ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3372 HJUD HB 535

248

DIVISION OF MOTOR VEHICLES
STATISTICS ON UNINSURED MOTORISTS
FROM JANUARY 1, 1985 TO OCTOBER 15, 1985

Accidents Involving $500 Property
Damage or Personal Injury/Death

26,098 Drivers involved in accidents

3,779 Suspensions issued for failure to provide proof of insurance

1,461 Reinstatements after providing proof of insurance

2,318 Suspensions remaining in effect for failure to provide proof of insurance

Drivers Cited for Six-point
Traffic Violations

8,647 Drivers cited for six-point traffic violations

2,726 Suspensions issued for failure to provide proof of insurance

312 Suspensions voided after providing proof of insurance

2,414 Suspensions remaining in effect for failure to provide proof of insurance

INFORMATION SHEET

Six-point Traffic Violations

Failure to yield to an emergency vehicle

Failure to yield to a flashing blue light

Failure of blue light to yield to authorized vehicle

Exceeding posted speed limit -- 20 or more over

Altered speed limits -- 20 or more over

Speeding in school zone/playground/crosswalk

Exceeding speed limit by 20 or more when:
- Passing school bus
- Towing mobile home
- Crossing bridge

Impeding

Failure to stop for school bus displaying red lights

Driving with driver's license revoked/cancelled/suspended

Driving in violation of limitation

Exceeding 20 mph when overtaking school bus

Operating motor vehicle while intoxicated

Reckless operation

Negligent operation

Hit and run

Reckless driving at state airport

Exceeding speed limit by 20 or more at airport

Exceeding speed limit by 20 or more in state park

VEHICLES COVERED UNDER HB 53

Chapter 10. Vehicle Registration and Title.

Sec. 28.10.011. Vehicles subject to registration. Every vehicle driven, moved, or parked upon a highway or other public parking place in the state shall be registered under this chapter except when the vehicle is

(1) driven or moved on a highway only for the purpose of crossing the highway from one private property to another, including an implement of husbandry as defined by regulation;
(2) driven or moved on a highway under a dealer's plate or temporary permit as provided for in AS 28.10.031 and 28.10.181(j);
(3) special mobile equipment as defined by regulation;
(4) owned by the United States;
(5) moved by human or animal power;
(6) exempt under 50 U.S.C. App. 501-591 (Soldier's and Sailor's Civil Relief Act);
(7) driven or parked only on private property;
(8) the vehicle of a nonresident as provided under AS 28.10.121;
(9) a commercial interstate vehicle under AS 28.10.141;
(10) transported under a special permit under AS 28.10.151;
(11) driven or moved on a highway or vehicular way not connected to the state highway system established under AS 19.10.020;
(12) a mobile home as defined by regulation. (§ 7 ch 178 SLA 1978; am § 1 ch 54 SLA 1979; am § 1 ch 99 SLA 1983)

Effect of amendments. — The 1983 amendment added paragraph (12).

NOTES TO DECISIONS

For case construing former AS 28.10.040 and meaning of "cross the highway," see Newell v. National Bank, Sup. Ct. Op. No. 2516 (File No. 5437), 646 P.2d 224 (1982).

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907-465-2450

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 23, 2986

SUBJECT: Penalty for failure to have mandatory auto insurance

TO: Representative Steven Rieger

FROM: Theresa L. Bannister
Legislative Counsel

You have asked whether the present state mandatory vehicle insurance law (AS 28.22) imposes a penalty on a person who is required to carry the insurance but who is not involved in an accident of a certain level under AS 28.22.210 or cited for a six-point traffic law violation. Although AS 28.22.200 requires certain operators and owners of motor vehicles who are not self-insured under AS 28.20.400 to carry motor vehicle liability insurance that complies with AS 28.22, there is no penalty imposed until the person has the accident or is cited for the six-point traffic law violation and fails to provide proof of such insurance.

TLB:csh
c5/023

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM January 20, 1986

SUBJECT: Waiver of mandatory motor vehicle insurance requirements (Work Order No. 14-1572)

TO: Representative Steven Rieger

FROM: Theresa L. Bannister TB
Legislative Counsel

You have asked whether the waiver of mandatory insurance coverage allowed by AS 21.89.020(e) allows a person to avoid the mandatory insurance requirements for motor vehicle operators. The answer is no. AS 21.89.020(e) allows a person to decline purchasing the insurance coverage from an insurance company, but this ability to decline does not eliminate either (1) the requirement under AS 28.22.200 that the person have the insurance, or (2) the requirement under AS 28.22.210 that the person show proof of such coverage after certain accidents and traffic law violations. The person who fails to demonstrate such coverage when called upon to do so by AS 28.22.210 will suffer the license suspension penalties of AS 28.22.240 (unless the person otherwise successfully challenges the suspension) even if the person waived purchase of the coverage under AS 21.89.020(e).

TLB:mkr
M2:046

Massachusetts

Mandatory insurance

books of the commonwealth to the highway fund, are not charged at the time of collection with a trust which can be carried out without compliance with the provisions of Const.Amend. art. 63, relating to appropriation bills. In re Opinion of the Justices (1938) 15 N.E.2d 813, 300 Mass. 630.

Under a proposed bill providing for payments from highway fund to municipalities and statutes providing for highway fund, money included in highway fund and to be received from sources designated by statute for highway fund is required to be paid into treasury as "money received on account of the commonwealth" within the constitution, and such money is not expressly or impliedly received on account of the cities and towns to which payment is directed to be made by the proposed bill, as respects applicability of provision of constitutional amendment relating to appropriation bills. Id.

A proposed bill providing for payment of designated sum from highway fund to municipalities for local highway purposes is not such a "distribution bill" as would be excluded from requirements of constitutional amendment relating to special appropriation bills. Id.

The constitutional amendment relating to appropriation bills was not inapplicable to bill appropriating designated sum from highway fund to be paid to municipalities on theory that payment was not authorized from state treasury, since, under statutes, money constituting highway fund and money derived from designated sources for highway fund is in and is to be paid into the treasury of the commonwealth, and such fund is not owned by any corporate body apart from the commonwealth. Id.

St.1910, c. 525, and St.1917, c. 276, providing for expenditure of money of commonwealth for highway improvement on petition of town selectmen, does not authorize selectmen to contract to do the work in name of town without any vote of town empowering them to make such contract. Wood v. Town of Concord (1929) 167 N.E. 311, 268 Mass. 185.

The contributions and assessments paid into the state treasury by cities, towns and counties for maintaining, repairing, improving and constructing ways, should have been credited to the general fund in the treasury of the commonwealth to cover anticipated appropriations made by the legislature, however any balance left in excess of the appropriations should be transferred to the highway fund in accordance with this section. § Op.Atty.Gen.1926, p. 8.

2. Surveys and plans

Cities and towns are authorized by this section to hire outside engineers and consultants to perform survey and layout work under supervision of Department of Public Works, and include cost as an acceptable expenditure. Op. Atty.Gen. April 21, 1964, p. 221.

Cities and towns may have plans of proposed improvement of highways prepared by outside engineers and consultants, subject to Department of Public Works approval, and include cost as an acceptable expenditure under this section. Id.

3. Safety devices

Department of Public Works may use funds provided by 1962 Act relative to accelerated highway program, for installation of safety devices, including traffic control signals, at locations where there was no federal participation in payment of costs. Op.Atty.Gen. Nov. 26, 1962, p. 87.

4. Research

The commonwealth is authorized to spend federal highway aid money for research purposes. Op.Atty.Gen. June 16, 1955, p. 108.

5. Parking facilities

The department of public works may not spend highway or bond issue funds to provide parking facilities in the downtown area of Provincetown in order to accommodate the increased traffic anticipated by the completion of the Mid-Cape highway. Op.Atty.Gen. March 3, 1954, p. 50.

6. Fines

Fines assessed for motor vehicle violations on reservations of the metropolitan district commission between December 1931 and October 1935, should be paid to the treasurer and receiver general of the commonwealth, and all fines assessed thereafter should be paid to the treasury of a county. Op.Atty.Gen. Dec. 3, 1935, p. 17.

COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE

St.1949, c. 571, which transferred from the department of public works to the registrar of motor vehicles certain powers and duties with respect to compulsory motor vehicle liability insurance, among other things, substituted the "state treasurer" and the "registrar" for the "department" in certain sections under this subdivision.

§ 34A. Definitions

The following words, as used in sections thirty-four A to thirty-four J, inclusive, shall have the following meanings:

"Certificate", the certificate of an insurance company authorized to issue in the commonwealth a motor vehicle liability policy, stating that it has or will insure the applicant for registration of a motor vehicle with respect to such motor vehicle for a period at least coterminous with that of such registration under such a motor vehicle liability policy which contains an anniversary date of December thirty-first, or a renewal or extension of such a policy, which conforms to the provisions of section one hundred and thirteen A of chapter one hundred and seventy-five or that it has executed a binder, as defined in said section one hundred and thirteen A, under and in conformity with said section covering such motor vehicle pending the issue of a motor vehicle liability policy; or the certificate of a surety company authorized to transact business in the commonwealth under section one hundred and five of said chapter one hundred and seventy-five as surety, stating that it has or will guarantee performance by the applicant for registration of a motor vehicle with respect to such motor vehicle for a period at least coterminous with that of such registration under a motor vehicle liability bond or renewal or extension thereof, payable to the commonwealth, which conforms to the provisions of said section one hundred and thirteen A and has been executed by such applicant as principal and by such surety company as surety; or the certificate of the state treasurer stating that cash or securities have been deposited with said treasurer as provided in section thirty-four D.

"Guest occupant" or "guest occupant of such motor vehicle", any person, other than an employee of the owner or registrant of a motor vehicle or of a person responsible for its operation with the owner's

or registrant's express or implied consent, being in or upon, entering or leaving the same, except a passenger for hire in the case of a motor vehicle registered as a taxicab or otherwise for carrying passengers for hire.

"Motor vehicle", shall, in addition to the meaning prescribed by section one, include a trailer, as defined by said section one.

"Motor vehicle liability bond", a bond conditioned that the obligor shall within thirty days after the rendition thereof satisfy all judgments rendered against him or against any person responsible for the operation of the obligor's motor vehicle with his express or implied consent in actions to recover damages for bodily injuries, including death at any time resulting therefrom, and judgments rendered as aforesaid for consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services, or for indemnity, in connection with or on account of such bodily injuries or death, and judgments rendered as aforesaid for contribution as a joint tortfeasor in connection with or on account of such bodily injuries, sustained during the term of said bond by any person, other than a guest occupant of such motor vehicle or any employee of the owner or registrant of such vehicle or of such other person responsible as aforesaid who is entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code,[1] to the amount or limit of at least five thousand dollars on account of injury to or death of any one person, and, subject to such limits as respects injury to or death of one person, of at least ten thousand dollars on account of any one accident resulting in injury to or death of more than one person; provided, however, that in the case of a person who is engaged in the business of leasing motor vehicles under any system referred to in section thirty-two C, the words "motor vehicle liability bond" shall mean a bond as described herein but conditioned further, except in the case of vehicles leased for a term of more than thirty days, that the obligor shall within thirty days after the rendition thereof satisfy all judgments rendered against him or against any person responsible for the operation of the obligor's motor vehicle with his express or implied consent, including such consent imputed under section thirty-two E, in actions to recover damages for injury to property, and judgments rendered as aforesaid for indemnity, or for contribution as a joint tortfeasor, in connection with or on account of such injury to property, sustained during the term of said bond by any person, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code, to the amount or limit of at least one thousand dollars on account of any such injury to property.

"Motor vehicle liability policy", a policy of liability insurance which provides indemnity for or protection to the insured and any person responsible for the operation of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services, or for indemnity, in connection with or on account of such bodily injuries or death, or by reason of the liability for contribution as a joint tortfeasor, in connection with or on account of such bodily injuries, sustained during the term of said policy by any person, other than a guest occupant of such motor vehicle or of any employee of the owner or registrant of such vehicle or of such other person responsible as aforesaid who is entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code, to the amount or limit of at least five thousand dollars on account of injury to or death of any one person, and, subject to such limits as respects injury to or death of one person, of at least ten thousand dollars on account of any one accident resulting in injury to or death of more than one person, or a binder as defined in section one hundred and thirteen A of said chapter one hundred and seventy-five providing indemnity or protection as aforesaid pending the issue of such a policy; provided, however, that in the case of a person who is engaged in the business of leasing motor vehicles under any system referred to in section thirty-two C, the words "motor vehicle liability policy" shall mean a policy of liability insurance as described herein and providing, in addition, except in the case of vehicles leased for a term of more than thirty days, indemnity for or protection to the insured and any person responsible for the operation of the insured's motor vehicle with his express or implied consent, including such con-

sent imputed under section thirty-two E, against loss by reason of the liability to pay damages to others for injury to property or by reason of the liability for indemnity, or for contribution as a joint tortfeasor, in connection with or on account of such injury to property, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code, sustained during the term of the policy by any person, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, to the amount or limit of at least one thousand dollars on account of any such injury to property.

Amended by St.1935, c. 459, §§ 1, 2; St.1945, c. 384, § 1; St.1949, c. 571, § 1; St.1959, c. 282, §§ 2, 3; St.1961, c. 177, §§ 2, 3; St.1963, c. 358, §§ 1, 2; St.1963, c. 476, §§ 1, 2; St.1964, c. 517, §§ 1, 2; St.1967, c. 736, § 8A.

28 U.S.C.A., § 2679.

Historical Note

St.1927 c. 346 § 2.
St.1926 c. 368 § 2.

St.1928 c. 381 § 4.

St.1930 c. 340 § 1.

St.1930, c. 340, extended the coverage under the compulsory motor vehicle liability insurance laws to include certain consequential damages. Section 5 thereof provided: "This act shall not apply to motor vehicle liability policies or bonds, both as defined in section thirty-four A of chapter ninety of the General Laws, or to deposits under section thirty-four D of said chapter, covering motor vehicles registered for operation during the current year or any part thereof."

St.1935, c. 459, eliminated compulsory motor vehicle insurance for the benefit of guests of persons whose liability was covered thereby. Section 5 thereof provided: "The provisions of this act shall not apply to motor vehicle liability policies and bonds, both as defined in section thirty-four A of chapter ninety of the General Laws, issued or executed in connection with the registration of motor vehicles or trailers for operation prior to or during the current year or any part thereof; nor shall said provisions affect the coverage of any deposit made under said section thirty-four D in relation to such operation."

The 1945 amendment made changes in the paragraph defining the term "certificate."

The 1959 amendment, approved May 6, 1959, laws 1959, c. 282, § 2 added the proviso to the paragraph defining "Motor vehicle liability bond"; section 3 of the amendatory act added the proviso to the paragraph defining "Motor vehicle liability policy."

Section 6 of the 1959 amendatory act provided: "The provisions of this act shall apply to the registration of motor vehicles for the year nineteen hundred and sixty and for subsequent years."

The 1961 amendment, approved March 6, 1961, excluded vehicles leased for more than 30 days from the operation of the law requiring compulsory property damage insurance coverage by persons in the business of leasing motor vehicles.

