

A Short Survey Of Laws Designed To Exclude The Financially Irresponsible Driver From The Highway

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Innocent victims of financially irresponsible motor vehicle operators have long concerned legislators, plaintiffs' lawyers, and the indignant public. This concern has prompted innumerable suggestions directed toward traffic accident prevention. They are the obvious—improvement of the highway system, elimination of highway hazards, enforcement of traffic regulations, limiting issuance of operator's licenses only to those who are qualified, and curtailment of the horsepower and speed of modern motor vehicles. These suggestions, while they may be effective, are apparently impractical for they require time, money, an efficient police force, and a certain submissiveness on the part of the automobile buyer.

Rightly or wrongly, the automobile has become symbolic in our American mores—a possession indicating good taste, status, and well-being; even more, it has become an integral part of our lives without which most of us would be helpless. Because of the automobile's unique place in our civilization, public officials have been chary in restricting its use,¹ and the more obvious and direct solutions to the problem of the uncompensated and innocent victim have been sidetracked for indirect solutions, less subject to human failing and fixing.

If the legislation which has been adopted to deal with the ever-increasing carnage on the highways is an indicia of the public attitude toward the problem, we can assume that people are not really as disturbed as they would have us believe. All of the legislation promulgated to dispose of the problem, in effect, "leaves the bodies lie" with the simple prescription that the driver at fault must pay, in most jurisdictions, a maximum of \$5,000 for maiming or killing one person, \$10,000 for maiming or killing more than one person, and \$5,000 for any amount of property destruction. There is still no wide-spread effective statutory regulation, or enforcement, of drivers' licensing laws nor of periodic motor vehicle safety inspection.² Mentally and physically incompetent people have

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¹ For example, recall in your own experience the indignation various municipal "crackdowns" on reckless operation have aroused.

² This does not mean that such measures have not been offered for adoption. It simply means that the record of passage of such laws by the state legislatures has been woefully bad.

no trouble getting their licenses. Dangerously defective old crates still speed along our highways.

The legislation dealing with the problem on the "practical" level can be divided roughly into six categories: (1) Security-type safety responsibility laws, (2) financial responsibility laws, (3) compulsory automobile insurance, (4) automobile compensation plans — usually called the Saskatchewan Plan, (5) unsatisfied judgment funds, and (6) impounding acts.

I

Security-type safety responsibility laws have been enacted in 45 out of the 52 United States jurisdictions.³ The Ohio law became effective March 1, 1953. It replaced the old financial responsibility or "first bite" law enacted in 1935. The new Ohio law⁴ provides that the drivers of motor vehicles involved in an accident⁵ must report the accident to the Registrar of Motor Vehicles in writing within five days after the accident.⁶ Receipt of this report by the Registrar starts a chain reaction which ultimately ends in the revocation of the financially irresponsible driver's license and owner's registration, regardless of whether or not he is at fault.⁷ Within twenty days of the receipt of the report, the Registrar, on the basis of the information contained therein,⁸ makes an ex parte administrative determination as to the amount of security sufficient to satisfy any judgments for damages resulting from the accident, without reference to fault, that may be recovered against such driver or owner.⁹ When this determination is made the Registrar notifies each party to the accident of the amount of security he must

³ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

⁴ OHIO REV. CODE §§ 4509.01 to 4509.99, inclusive.

⁵ An accident is defined as "any accident involving a motor vehicle which results in bodily injury to or death of any person, or damage to the property of any person in excess of one hundred dollars." OHIO REV. CODE § 4509.01 (J).

⁶ If the driver is unable to or does not make the report, the owner must make the report. OHIO REV. CODE §§ 4509.06, 4509.08.

⁷ The constitutionality of provisions similar to this has been sustained in all states where it has been tested. It is currently being tested in Ohio in the Common Pleas Court of Cuyahoga County, *Milutinovick v. Registrar*. So far, this is the only case questioning any of the requirements of the new law in Ohio.

⁸ OHIO REV. CODE § 4509.12.

