of a manufacturer's annual production of passenger cars and other motor vehicles be equipped with inflatable restraints or airbags for both front outboard seating positions, beginning on August 31, 1997.<sup>n1</sup> The Act also mandates that the Secretary of Transportation require that owner manuals for passenger cars, buses, multipurpose passenger vehicles, and trucks equipped with airbags include a statement, in easily understandable format, relating to the proper use and efficacy of airbags as supplemental restraints, rather than as substitutes for lap and shoulder belts.<sup>n2</sup> Temporary, renewable exemptions from these requirements are available from the secretary.<sup>n3</sup>

The requirements for airbags for federal government passenger cars are not as stringent as those for other cars, simply requiring that government cars be equipped, to the maximum extent practicable, with airbags.<sup>n4</sup>

The federal safety scheme relating to the regulation of airbags preempts conflicting design defect claims in cases where the vehicle complies with federal safety regulations.<sup>n5</sup> A federal safety regulation requiring a uniform airbag warning sign on the sun visor of an automobile has been held to impliedly preempt any duty on the part of an automobile manufacturer to use alternative language on that sign or on any other signs elsewhere in the vehicle.<sup>n6</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30127(b).

n2 49 U.S.C.A. § 30127(c).

n3 49 U.S.C.A. § 30127(e).

n4 49 U.S.C.A. § 30127(h).

n5 *Tammen v. General Motors Corp.*, 857 F. Supp. 788 (D. Kan. 1994); *Schick v. Chrysler Corp.*, 675 F. Supp. 1183 (D.S.D. 1987); *Boyle v. Chrysler Corp.*, 177 Wis. 2d 207, 501 N.W.2d 865 (Ct. App. 1993).

n6 *Fisher v. Ford Motor Co.*, 224 F.3d 570, 2000 FED App. 0278P (6th Cir. 2000).

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## § 192 Motorcycle helmets

Mandatory motorcycle helmet laws have been upheld as valid exercises of a state's power to promote public safety.<sup>n1</sup> A helmet requirement does not violate constitutional privacy rights<sup>n2</sup> or equal protection of the laws.<sup>n3</sup> Motorcyclist headgear statutes are not contrary to any federal policy in interstate commerce, and they do not place an unconstitutional burden on freedom of movement and the right to travel.<sup>n4</sup> However, a state law pertaining to motorcycle helmets must be consistent with federal regulations governing the performance and safety requirements for such helmets.<sup>n5</sup>

The Secretary of Transportation may make grants to a state that has in effect a law making the operation of a motorcycle unlawful if any individual on the motorcycle is not wearing a motorcycle helmet.<sup>n6</sup> These grants may be used for public safety education, training of law enforcement officers in the enforcement of such laws, monitoring compliance with such laws, and enforcement of such laws.<sup>n7</sup>

**FOOTNOTES:**

n1 *Kingery v. Chapple*, 504 P.2d 831 (Alaska 1972); *Bianco v. California Highway Patrol*, 24 Cal. App. 4th 1113, 29 Cal. Rptr. 2d 711 (4th Dist. 1994), as modified on denial of reh'g, (May 24, 1994); *Hamm v. State*, 387 So. 2d 946 (Fla. 1980); *State v. Quinnam*, 367 A.2d 1032 (Me. 1977).

Requiring motorcyclists to wear helmets when riding on the public highways is a legitimate and reasonable exercise of the police power, as it may reduce injuries and the consequent burden on publicly supplied or regulated medical, hospital, ambulance, and police services. *State v. Laitinen*, 77 Wash. 2d 130, 459 P.2d 789 (1969).

n2 *Picou v. Gillum*, 874 F.2d 1519 (11th Cir. 1989); *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992); *State v. Eight Judicial Dist. Court, In and For State, Clark County*, 101 Nev. 658, 708 P.2d 1022 (1985).

n3 *State v. Cotton*, 55 Haw. 138, 516 P.2d 709 (1973); *State v. Quinnam*, 367 A.2d 1032 (Me. 1977); *City of Jackson v. Lee*, 252 So. 2d 897 (Miss. 1971); *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992); *State v. Merski*, 113 N.H. 323, 307 A.2d 825 (1973).

n4 *Love v. Bell*, 171 Colo. 27, 465 P.2d 118 (1970); *People v. Carmichael*, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (County Ct. 1968).

n5 *Modified Motorcycle Ass'n of Massachusetts, Inc. v. Com.*, 60 Mass. App. Ct. 83, 799 N.E.2d 597 (2003); *City of Bremerton v. Spears*, 134 Wash. 2d 141, 949 P.2d 347 (1998).

n6 23 U.S.C.A. § 153(a)(1).



n7 23 U.S.C.A. § 153(b).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
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## § 193 Tires

The Motor Vehicle Safety Act (Act) allows the Secretary of Transportation to authorize the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of a regrooved tire—that is, a tire with a new tread produced by cutting into the tread of a worn tire—or a motor vehicle equipped with regrooved tires if the secretary decides that the tires are designed and made in a way consistent with the purposes of the Act, including to reduce traffic accidents.<sup>n1</sup> A person may not sell, offer for sale, introduce for sale, or deliver for introduction in interstate commerce, a regrooved tire or a vehicle equipped with regrooved tires unless authorized by the secretary.<sup>n2</sup>

The secretary must also prescribe through standards a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires, as well as cooperate with industry and the Federal Trade Commission to the greatest extent practicable to eliminate deceptive and confusing tire nomenclature and marketing practices.<sup>n3</sup>

In addition, the secretary must require a motor vehicle to be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry; the vehicle must be equipped with those tires by the manufacturer or by the first purchaser when the vehicle is first bought in good faith other than for resale.<sup>n4</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30123(a).

Although a regrooved bus tire had never crossed a state line, it was nevertheless subject to the statute because the presumption is that the tire will travel interstate at some future date. *National Ass'n of Motor Bus Owners v. Brinegar*, 483 F.2d 1294 (D.C. Cir. 1973).

n2 49 U.S.C.A. § 30123(a)(2).

n3 49 U.S.C.A. § 30123(b), adding that a tire standard or regulation prescribed under the Act supersedes an order or administrative interpretation of the Commission.

49 U.S.C.A. § 30123(b) is not primarily a safety law, but is designed to provide information to tire buyers from which they can tell something about the product they are buying, although it is related to safety in the sense that the owner can know whether its tires are good, average, or poor in relation to safety-related characteristics. *B. F. Goodrich Co. v. Department of Transp.*, 541 F.2d 1178 (6th Cir. 1976).

n4 49 U.S.C.A. § 30123(c).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
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## § 194 Bumpers

Citing the need to reduce economic loss resulting from damage to passenger motor vehicles involved in accidents, by providing for the maintenance and enforcement of bumper standards, federal legislation requires the promulgation of such standards,<sup>n1</sup> provides for judicial review of such standards,<sup>n2</sup> proscribes violations of those standards,<sup>n3</sup> and provides for the enforcement thereof by civil penalties, criminal penalties, and injunctions.<sup>n4</sup> When prescribing such a bumper standard, the Secretary of Transportation must design the standard to obtain the maximum feasible reduction of costs to the public, considering, among other things, the costs and benefits of carrying out the standard, the effect of the standard on insurance costs and legal fees and costs, and health and safety, including emission standards.<sup>n5</sup>

A manufacturer or distributor of a passenger motor vehicle or passenger motor vehicle equipment subject to a bumper standard must give the distributor or dealer, at the time of delivery, a certificate that the vehicle or equipment complies with the standard.<sup>n6</sup> Furthermore, to enable the Secretary of Transportation to decide whether a manufacturer of passenger motor vehicles or passenger motor vehicle equipment is complying with bumper standards, the secretary may require that the manufacturer keep records, make reports, make equipment and vehicles available for testing, and allow persons designated by the secretary to inspect vehicles and relevant records of the manufacturer.<sup>n7</sup> The secretary may conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records.<sup>n8</sup>

When an owner of a passenger motor vehicle sustains damages as a result of a motor vehicle accident because the vehicle did not comply with a federal bumper standard, the owner may bring a civil action against the manufacturer to recover the damages, as well as costs and a reasonable attorney's fee.<sup>n9</sup>

Generally, a state or political subdivision thereof may prescribe or enforce a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment only if the standard is identical to a federal standard.<sup>n10</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. §§ 32501 to 32511.

n2 49 U.S.C.A. § 32503.

n3 49 U.S.C.A. § 32506.

n4 49 U.S.C.A. § 32507.

n5 49 U.S.C.A. § 32502.

n6 49 U.S.C.A. § 32504.

n7 49 U.S.C.A. § 32505(a).

n8 49 U.S.C.A. § 32505(b)(C).

n9 49 U.S.C.A. § 32508.

n10 49 U.S.C.A. § 32511(a).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
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## § 195 Odometers

Congress has enacted the Motor Vehicle Information and Cost Savings Act (Act),<sup>n1</sup> for the purposes of prohibiting tampering with motor vehicle odometers and providing safeguards to protect purchasers of motor vehicles with altered or reset odometers.<sup>n2</sup> Under the Act, a person may not: advertise for sale, sell, use, install, or have installed, a device that makes an odometer register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer; disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer; or, with the intent to defraud, operate a motor vehicle if the person knows that the odometer is disconnected or not operating.<sup>n3</sup>

Pursuant to the Act, the service, repair, or replacement of an odometer is permitted if the mileage registered by the odometer remains the same as before the service, repair, or replacement, but if the mileage cannot remain the same, the odometer must be adjusted to zero and a written notice must be attached to the vehicle specifying the mileage before and the date of the service, repair, or replacement.<sup>n4</sup>

The Act requires a transferor of a motor vehicle to give the transferee a written disclosure of the cumulative mileage registered on the odometer or a written disclosure that the actual mileage is unknown, if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled.<sup>n5</sup> Mileage statements are required for licensing vehicles upon transfer,<sup>n6</sup> and a written disclosure about mileage is also required of the lessor upon the leasing of a motor vehicle.<sup>n7</sup> The requirement of disclosure of motor vehicle mileage upon transfer or lease applies in a state unless the state has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary of Transportation.<sup>n8</sup>

The Act neither affects state laws on disconnecting, altering, or tampering with odometers with intent to defraud, nor exempts persons from complying with those laws.<sup>n9</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. §§ 32701 to 32711.

n2 49 U.S.C.A. § 32701(b).

n3 49 U.S.C.A. § 32703(1) to (3).

n4 49 U.S.C.A. § 32704(a).

