



1-1-1973

Property Review of Selected 1972 California Legislation

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Property Review of Selected 1972 California Legislation*, 4 PAC. L. J. 567 (1973).
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Motor Vehicles

Motor Vehicles; suspension of driver's licenses

Vehicle Code §§13210, 13352, 13550 (amended).
AB 2332 (Brown); STATS 1972, Ch 1129

Section 13352 of the Vehicle Code, as amended, provides that the driver's license of a person convicted for the first time of driving a motor vehicle while under the influence of an intoxicating liquor or any drug or under a combination of the two (other than a violation of §§23101 or 23106 of the Vehicle Code relating to an intoxicated person who injures another), shall be *suspended* for a period of six months *if the court so orders*. Section 13352 previously provided for automatic suspension by the Department unless the court recommended that the license should not be suspended.

Section 13210 of the Vehicle Code, as amended, now conforms to Section 13352 as amended. Section 13210 provides that the court may *limit* the driving privilege of a person convicted for the first time of driving a motor vehicle while under the influence of an intoxicating liquor or any drug or while under a combination of the two (other than a violation of §§23101 or 23106), as a condition of probation without notifying the Department of Motor Vehicles. Prior to amendment, this section provided that the court could order the department not to automatically suspend a driver's license for a first offense under Section 13352 of the Vehicle Code.

Section 13550 of the Vehicle Code was amended to bring it into conformity with Section 13352 of the Vehicle Code and there are no substantive changes to this section.

COMMENT

The prior version of Section 13352 of the Vehicle Code (regarding driving while under the influence of intoxicating liquor or any drug) provided:

The department shall immediately suspend or revoke the privilege of any person to operate a motor vehicle The suspension or revocation shall be as follows:

- (a) Upon a first such conviction or finding . . . such privilege shall be suspended for a period of six months unless the court in case of the first conviction or finding . . . recommends no suspension

Despite these provisions, the Department of Motor Vehicles could still suspend a first offender's drivers license notwithstanding a recommendation to the contrary by the court [Hough v. McCarthy, 54 Cal. 2d 273, 353 P.2d 276, 5 Cal. Rptr. 668 (1960)]; although the legislative intent would appear to have been to leave some discretion with the courts regarding the suspension of a first offender's drivers license [Case Note, *Administrative Law: Driver's Licenses, Predetermined Policy of Suspension Upheld as Valid Exercise of Discretion*, 8 U.C.L.A. L. REV. 190-192 (1961)]. The amendment of Sections 13210, 13352, and 13550 of the Vehicle Code takes from the Department of Motor Vehicles the power to suspend the driver's license of a person convicted for the first time of driving a motor vehicle while under the influence of an intoxicating liquor or any drug or under a combination of the two (other than a violation of §§23101 or 23106 of the Vehicle Code), unless a court so orders. This will prevent the department from suspending a first offender's drivers license contrary to the wishes of the court.

See Generally:

- 1) Pricer & Wyckoff, *Practices and Procedures of the Department of Motor Vehicles*, 14 HAST. L.J. 355, 359-361 (1963).

Motor Vehicles; driving under influence of liquor or drugs

Penal Code §§367d, 367e (repealed); Vehicle Code §§13201, 13352, 23101, 23102, 23105, 23106 (amended).

AB 109 (Biddle); STATS 1972, Ch 92

Support: California Highway Patrol; District Attorneys' and Peace Officers' Associations

Eliminates provisions from the Penal Code and amends provisions in the Vehicle Code governing the operation of a motor vehicle while under the influence of an intoxicating liquor, any drug, or the combined influence of an intoxicating liquor and any drug; consolidates all provisions in the Vehicle Code governing the operation of a motor vehicle while under the influence of an intoxicating liquor, any drug, or combination thereof, whether on a highway, or on private property; expands criminal sanctions applicable to persons who injure or kill another in the course of operating a motor vehicle on private property while intoxicated, to include

persons under the influence of any drug, or the combined influence of an intoxicating liquor and any drug.