St.1963, c. 358, §§ 1 and 2, an emergency act, approved May 6, 1963, made changes within the definitions of "motor vehicle liability bond" and "motor vehicle liability policy" which were necessitated by enactment of chapter 231B regarding contribution among joint tortfeasors.

Section 4 of chapter 358 provided: "The provisions of sections thirty-four A and thirty-four D of chapter ninety of the General Laws, as amended by sections one, two and three of this act,

shall apply to and after the effective date hereof, apply to motor vehicle liability bonds and policies, and to deposits, covering motor vehicles and trailers registered for operation during the year nineteen hundred and sixty-three, with respect, however, only to accidents occurring on or after said effective date."

St.1963, c. 476, §§ 1 and 2, approved June 11, 1963, and by section 3 made applicable to motor vehicle liability bonds and motor vehicle liability policies issued for the year 1964 and for subsequent years, inserted, within the definitions of "motor vehicle liability bond" and "motor vehicle liability policy" exclusions with respect to certain employees of federal government.

St.1964, c. 517, §§ 1 and 2, approved June 12, 1964, and by section 4 made applicable to motor vehicle liability bonds and motor vehicle liability policies issued for the year 1965 and subsequent years, substituted, within the definitions of "motor vehicle liability bond" and "motor vehicle liability policy", the words "of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access" in lieu of "upon the ways of the commonwealth of such motor vehicle".

St.1967, c. 736, § 8A, approved Nov. 18, 1967, and by section 11 made effective Jan. 2, 1969, rewrote the definition of "Certificate."

Cross References

Action to recover statutory consequential damages within this section, see c. 231, § 85B.
Approval, contents, charges, etc., of motor vehicle liability policies, see c. 175, §§ 113A–113J.
Assigned risks, motor vehicle liability policies, see c. 175, § 113H.
Cancellation of compulsory motor vehicle liability insurance policies, see c. 175, § 113D.
Certificate as condition precedent to registration and to accompany application, see section 1A of this chapter.
Compulsory motor vehicle liability policies, see c. 175, § 113A.
Definitions of motor vehicle liability policy or bond, applicability to section requiring notice to insurer of default, see c. 231, § 58A.
Limitation of actions for bodily injury or death wherein judgments required to be secured by this chapter, see c. 260, § 4.
Limitation of actions for death wherein judgments require to be secured, see c. 260, § 4.
Medical pay provisions, see c. 175, § 111c.
Minors, contracts for motor vehicle liability insurance, see c. 175, § 113K.
Notice of default to company issuing motor vehicle liability policy or bond, see c. 231, § 58A.
Owner's responsibility in action for consequential damages, see c. 231, § 85B.
Payment of losses under liability contract, see c. 175, § 112.
Presumption of insured's consent to operation of vehicle, see c. 231, § 85C.
Race or color, non-issuance of policy on account of, penalty, see c. 175, § 113E.
Rebates,
  Acceptance, prohibition, see c. 175, § 183.
  Offer to pay or allow, prohibition, see c. 175, § 182.
Renewal of motor vehicle liability policies or bonds in certain cases, see c. 175, § 113F.
Revocation of notice of cancellation of liability policies, see c. 255C, § 21.
Riders and endorsements, commissioner's approval, see c. 175, § 192.
Security for damage caused by non-residents, see section 3G of this chapter.
Surety for operation of school bus, see c. 40, § 4.
Way, definition of, see section 1 of this chapter.

Law Review Commentaries

Actions against owners and operators of motor vehicles. Thomas F. Lambert, Jr. (1960) 25 NACCA L.J. 52.

Airplane pilot, showing wilful and wanton misconduct by pilot within state guest statute. 31 JATLA L.J. 565 (1965).

Assault and battery under general liability insurance. J. Albert Burgoyne and Eugene Lyne. 7 Annual Survey of Mass. Law, Boston College, p. 177 (1970).

Automobile compulsory insurance law —existence of relation of agency, Myer Cherkovsky (1929) 9 Boston U.L.Rev. 212.

Automobile insurance, Harold Williams (Aug.1931) 16 Mass.L.Q. No. 7, p. 1.

Compensation problems created by financially irresponsible motorists. (May 1953) 66 Harvard L.Rev. 1300.

Compulsory coverage of motor vehicle insurance. J. Albert Burgoyne, 11 Annual Survey of Mass. Law, Boston College, p. 217 (1961).

Compulsory insurance, entry of motor vehicle tort actions in district court. Richard H. Field, 1 Annual Survey of Mass.Law, Boston College, pp. 290, 293 (1954).

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Gross negligence: Guests. Robert E. Keeton, 5 Annual Survey of Mass.Law, Boston College, p. 41 (1958).

Gross negligence, application to guest occupant of an automobile. William J. Curran, 1 Annual Survey of Mass.Law, Boston College, p. 44 (1954).

Guest occupant exclusion. J. Albert Burgoyne, 6 Annual Survey of Mass. Law, Boston College, p. 173 (1959).

Host-guest: interstate tort cases. 32 ATL L.J. 314.

Imputed contributory negligence where owner is passenger in car driven by spouse. 32 ATL L.J. 420.

Insurance on leased vehicles. J. Albert Burgoyne, 6 Annual Survey of Mass.Law, Boston College, p. 180 (1959).

Insurance on nonowned automobiles. J. Albert Burgoyne, 11 Annual Survey of Mass.Law, Boston College, p. 207 (1964).

Insurance policies. J. Albert Burgoyne, 9 Annual Survey of Mass.Law, Boston College, p. 193 (1962).

Insurance policy conditions. J. Albert Burgoyne and George E. Donovan. 13 Annual Survey of Mass.Law, Boston College, p. 258 (1966).

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Joint tort-feasors. Robert J. Sherer, 10 Annual Survey of Mass.Law, Boston College, p. 52 (1963).

Legal complications resulting from inadequate liability insurance. Franklin T. Hammond (October 1958) 43 Mass.L.Q. No. 3, p. 42.

Liability for automobile accidents of minors. 48 Harvard L.Rev. 498 (Jan. 1935).

Massachusetts compulsory motor vehicle liability insurance. Charles O. Monahan (1933) 13 Boston U.L.Rev. 341.

Merit rating for motor vehicle insurance. J. Albert Burgoyne, 11 Annual Survey of Mass.Law, Boston College, p. 215 (1964).

Motor vehicle insurance. J. Albert Burgoyne and George E. Donovan. 12 Annual Survey of Mass.Law, Boston College, p. 255 (1965); 13 Annual Survey of Mass.Law, Boston College, p. 262 (1966).

Motor vehicle insurance, 1959 legislation. J. Albert Burgoyne, 6 Annual Survey of Mass.Law Boston College, p. 178 (1959).

Motor vehicle insurance: Ways of Commonwealth. J. Albert Burgoyne. 5 Annual Survey of Mass.Law, Boston College, p. 195 (1958).

Owner or guest. Thomas F. Lambert, Jr. (1958) 22 NACCA L.J. 45.

Pleading defenses. J. Albert Burgoyne. 10 Annual Survey of Mass.Law, Boston College, p. 187 (1963).

Prenatal injury. Thomas F. Lambert, Jr. (1960) 25 NACCA L.J. 156.

Punitive damages, liability of insurance carrier. 31 JATLA L.J. 42 (1965).

Right to enjoin preferential settlement of multiple claims arising out of automobile accident involving owner insured under a compulsory limited liability policy. 49 Harvard L.Rev. 658 (Feb. 1936).

Should motor vehicle insurance for cars owned by municipalities and charitable organizations be provided for and, if so how? Frank W. Grinnell (July-Sept.1940) 25 Mass.L.Q. No. 6, p. 11.

Status of children under guest acts. Thomas F. Lambert, Jr. (1958) 22 NACCA L.J. 40.

Suits against owners and operators of motor vehicles. Thomas F. Lambert, Jr. and Paul D. Rheingold (1962) 28 NACCA L.J. 82.

Uninsured motorists coverage. J. Albert Burgoyne and George E. Donovan. 13 Annual Survey of Mass.Law, Boston College, p. 253 (1966).

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Ways of commonwealth. J. Albert Burgoyne, 10 Annual Survey of Mass. Law, Boston College, p. 187 (1963).

When omnibus-clause coverage of automobile liability insurance is available to permittees. 31 JATLA L.J. 84 (1965).

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C.J.S. Insurance §§ 824-836.
C.J.S. Motor Vehicles § 110.
Comment.
Bills to reach and apply, see M.P.S. vol. 14, Simpson, § 527.
Defenses of insurer, see M.P.S. vol. 11, Martin and Hennessey, §§ 725, 731, 732.
Indemnity and contribution, see M.P.S. vol. 12, Martin and Hennessey, §§ 1151, 1152.
Statutes of limitations, see M.P.S. vol. 12, Martin and Hennessey, § 1061 et seq.
Forms.
Declaration in action on motor vehicle liability policy, see M.P.S. vol. 10, Rodman, § 1237.
Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1739 et seq.

Notes of Decisions

Note 1

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1. Validity

Alleged unconstitutionality of state statute, applicable solely to intrastate traffic, requiring posting of $5,000 bond, cash, or liability insurance, as condition of registration of motor vehicle and number plates therefor was so lacking in substance that single judge was justified in dismissing resident's bill for want of jurisdiction. Ex parte Poresky (C.C.A.1933) 54 S.Ct. 3, 290 U.S. 30, 78 L.Ed. 152.

Alleged unconstitutionality of provisions of Massachusetts motor vehicle law relating to compulsory insurance was so lacking in substance that the district judge was warranted in dismissing the bill to enjoin enforcement of such provisions for want of jurisdiction. Poresky v. Ryan (C.C.A.1936) 82 F.2d 311, certiorari denied 56 S.Ct. 678, 298 U.S. 654, 80 L.Ed. 1380, rehearing denied 56 S.Ct. 936, 298 U.S. 692, 80 L.Ed. 1409.

The statutes making registration of automobile and issuance of number plates therefor conditional upon the applicant for registration giving security covering automobile by automobile liability policy, or bond, or deposit of cash, or security for damages for bodily injuries including death and consequential damages caused by operation of automobile, are constitutional. Poresky v. Registrar of Motor Vehicles (1946) 67 N.E. 2d 407, 319 Mass. 717.

Creation of compulsory state insurance fund, providing security for motorists' civil liability for personal injuries, is not justifiable exercise of police power. In re Opinion of the Justices (1930) 171 N.E. 294, 271 Mass. 582, 69 A.L.R. 388.

The compulsory motor vehicle insurance act is valid in all respects. In re Opinion of the Justices (1925) 147 N.E. 681, 251 Mass. 569.

2. In general

The compulsory motor vehicle insurance act is a remedial statute that has been broadly construed to carry out its beneficent purpose. Desmarais v. Standard Acc. Ins. Co. (1954) 118 N.E.2d 86, 331 Mass. 199; O'Roak v. Lloyds Casualty Co. (1934) 189 N.E. 571, 285 Mass. 532.

The compulsory motor vehicle liability insurance statute is a remedial statute and is to be construed liberally to suppress the mischief intended to be put down and to advance the remedy which

Note 3

it was intended to afford. General Acc. Fire & Life Assur. Corp. v. Brow (1951) 98 N.E.2d 608, 327 Mass. 225; Cacavo v. Kearney (1934) 196 N.E. 817, 286 Mass. 480.

Discussion of effect of verdicts for plaintiffs on compulsory automobile insurance rates had no place in argument as to liability of defendant. Perry v. La Plante (1962) 179 N.E.2d 913, 343 Mass. 570.

After decision that commissioner of insurance had authority to establish classification of risks and rates of compulsory motor vehicle liability insurance according to zones, legislature was assumed to have been familiar with the decision, and fact that legislature thereafter amended the statute covering such insurance but retained the section defining commissioner's authority in its identical language was persuasive evidence of legislature's intent that existing authority of commissioner should continue unaffected. Doherty v. Commissioner of Ins. (1952) 102 N.E.2d 496, 328 Mass. 161.

The requirements of compulsory automobile insurance law apply alike to all who seek to register motor vehicles to be operated on ways of commonwealth. Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E.2d 837, 308 Mass. 249.

Under compulsory automobile liability policy wherein insurer agreed to indemnify insured for liability arising from negligent operation of insured's automobile, insurer was bound by result of action against insured as to negligence of driver of automobile, though insurer did not defend action against driver. MacRey v. Hartford Accident & Indemnity Co. (1935) 197 N.E. 516, 292 Mass. 105, 106 A.L.R. 1248.

Compulsory motor vehicle insurance law did not give to claimant any greater or further rights to benefits of automobile liability policy than existed prior to enactment of such law. Bruyette v. Sandini (1935) 197 N.E. 29, 291 Mass. 373.

Where automobile is no longer controlled by dealer, he is not required by compulsory insurance law to carry policy covering it. Liddell v. Standard Accident Ins. Co. (1933) 187 N.E. 39, 283 Mass. 340.

Identical words used in two sections of compulsory insurance law relating to automobiles must be presumed to have been used with same meaning. Id.

Provision of Massachusetts compulsory automobile policy that extraterritorial coverage shall not apply when motor vehicle is used to carry passengers for consideration was not limited to transportation of passengers by common carrier or habitually or as business. Sleeper v. Massachusetts Bonding & Insurance Co. (1933) 186 N.E. 778, 283 Mass. 511.

Compulsory automobile liability insurance statute contemplates registrant having legal capacity to contract for insurance, and would not be satisfied by acts of four year old girl. Mello v. Bloomingdale (1933) 183 N.E. 846, 281 Mass. 407.

Motor vehicles owned by express companies are excepted from the application of the compulsory insurance act. 8 Op. Atty.Gen.1929, p. 512.

3. Purpose of law

Purpose of compulsory motor vehicle liability insurance statute is not to protect the insured from loss but to compensate persons injured through the operation of motor vehicles. General Acc. Fire & Life Assur. Corp. v. Brow (1951) 98 N.E.2d 608, 327 Mass. 225; Bornbaum v. Employers Liability Assur. Co. (1942) 41 N.E.2d 54, 311 Mass. 282; Wheeler v. O'Connell (1937) 9 N.E.2d 544, 297 Mass. 549, 111 A.L.R. 1038.

The statutes dealing with registration and insurance of motor vehicles have for their purpose the protection of travelers upon the public ways. Kennedy v. Consolidated Motor Lines (1942) 43 N.E. 2d 121, 312 Mass. 84; Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E.2d 837, 308 Mass. 249.

Fundamental purpose of compulsory automobile liability insurance statute is the protection of travelers. Fields v. Parsons (1968) 234 N.E.2d 744, 353 Mass. 706.

Compliance with notice requirement of c. 175, § 113A for cancellation of compulsory automobile liability policy is im-

portant to effective administration of compulsory motor vehicle insurance law since legislative purpose was to make validity of registration coterminous with maintenance of the minimum security, and requirement also serves as safeguard against unintentional or mistaken action to detriment of traveling public and to the insured. Id.

