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Financial Responsibility Act for the Operation of Motor Vehicles

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CURRENT LEGISLATION

FINANCIAL RESPONSIBILITY ACT FOR THE OPERATION OF MOTOR VEHICLES.—The New York State Bar Association in outlining a general program for reducing automobile accidents¹ recommended, among other things, that measures be taken to encourage the automobile-owning public to carry automobile liability insurance,² and to adopt a financial responsibility law similar to that of New Hampshire.³ “Financial responsibility” in reference to motor vehicle acts has a technical meaning. It is defined as furnishing proof of the ability to respond in damages for future liabilities, in the amounts of \$5,000.00 for bodily injury or death caused to any one person; \$10,000.00 for such injury or death caused to two or more persons, subject to the

¹ 63 REP. N. Y. STATE BAR ASS'N (1940) 319.

² For history of the financial responsibility acts see 11 UN. LAWS ANN. (1938) 126. It will be gleaned from the material that follows above that a financial responsibility law is akin to the *ex delicto* rule which gives every dog the right to one bite. That is, every driver is entitled to one accident before the financial responsibility laws affect him. Compulsory insurance on the other hand requires insurance before the first accident, not only because the first accident is apt to be the last, but primarily to give the injured person a better chance to collect his damages. Although compulsory insurance seems preferable, only one state has adopted it, while fifteen states have the financial responsibility laws. This incongruity may be explained when we realize the powerful pressure that probably has been exerted to achieve this effect. Those most likely to exert such pressure are the insurance companies because they are principally interested in the result. The result is to get the most possible business with the least possible risk. This is admirably achieved through the financial responsibility acts. They can be made to be so stringent that almost every driver would have to insure; but not so strict that every driver would absolutely have to insure before he could drive. This is important because where compulsory insurance exists, people are more apt to start suits where they know every car is insured; and juries are prone to be lenient in awarding judgments where they know that the insurance companies are bound to pay. But under the financial responsibility laws some doubt exists as to whether the driver is insured and insurance companies are not bound to suffer from so many suits and judgments as under compulsory insurance. That the insurance companies have the power to influence legislation and do so, is demonstrated in the Report by the Temporary National Economic Committee in its monograph on insurance. It is stated therein that as many as 10,000 state and national bills were examined by the insurance lobby and that the lobby fought those it thought objectionable. But the sphere of influence extends much farther afield, as the report shows. This could be readily seen in New York City when this monograph was issued. Two large newspapers, the New York Daily News and the Mirror, omitted all mention of it. The Herald Tribune refuted it in half of its 1500 words, and the New York Times printed the report on page 29. When it is realized that \$109,600,000,000 of life insurance policies alone are in force, nothing need be said further to show this report's importance to every citizen in the United States. The only adequate write-up was by a paper which takes no advertising, “PM”; it devoted six whole pages to the report.

³ N. H. Laws 1937, c. 161, § 17.

limit of \$5,000.00 for one person; and \$1,000.00 for property damage, arising from the use or ownership of an automobile.⁴

Upon any reasonable ground appearing on his records the Commissioner of Motor Vehicles is authorized to suspend an operator's license and registration papers and plates⁵ unless such person give proof of his financial responsibility.⁶ Whenever the Commissioner under any law of this state revokes the driver's license of a person convicted under the Vehicle and Traffic Law, the registration papers and plates of every car owned by such person shall also be suspended unless proof of financial responsibility is given the Commissioner and thereafter maintained.⁷ Reversal on appeal causes this statute to be inapplicable;⁸ but forfeiture of bail is tantamount to conviction.⁹ The Code of Criminal Procedure § 335-a requires that before a plea of guilty be accepted by a magistrate, the driver must be warned that he is liable to loss of his license. Where the magistrate accepted a plea of guilty to driving while intoxicated without such a warning, the Commissioner was required to restore the motorist's license and could not require proof of financial responsibility under this section.¹⁰

Where a judgment in excess of twenty-five dollars results for damages to property, or for any amount because of personal injuries caused, and such judgment is not satisfied within fifteen days the person's license and registration plates are suspended.¹¹ This is the old New York law revamped by changing the amount of property damage from \$100 to \$25.¹² Formerly it also included the next two sections of our present law. Where the judgments are in excess of the following amounts, the satisfaction need not require payment in full. They are deemed satisfied when \$5,000 has been credited towards any one person having won a judgment because of bodily injury or death; where the amount credited is \$10,000 for two or more persons subject to the limit of \$5,000 for one person, and where \$1,000 has been credited upon a judgment because of property damage.¹³ But no suspension of a license shall result where a judgment-debtor secures a court order permitting the payment of the judgment in installments.¹⁴ A default will result in suspension again, but the judgment-creditor may consent in writing, and if the Commissioner in the exercise of his discretion permits it, the debtor may drive for six

⁴ NEW YORK VEHICLE AND TRAFFIC LAW § 94-1.

