

Recent Changes in Section 17, Subdivision I, of the New York Vehicle and Traffic Law

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RECENT CHANGES IN SECTION 17, SUBDIVISION I, OF THE NEW YORK VEHICLE AND TRAFFIC LAW.¹—The recent bus tragedy of July 22, 1934, left in its wake a score of litigations, the compensatory outcome of which depends greatly, if not solely, upon the insurance secured by the bus owners. With a view toward protecting the public from further exposure to such a condition of limited liability, Governor Lehman, on July 31 in a special message to both houses, urged the legislature to amend the Vehicle and Traffic Law. He called for measures both preventive and compensatory.

In the preventive class he proposed that the regulation for all busses for hire be put in the hands of the Public Service Commission; that the duty of the commission should be to inspect all busses for hire (carrying more than seven passengers), to see that they are properly equipped with safety appliances; that the ownership and place of storage should be filed with the Public Service Commission in order to facilitate the inspections; that the power to suspend registration for such violations should be increased from six months to one year.² The license to operate a motor vehicle is not a right but a privilege and the legislature may prescribe on what conditions it shall be exercised.³ The Motor Vehicle Commissioner has summary power to suspend temporarily, a license or certificate of registration, without notice, for proper cause.⁴ It was proposed that, withal, that this transfer of supervision to the Public Service Commission should not yield any of the enforceable provisions of the Vehicle and Traffic Law, and violations of the outlined safety regulations should be made offenses under the Vehicle and Traffic Law.⁵

With respect to compensation, it was proposed that the indemnity requirements on busses for hire were not adequate for public protection and, to become so, must be raised.⁶ The Governor's bill proposed an insurance requirement of at least five thousand dollars a passenger.⁷

Spokesmen for leading bus companies indicated their consent in placing all busses under the jurisdiction of the Public Service Commission, objecting however, to the legislature's fixing the price of the bond, the demand being made that such be left to the Public Service Commission.⁸

Subsequently, the senate approved two measures providing for the stricter regulation of busses. One, the Palmer Bill, proposed the placing of all busses including chartered carriers under the super-

¹ Laws of 1934, c. 902.

² N. Y. Times, Aug. 1, 1934, at 1:3.

³ *People v. Stryker*, 124 Misc. 1, 206 N. Y. Supp. 146 (1924); *People v. Hartnett*, 221 App. Div. 487, 224 N. Y. Supp. 97 (4th Dept. 1927).

⁴ Op. Att'y Gen.—130 (1925).

⁵ *Supra* note 1.

⁶ *Ibid.*

⁷ N. Y. Times, Aug. 7, 1934, at 12:2.

⁸ *Ibid.*

vision of the Public Service Commission. The other, the D. T. O'Brien measure, had as its aim the increase of insurance requirements on busses to at least five thousand dollars per passenger.⁹ As they stood, they were not adopted.

But as a result of the aforementioned proposals, Section 17, subdivision I of the Vehicle and Traffic Law was amended.¹⁰ The amendment was not as drastic as the aforementioned proposals would have it. The authority with which he had been previously vested was retained by the Commissioner of Motor Vehicles and no additional rights to supervise were bestowed upon the Public Service Commission. The proposal by the Governor,¹¹ that busses operating on a franchise should be included within the scope of the section, has not been followed. The scope of the Law has not been changed; the vehicles excepted by the Law remain the same.¹²

The only vital change in the Law was the increase in the rate of bonded security. Prior to the amendment¹³ the requirements on *each* vehicle defined, limited the bond demanded as follows: "Such bond or policy may limit the liability of the surety or insurer on any one judgment to twenty-five hundred dollars for bodily injuries or death, and five hundred dollars for damage to or destruction of property, and on all judgments recovered upon claims arising out of the same transaction or transactions connected with the same subject of action to five thousand dollars for bodily injuries or death and one thousand dollars for damages to or destruction of property."¹⁴ The amended law is more discriminatory. It classifies the vehicles that are within the design of the statute by fixing the bond required in proportion to the passenger volume of each vehicle. It defines ". . . a minimum sum, hereinafter called minimum liability, on any one judgment, and a maximum sum hereinafter called a maximum liability on all judgments . . .,"¹⁵ for the purpose of such classification and continues by distinguishing the damages to person from those pertaining to property. "For damages for and incident to death or injuries to persons"¹⁶ the vehicles are divided into five groups, and the bond or insurance policy for the amount required for minimum liability and for maximum liability, is clearly defined and may be tabulated for *each* vehicle, as follows:

⁹ N. Y. Times, Aug. 17, 1934, at 15:2.

