

STATE OF KANSAS

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Curt T. Schneider
Attorney General

April 15, 1977

ATTORNEY GENERAL OPINION NO. 77-123

The Honorable Robert F. Bennett
Governor of Kansas
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Motor Vehicles--Insurance--Rights of Action

Synopsis: Section 4 of 1977 House Bill 2490 does not confer upon injured persons any right of action against the responsible tortfeasor which is in conflict with existing provisions of the Kansas Automobile Injury Reparations Act, K.S.A. 1976 Supp. 40-3101 et seq.

* * *

Dear Governor:

I have your letter of April 12, 1977, concerning 1977 House Bill No. 2490, and particularly, that portion of section 4(a) which states thus:

"When the injury for which personal injury protection benefits are payable under this act are [sic] caused under circumstances creating a legal liability against a tortfeasor pursuant to K.S.A. 1976 Supp. 40-3117, the injured person, his or her dependents or personal representatives shall have the right to pursue his, her or their remedy by proper action in a court of competent jurisdiction against such tortfeasor." [Emphasis supplied.]

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As you point out, K.S.A. 1976 Supp. 40-3117 permits an injured person to pursue his or her remedy against the tortfeasor only in the event the injury requires medical treatment described in the act having a reasonable value of five hundred dollars or more, or if the injury falls within the class described in that statute. You question whether there is any conflict between these two provisions. I find no conflict. The right of action which is provided by section 4(a) applies specifically only in those circumstances when the injured person may claim damages for pain, suffering, mental anguish, inconvenience and other nonpecuniary loss against the tortfeasor under the existing K.S.A. 1976 Supp. 40-3117. There seems to be no conflict whatever; on the contrary, new section 4(a) appears to correspond fully with the existing right of action provided by K.S.A. 1976 Supp. 40-3117.

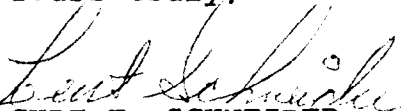
Secondly, you request my general opinion as to how section 4 of House Bill 2490 affects the Kansas no-fault insurance act, and whether in my judgment the public would be better protected by passage of this bill rather than by its veto and subsequent study. Sections 1, 2 and 3 include much-needed provisions which will permit more effective enforcement of the mandatory insurance requirements of the act, in order to reduce the number of uninsured motorists operating on Kansas highways. These sections are likely to enhance substantially the protection afforded motorists under the Kansas Automobile Injury Reparations Act. Moreover, I find nothing in section 4 which will in any way adversely affect motorists under the act. On the contrary, although I am not fully acquainted with the objections of the insurance industry to this section, I understand that they were fully aired in both the House and the Senate, whose approval of the bill reflects a legislative judgment that section 4 is desirable to assure that monies recovered by an injured person from the responsible tortfeasor, in which the insurer may share to the extent of personal injury protection benefits paid prior to such award, shall not be unduly reduced by the payment of fees and costs for which the insurer might equitably be deemed responsible. Certainly, I cannot substitute my judgment on this question of public policy for that of the legislature in responding to your request for my views on the bill.

Obviously, in considering the bill, you must make your own judgment how the public interest will best be served. I can only advise you that, first, I find no provisions in the bill, including section 4, which will in any way reduce the protection afforded injured persons under the Kansas Automobile Injury Reparations Act, K.S.A. 1976 Supp. 40-3101 et seq., and secondly, that it does include features which will provide more effective enforcement of the mandatory insurance requirements of the act to

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diminish the notorious disregard of those requirements by some motorists.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj