

## NOTES

### ARE OLDER AMERICANS DANGEROUSLY DRIVING INTO THE SUNSET?

The automobile provides the primary means of transportation for most Americans today.<sup>1</sup> Because the American population is progressively aging,<sup>2</sup> older drivers<sup>3</sup> constitute the most rapidly growing segment of the driving population.<sup>4</sup> In the near future, older drivers will account for the

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1. Samil Jamil Barakat & Thomas E. Mulinazzi, *Elderly Drivers: Problems and Needs for Research*, 41 *TRANSP. Q.* 189, 194 (1987). For example, in 1983, there were 150,310,000 licensed drivers in the United States. *Id.* Moreover, in 1980, 84.5% of eligible Americans had a driver's license. Robin A. Barr, *Recent Changes in Driving Among Older Adults*, 33 *HUM. FACTORS* 597, 598 (1991). By 1989, that figure increased to 86.6%. *Id.* For a complete historical discussion of the emergence of the automobile, see EDWARD C. FISHER & ROBERT H. REEDER, *VEHICLE TRAFFIC LAW 1-7* (1974).

2. Individuals age 65 and older constitute the fastest growing segment of the U.S. population. Steve Bates, *Requirements for Older Drivers Among Objects of Virginia Study*, *WASH. POST*, May 7, 1991, at E1. Currently, those age 65 and older account for 10% of the total population. Barakat & Mulinazzi, *supra* note 1, at 190. By the year 2020, 20% of the U.S. population will be age 65 or older. Nancy Walser, *When to Hang Up the Keys*, *HARV. HEALTH LETTER*, Nov. 1991, at 1. Also, approximately 33% of the population over 65 is considerably older—age 75 and above. Barakat & Mulinazzi, *supra* note 1, at 190. Assuming zero population growth within the next 50 to 60 years, there will be one person over age 65 for every 1.5 people under age 20. *Id.* Currently, the ratio is one to four. *Id.*

3. Some studies classify drivers in their late forties or early fifties within the category of "older drivers." Patricia F. Waller, *The Older Driver*, 33 *HUM. FACTORS* 499, 502 (1991). Certainly, drivers in their sixties are different from drivers in their seventies or eighties. However, for the purposes of this Note, the term "older drivers" refers to drivers over age 65.

4. While the total driving population increased 59.3% from 1965 to 1985, the number of older drivers increased 149.1%. Nikiforis Stamatidis et al., *Elderly Drivers and Intersection Accidents*, 45 *TRANSP. Q.* 377, 378 (1991). According to the American Association of Retired Persons (AARP), drivers over age 65 grew from 8% of the total driving population to 13% between 1972 and 1990. *Should the Elderly Drive?*, *CHI. TRIB.*, Mar. 28, 1993, at 3. The AARP estimates that by the year 2001, 17% of all drivers will be 65 or older. *Id.*

In addition, older drivers are obtaining licenses at a faster rate than any other segment of the driving population. Waller, *supra* note 3, at 500-01. From 1980 to 1989, the number of licensed drivers age 65 and older increased from 60.2% to 69.7% of those eligible to drive. Barr, *supra* note 1, at 597. During this same period, the total number of licensed drivers only increased from 84.5% to 86.6% of those eligible. *Id.* at 598.

Older drivers are also increasing their total mileage driven at a faster rate than any other segment of the population. Karlene Ball & Cynthia Owsley, *Identifying Correlates of Accident Involvement for the Older Driver*, 33 *HUM. FACTORS* 583, 583 (1991). In the future, elderly drivers will drive an estimated 84 billion miles a year. Joan E. Rigdon, *Car Troubles*, *WALL ST. J.*, Oct. 29, 1993, at A1. From 1980 to 1989, the annual miles driven by the average older driver increased from 5,564 to 7,267 per driver. Barr, *supra* note 1, at 598.

largest segment of the driving population.<sup>5</sup>

Recently, reports of accidents involving older drivers have received national attention.<sup>6</sup> Such accidents will undoubtedly increase as the number of older drivers increases.<sup>7</sup> Mounting empirical evidence shows that the aging process often dramatically diminishes driving ability.<sup>8</sup> Although many older drivers retain sound driving skills,<sup>9</sup> others do not. Still worse, many older drivers are unaware of their deteriorating driving ability.<sup>10</sup>

Empirical evidence reveals that, as a group, older drivers often pose a danger to themselves.<sup>11</sup> Perhaps more importantly, older drivers often endanger other drivers.<sup>12</sup> Many older drivers have some type of medical

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5. Experts predict remarkable growth in the number of older drivers over the next 25 years. By the year 2000, drivers age 55 or older will constitute 33% of the driving population. Barakat & Mulinazzi, *supra* note 1, at 189. Furthermore, although currently only 13% of all licensed drivers are age 65 or older. Walser, *supra* note 2, at 1, by the year 2010, 25% of all licensed drivers will be age 65 or older. Indiria A. Lakshmanan, *Aging Drivers: Issues of Rights, Safety Pondered as Ranks of Elderly Motorists Grow*, BOSTON GLOBE, Aug. 2, 1993, at 1, 14 (quoting Arthur Kinsman, manager for government and community relations for the Massachusetts chapter of the American Automobile Association). By the year 2020, the number of licensed drivers over the age of 65 will reach 50 million. Waller, *supra* note 3, at 500. Of those 50 million drivers, 17.5 million will be age 75 or older. Rigdon, *supra* note 4, at A1.

Past increases in the number of older drivers indicate that these predictions may be accurate. From 1980 to 1989, the number of licensed drivers age 65 to 69 increased by 26%. Barr, *supra* note 1, at 598. During that same period, licensed drivers age 70 and older increased by 49%. *Id.*

6. See, e.g., Rigdon, *supra* note 4, at A1. Among the more shocking examples were the 75-year-old driver who lost control of her car in a New York park, killing four and injuring 27, and the 88-year-old driver, taking nine different medications, who collided with and killed his wife while attempting to pick her up from a shopping mall. *Id.*

7. See *supra* notes 4-5 and accompanying text.

8. See Richard A. Marottoli et al., *Driving Cessation and Changes in Mileage Driven Among Elderly Individuals*, 48 J. GERONTOLOGY 255, 255 (1993); see also Miriam K. Campbell et al., *Medical Conditions Associated with Driving Cessation in Community-Dwelling, Ambulatory Elders*, 48 J. GERONTOLOGY 230, 230 (1993) ("[I]mpairments that increase in frequency with age lead to elevated rates of crash involvement.") (citations omitted).

9. Rigdon, *supra* note 4, at A1.

10. See Ball & Owsley, *supra* note 4, at 583. A recent experiment in Pennsylvania revealed the extent of the problem. Between 1978 and 1985, licensing officials notified 365,000 drivers over age 45 that their licenses would be revoked unless they submitted to a general physical and eye examination. See Walser, *supra* note 2, at 5. Of the 293,000 who submitted to the exam, 77,000 (26%) had new restrictions placed on their licenses. *Id.* Had the 72,000 individuals who refused to submit to the exam also received additional license restrictions, then approximately 40% of the sampled drivers would have had restrictions added. As a result of the study, Pennsylvania passed a law requiring physicians to report potentially impaired drivers. *Id.* See 75 PA. CONS. STAT. ANN. § 1518(b) (Supp. 1993) ("[P]hysicians shall report . . . every person . . . diagnosed as having any specified disorder or disability.").

11. Waller, *supra* note 3, at 500 (noting the increase in crash rate per mile driven for older drivers).

12. *Id.*

condition<sup>13</sup> or take some form of medication<sup>14</sup> that impair their ability to drive. Older drivers are involved in more accidents than other segments of the population.<sup>15</sup> In terms of crash risk per mile driven,<sup>16</sup> older drivers are the most dangerous motor vehicle operators on the road.<sup>17</sup> Furthermore, older drivers involved in automobile accidents usually suffer serious

13. By the year 2020, over 50% of older drivers will suffer from a medical condition that could impair their driving ability. Rigdon, *supra* note 4, at A1. For a discussion of the medical conditions that typically affect the elderly and their driving, see *infra* notes 35-52 and accompanying text.

14. See Wayne A. Ray et al., *Medications and the Safety of the Older Driver: Is There a Basis for Concern?*, 34 HUM. FACTORS 33, 33 (1992). By the year 2020, 80% of older drivers will take some sort of prescription medication. Rigdon, *supra* note 4, at A1. For a discussion of the effects of medication on driving skills in older individuals, see *infra* notes 53-56 and accompanying text.

15. Stamatiadis et al., *supra* note 4, at 389. See also Ronald Klein, *Age Related Eye Disease, Visual Impairment and Driving in the Elderly*, 33 HUM. FACTORS 521, 521 (1991). In 1980, 600,000 drivers age 65 and older were involved in reported traffic accidents. Barakat & Mulinazzi, *supra* note 1, at 197. Of those 600,000 drivers, between 100,000 and 200,000 suffered some sort of injury as a result of the accident. *Id.*

The following table depicts the rate and cause of accidents in a recent study for various age groups.

Age Group	No Accidents	Failure to Yield Way	Improper Lane Use	Improper Turn	Following Too Close
< 25	14.7	33.1	8.4	5.1	38.7
25-59	22.3	30.3	8.7	6.0	32.7
60-69	18.1	42.2	10.0	8.0	21.7
70-74	14.2	48.7	10.0	9.2	17.9
> 75	8.6	55.2	10.5	9.4	16.4

Stamatiadis et al., *supra* note 4, at 386.

16. The Department of Motor Vehicles usually measures absolute number of crashes when compiling statistics. Waller, *supra* note 3, at 500. Measuring absolute number of crashes can be very misleading. *Id.* For example, suppose one driver drives 5,000 miles in a year and has one crash while a second driver has two crashes after driving 100,000 miles. For insurance purposes, the second driver is considered twice as dangerous as the first. *Id.* However, if the relationship between crash risk and exposure to risk and the number of miles driven is measured, the second driver is 10 times safer than the first. *Id.*

17. *Id.* See also Alan M. Jette & Laurence G. Branch, *A Ten-Year Follow Up of Driving Patterns Among the Community-Dwelling Elderly*, 34 HUM. FACTORS 25, 25 (1992) (“[D]rivers over age 75 have more crashes per 1000 miles driven than do all other age groups except drivers under age 20.”) (citations omitted); Barbara Mathias, *Older Drivers at the Wheel*, WASH. POST, May 11, 1992, at B5 (“[W]hen the crash rate is figured on a yearly basis, the older driver’s rate of crash is slightly higher than the younger population[’s] . . .”).

Drivers over the age of 85 pose an even greater risk. These drivers are involved in accidents four times as often as drivers age 50 to 59. Rigdon, *supra* note 4, at A8. Moreover, drivers over age 85 average 40 crashes per million miles compared to only four crashes per million miles for those drivers age 35 to 65. Lakshmanan, *supra* note 5, at 1, 14.

injuries or die<sup>18</sup> because of their increased vulnerability to injury.<sup>19</sup> The health and safety risks posed by these drivers will likely increase as the driving population ages.

The majority of states, however, have not reacted to the increase in the number of older drivers<sup>20</sup> or their decreased driving ability.<sup>21</sup> In fact, the license renewal process significantly contributes to the dangers presented by older drivers. Existing license renewal laws do not address the impact of elderly drivers on the safety of our roads.<sup>22</sup> This Note argues that, in light of the empirical evidence reporting the ever increasing number of older drivers and the health and safety problems associated with them, the states need to adopt more uniform and stringent laws to regulate the driver's license renewal process.

Part I details the problem by describing the characteristics of older drivers and the risks that they pose to themselves and society. Part II examines the current situation by surveying the state laws that regulate the renewal process. Part III proposes that the states adopt more comprehensive renewal laws that require road tests for older drivers. This solution would

18. Barr, *supra* note 1, at 598-99. Motor vehicle accidents constitute the most common cause of accidental death among individuals age sixty-five to seventy-four. Barakat & Mulinazzi, *supra* note 1, at 202 (quoting National Institute on Aging report). Between 1980 and 1989, the fatality rate for older drivers increased by 43%. Barr, *supra* note 1, at 598. In contrast, the fatality rate for the total driving population fell by 8.4%. *Id.* Drivers over age 85 are 15 times more likely to die in an accident than drivers in their forties. Rigdon, *supra* note 4, at A1.