¹⁰ *Supra* note 1.

¹¹ *Supra* note 2.

¹² Laws of 1932, c. 340; Laws of 1934, c. 902.

¹³ *Supra* note 1.

¹⁴ Laws of 1932, c. 340.

¹⁵ *Supra* note 1.

¹⁶ *Ibid.*

<i>Seating Capacity</i>	<i>Minimum Liability of Bond</i>	<i>Maximum Liability of Bond</i>
1. Not more than 7 passengers.....	\$2,500	\$5,000
2. Not less than 8 nor more than 12 passengers	5,000	15,000
3. Not less than 13 nor more than 20 passengers	5,000	25,000
4. Not less than 21 nor more than 30 passengers	5,000	40,000
5. More than 30 passengers.....	5,000	50,000

"For damages for and incident to injury to or destruction of property; for each motor vehicle a bond or insurance policy with a minimum liability of one thousand dollars and a maximum liability of five thousand dollars." ¹⁷

From the above it is readily discernible that the amendment, although literally involving changes in several portions of Section 17, really is pertinent to one modification, that being an increase in the bonded liability of the owner of the vehicle in question.

This change in the statute, although affecting it in only one respect, may subject it to the same attacks of unconstitutionality to which the original statute ¹⁸ and the prior amendments ¹⁹ were exposed. A presumption of the outcome is not within the writer's task, but a recapitulation of the cases involved in this question may be of timely assistance to the reader at arriving at some conclusion.

The constitutionality of a law calling for the securing of a bond or insurance policy by owners of motor vehicles has been assailed ²⁰ particularly as violative of the Fourteenth Amendment of the Federal Constitution.

One attack was on the theory that the law ²¹ was "discriminatory and [that it] denied equal protection of the law," ²² inasmuch as it imposed a burden on one class of people while it exempted other persons similarly situated; ²³ and discriminated against people operating motor vehicles for hire, in favor of people operating such

¹⁷ *Ibid.*

¹⁸ N. Y. HIGHWAY LAW §282-b (now §17 N. Y. VEHICLE AND TRAFFIC LAW).

¹⁹ Laws of 1922, c. 612 (amending N. Y. HIGHWAY LAW §282-b); Laws of 1925, c. 315.

²⁰ *People v. Martin*, 203 App. Div. 423, 197 N. Y. Supp. 28 (1st Dept. 1922), 235 N. Y. 550, 139 N. E. 730 (1923); *Packard v. Banton*, 264 U. S. 140, 44 Sup. Ct. 257 (1924); *Welch v. Hartnett*, 127 Misc. 221, 215 N. Y. Supp. 540 (1926).

²¹ Laws of 1922, c. 612 (amending N. Y. HIGHWAY LAW §282-b).

²² *People v. Martin*, 203 App. Div. 423, 197 N. Y. Supp. 28 (1st Dept. 1922), 235 N. Y. 550, 139 N. E. 730 (1923).

²³ *Ibid.*

vehicles for their own private use.²⁴ Courts have held, however, that "in operating a motor vehicle the operator exercises a privilege which might be denied him and not a right and that in a case of privilege the Legislature may prescribe on what grounds it may be exercised."²⁵ The legislature has a right to protect the people of the state who are in danger of injury from automobiles.²⁶ "If the State determines that the use of streets for private purposes in the usual and ordinary manner shall be preferred over their use by common carriers for hire, there is nothing in the Fourteenth Amendment to prevent. The streets belong to the public and are primarily for the uses of the public in the ordinary way."²⁷

Another contention in which the owner sought shelter was under the claim that the clause in the statute²⁸ requiring continuing liability is "unreasonable, confiscatory and onerous."²⁹ Such allegations were not upheld.³⁰ The Law would not accomplish its purpose if, when the bond was extinguished by the recovery of a judgment, the vehicle owner could continue operating without violating the law until the State Tax Commission became aware of such and called on him to give a new bond.³¹ "The best answer is that surety companies are concededly giving such bonds to comply with the law, without qualification or delay and that there is no proof that the cost of the bond is increased measurably or in fact at all by such requirement."³²

Without doubt the most important assault against the statute's³³ constitutionality and one most pertinent to the recent amendment, is the charge that "the bond was so great as to be confiscatory,"³⁴ and "the requirements so burdensome as to amount to confiscation, resulting in deprivation of property without due process of law."³⁵ In considering this question it must be borne in mind that in the cases decided to point in this state,³⁶ the question of confiscation was raised correlative with the charges of discrimination and arbitrary classification previously mentioned and in the court's ruling, the defenses of the Law's validity were coincident and not tangibly separable, so that the answer to one question necessarily involved the answer to the other. For the sake of clarity, it becomes necessary, therefore, to stress a point previously mentioned which is worthy of

²⁴ Packard v. Banton, *supra* note 20.

