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## Compulsory Periodic Re-Examination of Drivers

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## NOTES

### COMPULSORY PERIODIC RE-EXAMINATION OF DRIVERS

On July 18, 1949, in the Commonwealth of Pennsylvania a truck ran off the road, killing the four-year-old brother of the driver and injuring several other occupants. The driver of the truck was convicted of involuntary manslaughter. He had been operating the foot pedals and gear shift, while another brother had done the steering. This unique driving method was necessitated by the fact that the driver was blind.<sup>1</sup>

On June 13, 1960, a Fort Lauderdale attorney was killed when he lost control of his car and collided with a steel post. He had previously lost both hands in accidents and had been to Atlanta to have his mechanical hands adjusted.<sup>2</sup>

Admittedly these cases are extreme, but they are not as rare as might be expected.<sup>3</sup> The most startling fact is not that blind or handless men are driving automobiles, but that their driving is sanctioned by the state; both drivers had valid operators' licenses. The blame for such incidents rests largely with the systems of licensing, examination, and re-examination of drivers. No licensing system can ever achieve perfect results, but it is clearly possible to prevent a blind or handless person from obtaining a license to operate a motor vehicle, a license that in his hands — or the lack of them — may amount to a license to kill.

When automobiles first began to replace the horse and buggy there was little reason for an elaborate licensing system. Early automobiles ran slowly, when they ran at all. Today, however, many automobiles have in excess of 300 horsepower, and most can approach 100 miles per hour. Florida classifies the automobile as a dangerous instrumentality.<sup>4</sup> There is an obvious need to require legally that operators of such "dangerous instrumentalities" achieve a certain standard of competence and maintain that competence as long as they drive.

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1. Memorandum from Charles T. Johnson, Traffic Safety Representative, to O. D. Shipley, Commissioner of Traffic Safety, Commonwealth of Pennsylvania, June 7, 1961.

2. The Harrisburg Evening News, Harrisburg, Pennsylvania, June 13, 1960, p. 1, col. 8.

3. The writer examined many reports of similar incidents during an interview with O. D. Shipley, Pennsylvania Commissioner of Traffic Safety, in Harrisburg, Pa., Jan. 3, 1962. The complete cooperation and invaluable assistance of Mr. Shipley, his administrative assistant, Mr. F. D. Altobelli, and the Bureau of Traffic Safety are gratefully acknowledged.

4. Sauer v. Sauer, 128 So. 2d 761 (Fla. 1961); Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920); Anderson v. Southern Cotton Oil Co.,

## THE PURPOSE OF LICENSING LAWS

A. R. Lauer asserts that a driver's license examination should accomplish several purposes, including the following:<sup>5</sup>

1. It should screen drivers for physical and mental defects which might interfere with proven performance at the wheel. . . .
2. It should attempt to determine whether one knows how to drive an automobile with reasonable skill.
3. It should determine whether one has a mastery of the local and state traffic ordinances, regulations and laws, as well as a knowledge of the accepted principles of safe driving on the highway.
4. It should provide a proper description of the driver so that he can be recognized on apprehension.
5. Roadability of the car the applicant expects to drive should be noted."

These five purposes are praiseworthy, but a sixth should be added. The examination should insure that each driver maintain the skills and abilities for which he was tested when he first obtained his license. For example, it is possible for a Florida driver to lose all or part of his vision, or become otherwise physically incapacitated, and still continue to hold a valid drivers' license simply by renewing it at the required time. Since the license may be renewed by mail, the state has no way to discover these possible grounds for disqualification.

The need for having drivers examined periodically is easily illustrated. A study conducted in Oklahoma<sup>6</sup> revealed that forty-five per cent of the drivers involved in accidents in 1949 had been driving for eleven years or more. Drivers with five years or more of experience accounted for 405 of 518 deaths in Oklahoma in the same period. In 1941, New Jersey began to re-examine drivers over the age of sixty-five who had been involved in accidents. In the first eight years 5,000 such drivers were tested; of these, the licenses of 1,500 were revoked, and an additional 2,000 had conditions added to their licenses.<sup>7</sup>

These and similar statistics<sup>8</sup> demonstrate that a person's ability to operate a motor vehicle can change drastically over a period of time. This is especially true of elder citizens, who may be afflicted with such infirmities as cataracts, failing vision, or impaired coordination. It is especially important that Florida, with its large num-

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73 Fla. 856, 74 So. 975 (1917).