The following table shows the fatality rates for various drivers.

Measure	Drivers 65+		All Drivers	
	1980	1989	1980	1989
Total Fatalities	2323	3319	28,816	26,389
Deaths per 100,000 population	9.0	10.7	16.7	13.8
Deaths per 100,000 licensed drivers	15.3	15.5	19.8	15.9

Barr, *supra* note 1, at 598.

19. Barr, *supra* note 1, at 599 ("The increase in vulnerability was substantially responsible for the discrepant rise in fatalities among licensed older drivers in the 1980s."); Waller, *supra* note 3, at 500 ("[I]ncreased age is associated with a higher risk of being seriously injured or killed in an automobile crash.").

The most common cause of fatal accidents for an older driver is the failure to yield right of way, followed by the failure to obey traffic signs, inattentiveness, and reckless, careless or negligent driving. Rigdon, *supra* note 4, at A1, A6 (discussing the *Wall Street Journal's* analysis of Department of Transportation fatal-accident reports).

20. See *supra* notes 4-5 and accompanying text.

21. See *supra* notes 11-19 and accompanying text.

22. See *infra* Part II for an examination of current state license renewal laws.

allow individuals to drive as long as they are capable while also protecting society from dangerous drivers. Part IV addresses potential difficulties in implementing a new regulatory scheme by exploring the constitutional issues that would inevitably arise if states enacted more stringent laws. Part V forecasts the political obstacles that more stringent renewal legislation would face in the states. Ultimately, Part VI concludes that the proposed statutory solution is the most effective method for both ensuring driving safety and protecting the rights of older drivers.

### I. COMMON HEALTH PROBLEMS OF OLDER DRIVERS

Aging produces numerous physical and psychological changes in the human body.<sup>23</sup> Vision,<sup>24</sup> hearing,<sup>25</sup> physical strength,<sup>26</sup> and reaction time<sup>27</sup> decrease with age. In addition, cognitive capacity,<sup>28</sup> risk evaluation skills, and decisionmaking abilities often become impaired due to increasing age.<sup>29</sup> Empirical evidence shows that these characteristics of aging reduce driving skills.<sup>30</sup>

While some older drivers adjust their driving habits<sup>31</sup> or stop driving

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23. Barakat & Mulinazzi, *supra* note 1, at 190. Aging produces biological, psychological, sociological, and behavioral changes. *Id.* For a discussion of the general effects of aging, see *AGING: PROSPECTS AND ISSUES* (Richard H. Davis ed., 1977).

24. David Shinar & Frank Schieber, *Visual Requirements for Safety and Mobility of Older Drivers*, 33 *HUM. FACTORS* 507, 508 (1991) (“[V]isual skills often deteriorate with advanced age . . .”).

25. Barakat & Mulinazzi, *supra* note 1, at 193.

26. *Id.* (“Studies of various kinds of muscular strength show declines in old age compared to young adulthood of 15%-46%.”).

27. *Id.* (noting that decreased reaction time “is one of the best documented facts about the aged on record”).

28. Ball & Owsley, *supra* note 4, at 588. *See also* Marottoli et al., *supra* note 8, at 255.

29. Barakat & Mulinazzi, *supra* note 1, at 197 (citation omitted).

30. Waller, *supra* note 3, at 502. Older drivers are more likely to be involved in multiple-car, daytime crashes, while younger drivers are usually involved in single vehicle, nighttime, alcohol- or speeding-related accidents. Mathias, *supra* note 17, at B5. Although there is a gradual deterioration in performance associated with an increase in crash risk, the data is based on group performance. Waller, *supra* note 3, at 501. Individual performances between drivers in certain categories can be very different. *Id.* For example, one driver may develop problems in his fifties and be totally unable to drive by age 60, while another driver may have no problems at all. *Id.* Moreover, day-to-day variation in driving ability is greatest for those over age 65. *Id.* at 502. Although one driver may or may not represent the group norm, classifying drivers according to age groups is the most efficient way to evaluate the problem.

31. Marottoli et al., *supra* note 8, at 255. Such measures range from driving less frequently or driving fewer miles to not driving during peak traffic hours. *Id.* Other measures include not driving under extreme weather conditions, avoiding certain routes, and driving only during daylight hours. Stamatiadis et al., *supra* note 4, at 380-81.

altogether based on their own perceived impairment,<sup>32</sup> others continue to drive for as long as possible.<sup>33</sup> Not surprisingly, accident and fatality rates begin to show a dramatic increase for the class of drivers over age fifty-five.<sup>34</sup> An examination of the debilitating effects of some of the most common health problems experienced by older drivers, such as Alzheimer's disease, dementia, eye disease, motor ability problems, and problems arising from medication, demonstrates the need for more frequent testing of an older person's driving ability.

More than one million Americans suffer from Alzheimer's disease.<sup>35</sup> Many more may have the disease but remain undiagnosed.<sup>36</sup> Older drivers with Alzheimer's have more accidents than those who are not afflicted with the disease.<sup>37</sup> Yet, many older individuals continue to drive after being diagnosed, even when their impairment is moderate to severe.<sup>38</sup> Despite

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32. Marottoli et al., *supra* note 8, at 255. In one recent study, researchers found that six medical conditions—macular degeneration, any activity limitation, syncope, Parkinson's disease, retinal hemorrhaging, and stroke sequelae—were significantly related to older drivers' decisions to stop driving. Campbell et al., *supra* note 8, at 233. However, because half of the drivers that reported such conditions continued to drive, the researchers concluded that the link between driving cessation and these conditions was uncertain. *Id.*

In another study, researchers compared the factors of higher age, lower income, not working, neurologic disease, cataracts, lower physical activity level, and functional disability to evaluate driving cessation decisions. Marottoli et al., *supra* note 8, at 255. The study found that no subjects stopped driving if none of the factors were present, while 49% of the subjects stopped driving if three or more factors were present. *Id.* at 257.

33. Ball & Owsley, *supra* note 4, at 583. "[A]lthough [older drivers] may cut down on their frequency of travel, they resist any change in their preferred mode of travel." *Id.* (citing Jette & Branch, *supra* note 17).

34. *Id.* See also Waller, *supra* note 3, at 500 ("The risk of crash per mile driven is lowest for drivers in their late 20s up to their middle 50s, and the rate of risk accelerates with increasing age.") (citations omitted); *supra* notes 11-18 and accompanying text.

35. Raja Parasuraman & Paul G. Nestor, *Attention and Driving Skills in Aging and Alzheimer's Disease*, 33 HUM. FACTORS 539, 541 (1991). Alzheimer's disease, a degenerative brain disorder, is one of the leading causes of dementia in adults. *Id.* at 539. Alzheimer's may cause a variety of abnormalities in memory, language, decisionmaking, visio-spatial skills, and other cognitive functions. *Id.* Although Alzheimer's disease is usually associated with the elderly, it may occur in people as young as 50. *Id.* at 542. Studies estimate that between 1.5 and 2.5 million Americans suffer from the disease. *Id.* at 541. However, this may be a conservative estimate. *Id.*

36. Parasuraman & Nestor, *supra* note 35, at 541. Many Americans with Alzheimer's disease remain undiagnosed because it is difficult to recognize the disease. *Id.* Specifically, age-related cognitive decline often cannot be distinguished from mild or incipient dementia. *Id.*

37. *Id.* at 552. Drivers with dementia have more accidents per mile driven than normal older drivers. *Id.*

38. *Id.* at 541 (noting that most individuals with Alzheimer's drive for up to four years following diagnosis) (citing Friedland et al., *Motor Vehicle Crashes in Dementia of the Alzheimer Type*, 24 ANNALS OF NEUROLOGY 782 (1988); Lucas-Blaustein et al., *Driving in Patients with Dementia*, 36 J.

this danger, not one state screens for Alzheimer's in its license renewal process. Further, some states may compound the problem by allowing long intervals between license renewals or by allowing renewal by mail.<sup>39</sup> Therefore, many older Americans with Alzheimer's continue to drive and pose a threat to the safety of our roads.

Dementia is another condition which afflicts many older drivers, approximately fifteen percent of the population over age sixty-five.<sup>40</sup> Dementia increases crash risk.<sup>41</sup> Studies show that a greater percentage of older drivers with dementing illnesses are involved in accidents than are those drivers who are not afflicted.<sup>42</sup> Nevertheless, many drivers continue to drive after the onset of the disease.<sup>43</sup> As with Alzheimer's disease, none of the states have implemented procedures to determine whether license renewal applicants suffer from dementia.<sup>44</sup>

As individuals age, their visual abilities decline.<sup>45</sup> This decline in

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AM. GERIATRICS SOC'Y 1087 (1988)).

39. See *infra* notes 62-76 and accompanying text for a survey of current testing requirements. Although a few states require physicians to report patients that have disabling conditions, see *infra* note 74 and accompanying text, no state has renewal procedures that incorporate screening measures for Alzheimer's.

40. Alfred W. Kaszniak et al., *Dementia and the Older Driver*, 33 HUM. FACTORS 527, 527 (1991). Dementia may involve impairment in abstract thinking, disturbance of higher cortical function, or personality change. *Id.* There are more than 50 possible causes for the disease. *Id.* Individuals age 80 and older are four to seven times more likely to suffer from the disease than those age 70 to 79. *Id.* One study suggests that as many as five million people suffer from mild to moderate dementia. Parasuraman & Nestor, *supra* note 35, at 541.

41. Kaszniak et al., *supra* note 40, at 533. A recent comparative test between drivers with and without dementia revealed that those with the disease had significantly more errors in speed, braking, and signal use. *Id.* at 534. In addition, individuals with dementia are more likely to get lost while driving. *Id.* at 535.

42. *Id.* at 532. Studies report that 29% to 47% of older drivers with dementia who continue driving are involved in an accident after the onset of the disease. *Id.* The crash rate for drivers with dementia is estimated to be between 17.0 and 19.3 crashes per million miles driven compared to an estimated 3.6 to 12.1 crashes per million miles driven for drivers without dementia. *Id.* at 532-33.

43. *Id.* at 533. The studies found that between 14% and 35% of the individuals with dementia continued to drive. *Id.*

44. See *infra* notes 62-76 and accompanying text for a survey of state license renewal laws. Illinois is the only state with procedures that may detect dementia: it requires road tests for renewal applicants over age 75. See ILL. ANN. STAT. ch. 625, para. 5/6-109(b) (Smith-Hurd 1993).

45. Klein, *supra* note 15, at 521. With age, the visual functions used in driving, such as daytime static and dynamic visual acuity, perception of angular movement, movement in depth, visual field, glare sensitivity and color vision, change. *Id.*

eyesight contributes to the increased accident involvement of older drivers.<sup>46</sup> However, the visual problems of older drivers often go undiagnosed,<sup>47</sup> in part because a number of states do not always test every aspect of a license applicant's vision.<sup>48</sup> Thus, unaware that they suffer visual problems, many individuals with poor eyesight, limited peripheral vision, or glare sensitivity continue to drive.<sup>49</sup>

Similarly, motor performance slows with increasing age.<sup>50</sup> Older drivers

The following table shows the decline in vision as it is associated with age.

Age (years)	20/20 or better
18-24	87.6%
25-34	84.3%
35-44	85.4%
45-54	71.2%
55-64	56.0%
65-74	32.0%

*Id.* at 522.

The following table details the frequency of age-related cataracts, age-related maculopathy, and open-angle glaucoma.

Age (years)	Cataract %	Age-related maculopathy %	Open-angle glaucoma %
52-64	21.0	18.0	1.0
65-74	53.0	26.0	6.0
75-85	80.0	36.0	7.0

*Id.* at 523.

46. Klein, *supra* note 15, at 521. A British study of the correlation between accident rates and poor visual acuity reported the highest correlation for those over age 45. *Id.* (citing P.A. Davison, *Inter-Relationships Between British Drivers' Visual Abilities, Age, and Road Accident Histories*, 5 OPTHALMIC PHYSIOLOGIC OPTICS 195 (1985)). Also, a three-year study of California drivers age 54 or older showed that a decline in visual acuity was significantly related to accident rates. Klein, *supra* note 15, at 521 (citing A. Burg, *Vision and Driving: A Report on Research*, 13 HUM. FACTORS 79 (1971)).