The fundamental purpose of compulsory motor vehicle insurance is to provide compensation for injuries or death incurred by travellers upon the public ways resulting from the operation of motor vehicles. Desmarais v. Standard Acc. Ins. Co. (1954) 118 N.E.2d 86, 331 Mass. 199.

The dominant purpose of statutes making registration of automobile and issuance of number plates therefor conditional upon applicant giving security is to make provision for security in collection of compensation for damages sustained without fault by travelers or on highway through negligent operation of motor vehicles. Poresky v. Registrar of Motor Vehicles (1948) 80 N.E.2d 521, 323 Mass. 752.

The broad purpose of the compulsory insurance act was to protect the traveling public, not to compel the automobile owner to provide accident insurance upon his own life for the benefit of his family. Oliveira v. Preferred Accident Ins. Co. of New York (1943) 45 N.E.2d 293, 313 Mass. 426, 143 A.L.R. 1391.

The dominant purpose of the compulsory motor vehicle liability insurance statute is protection of person injured by negligent operation of motor vehicles on the ways of the commonwealth but statute does not disregard right of insured to obtain indemnity for which insured pays. Brown v. Great American Indemnity Co. (1937) 9 N.E.2d 547, 298 Mass. 101, 111 A.L.R. 1065.

Terms of compulsory motor vehicle insurance law relative to giving of notice of cancellation of policy were required to be interpreted in light of dominant legislative purpose of law, which was to promote human welfare and general safety of persons on public ways. Merchants Mut. Casualty Co. v. Justices of Superior Court (1935) 197 N.E. 166, 291 Mass. 161.

Purpose of compulsory motor vehicle liability insurance statutes was that all registered motor vehicles should be protected by such insurance so that persons injured by their operation might have some security for collection of damages sustained. Caccavo v. Kearney (1934) 190 N.E. 817, 286 Mass. 480.

Purpose of compulsory motor vehicle insurance law was to furnish security for payment of damages to persons injured through other's use of motor vehicles on public ways of commonwealth. Guzenfield v. Liberty Mut. Ins. Co. (1934) 190 N.E. 23, 286 Mass. 133.

4. Law governing

The question as to whether claim for personal injury against insured and its driver was covered by Massachusetts compulsory automobile liability policy was a question of substantive law and would be determined according to laws of Massachusetts, where contract of insurance was presumably made and where insurer was called upon for performance. Connecticut Indem. Co. v. Lee (D.C.1948) 74 F.Supp. 353, affirmed 168 F.2d 420.

In ascertaining applicable Massachusetts law in interpreting clause of motor vehicle liability policy in absence of any decisions by state courts directly touching upon such clause, federal court would interpret clause according to general principles of common law recognized in Massachusetts. Id.

Law of New Hampshire governed rights of parties in actions by guests against host for injuries suffered in collision in New Hampshire on two-lane highway when host's vehicle suddenly crossed solid yellow dividing center-line into opposite line of traffic. Goodale v. Morrison (1962) 180 N.E.2d 67, 343 Mass. 607.

5. Limitations

In personal injury action against nonresident motorist who pleaded limitations defense, it would be presumed that defendant was subject to general portion of statute providing for compulsory insurance, rather than to portion thereof exempting nonresidents operating within commonwealth for less than 30 days, and that one-year statute, applicable

where compulsory insurance is required, governed action. Smith v. Pasqualetto (D.C.1957) 136 F.Supp. 680.

Where first writ was made out two days before expiration of statutory year and an attempt was made to serve it on the last day, fact that registration of defendants insured truck under the compulsory motor vehicle liability insurance statute shown to plaintiff was in a name appropriate for the name of a corporation and gave no indication of the names of any individual owners constituting a partnership which owned the truck and because of a holiday followed by a Saturday, the writ had to be made out before the ordinary means of checking became available disclosed an "unavoidable accident" authorizing the commencement of a new action within a year and plaintiff and his attorney were not negligent in relying upon appearances. Duff v. Zonis (1951) 99 N.E.2d 47, 327 Mass. 347.

Where a finding was entered for plaintiff on April 21, 1938, after trial of a tort action in superior court, and damages were assessed in excess of the ad damnum, and it was not claimed that assessment was due to accident or mistake, and after finding was made there was no matter remaining to be disposed of by the court before action could be terminated, the case was "ripe for judgment" on May 16, 1938, within superior court rule regarding entry of judgment in civil actions ripe for judgment, and hence plaintiff's bill filed on September 29, 1939, to apply in satisfaction of judgment the obligation of codefendant's insurer under an automobile liability policy was barred by one-year statute of limitations, notwithstanding that judgment was not entered for plaintiff until December 12, 1938. Sullivan v. Jordan (1941) 36 N.E.2d 387, 310 Mass. 12.

An action for injuries, resulting from negligent operation of city truck by city employee, sustained by plaintiff while loading truck in a city yard, was barred by provision of limitation statute covering tort actions arising out of operation of vehicles owned by city, where not brought until more than a year after injury, as against contention, based on another clause in statute, that provision related only to actions arising from operation of motor vehicles on a public way. Read v. Huber (1937) 11 N.E.2d 121, 298 Mass. 428.

Limitation of one year within which to bring an action for an injury does not restrict the right to recover in an action for personal injuries covered by the Massachusetts compulsory liability insurance statute, but merely affects the remedy. Brown v. Great American Indemnity Co. (1937) 9 N.E.2d 547, 298 Mass. 101, 111 A.L.R. 1065.

Classification of claims under statute permitting action to be brought against administrator within six months after giving bond to recover preferred claim is not affected by fact that administrator's inventory discloses no assets or that claim is secured under compulsory insurance law, since status of claim must be capable of final determination when action for its enforcement is brought. Gallo v. Foley (1937) 5 N.E.2d 425, 296 Mass. 143.

Where it was agreed that plaintiff's intestate was a guest occupant in motor vehicle the limitation under c. 260, § 4, dealing with actions of tort for death which were required to be secured by law was not applicable. Noon v. Beford (1964) 29 Mass.App.Dec. 98.

6. "Ways of the commonwealth"

Accident was one arising out of operation of vehicle "upon ways of commonwealth" within compulsory automobile liability policy providing indemnity for bodily injuries arising out of operation of vehicle on ways of commonwealth, where insured vehicle was proceeding at high rate of speed and went out of control on state highway and entered restaurant parking lot and struck plaintiffs' automobile. Harakiewicz v. Dakas (1963) 188 N.E.2d 581, 345 Mass. 594.

In the case of Commonwealth v. Puccia (1958) 153 N.E.2d 664, 338 Mass. 4, the court said: "Because the language of § 34A varies somewhat from that found in § 24 with respect to ways, the cases under § 34A are helpful here only by way of analogy and are not controlling."

The words "upon the ways of the commonwealth" as contained in this section means public ways within the commonwealth, or one laid out under the

authority of [illegible] Desmarais v. Standard Acc. Ins. Co. (1940) 118 N.E.2d at 333 Mass. 119.

One injured by an automobile on a "way" laid out and provided by a town in connection with a development for veterans' housing was entitled to the protection of the compulsory motor vehicle liability insurance statute where the general public had access to the way for any purpose for which the public ways in the commonwealth are customarily used by the public. General Acc. Fire & Life Assur. Corp. v. Brow (1951) 98 N.E.2d 908, 327 Mass. 225.

Injury sustained by truck occupant whose death resulted from the injury, which was caused by negligent operation of truck within a rifle range, did not take place on the "ways of the commonwealth," within meaning of quoted words as used in compulsory motor vehicle liability insurance act, since quoted words mean the public ways within the commonwealth. Terrasi v. Peirce (1939) 23 N.E.2d 871, 304 Mass. 469.

7. Classification of risks

Commissioner of insurance in establishing risk classifications, should use only those accidents covered by liability insurance required by c. 175, § 34A, since there is not a sufficient correlation between accidents involving only property damage and the risk which individuals present to the compulsory insurance system. Op.Atty.Gen. Aug. 12, 1964, p. 63.

8. Creditors and creditors rights

In bill in equity to reach and apply automobile liability insurer's obligation under policy in satisfaction of judgments obtained against insured by injured automobile passenger and her husband, insurer was bound by results of negligence action as to all matters decided therein material to recovery by passenger. Pezzuolo v. Travelers Ins. Co. (1959) 156 N.E.2d 795, 338 Mass. 678.

In action to recover the amount of an unpaid judgment obtained against plaintiff by guest in an automobile operated by the plaintiff with the consent of its owner, the insured to whom the insurer had issued a liability policy in compliance with the compulsory automobile insurance law, declaration stated a cause of action. Crompton v. Lumbermens Mut. Cas. Co. (1955) 129 N.E.2d 139, 333 Mass. 160.

The right of a judgment creditor of insured, who obtained judgment based on negligent operation of truck, to reach obligation of insurer under compulsory liability policy providing indemnity against liability for bodily injury or death arising out of operation of truck elsewhere than upon the highways of the commonwealth, depended upon and was limited by the right of the insured to enforce the indemnity contract. Terrasi v. Peirce (1939) 23 N.E.2d 871, 304 Mass. 469.

Compulsory automobile liability insurance statutes provide for security in collection of compensation for damages sustained without fault by travelers on highway through negligent operation of automobiles, but do not make available to judgment creditor proceeds of policy unless judgment debtor falls within definition of one assured under terms of policy. Leonardo v. De Vellis (1935) 198 N.E. 264, 292 Mass. 239.

9. Policy—In general

The liability, for which indemnity is required by compulsory liability insurance policy, is founded on insured's negligence. Bornbaum v. Employers Liability Assur. Co. (1942) 41 N.E.2d 54, 311 Mass. 282.

Where insured elected to take out a compulsory automobile liability policy instead of taking advantage of alternatives provided by compulsory automobile insurance law, insured would be deemed to have assented to provisions of policy with full realization of their import, and policy would not fail for lack of "mutuality". Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E.2d 837, 308 Mass. 249.

The rights of persons injured by automobile to have recourse to compulsory motor vehicle liability policy came into existence upon occurrence of accident, and rights of insured or of insurer under policy could not, subsequently to accident, be modified to detriment of person injured. Fallon v. Mains (1939) 19 N.E.2d 68, 302 Mass. 166.

In action on compulsory motor vehicle policy, principles applicable in cases dealing with ordinary policies are not controlling. Wheeler v. O'Connell (1937) 9 N.E.2d 511, 297 Mass. 549, 111 A.L.R. 1053.

Knowledge of loss which might result to insured under automobile liability by permitting entry of consent judgment against him by insurer's attorneys was no bar to rights of attorneys for insurer to act for its interest. Long v. Union Indemnity Co. (1932) 178 N.E. 737, 277 Mass. 428, 79 A.L.R. 1116.

Business of issuing policies or becoming sureties on bonds given under compulsory motor vehicle insurance act may be confined to corporations. In re Opinion of the Justices (1925) 147 N.E. 681, 251 Mass. 569.

The provisions of this section require a definite and distinct form of policy embodying in itself the terms set forth in the definition of motor vehicle liability policy in the section and a policy containing other provisions brought within the statutory terms by a rider is not such a form of policy as the commissioner of insurance is empowered to approve. 8 Op.Atty.Gen.1926, p. 146.

10. —— Presumptions as to policy

In suit on compulsory automobile liability policy which was not introduced in evidence, the only presumptions permissible were that owner had registered automobile in compliance with the law, that a liability policy had been issued and that the policy conformed to statutory mandate. Joyce v. London & Lancashire Indemnity Co. of America (1942) 41 N.E.2d 776, 312 Mass. 354.

In suit to reach and apply toward satisfaction of judgment proceeds of compulsory automobile liability policy which was not introduced in evidence, policy was presumed to conform to statutory mandates requiring such insurance. Leonardo v. De Vellis (1935) 198 N.E. 264, 292 Mass. 239.

In action on compulsory automobile liability policy where policy was not introduced in evidence, it was presumed that policy conformed to statutory mandates requiring such insurance. MacBey v. Hartford Accident & Indemnity Co. (1935) 197 N.E. 516, 292 Mass. 105, 106 A.L.R. 1248.

Liability policy must contain matters of substance required by statutes, and is assumed to provide indemnity for insured and any person responsible for operation of vehicle with insured's consent. O'Roak v. Lloyds Casualty Co. (1931) 180 N.E. 571, 285 Mass. 532.

It must be presumed that motor vehicle insurance policy sued on not in record was issued in accordance with statute. Caron v. American Motorists' Ins. Co. of Chicago, Ill. (1931) 178 N.E. 286, 277 Mass. 156.

11. —— Dating back policy

Insurer which dated back compulsory liability policy in ignorance that insured had been involved in an accident prior to issuance of policy, but subsequent to effective date of policy as dated back, was estopped to deny liability as to parties injured, when insurer issued certificate which was filed with registrar of motor vehicles. Royal Indemnity Co. v. Granite Trucking Co. (1936) 4 N.E.2d 809, 296 Mass. 149.

12. —— Extended coverages

Where provision of automobile liability policy affords a broader coverage than statutory liability as to territory, amount recoverable, and circumstances of operation, insurer's liability is measured exclusively by policy. Blair v. Travelers Ins. Co. (1935) 197 N.E. 60, 291 Mass. 432.

The commissioner of insurance may approve an automobile liability policy containing the provisions required by this section, and extended coverages, so long as the extended coverages are not inconsistent with the terms of this section. 8 Op.Atty.Gen.1926, p. 146.

13. —— Reformation of policy

Insurer on compulsory motor vehicle liability policy which had been dated back by insurer in ignorance that insured had been involved in accident prior to issuing policy but within effective time of policy as dated back, and insurer thereafter having issued certificate of insurance, was not entitled to reform policy so as to make effective

date subsequent to accident and defeat recovery by persons involved in accident with insured. Royal Indemnity Co. v. Grande Trucking Co. (1936) 4 N.E.2d 809, 296 Mass. 149.

14. Construction of terms of policy—In general

The principles covering interpretation of an ordinary insurance policy have been properly disregarded in determining the scope and extent of a compulsory motor vehicle policy in order to accomplish the legislative aim of providing compensation to those who have been injured by automobiles. Desmarais v. Standard Acc. Ins. Co. (1954) 118 N.E.2d 86, 331 Mass. 190.

Where insurer in defining coverage in automobile liability policy promised to pay in accordance with the compulsory automobile liability security act, reference to the act made the policy the one defined by the statute even though the verbiage was not identical, and the omission of the words "to others" was immaterial as respects liability of insurer for bodily injuries suffered by named assured himself through the operation of the vehicle by another with named assured's consent. Oliveria v. Preferred Accident Ins. Co. of New York (1943) 45 N.E.2d 262, 312 Mass. 426, 143 A.L.R. 1391.

Insurance policy, issued to meet requirements of compulsory motor vehicle insurance statute, must be construed in connection with such statute and public policy embodied therein. Guzenfield v. Liberty Mut. Ins. Co. (1934) 190 N.E. 23, 286 Mass. 133.