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n5 49 U.S.C.A. § 32705(a)(1).

The National Highway Traffic Safety Administration lacked the authority to promulgate a regulation under the Act which exempted vehicles 10 or more years old from the Act's odometer disclosure requirements. *Diersen v. Chicago Car Exchange*, 110 F.3d 481, 37 Fed. R. Serv. 3d 400 (7th Cir. 1997).

A transferor has a duty, under 49 U.S.C.A. § 32705, to state that the actual mileage of a vehicle is unknown, even if he or she lacks actual knowledge that the odometer reading is incorrect, if the transferor, in the exercise of reasonable care, would have had reason to know that the mileage was more than that which the odometer had recorded or the previous owner had certified. *Leach v. Bishop Bros. Auto Auction, Inc.*, 624 F.2d 34 (5th Cir. 1980).

n6 49 U.S.C.A. § 32705(b).

n7 49 U.S.C.A. § 32705(c).

A salesman's inaccurate oral representations as to the actual mileage of a vehicle that was the subject of a lease were not actionable, where the written disclosure form accurately reported the correct number of miles and the disclosure form was presented to the lessee at transfer. *Francesconi v. Kardon Chevrolet, Inc.*, 888 F.2d 18 (3d Cir. 1989).

n8 49 U.S.C.A. § 32705(d).

n9 49 U.S.C.A. § 32711.

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196

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## § 196 Enforcement; penalties

The Motor Vehicle Information and Cost Savings Act (Act) authorizes the Secretary of Transportation to conduct inspections or investigations necessary to carry it out, to impound vehicles for purposes of such inspections, to require dealers or distributors of motor vehicles to keep records to insure compliance with the Act, and to conduct hearings relating to such compliance.<sup>n1</sup> A civil action to enforce a subpoena or order of the secretary issued pursuant to such authority may be brought in a United States District Court, and a failure to obey an order of the court to comply with such a subpoena or order may be punished as a contempt of court.<sup>n2</sup> Generally, however, an inspection or impoundment may be carried out only after a warrant is obtained.<sup>n3</sup>

Violations of federal odometer requirements imposed under the Act can result in civil penalties imposed by the secretary, and a civil action will be brought by the Attorney General to collect those penalties.<sup>n4</sup> The Attorney General may bring a civil action to enjoin such violations,<sup>n5</sup> as may the chief law enforcement officer of the state where the violation occurs.<sup>n6</sup>

Willful and knowing such violations can result in criminal penalties, even against individual directors, officers, or agents of a corporation.<sup>n7</sup> In a criminal prosecution for odometer tampering, proof of intent to defraud is not required.<sup>n8</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 32706(a) to (e).

n2 49 U.S.C.A. § 32706(e)(3).

n3 49 U.S.C.A. § 32707(b).

n4 49 U.S.C.A. § 32709(a).

n5 49 U.S.C.A. § 32709(c).

n6 49 U.S.C.A. § 32709(d).

n7 49 U.S.C.A. § 32709(b).

## 7A Am Jur 2d Automobiles and Highway Traffic § 196

n8 U.S. v. Hugh Chalmers Chevrolet-Toyota, Inc., 800 F.2d 737 (8th Cir. 1986).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
 West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 117, 319, 327 to 329, 337  
 23 U.S.C.A. §§ 127, 153  
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 Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 86  
 West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
 West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 327  
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1. In General

7A Am Jur 2d Automobiles and Highway Traffic § 197

§ 197 Civil actions by private persons

A person who violates the Motor Vehicle Information and Cost Savings Act (Act) or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$ 1,500, whichever is greater.<sup>n1</sup> A private person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction; such action must be brought not later than two years after the claim accrues.<sup>n2</sup> The court in such an action must award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.<sup>n3</sup> Where the plaintiff in such an action obtains settlements with some defendants but not others, it has been held that the liability of the other defendants cannot properly be reduced by the amounts previously received by the plaintiff pursuant to the settlements,<sup>n4</sup> although there is authority to the contrary.<sup>n5</sup>

Thus, proof of intent to defraud is required in private civil actions under the Act,<sup>n6</sup> but such fraud may be inferred from a showing of constructive knowledge, recklessness, or gross negligence.<sup>n7</sup> A showing of mere negligence is not enough.<sup>n8</sup> Liability may be predicated on oral as well as written representations.<sup>n9</sup>

Under what has been termed the "remote purchaser" theory, an automobile buyer can sue, for violations of federal odometer regulations, not only the immediate seller but any other person in the chain of title who may have been involved in the fraud. This theory finds some support in case law,<sup>n10</sup> but other courts have rejected it.<sup>n11</sup>

In a private civil action under the Act, punitive damages may be awarded even though the award of actual damages was small.<sup>n12</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 32710(a).

n2 49 U.S.C.A. § 32710(b).

Under the Act, a vehicle buyer could bring a civil action against an automobile dealer for the dealer's alleged efforts to defraud the state motor vehicles department by making misrepresentations on odometer disclosure statements and reassignment forms, given that the Act created a private right of action to penalize violations. *Nigh v. Koons Buick Pontiac GMC, Inc.*, 143 F. Supp. 2d 563 (E.D. Va. 2001).

Where a victim proves no actual damages, he or she may still recover the minimum penalty of \$ 1,500 for each violation. *Attorney General of Maryland v. Dickson*, 717 F. Supp. 1090 (D. Md. 1989).

However, no treble damages can be awarded without a showing of actual damages. *Aldridge v. Billips*, 656 F. Supp. 975 (W.D. Va. 1987).

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The phrase "not later than two years after the claim accrues," which limits the time within which a private action may be brought under the Act, refers to the date on which the tampering with the odometer was discovered or should have been discovered, not to the date on which the tampering occurred. *Byrne v. Autohaus On Edens, Inc.*, 488 F. Supp. 276 (N.D. Ill. 1980); *Levine v. MacNeil*, 428 F. Supp. 675 (D. Mass. 1977).

n3 49 U.S.C.A. § 32710(b).

n4 *Ferris v. Haymore*, 967 F.2d 946 (4th Cir. 1992), as amended, (July 22, 1992).

n5 *Rice v. Gustavel*, 891 F.2d 594 (6th Cir. 1989).

n6 *Suits v. Little Motor Co.*, 642 F.2d 883 (5th Cir. 1981); *Walt Bennett Ford, Inc. v. Goyne*, 969 F.2d 603 (8th Cir. 1992), opinion corrected, (Aug. 7, 1992); *Huycke v. Greenway*, 876 F.2d 94, 13 Fed. R. Serv. 3d 94 (11th Cir. 1989).

The purchaser of a used automobile, who alleged that the seller had made a false odometer disclosure, failed to establish intent to defraud on the part of the seller, and thus could not recover in an action brought under Act; three of the car's former owners testified that it had not been driven 75,000 miles, as the purchaser contended, but rather was a low-mileage vehicle, and even if the odometer statement given by the seller was inaccurate, the seller had relied on statement given by the former owner from whom it purchased the vehicle, and nothing indicated that the seller had reason to believe that such statement was false. *Diersen v. Chicago Car Exchange*, 110 F.3d 481, 37 Fed. R. Serv. 3d 400 (7th Cir. 1997).

n7 *Leach v. Bishop Bros. Auto Auction, Inc.*, 624 F.2d 34 (5th Cir. 1980); *Daluz v. Acme Auto Body & Sales, Inc.*, 814 F. Supp. 242 (D. Conn. 1992); *Aldridge v. Billips*, 656 F. Supp. 975 (W.D. Va. 1987); *Stepp v. Duffy*, 654 N.E.2d 767 (Ind. Ct. App. 1995); *Carroll Motors, Inc. v. Purcell*, 273 S.C. 745, 259 S.E.2d 604 (1979).

An automobile dealer, which was informed by the transferor of a car that its odometer had not been functioning, was, at the very least, grossly negligent or acted with reckless disregard for the truth in certifying to the buyer of the car that the odometer reading was true, and thus the dealer's intent to defraud could be inferred as a matter of law. *Ralbovsky v. Lamphere*, 731 F. Supp. 79 (N.D. N.Y. 1990).

n8 *Ray Kim Ford, Inc. v. Daoud*, 750 F. Supp. 327 (N.D. Ill. 1990).

n9 *Ryan v. Edwards*, 592 F.2d 756 (4th Cir. 1979).

n10 *Rice v. Gustavel*, 891 F.2d 594 (6th Cir. 1989).

n11 *Ferris v. Haymore*, 967 F.2d 946 (4th Cir. 1992), as amended, (July 22, 1992); *Tusa v. Omaha Auto. Auction Inc.*, 712 F.2d 1248 (8th Cir. 1983).

n12 *Hughes v. Box*, 814 F.2d 498 (8th Cir. 1987); *Bishop v. Mid-America Auto Auction, Inc.*, 807 F. Supp. 683 (D. Kan. 1992).