47. Ball & Owsley, *supra* note 4, at 583.

48. See *infra* notes 72-73 and accompanying text for a discussion of the vision tests required by the states. The Center for Disease Control recently compared fatal accident rates in states that allow relicensure without a vision test with those in adjacent states that require eye tests for relicensure. See Don Colburn, *Vision Tests Reduce Older Drivers' Deaths*, WASH. POST, June 30, 1992, at (Health) 5. The study concluded that the death rate for older motorists is lower in states that require vision tests. *Id.*

49. Ball & Owsley, *supra* note 4, at 583. A recent study reported that older drivers who knew of their visual problems attempted to avoid difficult driving situations. However, older drivers who were not informed of their condition did not appear to modify their behavior. *Id.* at 583-84.

50. George E. Stelmach & Ariella Nahom, *Cognitive-Motor Abilities of the Elderly Driver*, 34 HUM. FACTORS 53, 53 (1992). Motor performance is essential in emergency situations involving braking, turning, or steering. *Id.*



cannot act as quickly or precisely as younger drivers.<sup>51</sup> This risk is also unaddressed, however, because no states test the motor abilities of renewal applicants.<sup>52</sup>

To combat their various physical and psychological conditions, many older individuals take medication.<sup>53</sup> These medications may have an adverse effect on driving ability, thereby increasing crash risk for affected drivers. This drug-related impairment is especially dangerous in older drivers who may already have reduced driving skills.<sup>54</sup> Despite the dangers associated with certain medications, states do not screen renewal applicants for prescription drug use.<sup>55</sup> As a result, a substantial number of older drivers continue to drive while suffering from the side effects of their medication.<sup>56</sup>

Most older Americans rely on the automobile to maintain their mobility and independence.<sup>57</sup> However, many older Americans have age-related problems<sup>58</sup> that make driving more difficult. Despite the prevalence of

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51. *Id.* For example, two researchers recently studied brake reaction-time using actual driving situations involving roadway hazards and concluded that those age 50 to 84 reacted more slowly than those age 18 to 40. *Id.* at 54. Other researchers find that brake reaction time increases two percent for each successive five-year age range beginning at age 15 and ending at age 75. *Id.* (citation omitted).

52. See *infra* notes 62-76 and accompanying text for a discussion of the renewal requirements of the states. Illinois, by requiring road tests, may detect some motor ability problems. See ILL. ANN. STAT. ch. 625, para. 5/6-109(b) (Smith-Hurd 1993).

53. Ray et al., *supra* note 14, at 33. In fact, over 80% of individuals age 65 or older take one or more prescription medications, many of which affect the central nervous system. *Id.* at 33-34. These statistics suggest that older drivers operate motor vehicles while they are under the influence of these medications. *Id.*

54. *Id.*

55. See *infra* notes 62-74 and accompanying text for a discussion of current testing requirements.

56. See Ray et al., *supra* note 14, at 34-35.

57. Waller, *supra* note 3, at 499. For older Americans, the driver's license has special significance, serving as a symbol of freedom, independence, and self-sufficiency. *Id.* For a discussion of the symbolic value of a driver's license to older Americans, see Susan A. Eisenhandler, *The Asphalt Identity: Old Age and the Driver's License*, 30 INT'L J. AGING & HUM. DEV. 1, 2-5 (1990).

58. In addition to the health problems discussed above, numerous other conditions potentially affect the elderly and their driving ability. First, most studies from the United States indicate that drivers with heart disease are twice as likely to have an accident. Julian A. Waller, *Research and Other Issues Concerning Effects of Medical Conditions on Elderly Drivers*, 34 HUM. FACTORS 3, 9 (1992). Waller concludes: "[A]t least some drivers with heart disease have reduced capability to deal with more demanding driving tasks because of altered oxygenation or cardiac conduction, and . . . this may express itself in crashes in which the clinical contribution is quite subtle." *Id.* Second, studies indicate that physical frailty brought about by age leads to a higher risk of being seriously injured or killed in an automobile accident. Waller, *supra* note 3, at 500 ("[I]ncreased vulnerability is associated with both immediate and delayed consequences of crashes."). Moreover, even if the older driver survives the crash, he or she is more likely to die from secondary complications or require a longer hospital stay. *Id.*

these problems, however, few states employ screening mechanisms to test older drivers for debilitating conditions. Therefore, many older drivers may not know of the danger that they pose to themselves and others.

## II. THE LAW

Each state independently regulates its license renewal process.<sup>59</sup> Consequently, the requirements for renewing a driver's license differ greatly from state to state. While a few states impose difficult renewal requirements,<sup>60</sup> the great majority have extremely lenient renewal laws.<sup>61</sup> This lax relicensure regulation allows many older drivers with hidden, or even obvious, medical conditions to pass unchecked through the system and continue driving. Unless these laws change, the safety risks posed by the ever expanding population of older drivers will increase significantly in the future as the population ages. A survey of individual state license renewal laws reveals the ease with which older drivers can renew their licenses and the consequent need for more stringent regulation.

### A. Survey of State Driver's License Renewal Laws

#### 1. Mail-In Renewal at Any Age

Thirteen states allow drivers of all ages to renew their licenses by mail.<sup>62</sup> The remaining thirty-seven states permit mail-in renewal until a

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59. See *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523 (1959) ("The power of the state to regulate the use of its highways is broad and pervasive."). States derive the power to regulate the use of public roads and highways from their police powers. See *infra* notes 177-79 and accompanying text for a discussion of the police power and how states can use it to regulate drivers. For a full discussion of the development of driving laws, see FISHER & REEDER, *supra* note 1, at 19-27. For a complete discussion of the licensing process, see JOHN H. REESE, POWER, POLICY, PEOPLE: A STUDY OF DRIVER LICENSING ADMINISTRATION 44-129 (1971).

Although the federal government has not enacted any laws regarding licensing procedures, it could probably do so under its Commerce Clause powers. This issue is beyond the scope of this Note. For a complete discussion of the federal government's power to regulate the licensing process under the Commerce Clause, see FISHER & REEDER, *supra* note 1, at 45-50.

60. See, e.g., *infra* notes 79-86 and accompanying text (detailing the renewal process in Illinois, the state with the most difficult renewal requirements).

61. See, e.g., *infra* notes 101-04 and accompanying text (detailing the renewal process in Alabama, a state that, along with Connecticut, Kentucky, Mississippi, Oklahoma, and West Virginia, has very lax renewal laws); Rigdon, *supra* note 4, at A8.

62. The thirteen states are Florida, Maine, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont and Wyoming. See FLA. STAT. ANN. § 322.18(8) (West Supp. 1994) ("The department shall issue 4-year and 6-year license extensions by mail . . . without reexamination at alternating license expirations."); ME. REV. STAT. ANN. tit. 29,

certain age<sup>63</sup> or require drivers to reapply in person.<sup>64</sup> Of the thirteen states accepting mail-in renewal at any age, only six require applicants to submit the results of a vision test with the application.<sup>65</sup> In the remaining seven states, drivers can renew their licenses by simply filling out a form and paying the required fee, without having to appear at the Department of Motor Vehicles in person.<sup>66</sup> Thus, mail-in renewal permits many drivers with dangerous medical conditions to continue to drive.

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§ 542-A (West 1978); MASS. GEN. LAWS ANN. ch. 90, § 8 (West Supp. 1994); MICH. COMP. LAWS ANN. § 257.314(1) (West 1990); N.J. STAT. ANN. § 39:3-10 (West Supp. 1994); N.Y. VEH. & TRAF. LAW § 502(6)(A) (McKinney Supp. 1994); OR. REV. STAT. § 807.150 (1993); 75 PA. CONS. STAT. ANN. § 1514(a) (1977); TENN. CODE ANN. § 55-50-338(a) (1993); TEX. REV. CIV. STAT. ANN. art. 6687b (West Supp. 1994) (“[T]he department may by rule provide that a person with a driver’s license that expires after January 1, 1984, may renew the license by mail.”); UTAH CODE ANN. § 53-3-214 (1994); VT. STAT. ANN. tit. 23, § 601(a) (1987); WYO. STAT. § 31-7-119(a) (1993).

63. See, e.g., ALASKA STAT. § 28.15.101(5) (1989) (mail-in renewal until age 69); ARIZ. REV. STAT. ANN. § 28-426.01 (Supp. 1993) (mail-in renewal until age 70); CAL. VEH. CODE § 12814.5(c) (West Supp. 1994) (mail-in renewal until age 70 provided driver has not accumulated more than one point for traffic offenses).

64. See, e.g., ALA. CODE § 32-6-1 (Supp. 1994); ARK. CODE ANN. § 27-16-901 (Michie 1994); COLO. REV. STAT. § 42-2-110 (1990); CONN. GEN. STAT. ANN. § 14-41(a) (West Supp. 1994); DEL. CODE ANN. tit. 21, § 2715(b) (Supp. 1993); GA. CODE ANN. § 40-5-32(b) (1991); HAW. REV. STAT. § 286-107(b) (Supp. 1992); IDAHO CODE § 49-319(1) (Supp. 1993); ILL. ANN. STAT. ch. 625, para. 5/6-109(c) (Smith-Hurd 1993); IND. CODE ANN. § 9-24-12-5 (Burns 1991); IOWA CODE ANN. § 321.196 (West Supp. 1994); KAN. STAT. ANN. § 8-247(e)(1) (1991); KY. REV. STAT. ANN. § 186.412 (Michie/Bobbs-Merrill 1989); LA. REV. STAT. ANN. § 32:408 (West 1994); MD. CODE ANN. TRANSP. § 16-115(a)(3) (Supp. 1993); MINN. STAT. ANN. § 171.13(2) (West Supp. 1994); MISS. CODE ANN. § 63-1-47 (1989); MO. ANN. STAT. § 302.175 (Vernon 1994); MONT. CODE ANN. § 65-1-111 (1992); NEB. REV. STAT. § 60-411.01(1) (1988); NEV. REV. STAT. § 483.382 (1991); N.H. REV. STAT. ANN. § 263:10 (1993); N.M. STAT. ANN. § 66-5-21 (Michie 1990); N.C. GEN. STAT. § 2077(f) (1993); N.D. CENT. CODE § 39-06-19 (1987); OHIO REV. CODE ANN. § 4507.09 (Anderson 1993); OKLA. STAT. ANN. tit. 47, § 1131 (West 1988); R.I. GEN. LAWS § 31-10-30 (1982); S.C. CODE ANN. § 56-1-210 (Law. Cop. 1991); S.D. CODIFIED LAWS ANN. § 32-12-42 (Supp. 1994); VA. CODE ANN. § 46.2-330 (Michie 1994); WASH. REV. CODE ANN. § 46.20.120 (West Supp. 1994); W. VA. CODE § 17B-2-12 (Supp. 1994).

65. The six states are Maine, Massachusetts, New York, Oregon, Utah, and Wyoming. See ME. REV. STAT. ANN. tit. 29, § 545-A(6) (West 1978) (“Any person required to pass a vision examination . . . may submit a doctor’s certificate setting forth [the applicant’s] visual acuity in each eye, both eyes combined and field of vision.”); MASS. GEN. LAWS ANN. ch. 90, § 8 (West Supp. 1994); N.Y. VEH. & TRAF. LAW § 502(6)(A) (McKinney Supp. 1994) (“[A driver’s] license may be renewed by submission of an application for renewal, the fee prescribed by law, proofs of prior licensing, fitness and acceptable vision.”); OR. REV. STAT. § 807.150 (1989); UTAH CODE ANN. § 53-3-206 (1994) (stating that drivers over age 65 must pass an eye examination which may be checked by “allowing the applicant to furnish to the division a statement from a physician”); WYO. STAT. § 31-7-119(b) (1993).

66. The seven states are Florida, Michigan, Pennsylvania, Tennessee, Texas, and Vermont. For example, New Jersey requires a vision test only every 10 years. N.J. STAT. ANN. § 39:3-10c (West 1990).