⁵ This is an exception in the New York law to the one-accident rule; the commissioner can remove for vicious propensities, that is, upon any reasonable grounds appearing on his records. The other exception is removal of license for traffic violations until proof of financial responsibility is furnished.

⁶ N. Y. V. & T. LAW § 94-c, e.

⁷ N. Y. V. & T. LAW § 94-a.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Nemo v. Mealey*, 175 Misc. 952, 25 N. Y. S. (2d) 632 (1940).

¹¹ N. Y. V. & T. LAW § 94-b.

¹² N. Y. Laws 1929, c. 695; L. 1939, c. 618.

¹³ N. Y. V. & T. LAW § 94-c.

¹⁴ N. Y. V. & T. LAW § 94-d.

months "from the date of such consent and thereafter until such consent is revoked in writing", provided, however, that the debtor give proof of financial responsibility.¹⁵ The old section providing that a discharge in bankruptcy does not relieve the judgment-debtor from any of the requirements of this section has been incorporated into our present law too.¹⁶

All these preceding sections have been held constitutional as a valid exercise of police power. There is no contravention of the Bankruptcy Act because the debtor is not compelled to pay his debt, but merely has his license suspended.¹⁷ One Court of Appeals case has held this section mandatory.¹⁸

Section 94-e is the recent enactment which caused most people to procure their insurance.¹⁹ It requires the Commissioner to remove the license of any driver operating a motor vehicle, or the registration plates of any owner whose car was involved in any accident resulting in "bodily injury or death, or where damages to property are in excess of twenty-five dollars".²⁰ The only limitation placed upon the public officer by this section is that he can't remove the license or registration plates and papers before ten days expire after receipt by him of notice of the accident, but he must remove them within forty-five days unless the owner or the driver immediately furnishes sufficient security to satisfy any judgment for damages which might result from such accident in favor of the aggrieved person, and in addition, either the driver or owner or both shall immediately furnish proof of financial responsibility for the future.²¹ It is provided, however, that if such owner or driver is insured to certain amounts (it always requires \$5,000, \$10,000 and \$1,000) by bond or insurance policy for every car owned, the Commissioner shall not require security or proof

¹⁵ *Ibid.*; whether the consent can be revoked during the six-months period is doubtful from the wording of the statute. The general intent of the article may permit such revocation, however.

¹⁶ N. Y. V. & T. LAW § 94-L(e); (1942) 16 ST. JOHN'S L. REV. 246, *supra*.

¹⁷ *Munz v. Harnett*, 6 F. Supp. 158 (D. C. 1933); *Reitz v. Mealey*, 34 F. Supp. 532 (D. C. N. Y. 1940); *Jones v. Harnett*, 246 App. Div. 7, 286 N. Y. Supp. 220 (1936). *But see In re Perkins*, 3 F. Supp. 697 (1933).

¹⁸ *Jones v. Harnett*, 271 N. Y. 626, 13 N. E. (2d) 455 (1936).

¹⁹ It was advertised by the state on billboards and pamphlets; and the insurance companies aided the campaign by divers means of advertisement at their disposal.

²⁰ The section does not clearly state that it is applicable to bodily injury, no matter how slight, and to property damage in excess of twenty-five dollars, but this distinction is made in §§ 94-b, f; and the Committee's Report on Automobile Accident Prevention suggested the distinction. 63 REP. N. Y. BAR ASS'N (1940) 323: "Only property damage claims amounting to \$25.00 or less are excluded from the operation of the act", urging the adoption of the New Hampshire law.

