

FILE

Subject

*State Revisions
Legislature 1974*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

January 28, 1974

Opinion No. 74-29

The Honorable Robert F. Bennett
President of the Senate
Senate Chamber

The Honorable Duane S. McGill
Speaker
House of Representatives

Gentlemen:

Thank you for your letter of January 25, 1974, enclosing a draft of a revised version of the Kansas Automobile Injury Reparation Act which you state is intended to correct the constitutional infirmities of the present Act found by the Shawnee County District Court.

Upon receipt of your letter we reviewed the bench decision of Judge Carpenter handed down on January 4, 1974, the Journal Entry of Judgment in the case of Manzanares v. Bell filed and entered by the court on January 23, 1974, the court's Memorandum Decision dated January 24, 1974 and the proposed changes in Substitute for House Bill 1129, now cited as K.S.A. 40-3101 et seq.

The thrust of the court's decision holding the act unconstitutional and the various examples given demonstrating the court's interpretation of the meaning of the Act is directed to Sections 13 and 17 of the Act. The court interpreted those sections in a manner that violated various provisions of the federal and state constitutions. We have carefully studied the proposed

amendments to the Act in the light of the conclusions reached by the court in his Memorandum Opinion. We are of the opinion that the proposed amendments, including the proposed amendments to Sections 13 and 17 and to the title of the Act, satisfy and remove the constitutional infirmities found by Judge Carpenter in his Memorandum Opinion.

In that connection the changes made on pages 4 and 5 in Section 13 of the Act do in our opinion clarify the intent of the legislature and remove the constitutional infirmity found by the court, since the proposed change makes it clear that upon recovery of damages in tort for economic loss, the insurer who has paid personal injury protection benefits to its insured is entitled to be repaid only those amounts recovered by the insured in a tort action which are "duplicative" of the personal injury protection benefits paid by the insurer to its insured.

A further amendment to eliminate the forgoing constitutional impairment alleged by the court is found in the suggested revision to Section 17 that eliminates Section 17 (a) which the court found could produce an unconstitutional result in certain hypothetical cases because of unequal treatment of two Kansas residents, both with no-fault insurance.

The changes in Section 17 do in our opinion clearly satisfy the constitutional objection to that section posed by Judge Carpenter in his opinion. Under Section 17 as now proposed it is clear that there is no limitation on the right to sue in tort for economic loss resulting from an automobile accident occurring in Kansas regardless of whether the person filing the action or defending the action is a resident or non-resident and regardless of whether he is or is not required to carry a Kansas No-Fault policy. It is also clear that no person, resident or non-resident, insured or uninsured, has a right to maintain an action in tort for "pain, suffering, mental anguish, inconvenience and other non-pecuniary loss" unless such person has reached the medical threshold of \$500 or has other serious injuries as itemized in Section 17. No person is prohibited from maintaining an action for general damages above itemized, whether he is a resident, non-resident, insured or uninsured, if his medical expenses have reached the \$500 threshold, or he has incurred serious injury as itemized in Section 17.

We believe we have fully answered the questions posed in your letter of January 25, 1974, however if any additional questions come to your attention whereby we may be of assistance, please do not hesitate to contact our office.

Yours very truly,



VERN MILLER
Attorney General