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The South Carolina Safety Responsibility Act -- Can We Do No Better?

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THE SOUTH CAROLINA SAFETY RESPONSIBILITY ACT — CAN WE DO NO BETTER?

In 1926 Connecticut enacted a so-called "financial responsibility" law providing that an automobile owner involved in an accident and ordered to pay a judgment would lose his driving privileges if such judgment remained unsatisfied.[1] Massachusetts enacted a compulsory automobile liability insurance law in 1925 which became effective in 1927.[2] New Hampshire, in 1936, enacted an improved type of law known as a "safety responsibility law".[3] Many other states have enacted laws similar to that of New Hampshire, and in 1952 South Carolina followed suit, the law becoming effective January 1, 1953.[4]

The purpose of this note is to briefly set out the provisions of the South Carolina Safety Responsibility Act and to compare it with legislation in other jurisdictions directed toward the same objective — compensation for persons injured on our public highways.

A. South Carolina Safety Responsibility Act

The South Carolina Safety Responsibility Act does not affect South Carolina motorists until they are involved in an accident or have had their license suspended for some other cause. Upon receipt of a report of a motor vehicle accident in South Carolina which resulted in bodily injury, death or damage to the property of any one person in excess of fifty dollars, the South Carolina Highway Department must, within sixty days thereafter, suspend the license of each operator or driver and all registrations of each owner of a motor vehicle in any manner involved in such accident, or revoke a nonresident operating privilege in South Carolina[5] unless:

1. such owner or operator had liability insurance with respect to the automobile or driver involved,
2. was a self-insurer under Section 46-708 (must have registered in his name 25 or more motor vehicles),
3. damage or injury was caused only to the owner or operator,

1. Lemmon, *Insurance and the Automobile — Where Are We Headed,* Ins. L. J. 369, 375 (1954).
2. Automobile Liability Insurance, Legislative Research Committee of North Dakota, p. 8 (1950).
3. See note 1 *supra.*
4. Code of Laws of South Carolina, 1952 § 46-701 thru 46-750.33.
5. Code of Laws of South Carolina, 1952 § 47-727.

4. the vehicle was being operated or had been parked without express or implied permission of the owner,[6] or
5. was legally parked when involved in the accident.[7]

Whenever the South Carolina Highway Department, under any law of the State, suspends or revokes the license of any person upon receiving a record of conviction, or a forfeiture of bail, it must also suspend the registration unless that person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by him. This registration remains suspended, and no registration can be made, until he gives and maintains proof of future financial responsibility.[8]

Proof of financial responsibility as used in this act is defined as the:

> proof of ability to respond in damages for liability on account of accidents occurring after the effective date of such proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of five thousand dollars, because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of ten thousand dollars because of bodily injury to or death of two or more persons in any one accident and in the amount of one thousand dollars because of injury or destruction of property of others in any one accident.[9]

Proof of future financial responsibility when required under this law may be given by filing:

1. a certificate of insurance as provided in Sections 46-750.5 and 46-750.6; or
2. a bond as provided in Section 46-750.8; or
3. a certificate of deposit of money or securities as provided in Section 46-750.12.[10]

The act provides for the Insurance Commissioner to consult the insurance companies authorized to issue automobile liability policies in South Carolina, and to approve a reasonable plan for the equitable apportionment among such companies of applicants for motor vehicle liability policies who are, in good faith entitled to such policies, but are unable to procure them through ordinary methods (assigned risk plan).[11]

6. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-728.
7. S. C. ACTS AND JOINT RESOLUTIONS 1955, No. 208, p. 299.
8. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-750.1.
9. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-702(9).
10. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-750.4.
11. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-720.