5. THE PSYCHOLOGY OF DRIVING 202 (1960).

6. *Id.* at 209.

7. Editorial, Saturday Evening Post, Nov. 16, 1957, p. 10.

8. See discussion under heading "Re-examination in Other States," *infra*.

bers of elderly and retired people, recognize the problem and take steps to solve it.

In addition, there are many drivers on the road today who have never been compelled to pass any driving examination. In the words of Mr. Glenn Carmichael of the Traffic Institute of Northwestern University:<sup>9</sup>

"The blunt truth is that many of our driver-licensing procedures are a mess. There are probably 25 million drivers on our highways who have never had any kind of driving test because their licenses were issued years before their states required examinations at all. Millions more are a threat because they have never had proper driver training. And we are menaced by a growing army of drivers with poor eyesight or other physical disabilities and chronic violators who should be barred permanently from getting behind the wheel."

#### RE-EXAMINATION IN OTHER STATES

##### *The Pennsylvania Program*

Procedures for compulsory periodic re-examination have been instituted in several states. A notable example is the Commonwealth of Pennsylvania, which, under its Commissioner of Traffic Safety, Mr. O. D. Shipley, has begun a program under which every driver in Pennsylvania will be re-examined.<sup>10</sup>

The Pennsylvania program is divided into two phases. Phase One consists of compulsory physical examinations of all applicants for learner's permits, and Phase Two contemplates a systematic re-examination of all licensed drivers on a staggered basis. Phase One began June 1, 1960. Since that date every applicant for a learner's permit has been required to submit to a visual examination given by the Highway Department and to furnish evidence of a satisfactory physical examination given by a physician. The Commonwealth pays for the visual test, but the cost of the physical examination is borne by the applicant.

Phase Two began on November 14, 1960. As of January 6, 1961, 196,000 drivers had been re-examined. These operators were called systematically according to the serial numbers on their licenses. Pennsylvania expects to examine about 750,000 drivers a year until all

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9. Friggens, *Let's Update Our Horse-and-Buggy Driver-Licensing System*, Reader's Digest, Jan. 1960, p. 58.

10. The material concerning the Pennsylvania re-examination program was obtained in the writer's interview with the Pennsylvania Commissioner of Traffic Safety in Harrisburg, Pa., Jan. 3, 1962.

active drivers have been re-examined. It is estimated that this process will take between seven and seven-and-one-half years. Each driver who passes the examination will then be re-examined every ten years prior to age sixty and thereafter every five years.

The initial results of the Pennsylvania re-examination program demonstrate how badly the program was needed. By December 12, 1961, a total of 7,925 persons had been disqualified as drivers for failure to meet the minimum physical standards set forth by the Department of Traffic Safety.<sup>11</sup> This figure represents 1.4 per cent of the 579,408 drivers examined as of that date. Among the rejections were 2,006 cases of extreme neuro-psychiatric or mental disorder, 798 cases of uncontrolled epilepsy, 693 chronic alcoholics, and 344 narcotics addicts.<sup>12</sup> Obviously these persons were not qualified to operate motor vehicles, and the roads of Pennsylvania are safer without them.

It is gratifying to note the number of drivers who recognized their unfitness to drive when faced with a compulsory re-examination. Of the 7,925 rejections, 3,207 were persons who voluntarily forfeited their licenses by refusing to submit to the physical examination.<sup>13</sup> Many of the voluntary forfeitures were by elder citizens, such as the eighty-eight-year-old attorney who wrote:<sup>14</sup>

"It has been a wonderful ride; no examination, no serious accident, no law violation, no arrest. At 88, it is high time, in the words of the Fisk Rubber Co., 'to retire.' Enclosed is my operator's license card. I shall enter Heaven on foot."