Section 23102 of the Vehicle Code, relating to driving while under the influence of intoxicating liquor or under the combined influence of intoxicating liquor and any drug, and Section 23105, relating to driving while under the influence of any drug, have been amended to provide that such driving is unlawful whether upon a highway or "upon other than a highway." Prior to amendment, these sections were only applicable to driving upon a highway.

Sections 23102 and 23105 were further amended to include a provision that the California Highway Patrol will only be required to provide patrol or enforce the provisions of these sections against drivers upon a highway. The penalties provided for a violation of Section 23102 or 23105 remain unchanged.

Sections 23101 and 23106 of the Vehicle Code similarly relate to driving while under the influence of intoxicating liquor, any drug, or under the combined influence of intoxicating liquor and any drug, and have been amended to provide that it is unlawful for any person while under such influence to drive a vehicle upon a highway "or upon other than a highway," and when so driving do any act forbidden by law or neglect any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes bodily injury to any person other than himself. Prior to amendment, this section was applicable to a person who "drives." By specifying "upon a highway" or "upon other than a highway," the language of these sections is made to conform with that used in Sections 23102 and 23105 *supra*, but the change does not appear to be substantive. [See *People v. Gossman*, 95 Cal. App. 2d 293, 295, 212 P.2d 585, 587 (1950), (construing "drives" to include off-highway driving)].

Sections 23101 and 23106, prior to amendment, provided that any violation of these sections was a felony, despite provisions which allowed felony-misdemeanor penalties. Sections 23101 and 23106 have been amended to allow a court in its discretion to decide whether a violation is a felony or a misdemeanor [See CAL. PEN. CODE §17].

Chapter 92 makes technical, non-substantive amendments to Sections 13201 and 13352 of the Vehicle Code. Section 13201 deals with the suspension of a person's driving privilege by a court. Section 13352 pertains to the suspension or revocation of a driver's license by the Department of Motor Vehicles.

Chapter 92 repealed Sections 367d and 367e of the Penal Code.

Section 367d dealt with a person who drives a vehicle while under the influence of an intoxicating liquor or the combined influence of an intoxicating liquor and any drug. Section 23102 of the Vehicle Code, as amended, prohibits the conduct formerly covered by Section 367d of the Penal Code. Section 367e related to a person who drives a motor vehicle while intoxicated and negligently injures another person. The prohibitions of this section are now incorporated within Sections 23101 and 23106 of the Vehicle Code.

See Generally:

- 1) CALIFORNIA LAW REVISION COMMISSION, *Recommendations Relating to Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Driving While Intoxicated*, 2 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS AND STUDIES, E-5 to E-21 (1959).
- 2) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 373 (1972).
- 3) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 269.
- 4) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION 190.
- 5) 53 OPS. ATT'Y GEN. 114 (1970).
- 6) 52 OPS. ATT'Y GEN. 250 (1969).
- 7) 43 OPS. ATT'Y GEN. 87, 305 (1964).
- 8) 39 OPS. ATT'Y GEN. 291 (1962).
- 9) 38 OPS. ATT'Y GEN. 49 (1961).

Motor Vehicles; definition of "speed trap"

Vehicle Code §40802 (amended).

AB 744 (Fenton); STATS 1972, Ch 1346

Chapter 1346 amends §40802 of the Vehicle Code to revise the definition of a "speed trap" to include a particular section of a highway with a prima facie speed limit established pursuant to Vehicle Code §22352(b)(1) (any highway other than a state highway), §22354 (state highway), §22358 (street other than a state highway), or §22358.3 (streets in business and residential districts which do not exceed 25 feet in width), which speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects [§40802(b)]. Prior to the addition of Subsection (b) to §40802, the definition of a "speed trap" was limited to a particular section of highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance [§40802(a)]. It should be noted that no officer may use a speed trap in arresting any person for a violation of the Vehicle Code nor may it be used to secure evidence as to the speed of

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any vehicle for the purpose of an arrest or prosecution under this Code. [§40801].

See Generally:

- 1) CAL. VEHICLE CODE §§22352, 22354, 40800 *et seq.*
- 2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §232 (1960).

Motor Vehicles; stopping vehicle on a freeway

Vehicle Code §22520 (amended).