Whenever contract, based on valuable consideration, has as its main purpose carrying of passengers, automobile liability insurer under policy precluding liability if passengers are carried for consideration is not liable for occurrences during journey covered by contract. Sleeper v. Massachusetts Bonding & Ins. Co. (1933) 186 N.E. 778, 283 Mass. 511.

"Or" as used in liability policy exempting accidents arising "out of or in" employment of insured's employees, has disjunctive meaning. Lunt v. Aetna Life Ins. Co. of Hartford, Conn. (1928) 159 N.E. 161, 261 Mass. 469.

15. —— Liberal construction

The language of policy issued under compulsory motor vehicle liability insurance law should be construed liberally to accomplish legislature's purpose to protect travelers on highways from injury by motor vehicles. Bornbaum v. Employers Liability Assur. Co. (1942) 41 N.E.2d 54, 311 Mass. 282.

Language of policy prescribed by statute providing indemnity and protection against loss only to insured and to any person responsible for operation of insured's motor vehicle with express or implied consent should be construed liberally to accomplish purpose of Legislature to protect travelers on highway from injury by motor vehicle. Dicklason v. Great American Indemnity Co. (1937) 6 N.E.2d 439, 296 Mass. 368.

16. —— Extraterritorial liability

Where insured truck was used principally for commercial purposes, but on day of accident the truck was used to transport its operator and others to rifle range, the occupant's death resulting from the accident which occurred within the rifle range was covered by extraterritorial public liability coverage of compulsory liability policy which covered operation of truck, notwithstanding declaration in policy that use of the truck was commercial, since such description meant only the regular and dominant use, and was not a specification of the only use for which the truck might possibly be required. Terrasi v. Pelree (1939) 23 N.E.2d 871, 304 Mass. 409.

Extraterritorial clause of automobile liability policy insuring against loss from liability "for damages on account of bodily injuries" covered consequential damages for medical expenses and loss of services resulting to parents of minor children injured by insured's negligence. Cormier v. Hudson (1933) 187 N.E. 625, 284 Mass. 231.

Inclusion of automobile liability insurance made compulsory by statute and of voluntary extraterritorial liability insurance in one policy did not change rules of construction which would be applied to the different kinds of insurance if they had been embodied in separate policies. Id.

Rights of administrator of deceased, killed in automobile collision in New Hampshire, against insurer who issued Massachusetts compulsory policy with extraterritorial coverage, were no greater than those of insured against whom administrator recovered judgment. Sleeper v. Massachusetts Bonding & Insurance Co. (1933) 186 N.E. 778, 283 Mass. 511.

Judgment creditors were not entitled to recover against judgment debtor's insurer under Massachusetts compulsory automobile policy containing extraterritorial coverage, for accident occurring in New Hampshire, where judgment debtor at time of accident carried passengers for consideration which precluded recovery under policy. Id.

New Hampshire compulsory automobile liability statute permitting recovery though automobile is used to carry passengers for consideration was not "specific statutory provision" annulling exclusion clause in Massachusetts compulsory policy with extraterritorial coverage, precluding recovery where automobile is used to carry passengers for consideration, under provision in policy that special statute in any state shall supersede exclusions. Id.

17. —— Loading and unloading vehicles

The loading and unloading clause of Massachusetts compulsory motor vehicle liability policy issued to express company would be construed as extending coverage to some accidents in which vehicle does not take an active part. Connecticut Indem. Co. v. Lee (C.C.A.1948) 168 F.2d 420.

The opening of sidewalk elevator doors by driver of express company's truck for purpose of delivering parcels from truck to consignee by means of sidewalk elevator was integral part of unloading the truck, so that under Massachusetts law, injury to one who fell into open elevator well was proximately caused by "unloading" of truck, within compulsory motor vehicle liability policy covering use of truck, including loading and "unloading". Id.

Under Massachusetts law, there is no requirement that some article from insured vehicle cause accident in order for compulsory motor vehicle liability policy to cover accident by virtue of loading and unloading clause in policy, but it is sufficient if there is a causal relation between either the loading or unloading and the accident. Id.

18. —— Garage liability

Automobile dealers and repairmen who have furnished certificate and obtained registration cannot, by failing to attach their plates to vehicles, withdraw from coverage of their policies customers' vehicles for which they have secured registration. Kramer v. Century Indem. Co. (1946) 67 N.E.2d 769, 320 Mass. 6, 165 A.L.R. 1463.

The words in garage liability policy defining "motor vehicle" as a motor vehicle under dealer's or repairer's registration mean motor vehicle which dealer or repairer may by attaching his plates lawfully use on public highways by virtue of his blanket registration, whether or not his plates are actually upon it at moment of any particular accident, and hence policy covered injuries caused by negligent operation of customer's automobile by garage owners' employee as necessary incident of repairs notwithstanding automobile was driven with customer's plates. Id.

A garage liability policy insuring against liability because of injury sustained through "ownership, maintenance, occupation or use of the premises" including public ways immediately adjoining and "all operations either on the premises or elsewhere" which are necessary and incidental thereto including repairs of motor vehicles, insured against liability arising out of testing of vehicles upon public ways for purpose of repairing them in course of business. Id.

19. Other insured

Where garage liability policies issued by different insurers, one covering driver and other covering owner of vehicle, each had a limit of liability of $5,000 and both afforded coverage for accident concerned, and both policies contained other insurance clauses by which it was provided that if insured had other insurance against loss company was not liable for a greater proportion of loss than applicable limit of liability stated in

declaration bore to the total applicable limit of liability of all valid and collectible insurance against such loss, and policies made this formula applicable to the compulsory coverage in event that other insurance was carried in company authorized to transact business in Massachusetts, and both insurers were authorized to transact insurance in Massachusetts and insurance under both policies was collectible, each insurer was liable for one-half of the combined A coverage or $5,000 together with costs and interests. Maryland Cas. Co. v. Hunter (1960) 168 N.E.2d 271, 341 Mass. 238.

20. Certificate

When insurer issued certificate which was filed with registrar he was stopped from denying liability as to parties injured. Royal Indemnity Co. v. Granite Trucking Co. (1936) 4 N.E.2d 809, 296 Mass. 149.

Person whose name was substituted on certificate of compulsory automobile liability insurance after registration of automobile by alteration of owner's name, which appeared thereon at time of execution, was not directly insured by policy so as to impose liability on insurer for judgment against such person for injuries received in operation of automobile covered by policy, regardless of whether application for registration in name of such person, which was attached to certificate, or certificate, was filled out and signed first. Leonardo v. De Vellis (1935) 198 N.E. 264, 292 Mass. 239.

Liability of insurer under compulsory automobile liability policy cannot be stretched beyond terms of certificate in light of governing statutes. Id.

Contractual obligation of insurer under compulsory automobile liability policy is defined by insurance certificate and policy, and is not affected by conduct of applicant for registration of automobile not covered by insurance either in placing name on application for registration or otherwise. Id.

Omission of statement as to residence and address of owner in application for registration of automobile is not cured by recital in accompanying certificate of insurance company that it has issued required requisite compulsory insurance to applicant, since certificate is made subsequently to application and is not authenticated by applicant. Crean v. Boston Elevated Ry. Co. (1935) 198 N.E. 172, 292 Mass. 226.

Certificate of coverage under Compulsory Motor Vehicle Liability Insurance Law required by section 1A of this chapter as condition of registration can appear on the face of the application for registration instead of being an individual stub attached thereto. Op.Atty. Gen. March 14, 1961, p. 111.

The registrar of motor vehicles could require certificates as provided in § 1A of this chapter precedent to registration of vehicles for which the Interstate Commerce Commission has issued permits of interstate transportation of passengers and which are used solely in such interstate transportation, only if the type of coverage required by Massachusetts does not conflict with the coverage required by the Interstate Commerce Commission. Op.Atty.Gen. May 17, 1949, p. 77.

21. Responsibility and consent—In general

Driver's prior statement, which related to her possession of automobile, but which contained no reference to her having been given permission of insured's son to operate automobile, constituted an admission by driver and as such was admissible, in action against such driver, the owner of the automobile and the owner's insurer, as substantive evidence relative to question whether she had permission of insured's son to operate automobile at time of fatal accident. Goodney v. Smith (1968) 242 N.E.2d 413, — Mass. —.

Permission given on occasion by automobile owner to her 16-year-old cousin to turn automobile around in street for purposes of washing it did not create bailment continuing through time when cousin, using duplicate keys made without knowledge of owner, took automobile from parking space used by owner in proceeding to her place of employment and was involved in accident. Scaltreto v. Shea (1967) 223 N.E.2d 525, 352 Mass. 62.

Under this section providing that policy should cover any person responsible for operation of insured vehicle with insured's express or implied consent, words "express or implied consent" primarily modify not the word "operation", but the word "responsible", and imply possession of vehicle with consent of owner and responsibility to him. Hurley v. Flanagan (1963) 48 N.E.2d 621, 313 Mass. 567.

Under this section providing that policy should cover any person responsible for operation of insured vehicle with insured's express or implied consent, responsibility for operation of vehicle accompanying possession conferred by owner is the test, not whether the particular operation was with express or implied consent of owner. Id.

The motor vehicle liability insurance act providing that policy should cover any person responsible for operation of insured vehicle with insured's express or implied consent requires only that insured consent to responsibility on part of person, against whom judgment is obtained, for operation of automobile somewhere, and that judgment be based upon operation upon the ways of the commonwealth. Id.

Person to whom owner voluntarily intrusts automobile would be "responsible" to owner for operation of automobile within meaning of compulsory motor vehicle insurance law. Fallon v. Mains (1939) 19 N.E.2d 68, 302 Mass. 166.

If insured owner of an automobile, expressly or by implication, gives his consent to another to take it on highway and there operate it, right of operator to indemnity from consequent loss exists even though vehicle be operated in manner, or by persons, or at times and places not authorized or even if such uses be forbidden by owner. Dickinson v. Great American Indemnity Co. (1937) 6 N.E.2d 439, 296 Mass. 368.

In suit against automobile liability insurer to apply in payment of judgment against automobile driver obligation of insurer under liability policy, plaintiff had burden to show that at time of accident driver was responsible for operation of automobile with owner's consent. Novo v. Employers' Liability Assur. Corporation (1936) 3 N.E.2d 737, 295 Mass. 232.

In suit to reach and apply toward satisfaction of judgment proceeds of compulsory automobile liability policy, liability of insured for indemnity for or protection to insured or any person responsible for operation of insured's motor vehicle with his express or implied consent must be established. Leonardo v. De Vellis (1935) 198 N.E. 264, 292 Mass. 239.

In action on compulsory automobile liability policy, fact that driver of insured's automobile who had insured's permission to drive automobile had no license to operate did not bar action against insurer based on driver's negligence. Mackey v. Hartford Accident & Indemnity Co. (1935) 197 N.E. 516, 292 Mass. 105, 106 A.L.R. 1248.

To entitle driver to indemnity provided for by automobile liability policy under motor vehicle law, driver must, at time and place of accident, have been driving car with express or implied consent of assured owner. Frankel v. Allied Mutuals Liability Ins. Co. (1934) 192 N.E. 517, 288 Mass. 218.

Under compulsory automobile liability policy, existence of responsibility for operation of motor vehicle, not authority for particular operation at time of accident, fixes insurer's liability to indemnify person other than owner against liability for negligent operation. Boudreau v. Maryland Casualty Co. (1934) 192 N.E. 38, 287 Mass. 423.

Automobile owner, permitting vehicle to be on public ways by personal use thereof or operation through servant or agent or user responsible to owner, may incur liability for damages which insurer, issuing policy required by statute, must make good to limit of insurance, notwithstanding violations of owner's rules and conduct by one whom he permits to use vehicle. Guzenfield v. Liberty Mut. Ins. Co. (1934) 190 N.E. 23, 286 Mass. 133.

Motor vehicle owner's consent to immediate conduct by user responsible to owner at moment of accident while operating it on public ways with owner's consent is immaterial on question of in-

surer's liability under compulsory motor vehicle insurance policy. Id.

Provision of compulsory motor vehicle insurance law that policy shall cover not only automobile owner, but any one responsible to him in its use contemplates that insurer's liability shall run with car unaffected by owner's action unless its presence on public ways was without his sanction. Id.

Bailee taking automobile with owner's consent on condition that he return car in half an hour was "person responsible for operation of insured's motor vehicle with his express or implied consent" within compulsory motor vehicle insurance law, though bailee failed to return automobile as agreed and accident occurred after time for its return expired. O'Roak v. Lloyds Casualty Co. (1934) 189 N.E. 571, 285 Mass. 532.

Person to whom owner voluntarily intrusts motor vehicle for use is "responsible" to owner for its operation within compulsory motor vehicle insurance law, though person intrusted with vehicle breaks contract of bailment. Id.

"Responsible," within compulsory motor vehicle insurance law, providing indemnity for person responsible for operation of insured's motor vehicle with his express or implied consent, means liable, answerable, or under bounden duty for its proper use in accordance with terms upon which possession has been delivered. Id.

Test whether operator other than insured comes within compulsory motor vehicle insurance law is whether operator was responsible to owner with owner's express or implied consent, not whether operation at time of accident was consented to. Id.

In suit to reach proceeds of statutory indemnity policy, evidence showed insured's automobile was operated with his implied consent at time it struck plaintiff's intestate. Boyer v. Massachusetts Bonding & Insurance Co. (1931) 178 N.E. 523, 277 Mass. 359.

Where taxicab was asset of insured's estate and was operated by driver with administrator's consent at time of accident, liability insurer was liable, though taxicab had been bequeathed to administrator. Hobbs v. Cunningham (1930) 174 N.E. 181, 273 Mass. 529.

Compulsory insurance law did not make owner liable for negligence of one, not servant or agent, operating motor vehicle with his knowledge and consent. McNeil v. Powers (1929) 165 N.E. 385, 266 Mass. 146.

22. — — Persons indemnified

Where automobile liability policy provided indemnity for those whose operation of the insured automobile with the consent of the named insured caused injuries to others and privilege of selecting those permitted by insured to use the automobile and so coming within protection afforded by the policy was left to the insured, policy covered the operation of the automobile, by either the named or the described insured, so that the coverage ran with the automobile so long as it was operated by the named insured or by one with his consent. Crompton v. Lumbermens Mut. Cas. Co. (1955) 129 N.E.2d 139, 333 Mass. 160.

Under the terms of an automobile liability policy, the driver of automobile upon the occurrence of an accident to a guest in the automobile was entitled under the terms of the policy to the same protection by virtue of the permissive use given to the driver by his father as the father as named insured would have had, if he had been operating the automobile at the time of the accident. Id.

Liability policy including as insured any person using the insured vehicle and any person legally responsible for use thereof, provided actual use was with permission of named insured, covered owner of truck leased by named insured and driver thereof whose services were included in the lease. O'Brien v. Ready (1954) 118 N.E.2d 98, 331 Mass. 204.

Where "truck and driver" lease required that lessee maintain insurance in its name, and liability insurance policy obtained by lessee covered hired equipment "while being operated in interest of named insured" and afforded protection to "any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is with permission of the named insured," lessee's policy applied, at least to extent that lessor's own policy afforded no coverage to liability incurred by lessor and driver, as result of collision in which leased vehicle was involved. Id.