B. The Assigned Risk Plan

The South Carolina Insurance Commission has approved an Assigned Risk Plan which was prepared and distributed by the National Bureau of Casualty Underwriters.[12] The Assigned Risk Plan became effective in South Carolina when all carriers writing direct automobile bodily injury liability insurance in the State had subscribed thereto.[13] This was effective on June 1, 1952. The plan is administered by a Governing Committee and a Manager.[14] It is the duty of the Manager to distribute, on the basis of premiums, the risks which are eligible for coverage under the plan, as far as practicable, to insurers in proportion to their respective net direct automobile bodily injury premium writings; with due regard to exclusions under reinsurance agreements, treaties or contracts filed in writing with the Manager.[15]

An applicant to the Assigned Risk Plan must use the prescribed application form; certify that he has, within 60 days prior to the date of application, attempted to obtain automobile liability insurance, and that he has been unable to obtain such insurance.[16] This application must be sent to the manager of the Assigned Risk Plan, together with $15.00 for private passenger motor vehicle and up to $90.00 for public motor vehicles, by a South Carolina licensed insurance agent who receives 10% of the policy premium as a commission.[17]

The applicant may be denied coverage even under the Assigned Risk Plan for any one of fifteen reasons, listed under Section 9 of the approved Assigned Risk Plan as an illustration coverage may be denied if the applicant: "has been convicted of any felony or high misdemeanor during the immediately preceding thirty-six months or habitually disregards local or state laws as evidenced by two or more non-motor vehicle convictions during the immediately preceding thirty-six months", or if within

> . . . the immediate preceding thirty-six months the applicant or anyone who usually drives the automobile has been convicted or forfeited bail more than once for any one, or once each for two or more of the following offenses:
> 1. driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs,

12. South Carolina Assigned Risk Plan, revised January 1, 1953.
13. *Id.* § 2.
14. *Id.* § 4.
15. *Id.* § 6.
16. *Id.* § 9.
17. *Id.* § 21.

2. failing to stop and report when involved in an accident,
3. homicide or assault arising out of the operation of a motor vehicle,
4. driving a motor vehicle at an excessive rate of speed where injury to person or damage to property results therefrom,
5. driving a motor vehicle in a reckless manner where injury to person or damage to property results therefrom,
6. operating during period of revocation or suspension of registration or license,
7. operating a motor vehicle without state or owner's authority,
8. loaning operator's license to an unlicensed operator,
9. the making of false statements in the application for license or registration,
10. impersonating an applicant for license or registration, or procuring a license or registration through impersonation whether for himself or another.

As a result of the above provisions a driver may be convicted of motor vehicle or non-motor vehicle offenses and be fined, imprisoned, or have his license suspended for usually not more than a year by the courts, — but then the insurance companies may exact an additional and more severe penalty; *i. e.,* by denying coverage for 36 months. When a person does not come within the provisions of the act the insurance companies are, in effect, denying the driver the right to drive for two years longer than our courts of law do — for the same offenses.

If the application is turned down, the applicant can appeal to the Governing Committee, and then to the Insurance Commissioner;[18] and after 10 days notice, to the Court of Common Pleas in Richland County.[19] If he is then denied coverage, he is not eligible to reapply for assignment for 12 months.[20] There is also a provision for cancellations under the plan.[21]

There is a provision for an increase of 15% in the premiums and classifications in regular use by the designated carrier if the applicant has, within the preceding 36 months, been involved (as owner or driver) in an accident resulting in personal injury, death, or property damage, or if he has been convicted of certain offenses (listed under Section 9), or any non-motor vehicle offense and sentenced to 5 or more days imprisonment or fined $50.00 or more.

18. *Id.* § 19.
19. Code of Laws of South Carolina, 1952 § 46-720.
20. South Carolina Assigned Risk Plan, Section 20.
21. *Id.* § 18.

There is an additional 25% increase if, within the preceding 36 months, the applicant has been involved in more than one motor vehicle accident (as owner or operator) resulting in personal injury, death, or property damage; or has been convicted more than once for certain offenses; or has been required to furnish proof of financial responsibility.[22] Therefore, the applicant may be charged from $50.00 to $100.00, or more, under the classification in regular use by the carrier, plus a 15% to 40% additional charge under the plan, or a total cost of $70.00 to $140.00 or more per year under the Assigned Risk Plan, which is prohibitive, and may have been designed to reduce the number of applicants.

