

## MISSOURI'S MOTOR VEHICLE SAFETY RESPONSIBILITY ACT COMPARED WITH MASSACHUSETTS' COMPULSORY MOTOR VEHICLE LIABILITY SECURITY ACT

In the past two decades there has been considerable agitation for the enactment of legislation to assure the financial responsibility of operators of motor vehicles. The reason lies primarily in the fact that the number of automobiles (particularly the number of automobiles of little value) has increased many fold as have the number of injuries inflicted as a result of negligent operation by persons financially incapable of responding in damages. As a result state legislatures have enacted laws which, in general, have attempted in one of two manners to assure financial responsibility. The first and most prevalent type of statute is that found in Missouri; the other is like the Massachusetts Act.

### THE MISSOURI ACT<sup>1</sup>

Four years ago Missouri passed the Motor Vehicle Safety Responsibility Act which became effective thirty days after July 8, 1946, and which provided in part that:

The Commissioner also shall suspend the license and all registration certificates or cards and registration plates issued to any person upon receiving authenticated report, as hereinafter provided, that such person has failed for a period of thirty days to satisfy any final judgment in amounts and upon a cause of action, as hereinafter stated.<sup>2</sup>

The Act further provides that:

Every judgment herein referred to shall for the purposes of this Act be deemed satisfied: 1. When \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount for bodily injury to or the death of one person as the result of any one accident; or 2. When subject to the said limit of \$5,000 as to one person, the sum of \$10,000 has been credited upon any judgment or judgments rendered in excess of that amount for bodily injury to or the death of more than one person as the result of any one accident; or 3. When \$1,000 has been credited upon any judgment or judgments rendered in excess of that amount for damage to property of others as a result of any one accident.<sup>3</sup>

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1. MO. REV. STAT. § 303.01—303.29 (1949).

2. MO. REV. STAT. §303.03 (1949).

3. MO. REV. STAT. § 303.05 (1949).

Under the Missouri act once a judgment is obtained and remains unsatisfied for the aforementioned thirty day period to the extent specified above and the judgment debtor's license and auto registration is suspended, he is under the duty of returning such license and such evidence of registration as he may possess subject to being deemed guilty of a misdemeanor. The suspension will remain in effect and no other vehicle will be registered in the name of such judgment debtor, nor will any new license be issued to such person for the vehicles involved, unless and until such judgment is satisfied or stayed and the judgment debtor gives proof of financial responsibility. A discharge in bankruptcy will not relieve the judgment debtor from any of the requirements of the act.

Proof of financial responsibility in the future means proof of the ability to respond in damages for any liability thereafter incurred resulting from the ownership, maintenance, use, or operation of the motor vehicle involved in any one accident causing bodily injury to or death of any one person in the amount of \$5,000; causing bodily injury to or death of two or more persons in any one accident in the amount of \$10,000; and for damage to property in the amount of \$1,000 resulting from any one accident. Proof of ability to respond in damages to this extent may be made in any one of three ways; by proof of a policy of liability insurance to cover the above risks, by the deposit with the appropriate official of money or securities to the extent necessary to cover the above risks, or by the execution of a bond sufficient to cover the above risks.

The act applies to non-residents and provides for suspension of their driving privileges in Missouri. It also applies to one who drives another's vehicle which vehicle is not insured to cover the non-owning driver. For violation in the latter case, the operator's chauffeur's license will be incumbered.<sup>4</sup>

#### THE MASSACHUSETTS ACT<sup>5</sup>

At an early date in the history of this type of legislation, 1925, the General Court of Massachusetts passed what, even today, is a progressive enactment in this field. The Massachusetts act

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4. MO. REV. STAT. § 303.08 (1949). Any person whose license or registration has been suspended must return same to director of revenue or be deemed guilty of a misdemeanor.

5. 3 MASS. LAWS ANN., c. 90, § 34 (1946).

provides that no motor vehicle can be registered unless the application for such registration is accompanied by a certificate as subsequently defined in the act.