## SUPPLEMENT:

### Cases

Requirement that claim under Motor Vehicle Information and Cost Savings Act (Odometer Act) include allegation that defendant intended to defraud as to vehicle's mileage was not jurisdictional, but rather was ingredient of claim for relief, and therefore case failing to satisfy such requirement could not be dismissed on jurisdictional grounds; intent-to-defraud language appeared in subsection that did not speak in jurisdictional terms or refer in any way to jurisdiction of district courts, and jurisdiction-conferring language appeared in neighboring subsection. *Bodine v. Graco, Inc.*, 533 F.3d 1145 (9th Cir. 2008).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196

West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 117, 319, 327 to 329, 337

23 U.S.C.A. §§ 127, 153

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Automobiles and Highway Traffic  
IV. Equipment, Weight, and Size of Vehicles  
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1. In General

7A Am Jur 2d Automobiles and Highway Traffic § 198

§ 198 Steering mechanisms

Statutes which require motor vehicles to be equipped with adequate steering mechanisms in good working order, sufficient to control them at all times when in use, are common.<sup>n1</sup> To be guilty of a violation of such a statute, though, one must know that the steering apparatus is defective, or the defect must be such that it should have been discovered in the exercise of due care.<sup>n2</sup>

A used car dealer has a duty to inspect, discover, and repair any defects in a steering mechanism which are patent or discoverable with the exercise of ordinary care.<sup>n3</sup>

#### FOOTNOTES:

n1 *People v. Foster*, 204 Misc. 507, 117 N.Y.S.2d 641 (County Ct. 1952).

n2 *People v. Foster*, 204 Misc. 507, 117 N.Y.S.2d 641 (County Ct. 1952).

n3 *Kopischke v. First Continental Corp.*, 187 Mont. 471, 610 P.2d 668, 29 U.C.C. Rep. Serv. 454 (1980).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
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Automobiles and Highway Traffic  
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1. In General

7A Am Jur 2d Automobiles and Highway Traffic § 199

§ 199 Brakes

Motor vehicles ordinarily are required by statute to be equipped with adequate brakes in good working order,<sup>n1</sup> including emergency brakes as well as foot brakes.<sup>n2</sup> Under certain provisions, the brakes must be adequate to bring the vehicle to a complete stop at the speed and within the distance indicated in the statute,<sup>n3</sup> and may also be required to be capable of holding the vehicle on any plus or minus grade on which it is to be operated.<sup>n4</sup> Some statutory provisions specifically regulate the brakes of special types of vehicles in relation to their weight.<sup>n5</sup>

The violation of such a statute ordinarily constitutes an offense.<sup>n6</sup> Under some such statutes, the mere inadequacy of the brakes on a vehicle makes out a prima facie case of a violation, although one may not be found guilty of a violation unless he or she had knowledge, or in the exercise of reasonable care should have had knowledge, of the defective condition of the brakes.<sup>n7</sup>

A conviction for operating a motor vehicle without adequate brakes has been denied where the motorist was cited while driving to the nearest place where the brakes could be repaired.<sup>n8</sup>

**FOOTNOTES:**

n1 *McCoy v. Courtney*, 25 Wash. 2d 956, 172 P.2d 596, 170 A.L.R. 603 (1946).

n2 *People v. Cicardo*, 140 Misc. 332, 250 N.Y.S. 477 (Magis. Ct. 1931).

n3 *Bingham v. Greenamyre*, 25 Cal. App. 2d 467, 77 P.2d 867 (3d Dist. 1938).

n4 *McCoy v. Courtney*, 25 Wash. 2d 956, 172 P.2d 596, 170 A.L.R. 603 (1946).

n5 *McNown v. Pacific Freight Lines*, 50 Cal. App. 2d 221, 122 P.2d 582 (4th Dist. 1942).

n6 *People v. DeWitt*, 175 Misc. 481, 25 N.Y.S.2d 236 (County Ct. 1940).

n7 *Dayton v. Palmer*, 1 Ariz. App. 184, 400 P.2d 855 (1965); *Masker v. Smith*, 405 So. 2d 432, 32 U.C.C. Rep. Serv. 1121 (Fla. Dist. Ct. App. 5th Dist. 1981).

n8 *People v. DeWitt*, 175 Misc. 481, 25 N.Y.S.2d 236 (County Ct. 1940).



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Products liability: personal injury or death allegedly caused by defect in braking system in motor vehicle, 99 A.L.R.3d 179  
Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 890 to 892 (Complaint allegation -- Defective brakes)

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Automobiles and Highway Traffic  
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1. In General

## 7A Am Jur 2d Automobiles and Highway Traffic § 200

## § 200 Warning and signaling equipment; flares

Motor vehicles are usually required by statute to be equipped with a horn or other signaling device that must produce a sound sufficiently loud to serve as a danger warning, although it may not be unnecessarily loud or harsh.<sup>n1</sup> Also, statutes often require motor vehicles to be equipped with directional signals, which must be used in making turns.<sup>n2</sup>

In a number of jurisdictions, statutes require the display of flares or similar warning lights or devices about a motor vehicle standing on a roadway at night.<sup>n3</sup> Violations of these so-called flare statutes are often regarded as negligence per se.<sup>n4</sup> However, under some statutes, the duty to place flares arises only where the vehicle or its lighting system, or in some instances both, are disabled.<sup>n5</sup> In any event, some statutes requiring flares to be placed around standing vehicles refer to the situation where the vehicle is left standing on a highway, and exclude from their operation vehicles standing in business or residential areas<sup>n6</sup> or vehicles standing on the shoulder of a highway off the traveled lanes.<sup>n7</sup> Moreover, flare statutes generally impose the duty in question only when a vehicle is left standing in the dark.<sup>n8</sup>

The type of flare or warning signal required to be displayed is usually specified in the statute.<sup>n9</sup> While there is some variation in the statutes as to the number of flares which must be used and as to where they must be placed, most statutes appear to contemplate placing at least one flare a specified distance to the rear, one to the front, and one on the traffic side at the immediate location of the standing vehicle.<sup>n10</sup>

Even where they provide that flares must be placed immediately when the vehicle is stopped on a highway, flare statutes have usually been construed to allow the driver a reasonable time in which to comply with the statutory requirements.<sup>n11</sup> The statutes ordinarily require not only the initial placement of flares but that they be maintained, and not be permitted to go out, while the vehicle remains on a highway in the dark.<sup>n12</sup>

**FOOTNOTES:**

n1 *Henderson v. O'Leary*, 177 Wis. 130, 187 N.W. 994, 24 A.L.R. 942 (1922).

n2 *State v. Bryant*, 219 Ark. 313, 241 S.W.2d 473 (1951).

n3 *Rodi v. Florida Greyhound Lines*, 62 So. 2d 355 (Fla. 1952); *Gies v. Consolidated Freightways*, 40 Wash. 2d 488, 244 P.2d 248 (1952).

n4 *Duncan v. Wiseman Baking Co.*, 357 S.W.2d 694 (Ky. 1961); *Jester v. Bailey*, 239 Miss. 384, 123 So. 2d 442 (1960); *McConnell v. Nabozny*, 110 A.D.2d 1060, 489 N.Y.S.2d 24 (4th Dep't 1985).

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n5 Anastasi v. McAllister, 189 Kan. 390, 369 P.2d 244 (1962); Duncan v. Wiseman Baking Co., 357 S.W.2d 694 (Ky. 1961); Nelson v. Powers, 402 So. 2d 129 (La. Ct. App. 1st Cir. 1981), writ denied, 409 So. 2d 616 (La. 1981).

n6 Beck v. Azcarate, 50 Cal. App. 2d 264, 122 P.2d 933 (2d Dist. 1942); Melone v. Jersey Cent. Power & Light Co., 18 N.J. 163, 113 A.2d 13 (1955).

n7 Goulden v. Midwest Emery Freight System, Inc., 21 Ill. App. 3d 901, 316 N.E.2d 246 (1st Dist. 1974); James v. Carnation Co., 278 Or. 65, 562 P.2d 1192 (1977).

n8 Young v. Gateway Transp. Co., Inc., 26 Ill. App. 3d 864, 326 N.E.2d 222 (1st Dist. 1975); Dixie Highway Exp. v. C. C. Galbraith & Son, 61 So. 2d 218 (La. Ct. App., Orleans 1952); Weishaar v. Canestrone, 241 Md. 676, 217 A.2d 525 (1966).

n9 Aetna Cas. & Sur. Co. v. Condict, 417 F. Supp. 63 (S.D. Miss. 1976).

n10 Aetna Cas. & Sur. Co. v. Condict, 417 F. Supp. 63 (S.D. Miss. 1976); Dixie Culvert Mfg. Co. v. Richardson, 218 Ark. 427, 236 S.W.2d 713 (1951).

n11 Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962); Stong v. Freeman Truck Line, Inc., 456 So. 2d 698 (Miss. 1984).

n12 Anderson v. Pacific Tank Lines, 52 Cal. App. 2d 244, 126 P.2d 153 (4th Dist. 1942).

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Automobiles and Highway Traffic  
IV. Equipment, Weight, and Size of Vehicles  
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1. In General

## 7A Am Jur 2d Automobiles and Highway Traffic § 201

## § 201 Mufflers; exhaust systems

A number of states have statutes which provide that motor vehicles must at all times be equipped with mufflers in good working order and in constant operation to prevent excessive or unusual noise, and which prohibit the use of muffler cutouts, bypasses, or similar devices. These statutes have generally been upheld as valid.<sup>n1</sup> Thus, a statutory requirement that a motor vehicle be equipped with a muffler in constant operation so as to prevent any excessive or unusual noise has been found not to be unconstitutionally vague or void for uncertainty.<sup>n2</sup> However, an ordinance prohibiting the operation of a motor vehicle equipped with a Hollywood muffler, or with any other muffler that produces a noise louder than that of the standard-type muffler used in the manufacture of the vehicle, has been deemed unconstitutional for indefiniteness.<sup>n3</sup>

In a number of jurisdictions, there are regulations which require that motor vehicles be equipped with exhaust systems in good working order.<sup>n4</sup> Some regulations impose on a motor vehicle owner the mandatory duty to maintain the exhaust system on the vehicle in such condition as to prevent carbon monoxide fumes from escaping into the vehicle; the owner's lack of knowledge of the vehicle's condition or failure to appreciate the dangers inherent in noncompliance with the statute does not furnish an excuse or justification for a failure to comply.<sup>n5</sup>

**FOOTNOTES:**

n1 *Smith v. Peterson*, 131 Cal. App. 2d 241, 280 P.2d 522, 49 A.L.R.2d 1194 (4th Dist. 1955); *State v. Cobbs*, 411 So. 2d 212 (Fla. Dist. Ct. App. 3d Dist. 1982); *Department of Public Safety v. Buck*, 256 S.W.2d 642 (Tex. Civ. App. Austin 1953), writ refused.

n2 *Smith v. Peterson*, 131 Cal. App. 2d 241, 280 P.2d 522, 49 A.L.R.2d 1194 (4th Dist. 1955); *People v. Byron*, 17 N.Y.2d 64, 268 N.Y.S.2d 24, 215 N.E.2d 345 (1966).

n3 *People v. James*, 6 Misc. 2d 441, 162 N.Y.S.2d 927 (City Ct. 1957).

n4 *State v. Cobbs*, 411 So. 2d 212 (Fla. Dist. Ct. App. 3d Dist. 1982); *State v. Beauregard*, 175 Vt. 472, 820 A.2d 183 (2003).

n5 *Lynghaug v. Payte*, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956).