## 2. *Infrequent License Renewal Periods*

Although many states require older drivers to appear in person to renew their licenses,<sup>67</sup> only eight states require older drivers to renew their licenses more frequently than younger drivers.<sup>68</sup> In the remaining forty-two states, older drivers may wait the three to five years statutorily prescribed for drivers of all ages between renewals.<sup>69</sup> Within this period, many older drivers may develop conditions which impair their driving ability.<sup>70</sup> Such infrequent renewals allow older drivers with health problems to continue driving unchecked for up to five years.

## 3. *Lack of Road Testing*

Only one state, Illinois, requires an older driver to pass a road test in order to renew his or her license.<sup>71</sup> The remaining forty-nine states do not require a road test once a driver has obtained his or her initial license. Therefore, these states never observe older drivers' actual performance behind the wheel. Required road tests could signal the authorities that an older driver has experienced a decline in reflexes and motor ability.

## 4. *Noncomprehensive Vision Tests*

In addition to not requiring road tests, eight states do not require

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67. See *supra* note 64 and accompanying text.

68. The eight states are Arizona, Hawaii, Illinois, Indiana, Iowa, Maine, New Mexico, and Rhode Island. See ARIZ. REV. STAT. ANN. § 28-426(A) (Supp. 1993) (original license is valid until applicant's sixtieth birthday, at which time it becomes renewable every five years); HAW. REV. STAT. § 286-106(1) (1985) (license expires every four years until driver reaches age 65 when license expires every two years); ILL. ANN. STAT. ch. 625, para. 5/6 115(g) (Smith-Hurd 1993) (license expires every four years until driver reaches age 81, then every two years for drivers age 81 through 87, and every year for drivers age 87 or older); IND. CODE ANN. § 9-24-12-1 (Burns 1991) (license expires every four years until age 75, after which license expires every three years); IOWA CODE ANN. § 321.196 (West Supp. 1993) (at the option of the applicant, license expires either every two or four years until age 70, after which the license expires every two years); ME. REV. STAT. ANN. tit. 29, § 542 (West Supp. 1993) (license valid for six years until driver reaches 65; thereafter license valid for only four years); N.M. STAT. ANN. § 66-5-19 (Michie 1993) (license valid for four years until driver reaches age 75, then license expires every year); R.I. GEN. LAWS § 31-10-30 (Supp. 1993) (license valid for five years until driver reaches age 70, after which license is valid for two years).

69. See, e.g., OHIO REV. CODE ANN. § 4507.09 (Anderson 1993) ("[E]very driver's license shall expire on the birthday of the applicant in the fourth year after the date it is issued . . .").

70. See *supra* notes 35-52 and accompanying text for a discussion of the medical problems frequently encountered by older individuals.

71. ILL. ANN. STAT. ch. 625, para. 5/6-109(c) (Smith-Hurd 1993). See *infra* notes 79-86 and accompanying text detailing the renewal requirements in Illinois.

applicants to pass a vision test before they obtain a renewed license.<sup>72</sup> Of the remaining states, fifteen test visual acuity only, twelve states test visual acuity and peripheral vision, one state tests visual acuity and depth perception, and only twelve states test visual acuity, peripheral vision, and depth perception.<sup>73</sup> The absence of comprehensive vision testing allows a significant number of older drivers that otherwise would be disqualified to maintain their driving privileges.

### 5. Doctors' Reports

Although the majority of states' relicensure procedures do not address the concerns raised above, a few states have initiated measures to combat the problem of unsafe older drivers. For example, six states require doctors to report conditions that impair driving ability,<sup>74</sup> and fourteen states<sup>75</sup> offer restricted licenses.<sup>76</sup> However, these efforts are inadequate given the magnitude of the problems associated with older drivers and the pervasiveness of lenient license renewal requirements. States must enact more stringent and comprehensive laws in this area in order to protect the health and safety of all drivers.

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72. The eight states are Alabama, Kentucky, Mississippi, New Jersey, Oklahoma, Tennessee, Vermont, and West Virginia. See ALA. CODE § 32-6-1(b) (Supp. 1993) (renewal every four years without examination provided applicant pays fees); KY. REV. STAT. ANN. § 186.410 (Michie/Bobbs-Merrill 1986) (renewal simply by applying); MISS. CODE ANN. § 63-1-49 (1989) (renewal by payment of a fee in lieu of a driving examination); N.J. STAT. ANN. § 39:3-10c (West 1990) (renewal with vision test only once every 10 years); OKLA. STAT. ANN. tit. 47, § 6-115 (West Supp. 1993) (renewal upon application and payment of the required fee); TENN. CODE ANN. § 55-50-338 (1993) (same); VT. STAT. ANN. tit. 23, § 623 (1987) (same); W. VA. CODE § 17B-2-12 (Supp. 1993) (same).

73. Rigdon, *supra* note 4, at A8 (listing and classifying the various state statutes regarding vision testing).

74. The six states are California, Delaware, Georgia, New Jersey, Oregon, and Pennsylvania. See DEL. CODE ANN. tit. 21, § 2723; GA. CODE ANN. § 40-5-42; N.J. STAT. ANN. § 39:3-10.4; OR. REV. STAT. § 807.710(1); PA. STAT. ANN. § 1518(b). In addition, Nevada requires doctors to report conditions relating to epileptic seizures. NEV. REV. STAT. § 483.386.

75. Mathias, *supra* note 17, at B5. See, e.g., CAL. VEH. CODE § 12813; IOWA CODE ANN. § 321.193; OR. REV. STAT. § 807.120; WASH. REV. CODE ANN. § 46.20.120.

76. Restricted licenses typically permit driving only during a certain time of day or for a certain number of miles. A typical provision, taken from the California Vehicle Code, states:

The department may, upon issuing a driver's license or after issuance whenever good cause appears, impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on, a motor vehicle which the licensee may operate or impose other restrictions applicable to the licensee that the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

CAL. VEH. CODE § 12813 (West Supp. 1994).

## B. *Specific State Renewal Provisions*

A comparison of relicensure provisions in four states, Illinois, Florida, Pennsylvania, and Alabama, demonstrates the variety of approaches to regulating older drivers. Undoubtedly, political pressures within a state dictate to some degree the extent of regulation by that state's legislature.<sup>77</sup> However, statistics show that Illinois, the state with the more stringent renewal laws of the four, has the lowest percentage of drivers age seventy and older involved in fatal accidents.<sup>78</sup> Until all states realize that they have an existing problem with older drivers that will only increase in the future, the degrees of protection, though different in different states, will remain uniformly ineffective.

### 1. *Illinois*

In Illinois, drivers generally must renew their licenses every four years.<sup>79</sup> In order to be relicensed, a driver must apply in person and pass an eye examination.<sup>80</sup> However, upon reaching age sixty-nine,<sup>81</sup> a driver must also demonstrate an ability to read and understand traffic signals as well as knowledge of the state traffic laws.<sup>82</sup> Upon reaching age seventy-five, the applicant must also take a road test to demonstrate his or her ability to drive with care<sup>83</sup> and control.<sup>84</sup> Beginning at age eighty-one,

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77. See Rigdon, *supra* note 4, at A8 (discussing the AARP's opposition to tougher renewal laws for older drivers); *infra* notes 194-205 and accompanying text.

78. *Id.* Illinois reported that 6% of its drivers age 70 or older were involved in fatal accidents whereas Florida reported 8.68%, Pennsylvania reported 7.45%, and Alabama reported 7.03%. *Id.*

79. ILL. ANN. STAT. ch. 625, para. 5/6-115(a) (Smith-Hurd 1993).

80. *Id.* para. 5/6-109(c) ("Re-examination for those applicants who at the time of renewing their driver's license possess a driving record devoid of any convictions of traffic violations . . . shall consist solely of a test of the applicant's eyesight . . .").

81. *Id.* para. 5/6-103(9) (stating that no driver's license shall be issued "[t]o any person, as a driver, who is 69 years of age or older" unless the driver passes the more stringent tests required by this paragraph).

82. *Id.* para. 5/6-109(b) ("[S]uch examination shall include a test of the applicant's eyesight, his ability to read and understand official traffic control devices, his knowledge of safe driving practices and the traffic laws of [Illinois] . . .").

83. ILL. ANN. STAT. ch. 625, para. 5/6-109(c) ("[E]very applicant for the renewal of a driver's license who is 75 years of age or older must prove, by an actual demonstration, the applicant's ability to exercise reasonable care in the safe operation of a motor vehicle.").

84. *Id.* para. 5/6-109(b) ("[T]he examination of an applicant 75 years of age or older shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control of the operation of a motor vehicle.").

an applicant must take all exams every two years in order to renew.<sup>85</sup> Finally, beginning at age eighty-seven, the applicant must take the exams every year.<sup>86</sup>

## 2. Florida

In Florida,<sup>87</sup> drivers must renew their licenses every four or six years depending on their driving record.<sup>88</sup> Although the state purports to test the eyesight and hearing of all renewal applicants,<sup>89</sup> a loophole exists that permits applicants to be relicensed by mail without submitting to these examinations.<sup>90</sup> Drivers of all ages are subject to the same renewal procedures.<sup>91</sup> Consequently, applicants of any age may renew by mail for up to twelve years.<sup>92</sup> When renewing by mail, an applicant need not

85. *Id.* para. 5/6-115(g) (“[E]ach original or renewal driver’s license issued to a licensee 81 years of age through age 86 shall expire 2 years from the date of issuance . . .”).

86. *Id.* (“[E]ach original or renewal driver’s license issued to a licensee 87 years of age or older shall expire 12 months from the date of issuance . . .”).

87. Florida has the nation’s largest elderly population, Rigdon, *supra* note 4, at A8, and drivers age 55 and older constitute 28% of the resident drivers. Adon Taft, *Rocky Road for Seniors, States Get Tougher on Rules for Driving*, MIAMI HERALD, Feb. 24, 1992, at C1. Florida has 150,000 resident drivers age 85 or older and approximately 50,000 drivers age 90 or older. *Id.*

88. FLA. STAT. ANN. § 322.18(2)(b) (West Supp. 1994). An applicant “applying for a renewal issuance . . . shall be issued a driver’s license or renewal extension sticker which expires at midnight on the licensee’s birthday which next occurs 4 years after the month of expiration . . .” *Id.* If a driver has not been convicted within the preceding three years of a driving offense, he or she need not renew for six years. *Id.*

89. Section 322.121(1) states:

It is the intent of the legislature that all licensed drivers in Florida be reexamined upon renewal of their licenses. Because only a small percentage of drivers in the state are categorized as problem drivers, the Legislature intends that the large number of drivers who have not had any convictions for the preceding 3 years be processed expeditiously upon renewal of their licenses by examinations of their eyesight and hearing only and that all other licensees be tested, in addition to the eyesight and hearing examinations, with respect to their ability to read and understand highway signs regulating, warning, and directing traffic.

FLA. STAT. ANN. § 322.121(1) (West Supp. 1994).

90. Section 322.18(8) states:

The department shall issue 4 year and 6 year license extensions by mail, electronic, or telephonic means without reexamination at alternating license expirations.

(a) If the department determines from its records that the holder of a license about to expire is eligible for renewal, the department shall mail a renewal notice to the licensee . . . The renewal notice shall direct the licensee to appear at a driver license office for in-person renewal or to transmit the completed renewal notice . . . to the department by mail . . . for a license extension.

FLA. STAT. ANN. § 322.18(8) (West Supp. 1994).

91. *See, e.g., id.* § 322.18 (provision governing renewal of license does not make distinctions based on age).

92. A driver need not renew for six years if he or she has not been convicted of a drug offense within the preceding three years. *Id.* § 322.18(2)(b). The law also provides for mail-in renewal at

submit any evidence of successful completion of any type of physical examination.<sup>93</sup> When renewing in person, an applicant need only pass a vision test.<sup>94</sup>

### 3. *Pennsylvania*

In Pennsylvania, drivers must renew their licenses every four years.<sup>95</sup> Drivers are allowed to complete the renewal process by mail.<sup>96</sup> Furthermore, the state does not have any special provisions regulating the relicensure process for older drivers. However, if the state believes that any individual driver is a safety hazard, the state may require that driver to undergo a physical and visual examination.<sup>97</sup> In addition, doctors are required to report drivers who have conditions that may impair driving ability.<sup>98</sup> If a doctor reports a driver, the state must evaluate the report and determine the driver's competency.<sup>99</sup> If the department deems the driver incompetent, his or her license will be recalled until the driver can prove

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alternating license expirations. *Id.* § 322.18(8). Therefore, upon expiration at the end of six years, the driver will be able to renew by mail if he or she had to renew in person last time, and will not be required to renew in person for another six years.