Where automobile protected by compulsory liability policy which covered named insured and any person responsible for operation of automobile with insured's express or implied consent was delivered by insured to garage for repairs and garage owners' employee as necessary incident of repairs operated automobile on street and negligently injured a person, liability to injured person on part of garage owners or employee was covered by the policy. Kenner v. Century Indem. Co. (1946) 67 N.E.2d 769, 320 Mass. 6, 165 A.L.R. 1463.

Where corporation's automobile liability policy contained indorsement by which policy was made to include protection in respect to ownership, maintenance or use of motor vehicles "put into use" by corporation, an automobile of an employee of the corporation who was authorized to use his automobile on a journey made on behalf of the corporation was "put into use" by the corporation and the insurer became liable to indemnify employee and corporation against liability for death of a motorist which resulted from an automobile collision which occurred during the journey. Liberty Mut. Ins. Co. v. Hathaway Baking Co. (1940) 28 N.E.2d 425, 306 Mass. 428.

A breach of the terms of a bailment of an automobile by bailee does not deprive the bailee of his responsibility to the owner, or deny him the benefit of the indemnity provided in a compulsory liability policy. White v. Standard Accident Ins. Co. (1939) 19 N.E.2d 702, 302 Mass. 474.

Where automobile was falsely registered and insured under compulsory motor vehicle liability insurance statutes in name of owner's nephew, and at time of accident was driven by owner, with consent of nephew, insurer was liable to person injured in such accident. Fallon v. Mains (1939) 19 N.E.2d 68, 302 Mass. 166.

In suits to apply in satisfaction of personal injury judgments alleged obligation of automobile insurer for damages sustained by operation of insured's automobile, evidence established that automobile driven by guest of employee of insured under employee's supervision for convenience and pleasure of guest and employee was operated with consent of insured, authorizing recovery by plaintiffs. Blair v. Travelers' Ins. Co. (1934) 192 N.E. 467, 288 Mass. 285.

Where owner permitted her son and son's companion to use automobile, instructing companion not to allow son to drive, companion was covered by policy as "person responsible for operation of insured's motor vehicle" within compulsory motor vehicle insurance law, notwithstanding owner's son was operating automobile at companion's request at time of accident. Boudreau v. Maryland Casualty Co. (1934) 192 N.E. 38, 287 Mass. 423.

Chauffeur's disobedience of employer's order not to permit any person to operate automobile did not destroy his responsibility to employer for operation thereof so that one injured by negligent operation thereof by one driving it with chauffeur's permission, was entitled to recover on compulsory motor vehicle insurance policy issued to employer. Guzenfield v. Liberty Mut. Ins. Co. (1934) 190 N.E. 23, 286 Mass. 133.

23. —— Persons not indemnified

The indemnity provided by a compulsory automobile liability policy could not be applied in satisfaction of injured person's judgment against driver, where driver's possession of automobile was unauthorized and without express or implied consent of owner. White v. Standard Accident Ins. Co. (1939) 19 N.E.2d 702, 302 Mass. 474.

Evidence supported finding that owner insured did not either expressly or impliedly consent to operation of his automobile by another, so as to make liability policy, issued pursuant to compulsory motor vehicle insured law, security for payment of judgment against such other person. Restighini v. Hanagan (1939) 18 N.E.2d 1007, 302 Mass. 151.

Where insured owner permitted third party to take automobile, and third par-

ty subsequently, without insured's knowledge or consent, invited friend to ride and to operate automobile, and, while so doing, automobile struck pedestrian, judgment of pedestrian's administratrix against the friend was not within compulsory liability policy protecting insured and any one responsible for operation of automobile with insured's consent. Woznicki v. Travelers Ins. Co. (1938) 12 N.E.2d 876, 299 Mass. 244.

Language of policy prescribed by compulsory motor vehicle insurance law cannot be construed as including in its indemnity a person who, lacking express or implied consent of an insured owner thereto, drives latter's motor vehicle on public highway. Dickinson v. Great American Indemnity Co. (1937) 6 N.E.2d 439, 296 Mass. 368.

Truck driver who drove truck on public highway without insured's express or implied consent was not a "person responsible" for operation of truck within meaning of compulsory motor vehicle insurance law, and hence insurer was not liable for injuries caused by collision of truck with automobile on highway.

Under automobile indemnity policy providing that word "assured" shall include any person "legally using" insured automobile, provided such use is with owner's permission, operator of automobile having possession thereof for purpose of sale was not an "assured" within policy so as to render insurer liable for unsatisfied balance of judgments in excess of statutory liability, where accident occurred while operator was using automobile for own purposes on pleasure ride, since such use amounted to conversion of automobile. Blair v. Travelers Ins. Co. (1935) 197 N.E. 60, 293 Mass. 432.

Where insured owner's husband permitted third person in insured's presence to take automobile, and such person subsequently, without insured's knowledge or consent, invited friend to ride and to operate automobile when accident occurred, injured person's judgment against such operator was not within liability policy protecting insured and any one responsible for operation of automobile with insured's consent. Moschella v. Kilderry (1935) 194 N.E. 728, 290 Mass. 62.

Where automobile owner, insured for liability, permitted brother to use automobile, and brother, after death of assured, continued to operate car without change in registration and no administrator or executor was appointed, brother, involved in collision about two months after assured's death, was not covered by policy. Frankel v. Allied Mutuals Liability Ins. Co. (1934) 192 N. E. 517, 288 Mass. 218.

One driving automobile with permission of owner fraudulently procuring compulsory liability insurance policy and registering automobile in name of another without latter's knowledge or consent at time of injury to one recovering judgment against such driver was not "operating automobile with express or implied consent of named assured" as required to render insurer liable on policy to judgment creditor. Rondina v. Employers' Liability Assur. Corporation (1934) 190 N.E. 35, 286 Mass. 209.

Liability of insured for injuries resulting when insured was transporting persons in his automobile to their place of employment for consideration, where such persons were not fellow employees of insured, was not protected by automobile liability policy covering "fellow employees" of insured. Goff v. Benson (1934) 190 N.E. 16, 286 Mass. 119.

24. Injuries covered—In general

Under Massachusetts law, cause of injury to plaintiff must be something physically attached to or immediately connected in some manner with motor vehicle or its operation in order for court to find the necessary causal relationship to the operation or use of the motor vehicle so as to have injury covered by the terms of compulsory Massachusetts motor vehicle liability policy. Connecticut Indem. Co. v. Lee (D.C.1948) 74 F.Supp. 353, affirmed 168 F.2d 420.

Where automobile accident occurred in a park situated between the street and the ocean and the entire surface of the park was unpaved and there were no roads constructed thereon and the park had been acquired by the town by eminent domain, place where the injuries were sustained was not a "public highway" nor a "private way laid out under authority of the statute" nor a

"way dedicated to public use" nor a "way under control of park commissioners or body having like powers" within coverage of a compulsory automobile liability policy. Farrell v. Brancommier (1938) 149 N.E.2d 303, 337 Mass. 366.

Where employee of furniture moving business was standing approximately seven feet inside the property line on a concrete platform at front entrance to a home and was injured when tailboard of backing truck struck his foot, employee was within coverage of compulsory liability policy providing indemnity for injuries arising out of operation of motor vehicle "upon ways of the Commonwealth". Desmarais v. Standard Acc. Ins. Co. (1954) 118 N.E.2d 86, 331 Mass. 199.

Under this section requiring motor vehicle insurance of at least $5,000 on account of injury of one person and of at least $10,000 on account of one accident resulting in injury of more than one person, term "injury" refers to bodily injuries. Saltzberg v. Lumbermens Mut. Cas. Co. (1950) 94 N.E.2d 269, 326 Mass. 351.

A motor vehicle liability policy as defined in this section does not cover liability for bodily injuries by the named assured himself through the operation of the vehicle by another with named assured's consent. Oliveria v. Preferred Accident Ins. Co. of New York (1943) 45 N.E.2d 263, 312 Mass. 426, 143 A.L.R. 1391.

This act was intended to draw a sharp line of distinction between the assured himself on the one hand and "others" to whom damages are to be paid, and the assured himself does not belong to the class of the "others" against whose claim the liability insurer has agreed to provide protection. Id.

It is a familiar principle that the cause of action for death is not derived from the decedent but arises only in favor of other persons after his death, but the liability for "death" intended to be covered by a motor vehicle liability policy as defined by statute includes only liability for deaths of the same persons liability for whose bodily injuries is also covered, and policy does not cover liability for death of named assured through the operation of the vehicle by another with named assured's consent. Id.

An investigator appointed by the registrar of motor vehicles who was injured by willful misconduct of truck driver was entitled to recover on compulsory motor vehicle policy which was in effect at time of injury, since "liability to pay damages," as used in statute defining a motor vehicle liability policy as a policy of liability insurance indemnifying against loss by reason of liability to pay damages for injuries, includes liability arising by reason of willful conduct as well as negligence in operation of motor vehicle. Wheeler v. O'Connell (1937) 9 N.E.2d 544, 297 Mass. 549, 111 A.L.R. 1038.

Under statute governing automobile liability policies, party injured when automobile coasted down street after being parked therein by parking space attendant could recover in statutory suit under automobile owner's liability policy, notwithstanding that attendant was authorized to operate automobile only in parking space. Buckley v. Aetna Life Ins. Co. (1937) 8 N.E.2d 748, 297 Mass. 395.

Named insured, who recovered for personal injuries sustained while riding in automobile through gross negligence of one driving with insured's consent, was not entitled to recourse to compulsory automobile liability policy which protected "others" from damage caused by operation of insured's automobile for satisfaction of judgment, since word "others," which denominated beneficiaries, did not include insured. MacRey v. Hartford Accident & Indemnity Co. (1935) 197 N.E. 516, 292 Mass. 105, 106 A.L.R. 1248.

Where insured negligently permitted oil to leak from crank case of parked motor-truck onto street, injury sustained by pedestrian who, while crossing street some time after truck had been driven away, slipped and fell on such oil, was within liability policy covering injuries "arising out of ownership, operation, maintenance, control or use" of motor vehicle on highway. Mullen v. Hartford Accident & Indemnity Co. (1934) 191 N. E. 394, 287 Mass. 262.

Damages for injuries to one slipping on ice which fell to street from parked ice truck was not within motor vehicle insurance policy. Caron v. American Motorists' Ins. Co. of Chicago, Ill. (1931) 178 N.E. 286, 277 Mass. 156.

Damages for injuries to person," within provision making registered owner prima facie legally responsible for driver's conduct, did not include medical expenses incurred by husband in caring for wife's injuries. Wilson v. Grace (1930) 173 N.E. 524, 273 Mass. 146.

Passenger in automobile was not entitled to recover for injuries received merely because he was in the exercise of due care where there was no negligence on part of defendant. Coldwell v. Bartlett (1933) 6 Mass.App.Dec. 42.

25. —— Wilful or intentional wrong

Actions of driver, who showed signs of drowsiness and who lost control of automobile, did not show such shocking indifference to safe driving as would constitute gross negligence, and guest who was injured when automobile swerved and hit tree was not entitled to recover. Hamilton v. Sullivan (1962) 186 N.E.2d 118, 345 Mass. 758.

In action for injuries sustained by plaintiff while riding as a guest in an automobile operated by defendant, evidence warranted finding of gross negligence on part of defendant. Griffin v. Davis (1956) 130 N.E.2d 356, 341 Mass. 730.

Wilful conduct by driver of an automobile injuring a guest occupant is not within the coverage of an automobile liability policy since "wilful" as so used means intentional, and an insurance policy indemnifying an insured against liability due to his intentional wrong is void as against public policy. Sheehan v. Goriansky (1947) 72 N.E.2d 538, 321 Mass. 290, 173 A.L.R. 497.

Conduct of driver of insured automobile which is wanton or reckless and results in injury to a guest occupant is not outside coverage of liability policy notwithstanding that "wanton or reckless conduct" is the legal equivalent of "intentional conduct," since reckless conduct differs from intentional conduct in that reckless wrongdoer, although intending the act, does not intend to cause the harm which results from it. Id.

Under automobile liability policy indemnifying insured against liability for damages because of bodily injury caused by accident and arising out of the ownership, maintenance or use of automobile, "accident" is a more comprehensive term than "negligence" and means an unexpected happening without intention or design. Id.

A harm which was only constructively intentional does not, for that reason alone, fall outside category of an injury caused by accident so as to be beyond the coverage of an automobile liability policy. Id.

The statute respecting compulsory motor vehicle liability insurance includes liability for injuries due to wilful wrong. Westgate v. Century Indemnity Co. (1941) 35 N.E.2d 218, 309 Mass. 412.

Rule applicable to ordinary insurance, that a policy indemnifying an insured against liability due to his wilful wrong is void as against public policy, is not applicable in construing this section requiring compulsory motor vehicle insurance, and hence does not require that this section be construed so as to exclude liability for injuries due to wilful wrong, since section is itself declaratory of public policy applicable to compulsory insurance. Wheeler v. O'Connell (1937) 9 N.E.2d 544, 297 Mass. 549, 111 A.L.R. 1038.

Policy protecting insured from liability for injuries "accidentally sustained" by persons arising out of insured's operation of an automobile did not cover liability for injuries to others caused by intentional or willful acts of insured. Miller v. U. S. Fidelity & Casualty Co. (1935) 197 N.E. 75, 291 Mass. 445.

26. Consequential damages

Under automobile liability policy providing $5,000 insurance on account of bodily injury to any one person or $10,000 on account of one accident resulting in injury to more than one person, accident causing personal injury to wife and consequential damages to husband for medical and hospital expenses resulted in "injury" to only one person, and insurer paying wife $5,000 was not

obligated to pay husband's judgment against insured for consequential damages. Saltzberg v. Lumbermens Mut. Cas. Co. (1950) 94 N.E.2d 269, 326 Mass. 351.

Where same damages for medical expenses and loss of earning power which father was seeking to recover in his present action for consequential damages arising out of collision between automobile operated by his minor son and automobile operated by defendant had previously been sought in action brought by minor son, through father as next friend, father could not retry the case on the merits in new action brought by him individually, and fact that earlier action proved unsuccessful was immaterial. Defore v. McKinstery (1948) 76 N.E.2d 560, 322 Mass. 190.

Hospital and medical expenses furnished minor on account of injuries sustained in automobile accident were obligations of father, and, if established by judgment against insured, were covered by automobile liability policy indemnifying insured against loss by reason of liability to pay damages to others for bodily injuries or for consequential damages. Sciaraffa v. Debler (1939) 23 N.E.2d 111, 301 Mass. 240.

Where, in action instituted on his behalf by father, minor was denied recovery for hospital and medical expenses incurred by reason of injuries sustained in automobile accident and minor after he became of age, in absence of any agreement with father or with persons to whom father was indebted for the services rendered to the minor, paid such expenses and recovered judgment for amount expended against insured, minor could not recover under policy indemnifying insured against loss by reason of liability to damage to others for bodily injuries or for consequential damages, since minor had but a single cause of action which would not support successive actions. Id.