⁹ *Id.*

deposit¹⁰ in order to avoid an order of suspension.¹¹ If, within ten days thereafter, neither the driver nor the owner complies with the Registrar's notice by depositing the security required, the Registrar must suspend their operators' licenses together with the registrations of all motor vehicles appearing in either of their names.¹² This is accomplished by requiring the non-complying driver and owner to turn in their licenses and license plates.¹³ If either willfully fails to turn them in, the State Highway Patrol will secure them and the non-complier thus becomes subject to a \$500 fine and thirty days imprisonment.¹⁴

The law provides that deposit of security is unnecessary for the driver or owner involved in an accident if either is covered by liability insurance.¹⁵ To be "covered," the policy affording the coverage must be subject to a minimum limit of \$5,000 for one injury, \$10,000 for one accident, and \$5,000 property damage.¹⁶ Furthermore, no security deposit is necessary if no one other than the driver of the only motor vehicle involved in the accident was injured or damaged,¹⁷ or if the motor vehicle involved was legally parked,¹⁸ or if at the time of the accident it was driven without the owner's consent.¹⁹

As above indicated, when the driver of a motor vehicle is irresponsible financially it becomes incumbent upon the owner, if other than the driver and if operated with the owner's consent, express or implied, to meet the security requirements. If the owner fails to satisfy the security requirements, he, too, loses his operator's license and the registration of all automobiles registered in his name.²⁰

The purpose of the security deposit is to satisfy judgments, to the extent of the limits above noted, in actions that may arise from the accident.²¹

¹⁰ With the registrar who delivers the deposit "forthwith" to the treasurer of state, "who shall be custodian thereof." OHIO REV. CODE § 4509.27.

¹¹ OHIO REV. CODE § 4509.13.

¹² OHIO REV. CODE § 4509.17. This requirement is mandatory. The statute uses the word "shall." Furthermore, the statute is self-effectuating. Counsel for the other side do not have to do anything to start the suspension provision operating.

¹³ OHIO REV. CODE § 4509.69.

¹⁴ OHIO REV. CODE § 4509.99(C).

¹⁵ OHIO REV. CODE § 4509.19 (A) (5).

¹⁶ OHIO REV. CODE § 4509.20 (A). It goes without saying that the insurance company issuing the policy must be authorized to do business in Ohio.

¹⁷ OHIO REV. CODE § 4509.19(A) (1).

¹⁸ OHIO REV. CODE § 4509.19(A) (2).

¹⁹ OHIO REV. CODE § 4509.19(A) (3). There are other exclusions applying to specific situations which are not of general interest here.

²⁰ OHIO REV. CODE §§ 4509.11 to 4509.17, inclusive.

²¹ OHIO REV. CODE § 4509.28(A).

The Ohio safety responsibility law generally embodies the old Ohio financial responsibility law. Roughly, the first half of the law has to do with the security provisions, the last half with the requirement of proof of financial responsibility before an operator's license or registration may be issued, or to prevent revocation thereof.

As under the old law, when a judgment is obtained and remains unsatisfied,²² even after security has been deposited, the judgment creditor may request the Clerk of the Court rendering the judgment to forward a certified copy of it to the Registrar,²³ who, upon receipt thereof, shall "forthwith" suspend the license and registration of the judgment debtor²⁴ until the judgment is "satisfied."²⁵

It is to be noted, in this connection, that a discharge in bankruptcy does not relieve the judgment debtor from having to "satisfy" the judgment if he wants his license and registration returned to him.²⁶ Note further that if "an owner's registration has been suspended, such registration shall not be transferred nor the motor vehicle registered in any other name unless the registrar of motor vehicles is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes" of the law.²⁷

There are numerous other provisions of the law which should engage the interest of every lawyer but which would consume too much space to permit touching upon. The Ohio law is similar to the other safety responsibility laws²⁸ in thrust, but differs, of course, in minor details.

