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MOTOR VEHICLES: Motor vehicle accident claims fund.

Under Act 198, P.A. of 1965, as amended, the legislature has provided that every person registering a motor vehicle for the 1966 registration year and thereafter, is required to present evidence that the vehicle is covered by public liability and property damage insurance meeting the requirements of the Financial Responsibility Law and pay a fee of \$1.00, or pay an uninsured motorist fee of \$35.00.

The law provides that if the policy of insurance lapses or is cancelled during the registration year and is not replaced by another qualifying policy, the owner must, before operating the vehicle upon the highways of the state, pay the uninsured motorist fee of \$35.00.

The fee required by Act 198, as amended, is payable only once for a vehicle during the registration year and is not required to be paid again upon transfer of the registration to a second vehicle.

The law permits claims to be made against the fund for damages occasioned by the operation in Michigan of an uninsured motor vehicle owned by a non-resident.

No. 4453

January 31, 1966.

Hon. Raymond D. Dzansizel
State Senator
The Capitol
Lansing, Michigan

Your recent letter requests my opinion upon several questions relating to Act No. 198, P.A. of 1965, which provides for the establishment of a motor vehicle accident claims fund. The act was made effective November 1, 1965, and was approved by Governor Romney July 16, 1965. It was later amended by Act No. 389, P.A. of 1965. Consideration will now be given to the first six questions presented which will be answered seriatim:

"1. Is every person who registers a motor vehicle for the 1966 registration year required to pay the additional fee prescribed by the act the amount thereof depending upon whether at the time of applying for registration said motor vehicle is insured under a public liability and property damage policy?"

Act 198, as amended, specifies in Section 3:

"(2) Every person registering an uninsured motor vehicle in this state for the 1966 registration year, and for each year thereafter, shall pay annually at the time of registering the same, in addition to any other fee prescribed by law, a fee of \$35.00. Such fee shall not be paid in connection with a transfer of registration plates.

"(3) Every person registering any other motor vehicle in this state for the 1966 registration year, and for each year thereafter, shall pay annually at the time of registering the same, in addition to any other fee prescribed by law, a fee of \$1.00. Such fee shall not be paid in connection with a transfer of registration plates."

Subject to the exceptions listed under Section 216 of Act No. 300, P.A. of

1949, the Michigan vehicle code,¹ every motor vehicle driven or moved upon a public highway of this state is required to be registered. The obligation of applying for registration is placed upon the owner, and in the case of a vehicle purchased from a dealer, upon the dealer.² Every person applying for registration of a motor vehicle for a period commencing with the 1966 registration year³ may present evidence of the existence of a policy of public liability and property damage insurance covering such vehicle which meets the requirements of Chapter V of Act No. 300, P.A. of 1949, as amended, being C.L.S. 1961 § 257.501, et seq.; M.S.A. 1960 Rev. Vol. § 9.2201, et seq.,⁴ the financial responsibility act, and pay the fee of \$1.00 prescribed by Act No. 198, as amended. Persons applying for registration of any motor vehicle who are not covered by such a policy of public liability and property damage insurance shall pay a fee of \$35.00 under the act.

"2. Does the act provide any specific method for a person to establish that a motor vehicle is covered by insurance? If not, has the department of state promulgated regulations under the act covering this subject?"

No, this is an administrative detail to be prescribed by the secretary of state. No formal regulation has as yet been issued; however, after conferring with representatives of the insurance industry, the secretary has drafted a form of certificate to be furnished by the insurer evidencing the existence of a policy of public liability and property damage insurance and has announced that at least for the time being his office will accept as satisfactory proof of the existence of such a policy any of the following:

- a. Such a certificate by the insurer furnishing the required information with respect to the policy of insurance.
- b. Letter from the applicant's agent setting forth the same information.
- c. The policy itself.

"3. If a motor vehicle is covered by insurance at the time of registration for the 1966 registration year but the policy of insurance is thereafter cancelled or lapsed, would the owner have to pay the additional uninsured motorist fee at that time? How will this requirement be enforced?"

Section 3 (5) of Act 198, P.A. 1965, as amended by Act 389, P.A. 1965, specifics:

"(5) Upon the cancellation or lapse of a motor vehicle liability insurance policy, or if the person's insurance shall terminate by reason of the company with whom he is insured becoming insolvent or in bankruptcy or receivership, the owner of such automobile shall pay

¹ Section 216 was last amended by Act No. 248, P.A. of 1964, being M.S.A. Cur. Mat. § 9.1916. The Michigan vehicle code appears in C.L.S. 1961 § 257.1, et seq.

² Section 217 was last amended by Act No. 248, P.A. of 1964, being M.S.A. Cur. Mat. § 9.1917.