Safety responsibility laws are a type of social legislation and are designed to create a greater degree of financial responsibility on the part of owners or operators of motor vehicles so as to protect the public. Although the word "safety" is usually used in the short title, the safety or prevention of accident aspects are for all practical purposes insignificant; and the primary purpose is to assure persons injured in automobile accidents a solvent defendant. The duty and responsibility of determining the qualification of drivers on our public highways is vested in the South Carolina Highway Department; the insurance companies should not be permitted to enter this field. Their interest is, of necessity, a selfish interest in denying certain classes of drivers motor vehicle liability insurance coverage. As a result they are, in effect, determining the qualification of drivers, since in many instances a denial of insurance results in a denial of driving privileges.

The insurance companies, by denying coverage to certain classes of drivers, are defeating the primary purpose of the South Carolina Safety Responsibility Law, *i. e.*, to provide solvent defendants. The drivers who are denied coverage are actually the ones who need it most, for the protection of the general public, since they are the ones most prone, or likely, to be involved in an accident. It is estimated that approximately 20% of the South Carolina motorists are uninsured, and of that group approximately 17% desire, and attempt to secure insurance, through normal channels and are denied coverage.[23] This does not keep them off the highways; and when they do have an accident, not one, but two people suffer a loss. The injured motorist has no recovery (assuming the negligent uninsured motorist to be judgment proof), and the uninsured motorist is denied the privilege of driving. No one has gained anything thereby, and the uninsured

22. *Id.* § 16.
23. Mr. J. E. McDavid, South Carolina Deputy Insurance Commissioner.

driver may otherwise meet all requirements to obtain his license, but his license is withheld simply because the insurance companies do not find it profitable to insure drivers in his class.[24] In effect this gives to the insurance companies the authority to determine the qualification of drivers on our public highways. The insurance companies are exercising a part of the responsibility of the South Carolina Highway Department.

The following classes of drivers often experience difficulty in obtaining motor vehicle liability coverage:

1. Persons recently involved in an accident when found at fault.
2. Soldiers.
3. Drivers under 25 years of age.
4. Drivers over 70 years of age.
5. Negroes.[25]

The estimated 17% of the uninsured South Carolina motorists who want insurance are almost entirely composed of the above mentioned classes, and they are actually involved in a much larger percentage of the accidents, per capita, than those motorists covered by insurance. They are the ones who really need insurance, and pose a problem which the legislatures in many states are studying and attempting to solve by other plans.

C. Alternate Plans In Operation

1. *Compulsory Automobile Insurance Plan*

In 1925 Massachusetts enacted a compulsory automobile insurance law, which became effective in 1927, and thereby began an era in legislation on automobile insurance. Although Great Britain and certain European countries require every motorist to carry liability insurance, Massachusetts was the first, and is the only state to date, to enact a compulsory motor vehicle insurance law in the United States.

> The underlying purpose of this law was to furnish security out of which persons injured by motor vehicles would be able to obtain damages. The law of Civil Liability was not changed; damages are payable only when the owner or person driving the car is solely responsible for the accident with no contributing negligence on the part of the injured person.

24. This writer has no intention of casting any reflection on the insurance industry, but recognizes the fact that the insurance companies must make a profit in order to stay in business, and the classification of risks is a necessary incident to the proper management of any profitable insurance company.
25. See note 23 *supra.*

The statutory coverage is in the amount of $5,000 for injuries received by any one person, or $10,000 for injuries received by two or more persons consequential damages are included in the coverage of the policy.

This statute specifies certain provisions which must be contained in each policy. The policy covers the assured and any person driving with his express or implied consent. Twenty days notice must be given to the Registrar of Motor Vehicles as well as to the insured when cancellation is to be effected. On such notice, the policy holder has a right to appeal to a board of appeal set up under the law. This board holds a hearing, and may revoke the cancellation or order it into effect. The Law provides for a review of the board's decision by the superior court. The board also has jurisdiction of cases arising whenever an insurance company refuses to issue a policy to an assured.

