

OPERATING AN UNINSURED MOTOR VEHICLE

The defendant is charged with having operated an uninsured motor vehicle.

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That the defendant (operated a motor vehicle) (permitted someone else to operate a motor vehicle);**

***Second:* That the operation took place (on a public highway) (on a private way laid out by statutory authority) (on a way dedicated to public use) (on a way under the control of park commissioners or a body with similar powers) (in a place to which the public has a right of access); and**

***Third:* That the vehicle being operated was not insured at the time.**

See Instruction 3.200 (Operation of a Motor Vehicle).

Compulsory insurance is required only "upon the ways of the commonwealth or in any place therein to which the public has a right of access." G.L. c. 90, § 34A. "Way" is defined as "any public highway, private way laid out under authority of statute, way dedicated to public use, or way under the control of park commissioners or body having like powers." G.L. c. 90, § 1.

SUPPLEMENTAL INSTRUCTION

Registry certificate of absence of record of insurance.

You may consider a properly-executed certificate from the Registry of Motor Vehicles as evidence of whether the vehicle was insured. You are not required to accept such evidence, but you may.

The Commonwealth has the burden of proving as an element of a prosecution under G.L. c. 90, § 34J that the defendant's vehicle was uninsured, and cannot utilize G.L. c. 278, § 7 to shift this burden to the defendant. *Commonwealth v. Munoz*, 384 Mass. 503, 426 N.E.2d 1161 (1981).

The Commonwealth will normally do this with a certificate from the Registry of Motor Vehicles, which is required by G.L. c. 90, § 34I to maintain a record of all motor vehicle insurance policies. General Laws c. 90, § 34J provides that "[i]n proceedings under this section, written certification by the registrar of motor vehicles that the registry of motor vehicles has no record of a motor vehicle liability policy or bond or deposit in effect at the time of the alleged offense as required by the provisions of this chapter for the motor vehicle alleged to have been operated in violation of this section, shall be admissible as evidence in any court of the commonwealth and shall raise a rebuttable presumption that no such motor vehicle liability policy or bond or deposit was in effect for said vehicle at the time of the alleged offense. Such presumption may be rebutted and overcome by evidence that a motor vehicle liability policy or bond or deposit was in effect for such vehicle at the time of the alleged offense."

However, it is constitutionally impermissible to shift the burden of proof on any element of an offense by means of a rebuttable presumption, *Francis v. Franklin*, 471 U.S. 307, 105 S.Ct. 1965 (1985); *Commonwealth v. Claudio*, 26 Mass. App. Ct. 218, 219-221, 525 N.E.2d 449, 450-451 (1988); *Commonwealth v. Crawford*, 18 Mass. App. Ct. 911, 912, 463 N.E.2d 1193, 1194 (1984), and therefore the model instruction accords only prima facie effect to such a certificate. See the notes to Instructions 3.240 (Presumption) and 3.260 (Prima Facie Evidence).

Since registration of motor vehicles is presently staggered at two-year intervals in Massachusetts, while compulsory insurance policies are in effect only for one year unless sooner canceled, the judge should carefully examine the contents of any certificate from Registry records before admitting it in evidence.

In cases where the authenticity of such a certificate is not disputed, jury confusion may be avoided by soliciting such a stipulation from the parties.

NOTE:

Nonresident motorist. Nonresident motorists whose vehicles are validly registered in their home state may be operated in Massachusetts without being registered here, if their state grants reciprocal privileges. Nor are they required to comply with the Commonwealth's compulsory insurance requirements unless the vehicle is operated here for more than 30 days in the aggregate in any year or the owner acquires a regular home or business here. G.L. c. 90, § 3; *Commonwealth v. Brann*, 23 Mass. App. Ct. 980, 504 N.E.2d 356 (1987).