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EDITORIAL

ANALYSIS OF AUTOMOBILE FINANCIAL RESPONSIBILITY

The automobile has become a very important factor in our economic, legal and social life and very naturally has required considerable legislation in its regulation. The also conceded fact that it is at all times a potential destroyer of life and property requires a more stringent regulation, and control by penal statutes for violations than the old laws which were used for pedestrian and horse drawn traffic. Since 1925 most states of the Union have adopted some kind of automobile financial responsibility legislation. In reviewing the statutes, five methods are used: compulsory insurance for all automobiles;¹ compulsory insurance only for offenders;² that type of legislation which applies the principle of workmen's compensation;³ that type of legislation compelling the automobilist himself to pay a definite uninsurable portion of the damage;⁴ that type of legislation of looking to the offender's automobile to pay damages.⁵ For convenience, we might divide the above classification into two classes: (1) Compulsory insurance and (2) Automobile financial responsibility laws.

To begin with the latter differs from the former in that they seek to spread the insuring of automobiles by indirection instead of compulsion. Indiana is one of the more recent states to adopt this method.⁶

Succinctly, the Indiana Statute provides that in the event a motorist is found guilty of any of certain motor vehicle offenses or has a judgment rendered against him for more than \$100 in a case arising from automobile accident, the driver's license of such motorist shall be suspended and shall not be restored until he is able to show "proof of financial responsibility." What constitutes such proof of financial responsibility is explained below.

This statute does *not* require *everyone* to carry insurance. It has no effect whatever upon a motorist until and unless he is found guilty of violating one of the traffic laws recapitulated in the ensuing paragraph or has a judgment rendered against him in the amount mentioned.

A person's operator's license and/or chauffeur's license will be suspended whenever such person: I. Is convicted or pleads guilty or forfeits bond for any of the following offenses: (1) Driving while drunk; (2) Homicide or assault arising out of the operation of an

1 Massachusetts Plan.

2 Stone and Connecticut Plans.

3 Marx Plan.

4 Swiss Plan.

5 Maritime Lien Plan.

6 Acts of 1931. Law became effective Oct. 31, 1931.

automobile; (3) Reckless driving, resulting in personal injury or property damage; (4) Leaving the scene of an accident without giving his name; (5) Driving without a license; (6) Driving an unregistered car; or (7) Any other violation of the law requiring suspension or revocation of a license; or II. Has a judgment rendered against him in any court in this country or in Canada, for damages for personal injury (including death) or property damage in excess of \$100 resulting from the ownership, maintenance, use or operation of an automobile.

The license shall not be restored until such person furnishes *proof of financial responsibility*. Such proof means proof of ability to pay damages for any *future* automobile accident, to the extent of \$5,000 for injury to or death of any one person, and \$10,000 for personal injury to or death of two or more persons in any one accident, and \$1,000 for damage to property in any one accident. Such proof may be evidenced by: (1) The certificate of an insurance company authorized to do business in Indiana, covering all automobiles then registered in the name of the person named; or (2) A bond of a surety company authorized to do business in Indiana, or a real estate bond signed by at least two individual sureties, each owning real estate in the state; or (3) Evidence of a deposit with the state treasurer or other proper officer of the sum of \$11,000 in cash or satisfactory securities.

There has arisen much comment as to the constitutionality of such enactment and to dispose of this major issue it might be well to show along what lines the courts have travelled in the interpretation of similar statutes.

The exponents were Massachusetts and New Hampshire who in 1925 discussed its constitutionality prior to the enactment of the law and found by the able opinion of the justices at the invocation of the legislatures that the law was constitutional.⁷ It was contended that the 14th amendment of the Federal Constitution was violated through discrimination and many objections were propounded: that state-owned cars being exempt under the proposed law rendered it unconstitutional; the variation between resident and non-resident security; that the proposed law would violate the constitutional provision giving the United States (not the states individually) control of interstate commerce. These discriminations were untenable in view of

⁷ (a) In Re Opinion of Justices, 147 N. E. 680 (Mass. 1925) (Declaring constitutional a proposed "compulsory insurance law" and a law to protect the public against financially irresponsible people).

(b) In Re Opinion of the Justices, 120 Atl. 117, 39 A. L. R. 1023 (N. H. 1925) (Valid and constitutional since the state has authority over public highways and has power to provide for public safety by regulation of undertakings which are inherently dangerous, the legislature may require persons to provide for insurance).

the police power of the states and because the constitution of the United States allows the states to provide for the establishment, maintenance and control of public highways, turnpikes and roads.⁸

As the automobile insurance laws existed in 1929 thirteen states had one type or another automobile financial responsibility laws. Among these was California.⁹ The statute will be quoted primarily because its constitutionality is now being questioned by the courts.