²¹ "For the future" is redundant, but it is used in our statutes continually, even though financial responsibility is defined as proof of the ability to respond in damages for the future § 94-L. But if it aids in understanding, it should be left that way.

from such owner or operator.²² The security required may in no event exceed the amounts specified in satisfying proof of financial responsibility,²³ and the security can only be used to satisfy a judgment arising out of that particular accident.²⁴ If the action is not commenced within one year the security must be returned.²⁵ This section does not apply against an owner where a person drives the owner's car without his consent express or implied.²⁶ A person driving with consent need not post security or proof if the owner is insured; today every owner's insurance covers such person because it is required by Section 94-q (*infra*). In lieu of a deposit of security, when required above, the driver or owner may sign a confession of judgment, if the injured person, or his legal representative, consents, and pay it in installments. In the event the debtor fails to pay an installment, his license is revoked until such judgment is satisfied.²⁷ But confession of judgment shall not be a substitute to maintenance of proof of financial responsibility in the future.²⁸

The New Hampshire law is very similar to ours stated above, only differing in that it is more stringent since it requires the Commissioner to remove the license of the person immediately upon receiving the report of the accident.²⁹ New Jersey also has a statute similar to the New York law.³⁰ These enactments have been held constitutional.³¹

The statute aiding the enforcement of 94-e, requires every motorist involved in an accident anywhere within New York State in which any person is killed or injured, or in which damage to the property of any one person including himself, in excess of twenty-five dollars is sustained, shall immediately report the matter in writing to the Commissioner.³² If the driver is incapable of making the report, either another participant, or the owner, if he wasn't driving, must make it. The penalty is suspension of license or registration, and punishment as a misdemeanor.³³ Under the old law any type of accident required a report; today every accident except for damage to property

²² N. Y. V. & T. LAW § 94-e(a).

²³ *Id.* § 94-e(b). The amounts are \$5,000, \$10,000 and \$1,000.

²⁴ N. Y. V. & T. LAW § 94-e(c).

²⁵ *Ibid.*

²⁶ *Id.* § 94-e(d). This section is required to make the statute constitutional. 174 Mich. 371, 140 N. W. 615 (1913); 4 A. L. R. 361.

²⁷ The statutes dealing with satisfaction of judgment become applicable after the satisfaction of judgment is signed. N. Y. V. & T. LAW §§ 94-c, 94-d, discussed in body of this note above.

²⁸ N. Y. V. & T. LAW § 94-e(d).

²⁹ N. H. Laws 1937, c. 161, § 17, AUTO LIABILITY INS. ACT.

³⁰ N. J. Laws 1931, c. 169, p. 334, MOT. VEH. ST. § 39:6-1(g).

³¹ Garford Trucking v. Hoffman, 114 N. J. L. 522, 177 A. & L. 882 (1935); Rosenblum v. Griffin, 89 N. H. 314, 197 A. & L. 701 (1938).

³² N. Y. Laws 1942, c. 80, amending N. Y. V. & T. LAW § 49-f.

³³ *Ibid.* The writer is grateful to Assemblyman Floyd E. Anderson for his prompt reply to a request for a copy of his bill which was enacted at the present (1942) session of the Legislature.

of \$25 or less, has to be reported. Another important innovation is that of adding the driver's own property to the amount; formerly, in a still earlier statute, his property was not taken into account.³⁴

Proof of financial responsibility is proof of the ability to respond in damages of future liabilities. The statutes which tell when such proof is required are not redundant in stating "financial responsibility must be maintained in the future". That statement requires the person to leave with the Commissioner proof of financial responsibility until no longer required. When such proof is required, whether to be maintained or not, it must cover each automobile registered by such person, in the amounts required (\$5,000, \$10,000 and \$1,000) for each automobile.³⁵

The different forms of furnishing proof of financial responsibility are by motor vehicle liability insurance, bonds duly executed, or deposits of money or securities.³⁶ The proof, when it must be maintained, may consist of a certificate issued by the insurance company,³⁷ or a bond,³⁸ or a receipt showing a deposit with the Department of Taxation and Finance of \$11,000 in cash, or of legal securities.³⁹ A person having given proof by one of the methods above described, may substitute any other proof conforming to the requirements of this statute;⁴⁰ and if any proof fails to fulfill the purpose of financial responsibility, the Commissioner shall require other proof. The penalty of suspension is the sanction for these provisions.⁴¹ The penalty of forging proof of financial responsibility results in fines of not more than \$1,000, or imprisonment of not more than thirty days or both.⁴²

Where an insurance carrier's certificate is furnished the Commissioner, he must refuse it unless every car of the person is covered in the amounts required;⁴³ this is also true of bonds,⁴⁴ or where cash or securities were given.⁴⁵ Where an insurance policy issues which only insures the automobile, and not the operator when driving another car, where he has given a certificate of this insurance company as proof of financial responsibility, it is unlawful for him to drive another's car.⁴⁶ This is noted upon his license. But if he takes out an operator's policy of liability insurance, covering the operator, not the car, he can drive any automobile.⁴⁷ Such a policy may also be

³⁴ OP. ATTY. GEN. 207 (1935).