SB 192 (Deukmejian); STATS 1972, Ch 61

Chapter 61 adds subdivision (f) to Section 22520 of the Vehicle Code to provide an additional exception to the general prohibition against stopping on a freeway which has full control of access and no crossings at grade. Section 22520(f) provides, in effect, that no person shall stop, park, or leave standing any vehicle upon a freeway, which has full control of access and no crossings at grade, except any person reporting a traffic accident or other situation or incident to a peace officer or any person specified in subdivision (c) (persons actually engaged in maintenance or construction on freeway property or any employee of a public agency actually engaged in the performance of his duties), either directly or by means of an emergency telephone or similar device. A person who engaged in the type of conduct specified in subdivision (f) was not previously exempt from the general prohibition against stopping on a freeway contained in Section 22520.

See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §§230-235 (7th ed. 1960), (Supp. 1969).

Motor Vehicles; use of freeways by pedestrians

Vehicle Code §21960 (amended).

SB 832 (Nejedly); STATS 1972, Ch 498

Section 21960 of the Vehicle Code provides that the Department of Public Works and any local authorities may prohibit or restrict the use of freeways or any portion thereof by pedestrians, bicycles, or other nonmotorized traffic or by any person operating a motor-driven cycle. This section has been amended to provide that, notwithstanding any provisions of any order, ordinance, or resolution to the contrary, the driver or passengers of a disabled vehicle stopped on a freeway may walk in either direction to the nearest exit on that side of the freeway

upon which the vehicle is disabled, from which telephone or motor vehicle repair services are available.

See Generally:

- 1) 60 C.J.S. *Motor Vehicles* §§35, 382, 383 (1969).

Motor Vehicles; U-turns

Vehicle Code §22105 (amended).

AB 395 (LaCoste); STATS 1972, Ch 64

Support: California Highway Patrol; California Peace Officers' Association

Section 22105 of the Vehicle Code, as amended, provides that no person shall make a U-turn upon any highway unless he has an unobstructed view for 200 feet in both directions along the highway and of any traffic thereon. Section 22105, prior to amendment, apparently did not apply to straight sections of highway unless they were "the approach to, or near the crest of, a grade." Neither was Section 22105, prior to amendment, limited in its application, to U-turns "upon any highway." A highway, as defined in Section 360 of the Vehicle Code, does not include privately maintained roadways not open to the public.

The author's intent was to clarify this section and insure that it is applied to U-turns (not just those on a curve or on the approach to, or near the crest of, a grade) which might be unsafely attempted due to fog or dust storms [Interview with Ernest LaCoste, California Assemblyman, Sacramento, California, July 11, 1972].

Motor Vehicles; unlawful riding and towing

Vehicle Code §21712 (amended).

AB 495 (Foran); STATS 1972, Ch 262

Support: California Peace Officers' Association

Section 21712 of the Vehicle Code has been amended to provide that no person shall knowingly drive a motor vehicle which is towing any person riding upon a bicycle, coaster, roller skates, sled, skis, or toy vehicle. Section 21712 was further amended to provide that the prohibition against towing a trailer containing a passenger shall apply to off highway driving as well as driving on a highway. Unaffected is a provision that no person shall ride, and no person driving a motor vehicle shall knowingly permit any person to ride on any vehicle not designed or intended for the use of passengers.

See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §335 (7th ed. 1960), (Supp. 1969).

Motor Vehicles; bumpers on registered vehicles

Vehicle Code §28070, 28071 (new).

SB 1149 (Walsh); STATS 1972, Ch 272

Opposition: Department of Public Works

Article 11 (commencing with Section 28070) has been added to Chapter 5 of Division 12 of the Vehicle Code, to provide that every passenger vehicle (as defined in Section 34710) registered in this state shall be equipped with a front and a rear bumper. As used in this section, "bumper" means a device designed and intended by the manufacturer to prevent the front or rear of the body of the vehicle from coming into contact with any other motor vehicle. This section shall not apply to any passenger vehicle that is required to be equipped with an energy absorption system pursuant to either state or federal law [See, e.g., CAL. VEHICLE CODE §34715; 15 U.S.C. §1381 *et seq.* (1970)].