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Automobiles and Highway Traffic  
IV. Equipment, Weight, and Size of Vehicles  
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1. In General

## 7A Am Jur 2d Automobiles and Highway Traffic § 202

## § 202 Mudguards or splashguards

Some state statutes require motor vehicles and trailers to have fenders or wheel covers, including flaps or splash aprons, unless the body of or attachments to the vehicle afford adequate protection to minimize the spray or splash of water or mud to the rear of the vehicle.<sup>n1</sup> Certain statutes require rear-wheel protectors on commercial vehicles and trailers, in the form of mudguards or splashguards, to prevent, so far as practicable, the throwing of dirt, water, or other materials on the windshields of following vehicles.<sup>n2</sup> Such a statute has been declared a valid exercise of the state's police power even though it applies to vehicles operating exclusively in interstate commerce, as the federal government has not preempted the field of motor carrier regulations in connection with mudguards or splashguards.<sup>n3</sup> However, the United States Supreme Court has invalidated, as unduly burdening interstate commerce, a state statute requiring motor carriers, including those engaged in interstate commerce, to be equipped with contour mudguards of a specified type on their trailers, noting, among other things, that because of another state's requirement that trailers be equipped with straight mudguards, trailers could be operated in both states only by a changing of the mudguards.<sup>n4</sup>

**FOOTNOTES:**

n1 *People v. Kiser*, 112 Cal. App. 2d Supp. 903, 245 P.2d 1125 (App. Dep't Super. Ct. 1952).

n2 *Tom's Exp. v. Division of State Highway Patrol, Dept. of Highways, Ohio*, 105 F. Supp. 916, 49 Ohio Op. 389, 65 Ohio L. Abs. 267 (S.D. Ohio 1952).

n3 *Tom's Exp. v. Division of State Highway Patrol, Dept. of Highways, Ohio*, 105 F. Supp. 916, 49 Ohio Op. 389, 65 Ohio L. Abs. 267 (S.D. Ohio 1952).

n4 *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).

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Automobiles and Highway Traffic  
IV. Equipment, Weight, and Size of Vehicles  
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2. Vehicle Lights

## 7A Am Jur 2d Automobiles and Highway Traffic § 203

## § 203 Generally

Although safety standards promulgated under the Motor Vehicle Safety Act<sup>n1</sup> should be expressed in terms of performance rather than design, dimensional restrictions on headlights are allowed because the overall safety and reliability of headlight systems depends, to a certain extent, on the wide availability of replacement lamps, which in turn depends on standardization.<sup>n2</sup>

In the exercise of the police power, a state legislature has the authority to require motor vehicles to be equipped with proper lights,<sup>n3</sup> which must be used or displayed at certain times.<sup>n4</sup> A state may require that rear brake lights emit only red light,<sup>n5</sup> require that bicycles ridden at night, even on sidewalks, have proper lights,<sup>n6</sup> and prohibit the use of spotlights<sup>n7</sup> or hazard lights<sup>n8</sup> on vehicles, other than authorized emergency vehicles, being operated on a highway.

In general, where a state statute prescribes in detail the lights with which motor vehicles are required to be equipped, and further provides that it is unlawful for a motorist to operate a motor vehicle equipped with lights other than those prescribed, a municipal ordinance which purports to dictate requirements with respect to such lights will be held invalid, as in conflict with the state law.<sup>n9</sup> However, the view has been expressed that where a state constitution confers on municipalities the power to exercise reasonable control over their streets, the state legislature cannot deprive municipal authorities of the right to prescribe the lights on motor vehicles which must be used on such streets.<sup>n10</sup>

Generally, the operation of a motor vehicle in violation of regulations as to lights on the vehicle is made a criminal offense.<sup>n11</sup> Such a regulation is not invalid for want of a provision making willfulness or wrongful intent an element of the offense.<sup>n12</sup> Even where criminal intent is made an element of such an offense, no more is required than intent to do the act which results in a violation of the regulation, and it is not necessary to establish an intent to commit the offense itself.<sup>n13</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. §§ 30101 to 30170.

n2 *Chrysler Corp. v. Department of Transp.*, 515 F.2d 1053 (6th Cir. 1975).

n3 *State v. Webber*, 2000 ME 168, 759 A.2d 724 (Me. 2000); *People v. Berrus*, 1 N.Y.3d 535, 770 N.Y.S.2d 691, 802 N.E.2d 1089 (2003).

n4 §§ 204, 206.

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- n5 State v. Patterson, 140 Idaho 612, 97 P.3d 479 (Ct. App. 2004).
- n6 People v. Williams, 2003 WL 1963240 (Cal. App. 1st Dist. 2003); State v. Rowell, 158 P.3d 1248 (Wash. Ct. App. Div. 3 2007).
- n7 Firsanov v. State, 270 Ga. 873, 513 S.E.2d 184 (1999).
- n8 State v. Warriner, 267 Neb. 424, 675 N.W.2d 112 (2004); People v. Levy, 188 Misc. 2d 103, 727 N.Y.S.2d 248 (App. Term 2001).
- n9 People v. Huchstep, 114 Cal. App. Supp. 769, 300 P. 448 (App. Dep't Super. Ct. 1931).
- n10 People v. McGraw, 184 Mich. 233, 150 N.W. 836 (1915).
- n11 Nilson v. Oppenheimer, 260 A.D. 670, 23 N.Y.S.2d 621 (2d Dep't 1940), judgment aff'd, 285 N.Y. 824, 35 N.E.2d 498 (1941).
- n12 City of Hays v. Schueler, 107 Kan. 635, 193 P. 311, 11 A.L.R. 1433 (1920).
- n13 Nelson v. State, 27 Ga. App. 50, 107 S.E. 400 (1921).

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## 7A Am Jur 2d Automobiles and Highway Traffic § 204

## § 204 Time during which lights must be used or displayed; intensity and visibility requirements

Regulations requiring lights on motor vehicles usually specify the period of time during which such lights must be turned on or displayed, such as when there is not sufficient daylight to render objects discernible at a certain distance.<sup>n1</sup> However, a motorist may legitimately be arrested even during daylight for having an inoperable headlight where a statute requires headlights to be suitable at all times so as to be capable of being illuminated whenever road conditions warrant.<sup>n2</sup>

Statutes setting forth requirements for lights on motor vehicles, including commercial motor vehicles,<sup>n3</sup> ordinarily set forth specifications in terms of intensity or visibility. In the case of headlights, a common requirement is that they enable the driver to distinguish clearly an object a specified distance ahead,<sup>n4</sup> while taillight requirements are usually couched in terms of visibility at a specified distance or a reasonable distance from the rear.<sup>n5</sup> The requirement that a headlamp be constructed and adjusted to produce visibility of some certain distance ahead indicates that the legislature intended the headlamp to be one specifically designed and made for use as a headlamp.<sup>n6</sup>

A statute requiring lights illuminating a highway a specified distance ahead does not require that the entire width of the highway area be so illuminated.<sup>n7</sup> Moreover, according to some courts, such a statute does not require lights of that efficacy under any and all circumstances, but only where there is not sufficient light on the highway to make persons or objects visible within the prescribed distance.<sup>n8</sup>

Whether or not regulations regarding the intensity or visibility of lights on motor vehicles are applicable to situations where unusual atmospheric conditions exist depends, to a certain extent, on the wording of the particular regulation and the facts of the case.<sup>n9</sup> Statutes requiring that headlights be capable of clearly lighting a road at least a specified distance ahead have been construed to require such lighting only under ordinary conditions,<sup>n10</sup> and not on a dark and misty morning<sup>n11</sup> or on a foggy and dark night.<sup>n12</sup> Indeed, some statutes limit their application to normal atmospheric conditions, making it obvious that they are not applicable except under normal conditions.<sup>n13</sup> However, a statutory duty governing the intensity and visibility of lights has been regarded as absolute with respect to trailers, regardless of atmospheric conditions.<sup>n14</sup>

**FOOTNOTES:**

n1 Miles v. Webb, 162 Md. 269, 159 A. 782 (1932).

n2 State v. Evans, 134 Idaho 560, 6 P.3d 416 (Ct. App. 2000); Com. v. Feyenord, 445 Mass. 72, 833 N.E.2d 590 (2005), cert. denied, 546 U.S. 1187, 126 S. Ct. 1369, 164 L. Ed. 2d 77 (2006).

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- n3 Kerner v. Surface Transp. Corp. of New York, 262 A.D. 89, 28 N.Y.S.2d 126 (1st Dep't 1941).
- n4 Seaboard Coast Line R. Co. v. Sheffield, 127 Ga. App. 580, 194 S.E.2d 484 (1972); Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981); Delao v. Carlson, 589 S.W.2d 525 (Tex. Civ. App. Austin 1979).
- n5 Hickerson v. Jossey, 131 Or. 612, 282 P. 768 (1929).
- n6 Bigelow v. Johnson, 303 N.C. 126, 277 S.E.2d 347 (1981) (holding that five-cell flashlight attached to motorcycle handlebars fell short of headlamp requirement).
- n7 Ott v. Tschantz, 239 Wis. 47, 300 N.W. 766 (1941).
- n8 Lockling v. Wiswell, 318 Mass. 160, 61 N.E.2d 15 (1945).
- n9 Oliver v. Harvey, 31 Wash. App. 279, 640 P.2d 1087 (Div. 1 1982) (holding that the driver of a car was negligent where she did not have her headlights on while driving in the fog).
- n10 Desautelle v. Fletcher, 103 N.H. 177, 167 A.2d 685 (1961).
- n11 Martin v. J.A. Mercier Co., 255 Mich. 587, 238 N.W. 181, 78 A.L.R. 520 (1931).
- n12 Cheatham v. Chabal, 301 Ky. 616, 192 S.W.2d 812 (1946); Blackford v. Kaplan, 135 Ohio St. 268, 14 Ohio Op. 118, 20 N.E.2d 522 (1939).
- n13 Elrich v. Schwaderer, 251 Mich. 33, 230 N.W. 902 (1930); Kendrick v. Kansas City, 237 S.W. 1011 (Mo. 1922).
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## 7A Am Jur 2d Automobiles and Highway Traffic § 205

## § 205 Position of lights; control of glare

A statute mandating the display of lights "on the front" of a motor vehicle has not been construed as meaning the very foremost part of the vehicle, but rather a point in front of the driver that will make the lights visible for the prescribed distance in the direction in which the vehicle is proceeding.<sup>n1</sup> Under statutes which, in effect, require the display of taillights to the rear of motor vehicles, taillights may be regarded as improper because their location is such that one approaching from the rear cannot effectively see the light at all, or because he or she is misled as to the location of the danger to be apprehended.<sup>n2</sup>

Although there is bound to be some glare in connection with the use of headlights on motor vehicles, so that statutory requirements as to their intensity may be fulfilled,<sup>n3</sup> the danger to other motorists from glare is reduced to some extent by regulations as to the construction and position of such lights.<sup>n4</sup> A common feature of such regulations is a requirement that motor vehicles be equipped with headlights which permit the beam to be dimmed or deflected, to some extent, on meeting another vehicle.<sup>n5</sup>

**FOOTNOTES:**

n1 State v. Read, 162 Iowa 572, 144 N.W. 310 (1913).

n2 Rozycki v. Yantic Grain & Products Co., 99 Conn. 711, 122 A. 717, 37 A.L.R. 582 (1923).

n3 Carriveau v. Vatapek, 204 Wis. 139, 235 N.W. 445 (1931).

n4 Schassen v. Columbia Gorge Motor Coach System, 126 Or. 363, 270 P. 530 (1928) (overruled in part on other grounds by, Walker v. Penner, 190 Or. 542, 227 P.2d 316 (1951)).

n5 Ward v. Walker, 206 Ark. 988, 178 S.W.2d 62 (1944); Whatley v. Henry, 65 Ga. App. 668, 16 S.E.2d 214 (1941).