Under the Compulsory Motor Vehicle Liability Insurance Law, the Commissioner of Insurance promulgates the rates and the classification of risks after having held a public hearing thereon.[26]

Two reasons have discouraged other states from enacting a compulsory insurance law:

1. Compulsory insurance has not worked out too well in Massachusetts.
2. The insurance companies have vigorously opposed it.[27]

There are several reasons why compulsory insurance has not worked out too well in Massachusetts. The rate making got into politics. In 1936 Governor Curley had "guest coverage" stricken out of the compulsory policy in order to carry out a campaign promise to reduce rates, and one insurance commissioner resigned on election eve rather than obey the order of the then Governor to reduce rates.[28]

The insurance companies oppose compulsory insurance because of the fear of politics in rate making, and the fear that it will lead to a State Fund.[29] Other reasons advanced by insurance companies are

26. Letter from Dennis E. Sullivan, present Insurance Commissioner of Massachusetts, February 28, 1952, as published in the Semi-final Report of the California Assembly on Finance and Insurance, p. 26 (1953).

27. Semi-final Report of the California Assembly on Finance and Insurance, p. 13 (1953).

28. Report on Automobile Liability Insurance by Legislative Research Committee of North Dakota, p. 13 (1950).

29. Report of the New York State Joint Legislative Committee to study the problem of Unsatisfied Judgment Fund and Compulsory Insurance, p. 14 (1954).

that they are compelled to accept undesirable risks,[30] that it might eliminate competition between private companies, that it will make the public claim-conscious and boost claimed losses, and that since a large percentage of cars are already insured there is no reason to force a relatively small group to insure.[31]

With all the criticisms directed toward the Massachusetts Compulsory Insurance Plan, still it has never been repealed and almost every legislative report which has studied the problem has reported favorably on a compulsory plan. Governor Dewey strongly recommended a compulsory insurance law for New York to several successive Legislatures. In 1954 a bill (Assembly No. 200) was introduced which would require proof of financial responsibility before a motor vehicle could be registered in New York, but it has not yet been passed.

2. *Financial Responsibility Plan*

"Financial responsibility legislation was developed as a result of, and as the insurance companies' answer to, the growing demand for compulsory liability insurance of some kind."[32]

This type of legislation is sometimes referred to as "first bite" legislation since each driver is allowed one accident before the law is applicable to him. The doctrine of "no liability without fault" was preserved. The first financial responsibility law did not apply to a driver until a judgment was obtained against him which he did not satisfy. In many cases the injured party did not prosecute his claim to a judgment because the negligent driver was judgment proof.[33] Therefore, when a driver was not sued due to this reason, his "lack of financial responsibility protected him from the operation of a statute intended to bar him from the road because of his financial irresponsibility."[34]

A new type of Financial Responsibility Law has been developed and is today in operation in South Carolina and a large majority of the other states. Although a model bill has been prepared, still there is a great difference in the enforcement and administrative

30. Report of New Jersey Legislative Joint Committee on Motor Vehicle Financial Responsibility Law, p. 43 (submitted January 28, 1952).
31. See note 27 *supra* at 12.
32. *Id.* at 81.
33. See note 28 *supra* at 118.
34. Taken from an article written by Frank P. Grad in connection with a legislative study undertaken by the Legislative Drafting Research Fund of Columbia Law School, completed October 1, 1949 and reprinted in the Semi-final Report of the California Assembly on Finance and Insurance, p. 83 (1953).

provisions in the bills as adopted by the various states.[35] It would seem that the large amount of interstate travel would make uniformity most desirable.