See Generally:

- 1) 60 C.J.S. *Motor Vehicles* §26, *et seq.* (1969).

Motor Vehicles; obstruction of automobile windows

Vehicle Code §26708 (amended); §26708.5 (new).

SB 329 (Nejedly); STATS 1972, Ch 528

Chapter 528 amends subdivision (a) of Section 26708 of the Vehicle Code to provide that "no person shall *drive* any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield, or side or rear windows, or with any object or material so placed, displayed, installed, affixed, or applied in or upon the vehicle as to obstruct or reduce the driver's clear view through the windshield or side windows." Prior to amendment, Section 26708 did not include the language "displayed, installed, affixed, or applied." Previously it was only unlawful to drive a vehicle with such material "placed" on the windows.

Chapter 528 also added Section 26708.5 to the Vehicle Code to provide that it is unlawful to place, install, affix, or apply any *transparent material* upon the windshield, or side or rear windows, of any motor vehicle if such material alters the color or reduces the light trans-

mittance of such windshield or side or rear windows, except as provided in subdivision (b) of Section 26708. Section 26708(b) provides an exception for: (1) rearview mirrors; (2) adjustable non-transparent sunvisors mounted in front of the side windows and not attached to the glass; (3) signs, stickers or other materials in a seven inch square in the lower corner of the windshield farthest removed from the driver; (4) rear side windows; and (5) direction, destination, or termini signs of a common carrier provided they do not interfere with the driver's view of approaching traffic. Section 26708.5 does not apply to factory-installed tinted glass or the equivalent replacement thereof. Unlike Section 26708, a person may violate Section 26708.5 without actually driving his vehicle.

See Generally:

- 1) *Davis v. Pine Mountain Lumber Co.*, 273 Cal. App. 2d 218, 77 Cal. Rptr. 825 (1969).
- 2) *Wilkerson v. Brown*, 84 Cal. App. 2d 491, 190 P.2d 958 (1948).
- 3) 1 OPS. ATT'Y GEN. 587 (1943).

Motor Vehicles; motorcycle headlamps

Vehicle Code §25650.5 (new).

SB 126 (Grunsky); STATS 1972, Ch 201

Support: California State Automobile Association; California Highway Patrol

Section 25650.5 of the Vehicle Code requires that every motorcycle manufactured and first registered after January 1, 1975, be equipped with a headlamp which automatically turns on when the engine is started and remains on while the motor is running. Prior to this addition to the Code, motorcycles were only required to have a headlamp turned on during nighttime operation.

COMMENT

SB 126 was introduced in the belief, supported by the Franklin Institute Research Laboratories, that the requirement of Section 25650.5 would make motorcycles more visible and thus cause a reduction of motorcycle accidents [Letter from Senator Donald L. Grunsky to the Pacific Law Journal, July 26, 1972]. In four states having similar laws (Indiana, Montana, Oregon, and Wisconsin), motorcycle accidents were reduced by 41.3% [Id.].

A possible deficiency in Section 25650.5 is that it does not set any performance standards for the operation of a motorcycle headlamp during the daylight hours. Sections 25650 and 25651 of the Vehicle Code

require certain standards for motorcycle headlamps, but only for nighttime operation. Since some motorcycles are mechanically unable to sustain continuous headlamp operation (because of inadequate batteries or generators) [Interview with Bryan Hill, Assistant Manager of Department of Governmental Affairs, California State Automobile Association, Sacramento, California, July 28, 1972], there might be some incentive to install headlamps which operate at much lower intensities during daylight hours than during nighttime hours. If this were to occur, it would appear that the beneficial effects of this section might be greatly diminished.

See Generally:

- 1) *Effect of Daytime Use of Motorcycle Headlights and Taillights on Motorcycle Accidents and Noticeability*, FRANKLIN INSTITUTE RESEARCH LABORATORIES, Dec. 1970, on file in the Pacific Law Journal Office.

Motor Vehicles; vehicle regulations

Vehicle Code §24007 (amended).