Generally, as to the requirement that lights be dimmed or the beam be deflected on approaching vehicles proceeding in the opposite direction, see § 253.

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## § 206 Standing, stalled, or parked vehicles

Statutory provisions relating to the display of lights on motor vehicles operated, used, or driven on a roadway are generally applicable to parked, or at least to temporarily standing, vehicles.<sup>n1</sup> The word "operated," as used in such statutes, is not limited to a state of motion, but includes at least ordinary stops on the roadway which are incidental to the vehicle's operation.<sup>n2</sup> Stalled or disabled vehicles, or vehicles stopped for repairs, are also deemed to be operated, driven, or used on a roadway within the meaning of statutory provisions relating to lights.<sup>n3</sup>

On the other hand, some statutes or ordinances relating to the display of lights on motor vehicles have been regarded as inapplicable to vehicles not in motion.<sup>n4</sup> Moreover, provisions that lights are not required on a parked motor vehicle where there is sufficient other light available to disclose its presence, or where it is parked within urban areas which local authorities have set aside as parking places, sometimes appear in statutes.<sup>n5</sup>

**FOOTNOTES:**

n1 *Associated Truck Lines v. Velthouse*, 227 Ind. 139, 84 N.E.2d 54 (1949); *Silcio v. Haley*, 380 So. 2d 670 (La. Ct. App. 4th Cir. 1980); *Bassey v. Mistrough*, 88 A.D.2d 894, 450 N.Y.S.2d 604 (2d Dep't 1982); *Murphy v. Hawthorne*, 117 Or. 319, 244 P. 79, 44 A.L.R. 1397 (1926).

Regarding requirements as to flares or similar warning lights near a standing motor vehicle, see § 200.

n2 *Hardware Mut. Casualty Co. v. Union Transfer & Storage Co.*, 205 Ky. 651, 266 S.W. 362 (1924) (truck parked across road for purpose of unloading); *Commonwealth v. Henry*, 229 Mass. 19, 118 N.E. 224 (1918).

n3 *McCoy v. Pittsburg Boiler & Machine Co.*, 124 Kan. 414, 261 P. 30 (1927); *Scheppmann v. Swennes*, 172 Minn. 493, 215 N.W. 861 (1927); *Frazier v. Hull*, 157 Miss. 303, 127 So. 775 (1930); *Lima Used Car Exchange Co. v. Hemperly*, 120 Ohio St. 400, 7 Ohio L. Abs. 271, 166 N.E. 364 (1929).

n4 *McGaffey v. Blosser*, 129 Neb. 371, 261 N.W. 565 (1935).

A parked snowmobile was not being operated, within the meaning of a statute requiring a snowmobile to display a lighted headlamp and taillamp if operated during the hours of darkness, where the driver was merely sitting on the stopped snowmobile, which had been turned off for five minutes, since such activity did not involve an exercise of physical control over speed or direction or a manipulation or activation of the snowmobile's controls. *Burg ex rel. Weichert v. Cincinnati Cas. Ins. Co.*, 2002 WI 76, 254 Wis. 2d 36, 645 N.W.2d 880 (2002).

n5 *Hammett v. Miller*, 227 N.C. 10, 40 S.E.2d 480 (1946).

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## § 207 Particular kinds of vehicles; towed vehicles

Statutory requirements as to lights on motor vehicles have been construed to be applicable to vehicles such as a motorcycle,<sup>n1</sup> a tractor,<sup>n2</sup> a snowmobile,<sup>n3</sup> a snowplow,<sup>n4</sup> a road roller,<sup>n5</sup> and a road grader.<sup>n6</sup> They have been considered inapplicable to a building being moved, under permit, on dollies along a street,<sup>n7</sup> to a hand sled,<sup>n8</sup> and to a toboggan being towed by an automobile.<sup>n9</sup>

A regulation requiring that every motor vehicle, while in use on a public highway, exhibit lights visible within a reasonable distance in the direction toward which the vehicle is going has been held not to apply to a vehicle being towed through the streets by another vehicle bearing sufficient lights,<sup>n10</sup> although there is authority to the contrary.<sup>n11</sup> However, it has been determined, or assumed, that statutory provisions as to taillights must be complied with when a vehicle is being towed on a public highway at night.<sup>n12</sup>

**FOOTNOTES:**

n1 Pope v. Halpern, 193 Cal. 168, 223 P. 470 (1924).

n2 Mathis v. Nelson, 79 Ga. App. 639, 54 S.E.2d 710 (1949).

n3 Burg ex rel. Weichert v. Cincinnati Cas. Ins. Co., 2002 WI 76, 254 Wis. 2d 36, 645 N.W.2d 880 (2002).

n4 Smith v. Ramsey County, 218 Minn. 325, 16 N.W.2d 169 (1944); Gaydoul v. Columbia County, 249 A.D. 917, 292 N.Y.S. 522 (3d Dep't 1937).

n5 Miller v. Abel Const. Co., 140 Neb. 482, 300 N.W. 405 (1941).

n6 Peterson v. King County, 199 Wash. 106, 90 P.2d 729 (1939); Crowley v. Clark County, 219 Wis. 76, 261 N.W. 221 (1935).

n7 Klopper v. D.J. & T. Sullivan Co., 124 Cal. App. 769, 13 P.2d 839 (1st Dist. 1932).

n8 Idell v. Day, 273 Pa. 34, 116 A. 506, 20 A.L.R. 1429 (1922).

n9 Illingworth v. Madden, 135 Me. 159, 192 A. 273, 110 A.L.R. 1090 (1937).

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n10 *Musgrave v. Studebaker Bros. Co. of Utah*, 48 Utah 410, 160 P. 117 (1916).

n11 *Broussard v. Teche Transfer Co.*, 15 La. App. 439, 132 So. 136 (1st Cir. 1931); *Peters v. Peterson*, 265 Minn. 131, 120 N.W.2d 846, 9 A.L.R.3d 1430 (1963).

n12 *Gentile v. De Jong*, 77 A.D.2d 167, 433 N.Y.S.2d 226 (3d Dep't 1980); *Haider v. Finken*, 239 N.W.2d 508 (N.D. 1976); *Strahan v. Davis*, 872 S.W.2d 828 (Tex. App. Waco 1994), writ denied, (Nov. 22, 1994).

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## § 208 Limitations as to weight and load

Legislation governing federal aid to states through which the interstate highway system passes provides that no funds will be apportioned to any state which does not permit the use of the interstate system within its boundaries by vehicles with a maximum weight not exceeding that specified by the statute.<sup>n1</sup> The statute does not preempt more restrictive local regulation, but merely threatens the loss of federal funds to a state which do not permit vehicles up to the specified maximum weight to use the interstate highway system within its borders.<sup>n2</sup> No state may enact or enforce any law denying reasonable access to motor vehicles subject to the statute to and from the interstate highway system to terminals and facilities for fuel, food, repairs, and rest.<sup>n3</sup>

Apart from the constraints of the above federal statute, a state generally has the power to impose reasonable weight limitations on interstate traffic using its highways as long as the limitation does not burden interstate commerce,<sup>n4</sup> despite more liberal weight provisions of sister states.<sup>n5</sup> However, a state statute allowing the state to revoke or suspend the right of an interstate motor carrier to operate on state highways as a consequence of the carrier's violation of state highway regulations governing distribution of weight loads in relation to axles has been struck down as in conflict with the more limited power of the Interstate Commerce Commission to suspend or revoke a certificate of convenience and necessity issued by it.<sup>n6</sup>

It has frequently been recognized that a state has the power to enact and enforce reasonable and nondiscriminatory regulations limiting the weight of vehicles or their loads using its highways.<sup>n7</sup> The basis for this exercise of the police power is the protection of the public highways, for the construction and maintenance of which the state is responsible,<sup>n8</sup> and it is constitutionally permissible for a state statute to create a conclusive presumption of damage to roads caused by the violation of such a regulation, so that the violator cannot avoid being penalized thereunder by proving that it caused no perceptible damage to roads.<sup>n9</sup> Likewise, it is not constitutionally impermissible for a state to provide for mandatory fines for overweight violations, so as to preclude a violator from escaping liability by claiming inability to pay.<sup>n10</sup>

To be valid, though, state regulations as to the weight of motor vehicles or the loads to be transported thereon must not be unreasonable, arbitrary, or discriminatory in their provisions or operation.<sup>n11</sup> Nevertheless, the reasonableness of various types and degrees of vehicle weight limitations imposed by states has usually been upheld, the general view being that the states have wide legislative discretion in the matter.<sup>n12</sup>

In upholding state motor vehicle weight limitations, the courts have rejected claims of illegal discrimination based on classifications differentiating between several types of vehicles, carriers, or hauls,<sup>n13</sup> including: vehicles used in different types of business;<sup>n14</sup> freight motor carriers and railroad carriers;<sup>n15</sup> trucks and passenger buses;<sup>n16</sup> private vehicles and those licensed as common carriers;<sup>n17</sup> private vehicles and government vehicles;<sup>n18</sup> various combinations of tractors and trailers;<sup>n19</sup> and conventional hauls and hauls between common-carrier terminal points.<sup>n20</sup> Furthermore, state laws imposing or allowing, by special or local laws applicable only in particular counties or areas, weight limitations

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more stringent than existing statewide limitations, or limitations applicable in comparable areas, have, for the most part, been upheld.<sup>n21</sup> Also, a court has rejected the contention that a statute limiting the gross weight of vehicles operated on the highways which were licensed after a certain date established an unconstitutional classification in favor of the owners of vehicles which were licensed before that date.<sup>n22</sup>

**FOOTNOTES:**

n1 23 U.S.C.A. § 127(a).

n2 Ruiz v. Commissioner of Dept. of Transp. of City of New York, 679 F. Supp. 341 (S.D. N.Y. 1988), judgment aff'd, 858 F.2d 898 (2d Cir. 1988).

n3 23 U.S.C.A. § 127(b).

n4 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); State v. Genesis Leasing Corp., 197 N.J. Super. 284, 484 A.2d 1263 (App. Div. 1984); W. J. Dillner Transfer Co. v. Messner, 371 Pa. 356, 89 A.2d 516 (1952).