Definitions. The following words as used in sections 34A to 34J inclusive shall have the following meanings: "Certificate," the certificate of an insurance company authorized to issue in the commonwealth a motor vehicle liability policy, stating that it has issued to the applicant for registration of a motor vehicle such a policy which covers such motor vehicle, and conforms to the provisions of section 113A of Chapter 175 and runs for a period at least coterminous with that of such registration or that it has executed a binder, as defined in section 113A under and in conformity with said section covering such motor vehicle pending the issue of a motor vehicle liability policy; or the certificate of a surety company authorized to transact business in the commonwealth under section 105 of said Chapter 175 as surety, stating that a motor vehicle liability bond payable to the commonwealth which covers such motor vehicle, and conforms to the provisions of said section 113A, and runs for a period at least coterminous with such registration, has been executed by such applicant as principal and by such surety company; or the certificate of the department stating that cash or securities have been deposited with the department as provided in section 34D.<sup>6</sup>

The sanction is that whoever operates a motor vehicle which is subject to the provisions of the act and which is not insured against liability shall be subject to a fine of not less than \$100 and not more than \$500 or by imprisonment for not more than one year.

#### CONSTITUTIONALITY

Little doubt remains as to the constitutional basis of either the Missouri or Massachusetts type of statute. The validity of these statutes is based on the grounds that the use of the highways is a privilege granted by the state, that such privilege may be conditioned by the state in any reasonable manner, and that the imposition of a requirement of financial responsibility upon those who make use of the highways is a reasonable condition.

A serious constitutional objection arises, however, from the provision in the Missouri type statute that a discharge in bankruptcy will not relieve the judgment debtor from the suspension

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6. 3 MASS. LAWS ANN., c. 90, § 34A (1946).

provisions of the act. The argument advanced is that the provision is in conflict with the bankruptcy laws of the United States and, therefore, must give way to them.

The first case to raise this point was *In re Perkins*,<sup>7</sup> a bankruptcy proceeding, in which the court held that section 94 (b) of New York's Vehicle & Traffic Code, which provides that one's driver's license and motor vehicle registration shall remain suspended until any judgment, as previously defined in the act, is satisfied or discharged except by discharge in bankruptcy, was in conflict with the Federal Bankruptcy Act. The court noted that the section here in question does not interfere with the supremacy of the bankruptcy court in the administration of the property of the bankrupt, but rather the alleged conflict arises from the fact that the section denies to the bankrupt the full effect upon such judgment of the discharge in bankruptcy.

The question arose again in *Munz v. Harnett, Commissioner of Motor Vehicle Bureau*,<sup>8</sup> in which, by a unanimous decision, a special three man statutory court upheld the validity of the New York Act as against a contention that it was in conflict with the Bankruptcy Act. The court stated that a discharge in bankruptcy is not a satisfaction of the judgment, but rather serves only as a bar to collection of the judgment; and since the act does not give any additional remedy with which to satisfy the judgment, it is not in conflict with the Bankruptcy Act. In answer to the contention that, practically speaking, an additional remedy was given, the court points out that although the provision here in question will result in a greater likelihood that the judgment creditor will be paid even after the judgment debtor has gone through bankruptcy, this effect is merely collateral to the cardinal purpose of the statute which is, of course, to insure competence and care on the part of one using the highway by means of reasonable police regulation.

The third case to consider the validity of the New York law was *Reitz v. Mealey, Commissioner of Motor Vehicles*,<sup>9</sup> in which a three man Federal Court, speaking through Judge Learned Hand, stated that although the power to suspend one's driver's license is in effect a means of aiding in the collection of the

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7. 3 F. Supp. 697 (N.D. N.Y. 1933).

8. 6 F. Supp. 158 (S.D. N.Y. 1938).