SB 149 (Marler); STATS 1972, Ch 99

AB 1308 (Bee); STATS 1972, Ch 268

Prior to amendment, Section 24007(a) of the Vehicle Code prohibited a dealer or person holding a retail seller's permit from selling a new or used *motor* vehicle which is not in compliance with provisions of the Vehicle Code and regulations adopted pursuant thereto by the Department of California Highway Patrol, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, or is sold exclusively for off-highway use. Chapter 99 deletes the word "motor" from Section 24007(a), thus making the provisions of this section applicable to trailers and all vehicles registered for highway use [See CAL. VEHICLE CODE §670].

Section 24007(b) of the Vehicle Code prohibited any dealer from selling a new or used motor vehicle subject to the Pure Air Act of 1968 [Chapter 4, (commencing with Section 39080) of the Health and Safety Code] which is not in compliance with such act, unless the vehicle is sold to a dealer or sold for the purpose of being wrecked or dismantled. Chapter 268 extends these provisions to include the sale by any person, rather than by any dealer.

Violation of Section 24007 constitutes an infraction (§40000), which is punishable upon a first conviction by a fine not exceeding fifty dollars (§50) (§42001).

Motor Vehicles; bicycles—right-of-way

Vehicle Code §21202 (amended).

AB 493 (Foran); *STATS* 1972, Ch 928

Section 21202 has been amended to clarify the duty of a bicyclist riding upon a roadway to ride as near the right-hand curb or edge of the roadway as practicable. Formerly, this section provided that such a bicyclist had to ride as near the right side of the roadway as practicable.

This section has also been amended to add that when there is a one-way highway which has two or more marked traffic lanes, the bicyclist may ride as near the left-hand curb or edge of such roadway as practicable.

It should be noted that Section 21202 may be used to determine contributory negligence on the part of a bicyclist [*See* Albrecht v. Broughton, 6 Cal. App. 3d 173, 85 Cal. Rptr. 659 (1970)].

Motor Vehicles; transfer of vehicle ownership

Vehicle Code §5902 (amended).

SB 438 (Whetmore); *STATS* 1972, Ch 296

Support: Department of Motor Vehicles

Opposition: Independent Automobile Dealers Association of California

Section 5902 of the Vehicle Code (application for transfer; surrender of registration card) has been amended by the deletion of subsection (c), which required that a transfer of vehicle ownership be accompanied by a certified statement from the transferee stating the name and address of the person from whom he acquired the vehicle, provided that the vehicle was acquired from a person other than a vehicle manufacturer or dealer holding a license and certificate issued pursuant to Chapter 4 (commencing with Section 11700) of the Vehicle Code.

COMMENT

Section 5902(c) was enacted by Chapter 1252, Statutes of 1970. The subsection was added to prevent the loss of use-tax revenue in cases of multiple transactions involving the same automobile, and to prevent improper practices by gas station car lots and "curb stoning" of vehicles by car salesmen. The act of "curb stoning" occurs when a car salesman takes an automobile in trade and sells it to another party

without the dealer knowing of its existence. Thus, the salesman clears a profit and the dealer receives nothing.

In the two years since the subsection's enactment, the Department of Motor Vehicles has projected a cost of approximately \$180,000 spent to collect approximately \$40,000 of added revenue obtained pursuant to the subsection's requirements [Interview with Leonard Bleier, Legislative Liaison, Department of Motor Vehicles, Sacramento, California, Sept. 25, 1972 (hereinafter cited as *Bleier*)]. Thus, the subsection has not served its intended purpose to promote additional tax revenue. Furthermore, the bill apparently has not solved the problem of "curb stoning." An unprincipled car salesman may still circumvent the law by instructing the buyer of the trade-in automobile to certify that it was purchased from the previous owner rather than the salesman. The investigative section of the Department of Motor Vehicles has been able to control service station car lots and garage mechanic automobile sales without the assistance of the subsection [*Bleier*].

Motor Vehicles; power of local authorities

Vehicle Code §§21207, 22358.3, 22503.5 (amended); §32 (new).
SB 1192 (Nejedly); STATS 1972, Ch 1095

Section 32 has been added to the Vehicle Code to provide that whenever local authorities are given the power to take action by ordinance pursuant to specified sections of the Vehicle Code, they shall also have the power to take such action by resolution.