New Jersey regulations restricting the use of local roads by large trucks were facially discriminatory, and thus were invalid under the Commerce Clause, even though they applied evenhandedly without regard to the citizenship of the truck driver or owner, where such regulations required restricted vehicles traveling through New Jersey with no origin or destination in New Jersey to use the national highway network, and prohibited them from using local roads except as necessary to access food, fuel, repairs, or rest, but they permitted restricted vehicles engaged in intrastate travel or in interstate travel with an origin or destination in New Jersey to have unlimited access to local roads. American Trucking Ass'n, Inc. v. Whitman, 437 F.3d 313 (3d Cir. 2006), cert. denied, 127 S. Ct. 349, 166 L. Ed. 2d 41 (U.S. 2006).

n5 Whitney v. Johnson, 37 F. Supp. 65 (E.D. Ky. 1941), judgment aff'd, 314 U.S. 574, 62 S. Ct. 117, 86 L. Ed. 465 (1941); Com. v. Peacock, 118 Pa. Super. 168, 179 A. 907 (1935).

n6 Castle v. Hayes Freight Lines, 348 U.S. 61, 75 S. Ct. 191, 99 L. Ed. 68 (1954).

n7 South Carolina State Highway Department v. Barnwell Bros., 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938); Department of Public Safety v. Freeman Ready-Mix Co., 292 Ala. 380, 295 So. 2d 242 (1974); People v. Slonski, 40 Ill. App. 3d 319, 352 N.E.2d 292 (1st Dist. 1976); Bundrick v. Lafayette Parish Police Jury, 462 So. 2d 1319 (La. Ct. App. 3d Cir. 1985); State v. Krahwinkel, 2002 SD 160, 656 N.W.2d 451 (S.D. 2002).

n8 Youngblood v. Darby, 58 So. 2d 315 (Fla. 1952); State v. Luttrell, 159 Neb. 641, 68 N.W.2d 332 (1955); State v. Myrl & Roy's Paving, Inc., 2004 SD 98, 686 N.W.2d 651 (S.D. 2004).

n9 Department of Transp. v. Del-Cook Timber Co., Inc., 248 Ga. 734, 285 S.E.2d 913 (1982).

n10 Com. v. Church, 513 Pa. 534, 522 A.2d 30 (1987).

n11 Department of Transp. v. Georgia Min. Ass'n, 252 Ga. 128, 311 S.E.2d 443 (1984); State v. Amyot, 119 N.H. 671, 407 A.2d 812 (1979); State v. Harrington, 159 Ohio App. 3d 451, 2004-Ohio-7140, 824 N.E.2d 153 (12th Dist. Madison County 2004).

n12 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Department of Public Safety v. Freeman Ready-Mix Co., 292 Ala. 380, 295 So. 2d 242 (1974); People v. Conlan, 189 Ill. 2d 286, 244 Ill. Dec. 350, 725 N.E.2d 1237 (2000); Bonded Concrete, Inc. v. State by White, 131 Misc. 2d 567, 500 N.Y.S.2d 927 (Sup 1986).

n13 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932).

The failure of a state statute governing overweight assessments of vehicles to differentiate between timber haulers and other freight haulers did not render the statute unconstitutional. Department of Transp. v. Del-Cook Timber Co., Inc., 248 Ga. 734, 285 S.E.2d 913 (1982).

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n14 Sterling H. Nelson & Sons, Inc. v. Bender, 95 Idaho 813, 520 P.2d 860 (1974); State v. Hadley, 115 N.H. 541, 345 A.2d 160 (1975); State v. Consolidated Freightways Corp., 72 Wis. 2d 727, 242 N.W.2d 192 (1976).

n15 Morris v. Duby, 274 U.S. 135, 47 S. Ct. 548, 71 L. Ed. 966 (1927).

A classification in a state statute imposing restrictions on the size of vehicles and weight of load permissible on the highways is not invalid because it favors transportation by railroads as against transportation by motor trucks, since the state has the right to foster a fair distribution of traffic, to the end that all necessary facilities are maintained and that the public is not be inconvenienced by inordinate uses of its highways for purposes of gain. Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932).

n16 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Whitney v. Fife, 270 Ky. 434, 109 S.W.2d 832 (1937); Ex parte Sterling, 122 Tex. 108, 53 S.W.2d 294 (1932).

n17 City Grocery Co. v. State Road Department of Florida, 60 F.2d 331 (N.D. Fla. 1932); Tyson v. Stoutamire, 104 Fla. 505, 140 So. 454 (1932).

n18 State v. Moore, 237 Kan. 523, 701 P.2d 684 (1985); State ex rel. Daniel v. John P. Nutt Co., 180 S.C. 19, 185 S.E. 25 (1935); Hoover Motor Express Co. v. Fort, 167 Tenn. 628, 72 S.W.2d 1052 (1934).

n19 Werner Transp. Co. v. Hughes, 19 F. Supp. 425 (N.D. Ill. 1937).

n20 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Ex parte Sterling, 122 Tex. 108, 53 S.W.2d 294 (1932).

n21 Snyder v. State, 206 Ind. 202, 188 N.E. 777 (1934).

n22 Intrastate Trucking Corp. v. White, 185 A.D.2d 697, 586 N.Y.S.2d 65 (4th Dep't 1992).

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## 7A Am Jur 2d Automobiles and Highway Traffic § 209

## § 209 Local regulations

Municipalities authorized by statute to forbid large and heavy-loaded vehicles from passing along their streets have the power to limit the weight of vehicles and loads on those streets.<sup>n1</sup> Moreover, municipalities which have been empowered to regulate the use of their streets have generally been recognized to have the power to limit the weight of vehicles on certain of their streets,<sup>n2</sup> where the streets could be damaged in the absence of the limitation.<sup>n3</sup> However, in some cases, a particular local regulation of the weight of vehicles has been regarded as beyond, or not in accordance with, powers conferred upon the local government by statute or charter.<sup>n4</sup>

It has sometimes been contended that particular weight limitations were beyond the power of a local government as being in conflict with state regulations. Such contention has been rejected where there were no applicable state regulations, or the particular local regulation was not construed to be in conflict with applicable state regulations.<sup>n5</sup> In certain instances, the position of the local unit with reference to power conflicts with the state in the field of weight regulation has been enhanced by home-rule provisions of the state constitution.<sup>n6</sup> In other cases, though, the particular local regulation has been regarded as in conflict with state regulations.<sup>n7</sup>

To be valid, local regulations limiting the weight of motor vehicles must not be unreasonable, arbitrary, or discriminatory in their provisions or operation.<sup>n8</sup> In a number of cases, the reasonableness of a limitation imposed or classification utilized in a local governmental unit's regulation of the weight of vehicles on its streets has been upheld,<sup>n9</sup> as against contentions that users were being deprived of access to their properties, or compelled to take circuitous routes in the conduct of their businesses, where it appeared that not all access was cut off or that reasonable alternate routes were available.<sup>n10</sup> Conversely, a local governmental entity cannot enforce a weight limitation to prevent one from using a road if there is no viable alternate route.<sup>n11</sup>

**FOOTNOTES:**

n1 *C. White and Son, Inc. v. Town of Rocky Hill*, 181 Conn. 114, 434 A.2d 949 (1980); *City of Overland Park v. McLaughlin*, 10 Kan. App. 2d 537, 704 P.2d 997 (1985), judgment aff'd, 238 Kan. 637, 714 P.2d 939 (1986); *C & T Transport, Inc. v. York Tp.*, 252 Mich. App. 524, 652 N.W.2d 694 (2002); *Blackwood, Inc. v. Township of Reilly*, 923 A.2d 1256 (Pa. Commw. Ct. 2007).

n2 *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955).

n3 *Blackwood, Inc. v. Township of Reilly*, 923 A.2d 1256 (Pa. Commw. Ct. 2007).

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n4 City of Trenton v. County Bd. of Road Com'rs of Wayne County, 116 Mich. App. 212, 323 N.W.2d 340 (1982); Andrews v. Waste Control, Inc., 409 So. 2d 707 (Miss. 1982) (statute granting county authority to regulate width of tires on county roads held not to authorize weight restriction); Bergen County v. Borough of Rutherford, 41 N.J. Super. 545, 125 A.2d 568 (Law Div. 1956).

n5 Village of North Aurora v. Anker, 357 Ill. App. 3d 1049, 294 Ill. Dec. 470, 830 N.E.2d 882 (2d Dist. 2005), appeal denied, 217 Ill. 2d 568, 300 Ill. Dec. 368, 844 N.E.2d 40 (2005); City of Cedar Rapids v. State, 478 N.W.2d 602 (Iowa 1991); Huron Tp. v. City Disposal Systems, Inc., 201 Mich. App. 210, 505 N.W.2d 897 (1993), judgment rev'd on other grounds, 448 Mich. 362, 531 N.W.2d 153 (1995).

n6 City of Trenton v. County Bd. of Road Com'rs of Wayne County, 116 Mich. App. 212, 323 N.W.2d 340 (1982).

n7 State v. Rivers, 62 Ohio Misc. 2d 724, 610 N.E.2d 1217 (Mun. Ct. 1992); Scurlock Permian Corp. v. Brazos County, 869 S.W.2d 478 (Tex. App. Houston 1st Dist. 1993), writ denied, (Apr. 13, 1994).

n8 Dibble v. Town of Ripley, 124 Misc. 2d 951, 478 N.Y.S.2d 751 (Sup 1984); Red River Const. Co. v. City of Norman, 1981 OK 20, 624 P.2d 1064 (Okla. 1981).