9. 34 F. Supp. 532 (N.D. N.Y. 1940).

judgment debt, and if the Bankruptcy Act is to be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, then the act here in question is invalid because it conflicts with the Bankruptcy Act and the latter controls. But the court went on to say that the Bankruptcy Act should not be so read. A state should not be so impeded in its legislative policy. If the sanction imposed is designed to promote some equally valid public purpose, it should not be struck down as being in conflict with the Bankruptcy Act. The court states that the inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity.

Judge Cooper, dissenting, reiterated his position, taken in the previous case of *In re Perkins*,<sup>10</sup> that there is a conflict between the Bankruptcy Act and the provisions of the New York statute which causes those provisions to fail; and since they are inseparable the whole act fails. Judge Cooper also based his position on the fact that it is completely within the discretion of the judgment creditor as to whether the license shall be revoked since it is he who must request certification of the judgment to the commissioner and since he can, on written request, have the suspension lifted. He pointed out that in that way control over the sanction is placed in the hands of the judgment creditor as a weapon to force payment of the judgment debt after discharge in bankruptcy.

On appeal to the United States Supreme Court,<sup>11</sup> the case was affirmed by a five-to-four decision. The majority held that the provision, that a discharge in bankruptcy should not discharge the judgment within the meaning of this act, was not put into the act to protect the rights of the judgment creditor, but rather to enforce the state's public policy that financially irresponsible persons should not use the highways. This policy would be frustrated if one were allowed to satisfy the provisions of the act by obtaining a discharge in bankruptcy.

With respect to the provision that a judgment creditor must request a certification to the commissioner of the outstanding judgment, a counterpart of which does not exist in the Missouri act and which provision is an amendment to the original New

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10. 3 F. Supp. 697 (N.D. N.Y. 1933).

11. *Reitz v. Mealey*, Commissioner of Motor Vehicles, 314 U.S. 33 (1941).

York act, the Court said that this was a mere administrative convenience to aid the clerk of the court, and even if it were set aside, the previous provision making it mandatory for the clerk to certify to the commissioner each judgment which remains unsatisfied for the specified period would come back into force and the same result would be reached.<sup>12</sup>

The dissent, however, maintained that the assumption by the majority does not necessarily follow in that it is merely conjectural as to whether the commissioner would suspend the license after being advised that the amendment giving the creditor that power contravened the Bankruptcy Act. Also, even assuming that there would be a replacement by the old provision if the amendment dropped out, the provision that if the creditor consents in writing to lift the suspension, such suspension will be lifted, still remains and renders the act invalid. The majority found it unnecessary to pass upon the validity of this latter provision in that it was not invoked in the present case. "If the creditor attempts to exercise that power the commissioner will have to determine whether the amendment giving the creditor such power is valid."<sup>13</sup>

The dissent also argues that a state cannot supply a device for the collection of debts which survives a discharge in bankruptcy. It goes on to say that a collection device is preserved by the act in that if the judgment is not paid, the judgment creditor will see to it that the license is suspended, but if it is paid, there will be no such suspension. Thus the bankrupt, instead of receiving by virtue of his discharge "a new opportunity in life and a clear field for future effort unhampered by the pressure and discouragement of pre-existing debt," finds him-

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12. The majority then stated that the provision permitting the judgment creditor to lift the suspension on written request was not invoked here and therefore is not material to this case. The Missouri act does not provide that the judgment creditor may have the suspension lifted or in any way prevent the suspension, but it does provide for installment settlements made under the supervision of the court during which time the license and registration of the judgment debtor will be restored upon proof of financial responsibility to the named extent. Lastly the Court said that if the provisions here in question were held invalid, they are severable and the whole act should not fail.

13. The minority of the court felt that it was necessary to decide on the validity of these provisions in that if they were held to be unconstitutional the whole statute would fail while the majority felt that even if one or more of these amendments were held to be unconstitutional they would merely drop out and the original act would be retained.

self still entangled with a former creditor. In short the dissent maintained that the judgment creditor is given a powerful collection device which should not be allowed to survive bankruptcy.