Sections 21207 and 22503.5, prior to amendment, authorized the *legislative body of any city* to establish and regulate bicycle lanes and to establish special parking regulations for two-wheeled or three-wheeled motor vehicles. These sections have been amended to authorize such action by *local authorities*. "Local authorities" include the legislative body of every county or municipality having authority to adopt local police regulations [CAL. VEHICLE CODE §385].

Section 22358.3 has been similarly amended to substitute "local authority" for "legislative body of a city," but in addition has been amended to authorize local authorities to determine and declare a *prima facie* speed limit of 20 or 15 miles per hour on any street in a public park having a roadway not exceeding 25 feet in width, other than a state highway. Prior to amendment, the provisions of §22358.3 authorizing a 20 or 15 mile per hour speed limit were limited to streets in a business or residence district.

Motor Vehicles; cancellation of temporary permits

Vehicle Code §§11106, 11507, 11719, 11802 (amended).

SB 888 (Cusanovich); STATS 1972, Ch 215

SB 743 (Zenovich); STATS 1972, Ch 585

Support: California Department of Motor Vehicles

Chapter 215 amends Sections 11106 (instructor's or driving school licenses), 11507 (auto dismantler's license and special plates), 11719 (manufacturer's, transporter's or dealer's license and special plates) of the Vehicle Code to provide that temporary permits issued during the waiting period for approval of such licenses may be canceled when the Department of Motor Vehicles has determined or has reasonable cause to believe that the application is incorrect or incomplete, or the temporary permit was issued in error. The temporary permits shall be invalid when canceled or when the applicant's license has been issued or refused. Prior to amendment, Sections 11106, 11507, and 11719 provided that temporary permits, issued after application for a license, could only be terminated by the issuance or refusal of such license.

Section 11106 of the Vehicle Code has also been amended to provide that the temporary permit issued after application for an instructor's or driving school license, may be effective up to 120 days, rather than only 60 days as the section previously provided.

Chapter 585 amends §11802, relating to vehicle salesmen's licenses in a manner similar to the amendments to §§11106, 11507, and 11719 made by Chapter 215 noted *supra*. Section 11802 has been amended to provide that if the Department of Motor Vehicles determines to its satisfaction that the temporary permit was issued upon a fraudulent application, the department may cancel the temporary permit and such cancellation shall be effective immediately. The department may also cancel such temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. Again, the cancellation is effective immediately. If, however, the department determines that the information in the application is correct and complete, the temporary permit becomes invalid only when the applicant's license has been issued or refused, unless within five days of receipt of a notice of refusal and statement of issues the applicant demands a hearing pursuant to subdivision (b) of §11803. The filing of a demand for a hearing stays the effective date of the invalidation of the temporary permit pending a hearing and a determination of the issues. The notice of

refusal shall be made effective not less than five days after its receipt by the applicant.

COMMENT

Chapter 215 and Chapter 585 were adopted in order to allow the Department of Motor Vehicles to terminate temporary permits prior to the formal department action on the license. In the past, because of the time required to process a formal department refusal of a license, a person who was operating a business (under one of the temporary permits described above) could continue to do so for several weeks after the department had discovered that the applicant should never have been issued a temporary permit [Interview with Leonard Bleier, Legislative Liaison, California Department of Motor Vehicles, Sacramento, California, July 12, 1972].

Chapters 215 and 585 may, however, have created potential due process violations. Chapter 215 (dismantler's, manufacturer's, transporter's and dealer's licenses), provides for summary revocation of temporary permits with no provisions for notice and a hearing prior to the revocation when the application is incomplete, incorrect, or the temporary permit issued in error. Chapter 585 (vehicle salesman's license) provides for notice and a hearing only when the application is correct and complete. This was not a problem prior to the adoption of these chapters, because the termination of a temporary permit would have occurred simultaneously with the granting or denial of the permanent license, and upon the time of the department's denial of an application to operate one of the businesses specified, the applicant is entitled to request a hearing [CAL. VEHICLE CODE §§11107, 11509, 11708, 11803].