93. *Id.*

94. *Id.*

95. 75 PA. CONS. STAT. ANN. § 1514(a) (1977) ("Every driver's license shall expire . . . at intervals of not more than four years . . .").

96. *Id.* ("Every license shall be renewable on or before its expiration upon application, payment of the required fee, and satisfactory completion of any examination required or authorized by this chapter.").

97. Section 1514(b) states:

The department may require persons applying for renewal of a driver's license to take and successfully pass a physical examination or a vision examination . . . or both examinations, if the department has reason to believe, either based on knowledge of the person or on statistical inference, that the person may be a traffic safety hazard.

75 PA. CONS. STAT. ANN. § 1514(b) (1977).

98. *Id.* § 1518(b) (Supp. 1993) ("[P]hysicians shall report to the department . . . every person . . . diagnosed as having any specified disorder or disability . . ."). This provision reflects state concern regarding "disorders characterized by lapses of consciousness or other mental or physical disabilities affecting the ability of a person to drive safely." *Id.* § 1518(a).

99. Section 1519(a) provides: "The department shall appoint one or more qualified persons who shall consider all medical reports and testimony and determine the competency of the driver or the applicant to drive." 75 PA. CONS. STAT. ANN. § 1519(a) (Supp. 1993). The driver may also obtain a second medical opinion. The provision further states in relevant part:

The department, having cause to believe that a licensed driver or applicant may not be physically or mentally qualified to be licensed, may obtain the advice of a physician who shall cause an examination to be made or who shall designate any other qualified physician. The licensed driver or applicant may cause a written report to be forwarded to the department by a physician of the driver's or applicant's choice.

*Id.*



his or her competence.<sup>100</sup>

#### 4. Alabama

In Alabama, drivers must renew their licenses every four years.<sup>101</sup> In order to be relicensed, the applicant merely has to apply in person and pay the requested fee.<sup>102</sup> The applicant need not take a road test nor even pass an eye examination.<sup>103</sup> Drivers of all ages are subject to the same provisions.<sup>104</sup>

### III. PROPOSAL

Older drivers pose a potential hazard to themselves and others.<sup>105</sup> Left unchecked, the dangers presented by these drivers will increase as the driving population continues to age.<sup>106</sup> However, the states have not yet addressed the problem adequately. Current license renewal requirements are extremely haphazard and lax.<sup>107</sup> In order to protect the safety of all drivers, the states need to enact more comprehensive and stringent laws regulating the license renewal process for older drivers.<sup>108</sup>

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100. Section 1519(c) states:

The department shall recall the operating privilege of any person whose incompetency has been established under the provisions of this chapter. The recall shall be for an indefinite period until satisfactory evidence is presented to the department in accordance with regulations to establish that such person is competent to drive a motor vehicle.

75 PA. CONS. STAT. ANN. § 1519(c) (Supp. 1993).

101. ALA. CODE § 32-6-1(b) (Supp. 1993).

102. *Id.* The statute states: "Every driver's license issued under this article may be renewed at the end of the license period without examination upon application and payment of the fee." *Id.*

103. *See id.*

104. *See id.*

105. *See supra* notes 11-19 and accompanying text.

106. *See supra* notes 4-5 and accompanying text.

107. *See supra* notes 62-76 and accompanying text (detailing the various approaches the states take in regulating older drivers). Admittedly, more stringent license renewal laws raise difficult social issues. For example, mobility is important to the well-being of older individuals. *See Waller, supra* note 3, at 499. If a driver loses his or her license, he or she may lose her means of mobility. However, many cities have inexpensive, mini-transport systems available to senior citizens. Mathias, *supra* note 17, at B8. Even if alternative means of transportation for older drivers need to be developed in a particular location, funds are better spent on such projects than on the costs arising from unsafe drivers on the road. Any proposed solution must seek both fairness to older drivers and safer highways. For further discussion of the social issues involved, see Eisenhandler, *supra* note 57, at 5-9.

108. This Note focuses exclusively on the need to enact new license renewal laws. However, state legislatures or Congress could implement many other types of measures that would improve the current situation. For example, the current highway system was designed for younger drivers. Waller, *supra* note 3, at 503. By increasing the size of and the lettering on road signs, and by placing signs farther from exits, legislators can facilitate driving for older individuals. *Id.* Moreover, federal car safety

In substance, the renewal requirements should be performance-based<sup>109</sup> with age acting as a trigger mechanism<sup>110</sup> for more frequent and comprehensive testing. States should offer restricted licenses<sup>111</sup> or retesting if a driver fails to meet any of the requirements. Moreover, applicants should fill out detailed questionnaires regarding prior medical history and current medications. Finally, physicians should be required to report to the state licensing board patients who have medical conditions that impair their ability to drive.<sup>112</sup>

However, because drivers age fifty to fifty-nine are statistically the safest on the road,<sup>113</sup> a driver should not be subject to new renewal requirements until he or she reaches age sixty.<sup>114</sup> Because existing renewal

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regulations are designed to protect 5-foot-10-inch, 170-pound males involved in 30-mile-per-hour, head-on crashes. Rigdon, *supra* note 4, at A6. However, older drivers are usually smaller and often get hit from the side. *Id.* Although new side impact standards have been passed, which new cars must meet by 1997, the stiff padding that will be required can injure older drivers whose bones have weakened. *Id.* Although the above measures may partially alleviate these problems, more stringent license renewal requirements remain the best and least expensive way to protect all drivers.

109. Currently, Illinois is the only state that uses a pure performance standard in road testing some of its older renewal applicants. See ILL. ANN. STAT. ch. 625, para. 5/6-109(c) (Smith-Hurd 1993) (requiring drivers age 75 and older to demonstrate care and control while driving an automobile). The renewal requirements in the remaining states are not performance-based but merely require the passing of an eye test or the payment of a fee. See, e.g., ALA. CODE § 32-6-1(b) (Supp. 1993) (allowing mail-in renewal upon payment of a fee).

Performance-based testing ensures that states will not deny a license to an older driver solely on the basis that he or she is above a certain age. Although as a group older drivers pose various hazards, all individuals within each particular age group have different driving abilities. See Waller, *supra* note 3, at 501-02. If new laws allowed license revocation based on standards other than performance, various procedural due process challenges could arise. For further discussion of this issue, see *infra* notes 189-93 and accompanying text. An older driver should be allowed to drive for as long as he or she is capable of doing so.

110. Because age does not constitute an impermissible distinguishing criteria, using age as the triggering mechanism for more frequent renewals likely would survive constitutional challenge. See *infra* Part IV for a discussion of the constitutionality of more stringent renewal provisions. Only eight states currently rely on age as a triggering mechanism. See *supra* note 68. However, age is already used as a triggering mechanism for travel by air. The Federal Aviation Administration prohibits pilots over age 60 from flying commercial airplanes. 14 C.F.R. § 121.383(c) (1986).

111. See *supra* note 76 for an example of a restricted license.

112. Currently, only seven states require doctors to report medical conditions that may affect the driving performance of their patients. See *supra* note 74 and accompanying text.

113. Rigdon, *supra* note 4, at A1.

114. There is an accelerated rate of crashes per mile driven for drivers beginning approximately at age 55. See Waller, *supra* note 3, at 500 (“[The] risk of crash per mile driven is lowest for drivers in their late 20s up to their middle 50s, and the rate of risk accelerates with increasing age.”) (citations omitted). Waiting until drivers reach age 60 to begin more stringent testing ensures that any drivers required to meet heightened standards to obtain a renewal clearly fall within the cohort group that exhibits an increased crash risk.

requirements for drivers younger than age sixty are effective,<sup>115</sup> legislatures should not implement the new requirements for all age groups.<sup>116</sup> States should require that drivers, upon reaching age sixty, renew their licenses every two years<sup>117</sup> until they reach age eighty-five, after which the driver should be subject to the renewal requirements every year.<sup>118</sup>

The renewal process itself should include a number of comprehensive tests.<sup>119</sup> First, because vision decreases with age,<sup>120</sup> states should test an applicant's vision to the fullest extent possible,<sup>121</sup> including tests for

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With the exception of Arizona, which imposes a new requirement upon drivers at age 60, *see* ARIZ. REV. STAT. ANN. § 28-426(a)(2) (Supp. 1993), states that currently make age distinctions, either for mail-in renewal or for time allowed between renewals, wait until the driver is at least age 65. *See supra* note 68 (listing states that require older drivers to renew more frequently than younger drivers); *supra* note 63 (listing states that allow mail-in renewal until a certain age).

115. Younger drivers, with the exception of teenagers, are involved in fewer accidents per mile than older drivers. *See* Campbell et al., *supra* note 8, at 230.

116. Even though very young drivers are also involved in a high number of accidents, the causes of those accidents differ from those involving older drivers. Younger drivers are usually involved in alcohol- or speeding-related accidents. Mathias, *supra* note 17, at B5. Renewal requirements cannot keep young drivers from drinking and driving or from driving too fast. However, renewal requirements can identify age-related conditions associated with a decrease in driving ability for older drivers.

117. Because individuals over age 60 usually begin to suffer a decline in vision, and health in general, waiting past age 60 would increase the probability that a driver has an undiagnosed condition that affects his or her driving ability. Currently, most drivers may wait three to five years between renewals. *See supra* note 69 and accompanying text. Renewal every two years would decrease the possibility that older drivers are driving with serious health problems.

118. Accident involvement for drivers over age 85 rises dramatically: drivers age 85 and older are involved in accidents four times as often as drivers age 50 to 59. Rigdon, *supra* note 4, at A1. In addition, individuals age 85 and older have a higher risk of suffering from various medical conditions or from the side effects of the medications they take to combat their illnesses. *See supra* notes 35-56 and accompanying text. Because drivers age 85 and older pose an increased risk, they should be tested more frequently. *Cf.* ILL. ANN. STAT. ch. 625, para. 5/6-115(a) (Smith-Hurd 1993) (requiring renewal every two years for drivers age 81 to 86 and then every year for drivers age 87 and older). Although several states require more frequent renewal by older drivers, *see supra* notes 67-69 and accompanying text, only Illinois employs a two-tiered system with special requirements for very old drivers. *See supra* notes 84-86 and accompanying text.

119. Although some states provide for a variety of tests, no state includes every possible test or procedure currently utilized by other states. For example, while Pennsylvania requires doctors to report conditions that may impair a driver's ability, *see* 75 PA. CONS. STAT. ANN. § 1518(b) (Supp. 1993), and Illinois does not, Illinois requires more frequent renewals for older drivers, *see* ILL. ANN. STAT. ch. 625, para. 5/6-115(a) (Smith-Hurd 1993), but Pennsylvania does not. The most effective measure would incorporate all tests necessary to determine, consistently and comprehensively, an older driver's ability.

120. Klein, *supra* note 15, at 521. For a discussion of the vision problems suffered by older individuals, *see supra* note 45 and accompanying text.

121. Current standards used to test visual ability often fail to detect visual changes that affect driving performance. Klein, *supra* note 15, at 524-25. Only 12 states test several different aspects of an applicant's vision. *See supra* note 73 and accompanying text.

acuity, peripheral vision, depth perception,<sup>122</sup> night vision,<sup>123</sup> and ability to read traffic signs.<sup>124</sup> States should not allow drivers with poor eyesight<sup>125</sup> to renew until the problem is corrected.<sup>126</sup> Moreover, states should require that drivers with poor night vision drive only during daylight hours.<sup>127</sup>

In addition, because motor performance slows with age,<sup>128</sup> states should test the reflexes and motor skills of older applicants.<sup>129</sup> Efficient testing methods, such as driving simulators, already exist.<sup>130</sup> Although an older driver may have good vision, his or her inability to react quickly or correctly could prove dangerous to other drivers. States should deny renewal to drivers that exhibit unusually slow reaction times.