II

Financial responsibility laws are now almost entirely *passé*.²⁹ These laws provide substantially that when a judgment entered against an irresponsible driver remains unsatisfied for a period of 30 days or more, the driver's license and the registration plates of his motor vehicles shall be suspended until he pays the judgment

²² For example, where the damages awarded are over and above the security required, but less than the \$5,000, \$10,000 and \$5,000 limits.

²³ OHIO REV. CODE § 4509.35.

²⁴ OHIO REV. CODE § 4509.37.

²⁵ OHIO REV. CODE § 4509.40. A judgment is "satisfied" if paid to the extent of the \$5,000, \$10,000, \$5,000 limit. OHIO REV. CODE § 4509.41.

²⁶ OHIO REV. CODE § 4509.43.

²⁷ OHIO REV. CODE § 4509.68. This provision is to prevent transfer to a member of the family or friend in order to secure license plates.

²⁸ See note 2, *supra*.

²⁹ Only four jurisdictions still have such laws. They are: District of Columbia, Kansas, New Mexico and South Dakota. Congress is expected, however, to pass a security type safety responsibility law this session for the District of Columbia.

and until he fulfills the additional requirement of showing proof of financial responsibility for the future. Most financial responsibility laws also provide that upon conviction of certain crimes³⁰ licenses and registrations shall be revoked. Proof of financial responsibility must thereafter be furnished before license and registration will be re-issued.

III

Compulsory insurance has been adopted in only one United States jurisdiction, Massachusetts. In Canada, only in Saskatchewan.

The Massachusetts law³¹ became effective January 1, 1927. It has been repeatedly amended since. It provides that no motor vehicle shall be registered unless it is covered by a policy of liability insurance with limits of \$5,000 and \$10,000 for personal injury. There is no property damage coverage requirement, although failure to satisfy a judgment for damages to property for a period of 60 days is cause for suspension until a maximum of \$1,000 has been paid.³² A large part of the Massachusetts law itself is devoted to the requisites and conditions of the insurance required or the bonds and deposits which may be deposited in lieu of insurance. The crux of the sanctions required under the law, however, are simply that before a person can have his motor vehicle registered in Massachusetts, he must show that he is insured up to the minimum limits.

IV

The Saskatchewan Plan reflects the most extreme approach to date to the philosophy that the state stands in *loco parentis* to those persons who are injured on its highways. In addition to the security provisions of the Vehicles Act of 1951 which provide that the Highway Traffic Board may require proof of financial responsibility from a person who, "in the opinion of the Board," is responsible for personal injury or property damage amounting to more than \$50,³³ there is the Saskatchewan Automobile Accident Insurance Act of 1947. This Act puts the government in the insurance business. When applying for a motor vehicle registration, every Saskatchewan resident must apply for a certificate of insurance from the Saskatchewan government insurance office and pay the

³⁰ Manslaughter, drunken driving, hit and run, using motor vehicle in the commission of a felony, perjury to obtain registration, and others.

³¹ Chapter 90, Sections 1, 1A, 3, 3G, 22A and 34A-34J; Chapter 90A, Sections 12-17; Chapter 26, Section 8A; and Chapter 175, Sections 112, 113, 113A-113H, 182 and 183; of the General Laws of Massachusetts as the same have been added to and amended since original effective date.

³² GEN. LAWS OF MASS., c. 90, § 3G.

³³ Section 60, Part IV of the Vehicles Act, 1951 (originally Part II of the Vehicles Act, 1932, as added by Chapter 67, Laws of 1933).