Although the question of whether or not a temporary permit should be issued in the first place appears to be entirely within the discretion of the Department of Motor Vehicles [See CAL. VEHICLE CODE §§11106, 11507, 11719 and 11802(c)], it seems that once it is conferred the holder of such a temporary permit possesses a "right, authority, license, or privilege" [CAL. GOV'T CODE §11503] within the contemplation of the Administrative Adjudication Act [CAL. GOV'T CODE § 11500 *et seq.*].

The Department of Motor Vehicles takes a position to the contrary [Interview with Leonard Bingham, Legal Counsel, California Department of Motor Vehicles, Sacramento, California, Aug. 10, 1972], but it would appear that a logical argument could be made that a summary revocation of a temporary permit to conduct any of the busi-

nesses set forth in Sections 11106, 11507, 11719, and 11802 of the Vehicle Code, without notice and hearing, would be a denial of the respondents right to due process.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA ADMINISTRATIVE MANDAMUS §§2.3-2.6 (1966).

**Motor Vehicles; manufacturer's responsibility
for safety defects**

Vehicle Code Chapter 2 (commencing with §9975) (new).

SB 371 (Moscone); STATS 1972, Ch 954

Chapter 2 (commencing with Section 9975) has been added to the Vehicle Code to provide that every manufacturer of a motor vehicle who furnishes notification to the registered owner of the motor vehicle of any defect in the vehicle or equipment which relates to motor vehicle safety, shall correct such defect without charge to the registered owner of the vehicle or, at the manufacturer's election, reimburse the registered owner for the cost of making such correction. This provision applies regardless of any limitation in any warranty relating to the motor vehicle.

The manufacturer of such motor vehicle shall not be liable for the cost of such correction if the registered owner of the motor vehicle does not seek to have the correction made within 45 days after receipt of the notification or within the warranty period of the motor vehicle, whichever is longer.

COMMENT

It might be noted that Chapter 954 is similar in some respects to Chapter 38 of Title 15 of the United States Code (National Traffic and Motor Vehicle Safety Act of 1966) which provides for the establishment of federal motor vehicle safety standards by the Secretary of Transportation. In part, this federal act requires the manufacturer to notify the initial owner of the vehicle, and subsequent owners where the warranty has remained in effect, in the event the manufacturer or the Secretary of Transportation determine that a safety defect exists.

Motor Vehicles; financial responsibility

Vehicle Code §16056 (amended).

SB 1034 (Marks); STATS 1972, Ch 612

Section 16056 of the Vehicle Code has been amended to specify

that the Department of Motor Vehicles may, in its discretion, issue a certificate of self-insurance when it is satisfied that the applicant in whose name more than 25 vehicles are registered is possessed and will continue to be possessed of the ability to pay judgments obtained against him *in amounts at least equal to the amounts provided in Section 16059*. Section 16059 specifies limits of liability with respect to insurance policies and bonds. The certificate may be issued authorizing the applicant to act as self-insurer for either property damage or bodily injury or both.

Furthermore, Section 16056 has been amended to authorize, rather than require, the Department of Motor Vehicles to issue such certificate to any person duly qualified under the laws and ordinances of any city or county to act as self-insurer, who files with the department an application and satisfactory evidence of his qualifications as specified above.

See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §364 (7th ed. 1960), (Supp. 1969).

Motor Vehicles; drivers between 18 and 21

Vehicle Code §§1816, 2256, 11102, 11104, 12502, 12503, 12504, 12518, 12800.5, 13005.5, 14607, 17700, 17707 (amended).

AB 381 (Conrad); STATS 1972, Ch 8
(Effective March 4, 1972)

Chapter 8 provides that all amendments to the Vehicle Code made by Chapter 1748 of the Statutes of 1971 will become operative on March 4, 1972, rather than 121 days after the adjournment of the 1971 legislative session [See A.B. 1876, CAL. STATS. 1971, c. 450, at 935]. This chapter further provides that the civil liability of a person between the ages of 18 and 21, arising out of his driving a motor vehicle on or after March 4, 1972, shall not be imposed by Section 17707 of the Vehicle Code upon a person, who, prior to March 4, 1972, signed and verified the application of the driver for a driver's license.