The courts have thus in the main taken two points of view. The first view is represented by the opinions of Judge Cooper that the law denies to the bankrupt the full effect of a discharge in bankruptcy and, therefore, is in conflict with the Bankruptcy Act and consequently must give way to it. In the second view of the question, which was the view taken by Judge Learned Hand and adopted by the United States Supreme Court, it is admitted that the bankrupt is denied the full effect of the discharge in bankruptcy but it is further argued that this fact alone does not render the statute invalid because the Bankruptcy Act should not be read as relieving bankrupts of all sanctions for the collection of dischargeable debts no matter what other public policy may be served, and the provision here in question is aimed at a public purpose equally as important as the public purpose at which the Bankruptcy Act is aimed.

Before passage of the Massachusetts Law it was held to be constitutional in an advisory opinion<sup>14</sup> of the Supreme Judicial Court of that state in which the court cited statistics for the year 1923 which pointed up the need for legislation to assure the financial responsibility of operators of motor vehicles.<sup>15</sup> After showing the need for such legislation the court went on to say that the general principle which sustains the validity of the compulsory security provisions of the act is that when, in the opinion of the legislature, the general welfare of the travelers of the highway is threatened by and demands protection against a specific evil, any rational means adapted to remedy the evil are constitutional, and the requirement that every owner, before being allowed to register his motor vehicle, provide security for the discharge of possible liability for personal injuries or death or property damage resulting from the operation of a motor

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14. *In re* Opinion of Justices, 251 Mass. 569, 147 N.E. 681 (1925).

15. They said that in that year there were 20,000 accidents causing from motor vehicle accidents 550 of which were fatal accidents causing 578 deaths. The blame for two-thirds of these accidents, according to the court, was on the operator of the motor vehicle in question. Thirty percent of the operators of motor vehicles at that time carried insurance while the other seventy percent did not, and the financial responsibility of the latter group was doubtful, a large percentage of the judgments having not been satisfied.

vehicle on the public highways, cannot be pronounced unreasonable. There is no greater extension of the legislative power here than in the case of compulsory Workman's Compensation Insurance.

#### EFFECTIVENESS OF THE TWO TYPES

The question remains as to the effectiveness of the two types of statutes in correcting, or at least alleviating, the conditions at which they are aimed. The Missouri statute takes no steps to assure financial responsibility until after an accident has occurred, a judgment rendered, and there has been a failure to satisfy the judgment. It is true that there is the potential threat of having one's license and registration suspended if one is financially irresponsible and if one has a judgment rendered against him for the negligent operation of a motor vehicle. That threat undoubtedly causes many conscientious citizens to take out insurance. But certainly this threat does not assure the financial responsibility of the public as a whole, many of whom are not conscientious citizens, as well as does the requirement that one must give proof of financial responsibility before one's motor vehicle will be registered. The individual who is really irresponsible, both financially and otherwise, who drives one of the many "wrecks" which provide our highways with their biggest menace, will not be prevented from operating his motor vehicle by the mere threat of suspension of his driver's license and auto registration as a result of his inability to satisfy a judgment which might be rendered against him. As a matter of fact a person injured by a financially irresponsible person is not likely to prosecute his claim against the person to the judgment stage for the simple reason that the defendant is "judgment-proof." The end result in this event would be that the irresponsible operator is not even punished for his irresponsibility to the extent of suspension of his license and registration. On the other hand the Massachusetts statute is not dependent on whether a private individual prosecutes to judgment a claim for damages as a result of a tort; for as we have previously seen, the act provides that whoever operates a motor vehicle in violation of the provisions of that act is subject to a fine or imprisonment. Not only does the Massachusetts enactment provide a more effective means of imposing punishment, but the degree of punishment is, itself more in accordance with the gravity of the offense committed.

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