The large number of voluntary forfeitures does not indicate that the determination of fitness to drive can be left wholly to the discretion of the individual license holder. An equally large number of drivers sought to renew their licenses despite extensive physical disabilities. Several applying drivers were qualified to apply for the Pennsylvania blind pension!<sup>15</sup>

The Pennsylvania program has not been in operation long enough to evaluate its success in reducing highway fatalities, but in the words of Mr. Shipley:<sup>16</sup>

11. Press release from Charles M. Dougherty, Sec'y of Revenue, Commonwealth of Pa., Dec. 12, 1961.

12. *Id.* at 3.

13. *Ibid.*

14. Letter received by the Bureau of Traffic Safety, Commonwealth of Pa., Oct. 4, 1961 (sender's name withheld).

15. The writer examined the physical examination forms of several such drivers at the Bureau of Traffic Safety, Jan. 3, 1962. Several forms showed the applicant's vision to be 20/200 blank.

16. Interview with Mr. Shipley.

"The effectiveness of our Physical Examination Program can be measured by its public acceptance. At the outset, motorists viewed it with skepticism. However, today it is regarded as a necessity, as is mandatory inspection of motor vehicles.

"Although the program is still in its infancy, the reduction of accidents, particularly fatal accidents, should be attributed in part to the program. The fact that in the first eighteen months of the program 7,925 persons have been prohibited from driving because they could not meet the minimum standards established, and the fact that many more persons are now required to drive with corrected vision, should be encouraging to us, since these persons are no longer the source of potential danger they might have been.

"Projecting the results of the Pennsylvania program nationally would reveal that of the nation's 84 million drivers, approximately 1,176,000 would be rejected under the Pennsylvania minimum standards. Thus we feel the program has been extremely worthwhile and encourage its adoption by all states."

#### *Actions of Other States*

Several other states have re-examination programs with varying provisions. For example, Illinois requires drivers over the age of sixty-nine to be re-examined.<sup>17</sup> Delaware provides for a special examination of any person involved in a second accident resulting in personal injury, death, or property damage to the apparent extent of \$100 or more, within a twenty-four-month period.<sup>18</sup> New York<sup>19</sup> and New Mexico<sup>20</sup> provide for re-examination when there is "good cause" to believe the operator is incompetent.

North Carolina re-examines all of its licensed drivers every four years.<sup>21</sup> The re-examination consists of a visual test, a written test requiring knowledge of traffic regulations and signs, and, at the option of the examiner, a driving test. Twenty-two states,<sup>22</sup> including Florida,<sup>23</sup> have adopted point systems. Under these systems each traffic violation is assigned a point value. If a driver accumulates a certain number of points in a specified time, his license may be suspended or revoked.<sup>24</sup>

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17. ILL. ANN. STAT. ch. 95-½, §6,109 (Smith-Hurd 1958).

18. DEL. CODE ANN. tit. 21, §2712 (1953).

19. N.Y. VEHICLE & TRAFFIC LAW §501 (8).

20. N.M. STAT. ANN. §64-13-61 (1953).

21. N.C. GEN. STAT. §20-7 (f) (1961).

22. E.g., MICH. STAT. ANN. §9.2020 (1960); N.C. GEN. STAT. §20-16 (c) (1961); S.C. CODE §46-193.1 (1952, Supp. 1960).

23. FLA. STAT. §322.27 (2) (1961).

24. *Ibid.*

Although there is much to be said in favor of point systems, it should be recognized that they do not provide a complete solution. Under a point system, the unfit driver is afforded the opportunity to have at least one serious accident before his right to drive is questioned. Perhaps it is felt that the incompetent driver, like the common law dog, is entitled to his first bite.

#### NEED FOR LEGISLATIVE ACTION

The average person considers himself competent to drive and would resent being deprived of his license. In addition, there are many citizens whose livelihood depends directly or indirectly on the use of a motor vehicle. Because of these factors there probably would be a great deal of public opposition to a program of re-examination, especially in its initial stages. This was the case with the Pennsylvania program.