A city's overweight vehicle ordinance was unenforceable where the city failed to erect signs giving drivers reasonable notice of the ordinance's requirements. City of Decatur v. Page, 339 Ill. App. 3d 316, 273 Ill. Dec. 837, 789 N.E.2d 1269 (4th Dist. 2003).

n9 Ruiz v. Commissioner of Dept. of Transp. of City of New York, 679 F. Supp. 341 (S.D. N.Y. 1988), judgment aff'd, 858 F.2d 898 (2d Cir. 1988); City of Overland Park v. McLaughlin, 10 Kan. App. 2d 537, 704 P.2d 997 (1985), judgment aff'd, 238 Kan. 637, 714 P.2d 939 (1986); Leathers v. City of Burns, 251 Or. 206, 444 P.2d 1010 (1968); Upper Moreland Tp. v. Ivymor Contractors, Inc., 20 Pa. Commw. 66, 341 A.2d 214 (1975).

n10 Des Moines Metropolitan Area Solid Waste Agency v. City of Grimes, 495 N.W.2d 746 (Iowa 1993); Bundrick v. Lafayette Parish Police Jury, 462 So. 2d 1319 (La. Ct. App. 3d Cir. 1985); State v. Johnson, 87 Or. App. 654, 743 P.2d 1121 (1987).

n11 Troy Sand & Gravel Co. Inc. v. Rensselaer County, 198 A.D.2d 646, 603 N.Y.S.2d 618 (3d Dep't 1993).

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## 7A Am Jur 2d Automobiles and Highway Traffic § 210

## § 210 Limitations as to dimensions

States have the power to enact statutes regulating the dimensions of motor vehicles and combinations of such vehicles, including their length and width, so long as such regulations are reasonable, nondiscriminatory, and impose no undue burdens on interstate commerce,<sup>n1</sup> and do not conflict with preemptive federal law.<sup>n2</sup> Within such restrictions, state statutes relating to the dimensions of motor vehicles have been upheld as valid by the United States Supreme Court, on the ground that the basic purpose thereof is the promotion of public safety and highway conservation, their effect on interstate commerce being merely incidental.<sup>n3</sup> Moreover, such statutes have been upheld as against the contentions that they constitute a taking of property without due process and a denial of equal protection of the laws,<sup>n4</sup> and that they impair the obligation of contracts with patrons for the carriage of freight.<sup>n5</sup>

The state may make reasonable regulations as to the height of motor vehicles using the highways, and such regulations have generally been upheld as against the arguments that they are arbitrary or a violation of the due process or equal protection clause, or that they impair the obligations of contracts.<sup>n6</sup> Due process is not violated by a state statute prohibiting the operation on its highways of any vehicle carrying any other vehicle above the cab or over the head of the operator of the carrier vehicle, as applied to one engaged in interstate commerce as a common carrier of automobiles on motor trucks.<sup>n7</sup> On the other hand, a federal statute prohibiting states from setting trailer length limits less than 48 feet does not give states the implicit authority to regulate trailers longer than 48 feet, since if Congress had intended states to have complete dominion over oversized trailers, it could have so specified.<sup>n8</sup>

**FOOTNOTES:**

n1 *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 98 S. Ct. 787, 54 L. Ed. 2d 664 (1978); *People v. Kesler*, 186 Ill. 2d 413, 238 Ill. Dec. 619, 712 N.E.2d 341 (1999) (upholding statute prohibiting towing combinations of three vehicles).

A state statute prohibiting the use of 65-foot double-trailer trucks within its borders, but permitting the use of 55-foot single-trailer trucks and 60-foot double-trailer trucks, violated the Commerce Clause of the United States Constitution. *Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981).

n2 *State v. Sherbrooke*, 633 N.W.2d 856 (Minn. Ct. App. 2001).

n3 *South Carolina State Highway Department v. Barnwell Bros.*, 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938).

n4 *Sproles v. Binford*, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); *State v. Wetzel*, 208 Wis. 603, 243 N.W. 768, 86 A.L.R. 274 (1932).

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n5 Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).

n6 Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).

n7 Darnall Trucking Co. v. Simpson, 122 W. Va. 656, 12 S.E.2d 516 (1940).

n8 Mid-Atlantic Bldg. Systems Council, a Div. of Pennsylvania Builders Ass'n, Inc. v. Frankel, 17 F.3d 50 (2d Cir. 1994).

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## § 211 Local regulations

The power of a state to regulate the dimensions of motor vehicles may be delegated to municipal or local governments, and such a delegation is generally implied where those local units have the authority to improve and regulate the use of their streets, in the exercise of the police power.<sup>n1</sup> However, an ordinance prohibiting the operation of double-decked buses not equipped with pneumatic tires on city streets has been considered void as unreasonable, on the ground that it did not promote the public purpose of conserving streets, in that only the weight, not the height, of the vehicle bore a relationship to the preservation and proper maintenance of streets.<sup>n2</sup> Also, where state regulations as to the dimensions of motor vehicles purport to be exclusively controlling and statewide in operation, a local governmental unit may not enact an ordinance regulating the dimensions of motor vehicles using its streets.<sup>n3</sup>

**FOOTNOTES:**

n1 Zenith-Godley Co. v. Wiley, 279 A.D. 498, 110 N.Y.S.2d 599 (1st Dep't 1952).

n2 Pennjersey Rapid Transit Co. v. City of Camden, 6 N.J. Misc. 813, 142 A. 821 (Sup. Ct. 1928).

n3 People v. Bedell, 251 N.Y. 415, 167 N.E. 519 (1929).

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7A Am Jur 2d Automobiles and Highway Traffic § 212

## § 212 Violations of limitations

A violation of restrictive regulations relating to the weight and load,<sup>n1</sup> or to the dimensions,<sup>n2</sup> of motor vehicles on the public roadways is generally made a punishable offense. Also, in many states, a violation of statutes or regulations limiting the weight of motor vehicles and their loads will render the violator liable for damages to highways or bridges because of the excess weight.<sup>n3</sup> However, since an overweight violation is not a common-law crime, no penalty can be imposed where the regulation provides none.<sup>n4</sup>

In a number of cases, the issue has been raised as to whether knowledge or intent is a requisite element of the offense. The result generally depends on the language of the regulation and the purpose of the legislative body, and knowledge or intent is sometimes required.<sup>n5</sup> In other cases, though, the proscribed conduct has been viewed as *mala prohibita*, and thus not subject to the requirement of knowledge or intent.<sup>n6</sup>

**FOOTNOTES:**

n1 *People v. White*, 206 Ill. App. 3d 15, 150 Ill. Dec. 896, 563 N.E.2d 1023 (1st Dist. 1990); *Denton v. State*, 182 Ind. App. 464, 395 N.E.2d 812 (1979), on reh'g, 398 N.E.2d 1288 (Ind. Ct. App. 1979); *State v. Woodward*, 383 A.2d 661 (Me. 1978); *People v. Delta Carting Corp.*, 136 Misc. 2d 268, 518 N.Y.S.2d 572 (Dist. Ct. 1987); *Com. v. Liver*, 360 Pa. Super. 205, 520 A.2d 56 (1987).

n2 *City of Cleveland v. Curluter*, 163 Ohio St. 269, 56 Ohio Op. 244, 126 N.E.2d 436 (1955); *Holyfield v. State*, 124 Tex. Crim. 422, 63 S.W.2d 386 (1933).

n3

**Related References:**

Am. Jur. 2d, Highways, Streets, and Bridges § 686.

n4 *Young's Sheet Metal and Roofing, Inc. v. Wilkins*, 77 N.C. App. 180, 334 S.E.2d 419 (1985); *Com. ex rel. Varronne v. Cunningham*, 365 Pa. 68, 73 A.2d 705 (1950).

n5 *Widner v. State*, 181 Ind. App. 427, 391 N.E.2d 1199 (1979); *People v. Cubiotti*, 4 Misc. 2d 44, 157 N.Y.S.2d 784 (City Ct. 1956).

n6 *Leonard v. State*, 38 Ala. App. 138, 79 So. 2d 803 (1955); *Com. v. Lawrence Ready-Mix Concrete Corp.*, 4 Mass. App. Ct. 804, 345 N.E.2d 919 (1976); *State v. Boze*, 472 S.W.2d 35 (Mo. Ct. App. 1971).



**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196  
 West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 117, 319, 327 to 329, 337  
 23 U.S.C.A. §§ 127, 153  
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 Am. Jur. Legal Forms 2d § 33:20  
 Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 890 to 894, 897 to 900  
 Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 86  
 West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 319, 327  
 Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads,  
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Automobiles and Highway Traffic  
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3. Weight, Load, and Dimensions of Vehicles

## 7A Am Jur 2d Automobiles and Highway Traffic § 213

## § 213 Waivers of limitations

A number of the statutes limiting the weight, load, or dimensions of motor vehicles contain provisions authorizing designated officials to waive such limitations under certain circumstances, and such provisions have generally been upheld as against the contention that they constitute an unconstitutional delegation of legislative power.<sup>n1</sup>

**FOOTNOTES:**

n1 *Sproles v. Binford*, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); *Ashland Transfer Co. v. State Tax Commission*, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932); *Ex parte Salcido*, 153 Tex. Crim. 160, 218 S.W.2d 467 (1949); *State v. Wetzel*, 208 Wis. 603, 243 N.W. 768, 86 A.L.R. 274 (1932).

However, a statute authorizing the state department of highways to issue single permits exempting vehicles from statutory limitations on weight, when the public interest is served thereby, did not authorize the department to issue single permits allowing multiple trips of an overweight vehicle on the state's highway system. *Bunch v. Cobb*, 273 S.C. 445, 257 S.E.2d 225 (1979).