³ Act No. 198 became effective on November 1, 1965. See Section 31 of Act 198.

⁴ Certain sections were amended and two sections were added by Act Nos. 140 and 171, P.A. of 1964.

the uninsured motor vehicle fee established in subsection (2) or obtain insurance before operating the vehicle upon the highways of this state. Failure to do so constitutes a misdemeanor."

The legislature has clearly provided here that as of the date of the termination of such insurance coverage, it becomes incumbent upon the owner to pay the "uninsured motor vehicle fee" prescribed by Section 3 (2) or obtain insurance upon the vehicle before operating or permitting its operation upon the public highways. The amount of such fee is fixed by the amendatory act at \$35.00 for the registration year.

You also inquire as to how this requirement will be enforced. As far as the act is concerned, Section 4 (1) requires the owner or operator of a motor vehicle operated upon the public highways of the state to produce upon request of any peace officer evidence that either:

1. The vehicle is insured subject to limits specified by the act, or
2. The uninsured motor vehicle fee has been paid.

Section 4 (4) provides that an owner or operator who knowingly produces false evidence with respect thereto shall be guilty of a misdemeanor. In addition to the ordinary penalties provided by law therefor, conviction is grounds for the suspension by the secretary of state of the operator's license or chauffeur's license of such a person together with his motor vehicle registration for a period of not more than one year.

In order that the owner or operator will be able to produce evidence while driving that the vehicle is insured, the document presented to the secretary of state as evidence of that fact will be returned to him to be available for production for that purpose. That will be true whether it is a certificate, letter, or the policy of insurance. In addition there will be endorsed upon the certificate of registration the amount of the fee whether \$1.00 or \$35.00 paid in compliance with Act No. 198, as amended. Thus, should the vehicle not be insured, the registration certificate will evidence payment of the \$35.00 fee.

"4. If a person who has previously registered automobile X for the registration year which was covered by liability insurance and subsequently trades automobile X in upon the purchase of automobile Y:

"a. Will he be required to present evidence at the time of registering automobile Y that said vehicle is covered by public liability and property damage insurance?

"b. What evidence will he be required to present that automobile Y is covered by public liability and property damage insurance?"

Section 3 (2) and (3) of Act No. 198, P.A. 1965, as amended by Act 389, P.A. 1965, specifies:

"(2) Every person registering an uninsured motor vehicle in this state for the 1966 registration year, and for each year thereafter, shall pay annually at the time of registering the same, in addition to any other fee prescribed by law, a fee of \$35.00. Such fee shall not be paid in connection with a transfer of registration plates.

"(3) Every person registering any other motor vehicle in this state for the 1966 registration year, and for each year thereafter, shall pay annually at the time of registering the same, in addition to any other fee prescribed by law, a fee of \$1.00. Such fee shall not be paid in connection with a transfer of registration plates."

The law requires that at the time of registering any motor vehicle, new or used, the person applying therefor will be required to present evidence as to the existence of public liability and property damage insurance coverage, or payment of the uninsured motorist fee will be required.

As expressly stated in Section 3 (2) and (3) of Act 198, as amended, the owner of an insured or uninsured motor vehicle is not required to pay the same fee more than once during the same registration year by reason of the transfer of his registration plates to another vehicle. It will be necessary in registering automobile Y to produce evidence of insurance upon vehicle Y. In the event the owner does not produce evidence of insurance on vehicle Y, he will be subject to payment of the \$35.00 fee. If vehicle X was registered as uninsured by such person, registration plates are transferred to vehicle Y without an additional fee. In answer to question b, the proof of insurance required would be the same as is set forth in the answer to question 2 above.

"5. When an automobile dealer makes application upon behalf of a purchaser for the registration of a new or used vehicle, will the dealer be required to present evidence of public liability and property damage insurance upon said vehicle?"

The law clearly provides that such requirement is applicable to every person making application for the registration of a motor vehicle. Inability to present evidence of insurance will require payment of the \$35.00 fee except where the registration plates are being transferred and the \$35.00 fee has been previously paid.

"6. Can a Michigan resident who is injured by a nonresident uninsured motorist make a claim against the fund? Can he if the accident occurred outside the State of Michigan?"

