

Defenses to Driving Without Insurance

1. What are the penalties for driving without insurance?

New Jersey law requires all drivers to have insurance on their motor vehicles. A driver must have insurance coverage of \$15,000 for the injury or death of a person; \$30,000 for the injury or death of more than one person; and \$5,000 for property damage. The penalties for driving without insurance are hard-core. For a first time offense, the fines are \$300 to \$1000, and a loss of your license for 1 year. Additionally, you will have to pay surcharges for three years in the amount of \$250 per year.

The penalties for a second time driving without insurance are even worse. The fines are up to \$5,000, there is a 2 years license suspension, and there is a 14-day, mandatory jail term, and an additional mandatory 30 days of community service. The penalties for driving without insurance are very strict and they cause excessive hardship for many drivers. Therefore, the sentencing exposure makes driving without insurance one of the harshest traffic laws in New Jersey. A driver charged with driving without insurance faces even more penalties than a DWI charge. A person conviction of driving without insurance faces a 1 year loss of his driver's license. Meanwhile, person who is convicted of a first time DWI typically only loses his driver's license for only 3 to 7 months.

2. What does the no driving without insurance statute specify?

N.J.S.A. 39:6B-1 (Maintenance of motor vehicle liability insurance coverage) provides:

1. a. Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle wherein such coverage shall be at least in: (1) an amount or limit of \$15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in anyone accident; and (2) an amount or limit, subject to such limit for any one person so injured or killed, of \$30,000, exclusive of interest and costs, on account of injury to or death of, more than one person, in anyone accident; and (3) an amount or limit of \$5,000, exclusive of interest and costs, for damage to

property in anyone accident.

b. Notwithstanding the provisions of subsection a. of this section, an owner or registered owner of an automobile, as defined in section 2 of P.L. 1972, c.70 (C.39:6A-2), registered or primarily garaged in the State may satisfy the requirements of subsection a. of this section by maintaining a basic automobile insurance policy containing coverages provided pursuant to subsections a. and b. of section 4 of P.L.1998, c.21 (C.39:6A-3.1).

c. Notwithstanding the provisions of subsection a. of this section, an owner or registered owner of an automobile, as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the State may satisfy the requirements of subsection a. of this section by maintaining a special automobile insurance policy containing coverages provided pursuant to subsection b. of section 45 of P.L.2003, c.89 (C.39:6A-3.3).

3. What are the legal burdens in a driving without case?

A defendant who is charged with driving without insurance must produce at the Municipal Court an insurance card that provides coverage on the date when the summons was issued. If the defendant can't produce the requisite insurance card, then this failure creates a rebuttable presumption that he was uninsured when he was charged with this offense.

The key elements that the prosecutor must prove under the driving without insurance statute are as follows:

- a. The driver is owner of the vehicle and/or;
- b. The driver knew or should have known that the vehicle was uninsured; and
- c. The vehicle must also be principally garaged and registered in New Jersey.

4. What is the most important no insurance case?

The most important no insurance case is State v. Hochman, 188 N.J. Super. 382 (App. Div. 1982). Here, the Appellate Division reviewed and ultimately reversed a conviction for driving without insurance. The court held that the prosecutor failed to prove its burden of proving that the driver's insurance was lawfully canceled. This case was a very fact specific one. Here, the defendant was charged with driving a car that he owned without

insurance. At trial, it was stipulated that because of long hours defendant worked, he asked his wife to take care of paying the household bills. Therefore, the defendant gave his wife several thousand dollars each month to pay for the car insurance and for the other household bills. Mr. Hochman's wife made the arrangements through an insurance broker to have Allstate insure the vehicle. Thereafter, the insurance broker then arranged to finance the insurance premiums through a "Lee Finance" financial service. The defendant's wife then paid the broker and she agreed to pay the balance to the financial service in monthly installments of \$48.

The key issue in the Hochman case was whether All State sent out the proper cancellation notices to the driver. Allstate claimed it mailed a cancellation notice to Mr. Hochman. However, it was stipulated at trial that it had mailed the cancellation notice to an incorrect address of 313 Park Street rather than 314 Park Street. The Appellate Division held that in order to convict a defendant-owner of operating a motor vehicle in violation of the insurance provisions, the prosecutor did not have to prove a culpable mental state. The culpable mental state is that defendant knew his vehicle was uninsured. Instead, the court held that the prosecutor simply had the burden of proving beyond a reasonable doubt that (1) defendant owned the vehicle, (2) the vehicle was registered in New Jersey, (3) defendant operated the vehicle or caused it to be operated upon any public road or highway in this State, and (4) the vehicle was without liability insurance coverage required by N.J.S.A. 39:6B-1.