Furthermore, states should test the cognitive<sup>131</sup> and attentional abilities<sup>132</sup> of all older applicants.<sup>133</sup> Although no states currently test such

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122. All three are essential to good driving and a deficiency in just one increases crash risk. See Klein, *supra* note 15, at 521.

123. Poor night vision increases crash risk for individuals who drive after dark. See Shinar & Schieber, *supra* note 24, at 509. Currently, no states test an applicant's night vision.

124. A relationship exists between road sign reading performance and overall visual skills. *Id.* at 508. Currently, Illinois is the only state that tests an applicant's ability to read and understand traffic signs. See ILL. ANN. STAT. ch. 625, para. 5/6-109(b) (Smith-Hurd 1993).

125. The number of drivers with poor eyesight is surprisingly high. For example, in Illinois, from January 1, 1993 to July 30, 1993, 17% of drivers age 81 to 86 and 23% of drivers over age 87 failed the required vision test. Rigdon, *supra* note 4, at A6.

126. Drivers of all ages, not just older drivers, should be required to meet basic visual acuity standards.

127. Thus, a driver with otherwise normal vision can continue to drive, but only in the safest possible conditions for himself and other drivers. See *supra* notes 75-76 and accompanying text for a discussion of similar license restrictions.

128. See *supra* notes 50-52 and accompanying text for a discussion of the decline in reflexes associated with age.

129. All cognitive motor processes decrease by approximately the same proportional amount with increased age. Stelmach & Nahom, *supra* note 50, at 63. Therefore, the older the driver, the more likely that he or she has slower reflexes or motor skills. Currently, no state tests the reflexes or motor skills of renewal applicants.

130. See, e.g., Ball & Owsley, *supra* note 4, at 586 (discussing the availability and accuracy of driving simulators).

131. States should test older drivers' cognitive abilities to prevent individuals from driving with undiagnosed cases of Alzheimer's disease, dementia, or other mentally debilitating conditions. See *supra* notes 35-44 and accompanying text for a discussion of the prevalence of Alzheimer's disease and dementia among older individuals.

132. While driving, an individual must monitor the outside environment, the internal controls, and the status of the car. Therefore, the skill of interchangeably focusing and switching attention is related to driving performance. Parasuraman & Nestor, *supra* note 35, at 542. For a complete discussion of attentional skills and driving performance, see *id.*

133. Older drivers need their attentional and cognitive skills tested in addition to their actual driving skills because even road tests do not adequately evaluate attentional factors. *Id.* at 553. Current procedures do not properly evaluate attentional factors necessary for safe driving. *Id.*

abilities, states can use a "useful field of view" test (UFOV) to screen both functions.<sup>134</sup> The UFOV test is a simple and inexpensive test that can often predict accident involvement in older drivers.<sup>135</sup> Drivers that fail prescribed UFOV requirements should not be granted a renewal.

Also, states should require applicants to answer detailed questionnaires concerning current medical conditions and medication usage.<sup>136</sup> Because many older drivers take medications that have serious side effects,<sup>137</sup> transportation departments should implement guidelines to aid testgivers in properly restricting drivers on medication from driving long distances or at late hours.<sup>138</sup> In order to encourage applicants to fill out forms accurately, states should warn drivers that failure to do so could lead to revocation of their licenses.<sup>139</sup>

Once the applicant passes the vision, motor, and attentional skills tests, and the department does not consider him or her to have a serious medical condition, the applicant should take an actual driving test.<sup>140</sup> A functional

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134. Ball & Owsley, *supra* note 4, at 588. The UFOV is the "visual field area over which information can be acquired during a brief glance." *Id.* The UFOV's size is a function of four variables: the duration of target presentation, the competing attentional demands of the central and peripheral tasks, the salience of the peripheral target, and the distance of the peripheral target from central vision. Each of these components are varied during the test. *Id.* For a complete discussion of the test and its relation to attentional and cognitive skills, see *id.* at 588-89.

135. Parasuraman & Nestor, *supra* note 35, at 553.

136. Although all states question renewal applicants about relevant medical conditions, Mathias, *supra* note 17, at B7, no states preclude drivers from driving solely on the basis of medication use.

137. See *supra* notes 53-56 and accompanying text for a discussion of older drivers and medication usage.

138. The department of transportation for each state must promulgate guidelines indicating the number or types of medications that can be taken and the restrictions, if any, required for each. These guidelines should resemble those promulgated in states that require doctors to report patients with certain conditions to the department of transportation. See, e.g., 67 PA. CODE § 83.5 (1986). For example, many medications used to treat anxiety or insomnia can cause drowsiness, confusion, dizziness, decreased motor coordination, and impaired memory and recall. Ray et al., *supra* note 14, at 35. When older drivers take too much or too many medications, their driving ability can be severely impaired. Therefore, states must decide what amounts and combinations of medication are safe. If certain medications cause drowsiness, for example, states should consider allowing the driver to drive only during daylight hours or before a daily medication is taken. Because younger drivers typically do not take the same kinds or volumes of medications that older drivers do, the limitations need not be implemented across the board.

139. Of course, many applicants will be tempted to avoid license restrictions by not completing the questionnaire or completing it inaccurately. However, if a driver is made aware that his or her license is subject to revocation if inaccuracies are discovered, perhaps through a subsequent accident or doctor's report, the driver will be more likely to fill out the form accurately.

140. Currently, Illinois is the only state that requires road tests for older renewal applicants. See ILL. ANN. STAT. ch. 625, para. 5/6-109. However, in Illinois, the road test requirement does not begin until a driver reaches age 75. See *id.* Because of the increased accident involvement beginning at age 60, this Note proposes that drivers should be subject to the road test requirement at that age.

assessment through an actual road test best predicts an applicant's driving ability.<sup>141</sup> Applicants should be required to take the same road test given to those seeking an initial license.<sup>142</sup> If the applicant meets the standard required of first-time drivers, states should issue a renewal.

If the driver fails to pass any test, a provision for retesting should exist. To minimize inconvenience, drivers should be allowed to retake any test or any portion of a test as soon as practicable.<sup>143</sup> In addition, the department of transportation should also have the authority to issue restricted licenses. Upon a finding of good cause, older drivers with potential problems should be restricted, for example, to driving only during certain times of the day or in certain geographic areas.<sup>144</sup>

Finally, each state should establish a medical advisory board to define conditions that affect an individual's ability to drive.<sup>145</sup> If a physician knows that a patient has a defined condition,<sup>146</sup> the physician should

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141. See Parasuraman & Nestor, *supra* note 35, at 553. Yet, only one state administers a road test after the granting of the initial license. See *supra* note 140 and accompanying text. Perhaps states have not required road tests because they are not aware of the extent of the dangers that older drivers pose as a group. However, pressure from senior citizens groups within states also makes road testing older drivers politically unpopular. See Rigdon, *supra* note 4, at A6 (discussing the failure of a Florida state representative to successfully introduce a bill requiring regular road tests for drivers over age 80 because of political opposition from older individuals and the AARP). See *infra* Part V for a discussion of the political obstacles facing more stringent license renewal regulations.

142. In all states, drivers must pass a driving test in order to obtain an initial license. See, e.g., 75 PA. CONS. STAT. ANN. § 1508(a) (1977) ("The examination [for an original license] shall include . . . an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle."). The justification for road testing younger drivers, ensuring that the individual can safely handle an automobile, applies with equal force to older drivers.

143. The department of transportation for each state will need to make this determination based on human and financial resources. While the goal should be to allow all capable drivers the freedom to drive, any driver that has an obvious physical or mental impairment should not be granted a renewal until the problem is corrected.

144. Currently, only 14 states issue restricted licenses for daylight driving or driving only in designated geographic areas. Mathias, *supra* note 17, at B6. See, e.g., 75 PA. CONS. STAT. ANN. § 1512 (1977). Such restrictions decrease crash risk by requiring drivers to drive in favorable and manageable conditions.

145. Seven states have adopted such a provision. For example, the Pennsylvania statute states in relevant part:

There shall be a Medical Advisory Board consisting of 13 members appointed by the secretary [of transportation]. . . . The Medical Advisory Board shall define disorders . . . . All physicians and other persons authorized to diagnose or treat disorders and disabilities defined by the Medical Advisory Board shall report . . . [the identity] of every person . . . having any specified disorder.

75 PA. CONS. STAT. ANN. §§ 1517-1518 (Supp. 1993).

146. Physicians could be provided with guidelines promulgated by the state medical advisory board. The following Pennsylvania provision could serve as a model:

report the driver to the licensing board.<sup>147</sup> Failure to report a driver with a known medical condition should subject the physician to potential liability claims by injured third parties if the patient is subsequently involved in an accident as a result of the condition.<sup>148</sup> Upon receiving the report, the transportation department should determine, based on the seriousness of the condition, whether to retest the driver or issue a restricted license.

#### IV. CONSTITUTIONAL ANALYSIS

States that enact more stringent license renewal requirements for older drivers may encounter constitutional challenges from older Americans. Specifically, opponents of new laws have threatened to challenge<sup>149</sup> more stringent renewal requirements under the Fourteenth Amendment's Equal Protection Clause<sup>150</sup> or under the Fourteenth Amendment's Due Process

(a) General. A person afflicted by any of the following conditions may not drive if, in the opinion of the examining physician, the conditions are likely to interfere with the ability to control and safely operate a motor vehicle:

- (1) Loss or impairment of the use of a foot, leg, finger, thumb, hand or arm, as a functional defect or limitation.
- (2) Unstable or brittle diabetes or hypoglycemia, unless there has been a continuous period of at least 6 months freedom from a related syncopal attack.
- (3) Cerebral vascular insufficiency or cardiovascular disease, including hypertension, with accompanying signs and symptoms.
- (4) Periodic loss of consciousness, attention or awareness from whatever cause.
- (5) Rheumatic, arthritic, orthopedic, muscular or neuromuscular disease.
- (6) Mental deficiency or marked mental retardation . . . .
- (7) Mental or emotional disorder, whether organic or functional.
- (8) Use of any drug or substance, including alcohol, known to impair skill or functions, regardless [of] whether the drug or substance is medically prescribed.
- (9) Another condition which, in the opinion of the examining licensed physician, could interfere with the ability to control and safely operate a motor vehicle.

67 PA. CODE § 83.5 (1986).

147. Upon issuing the report, the doctor should be relieved of any potential liability. Moreover, the report should be used only for the purpose of determining whether an individual should drive an automobile. Finally, the report should remain confidential and should not be used as evidence in any civil or criminal trial, except in the physician's defense. See generally 75 PA. CONS. STAT. ANN. § 1518 (Supp. 1993), for an example of such a statute.

148. In essence, the requirement should impose a duty upon physicians to report patients with medical conditions that could impair their driving. A breach of that duty should open the possibility of the physician being subject to civil claims. See, e.g., DiMarco v. Lynch Homes, 583 A.2d 422, 425 (Pa. 1990) (permitting third party to sue physician for breach of duty of care when physician fails to exercise duty of care to patient who subsequently injures third party).

149. See Rigdon, *supra* note 4, at A8 (detailing legal challenges pondered by the AARP).

150. The Fourteenth Amendment's Equal Protection Clause states in relevant part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. For a discussion of the history of the Fourteenth Amendment's Equal Protection Clause, see

Clause.<sup>151</sup> However, in light of the Supreme Court's current framework for evaluating such claims, any law tailored to protect the safety of all drivers would withstand constitutional scrutiny.

### A. Equal Protection

Challengers of more stringent laws would allege a violation of the Fourteenth Amendment's Equal Protection Clause based on a claim of age discrimination. The Equal Protection Clause prohibits any state from denying equal protection of the law to any person;<sup>152</sup> states must treat similarly those who are similarly situated with respect to the application of a given law.<sup>153</sup> The Clause does not necessarily prevent state legislatures from classifying individuals in order to enact laws.<sup>154</sup> However, it mandates that all individuals receive fair treatment in the exercise of fundamental rights<sup>155</sup> and eliminates distinctions based on impermissible criteria.<sup>156</sup> Opponents of new legislation may argue that more stringent renewal laws use age as an impermissible criteria for requiring stricter tests or impose an unfair burden on older drivers. To evaluate equal protection

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Robert J. Reinstein, *Completing the Constitution: The Declaration of Independence, Bill of Rights and Fourteenth Amendment*, 66 TEMP. L. REV. 361, 383-410 (1993); Joseph Tussman & Jacobus TenBroek, *The Equal Protection of the Laws*, 37 CAL. L. REV. 341 (1949).