**REFERENCE:** West's Key Number Digest, Antitrust and Trade Regulation [westkey]196

West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 117, 319, 327 to 329, 337

23 U.S.C.A. §§ 127, 153

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Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic §§ 890 to 894, 897 to 900

Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 86

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1. Federal Provisions

## 7A Am Jur 2d Automobiles and Highway Traffic § 214

## § 214 Generally; injunctions to restrain violations

The Motor Vehicle Safety Act (Act) provides for the granting of injunctions by federal district courts to restrain violations of the Act, in civil actions brought by the Attorney General on behalf of the United States.<sup>n1</sup> When practicable, the Secretary of Transportation must notify a person against whom such an action for injunctive relief is planned, give him or her an opportunity to present his or her views, and, except for a knowing and willful violation of the Act, give the person a reasonable opportunity to remedy the defect or comply with the applicable motor vehicle safety standard; but the failure to give notice and an opportunity to remedy the defect or comply does not prevent a court from granting appropriate relief.<sup>n2</sup> The Act prescribes the venue for any such injunctive proceeding, as the judicial district in which the violation occurred or the defendant is found, resides, or does business, and states that process in the action may be served in any other judicial district in which the defendant resides or may be found.<sup>n3</sup> In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.<sup>n4</sup> The Act also provides for the enforcement of any injunction or restraining order by criminal contempt.<sup>n5</sup>

A manufacturer offering a motor vehicle or motor vehicle equipment for import must designate an agent on whom service of notices and process in administrative and judicial proceedings may be made, and file such designation in writing with the Secretary of Transportation.<sup>n6</sup> Such an agent may be served at the agent's office or usual place of residence.<sup>n7</sup> If a manufacturer does not designate an agent, service may be made by posting the notice or process in the office of the Secretary of Transportation.<sup>n8</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30163(a).

n2 49 U.S.C.A. § 30163(b).

n3 49 U.S.C.A. § 30163(c).

n4 49 U.S.C.A. § 30163(e).

n5 49 U.S.C.A. § 30163(d).

n6 49 U.S.C.A. § 30164(a).

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n7 49 U.S.C.A. § 30164(b).

n8 49 U.S.C.A. § 30164(b).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 327  
49 U.S.C.A. §§ 30118 to 30121, 30163 to 30167, 30170  
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7A Am Jur 2d Automobiles and Highway Traffic § 215

§ 215 Inspections and investigations; records and reports

The Motor Vehicle Safety Act (Act) authorizes the Secretary of Transportation to conduct inspections or investigations for the purpose of enforcing the Act,<sup>n1</sup> and to reasonably require that manufacturers of motor vehicles or motor vehicle equipment keep records and make reports to enable the secretary to decide whether they are complying with the Act.<sup>n2</sup>

In carrying out the provisions of the Act, the secretary may require any person to file reports or answers to specific questions, including reports or answers under oath, and to conduct hearings, administer oaths, take testimony, and require, by subpoena or otherwise, the appearance and testimony of witnesses and the production of records the secretary considers advisable.<sup>n3</sup>

The Act also requires manufacturers of motor vehicles or motor vehicle equipment to report safety recalls in foreign countries to the secretary in certain instances,<sup>n4</sup> authorizes the secretary to establish early warning reporting requirements for such manufacturers,<sup>n5</sup> and authorizes the secretary to require certain reports regarding sales or leases of motor vehicles with defective tires.<sup>n6</sup>

Information obtained by the secretary under the Act which is related to a confidential matter may be disclosed only in limited circumstances.<sup>n7</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30166(b).

n2 49 U.S.C.A. § 30166(e).

n3 49 U.S.C.A. § 30166(g).

n4 49 U.S.C.A. § 30166(l).

n5 49 U.S.C.A. § 30166(m).

n6 49 U.S.C.A. § 30166(n).

n7 49 U.S.C.A. § 30167(a).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 327  
49 U.S.C.A. §§ 30118 to 30121, 30163 to 30167, 30170  
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7A Am Jur 2d Automobiles and Highway Traffic § 216

§ 216 Discovery, notification, and remedy of defects

The Motor Vehicle Safety Act (Act) contains a number of provisions governing the discovery, notification, and remedy of motor vehicle defects. Matters covered by these provisions include --

- notification by manufacturers to the Secretary of Transportation and to owners, purchasers, and dealers as to such defects or noncompliance with motor vehicle safety standards.<sup>n1</sup>
- the contents, timing, and form of such a manufacturer's notice of defect or noncompliance.<sup>n2</sup>
- notification to manufacturers respecting the secretary's finding of such a defect or noncompliance.<sup>n3</sup>
- ways for manufacturers to remedy these defects or noncompliances, such as by repair, replacement, or a refund of the purchase price.<sup>n4</sup>
- enforcement of notification and remedy orders.<sup>n5</sup>

On the motion of the secretary, or on application by any interested person, the secretary may conduct a hearing to decide whether the manufacturer has reasonably met the Act's remedy requirements.<sup>n6</sup> A manufacturer may be exempted from the remedy requirements if the secretary decides that the defect or noncompliance in question is inconsequential to motor vehicle safety.<sup>n7</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30118(c).

n2 49 U.S.C.A. § 30119.

n3 49 U.S.C.A. § 30118(a).

n4 49 U.S.C.A. § 30120.

n5 49 U.S.C.A. § 30121.

n6 49 U.S.C.A. § 30120(e).



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n7 49 U.S.C.A. § 30120(h).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 327  
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7A Am Jur 2d Automobiles and Highway Traffic § 217

§ 217 Civil and criminal penalties

The Motor Vehicle Safety Act (Act) provides for the imposition of civil penalties owing to the United States for violations thereof,<sup>n1</sup> but authorizes the Secretary of Transportation to compromise the amount of such a civil penalty.<sup>n2</sup>

Under the Act, a person who fails to comply with the reporting requirements of the Act with the specific intention of misleading the secretary with respect to motor vehicle or motor vehicle equipment safety related to defects that have caused death or serious bodily injury to an individual is subject to criminal penalties.<sup>n3</sup>

**FOOTNOTES:**

n1 49 U.S.C.A. § 30165(a).

n2 49 U.S.C.A. § 30165(b).

n3 49 U.S.C.A. § 30170(a).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 327  
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7A Am Jur 2d Automobiles and Highway Traffic § 218

## § 218 Generally

Generally speaking, a state has the power to enact statutes authorizing police or other designated officers to inspect motor vehicles to detect the inadequacy of equipment,<sup>n1</sup> overloading,<sup>n2</sup> and other violations of laws relating to the equipment, weight, load, and dimensions of motor vehicles. A state statute requiring the display of a valid inspection sticker on an automobile is not unconstitutional; such a statute is not discriminatory, as having the practical effect of punishing state residents while immunizing transient motorists from a like penalty, since the classification of affected persons is reasonable and applies to all users of highways and all residents of the state.<sup>n3</sup>

Under properly delegated legislative authority,<sup>n4</sup> municipalities may adopt ordinances relating to the inspection of motor vehicles.<sup>n5</sup> Even though such an ordinance applies to both residents and nonresidents who operate motor vehicles within the municipality, it does not constitute an invalid burden on interstate commerce, particularly where it does not make operation by either a resident or a nonresident unlawful until a defect has been discovered and the operator has failed to correct it within a specified time, and it does not apply to vehicles bearing unexpired inspection certificates issued by any other public authority of competent jurisdiction.<sup>n6</sup> There is no conflict between a state statute providing for the licensing of motor vehicles and a municipal ordinance requiring inspection thereof, since the statute and ordinance relate to different subjects.<sup>n7</sup>

**FOOTNOTES:**

n1 *People v. Fidler*, 280 A.D. 698, 117 N.Y.S.2d 313 (3d Dep't 1952).

n2 § 219.

n3 *State v. Christensen*, 639 P.2d 205 (Utah 1981).

n4 *City of Evanston v. Wazau*, 364 Ill. 198, 4 N.E.2d 78, 106 A.L.R. 789 (1936); *Martin v. Rowlett*, 1939 OK 307, 185 Okla. 431, 93 P.2d 1090 (1939); *Town of Brattleboro v. Nowicki*, 119 Vt. 18, 117 A.2d 258 (1955).

n5 *Eugene v. State*, 764 S.W.2d 567 (Tex. App. Houston 14th Dist. 1988).

n6 *Mayer v. Ames*, 133 Ohio St. 458, 11 Ohio Op. 152, 14 N.E.2d 617 (1938).

n7 *Mayer v. Ames*, 133 Ohio St. 458, 11 Ohio Op. 152, 14 N.E.2d 617 (1938).

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## 7A Am Jur 2d Automobiles and Highway Traffic § 219

## § 219 Weight and load limitations

To enforce statutory limitations relative to the weight and load of motor vehicles,<sup>n1</sup> designated officials may be empowered to stop apparently overloaded vehicles to ascertain their exact weight.<sup>n2</sup> The courts will not enjoin the enforcement by duly authorized officers of valid statutory provisions respecting limitations on the weight of vehicles that may be operated on public highways, provided, of course, that the officers are acting in the manner prescribed by those laws.<sup>n3</sup> A statute may authorize the imposition of civil penalties for operating an overweight vehicle on a public highway, which penalties may be upheld even though they result in heavy financial sanctions.<sup>n4</sup>

Under some statutes, designated police officials are authorized to have motor vehicles inspected to detect overloading, and this authorization is not affected by whether or not evidence of overloading is disclosed by the inspection.<sup>n5</sup>

**FOOTNOTES:**

n1 § 208.

n2 *People v. Fair*, 61 Ill. App. 2d 360, 210 N.E.2d 593 (1st Dist. 1965).

n3 *Whitehead v. Richardson*, 127 S.W.2d 512 (Tex. Civ. App. Dallas 1939).

n4 *State v. Geise*, 2002 SD 161, 656 N.W.2d 30 (S.D. 2002) (holding that the operator of a tractor-trailer was properly assessed a double civil penalty for his gross weight violation, where the vehicle had extreme axles and its total weight exceeded allowable limits by more than 10,000 pounds).

n5 *People v. Fidler*, 280 A.D. 698, 117 N.Y.S.2d 313 (3d Dep't 1952).

**REFERENCE:** West's Key Number Digest, Automobiles [westkey]5(1), 5(2), 6, 7, 10, 11, 115, 327  
49 U.S.C.A. §§ 30118 to 30121, 30163 to 30167, 30170  
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