The Hochman court further held that the first three elements of the offenses were proven beyond a reasonable doubt. However, the pivotal issue was whether the state proved beyond a reasonable doubt the fourth element of the defense, that the vehicle was uninsured. Thus, the legal question was whether driving without insurance is a strict liability offense. Moreover, the issue was whether the defendant's insurance policy had been lawfully and effectively canceled. Finally, the Hochman court further held that Allstate had not properly canceled the insurance policy. Thus the Hochman court held;

A notice of cancellation of a policy of automobile liability insurance is effective in this State only if it is based on one or more statutorily enumerated reasons, including the nonpayment of premiums. N.J.S.A. 17:29C-7(A)(a). Moreover, prior to March 10, 1981, where, as here, the cancellation was for nonpayment of premiums, the notice of cancellation must have been mailed or delivered by the insurance carrier (here Allstate) to the insured (here either defendant or his wife) at least ten days prior to

the effective date of cancellation and must have been accompanied by a statement of the reason given for such cancellation. N.J.S.A. 17:29C-8. Weathers v. Hartford Ins. Group, 77 N.J. 228, 234 (1978). Proof of mailing the notice, however, is not conclusive on the issue. The insured may still offer proof that he never received the notice "for the purpose of refuting the hypothesis of mailing.

The Hochman court also held that although Allstate claimed that a notice of cancellation was sent to the defendant's wife, this did not establish that the notice satisfied the statutory requirement of N.J.S.A. 17:29C-8. There is no proof that the notice mailed to the named insured (assuming that defendant's wife was the insured named in the policy) or that it was mailed to the address shown in the policy, or that its contents complied with statutory requirements.

The court opined "thus, we are constrained to hold that the state failed to sustain its burden of proving beyond a reasonable doubt that the Allstate automobile liability insurance policy covering defendant's vehicle was lawfully canceled. The Allstate policy therefore was presumptively in full force and effect... and defendant's conviction for violating the compulsory insurance provisions of N.J.S.A. 39:6B-2 cannot stand."

5. What are some other types of defenses that can be used in a driving without insurance case?

An overlooked defense is that the driver did not operate the vehicle. Proving operation is different in no-insurance cases than in a DWI case. A defendant who is seated in the driver's seat, behind the steering wheel of a vehicle that is under tow and was in physical control of the vehicle did not "operate" the vehicle for the purposes of prohibiting operating the vehicle while suspended, operating uninsured vehicle and operating unregistered vehicle, where the vehicle did not have an engine and incapable of being operated under its own power. A savvy lawyer can try to advocate that the prosecutor can't prove that the defendant drove the vehicle. State v. Derby, 256 N.J. Super. 702, (Law Div. 1992).

6. What are the important cases that can be used to argue that the insurance company properly cancelled the policy?

A. See, Hodges v. Pennsylvania National Insurance Company, 260 N.J. Super. 217, 222-23 (App. Div. 1992). In a case involving Personal Injury Protection/ No Fault PIP benefits the Appellate

Division ruled that an insurance company did not properly mail a notice of cancellation, thus the policy was not canceled.

B. Lopez v. New Jersey Automobile Full Underwriting Association, 239 N.J. Super. 13, 20, (App. Div.), certif. den. 122 N.J. 131 (1990). In order to be effective, notice of cancellation "must be sent in strict compliance with the provisions of N.J.S.A. 17:29C-10." (absence of proof of personal knowledge of mailing by postal employee or insurer employee renders notice ineffective). The court questioned whether the stamped proof of payment of money in postage was proof of mailing. The Appellate Division in Hodges noted that our courts have interpreted the statute to require a precise proof of mailing, usually the official "U.S. Postal Service Certificate of Mailing."

C. Lumbermens Mutual Casualty Co. v. Carriere, 170 N.J. Super. 437, 450 (Law Div. 1979), If a husband and wife, or both, are named in the policy, supports the proposition that both husband and wife named in the policy should receive notice.