> An underlying assumption of this type of legislation was that there existed a class of bad drivers which could be isolated by permitting each member of that class to have his first accident. Then, both as a deterent and as an assurance to future victims, the requirement of proof would be imposed. Thus, it was hoped, the financial burden threatened by required insurance would make motorists more careful, while at the same time the isolation of bad drivers would result in distributing the cost of accidents among the group which causes them.
>
> Although financial responsibility legislation had been on trial for no more than seven years when the Columbia Report was published, its weaknesses had become so readily apparent that later writers have not added substantially to the criticisms offered by the Columbia Committee. It found that, even assuming an habitually careless class of drivers to exist, financial responsibility laws as then constituted were not effective in segregating it; there was no evidence that such legislation did operate to compel careless drivers to insure, nor did it cause any general voluntary increase in the carrying of liability insurance. Where motorists actually came under compulsion of the law, administrative weaknesses in the legislation would frequently render it ineffective, for many such drivers would fail to surrender registration plates and license cards, or would continue to operate vehicles in violation of the law. This situation was found particularly acute where the driver was not the owner, and hence could not be compelled to insure the vehicle. Furthermore, since a motorist who had an accident could always elect to leave the highway, financial responsibility laws carried no guarantee that a victim would recover a judgment or that such a judgment would be satisfied. The "first" accident was left especially unprotected. Finally, the committee found that one of the main purposes of the law was completely unfulfilled, for there was no evidence of a decrease in the number of accidents or of any relationship whatsoever between the number of accidents and the number of license revocations or suspensions.[36]

35. See note 27 *supra* at 82.
36. See note 27 *supra* at 82.

3. *Unsatisfied Judgment Fund Plan*

The first Unsatisfied Judgment Fund law was enacted in Canada. Manitoba has had such a law in effect since January 1, 1946, Alberta since April 1, 1947, Ontario since July 1, 1947, British Columbia since January 1, 1948, and Prince Edward Island since 1949.[37] North Dakota was the first State in this country to create an Unsatisfied Judgment Fund and it has been in effect since January 1, 1948.[38] In 1952 New Jersey set up an Unsatisfied Judgment Fund which went into effect April 1, 1955.[39]

The jurisdictions with Unsatisfied Judgment Funds have some type of Financial Responsibility law (similar to the South Carolina Safety Responsibility Law).

> Under the North Dakota law, when any resident of the State recovers a judgment for an amount exceeding $300, in an action for damages resulting from bodily injury or death arising out of the use of a motor vehicle, the judgment creditor may apply to a judge of the District Court for an order directing payment out of the Unsatisfied Judgment Fund. The judgment creditor, as a prerequisite to collection from the Fund, must show that he has exhausted his remedies against the judgment debtor. If the court is satisfied that the judgment creditor has taken all reasonable steps to enforce collection of the judgment, and that there is good reason for believing that the judgment debtor has no property subject to execution, and is not insured under a policy of automobile liability insurance, the court may make an order requiring payment from the Fund to the limit of $5,000 in case of bodily injury or death of one person, or $10,000 where more than one person was killed or injured. Upon payment, the judgment is assigned to the Fund and the license of the judgment debtor is suspended until he repays the amount paid in his behalf, with interest.
>
> The Manitoba Unsatisfied Judgment Fund Law differs from the North Dakota law in several particulars:
>
> 1. It is applicable to judgments in excess of $100.
> 2. It is applicable also to hit-and-run cases.
> 3. It contains detailed provisions regarding defenses by the Fund in case of default by the judgment debtor.[40]

37. See note 28 *supra* at 136.
38. *Id.* at 132.
39. See note 27 *supra* at 21.
40. See note 28 *supra* at 135.

The North Dakota legislative committee recommended that the law be amended so as to provide:

1. For investigation and defense in default cases where the Fund is liable to be exposed.
2. That interest from the investment of the Fund be credited to the Fund annually.
3. That benefits be extended to hit-and-run accidents.[41, 41a]

The New Jersey Unsatisfied Judgment Fund (P. L. 1952 Chap. 174) was created by requiring a person registering an uninsured motor vehicle to pay a fee of three dollars, an insured motor vehicle one dollar, and requiring insurers to pay one-half of one per centum (.5%) of its net direct written premiums for the calendar year into the fund, and future assessments, as necessary, up to a stated limit.