³⁵ N. Y. V. & T. LAW § 94-l.

³⁶ *Id.* § 94-m.

³⁷ *Id.* § 94-n.

³⁸ *Id.* § 94-u.

³⁹ *Id.* § 94-v.

⁴⁰ N. Y. V. & T. LAW § 94-w.

⁴¹ *Id.* § 94-x.

⁴² *Id.* § 94-bb.

⁴³ *Id.* § 94-n(b).

⁴⁴ By necessary implications, N. Y. V. & T. LAW § 94-U(c).

⁴⁵ N. Y. V. & T. LAW § 94-L, last sentence.

⁴⁶ N. Y. V. & T. LAW § 94-o.

⁴⁷ *Ibid.*

given where the person must give proof of financial responsibility but owns no car.⁴⁸ The insurance policy to be sufficient must be issued by an authorized carrier of this state,⁴⁹ and shall insure the person named therein and any other person using or responsible for the use of such motor vehicle with the consent, express or implied, of such named insured.⁵⁰ Every liability policy must conform to Section 94-q, because the company's policy must be submitted to the Commissioner for approval, and he can only sanction those conforming to this law.⁵¹

Bonds are subject to the same requirement as insurance policies.⁵² For both bonds and insurance policies it is provided that before cancellation is effective,⁵³ ten days' written notice must be given the Commissioner. Where cash or securities are deposited they are no longer exempt from attachment or levy today,⁵⁴ and where so attached, additional security is necessary to maintain \$11,000 for each car owned by such person. No cash or securities will be accepted where any unsatisfied judgments are on file in the county where such person resides.⁵⁵

Where the suspension is due to non-payment of the judgment, it continues until satisfied, either by crediting the amounts to the sums mentioned (\$5,000, \$10,000, \$1,000) or by receiving a court order permitting payment of the judgment in installments and the debtor gives proof of his financial responsibility in the future.⁵⁶ The suspension under this last section continues for every car either the driver or owner possessed, nor can new cars be registered in his name until he complies with this section; unless he obtains a release, a judgment in his favor in an action at law to recover damages from such accident, or satisfies the judgment and thereafter maintains proof of financial responsibility. If no suit is brought within one year by the aggrieved person or his representative, the Commissioner can return the license and registration plates of such person if he maintains proof of financial responsibility. The suspension by statute seems to be absolute until satisfied or the judgment's statute of limitation is tolled. The only new limitation is that requiring the aggrieved person to commence his suit within one year, to reach the security deposited by the driver or owner, if such a deposit was made. There are three situations where a person, who has his license suspended and his registration certificates and plates removed, can still have a car registered in his name; when he's a trustee under

⁴⁸ *Ibid.*

⁴⁹ N. Y. V. & T. LAW § 94-q.

⁵⁰ *Ibid.*; 264 N. Y. 545, 191 N. E. 557 (1931).

⁵¹ N. Y. V. & T. LAW § 94-q.

⁵² *Id.* § 94-u.

⁵³ *Id.* §§ 94-s, 94-u(d).

⁵⁴ Old V. & T. LAW § 94-c, L. 1939, c. 390.

⁵⁵ N. Y. V. & T. LAW § 94-v.

⁵⁶ *Id.* § 94-h.

the Federal Bankruptcy Act, if he had a mortgage on a car before this Act went into effect, and if he is a judgment-creditor in an action where the debtor's license was suspended.⁵⁷

Such proof of financial responsibility which was left with the Commissioner may be released in the following instances: Upon death, or permanent incapacity of the person on whose behalf the proof was filed,⁵⁸ or when the person surrenders his license and registration plates. But the Commissioner in the latter instance is not to return such proof in the event an action for damages for a liability in this article is pending; or a judgment for such liability is outstanding and unsatisfied, or the Commissioner has received notice within three months that the person was involved in any automobile accident. An affidavit of the applicant constitutes such evidence of the non-existence of the foregoing facts in the absence of evidence to the contrary in the records of the bureau.⁵⁹ Such person again applying for a license, must again give proof of financial responsibility. A reading of all the sections involved seems to indicate that once financial responsibility is furnished, it must thereafter be maintained except in the instances mentioned above.