Individuals bring claims under the Equal Protection Clause unless a specific statute protects those of a particular age. See, e.g., *Equal Employment Opportunity Comm'n v. Wyoming*, 460 U.S. 226, 228-33 (1983). For example, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et. seq. (1988), prohibits covered employers from discriminating against or discharging employees between the ages of 40 and 70 because of their age. *Id.* If such an instance occurs, an employee would sue directly under the Act. 460 U.S. at 233. However, because federal legislation governing older drivers does not exist, any challenge would be brought directly under the Equal Protection Clause.

151. The Fourteenth Amendment's Due Process Clause states in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. For a discussion of the Fourteenth Amendment's Due Process Clause, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT, FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* (1980).

152. See, e.g., *Reed v. Reed*, 404 U.S. 71, 74 (1971) ("The Fourteenth Amendment's command [is] that no state deny the equal protection of the law within its jurisdiction.").

153. See, e.g., *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 70 (1911).

154. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 314 (1976) (stating that "the drawing of lines that creates distinctions is peculiarly a legislative task and an unavoidable one"). For example, in every state but one, 15-year-olds may not drive without parental consent or accompaniment. *Thompson v. Oklahoma*, 487 U.S. 815, 842 (1988) (citing state statutes).

155. See, e.g., *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 19 (1973); *Baxstrom v. Herold*, 383 U.S. 107, 114 (1966). See *infra* note 159 for a discussion of fundamental rights.

156. See, e.g., *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (requiring Jaycees to accept women as regular members). See *infra* note 159 for a discussion of suspect classes.



claims, the United States Supreme Court has developed three standards of review.<sup>157</sup>

### 1. *Strict Scrutiny*

The Court employs a strict scrutiny standard when challenged legislation restricts a "fundamental right"<sup>158</sup> or hinders a "suspect class."<sup>159</sup> Under the strict scrutiny standard, the state has the burden of showing a compelling justification for the legislature's classification scheme.<sup>160</sup> If the state cannot meet its burden, the Court rules the statute unconstitutional.<sup>161</sup> However, under existing precedent, the right to drive an automobile does not rise to the level of a "fundamental right,"<sup>162</sup> and age does not

157. For a complete discussion of the standards of review for equal protection claims, see JOHN E. NOWAK & RONALD D. ROTUNDA, *CONSTITUTIONAL LAW* § 14.3, at 573-90 (4th ed. 1991).

158. See, e.g., *Carey v. Brown*, 447 U.S. 455, 461-62 (1980) (holding that regulation of political speech is fundamental right reviewed under strict scrutiny standard). To date, the Supreme Court has recognized six substantive categories of fundamental rights. NOWAK & ROTUNDA, *supra* note 157, § 14.3, at 393-94. First, the First Amendment guarantees the freedom of association. *Bates v. Little Rock*, 361 U.S. 516, 522-23 (1975). Second, the right to participate in the electoral process and vote is a fundamental right. *Dunn v. Blumstein*, 405 U.S. 330, 337 (1972). Third, there is a right to interstate travel. *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969). Fourth, the right to fairness in the criminal process is considered fundamental. See, e.g., *Bounds v. Smith*, 430 U.S. 817, 828-29 (1977). Fifth, there is a fundamental right to privacy. See, e.g., *Roe v. Wade*, 410 U.S. 113, 152, *reh'g denied*, 410 U.S. 959 (1973). Sixth, there is a fundamental right to procedural due process. See, e.g., *Youngberg v. Romeo*, 457 U.S. 307, 314 (1982). For a detailed discussion of fundamental rights, see NOWAK & ROTUNDA, *supra* note 157, § 11.7, at 393-94.

159. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) ("The general rule that [legislation is valid] gives way when a statute classifies by race, alienage, or national origin . . . These laws are subjected to strict scrutiny . . . Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution.") (citations omitted).

A "suspect class" is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of such political powerlessness as to command extraordinary protection from the majoritarian process." *Rodriguez*, 411 U.S. at 28. For example, race constitutes a suspect class. *Palmore v. Sidotti*, 466 U.S. 429, 432 (1984) (stating that "classifications [based on race] are subject to the most exacting scrutiny").

As the Court has stated, the Fourteenth Amendment's "central purpose is to prevent states from purposefully discriminating against individuals on the basis of race . . . Laws that explicitly distinguish between individuals on racial grounds fall within the core of that prohibition." *Shaw v. Reno*, 113 S. Ct. 2816, 2824 (1993).

160. See, e.g., *United States v. Fordice*, 112 S. Ct. 2729, 2731 (1992).

161. See, e.g., *Halper v. Virginia State Bd. of Elections*, 383 U.S. 663, 672 (1966) (finding Virginia poll tax unconstitutional under the Equal Protection Clause).

162. See *Maher v. State*, 612 N.E.2d 1063, 1065 (Ind. 1993); *Quiller v. Bowman*, 425 S.E.2d 641, 642 (Ga.), *cert. denied, sub nom. Quiller v. Miles*, 114 S. Ct. 72 (1993); *People v. Zinn*, 843 P.2d 1351, 1353 (Colo. 1993); *State v. Lite*, 592 So. 2d 1202, 1203 (Fla. Dist. Ct. App. 1992), *aff'd*, 617 So. 2d 1058 (1993); *In re Maricope Co.*, 770 P.2d 394, 396 (Ariz. 1990); *Commonwealth v. Strunk*, 582 A.2d 1326, 1372 (Pa. 1990); *Hernandez v. Department of Motor Vehicles*, 721 P.2d 50, 52 (Cal. 1981). For

constitute a "suspect class."<sup>163</sup> Therefore, the Court would not review tougher renewal laws under the strict scrutiny standard.<sup>164</sup>

## 2. Intermediate Scrutiny

More recently, the Court has developed an intermediate scrutiny standard for equal protection claims.<sup>165</sup> The Court has applied the standard when the challenged legislation applies to a "quasi-suspect class."<sup>166</sup> To date, the Court has concluded that only gender<sup>167</sup> and illegitimacy<sup>168</sup> constitute quasi-suspect classes.<sup>169</sup> Under this standard, the Court strikes down a law as unconstitutional unless the classification serves an important legislative objective and relates substantially to the accomplishment of that

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a discussion of the legal nature of a driver's license, see JOHN H. REESE, *THE LEGAL NATURE OF A DRIVER'S LICENSE* 35-52 (1965).

163. *Murgia*, 427 U.S. at 313. In *Murgia*, a police officer challenged a Massachusetts statute that required mandatory retirement for uniformed state police officers at age 50. *Id.* at 309. The Court held that the strict scrutiny test should not apply, because the right to employment is not a fundamental right and age does not constitute a suspect class. *Id.* at 313. In reasoning that age does not constitute a suspect class, the Court stated: "[O]ld age does not define a 'discrete and insular' group in need of 'extraordinary protection from the majoritarian political process' . . . [but rather] marks a stage of life that each of us will reach if we live our normal span." *Id.* at 313-14 (quoting *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938)). Applying the rational basis standard, the Court concluded that the age classifications were rationally related to the State's objective and upheld the statute. *Id.* at 314-15.

164. Even if the right to drive did constitute a fundamental right, one court has suggested that new laws could survive heightened judicial scrutiny. *Miller v. Malloy*, 343 F. Supp. 46, 48 (D. Vt. 1972). In *Miller*, an individual convicted of operating a motor vehicle without the owner's consent challenged the constitutionality of a Vermont statute mandating proof of financial responsibility of persons convicted of that crime. *Id.* at 47-48. The plaintiff asserted that, because he could not afford liability insurance, he was not eligible to receive a driver's license without such insurance, and his release from incarceration for work purposes depended on his ability to drive, the law infringed upon his personal liberty interests. *Id.* at 50. Accepting this argument, the court required that the state show a "compelling interest" to support the legislation. *Id.* However, the court found that the statutes' purpose of "protect[ing] the public" was sufficiently compelling to justify the limited infringement on plaintiff's interest in obtaining a license. *Id.* at 50-51.

165. *Clark v. Jeter*, 486 U.S. 456, 461 (1988) ("Between . . . [the] extremes of rational basis review and strict scrutiny lies a level of intermediate scrutiny.") (citing *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 723-24 & n.9 (1982); *Mills v. Habluetzel*, 456 U.S. 91, 99 (1982); *Craig v. Boren*, 429 U.S. 190, 197 (1976); *Mathews v. Lucas*, 427 U.S. 495, 505-06 (1976)).

166. See, e.g., *Clark*, 486 U.S. at 461. See GERALD GUNTHER, *CONSTITUTIONAL LAW* 656 (12th ed. 1991), for a discussion of quasi-suspect classifications.

167. *Craig v. Boren*, 429 U.S. 190, 197-99 (1976) (concluding that statute prohibiting the sale of 3.2% beer to males under age 21 and to females under age 18 constituted gender-based discrimination and violated Equal Protection Clause by denying males 18-20 years of age equal protection of the laws).

168. *Clark*, 486 U.S. at 463; *Mills*, 456 U.S. at 99; *Pickett v. Brown*, 462 U.S. 1, 12 (1983).

169. *Clark*, 486 U.S. at 461 ("[I]ntermediate scrutiny . . . has been applied to discriminatory classifications based on sex or illegitimacy.") (citations omitted).

objective.<sup>170</sup> However, age has not been recognized as a “quasi-suspect class.”<sup>171</sup> Therefore, more stringent renewal requirements would not be reviewed under the intermediate scrutiny standard.

### 3. *Rational Relationship Standard*

The Court employs a rational relationship test when challenged legislation does not restrict a “fundamental right” or hinder a suspect or “quasi-suspect class.”<sup>172</sup> Because stricter driver’s license renewal laws do neither,<sup>173</sup> any new requirements would be reviewed under the rational relationship standard. Under this least restrictive level of review, the Court upholds challenged legislation if the legislative classification rationally relates to a legitimate state purpose.<sup>174</sup> This test places the burden on the challenging party to demonstrate that the classification does not rationally relate to a legitimate state purpose.<sup>175</sup> When employing this framework, the Court conducts a two-step process. In the context of stricter license renewal laws, the court would first consider whether the state has a legitimate purpose for enacting this legislation.<sup>176</sup> If such an interest exists, the court would then decide whether the legislation rationally relates to that purpose.

#### (a) *Legitimate State Purpose*

Under the police power doctrine,<sup>177</sup> the states have the authority to enact and enforce laws in order to protect the health, safety, and welfare of their citizens.<sup>178</sup> Accordingly, states have the power and responsibility to regulate driving and the licensing of drivers.<sup>179</sup> Historically, the Court has

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170. *Craig*, 429 U.S. at 197 (stating that “classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives”).

171. *See, e.g., Murgia*, 427 U.S. at 313 (noting that old age is simply a condition that all will eventually experience).

172. *See, e.g., Michael H. v. Gerald D.*, 491 U.S. 110, 131 (1989)

173. *See supra* notes 158-71 and accompanying text.

174. *Murgia*, 427 U.S. at 314-16.

175. *See, e.g., id.* (stating that the rational relationship test “employs a relatively relaxed standard reflecting the Court’s awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one”).

176. *See, e.g., Kadrmas v. Dickenson Pub. Sch.*, 487 U.S. 450, 463 (1988).

177. *See* LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 6-3, at 404-06 (2d. ed. 1988), for a general discussion of the police power.

178. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972) (holding that a state has “the undoubted power to promote the health, safety, and general welfare of its citizens”).

179. *Hess v. Pawloski*, 274 U.S. 352, 356 (1927) (“In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways.”). *See also* *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523 (1959)

been extremely reluctant to second-guess state legislatures' decisions on economic and social matters.<sup>180</sup> The purpose of more stringent renewal laws, to enhance driver safety and reduce accidents, is so closely aligned with the police power that courts would undoubtedly accept the purpose as legitimate.