An action for consequential damages sustained by father through negligence of motorist in striking son was governed by the six-year statute of limitations, since damages were not "bodily injuries" within amendment to statute requiring the payment of judgments in actions of tort for bodily injuries or consequential damages to be secured by compulsory motor vehicle insurance or within statute requiring actions of tort for "bodily injuries," the payment of judgments in which is required to be secured by compulsory motor vehicle insurance to be brought within one year. Barbato v. La Vallee (1938) 12 N.E.2d 815, 299 Mass. 411.

In the case of McAdam v. Federal Mut. Liability Ins. Co. (1935) 193 N.E. 362, 288 Mass. 537, the court said: "The damages for bodily injuries sustained by the party injured are both consequential and direct results of the injuries, while the pecuniary damages caused by the injury, sustained by others, are entirely consequential."

Husband's cause of action for consequential damages for wife's injuries in automobile accident accrued at time of accident, although medical expenses were not then paid or incurred. Bartlett v. Hall (1935) 193 N.E. 360, 288 Mass. 532.

Action based on compulsory automobile liability policy for consequential injuries to plaintiff's wife in automobile accident was not within amendment requiring actions of tort for bodily injuries or for death, payment of judgments of which are required to be secured by compulsory motor vehicle insurance, to be instituted within one year after cause of action accrues. Id.

27. Property damages

Automobile liability policy covering property damage and not personal injury which did not apply to any person or organization or to any agent or employee thereof operating automobile repair shop, etc., with respect to any accident arising out of operation thereof did not cover damage caused by insured's automobile when driven by garage owners' employee as necessary incident of repairs. Kenner v. Century Indem. Co. (1946) 67 N.E.2d 769, 320 Mass. 6, 165 A.L.R. 1463.

Under garage liability policy whereby insurer agreed to pay on behalf of insured all sums which insured should become liable to pay for property damage caused by accident arising out of ownership, maintenance or use of premises and all operation "on the premises or

elsewhere" which were necessary and incidental thereto, including repair of motor vehicles, person who obtained judgment against garage owners and their employee for damage to person's automobile in collision with customer's automobile driven by garage owners' employee, had valid claim against insurer for amount of judgment together with costs and interest. Id.

An agreed judgment for plaintiff in action for damages to automobile colliding with automobile driven by defendant was not subject to statute requiring that agreed judgment, payment of which is secured by motor vehicle liability bond or policy as defined in compulsory insurance act, shall not bar action by judgment debtor, unless agreement was signed by him in person, as such policy or bond does not secure payment of judgment in action for property damage. Macheras v. Symopoulos (1946) 66 N.E.2d 351, 319 Mass. 485.

28. Guest occupant—In general

Guest injured in automobile collision while engaged in a shopping errand with and for her daughter-in-law springing solely from "casual intrafamily cooperation" was no more than licensee. O'Day v. O'Day (1966) 215 N.E.2d 896, 350 Mass. 778.

Under uninsured motorist coverage which defined uninsured automobile as one with respect to which there is no policy "applicable" at time of accident, there was no policy "applicable" when insured was injured while guest in automobile of driver whose only insurance was compulsory motor vehicle liability policy which made no provision against injury to guest. Whitney v. American Fidelity Co. (1966) 215 N.E.2d 767, 350 Mass. 542.

Automobile passenger seeking to recover from insurer for injuries had burden of showing that automobile liability policy included guest coverage. Owens v. Dinkens (1962) 185 N.E.2d 645, 345 Mass. 106.

Child thrown from running board of ice cream truck while being given ride home by driver could recover from driver for injuries for ordinary negligence, if she was business invitee of driver, but driver would be liable only for gross negligence, if she was gratuitous guest. Fulden v. Crook (1961) 172 N.E.2d 686, 342 Mass. 173.

One who was not a "guest" in the common-law sense may nevertheless be a "guest occupant" under this section eliminating compulsory motor vehicle insurance for benefit of guest occupant of person whose liability is covered by compulsory motor vehicle insurance. Lupinski v. Donnell (1949) 82 N.E.2d 793, 323 Mass. 489.

A plaintiff who, at request of a painter employed by plaintiff's landlord to paint plaintiff's apartment, accompanied painter in his automobile to a paint store to examine a color chart and pick colors to be used in plaintiff's apartment, and who was injured while being driven home by painter, was a "guest occupant" within statute eliminating compulsory motor vehicle insurance for benefit of guest occupant of person whose liability is covered by compulsory motor vehicle insurance, so as to preclude plaintiff from applying proceeds of compulsory motor vehicle policy to satisfaction of judgment obtained by plaintiff against painter in tort action for injuries. Id.

Decedent, even though a trespasser in that he was riding on running board of insured automobile without driver's consent, was a "guest occupant" within meaning of liability policy, including in its coverage liability for death or injury to a guest occupant of insured vehicle. Sheehan v. Gorlansky (1947) 72 N.E.2d 538, 321 Mass. 200, 173 A.L.R. 497.

The purpose of 1935 amendment to this section was to free automobile owner from compulsory obligation in case of guest occupants. Muise v. Century Indem. Co. (1946) 65 N.E.2d 98, 319 Mass. 172.

In determining whether decedent was a guest and not an employee within motor vehicle liability policy, verdict against insured, in prior action by decedent's administrator under statute authorizing action for death of person not an employee, was equivalent to finding that decedent's presence in insured's automobile at time of accident, had no causal relation to employment of decedent by insured. Id.

The amendment to this section relieving owner of motor vehicle from compulsory obligation in case of guest occupants is to be strictly construed in order to effectuate its aim and object. Id.

In statutory suit by injured automobile guest against automobile liability insurer to apply alleged obligation of insurer under "guest occupant" coverage provision to satisfaction of judgment against insured, evidence sustained trial judge's finding that insurer had disclaimed liability on trial before auditor for insured's misstatement as to her residence in application for insurance, as regards insurer's waiver of nonliability by undertaking defense of action. Sanborn v. Brunette (1941) 32 N.E.2d 384, 315 Mass. 231.

The fact that automobile liability insurer wrote letter to insured disclaiming liability for injury to guest because of insured's misstatement in application for insurance as to place of insured's residence did not require finding that previous disclaimer by insurer's attorney at trial before auditor was not complete and effective. Id.

In automobile guest's statutory suit to apply alleged obligation of insurer under "guest occupant" coverage provision of automobile liability policy to satisfaction of judgment against insured, evidence would have authorized finding that what insurer's counsel did after trial before auditor was in furtherance of insured's request that he finish trial in her behalf personally and not as attorney for insurer, and that attorney's subsequent action looking solely towards preservation of insured's right to jury trial could not have harmed insured. Id.

In injured automobile guest's statutory suit to apply alleged obligation of automobile liability insurer under the "guest occupant coverage" policy provision to satisfaction of judgment against insured, any defense available to insurer against insured was available against guest. Id.

A person who admittedly was "inside" the automobile in which he was injured was a "guest occupant" within this section not requiring indemnity against liability to pay damages to a guest occupant notwithstanding such person's allegations that he had "ceased to stand in the relation of a guest of the defendant" and notwithstanding any findings thereunder. Joyce v. London & Lancashire Indemnity Co. of America (1942) 41 N.E.2d 776, 312 Mass. 554.

In suit on compulsory automobile liability policy, alleged error in excluding findings of district judge that plaintiff had been a guest of owner of automobile in which plaintiff was injured, but that before injuries were sustained plaintiff's status changed was harmless where such finding did not establish that plaintiff was not a "guest occupant" at time of his injury within meaning of statute. Id.

In suit on compulsory automobile liability policy where it appeared by agreement that plaintiff was "inside the motor vehicle" at the time of his injury and nothing more appeared than that the policy was one issued under statute which did not cover a "guest occupant", plaintiff could not prevail. Id.

The average man's or even ordinary dictionary definition of words "guest occupant" is no substitute for legislature's plain definition thereof so as to include a trespasser in act eliminating compulsory motor vehicle liability insurance for such guest's benefit. Westgate v. Century Indemnity Co. (1941) 35 N.E.2d 218, 309 Mass. 412.

A "guest occupant" of automobile within act eliminating compulsory motor vehicle liability insurance for benefit of such guests is any person "in or upon, entering or leaving the same", except owner's employee or person responsible for vehicle's operation with owner's express or implied consent, and includes trespasser. Id.

The liability of automobile owner for injuries to boy, who was on automobile running board without invitation and against will of one operating automobile with owner's express or implied consent, as result of such operator's wanton and wilful act in starting automobile, was not covered by motor vehicle liability insurance policy issued to owner, as such boy was "guest occupant" of automobile within statute eliminating such insurance for benefit of guest occupants. Id.

The statutory definition of "guest occupant" within compulsory automobile

liability insurance law as person "in or upon, entering or leaving" vehicle does not change established principles of automobile owner's liability to guest for negligence. Ruel v. Langelier (1938) 12 N.E.2d 745, 298 Mass. 240.

In personal injury action by guest against daughter who was driving when automobile struck tree, exclusion of evidence offered by defendant's attorney of statements made by defendant before trial inconsistent with statements on direct examination was held reversible error, where statements were only hearsay, constituted no admission against defendant's interest, would not have obstructed justice, and registration of automobile disclosed that another than defendant would pay loss. Horneman v. Brown (1934) 190 N.E. 735, 286 Mass. 65.

A person, thrown upon sidewalk by automobile as it starts, is still a passenger, even after alighting, where one end of a hose, which was on the floor of automobile, became entangled around his leg, and the other was caught in closed door of automobile. Lanza v. Scarpa 1957) 11 Mass.App.Dec. 47.

29. —— Duty owed guest

Words "host" and "guest," as used in motor vehicle litigation cases involving host-guest relationship, must not be allowed to obscure principle that, when one enters upon a gratuitous undertaking for benefit of another, duty of care which he owes to that other with respect to his acts of commission or of omission in carrying out of undertaking is only duty to refrain from gross negligence. Wheatley v. Peirce (1968) 238 N.E.2d 878, — Mass. —.

Driver, who accepted passenger's invitation to drive latter's automobile and who was driving at excessive speed at time of accident on a sharp curve had not undertaken to confer any benefit on passenger so as to bring himself within exemption which would avail him lesser duty of care, that is only duty to refrain from gross negligence. Id.

If host-guest relationship has begun before accident occurs, and a gratuitous undertaking to plaintiff had been assumed by defendant, defendant owes plaintiff only duty to refrain from gross negligence. Motta v. Mello (1959) 154 N.E.2d 361, 338 Mass. 170.

Degree of automobilist's duty to injured person depends upon whether act claimed to be negligent was performed in carrying out gratuitous undertaking, not in whether injured person had, at time of accident, already become a passenger. Id.

30. —— Gross negligence

Evidence that defendant motorist informed plaintiff guest passenger that motorist wanted to show passenger how close he could come to fire hydrant without hitting it and that defendant motorist then drove his automobile to right of hydrant, struck curb stone and hit hydrant was sufficient for jury on issue of defendant's gross negligence. Lewis v. St. George (1968) 235 N.E.2d 47, — Mass. —.

Evidence was sufficient to support jury's finding that host driver's stopping on public highway in heavy fog where her automobile was hit in rear by truck constituted gross negligence and that her acts were legal cause of injury to guest. Posner v. Minsky (1968) 234 N.E.2d 287, 353 Mass. 656.

Guest was not entitled to recover for injuries sustained in automobile accident caused by host's momentary inattention where no unusual hazard was presented as there was no gross negligence. O'Day v. O'Day (1966) 215 N.E. 2d 896, 350 Mass. 778.

Driver of automobile which on dark, rainy, and foggy night struck guy wire 20 feet from street, went through wire, across lot, and down over embankment was not guilty of gross negligence and was not liable for guest's injuries. Israelian v. Moore (1963) 187 N.E.2d 863, 345 Mass. 770.

In action by guest passenger to recover for personal injuries sustained while riding in an automobile owned and operated by defendant, evidence sustained finding of gross negligence on the part of defendant. Andrews v. Silva (1959) 157 N.E.2d 399, 338 Mass. 799.

A gratuitous guest passenger may recover only upon proof that operator of automobile in which he was riding was guilty of gross negligence. Marshall v. August (1959) 155 N.E.2d 800, 338 Mass. 790.

Right of a gratuitous guest passenger to recover against driver of a motor vehicle requires proof that the driver was guilty of "gross negligence" at the time of the accident, and such "negligence" is the omission of even such diligence as habitually inattentive and careless men do not fail to exercise in avoiding danger to their own person or property. Pruzynski v. Malinowski (1958) 153 N.E.2d 640, 338 Mass. 58.

31. —— Imputed negligence

Driver, who accepted passenger's invitation to drive latter's automobile and who was driving at excessive speed at time of accident on a sharp curve could not impute his own negligence to that of the passenger. Wheatley v. Peirce (1968) 238 N.E.2d 878, — Mass. —.

32. Passenger for hire and invitee

Evidence did not permit finding that automobile passenger who contributed two dollars' worth of gasoline was conferring benefit on defendant-driver who had obtained permission from her father-owner to take passenger to laundromat on condition she buy gasoline so as to render her business invitee rather than gratuitous guest and thus count alleging ordinary negligence should not have gone to jury. Gray v. Lauziere (1968) 241 N.E.2d 825, — Mass. —.

In action for injuries sustained by plaintiff in accident occurring while she was a passenger in automobile owned and operated by defendant, evidence of intimacy between defendant and man riding in front seat of automobile with her at time of accident, that defendant had been surprised to find her husband at home when the group went to defendant's home, and that there had been telephone calls to plaintiff on day of accident from defendant's husband seeking to learn of her whereabouts, would not have established such benefit to defendant as would give plaintiff status of invitee, and there was therefore no error in exclusion of such evidence. Crowley v. McCauley (1959) 155 N.E.2d 407, 338 Mass. 418.

A person who pays any money to motorist for being transported, no matter how small, is a passenger for hire. Konstadakis v. McGarrigle (1962) 21 Mass.App.Dec. 28.

33. Employees

Under amendment to this section relieving owner of motor vehicle from compulsory obligation in case of guest occupants, and defining a guest occupant as any person other than an employee or passenger for hire, an "employee" is one whose transportation is in furtherance of duties owed by him to his employer, or at least is incidental to his employment, and such a person is not a "guest". Muise v. Century Indem. Co. (1946) 65 N.E.2d 98, 319 Mass. 172.

Where fisherman was fatally injured while riding in automobile, owned and operated by commander of fishing vessel, to his home to distribute Christmas gifts, fisherman was not riding as an "employee", and his administrator could not recover under motor vehicle liability policy which did not cover guest occupants. Id.

Where compulsory automobile liability policy provided that coverages "A" and "B" should not apply to bodily injury to or death of any person for which insured or insurer might be held liable under any workmen's compensation law, and under clauses of coverage "A", which were compulsory under statute, protection of policy was extended to any person injured upon ways of commonwealth, and insured was not covered by compensation law, Insured's employee, who was injured while engaged in insured's business as result of negligent operation of insured's automobile, was entitled to benefits of policy. Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E.2d 837, 308 Mass. 249.