"The operators or chauffeur's license and all of the registration certificates, of any person, in the event of his failure to satisfy every judgment within fifteen days from the time it shall have become finally rendered against him by a court of competent jurisdiction in this or any other state, or in a district court of the United States, for damages on account of personal injury, or damages to property in excess of one hundred dollars resulting from the ownership or operation of a motor vehicle by him, his agent, or any other person with the express or implied consent of the owner shall be forthwith suspended by the chief of the division of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered and shall remain suspended and shall not be renewed nor shall any motor vehicle be thereafter registered in his name, while any such judgment remains unsatisfied and subsisting, and until the said person give proof of his ability to respond in damages as defined in section 36 1/2 of this act, for future accidents."¹⁰

In *Ex Parte Lindley*,¹¹ a California case, a driver was convicted under the clause of the act making its violation a misdemeanor, and sought a writ of habeas corpus on the ground that the statute was unconstitutional. The appellate court held the statute unconstitutional and against the 14th Amendment. Upon review the Supreme Court in *Watson v. Division of Motor Vehicles*¹² held the statute constitutional by divided court, citing principally in support the Massachusetts discussion in the *Opinion of Justices*¹³ and a United States Supreme Court decision.¹⁴

In 1930 New York approved of a bill¹⁵ similar to that adopted in California, extra-territorial in nature specifying the suspension of oper-

⁸ *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 650 (1885). Nor does the fact that the law does not apply to private property render it unfair as the police power only extends over the public highways.

⁹ LAWS OF 1929, chaps. 258, 259, 262 (Constitutionality of statute now being questioned by courts).

¹⁰ DEERINGS GEN. LAWS 1229 SUPP., p. 3451, S. 73g.

¹¹ 291 Pac. 638 (Cal. 1930).

¹² 298 Pac. 481 (Cal. 1931).

¹³ *Op. cit. supra* note 7a.

¹⁴ *Hendrick v. Maryland*, 235 U. S. 610 (1914).

¹⁵ LAWS OF 1930, chap. 398.

ating license and registration certificates as a penalty for failure to comply with the act. Other states which have financial regulation are: Connecticut,¹⁶ Iowa,¹⁷ Maine,¹⁸ Minnesota,¹⁹ New Jersey,²⁰ North Dakota,²¹ Rhode Island,²² Vermont,²³ and Wisconsin.²⁴

The cases mentioned illustrate that the laws of automobile insurance and financial responsibility are not unconstitutional. Indigent motorists are a constant menace to society and as a consequence of their impecunity hundreds of thousands of people have no recourse and are what heretofore were termed "victims of circumstance." In 1927 in the state of California alone considering only Los Angeles, San Francisco and Alameda Counties out of 762 fatal accident cases (antecedent to compulsory insurance) 50 cases were paid as a result of insurance carried while only 15 were paid where there was no insurance.²⁵ Some progressive move should be accepted in this highly advanced mechanical age to preserve life rather than to destroy it and in so doing keep *toute avant* scientifically, legally, economically and socially. These financial responsibility laws seem to be permanently entrenched in our legal and economic systems today. They are sound and cannot be made too stringent if their objective, the protection of human interests and lives, is to be accomplished. The Indiana Statute and similar statutes of other states demanding financial responsibility are without question a step in the proper direction but lack a definiteness which deficiency allows for "loop holes" by which offenders may evade the law. It is not to be inferred from this observation that the conceivers of such a bill had this in mind, for such reaction to the law was not then forcible and it is only after application that such defects appear.

In regard to accidents involving a loss of under one hundred dollars, caused by violation of any of the traffic laws enumerated earlier in this comment, the law requires nothing of the owner, operator, or both, of motor vehicles and they retain liberties and continue as before without effect of the statute. In the event a motorist causes an accident in a state adopting a financial responsibility law, repairs to a state wherein there is no such enforcement he is not necessarily subject to any financial responsibility in the latter state in which he con-

16 ACTS OF 1929, chaps. 297, 300.

17 LAWS OF 1929, chap. 118.

18 LAWS OF 1929, chap. 209.

19 LAWS OF 1927, chap. 412.

20 LAWS OF 1929, chap. 116 amended by LAWS OF 1930, chap. 267.

21 LAWS OF 1929, chap. 163.

22 LAWS OF 1929, chap. 1429.

23 ACTS OF 1927, Act. No. 81 amended by ACTS OF 1929 (Acts Nos. 76, 77).

24 STATUTES OF 1929, chap. 85.

25 THE COMMONWEALTH, Vol. V., No. 15, Table 1.