7. What other type of defenses can be used against a driving without insurance charge if the driver does not own the vehicle?

The charge of driving without insurance is much easier to defend if the driver does not own the vehicle. There are strict liability laws for a driver who only operates an uninsured vehicle. The prosecutor must prove that the driver knew or should have known from the totality of circumstances that the vehicle did not have insurance. These facts can be established by analyzing the relationship between the parties, whether or not the vehicle had a valid inspection sticker, and testimony by the owner who often is also issued an uninsured motorist charge.

An illustrative case is Matlad v. U.S. Services, 174 N.J. Super. 499 (App. Div. 1980). Here, the husband canceled policy without telling his wife. The court held that the cancellation was void as against public policy and thus coverage continued for wife. Additionally, the defendant/owner must operate or cause the car to be operated. If a driver took the car without permission that day, the owner did not cause the vehicle to be operated.

As a side note the prosecutor is still legally required to provide discovery. In some rare cases a no insurance charge can be dismissed if the prosecutor fails to provide discovery. When there is no accident and if there are sympathetic circumstances, then a prosecutor many times will offer a plea bargain so a driver does not lose his driver's license for a one year loss of

license. Many times the prosecutor will offer the driver to plead guilty to failure to produce an insurance document, and only require the driver to lose his license for 30 days. In many cases the driver will not have to lose his license at all. Nonetheless, the prosecutors and the courts should try to be reasonable with the public, and not to overly punish drivers who drive without insurance. A defendant will often lose his job if he is convicted for driving without insurance. Moreover, as a side note the severe sentencing of driving without insurance should be softened somewhat if the State would pass a limited "drive to work" license.

8. What are the legal requirements for an insurance company to cancel a policy?

There are many notices that an insurance company must issue before it can legally cancel a driver's insurance policy. These requirements are codified in the law N.J.S.A. 17:29C-8 and it provides as follows;

N.J.S.A. 17:29C-8. Time for notice

No notice of cancellation of a policy to which section 2 applies shall be effective unless mailed or delivered by the insurer to the named insured at least 20 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium at least 15 days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

This section shall not apply to non-renewal.

9. What is the best defense to driving without insurance?

The best defense available is that your insurance policy was cancelled without your knowledge. Many no insurance cases have been dismissed wherein one spouse failed to notify the other spouse that their motor vehicle insurance policy had been cancelled.

Another strong defense may be available if the insurance company failed to notify you of the policy's termination. If an insurance

company fails to properly notify a client of a policy's termination, then the insurance policy may still be in effect. Thus, a person cited for operating an uninsured vehicle may have, in fact, been driving with insurance. In many cases a person pays his insurance bill by an automatic debit from his checking account. In this type of scenario, the defendant can argue that he earnestly believed that his monthly insurance bill was automatically debited from his account. Moreover, he can contend that he had no reason to believe that his insurance bill was not paid.

The most common defense to a driving uninsured charge is that the insurance was canceled without affording the client notice of the cancellation which makes the cancellation unlawful.

If the vehicle that was driven was owned by a person who was not the driver, then legal counsel can raise notice defenses. You can argue that the driver had no reason to believe and no knowledge that the vehicle was uninsured. In most cases the registered owner of the vehicle will typically be the driver. If someone other than the owner is operating the vehicle a ticket for no insurance can still be issued. However, it will be very hard for the prosecutor to prove his case. However, if someone other than the owner is issued a ticket for no insurance then the prosecutor must prove that the driver knew or should of known by the attendant circumstances that the vehicle was uninsured. New Jersey caselaw indicates that there is a sliding scale analysis on these types of cases. The closer the relationship between parties, then the more likely the court will rule that the defendant had full knowledge that the vehicle was not insured. Nonetheless, these are fact specific cases. I have successfully defended members of the same household by showing that it was virtually impossible for the operator to know that the vehicle was uninsured.

In summary, the most frequently raised defense in no insurance cases is that the insurance company failed to properly cancel the driver's insurance policy. Title 17 of the New Jersey Statutes provides the necessary steps that an insurance company must adhere to so as to properly cancel insurance. Proving that the insurance company failed to follow the proper legal procedure is also an involved and technical defense. However, they can be won.