The compulsory automobile insurance law does not exclude as a class all employees of insured from right to avail themselves of security of policy but excludes only those employees of insured who are entitled to payments or benefits under workmen's compensation act. Id.

Under statutes requiring motor vehicle liability insurance covering bodily injuries and consequential damages consisting of expenses incurred by spouse, parent, or guardian of injured party, and providing for application of insur-

er's obligation to payment of judgment for such injuries or damage, master was not entitled to application of insurer's obligation to payment of master's judgment against servant for sums which master was compelled to pay to persons who were injured through servant's negligence while he was driving insured automobile in scope of his employment. Stratton v. Bracor (1938) 16 N.E.2d 50, 301 Mass. 10.

An automobile liability insurer was not liable for payment of judgment recovered against insured's employee driving automobile at time of accident on ground that employee was a person responsible for operation of automobile with insured's express or implied consent where employee used automobile in connection with cemetery work, work at cemetery ceased at 4:30 p. m., automobile was kept in garage located in cemetery, and accident occurred when employee was on his way back to cemetery from a private shopping expedition. Gearin v. Walsh (1938) 12 N.E.2d 66, 299 Mass. 145.

An employee, having employer's general permission to use latter's truck in helping third person deliver soda water bottled by him at picnic grounds, operated truck with employer's implied consent at time of injuring others after picnic to which he helped such third person to drive truck, loaned to latter by employer for such purpose, though forbidden by latter to drive it at such time, and hence was within protection of employer's liability insurance policy as "person responsible for the operation of the insured motor vehicle with his express or implied consent." Dufour v. Arruda (1938) 11 N.E.2d 920, 299 Mass. 46.

Injured party's recovery of judgment against motorist protected by compulsory motor vehicle insurance policy entitled injured party to decree authorizing payment to him by insurer, notwithstanding injured party was employed by insured motorist who was not insured under workmen's compensation act, and notwithstanding injured party was operating the insured automobile at time injury was sustained. Adams v. American Employers Ins. Co. of Boston (1935) 198 N.E. 147, 292 Mass. 260.

Employer's insurer was liable on judgment against truck driver for negligently causing death of driver's helper. Rose v. Franklin Surety Co. (1933) 183 N.E. 918, 281 Mass. 538.

Truck driver's helper killed by driver's negligence was not person entitled to "payments" or "benefits" under workmen's compensation act so as to preclude recovery on compulsory motor vehicle insurance policy, where employer did not carry compensation insurance. Id.

A fellow employee who is a paying passenger in a car pool, may recover against operator of motor vehicle for negligence which causes his injuries. Meyers v. Cummings, 30 Mass.App.Dec. 221.

34. Leased vehicles

Duty to carry compulsory liability insurance was on owner of leased vehicle. O'Brien v. Ready (1954) 118 N.E.2d 98, 331 Mass. 204.

Where leased truck was involved in accident while being operated under lessee's permit, owner's liability insurance carrier was liable, under policy limiting coverage to operations under owner's permits, only for amount of compulsory insurance. Id.

35. Registration

A licensed owner of automobile which the owner alone drove was not entitled to registration of automobile and issuance of number plates therefor without first giving security required by the motor vehicle compulsory insurance statutes, on the ground that he had an immemorial right to use of highway in the ordinary and usual manner. Poresky v. Registrar of Motor Vehicles (1948) 77 N.E.2d 314, 322 Mass. 742.

A licensed owner of automobile which the owner alone drove was not entitled to registration of automobile and issuance of number plates therefor without first giving security covering automobile, by an automobile liability policy or a deposit of cash or securities for damages for bodily injuries including death and consequential damages caused by operation of such automobile as required by statutes. Poresky v. Registrar of Motor Vehicles (1946) 67 N.E.2d 407, 319 Mass. 717.

In actions between members of family in connection with automobile accident, courts must examine cases with care to prevent fraudulent co-operation between plaintiff and nominal defendant at expense of insurer, since it must be inferred from fact of registration within commonwealth that automobile was protected. Horneman v. Brown (1934) 190 N.E. 735, 286 Mass. 65.

36. Expiration of registration

Under statute relating to the registration of automobiles, an insurer under a motor vehicle liability policy issued in connection with registration of insured's automobile for period "from 12:01 A.M. January 1, 1933, to 12:01 A.M. January 1, 1934" was not liable for injuries occasioned in operation of an automobile at 3:40 o'clock on the morning of January 1, 1934, at which time automobile was not registered for the year 1934, in view of legislative intent as manifested by statutes, that registration of every motor vehicle shall expire at midnight on December 31 of each year. Geary v. Travelers Ins. Co. (1933) 15 N.E.2d 238, 300 Mass. 314.

A liability insurance policy taken out by an owner of a motor vehicle after a deposit is made to cover the registration of the motor vehicle, but before the expiration of the year covered by the registration pursuant to § 34D of this chapter would not afford coverage to such owner for accidents which might have occurred prior to the taking out of the policy, and it would therefore be necessary for the division of highways to retain the deposit of security for a period of at least one year from the time when such policy was taken out, to protect persons who might have suffered injury due to the operation of the motor vehicle during such period. 8 Op.Atty.Gen. 1926, p. 161.

37. Accidents outside state

Automobile liability policy under Massachusetts compulsory motor vehicle liability insurance act did not cover accident occurring in New Hampshire. Sleeper v. Massachusetts Bonding & Insurance Co. (1933) 186 N.E. 778, 283 Mass. 511.

38. Representations by insurer

Automobile liability insurer was bound by representations made by its adjuster to persons injured in collision with insured automobile, that their medical expenses would be paid and they would be compensated for pain and suffering and loss of time from work and that they need not consult an attorney or sue insurer. MacKeen v. Kasinskas (1957) 132 N.E.2d 732, 333 Mass. 695.

Evidence as to representations allegedly made by adjuster for automobile liability insurer to persons injured in collision with insured automobile as to payment of medical expenses and compensation for pain and suffering and loss of time from work without necessity of consulting counsel or suing insurer was sufficient to take action against driver of automobile to recover damages for such injuries to jury on question of whether defendant and insurer were estopped by adjuster's conduct from setting up defense of one-year statute of limitations. Id.

Representations allegedly made by adjuster for automobile liability insurer to persons injured in collision with insured automobile that their medical expenses would be paid and that they would be compensated for pain and suffering and loss of time from work and need not consult an attorney or sue insurer were sufficient to estop driver of insured automobile and insurer from setting up one-year statute of limitations as a defense to action to recover damages for injuries sustained in collision. Id.

39. Co-operation clause

Where automobile liability policy required insured's aid in preparation and trial of case brought against insured, insured was bound to comply with conditions precedent of policy unless waived or unless company was estopped from relying upon them. Polito v. Galluzzo (1958) 147 N.E.2d 375, 337 Mass. 360.

Where insured disappeared without notifying insurer of his new address or furnishing some method by which he could be reached, and insurer made reasonable efforts to locate him, disappearance of insured and its failure to notify insurer of change of address were a material breach of cooperation caused in

automobile liability policy and warranted a disclaimer of liability. Id.

Insured driver's submission to insurer of statements indicating automobile accident was caused by his "dozing off" was breach of co-operation clause of automobile policy where accident resulted, according to his later statement, from his placing his hand on knee of lady companion and her objection and resistance thereto. Gleason v. Hardware Mut. Cas. Co. (1954) 122 N.E.2d 381, 331 Mass. 703.

That insurer on automobile policy providing guest coverage did not immediately disclaim coverage, on ground of insured's breach of co-operation clause, by furnishing false statements as to cause of accident, when it received guest's answers to interrogatories, which answers conflicted with statements, did not constitute waiver of breach where falsity of statements was not otherwise indicated and no prejudice appeared from failure to disclaim immediately. Id.

The co-operation clause in motor vehicle liability policy was binding upon person driving vehicle as well as upon insured owner of vehicle. Williams v. Travelers Ins. Co. (1953) 115 N.E.2d 378, 330 Mass. 176.

Under the co-operation clause in motor vehicle liability policy, all of insured's communications to insurer must be truthful and in good faith; however, a misstatement concerning a trivial or an inconsequential matter or an honest mistake does not constitute a breach; but the furnishing of information by insured, known to be false and of a material nature, either before or at the trial, is a breach of the clause. Id.

Where insured and the driver of insured's motor vehicle made statements to the insurer which were false, and then changed their testimony upon trial of action in tort by minor plaintiff against driver, and statements were intentionally given with intent to defraud, the action of insured and driver voided the insurance policy because of their failure to comply with co-operation clause in policy, and hence insurer was not required to satisfy the judgment. Id.

The giving by insured of intentionally false information as to details of accident would be a breach of co-operation clause of automobile liability policy, regardless of whether false information is an overstatement or understatement of facts bearing upon liability. Searls v. Standard Accident Ins. Co. (1944) 56 N.E.2d 127, 316 Mass. 606.

40. Preferred claims

Compulsory motor vehicle insurance law does not give tort claims arising out of automobile accident preferred standing in relation to settlement of estate of deceased person, since injured person's right to avail himself of insurance is ancillary to original right of action against tort-feasor, and injured person must first establish his claim against tort-feasor or his estate as provided by law. Gallo v. Foley (1937) 5 N.E.2d 425, 296 Mass. 306.

41. Reimbursement provisions

Where insured's employee, who was injured while engaged in insured's business, was entitled to benefit of coverage "A" of compulsory automobile liability policy, and insurer paid employee's claim against insured, who was not covered by compensation Act, and coverage "B" of policy did not apply to injuries sustained by insured's employees while engaged in insured's business, and under coverage "A" insured agreed to reimburse insurer for payments which insurer would not have been obligated to make if exclusions applicable to coverage "B" were applicable to coverage "A", reimbursement provisions were not unreasonable or arbitrary nor violative of "public policy" and the workmen's compensation act. Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E. 2d 837, 308 Mass. 249.

Provisions of compulsory automobile liability policy which required insured to reimburse insurer for any payments made by insurer under certain conditions were designed to prevent employers, such as insured, who did not insure under compensation act from defeating purposes of act and from gaining an advantage over employers who, notwithstanding that they were insured under compensation act, were required to bear additional burden of complying with

compulsory automobile insurance law. Id.

Where insured's employee who was injured while engaged in insured's business was entitled to benefit of coverage "A" of compulsory automobile liability policy, and insurer paid employee's claim against insured, who was not covered by compensation act, and coverage "B" of policy did not apply to injuries sustained by employees while engaged in insured's business, and under coverage "A" insured agreed to reimburse insurer for payments which insurer would not have been obligated to make if exclusions applicable to coverage "B" were applicable to coverage "A", reimbursement provisions were not unconstitutional as failing to afford "equal protection of law" required by federal constitution, when applied to compel insured to reimburse insurer for amount paid employee. Id.

42. Settlements

In action by insurer under compulsory automobile liability policy against insured to recover amount which insurer paid to insured's employee in settlement of employee's claim against insured for injuries which employee sustained while engaged in insured's business as result of negligent operation of insured's automobile, where employee was entitled to benefit of policy and policy gave insurer right to settle claims against insured in any way which insurer deemed expedient, insured's contention that insurer's settlement with employee was improper because insured had no notice of settlement could not be sustained where there was evidence that insured knew what was being done in connection with settlement, and record did not show an absence of good faith or negligence by insurer in making settlement. Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E.2d 837, 308 Mass. 249.

Where compulsory automobile liability policy gave insurer right to settle claims against insured in any way which insurer deemed expedient, even if insured were ignorant of insurer's settlement of claim by insured's employee against insured for injuries caused by negligent operation of insured's automobile, insured could not attack settlement in absence of evidence showing fraud or negligence on part of insurer. Id.

An insurer in a motor vehicle liability policy which obligated insurer to defend actions against insured would not be liable to insured for failure to make a settlement which a reasonably prudent person, exercising due care "from the standpoint of the assured," would have made in absence of an express promise to settle. Abrams v. Factory Mut. Liability Ins. Co. (1937) 10 N.E.2d 82, 298 Mass. 141.

Insurer under compulsory motor vehicle liability policy, coverage of which is limited as to amount, may settle part of multiple claims arising from accident, notwithstanding such settlement results in preference by exhausting fund to which injured person whose claim has not been settled might otherwise look. Bruyette v. Sandini (1935) 197 N.E. 29, 291 Mass. 373.

Insurer indemnifying insured against automobile liability has right to dispose of action against insured at its option, and settle in way best for its interest. Long v. Union Indemnity Co. (1931) 178 N.E. 737, 277 Mass. 428, 79 A.L.R. 1116.

43. Withdrawal by insurer

That automobile liability insurer undertook defense of actions at law for injuries, removed cases to the superior court, filed claims for jury trials, propounded and answered interrogatories, defended cases before the auditor, attended hearing upon auditor's draft report, and, after auditor had filed his report, withdrew from the cases without operator of automobile signing a non-waiver agreement, did not estop insurer from denying its liability on the ground that the cases were not covered by the policy, where it did not appear that plaintiff was misled. Restighini v. Hannigan (1939) 18 N.E.2d 1007, 302 Mass. 151.

While automobile liability insurer could not continue in active defense of actions for injuries against operator of automobile after it had sufficient information to warrant a belief that the actions were outside the terms of the policy without being estopped from denying liability, insurer could, pending ascertainment of essential facts, take the

usual measures in defense of the actions without barring itself from subsequently withdrawing when it discovered that the policy did not cover the person operating the automobile when the accident occurred. Id.

44. Defense available to insurer

Where husband filed bill in Massachusetts court against insurer to reach and apply proceeds of automobile liability policy to satisfaction of husband's judgment for personal injuries, damage to his automobile, and loss of wife's services, and wife filed a separate and similar bill to satisfy her judgment for injuries sustained in same collision, and insurer had husband's bill removed to federal district court, and Massachusetts court dismissed wife's bill, collateral estoppel by judgment was not available to insurer as a defense to husband's action in federal court. Standard Acc. Ins. Co. v. Doiron (C.A.1948) 170 F.2d 206.

Taxicab company's defense to action by passenger and her husband for injury to passenger's thumb, upon which taxicab door was closed, that injury was due to her refusal of operator's assistance and her act of closing door on her thumb was meritorious, and therefore Superior Court should have vacated default judgment. Medford Red Cab, Inc. v. Duncan (1961) 172 N.E.2d 260, 341 Mass. 708.

In bill to reach and apply the proceeds of a liability policy where plaintiff was injured while riding as a guest in automobile owned and operated by another and which was registered in name of insured who carried compulsory liability insurance which included noncompulsory guest coverage, while defenses of lack of co-operation and misrepresentation of insured were not available to the insurer against injured party seeking to reach the proceeds where compulsory liability coverage is involved, they were available as to the noncompulsory guest coverage. Cassidy v. Liberty Mut. Ins. Co. (1958) 154 N.E. 2d 353, 338 Mass. 139.