Public opposition, of course, is an effective deterrent to legislative action. It would be exceedingly difficult to institute a re-examination program by special legislation. The Pennsylvania program, however, was enacted administratively by the Bureau of Traffic Safety under the authority of the Pennsylvania statute, which states:<sup>25</sup>

“The secretary may, in his discretion, require the special examination, by such agencies as the secretary may direct, of any applicant for learner’s permit or operator’s license, or of any operator, to determine incompetency, physical or mental disability or disease or any other condition which might prevent such applicant from exercising reasonable and ordinary control over a motor vehicle or tractor.”

Could Florida adopt a similar program by administrative action? The answer is not clear. *Carnegie v. Department of Public Safety* casts serious doubt upon the possibility.<sup>26</sup> In that case the Department of Public Safety had ordered the appellant to submit to a re-examination because he had given an improper hand signal while driving. The Florida Supreme Court held that under these circumstances the Department had no authority to cancel the appellant’s license, and it ordered the license restored. The Court stated:<sup>27</sup>

“[I]t must be held that the Department had no authority to require the appellant to take a re-examination under the circumstances here existing and no authority to cancel his license upon his failure to do so. In fact, the only authority to cancel

25. PA. STAT. ANN. tit. 75, §608 (g) (1960).

26. 60 So. 2d 728 (Fla. 1952).

27. *Id.* at 731.

a license held by the Department is that contained in Section 322.22 Florida Statutes, F.S.A. Failure to take an examination, as directed by the Department, is not one of the grounds for cancellation therein stated."

Shortly after the *Carnegie* decision, the legislature conferred on the Department of Public Safety express authority to compel a re-examination for "good cause."<sup>28</sup> *Good cause* is defined in this section as meaning "a licensee is subject to having his license suspended or revoked under the provisions of §322.27 (1)." Under section 322.27 (1) (c) the Department is authorized to suspend the license of an operator without a preliminary hearing "on a showing of its records or other sufficient evidence that the licensee . . . is incompetent to drive a motor vehicle . . . ." In 1959 the legislature amended section 322.221 by adding to the definition of *good cause* the phrase "or whenever the licensee's driving record or other evidence is sufficient to indicate that his driving privilege is detrimental to public safety." Section 322.221 appears to be an express modification of the rule stated in *Carnegie*.

Several questions concerning section 322.221 immediately present themselves. How can the Department discover whether the licensee is subject to having his license suspended or revoked under section 322.27? What is the meaning of the vague phrase *other evidence*? Could the Department require that all drivers submit to physical examinations to determine if there is "good cause" to require them to submit to a driving test? Is the rule laid down in *Carnegie* of any continuing force?

The Florida Supreme Court has held that a driver's license is a privilege extended by the state, not a right.<sup>29</sup> The Court has also stated that it will not disturb summary regulations for suspension or revocation of drivers' licenses as long as they are "reasonable and reasonably executed."<sup>30</sup> Unfortunately, the Court has not yet had occasion to construe section 322.221, but it has clearly expressed its attitude concerning related matters.

In *Smith v. City of Gainesville*, the Court said:<sup>31</sup>

"While in *Carnegie v. Department of Public Safety* . . . we held that a driver's license cannot be revoked arbitrarily or capriciously, we have nonetheless consistently followed the rule, which appears to be unanimous throughout the country, to the effect that upon a proper showing in accord with the pre-

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28. FLA. STAT. §322.221 (1961).

29. *Smith v. City of Gainesville*, 93 So. 2d 105 (Fla. 1957).

30. *Thornhill v. Kirkman*, 62 So. 2d 740, 742 (Fla. 1953).

31. 93 So. 2d 105, 106 (Fla. 1957).



vailing statutes a motor vehicle operator's license may be revoked."

This gives little clear guidance for determining whether a program of periodic physical examinations could be "in accord with the prevailing statutes." But the change in attitude and approach since *Carnegie* seems unmistakable.