See Generally:

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §315 (7th ed. 1960); §317 (Supp. 1969).

Motor Vehicles; operative date of acts

Vehicle Code §1.5 (repealed).

AB 1372 (Hayden); STATS 1972, Ch 631
(Effective August 9, 1972)
Support: Department of Motor Vehicles

Section 1.5 of the Vehicle Code specified that any act enacted at a regular or special session of the Legislature adding, amending, or repealing any portion of the Vehicle Code would become operative on the 121st day after adjournment of the session at which the bill was enacted, unless a different date was expressly specified in the act. Chapter 631, an urgency statute, repeals Section 1.5 and affects the operative date of Vehicle Code bills at the Legislature's 1972 Regular Session.

COMMENT

The Vehicle Code is the most widely circulated Code in California, thereby creating a problem regarding incorporation of new laws and amendments into the Code. Vehicle Code Section 1.5 was enacted to provide an additional 60 days over and above the normal 61 days after adjournment when most statutes become operative [CAL. CONST. art. 4, §8]. The apparent purpose of Section 1.5 was to facilitate the printing and distribution of the new Vehicle Code. However, as enacted, the section referred to "acts" rather than amendments to the Vehicle Code, and therefore served to delay the operative date of any statute no matter how minor the Vehicle Code portion was. Chapter 631 repeals the section to prevent such delays. To provide time for printing and distribution of a new Vehicle Code, acts pertaining solely to the Vehicle Code should contain an express provision that they shall become operative on the 121st day after adjournment [Interview with Wadie Deddeh, Chairman, Assembly Committee on Transportation, Sacramento, California, Sept. 20, 1972].

Motor Vehicles; financial responsibility laws

Vehicle Code §16080.5 (new).
AB 748 (Conrad); STATS 1972, Ch 1179
(Effective December 8, 1972)

California's financial responsibility laws [CAL. VEHICLE CODE §16000 *et seq.*] require an uninsured motorist, if involved in an accident in which there is in excess of \$200 property damage to any one person, or bodily injury or death of a person, to deposit security in a sum which will be sufficient in the judgment of the Department of Motor Vehicles to satisfy any final judgment which may be recovered against the driver.

Failure to comply with these security provisions will result in suspension of the uninsured motorist's driver's license.

Section 16080.5 has been added to the Vehicle Code to require the Department of Motor Vehicles to stay any proceeding or order pursuant to Sections 16053(c), 16080, 16100, or 16484 relating to the suspension of a person's driver's license or the registration card or license plates owned by any person for failure to comply with the financial responsibility laws, upon the request of such person for a hearing. Upon the receipt of any such request, the department shall refund any security deposited by such person.

Chapter 1179 is a response to the California Supreme Court Case of *Rios v. Cozens*, 7 Cal. 3d 792, 103 Cal. Rptr. 299, 499 P.2d 979 (1972), which held that the security requirement and subsequent license suspension without opportunity for a hearing was unconstitutional. The court felt that "a person's interest in the retention of his driver's license and in the use of his motor vehicle represents a sufficiently important benefit to justify the requirement that he be accorded a hearing, before he is deprived of those rights, to determine whether there is a reasonable possibility that a judgment will be recovered against him" [*Rios v. Cozens, supra* at 795]. A prior federal decision reached the opposite conclusion when faced with the same issue [*See Rivas v. Cozens*, 327 F. Supp. 867 (N.D. Cal. 1971), *vacated and remanded for determination of mootness*, 41 U.S.L.W. 3271 (U.S. Nov. 13, 1972)].

Chapter 1179 provides that if the United States Supreme Court finds that the procedures used by the Department afforded due process and were constitutional, then 30 days thereafter, or as soon thereafter as feasible, the operation of §16080.5 shall be suspended. On the other hand, if the Court finds that the procedures do not afford due process and hearings are required, §16080.5 shall remain operative until amended or repealed by the Legislature.

See Generally:

- 1) Comment, *The Constitutionality of the California Financial Responsibility Law*, 4 CAL. WEST. L.R. 89 (1968).