The New Jersey statute is very strict as to the procedure to be followed in paying an injured party out of the fund. The insurance companies do the investigating and the defending of the uninsured party and they are reimbursed by the Fund.

The New Jersey Fund is only applicable when the damage is in excess of $200, with limits of $5,000 for injury to or death of one person, $10,000 for injury to or death of two or more persons, and $1,000 for property damage. Where there is a judgment recovered against an uninsured motorist, and the statute has been complied with, the judgment over $200, and up to the above mentioned limits, is paid out of the Fund and the judgment is assigned to the treasurer. The license of the uninsured judgment debtor is then revoked and not reinstated until he has either paid the judgment or made arrangements for payment therefor. If a greater amount is collected than the amount paid out of the Fund, plus 4% interest, the excess is paid over to the judgment creditor.

The greatest objections to the New Jersey Fund will probably be that it is too difficult for the injured party to comply with the strict provisions of the statute, and the fact that the statute is not applicable if the injured party was a guest riding in a motor vehicle owned or operated by the debtor, or was operating or riding in an uninsured motor vehicle owned by him or his spouse, parent or child.

Generally an Unsatisfied Judgment Fund is set up by making assessments on the registration of motor vehicles, operating licenses, and

41. *Id.* at 137.

41a. According to C. Emerson Murray, Research Director for the North Dakota Legislative Research Committee, there has been no specific legislative action which has resulted from the extensive research compiled in the 1950 Legislative Report.

New Jersey also assesses the net premiums collected from New Jersey residents.[42]

It appears that the Unsatisfied Judgment Fund has remedied the defect in the Financial Responsibility Laws by providing for the satisfaction of a judgment recovered by the person injured in a motor vehicle accident whether the defendant is solvent or not. It would seem that the old type of Financial Responsibility Law would come back into prominence since any person injured in an automobile accident would, under ordinary circumstances, pursue it to judgment if he had a valid claim since he would be assured of having his judgment satisfied. This would eliminate the inequality of having a motorist's operating license suspended when not at fault due to his inability to obtain insurance or to post the bond required. Under this type of law only a driver actually found at fault who could not satisfy the judgment against him within a stated time would lose his license.

This still leaves the problem of getting insurance for the drivers in the classes which the insurance companies find unprofitable to insure. There is a growing feeling that where the State uses coercive methods in an attempt to get motorists to carry liability insurance, it should provide a way for the motorists to obtain such insurance at a reasonable rate. This feeling has led to the two following plans:

1. Automobile Accident Compensation without Fault Plan.
2. State Owned Plan.

4. *Automobile Accident Compensation Without Fault Plan*

The Canadian Province of Saskatchewan is the only jurisdiction to-date having an Automobile Accident Compensation Without Fault Plan.

When the CCF (Co-operative Commonwealth Federation) gained the balance of power in 1944 it instituted a program of acquiring control of many enterprises: electric power, telephone system, bus system, a box factory, a sodium sulphate plant, a printing plant, the Timber Board, the Fish Board, airways system, fur marketing service, and the Government Insurance Office.[43]

The concepts of the Committee of the Saskatchewan Government Insurance office may be briefly stated as follows:

1. Neither financial responsibility laws nor liability insurance have proved adequate because they have not tended to remove

42. See note 39, 40 and 41 *supra*.
43. See note 28 *supra* at 23.

unqualified drivers from the highways nor reduce the social waste that accompanies automobile accidents.