That the accident must have occurred within the State of Michigan in order to qualify for the making of a claim against the fund is evidenced by the following provisions of the act. Section 6 (1), as amended by Act 389, P.A. 1965, provides:

"Where the death of or personal injury or property damage to any person or property is occasioned in this state by an uninsured motor vehicle, any person who would have a cause of action against the owner or driver of the uninsured motor vehicle in respect to the death or personal injury, or property damage except a person entitled to make an application under section 7, may make application, in a form prescribed by the secretary, for payment out of the fund subject to the limitations provided in this act for all damages in respect to the death or personal injury and for damages in excess of \$200.00 in respect to property damage." (Emphasis supplied)

Section 7 (1), as amended by Act 389, P.A. 1965, specifies:

"Subject to section 8, where a person recovers in any court in this state a judgment for damages on account of injury to or the death of any person or property damage *occasioned in this state* by an uninsured motor vehicle *owned or operated by the judgment debtor within this state*, upon the determination of all proceedings, including appeals, he may make application, in the form prescribed by the secretary and the secretary shall pay the amount of the judgment or of the unsatisfied portion thereof, subject to the limitations provided in this act with respect to death or personal injury and the amount of the judgment or of the unsatisfied portion thereof, in excess of \$200.00 with respect to property damage out of the fund." (Emphasis supplied)

See also similar qualifying phrases in Sections 12, 13, 15, and 23.

The second of the two questions numbered six is accordingly answered in the negative.

Whether a Michigan resident who suffers personal injury or property damage caused in this state by a nonresident uninsured motorist is authorized to make a claim against the fund, presents a more difficult question.

The legislature has provided that the fund is to be financed through the payment of fees, imposed by this act, only on residents of Michigan;⁵ that the purpose of the fund is to provide a source of recovery to residents of Michigan for damages suffered in automobile accidents caused by uninsured motorists; and that the money available for this purpose is derived solely from the fees paid into the fund by these same residents of Michigan. It is also obvious that if a great many claims are made against the fund, as a result of damage caused by nonresidents, who have made no contribution to the fund, this might have a tendency to impair the solvency of the fund.

In answering this question, we take cognizance of certain undisputed rules of statutory construction.

1. The words of a statute must be given their ordinary and usual meaning.

Hammons v. Franzblau, 331 Mich. 572.

Jewel Tea Company, Inc. v. Board of Pharmacy, 335 Mich. 673.

2. Full effect must be given to the intent of the legislature.

Van Antwerp v. State, 334 Mich. 593, 599-600, citing *City of Grand Rapids v. Crocker*, 219 Mich. 178, 182, 183.

3. Exceptions in a statute are carefully scrutinized and not extended beyond their plain meaning. The rule of construction is that exceptions to an act shall appear in the act.

Grand Rapids Motor Coach Co. v. Public Service Commission,

⁵ Section 3 (2) and (3), provide for the collection of certain fees from persons registering vehicles in this state. Relevant provisions of the Michigan vehicle code, which govern the registration of vehicles, make it clear, with minor exceptions not relevant here, that only residents of Michigan are required to register their vehicles in Michigan.

323 Mich. 624, and *Arends v. Grand Rapids Railway Co.*, 172 Mich. 448.

4. Statutes relating to the same subject, being in pari materia, should be construed together and effect given to all of them.

In re Jones Estate, 334 Mich. 392.

Palmer v. State Land Office Board, 304 Mich. 628.

Therefore the question of whether a Michigan resident can recover for damages suffered under these circumstances, depends on the intent of the legislature in enacting Act 198, as amended, and that intent must be derived from the several provisions of the act itself.

A review of Act 198, as amended, makes it clear that the legislature intended to provide a source of recovery for victims of uninsured motorists. The legislature did, however, place certain restrictions and limitations in the act with respect to the persons who could make a claim from the fund, under what circumstances they could make such a claim, and the amount and type of damages which could be included in such claim.

In Act 198, the legislature provides for the creation of a motor vehicle accident claims fund and also provides a source of revenue for that fund. (Sec. 3)

The act grants the right to make a claim from that fund to " * * * any person * * *," who would have a cause of action against the owner or driver of an uninsured motor vehicle which causes death, personal injury or property damage. This right is limited, however, to those cases where the death, personal injury or property damage is occasioned, " * * * in this state * * *." (Secs. 6 (1), 7 (1), 12 and 15)

The right to make such a claim is further limited to residents of this state and residents of jurisdictions in which recourse of a substantially similar character to that provided by Act 198 is afforded to residents of this state. (Sec. 25)

The amount of the claim which is payable from the fund is also limited. The fund will only pay for property damage in any one accident which exceeds \$200.00 and does not exceed \$5,000.00 exclusive of costs. The fund will pay for all personal injury, subject to a limit of \$10,000.00 for death or injury to one person and a limit of \$20,000.00 for death or injury of more than one person, in any one accident. (Secs. 6 (1), 7 (1), 19, 23) The amount of the claim which is payable from the fund is further limited to exclude damages which are compensated for under a policy of insurance or under a contract, agreement or arrangement providing for the payment of compensation, indemnity or other benefits. (Sec. 22)

After setting up this fund, granting a right to make a claim from the fund to certain persons, and then limiting the amount which may be paid to those persons from the fund, Act 198 further provides that no payment can be made to any person unless the secretary is subrogated, either contractually or statutorily, to the rights of the person to whom the payment is made.