²⁵ *Supra* notes 3 and 4.

²⁶ *Supra* note 22.

²⁷ *Supra* note 24.

²⁸ N. Y. HIGHWAY LAW §282-b (amended by Laws of 1934, c. 902).

²⁹ *Supra* note 22.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Supra* notes 18 and 19.

³⁴ *Supra* note 22.

³⁵ *Supra* note 24.

³⁶ 62-A MCKINNEY, CONSOLIDATED LAWS OF NEW YORK (1929) §17.

repetition, *viz.*, "in operating a motor vehicle, the operator exercises a privilege which might be denied him and not a right and that in a case of privilege the Legislature may prescribe on what grounds it may be exercised."³⁷ The court, in *Packard v. Banton*, in reply to the plaintiff's assertion that the insurance premium required was so great as to embody half the money earned by the vehicle, declared with respectful disdain for the sum involved, that the requirement of the law was not unconstitutional, saying "the operator under the Statute is not confined to this method (insurance policy) but instead may file either a personal bond with two approved sureties or a corporate surety bond."³⁸ (In respect to this answer the statute has not been changed.³⁹) In answer to the plaintiff's insistence that he could not secure a personal bond, the court said, "it does not appear that he might not procure the corporate surety bond at a less cost."⁴⁰ The fact that expenses sustained by the owner of property, due to the exercise of the police power of the state or the passage of remedial statutes for the public interest, even though they may amount to more than he can temporarily stand, has no effect on the validity of the Law if the exercise of the power is reasonable.⁴¹

Again remembering that the court classifies the operation of a motor vehicle as a privilege, it has been held,⁴² "Moreover a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by Government sufferance or permission. In the latter case the power to exclude altogether generally includes the lesser power to condition and may justify a degree of regulation not admissible in the former."⁴³

The inevitable conclusion to which one must come from the decisions outlined above, and which due to the lack of change must necessarily pertain to the Law as it existed up until the time of the present amendment,⁴⁴ is as follows:

1. The constitutionality of the statute pertaining to the procurement of an insurance policy or bond by the owner of motor vehicles cannot be assailed on the grounds of discrimination or of unequal distribution of law.⁴⁵ The amended law has not been changed in any respect sufficient to admit any new grounds for alleged discrimination.⁴⁶ In fact it has become less so, for since the case of

³⁷ *Supra* notes 24 and 3.

³⁸ *Supra* note 24.

³⁹ *Supra* note 1.

⁴⁰ *Supra* note 24.

⁴¹ *Supra* note 22; also see Health Dep't of the City of New York v. Rector, etc. of Trinity Church, 145 N. Y. 32, 39 N. E. 833 (1895).

⁴² *Supra* note 24.

⁴³ *Ibid.*

⁴⁴ *Supra* note 1.

⁴⁵ *Supra* note 20.

⁴⁶ *Supra* note 1.

Packard v. Banton the alleged discrimination against vehicle owners in a city of the first class⁴⁷ has been removed⁴⁸ and the law⁴⁹ now applies to vehicles on all highways within the state.

2. With respect to the clause in the statute⁵⁰ requiring continuing liability, the court in *People v. Martin* has definitely decided that it is not "confiscatory and onerous,"⁵¹ and is in no way opposed to the Federal Constitution.⁵²

3. With regard to that clause of the statute, as it existed at the time and continued to exist until the current amendment was made, requiring that the vehicle owners be bonded or insured for a certain named sum,⁵³ it has been held that such *was* a valid and *reasonable* exercise of the police power of the state.⁵⁴ The Law, pertinent to decisions on this point, has been changed in that the amount of the insurance or bond required has been raised, and the question whether such change is a *reasonable*⁵⁵ exercise of the state's police power is, in this writer's opinion, the only question on which the validity of the amended statute can possibly be contested.

HENRY J. O'HAGAN.

⁴⁷ Laws of 1922, c. 612; *supra* note 24.

⁴⁸ *Supra* note 1.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Supra* note 22.

⁵² U. S. CONSTITUTION, Amend. 14, Sec. 1.

⁵³ Laws of 1932, c. 340; Laws of 1922, c. 612.

⁵⁴ *Supra* note 20.

⁵⁵ "Legislation is most clearly within the scope of the police power, which has for its object the protection of the health, safety, good order, and the morals of the community." BURDICK, *THE LAW OF THE AMERICAN CONSTITUTION* (1922) §270, p. 563.