All the sections of this article are applicable to non-residents as well as residents.⁶⁰ Where a non-resident's license is revoked for any of the reasons under this section the Commissioner shall send a certified copy of the reason for suspension to the Commissioner of motor vehicles where such non-residents live.⁶¹ The Commissioner is also authorized to take action as anywhere required in this article upon receiving proof that any person in another state, District of Columbia, or territory or lands in continental United States (exclusive of Alaska or a province of Canada) had his driving privileges suspended in such other place.⁶² This statute refers to non-residents within New York, but as similar words are also used in the sections which are applicable to residents,⁶³ the place where the driver lost his right to drive is no longer important when seeking to apply this Act within New York, either as against residents or non-residents. The non-resident who wishes to furnish proof of financial responsibility by filing a certificate of a foreign insurance carrier, must be rejected by the Commissioner unless the carrier agrees to execute a power of attorney authorizing the Commissioner to accept service on its behalf; that the carrier agree to adopt a resolution binding upon it, declaring that its policies shall be deemed to be varied to comply with the law of this state; that it accept as final and binding any judgment by a court of competent jurisdiction in this state in any action arising

⁵⁷ *Id.* § 94-L.

⁵⁸ *Id.* § 94-y.

⁵⁹ *Ibid.*

⁶⁰ N. Y. V. & T. LAW § 94-i.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ N. Y. V. & T. LAW §§ 94-a, 94-b, 94-e.

out of a motor vehicle accident.⁶⁴ This is also a new section, and it is a valid method of exercising jurisdiction over a foreign insurance corporation.⁶⁵

Exemptions from the operation of this article are made for particular persons and certain motor vehicles. This article does not apply to any motor vehicle for the operation of which security is required to be furnished under section seventeen of this chapter, *i.e.*, common carriers like taxi-cabs, thus overruling *Jones v. Hartnett* in that respect.⁶⁶ Nor does it apply to any motor vehicle registered under Section 18, automobiles belonging to the public service or transit commission; nor to any cars owned by the state or a political subdivision thereof.⁶⁷ Any person having registered in his name more than twenty-five motor vehicles may become a self-insurer if the Commissioner, in his discretion, reasonably believes that this person can satisfy any judgments arising under this article. This is a privilege and upon reasonable grounds may be cancelled.⁶⁸

The foregoing classifications have been held valid elsewhere and there is no doubt they will be sustained here.⁶⁹

The expenses of administering this article are charged to all insurance carriers who issued automobile liability insurance policies, to all self-insurers and persons who gave proof of financial responsibility by bond or deposit of money or securities, *pro rata* in proportion to the number of motor vehicles in connection with which proof of financial responsibility was furnished by them.⁷⁰

Finally this article is to be construed towards uniformity in all the states.⁷¹ It is not to be construed as preventing any other process,⁷² nor as repealing any other motor vehicle laws except Article 6-a.⁷³ And if any part is held to be unconstitutional, it shall not affect the validity of the remaining parts of this article.⁷⁴

BERNARD FROMARTZ.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.—In a joint letter to Congress dated September 1, 1917, Secretaries Baker and Daniel urged the earliest possible consideration of a bill "to free

⁶⁴ *Id.* § 94-p.

⁶⁵ *Meirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 N. Y. Supp. 165, 60 Sup. Ct. 153 (1939); *Gilbert v. Burnstine*, 255 N. Y. 348, 174 N. E. 705 (1931).

⁶⁶ 271 N. Y. 626, 13 N. E. (2d) 455 (1936).

⁶⁷ N. Y. V. & T. LAW § 94-ff.

⁶⁸ *Id.* § 94-gg.

⁶⁹ *Re Opinion of Justices*, 251 Mass. 509, 147 N. E. 681 (1925); 5 AM. JURIS. § 520, 39 A. L. R. 1028, 69 A. L. R. 397.

⁷⁰ N. Y. V. & T. LAW § 94-ii.

⁷¹ *Id.* § 94-jj.

⁷² *Id.* § 94-hh.

⁷³ *Id.* § 94-mm.

⁷⁴ *Id.* § 94-nn.