Finally, with the obvious intention of continuing a concept which has been the core of the Financial Responsibility Law, and also for the pur-

pose of improving the financial condition of the fund, the legislature has authorized the secretary to exercise his subrogation rights against the person who caused the damage, and to take whatever action is necessary to recover from that person, the amount paid from the fund. The secretary is authorized to suspend the operator's license and vehicle registration of such person, and to continue that suspension in force until such time as the fund has been repaid in full, or the person enters into a partial payment agreement and takes out financial responsibility insurance.

By reference to the various provisions above, it is obvious that the legislature has placed no limitation on recovery from the fund by reason of the status of the claimant himself. Even though a person is a pedestrian or a passenger in a vehicle at the time of the accident, doesn't own a vehicle and is therefore not subject to the requirement that he pay a fee into the accident claims fund, he is still eligible to make a claim from the fund. There is a limitation that a claim may be made from the fund only with respect to damages caused by an uninsured motor vehicle, but there is no further specific limitation that such uninsured vehicle be registered in Michigan.

Applying the principle that exemptions in the statute are not extended beyond their plain meaning, *supra*, we may therefore conclude that since the legislature failed to specifically include a limitation that no claims would be paid where the damages are caused by a nonresident uninsured motorist, the legislature did not intend to limit claims from the fund in this manner.

There remains however one difficulty. As noted above, when a claim is made from the fund, the secretary is either contractually or statutorily subrogated to the rights of the claimant and is authorized to take appropriate action against the offending party to recover the amount which the fund has paid out. Sections 6 and 10 of the act also contain appropriate provisions authorizing the secretary to suspend the operator's or chauffeur's license and the owner's registration of the person who caused the damage and to continue that suspension until such time as the debtor has either repaid the amount of the debt in full to the fund, or has commenced installment payments and taken out financial responsibility insurance. Sections 6 and 10 do not specifically authorize the secretary to suspend the nonresident driving privileges of a nonresident, uninsured motorist, who is found to have been at fault in the accident.

If the secretary pays a claim out of the fund, resulting from damage caused by a nonresident uninsured motorist, whose operator's license and vehicle registrations have been issued by his state of residence, the secretary has no specific authority under Act 198 to suspend such license or registration. It would seem, therefore, that the secretary would have no way of effectively attempting to recover for the fund amounts paid out with respect to damages caused by a nonresident. From this it might be inferred that the legislature did not in the first place intend that the secretary should make payments out of the fund with respect to damages caused by nonresidents.

It must be noted, however, that Act 198 and Chapter V of Act 300, P.A. 1949, as amended, (The Financial Responsibility Law) must be

construed in pari materia. Both Act No. 198 and Chapter V of Act 300 relate to and deal with the same subject, i.e., damages resulting from accidents involving uninsured motorists. No part of Chapter V of Act 300 was repealed by Act No. 198. A person who suffers damage at the hands of an uninsured motorist, must comply with the provisions of Act No. 198 in order to recover for those damages from the motor vehicle accident claims fund. This same person also has recourse to several provisions of Chapter V to aid him in seeking recovery for his damages. The provisions of Chapter V also apply independently to the uninsured motorist who is involved in an accident. And in fact, Act No. 198 defines an "uninsured motor vehicle" by reference to the provisions of Chapter V of Act No. 300.

In addition, both Chapter V and Act No. 198 deal in appropriate ways with uninsured motorists against whom judgments are rendered for damages caused in automobile accidents. Act 198 authorizes the secretary, under appropriate circumstances, to pay to the injured party the amount of the judgment and to take appropriate steps to suspend the operator's license of the judgment debtor. Entirely independently, Chapter V of Act 300 authorizes the secretary of state to suspend either the operator's license or the nonresident driving privileges of a judgment debtor against whom a judgment has been rendered as a result of an automobile accident when that judgment has remained unpaid for 30 days. The provisions of Chapter V of Act 300 make it clear that the secretary is authorized to take appropriate action against not only the operator's license of a Michigan resident, but the driving privileges of a nonresident who would otherwise be authorized to drive in Michigan if he possessed a valid operator's license issued by another jurisdiction.⁶

It is therefore my opinion for the reasons set forth above that a Michigan resident injured in Michigan by a nonresident, uninsured motorist is authorized to make a claim against the motor vehicle accident claims fund.

FRANK J. KELLEY,
Attorney General.

⁶ Sec. 302 (3) and (4), Michigan vehicle code. (M.S.A. 1960 Rev. Vol. § 9.2002).