(b) *Classification Rationally Related to the State Purpose*

Because the states have a legitimate interest in protecting their citizens, a reviewing court must then decide whether mandating more stringent renewal requirements promotes that purpose. Again, the Supreme Court has employed a high level of deference to the states in this review.<sup>181</sup> Based on the empirical evidence showing that older drivers pose significant road hazards,<sup>182</sup> a court would conclude that stricter laws promote public safety. Thus, both elements of rational review are satisfied and reviewing courts would reject equal protection challenges to more stringent renewal laws.

C. *Due Process*

Even if more stringent renewal laws survive initial equal protection attacks, an aggrieved individual might also challenge a new statute if the stricter requirements caused the person to lose or have restrictions placed on his or her license. The Fourteenth Amendment's Due Process Clause places limitations on a state's ability to interfere with an individual's rights and provides procedural safeguards before an individual can be deprived of certain rights.<sup>183</sup> Therefore, challengers may attack the law on either

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("The power of the state to regulate the use of its highways is broad and pervasive."). For a complete discussion of the police power doctrine and its relation to driving laws, see FISHER & REEDER, *supra* note 1, at 33-39.

180. See, e.g., McGowan v. Maryland, 366 U.S. 420, 425-26 (1961) ("State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."); Ferguson v. Skrupa, 372 U.S. 726, 731 (1963) ("[W]e refuse to sit as a 'superlegislature to weigh the wisdom of legislation.'") (citation omitted).

181. See Railway Express Agency v. New York, 336 U.S. 106, 110 (1944) ("It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.") (citation omitted).

182. See *supra* notes 11-19 and accompanying text.

183. The Fourteenth Amendment states in relevant part: "No . . . State shall deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend XIV, § 1. For a complete discussion of substantive due process, see Michael J. Phillips, *The Nonprivacy Application of Substantive Due Process*, 21 RUTGERS L.J. 537, 539-76 (1990). For a complete discussion of procedural due process, see Edwin L. Rubin, *Due Process and the Administrative State*, 72 CAL. L. REV. 1044, 1047-82 (1984).

substantive or procedural due process grounds.

### 1. *Substantive Due Process*

Substantive due process protects an individual's liberty interests from unwarranted governmental infringement.<sup>184</sup> An aggrieved individual who fails to pass the more restrictive tests could argue that the interest in driving is a liberty interest that the government cannot take away.<sup>185</sup> However, the right to drive is not a fundamental right.<sup>186</sup> Thus, a reviewing court would simply examine whether the law is rationally related to a proper state purpose.<sup>187</sup> Because a rational relationship exists between stricter licensing requirements and highway safety,<sup>188</sup> any new laws would also survive a substantive due process challenge.

### 2. *Procedural Due Process*

Even if legislation survives substantive due process scrutiny, it must still be implemented in a fair manner.<sup>189</sup> Procedural due process guarantees individuals certain protection before they can be deprived of life, liberty, or property.<sup>190</sup> If an individual lost his or her driver's license as a result

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184. See *Collins v. City of Harker Heights*, 112 S. Ct. 1061, 1068 (1992); *United States v. Salerno*, 481 U.S. 739, 746 (1987).

185. However, the Court traditionally applies substantive due process analysis to laws that affect everyone, and an individual typically may not bring a substantive due process challenge on his own behalf. *NOWAK & ROTUNDA, supra* note 157, § 11.4, at 369-80. For a complete discussion of substantive due process, see *id.*

186. See *supra* note 158.

187. See, e.g., *Kelley v. Johnson*, 425 U.S. 238 (1976).

188. See *supra* notes 181-82 and accompanying text.

189. *Fuentes v. Shevin*, 407 U.S. 67, 97 (1972) (stating that due process "prevent[s] unfair and mistaken deprivation").

190. *Goldberg v. Kelley*, 397 U.S. 254, 261-63 (1970). In *Goldberg*, the Court abandoned its former right-privilege distinction and held that welfare recipients had to receive due process safeguards before their benefits could be terminated. *Id.*

Later, in *Board of Regents v. Roth*, 408 U.S. 564 (1972), the Court established modern due process analysis. The Court held that, in order to determine whether due process requirements apply in the first place, the Court must first determine whether a liberty or property interest is involved. *Id.* at 571. The Court held that to have a property interest in a benefit, an individual must have a legitimate claim of entitlement to the interest. *Id.* at 577. In terms of liberty, the Court said that the definition must be broad. *Id.* at 572.

Once a court determines that a liberty or property interest is at stake, it must decide what amount of process is due. In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court developed a three-part balancing test for deciding what due process requires in a given situation. *Id.* at 332-35. The Court stated that it would examine:

[f]irst the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's

of new testing requirements, he or she could argue that inadequate procedures govern the renewal process. The Supreme Court has held that a driver's license cannot be taken away without an adequate procedural hearing.<sup>191</sup> However, the procedural threshold that a state must meet is not always demanding, particularly if the interest at stake is not considered fundamental.<sup>192</sup> An actual driving test in which the applicant could demonstrate his or her ability to drive would go beyond that which is required for due process under the Fourteenth Amendment.<sup>193</sup> Therefore, as long as reformed renewal laws rely on ability rather than age, procedural due process challenges will fail.

## V. POLITICAL OBSTACLES

Although the need to enact more stringent renewal laws is clear, and any constitutional challenges to such laws would likely fail, state legislatures have been hesitant to reform licensing laws. This hesitancy is largely attributable to opposition from senior citizen lobbying groups.<sup>194</sup>

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interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail . . . .

*Id.* at 335. For a complete discussion of procedural due process requirements, see NOWAK & ROTUNDA, *supra* note 157, § 13.8, at 524-34.

191. *Bell v. Burson*, 402 U.S. 535, 539 (1971). In *Bell*, the petitioner challenged the Georgia Motor Vehicle Safety Responsibility Act, which provided that the state would suspend the driver's license of an uninsured motorist involved in an accident unless, without any consideration of fault or responsibility, he or she posted security for the amount of damages claimed by an aggrieved party at a presuspension hearing. *Id.* at 536-38. The Court held that the statute violated the Fourteenth Amendment's Due Process Clause. *Id.* at 535. The Court reasoned that a license may be essential in the pursuit of one's livelihood and therefore could not be taken away without, in this case, an adequate procedure for determining whether there was a reasonable possibility of judgment against the driver as a result of the accident. This procedure was necessary because the state cannot otherwise take away the privilege to drive in the absence of fault. *Id.*

192. *See, e.g., Board of Curators v. Horowitz*, 435 U.S. 78, 89 (1978) (holding that a formal hearing was not required to satisfy procedural due process requirements).

193. In the cases addressed by the Supreme Court, the petitioners challenged the removal of some privilege without an adequate hearing prior to removal. *See, e.g., Matthews*, 424 U.S. at 324-25. However, in the context of stricter requirements for older drivers, a license would not be suspended or revoked until after the applicant took a driving test. Because the applicant has the opportunity to prove his or her ability during the test, the testing procedure goes beyond that which is required by the Fourteenth Amendment.

If the state decides to establish some sort of appeals process for drivers subject to license removal, the process will have to meet due process requirements. *See, e.g., Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (holding that once a state creates entitlements through substantive law, the adequacy of procedures used to deprive individuals of those entitlements depends on federal constitutional law, and state laws or regulations cannot foreclose the due process inquiry).

194. *See, e.g., David Abrahamson, Elderly Drivers: Can You Be Too Old to Drive?, CAR & DRIVER*, Sept. 1988, at 32 (discussing how Florida's senior citizen lobby helped to defeat a proposal which would have required older drivers to take road tests every two years); Herman Wong, *Stereotypes*

Foremost among the senior citizen lobbying groups is the American Association of Retired Persons (AARP), a thirty-two million member organization comprised of individuals age fifty and older.<sup>195</sup> As the nation's second largest organization,<sup>196</sup> with an estimated ten billion dollars in annual cash flow<sup>197</sup> and membership comprising nearly twenty-five percent of all registered voters,<sup>198</sup> the AARP wields substantial political influence in every state.<sup>199</sup> Accordingly, many legislators refuse to vote in favor of bills opposed by the AARP because they fear the possible political repercussions.<sup>200</sup> For example, legislators recently defeated proposed legislation in Florida that would have required drivers age eighty and older to take hearing, sight, and road tests every two years.<sup>201</sup> Not coincidentally, this legislative defeat came after the AARP attacked the bill as discriminatory.<sup>202</sup>

The license renewal requirements proposed in this Note would likely receive strong opposition from the AARP and other senior citizen lobbying groups.<sup>203</sup> However, a less stringent and more politically palatable measure will not solve the problem. States that have enacted some additional testing requirements for seniors through a patchwork of programs have failed to eliminate the dangers.<sup>204</sup>

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*Don't Give the Complete Picture of Older Driver Safety*, L.A. TIMES, Jan. 3, 1991, at 4 (discussing American Association of Retired Persons proposal that more stringent license renewal procedures be applied to all age groups, not just senior citizens).

195. ENCYCLOPEDIA OF ASS'NS 1335-36 (27th ed. 1993).

196. Frank Swoboda, *AARP Flexes Its Muscle: Washington-Based Association for Retirees Steps into the Political Arena*, WASH. POST, Apr. 18, 1988, at F1. AARP membership has increased dramatically since the group lowered its minimum membership age to fifty from fifty-five. *Id.*

197. *Id.* (noting that this figure would make the AARP the largest company in the Washington D.C. metropolitan area).

198. *Id.* (noting that this number will increase as the population continues to age). See also *supra* note 2 for statistics documenting the increase in the population of America's senior citizens.

199. See Rigdon, *supra* note 4, at A10 (discussing the failure of a Florida state representative to introduce a bill requiring regular road tests for drivers over age 80 due to opposition from the AARP).

200. *Id.*

201. See *More Tests for Elderly Drivers? High-Risk Seniors Say It's Age Bias*, STAR TRIB., June 9, 1990, at 1M (noting the political clout of Florida's burgeoning senior population).

202. *Id.*

203. See Ron Stodghill, *Safety Booster Toots the Horn on Rules for Older Drivers*, DETROIT FREE PRESS, Mar. 12, 1990, at 3E (quoting AARP representative who stated, "if [a state] targets[s] a specific age group for special licensing, that would be age discrimination").

204. Federal action in driving regulation has been nonexistent. The Senate recently passed the High-Risk Drivers Act, S. 2132, 103d Cong., 2d Sess. tit. II (1994), but it merely provides for a federal study of older drivers. Tom Incantalupo, *High Risk Drivers Who Fall Under That Category Are Costing Us Plenty—Can Anything Be Done?*, NEWSDAY, June 5, 1994, at A76. The bill, which is still under consideration by the House of Representatives, would provide \$100 million over five years for states to reduce accidents by young drivers, elderly drivers, and drunk drivers of all ages. *Id.*

Accidents involving older drivers will continue if the AARP effectively opposes more stringent legislation. Arguably, the AARP should support the proposed legislation because it protects its members and their families. The AARP's own newsletter reports:

[Older drivers] do have problems when involved in driving situations requiring quick response, full vision and interaction with other drivers. . . . The gradual failure of sensory acuity associated with aging reduces the quantity and accuracy of information [they] are capable of processing.<sup>205</sup>

## VI. CONCLUSION

Older drivers constitute the most rapidly growing segment of the driving population. However, many older drivers exhibit the effects of aging, suffer from medical conditions, or take medications that dramatically reduce their driving ability. As a result of these factors, older drivers are involved in more accidents than most other drivers and often suffer serious injuries as a result.

Thus far, states have not reacted adequately to address this growing problem. Current license renewal requirements are extremely lax and allow unsafe older drivers to continue to drive. Accordingly, states must enact more comprehensive and stringent renewal requirements to protect the safety of all drivers. Although the proposed renewal requirements for older drivers could draw claims of age discrimination and stir up considerable political opposition, they would likely withstand constitutional scrutiny and are necessary for highway safety. Therefore, state legislatures should adopt more stringent renewal schemes that incorporate the measures proposed in this Note.

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205. Jeff Gubinn, *For Some, Driving Is Life Itself*, STAR TRIB., July 4, 1994, at 1E (quoting an AARP newsletter).