2. The theory that the right to compensation or indemnity must be dependent upon the present concepts of liability, *i. e.*, the rule of negligence, must be abandoned. In the event of a motor vehicle accident, a driver's liability must become absolute.
3. Motorists who are "judgment proof" will not voluntarily purchase liability insurance.
4. Because public liability insurance contains exclusions, it does not cover all situations.
5. Assigned risk plans impede the functioning of financial responsibility laws.
6. Unsatisfied judgment funds present the same weaknesses as liability insurance.
7. It is a sound socialist principle that where the State creates a compulsory market, the State itself should undertake to supply the market.
8. Compulsory insurance, as a State undertaking, will permit an underwriter to impose premium surcharges, where deemed advisable, and through cooperation with licensing authorities, will keep unqualified drivers off the highways.
9. The economic loss resulting from the disability caused by motor vehicle accidents should properly be recognized as a factor in the cost of operating vehicles on a highway.
10. Financial responsibility laws are adequate for property damage liability losses, but not for bodily injuries.[44]

The Compensation Without Fault Plan was originally adopted in Saskatchewan in limited form in 1946, and was extended in 1947, 1948, and 1949 so that, as now in effect, it requires every applicant for an owner's registration, or a driver's license, to furnish compulsory insurance insuring himself and all other residents of the Province against injury or death resulting from an automobile accident occurring within the province. He must also insure himself against injury or death resulting from riding in or driving the automobile registered, in the case of an owner, or from driving an automobile, in the case of a driver, at any place within the Dominion of Canada or the United States, without regard to the fault of any person involved in the accident. The amounts are fixed in a schedule of compensation benefits set up in the statute.[45]

44. *Id.* at 24-26.
45. See note 30 *supra* at 13-14.

In addition, compulsory collision insurance, fire and theft insurance, and property damage insurance to the extent of $1,000, on the $100 deductible basis, and public liability insurance, with the $5,000 to $10,000 limitation, is required of an applicant for an owner's registration certificate.[46] (The $100 deductible provision in the collision insurance is waived if the accident occurs outside of Saskatchewan.)[47]

The Saskatchewan Government Insurance Office also has a "package policy" which gives the insured coverage in addition to the compulsory insurance. The insured can also obtain insurance from private insurance companies.[48]

In Saskatchewan the victim of a motor vehicle accident is insured, regardless of whether or not the motorist involved carried government insurance,[49] and this does not preclude the injured party (if not at fault) from bringing a tort action against the party or parties at fault.[50] In this instance the compulsory insurance is in excess of other insurance paid in satisfaction of the judgment.[51]

The Automobile Accident Compensation Without Fault Plan has been seriously considered by legislative committees in at least two states (California and New Jersey) but no state has yet seen fit to adopt this plan. The New Jersey legislative committee gave two reasons for not recommending the plan:

1. The lack of experience as to the probable results of the operation of the plan and its probable cost.
2. That it would probably meet with grave constitutional objection.[52]

The New York legislative committee was of the opinion that the present common law system of "no liability without fault" should not be abandoned with respect to automobile accidents, and gave no consideration to this plan.[53]

In 1951 Assemblyman George D. Collins introduced in the California Legislature a bill (A. B. No. 2023) providing for a type of automobile compensation insurance, modeled, more or less, on the Workmen's Compensation Insurance Law. Because of the late date in the legislative session when the bill came up for hearing it was agreed that he would not bring his bill up for hearing provided the Committee on Insurance would make a study and report on the subject matter

46. *Id.* at 14.
47. See note 28 *supra* at 32.
48. *Id.* at 35.
49. See note 27 *supra* at 89.
50. See note 30 *supra* at 10.
51. See note 28 *supra* at 40.
52. See note 30 *supra* at 15.
53. See note 29 *supra* at 11.

of his bill.[54] In-so-far as this writer can determine, no affirmative action has yet been taken on this bill.

An article, *"Let's Put Sense in the Accident Laws,"* perhaps showing today's trend of thinking on the subject, appeared in *The Saturday Evening Post,* October 22, 1955. The article was written by Hon. Samuel H. Hofstadter, Justice of the New York Supreme Court. In this article Judge Hofstadter recommended that some type of compensation without fault plan be adopted, one which would be analogous to that of the Workmen's Compensation Laws.