premium therefor. He then not only becomes insured himself but, also, insures any person he may injure in Saskatchewan regardless of fault. The perils covered are "(a) driving, riding in or on, or operating a moving motor vehicle, trailer or semi-trailer in Saskatchewan; or (b) collision with or being struck, run down or run over by a moving motor vehicle, trailer or semi-trailer in Saskatchewan."³⁴ Furthermore, the insurance covers the person named in the certificate, if he is domiciled in Saskatchewan, and any persons riding with him, if they too are domiciled in Saskatchewan, for bodily injuries sustained on a public highway in any other province of Canada or in the United States. Payment is made regardless of fault. The theory is very much similar to that of workmen's compensation. The maximum recovery is \$10,000 payable only in a death claim where there are seven or more dependents of the deceased.³⁵ Injuries are paid for according to a schedule. For example, severance of both hands is worth \$2,000; complete blindness, \$2,000; one arm, \$1350,³⁶ etc. There is no provision for back injuries and mental anguish, per se. This type of injury might be covered in the omnibus section which provides, in effect, that if three doctors certify that the injured party is "permanently incapable of engaging in any occupation for wages or profit" his injury is worth \$2,000.³⁷

The Act has other provisions which are engaging because they are quaint. For example, the basic premium rates to be charged by the government must be published before the commencement of the license year in *The Saskatchewan Gazette*,³⁸ and housewives, when "totally and continuously disabled," are entitled to \$12.50 for six weeks,³⁹ regardless of whether they had any earned income prior to their disability or not.⁴⁰

The insurance provided pays weekly benefits⁴¹ and also covers such items, other than personal injury, as damages to tires, loss to rugs, robes, even loss or damage caused by "the voluntary parting of ownership, whether or not such parting is induced by any fraudulent scheme, trick, device or false pretense."⁴² Fortunately, Saskatchewan has a population about one-seventh that of Ohio in an

³⁴ SASKATCHEWAN AUTOMOBILE ACCIDENT INSURANCE ACT, 1947, as amended, Part II, Section 16(1).

³⁵ *Id.*, Part II, Sec. 20(1).

³⁶ *Id.*, Part II, Sec. 17(3) (b).

³⁷ *Id.*, Part II, Sec. 17(3) (c).

³⁸ *Id.*, Part I, Sec. (5) (2). There is probably political significance in this choice.

³⁹ *Id.*, Part II, Sec. 18(3).

⁴⁰ *Id.*, Part II, Sec. 27(6). Obviously their distaff side has a profound influence upon the Saskatchewan Legislative Assemblymen.

⁴¹ Not exceeding \$20 for 52 weeks. *Id.*, Part II, Sec. 18(1) (b) (1).

⁴² *Id.*, Part III, Sec. 2(b) and (c).

area about six times as large. If such were not the case, it is improbable that *anyone* in Saskatchewan could afford to pay the premium for the insurance he necessarily would need in order to own an automobile.

V

Another novel and expensive way to meet the problem of the uncompensated victim of motor vehicle accidents is by the establishment of an unsatisfied judgment fund. All of the Canadian provinces with the exception of Quebec and Saskatchewan, and two of the states, New Jersey⁴³ and North Dakota,⁴⁴ have adopted such a fund. Generally, these funds are financed by additional taxes on the motorist or by assessing the insurance companies doing business in the state.⁴⁵

In North Dakota, where any resident recovers a judgment for bodily injury or death arising out of the operation of a motor vehicle by the judgment debtor in that state, the resident may apply for payment up to \$5,000 and \$10,000 limits from the state fund for bodily injury or death only. There is no provision for property damage. The application must show that the judgment debtor is judgment-proof.⁴⁶ Furthermore, no default judgment will count unless the Attorney General and the Highway Commissioner have been given thirty days notice prior to the entry of the default judgment thereby affording them an opportunity to appear and defend.⁴⁷ If judgment is obtained, however, and "if the court is satisfied of the truth of the matters as shown by the judgment creditor . . ., and if the applicant has taken all reasonable steps to enforce the collection of said judgment, that there is good reason for believing that the judgment debtor has no property liable to be sold or applied in satisfaction of the judgment . . . the court shall make an order directed to the State Treasurer requiring him . . . to pay . . ." ⁴⁸ The State Treasurer then pays up to the above-mentioned limits and takes an assignment of the judgment pro tanto.⁴⁹ The operator's license and registration of the judgment debtor are then suspended until he has reimbursed the state fund with interest

⁴³ The effective date of the New Jersey "Unsatisfied Claim and Judgment Fund Law," Secs. 39:6-61 through 39:6-91, N.J.S.A., is April 1, 1955, although the taxes imposed to create the fund are collected from April 1, 1954.

