



STATE OF KANSAS

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February 12, 1985

ATTORNEY GENERAL OPINION NO. 85- 17

The Honorable Herman G. Dillon
State Representative, Thirty-Second District
273-W, State Capitol
Topeka, Kansas 66612

Re: Insurance -- Automobile Injury Reparations Act --
Motor Vehicle Liability Insurance Coverage; Display
of Proof of Financial Security

Synopsis: K.S.A. 1984 Supp. 40-3104(d) requires that any person operating a motor vehicle upon the highways of Kansas be able to show, upon demand by a law enforcement official, evidence of financial security. Subsection (e) defines evidence of financial security as including a policy of motor vehicle liability insurance or an identification card or certificate issued by the insurance company which has such a policy in effect on the vehicle. The subsection also provides that a person charged with a violation of K.S.A. 1984 Supp. 40-3104(d) has 20 days to produce such evidence of financial security, either in court or in the office of the arresting officer. By this language, the legislature has permitted a minimum time period in which a person may, at his or her convenience, produce evidence of financial security in one of two different locations. Additionally, the "form" which is forwarded to the department of revenue following the production of such evidence should be filled out at the office of the arresting officer or the court at the time such evidence is produced, and not before. Cited herein: K.S.A. 1984 Supp. 40-3104.

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Dear Representative Dillon:

As State Representative for the Thirty-Second District, you request our opinion concerning the duty of a motorist to produce evidence of financial security in the form of a policy of motor vehicle liability insurance or related documents. Specifically, K.S.A. 1984 Supp. 40-3104 provides that such evidence be produced by a motorist upon demand of a law enforcement officer, and also provides penalties for a violation. You inquire concerning the application of provisions in the statute which allow persons to avoid a violation upon the completion of certain acts.

In pertinent part, K.S.A. 1984 Supp. 40-3104 provides:

"(a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle is included under an approved self-insurance plan as provided in subsection (f) or is expressly exempted from the provisions of this act.

. . .

"(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.

"(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. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer and the policy number, a certificate of self-insurance signed by the commissioner of insurance or the completion of

a form prescribed by the secretary of revenue signed by the insurer or an agent of the insurer certifying that at the time of arrest the motor vehicle was covered by motor vehicle liability insurance.

"When the evidence of financial security provided by the owner is an insurance policy, an identification card or 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.

When evidence of insurance is provided by the owner on the form prescribed by this subsection such form will also be forwarded immediately to the department.

. . .

"(g) Any person violating any provision of this section shall be guilty of a class B misdemeanor, except that any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a class A misdemeanor." (Emphasis added.)

You are concerned that provisions of the law relating to the furnishing of proof of insurance are being misapplied (through a misunderstanding of the law rather than any intentional conduct), and so would like our opinion as to how the procedures established by the statute actually work.

At the outset, it is clear that any person operating a motor vehicle in this state must carry with them in the vehicle what the statute refers to as "evidence of financial security." A previous opinion of this office, No. 84-113, concluded that this requirement applied to both Kansas motorists and those persons holding drivers' licenses from other states. Evidence of financial security can consist of a policy of motor vehicle liability insurance, a card or certificate issued by the company which has issued such a policy for the vehicle, or a certificate of self-insurance signed by the commissioner of insurance. If a person is unable to produce such evidence upon demand by a law enforcement officer, the provisions of subsection (e) come into play. These provisions can briefly be summarized as follows.

Initially, subsection (e) allows a person to avoid the penalties of K.S.A. 1984 Supp. 40-3104(g) by producing, within 20 days of the date of his or her arrest, evidence of financial security. In addition to leaving the actual time of such action up to the offending motorist, the subsection also allows an option as to where such proof may be produced, i.e. either at the court, which can be either the municipal or district, depending on the location of the violation, or at the office of the arresting officer. Again, this could be either at the sheriff's office or the police station, depending on the circumstances of the arrest.

Once such evidence is presented, the court or the office of the arresting officer is required to record certain information from the policy, card or certificate (such as the name of the insurer and the policy number) and forward the form to the department of revenue, which then verifies its validity. Alternatively, we note that the motorist may also, at his or her option, supply the needed information on the form itself, which is signed by the insurer or its agent, and then forwarded to the department by the court or law enforcement office.

Given the above, it is our opinion that any court appearance for a person cited for a violation of K.S.A. 1984 Supp. 40-3104(d) should be scheduled to allow the motorist the 20 day period given by subsection (e). Further, a person who is issued a citation for a violation should be notified at that time of the 20 day period in which proof may be furnished. We do not think the form which must be completed need be furnished at the time of the citation, for the language of subsection (e) indicates that it is the court or the office of the arresting officer which is to record information on the form and then remit to the department of revenue. Clearly, this is to be done when the person appears during the 20 day period. Should the person elect to complete the form himself, and then have it signed by his insurer (as in the case of recently obtained insurance where no policy or identification card has yet been issued), he may obtain a form at either of the two places identified by the statute, complete it, and then return it for mailing to the department of revenue.

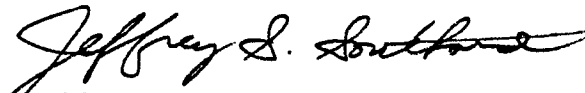
In conclusion, K.S.A. 1984 Supp. 40-3104(d) requires that any person operating a motor vehicle upon the highways of Kansas be able to show, upon demand by a law enforcement official, evidence of financial security. Subsection (e) defines evidence of financial security as including a policy of motor vehicle liability insurance or an identification card or certificate issued by the insurance company which has such a policy in effect on the vehicle. The subsection also provides that a person charged with a violation of K.S.A. 1984 Supp. 40-3104(d) has 20

days to produce such evidence of financial security, either in court or in the office of the arresting officer. By this language, the legislature has permitted a minimum time period in which a person may, at his or her convenience, produce evidence of financial security in one of two different locations. Additionally, the "form" which is to be forwarded to the department of revenue following the production of such evidence is to be filled out at the office of the arresting officer or the court at the time such evidence is produced, and not before.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw