



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

October 31, 1984

ATTORNEY GENERAL OPINION NO. 84-113

Bert Cantwell
Superintendent
Kansas Highway Patrol
122 SW Seventh
Topeka, Kansas 66603

Re: Insurance -- Kansas Automobile Injury Reparations Act - - Motor Vehicle Liability Insurance; Applicability to Non-Resident Motorists

Synopsis: As amended by L. 1984, ch. 174, §2, K.S.A. 1983 Supp. 40-3104 requires any person operating a motor vehicle on a Kansas highway to display evidence of financial security, which is defined to mean documentation that the motor vehicle was covered by a policy of liability insurance. The statute is included within K.S.A. 40-3101 et seq., the Kansas Automobile Injury Reparations Act, which has been construed to apply to non-resident motorists operating motor vehicles in Kansas. Accordingly, the provisions of K.S.A. 1983 Supp. 40-3104, as amended, including the penalty provisions for failure to produce evidence of financial security following the issuance of a citation, apply to non-resident motorists who operate motor vehicles in this state. Cited herein: K.S.A. 8-1604, as amended by L. 1984, ch. 174; K.S.A. 40-3103; K.S.A. 1983 Supp. 40-3104, as amended by L. 1984, ch. 174; K.S.A. 40-3106.

*

*

*

Bert Cantwell
Page Two

Dear Mr. Cantwell:

As Superintendent of the Kansas Highway Patrol, you request our opinion on the applicability of K.S.A. 40-3104(d), as amended by L. 1984, ch. 174, §2, to non-residents traveling on Kansas highways. As amended, the statute reads in pertinent part:

"(d) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer."
(emphasis added).

K.S.A. 40-3103(p) reads:

"(p) 'Person' means an individual partnership, corporation, or other association of persons."

Without any ascertainable legislative intent to the contrary, it is our opinion that the plain language of the statute subjects non-residents to its requirements. The phrase "any person" must be taken to mean just that.

Where a statute is plain and unambiguous, Kansas courts give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. Johnston v. Tony's Pizza Service, 232 Kan. 848, 850 (1983), Johnson v. McArthur, 226 Kan. 128 (1979). Subsections (e) and (h) of K.S.A. 1983 Supp. 40-3104, as amended, lend further support to our conclusion. Subsection (e), which was added in 1984, reads in pertinent part:

"(e) No person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court or in the office of the arresting officer, within 20 days of the date of arrest, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest."
(Emphasis added.)

Upon receipt of a citation for lack of proof of insurance, the motorist has the above 20 day period to avoid conviction. This language is identical to that of K.S.A. 8-1604(c), which was also added by L. 1984, ch. 174.

Subsection (e) goes on to explain the subsequent verification process:

"When the evidence of financial security provided

by the owner is an insurance policy, an identification card of certificate of insurance or a certificate of self-insurance, the information will be recorded by the office of the arresting officer or the court on the form prescribed by the secretary of revenue as authorized by this subsection and forwarded immediately to the department of revenue

"Upon receipt of such form, the department will mail the form to the named insurance company for verification that such insurance was in force on the date stated. It shall be the duty of insurance companies to notify the department within 30 calendar days of the receipt of such forms of any insurance that was not in force on the date stated."

Finally, subsection (h) provides for a penalty when the insurance company shows that no insurance was in force. Subsection (h) reads:

"(h) In addition to any other penalties provided by this act for failure to have or maintain financial security in effect, the director, upon receipt of the accident report required by K.S.A. 8-1607, and amendments thereto, or a denial of such insurance by the insurance company listed on the form prescribed by the secretary of revenue pursuant to subsection (e) of this section and K.S.A. 8-1604 and amendments thereto shall, upon notice and hearing as provided by K.S.A. 40-3118, and amendments thereto, suspend:

. . . .

"(4) if the driver is a nonresident, the privilege of operating a motor vehicle within this state;

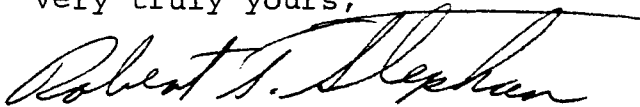
"(5) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within this state of any motor vehicle owned by such owner" (Emphasis added.)

It is noteworthy that paragraphs (4) and (5) of subsection (h) provide for the statute's application to non-resident motorists. (See also K.S.A. 40-3106, which prohibits uninsured non-residents from operating motor vehicles on Kansas highways.) In light of the foregoing provisions, it is our opinion that the new requirement to display evidence of financial security to law enforcement officers applies equally to non-resident motorists traveling on Kansas highways. This conclusion is consistent with the decision of the Kansas Supreme Court in the case of Mayer v.

Harris, 224 Kan. 231 (1978), which construed K.S.A. 40-3106 to hold that non-resident owners of motor vehicles operated on the highways of this state are subject to the provisions of K.S.A. 40-3101 et seq. In that K.S.A. 1983 Supp. 40-3104, as amended, is a part of the same act, it should likewise apply equally to resident and non-resident motorists, as the state has an interest in seeing that all persons who use Kansas highways (and so are potential accident victims) are insured.

In conclusion, as amended by L. 1984, ch. 174, §2, K.S.A. 1983 Supp. 40-3104 requires any person operating a motor vehicle on a Kansas highway to display evidence of financial security, which is defined to mean documentation that the motor vehicle was covered by a policy of liability insurance. The statute is included within K.S.A. 40-3101 et. seq., the Kansas Automobile Injury Reparations Act, which has been construed to apply to non-resident motorists operating motor vehicles in Kansas. Accordingly, the provisions of K.S.A. 1983 Supp. 40-3104, as amended, including the penalty provisions for failure to produce evidence of financial security following the issuance of a citation, apply to non-resident motorists who operate motor vehicles in this state.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Deputy Attorney General