



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86-136

The Honorable Fletcher Bell
Commissioner of Insurance
Insurance Department
420 SW 9th Street
Topeka, Kansas 66612

Re: Insurance -- Kansas Automobile Injury Reparations
Act -- Evidence of Financial Security

Synopsis: The Kansas Automobile Injury Reparations Act requires a vehicle's insurance policy identification card to provide the name of the insurer and the policy number. The Act does not require that the identification card state the policy's expiration date. A law enforcement officer may not issue a citation for failure of a card to state an expiration date. Cited herein: K.S.A. 1985 Supp. 40-3104, as amended by L. 1986, ch. 182, §1; K.S.A. 1985 Supp. 40-3107.

* * *

Dear Commissioner Bell:

As Commissioner of Insurance for the State of Kansas, you request our opinion on two questions concerning K.S.A. 40-3101 et seq., the Kansas Automobile Injury Reparations Act. Specifically, you ask whether the expiration date of a vehicle's insurance policy must be included on the identification cards which are permitted to be used as evidence of financial security. You also ask, if the expiration date is not required to be included upon such cards, whether law enforcement officers may issue citations to

the policy holders for the failure of the identification cards to include the expiration dates of the policies.

K.S.A. 1985 Supp. 40-3104, as amended by L. 1986, ch. 182, §1 states in part:

"(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.

"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. (Emphasis added.)"

In our opinion, the expiration date of the policy is not required to be displayed upon the identification cards. The statutory language is specific: "an identification card . . . which provides the name of the insurer and the policy number" K.S.A. 1985 Supp. 40-3104, as amended by L. 1986, ch. 182, §1(e). Had the legislature intended the expiration date to be displayed upon the cards, it would have been a simple matter to have included this additional requirement in the statute.

Furthermore, the law goes on to state insurance verification procedure: "the information will be recorded by . . . the arresting officer . . . and forwarded immediately to the department of revenue . . . the department will [contact] the . . . insurance company for verification that such insurance was [in fact] in force on the date stated." K.S.A. 1985 Supp. 40-3104, as amended by L. 1986, ch. 182, §1(e). This procedure is followed when a charge is made for violation of subsections (b), (c) or (d) of the act. Regardless of whether an expiration date is on the card, the law enforcement officer

and the department of revenue must still verify that the policy complies with the law.

Besides being superfluous, requiring an expiration date upon the identification card may also mislead the police officer. For example, a party purchasing six months of insurance and cancelling the coverage one month later would still be carrying a card purporting effective coverage. By compelling verification through proper channels, the law as drafted assures that this scenario does not allow an uninsured driver to go undetected.

Turning now to your second question, you ask whether law enforcement officers may issue citations for the failure of the identification cards to include the expiration dates of the policies. Given that the law as recited above does not require an expiration date upon the identification card, it would be improper for an officer to cite a person for failing to provide this expiration date.

Your request letter indicated that certain law enforcement officers may be issuing citations in reliance upon K.S.A. 1985 Supp. 40-3107, which states in part:

"Every policy of motor vehicle liability insurance issued by an insurer to an owner residing in this state shall:

"(a) Designate by explicit description or by appropriate reference of all vehicles with respect to which coverage is to be granted;

"(b) insure the person named and any other person, as insured, using any such vehicle with the expressed or implied consent of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of any such vehicle within the United States of America or the Dominion of Canada, subject to the limits stated in such policy;

"(c) state the name and address of the names insured, the coverage afforded by the policy, the premium charged and the policy period;" (Emphasis added.)

In our opinion, K.S.A. 1985 Supp. 40-3107 was drafted as a mandate to the insurance industry to assure that minimal standards of contract law and clarity were met. This statute is entirely compatible with K.S.A. 1985 Supp. 40-3104, as amended by L. 1986, ch. 182 in that one statute concerns itself with proving financial security to a police officer, while the other statute concerns itself with what is required in the policy itself. In any case, K.S.A. 1985 Supp. 40-3107 should not be used by a law enforcement officer as a basis for issuing a citation to the policy holder.

We note that, as a practical matter, though a citation may not be issued solely because an insurance identification card does not state the dates of policy coverage, an officer may note the information given and check it through the procedure provided in K.S.A. 1985 Supp. 40-3104 as amended by L. 1986, ch. 182, §1(e). If it is found that the insurance was not effective, appropriate action may then be taken by the officer. The alternative of a literal application of the foregoing would result in everyone ever stopped by an officer for any reason being given a citation for inability to prove financial security. This ludicrous result was not the intent of the legislature.

In conclusion, the Kansas Automobile Injury Reparations Act requires a vehicle's insurance policy identification card to provide the name of the insurer and the policy number. The Act does not require that the identification card state the policy's expiration date. A law enforcement officer may not issue a citation for failure of a card to state an expiration date.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
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