The Court was faced with a situation analogous to *Carnegie* in *City of Miami v. Aronovitz*.<sup>32</sup> The municipal police department had set up road blocks for the purpose of checking drivers' licenses. The appellee was stopped and required to exhibit his license. He later filed a complaint against the City of Miami seeking declaratory and injunctive relief. A temporary injunction was entered against the city, from which it appealed. The Court reversed the decree and held that the municipal police department had the authority to make a systematic check of drivers' licenses. It recalled that "as originally contemplated the drivers' licensing requirement was enacted primarily as a source of revenue to finance the maintenance of the State Department of Public Safety." But with the passage of time "this requirement has become an essential segment of our laws for the control and prevention of traffic accidents and fatalities."<sup>33</sup> The Court noted some traffic accident statistics and continued with this significant statement of policy:<sup>34</sup>

"Giving recognition to our established judicial viewpoint that an automobile is a dangerous instrumentality, we must conclude that any procedure lawfully directed toward the effective prevention of the negligent operation of the automobile and the imposition of requirements of competency on the part of the driver thereof, should meet with judicial approbation."

The Court's feeling of concern about traffic safety in Florida as expressed in *Aronovitz*, might impel it to approve administrative action by which every driver would be periodically required to stand a physical examination to determine whether sufficient good cause existed to require him to submit to a driving test. Such a holding would facilitate a program of great benefit to the public at large and the automobile driver in particular. If, however, the Court should strike down administrative action toward such a program, legislative action should be taken expressly to authorize the Department of Public Safety to require periodic physical examinations of all drivers.

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32. 114 So. 2d 784 (Fla. 1959).

33. *Id.* at 787.

34. *Id.* at 788.

## FINANCING THE PROGRAM

The Pennsylvania experience demonstrates that a re-examination program does not necessarily create financial problems. The Pennsylvania Department of Traffic Safety, despite its extensive re-examination program, has not had to increase its budgetary requirements. The explanation is simple. The bulk of the re-examinations consist of a visual test and a physical examination. The visual tests have been given by the Bureau of Traffic Safety or the Highway Patrol for several years, and the cost of these tests is small. The applicant or licensee must bear the cost of the physical examination. Consequently it does not increase the cost to the state.<sup>35</sup>

If additional funds should be needed in Florida, they could be obtained by a slight increase in the drivers' license fee. The present fee is small;<sup>36</sup> and the increase, since it would be used to prevent needless highway accidents, could be viewed by the driver as a form of cheap insurance. However, judging from the Pennsylvania experience, it seems likely that a program of re-examination could be conducted in Florida without any increase in cost to the state and without an increase in license fees.

## TYPE OF EXAMINATION

The American Association of Motor Vehicle Administrators has published a pamphlet describing a model drivers' license examination.<sup>37</sup> This examination is divided into four sections: (1) the law test, (2) the sign and signal test, (3) visual tests, and (4) the driving or road test.<sup>38</sup> To these should be added the requirement of a satisfactory physical examination. When the driver initially applies for his license, he should be required to pass all phases of the examination. In the re-examination the road test could be left to the discretion of the examiner.

The most important parts of the re-examination are the visual test and the physical examination. In the Pennsylvania program these constitute the entire re-examination.

*The Visual Test*

It is generally agreed that operators of motor vehicles should be

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35. Mr. Shipley stated that the cost of the physical examination is the cost of an office visit and that many family physicians make no charge. See note 10 *supra*.

36. FLA. STAT. §322.21 (1961).

37. STANDARDS AND PROCEDURES FOR THE EXAMINATION OF APPLICANTS FOR DRIVER LICENSES (1948 ed.).

38. *Id.* at 11.

required to meet a minimum standard of visual acuity. Just how strict this minimum should be is open to debate. At the present time some states require vision as high as 20/30, others as low as 20/70.<sup>39</sup>

Of all human faculties vision is perhaps most subject to impairment, especially in advanced age. This is graphically illustrated by the fact that in the Pennsylvania program, of the first 579,408 persons re-examined, 203,267, or thirty-five per cent, must wear glasses.<sup>40</sup>

The mechanics of the visual test could be either simple or relatively complex, depending on the standard of vision required. Several lines of three-quarter-inch block letters on a rotary cylinder to be viewed by the applicant at twenty feet could adequately serve the purpose.<sup>41</sup> In doubtful cases a more elaborate examination could be given.

An applicant who fails to meet the minimum standard at his first visual examination should be allowed to retake the test after he obtained the necessary corrective lenses. If he then passes, his license should be restricted to driving with the corrective lenses.

### *The Physical Examination*

An elaborate physical examination, on the order of an insurance examination, would entail prohibitive cost. This is unnecessary, however. The Pennsylvania examination has been so simplified that it can be printed on an IBM card. The examining physician is asked to check the following categories "Yes" or "No":<sup>42</sup>

1. Neurological disorders such as to prevent reasonable control of a motor vehicle.
2. Any Cardiac or Circulatory disorder including Hypertension such as to prevent reasonable control of a motor vehicle.
3. Neuropsychiatric disorders such as to prevent reasonable control of a motor vehicle.
4. Conditions causing repeated lapses of consciousness, e.g., epilepsy, narcolepsy, hysteria, etc. (may be considered if episode free for two years with or w/o medication.)

"To your knowledge is Examinee:

5. An Alcoholic?
6. A narcotic addict?
7. An uncontrolled diabetic?

39. See LAUER, *THE PSYCHOLOGY OF DRIVING* 206 (1960).

40. Press release, *supra* note 11.

41. LAUER, *THE PSYCHOLOGY OF DRIVING* 206 (1960).

42. Dep't of Revenue Form RTS-101 (Rev. 10-61).

8. An uncontrolled epileptic?
9. List other disabilities, if relevant."

A simplified form such as this has three major advantages: It enables the physician to complete the examination quickly and with a minimum of trouble; it lowers the cost to the applicant; and it allows machine processing. But it is sufficiently complete to discover most of the physical disabilities that would disqualify the applicant from operating a motor vehicle.

It should be noted that the physician himself does not pass on the applicant's qualifications but merely fills out the form according to his findings. This encourages the physician to be completely candid in his findings, since he is personally relieved of responsibility for disqualifying the applicant.

The extreme brevity of the form is possible because the program seeks to disqualify only those drivers with definite disabilities that patently demonstrate that the driver is unqualified to operate a motor vehicle. Under the Pennsylvania program a chronic alcoholic may be licensed if he has abstained for six months. A chronic epileptic may be licensed if he has been free from attacks for a two-year period, with or without medication. The only persons who need fear the loss of their licenses are those who clearly should not drive at all.

#### *Selection of Drivers to Be Tested*

Until 1961, all Florida drivers' licenses expired each year on September 30.<sup>43</sup> Under this system it would have been impractical to re-examine drivers as their licenses came due for renewal. However, the 1961 Legislature inaugurated a new system, whereby licenses are renewed every two years in the month of the operator's birth.<sup>44</sup> This staggering of expiration dates might facilitate a re-examination program in which drivers would be re-examined every four or six years in the months in which their licenses expired.

The Pennsylvania system of calling drivers by their license numbers is perhaps preferable, because it eliminates the problem of congestion resulting from the number of drivers who wait until the last possible minute to report for re-examination. In addition, it facilitates record-keeping and enables the state to determine with accuracy the number of active drivers. Under the Pennsylvania system much of the record-keeping can be done by machine, which minimizes cost.

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43. FLA. STAT. §322.18 (1959).

44. FLA. STAT. §322.18 (2) (1961).

## CONCLUSION

Testing of a driver upon his initial application for a license is an acknowledgement that a licensing program is more than a revenue device; it reflects the state's—and the public's—vital concern for highway safety. But a system that provides only for initial examinations ignores the elementary fact that a person qualified to drive when he first obtains his license does not necessarily retain his qualifications indefinitely.

The license renewal system, by incorporating a program of driver re-examination, can be made an effective safety measure at slight cost to the driver or to the state. Florida's system of license renewal, as presently administered, is merely a revenue measure.

The re-examination program contemplated here does not represent an elaborate scheme for intensive screening of drivers. Rather, it constitutes the minimum effort required to ensure that drivers maintain those basic qualifications that are indispensable for the operation of motor vehicles. The public has an acute interest in highway safety, and the state has a responsibility to protect this interest. A licensing system that permits the blind and the handless to operate today's high-speed automobiles on congested highways does not meet that responsibility.

The experience of other states shows that re-examination programs are cheap and effective. It is earnestly urged that Florida adopt such a program in the interest of highway safety.

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