⁴⁴ The effective date of the NORTH DAKOTA UNSATISFIED JUDGMENT ACT, Chapter 39-17 of the 1947 Supplement to the N. D. REV. CODE, was July 1, 1947.

⁴⁵ The latter, of course, raises insurance premiums, thereby further taxing the insured motorist.

⁴⁶ N. D. REV. CODE, c. 39-17, § 39-1703 (1947 Supp.).

⁴⁷ *Id.*, c. 39-17 § 39-1704.

⁴⁸ *Id.*, c. 39-17, § 39-1704.

⁴⁹ *Id.*, c. 39-17, § 39-1708.

at 2%.⁵⁰

New Jersey's plan is more complicated and since it does not become effective until next year, during which time it may be amended, suffice it to say that there an Unsatisfied Claim and Judgment Fund Board is established to assign the defense of actions against the fund to insurance companies⁵¹ who may insist upon the cooperation of the defendant.⁵² Here, in addition to the bodily injury and death limits of \$5,000 and \$10,000 there is also a limit of \$1,000 for property damage. Furthermore, an insurer assigned to defend the fund is authorized to settle any case, "with the approval of the treasurer or any other one member of the board" by payment of up to \$1,000, without court approval.⁵³

VI

Finally, there are the impounding acts. Their provisions tie in with the security-type safety responsibility laws in that in the interim between the accident and the deposit of security or proof of financial responsibility, the motor vehicles of the persons involved in the accident are impounded. So far only four Canadian provinces have adopted such provisions,⁵⁴ but their effectiveness, particularly against non-residents, has been noteworthy. The British Columbia law provides that "any peace officer present at the scene of the accident, or who arrives thereat while any or all of the motor vehicles so involved...are still at the scene...shall...impound each motor vehicle so involved."⁵⁵ The cars remain impounded thereafter until proof is made, security deposited, judgment has been entered in favor of the owner of the vehicle impounded or a year elapses without an action filed against such owner.

Each of the six forms of legislation attempting to solve the problem of the innocent victim of motor vehicle disaster represents the ascendancy of its own sociological philosophy, i.e., voluntary responsibility, compulsion, or indemnity without fault. The most workable and useful form would appear to be the safety responsibility acts adopted by an overwhelming majority of the North American jurisdictions. The least workable would appear to be

⁵⁰ *Id.*, c. 39-17, §39-1710.

⁵¹ N.J.S.A. § 39:6-66.

⁵² *Id.*, § 39:6-68.

⁵³ *Id.*, 39:6-72(b).

⁵⁴ Alberta, provision discretionary; British Columbia; Manitoba; Prince Edward Island, upon application of injured party.

⁵⁵ BRITISH COLUMBIA REV. STAT., c. 227, § 110(1). If, however, the driver of any motor vehicle involved produces an "insurance card" (provided by statute to prove that the motor vehicle is insured) or satisfies the peace officer that no one other than himself was damaged or hurt, or that at the time of the accident, his motor vehicle was legally parked, the peace officer shall not impound.

the Massachusetts and Saskatchewan compulsory insurance plans. Unfortunately the proponents of these latter forms, or forms similar to them, have lost themselves in dialectic; they urge with such force that drivers be required to be financially responsible that they overlook the most obvious and effective requirement that, first, drivers be responsible. Not so the proponents of the safety responsibility laws. For years these same proponents have stood firmly for more effective drivers' licensing and periodic motor vehicle inspection laws. The real fight between these separate proponents is just getting underway. The next decade will probably decide (1) whether you will be able to afford to own an automobile, i.e., pay the fees and taxes necessary for its registration, and (2) whether, if you do get seriously hurt, without fault on your part, you will be circumscribed by a compensation system which limits your damages to the figures contained in a schedule.