In reply to the assertion that the adoption of the Automobile Accident Compensation Without Fault Plan would probably meet with grave constitutional objections, it would appear that this plan would raise no greater constitutional questions than the Workmen's Compensation Laws today found in all 48 states.

The greatest objection to the plan advanced by the insurance industry is that it might lead to the creation of a "state fund". This objection is well founded as shown by the plan next considered.

5. *State Owned Plan*

Strangely enough, Saskatchewan has the only wholly State owned automobile insurance plan. North Dakota has a State owned and operated Unsatisfied Judgment Fund; whereas the New Jersey Unsatisfied Judgment Fund is administered by a board, consisting of the State treasurer and four insurance representatives. A claim against the fund is assigned to an insurer to investigate, settle, or defend.[55] This method keeps the insurers in the picture and may be a step forward.

In 1954 there was introduced in the New York Senate a bill (Senate No. 1260) to provide a State Insurance Fund for the purpose of providing liability insurance to owners and operators of motor vehicles, and to consist of the premiums received and paid into the fund, property and securities acquired by and through the use of money belonging to the fund, and interest earned thereupon. This bill was introduced less than a month after a bill (Assembly No. 200) was introduced providing that before an owner can register a motor vehicle he must show proof of financial responsibility. Perhaps New York was attempting to follow the concepts of Saskatchewan where the State creates a compulsory market it should undertake to supply the market.

54. See note 27 *supra* at 4.
55. N.J. P. L. Chap. 174; Assembly No. 410 (1952).

D. Conclusion

Originally it was thought that the financial responsibility legislation would be primarily a safety device, and it was passed in the various legislatures without much opposition. Now it is generally recognized that there is very little value safety-wise, and other safety measures have been enacted — such as the point system recently enacted in South Carolina.

Today the primary purpose in Financial Responsibility legislation is either to provide a solvent defendant, or simply to compensate the injured parties without regard to fault. Where there is a two-car collision wherein both drivers carry collision and liability insurance (particularly if both are insured by the same insurer) the only question generally involved is the amount of the damage.

Even in the common law field we have the comparative negligence doctrine, and with the widespread settlement of claims by insurance companies where liability is doubtful, we are nearing the compensation without fault field without legislation.

With most motor vehicle owners and operators carrying liability insurance, the jury verdicts continue to spiral upward since it is considered all right to "soak" the insurance companies. As the verdicts go up the insurance rates must go up; the company must make a profit in order to stay in business. For some areas the rates are now quite burdensome ($288.00 in New York when there is a young driver in the family for coverage of $100,000 for injury to one person, $300,000 total maximum liability in any one accident, and $5,000.-00 property damage).[56]

There is one area wherein this writer can find no legislative action. The States are continuing to go forward with the reasoning that a person not at fault (and in many instances at fault) who is injured in a motor vehicle accident should be compensated for his injuries. In a great many instances his injury is more than compensated for by the excessive verdicts which are common today. The situation today is fast approaching one whereby it is impossible to prepare for this contingent liability in the event you are at fault in a motor vehicle accident. As you increase the insurance the verdicts go up, so that a person may carry a normal insurance coverage and still be ruined financially in the event that this contingency occurs. It would seem that a limit should be placed on the liability of a person coming within the terms of the statute and carrying insurance. This was

56. See note 1 *supra* at 378.

done in the field of Workmen's Compensation Laws, and would give a person an added incentive to carry insurance coverage.

With a limit placed on liability the insurance rates could be better regulated and would not continue to go up since there would be no excessive verdicts.

Regardless of the position taken by the legislatures in the various states, one thing is definite — the present so-called Safety Responsibility Laws are not the answer to this problem. In fact they are as bad, if not worse, than no such law at all. The idea is good, and appropriate legislation can remedy the defects and provide a workable solution. This will require cooperation between the insurance industry and the law enforcement divisions in the various states. They must work together if the problem is to be solved.

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