If automobile registered in the name of the father alone would be illegally registered if there were part ownership in the son, an admission of such ownership by the son would not be admissible against the father. Hayeck v. Raymond (1958) 154 N.E.2d 80, 338 Mass. 116.

Where automobile guest recovered judgment against host under liability policy, rights of guest were derivative on insured and any defenses that insurer might have against host were equally applicable against guest since guest's rights against insurer rose no higher than those of host. Polito v. Gallazzo (1958) 149 N.E.2d 375, 337 Mass. 360.

In suit by automobile guest against automobile liability insurer for satisfaction of guest's judgment against insured motorist for injuries sustained in accident, any defense available to insurer against insured was equally available against guest. Salonen v. Paanenen (1947) 71 N.E.2d 227, 320 Mass. 568.

In injured automobile guest's statutory suit to apply alleged obligation of automobile liability insurer under the "guest occupant coverage" policy provision to satisfaction of judgment against insured, any defense available to insurer against insured was available against guest. Sanborn v. Brunette (1944) 52 N.E.2d 384, 315 Mass. 231.

Trial judge's findings that judgment obtained by automobile guest against owner of automobile for injuries arising out of automobile accident resulted from collusion of parties, and was for purpose of serving as basis for fraudulent claim against defendant insurance company under automobile liability policy, was supported by evidence, and warranted dismissing bill brought by guest seeking to reach and apply liability of defendant company under policy in satisfaction of judgment. Fistel v. Car & General Ins. Corporation (1939) 23 N.E. 2d 895, 304 Mass. 458.

Automobile liability insurer was not estopped to deny liability in suit by person who obtained judgment against automobile operator, on ground that automobile was not operated with owner's consent, because insurer assumed defense of original action against automobile operator. Novo v. Employers' Liability Assur. Corporation (1936) 3 N. E.2d 737, 295 Mass. 232.

Where motor vehicle was falsely registered and insured under compulsory motor vehicle liability insurance statutes in name of owner's sister and at time of accident was driven by owner's wife with knowledge and consent of registree, vehicle was a trespasser on the highway, but insurer was liable to person obtaining judgments for death of her husband in such accident, where husband was not entitled to benefits of Workmen's Compensation Act. Cuccavo v. Kearney (1931) 180 N.E. 817, 280 Mass. 480.

45. Declaratory judgment actions

Where jurisdiction of action under Federal Declaratory Judgment Act to determine whether personal injury action against its insured was covered by Massachusetts compulsory motor vehicle liability policy issued by plaintiff was founded on diversity of citizenship between plaintiff and all defendants, counterclaim by defendant insurance company, which had issued a public liability policy to insured, for a determination that its policy did not cover accident forming basis of personal injury action arose out of same transaction and was ancillary to main action, so that no independent jurisdictional grounds were required to sustain it. Connecticut Indem. Co. v. Lee (C.C.A.1948) 168 F.2d 420.

Where automobile liability policy permitted cancellation on written notice of not less than 15 days, and on March 25 insurer notified insured of cancellation for nonpayment of unpaid balance of premium, to become effective April 16, and at same time sent notice to registrar of motor vehicles in Massachusetts in accordance with state law, and insured then made a further partial payment of premium but was informed that balance of premium would have to be paid before April 16, to reinstate the policy, and no further payments were made, the policy was cancelled on April 16, and insurer was entitled to declaratory judgment absolving it from any liability arising out of accident in which insured was involved on April 18. Hartford Acc. & Indem. Co. v. Segreto (D.C.1941) 37 F.Supp. 614.

46. Default judgments

Where the only service of summons in accident case on automobile owner was at apartment from which such owner had previously moved to another state, default judgment against such owner was a mere nullity, and did not authorize suit against owner's automobile liability insurer. Hogan v. Liberty Mut. Ins. Co. (1940) 25 N.E.2d 188, 305 Mass. 186.

47. Foreign judgments

Insurer on compulsory motor vehicle liability policy was liable to insured where a judgment was recovered against insured in Rhode Island for injuries sustained in Massachusetts by person who was struck by truck operated by insured, notwithstanding action was brought in Rhode Island after cause of action was barred by limitations in Massachusetts, but before action was barred by Rhode Island statute. Brown v. Great American Indemnity Co. (1937) 9 N.E.2d 547, 298 Mass. 101, 111 A.L.R. 1065.

Under liability policy wherein insurer agreed to indemnify insured for liability for injuries accidentally sustained caused by insured's operation of his automobile, insurer was liable where judgments were secured in another state in actions based solely on declarations alleging that injuries were caused by negligence of insured, though trial judge found that insured in operation of his automobile was guilty of recklessness, since insured in such actions was held liable for negligence and not for intentional and willful conduct, in that judgments in foreign state were presumably based on the declarations. Miller v. U. S. Fidelity & Casualty Co. (1935) 197 N. E. 75, 291 Mass. 445.

48. Amount of judgment

In suits to apply in satisfaction of personal injury judgments alleged obligation of automobile insurer for damages sustained by operation of insured automobile where, other than as appeared in complaint, record did not disclose amount of judgment for plaintiff, judgment could not be entered for plaintiff in excess of minimum required by compulsory insurance law. Blair v. Travelers' Ins. Co. (1934) 192 N.E. 467, 288 Mass. 285.

In suits to apply in satisfaction of personal injury judgments alleged obligation of automobile insurer for dam-

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ages sustained by operation of insured automobile, answer, neither admitting nor denying allegation that plaintiff recovered judgment in action at law against insured for sum in excess of minimum required by compulsory insurance law, was not admission of fact of such recovery so as to authorize judgment in excess of minimum requirements. Id.

49. Interest and costs

Under compulsory motor vehicle policy by which insurer agreed to pay $5,000 indemnity, interest, and costs, interest and costs were not included within limit of $5,000 where a judgment was recovered against insured for $9,000 costs were taxed against insured, and interest ran from date of judgment. Brown v. Great American Indemnity Co. (1937) 9 N.E.2d 547, 298 Mass. 101, 111 A.L.R. 1065.

Where a judgment was recovered against insured for injuries sustained in collision occurring while compulsory motor vehicle liability policy was in effect, insured was not required to satisfy judgment before bringing action against insurer for amount of policy plus interest and costs. Id.

Under automobile indemnity policy providing for payment out of cash deposited as security the amount of execution, including costs and interest up to but not in excess of $5,000, insurer was liable for interest from date of judgment, notwithstanding judgment was for $5,000, payment on judgment being applied first to payment of interest due thereon and then to reduction of judgment proper. Blair v. Travelers Ins. Co. (1935) 197 N.E. 60, 291 Mass. 432.

Under automobile indemnity policy providing for payment out of cash deposited as security for damages for bodily injuries, amount of execution, including costs and interest up to but not in excess of $5,000, interest from date of verdict to date of judgment was included in maximum recovery of $5,000. Id.

§ 34B. Certificates of insurance or surety companies; contents of certificate; copies

The registrar shall accept a certificate as defined in section thirty-four A from any person applying for registration of a motor vehicle.

Such certificate of an insurance or surety company shall, except as hereinafter provided, be in a form prescribed by the commissioner of insurance, shall contain the recitals required by said section thirty-four A and, if at the time of the execution thereof the schedule of premium charges and classifications of risks for the year for which registration is sought have been fixed and established under section one hundred and thirteen B of chapter one hundred and seventy-five, shall state the rate at which and the classification under which the motor vehicle liability policy or bond referred to therein was issued or executed and the amount of the premium thereon and whether or not said premium is at the rate fixed and established as aforesaid, and each such certificate shall contain such other information as said commissioner may require. Such a certificate shall be executed in the name of the company by one of its officers, or by an employee of the company duly authorized by it by a writing, in a form prescribed by said commissioner, filed in the office of said commissioner and not theretofore revoked by a writing filed as aforesaid, or by an insurance agent of the company licensed under chapter one hundred and seventy-five to solicit applications for and to negotiate motor vehicle liability policies or bonds, or on behalf of such an insurance agent by one of his agents or employees authorized by such insurance agent by an unrevoked writing as aforesaid, in form and filed as hereinbefore provided. The signature of the person authorized by any such writing shall be written on the margin thereof. No other person shall execute or issue such a certificate. Whoever issues or executes a certificate in a form other than that prescribed by said commissioner shall be punished by a fine of not less than fifty nor more than five hundred dollars.

The registrar shall, when preparing his record of each registration, furnish a copy of such record to the company appearing signatory to the certificate accompanying the application for such registration.

If such a certificate, whether or not conforming to the foregoing requirements of this section, is executed in the name of a company by a person hereinbefore specified, or is so executed by any other person in violation of this section under authorization of the company, and is filed with the registrar in connection with the registration of a motor vehicle, the company shall be estopped to deny the issue or validity of such certificate or that a motor vehicle liability policy or bond has in fact been issued or executed as set forth in such certificate.

The certificate which the state treasurer shall issue upon receipt of cash or securities under section thirty-four D or thirty-four F shall be in such form and shall contain such information as the registrar may prescribe.

Whoever issues or alters without authority or forges any certificate as defined in said section thirty-four A or issues such certificate knowing that the policy or bond therein described has not in fact been issued or executed or is not in force or that the cash or securities have not been deposited, or whoever knowing that such certificate has been issued or altered without authority or forged or that the policy or bond described therein has not in fact been issued or executed or is not in force or that the cash or securities have not been deposited files such certificate with the registrar, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both.

Amended by St.1933, c. 83, §§ 1, 2; St.1935, c. 302; St.1949, c. 571, § 2.

Historical Note

St.1925 c. 346 § 2. St.1927 c. 127 § 1. St.1928 c. 381 § 4.

St.1943, c. 372, authorized the issuance and use by certain insurance companies of renewal certificates, renewal agreements and renewal receipts.

Library References

Automobiles ⇨43.
C.J.S. Motor Vehicles § 110.
Comment.
Defenses of insurer, see M.P.S. vol. 11, Martin and Hennessey, § 728.
Judgment creditors bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

Notes of Decisions

In general 1
Estoppel 2

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1. In general

A licensed owner of automobile which the owner alone drove was not entitled to registration of automobile and issuance of number plates therefor without first giving security covering automobile, by an automobile liability policy or a deposit of cash or securities for damages for bodily injuries including death and consequential damages caused by operation of such automobile, as required by statutes. Poresky v. Registrar of Motor Vehicles (1946) 67 N.E.2d 407, 319 Mass. 717.

That insured, in obtaining compulsory motor vehicle liability policy, gave a false address, would not be inferred from return to insurer of mail addressed two months later to insured at address given and marked "addressee unknown," as respects sufficiency of notice of cancellation. Palocian v. Day (1938) 13 N.E.2d 398, 299 Mass. 586.

In action to reach and apply toward satisfaction of judgment proceeds of compulsory automobile liability policy, insurer's defense based upon certificate of insurance showing issuance of policy to person other than judgment debtor to whom no policy was issued was not affected by statutes providing that insurer issuing certificate should be estopped to deny issuance of policy as set forth therein and that no statement made by insured in securing policy or registration of automobile should avoid policy. Leonardo v. De Vellis (1935) 198 N.E. 264, 292 Mass. 239.

In determining insurer's liability under compulsory motor vehicle liability insurance statutes, the statutes and policy must be construed together in the light of the General Court's dominant design in undertaking to deal with the subject of motor vehicle liability insurance. Caccavo v. Kearney (1934) 190 N.E. 817, 286 Mass. 480.

One driving automobile with permission of owner fraudulently procuring compulsory liability insurance policy and registering automobile in name of another without latter's knowledge or consent at time of injury to one recovering judgment against such driver was not "operating automobile with express or implied consent of named assured" as required to render insurer liable on policy to judgment creditor. Rondina v. Employers' Liability Assur. Corporation (1934) 190 N.E. 35, 286 Mass. 209.

Certificate of coverage under Compulsory Motor Vehicle Liability Insurance Law required by section 1A of this chapter as condition of registration can appear on the face of the application for registration instead of being an individual stub attached thereto. Op.Atty. Gen., March 14, 1961, p. 111.

2. Estoppel

Representations allegedly made by adjuster for automobile liability insurer to persons injured in collision with insured automobile that their medical expenses would be paid and that they would be compensated for pain and suffering and loss of time from work and need not consult an attorney or sue insurer were sufficient to estop driver of insured automobile and insurer from setting up one-year statute of limitations as a defense to action to recover damages for injuries sustained in collision. MacKeen v. Kasinskas (1956) 132 N.E.2d 732, 333 Mass. 695.

Where insured at the time of making application for workmen's compensation insurance policy had knowledge, but did not disclose, that his employee was injured within antedated period of the term of the policy, ordinary principles of nondisclosure would apply as to validity of the policy in absence of controlling provisions in workmen's compensation act, comparable to provision in motor vehicle liability insurance statute that insurance company is estopped to deny the issuance or validity of the policy after filing of certificate of issuance. Century Indem. Co. v. Jameson (1956) 131 N.E.2d 767, 333 Mass. 503.

Insurer which dated back compulsory liability policy in ignorance that insured had been involved in an accident prior to issuance of policy, but subsequent to effective date of policy as dated back, was estopped to deny liability as to parties injured, when insurer issued certificate which was filed with registrar of motor vehicles. Royal Indemnity Co. v. Granite Trucking Co. (1936) 4 N.E.2d 809, 296 Mass. 149.

§ 34C. Single motor vehicle liability policy or bond covering several motor vehicles

Any person applying for the registration of more than one motor vehicle under section two or three, or any manufacturer or dealer or repairman applying for registration of motor vehicles under section five, may, in lieu of procuring a separate policy or bond covering each motor vehicle, furnish a single motor vehicle liability policy or bond covering all motor vehicles owned or controlled by him, in which the amounts or limits of indemnity as provided in section thirty-four A for a motor vehicle liability policy or bond shall apply to each motor vehicle covered thereunder.

Amended by St.1932, c. 180, § 13; St.1949, c. 571, § 3.

Historical Note

St.1925 c. 346 § 2. St.1928 c. 381 § 4.

This section was made applicable to "repairmen" applying for registration of a motor vehicle under section five by the 1949 amendment.

Cross References

Compulsory motor vehicle liability policies, see c. 175, § 113A.
Dealer, manufacturer etc., definition of, see section 1 of this chapter.

Law Review Commentaries

Policy conditions. J. Albert Burgoyne and Eugene Lyne. 7 Annual Survey of Mass.Law, Boston College, p. 179 (1960).

Library References

A Constables ⟨=13.
C.J.S. Motor Vehicles § 110.
Comment:
Defenses of insurer, see M.P.S. vol. 11, Martin and Hennessey, § 732.
Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

Notes of Decisions

1. In general

In the case of Kenner v. Century Indemnity Co. (1946) 67 N.E.2d 769, 320 Mass. 6, 165 A.L.R. 1463, the court said: "Chapter 90, § 34C, provides that any dealer applying for registration under section 5 may, in lieu of procuring a separate policy or bond for each vehicle, 'furnish a single motor vehicle liability policy or bond covering all motor vehicles owned or controlled by him.' It was plainly intended by the language of these two sections taken together that the statutory coverage under a blanket policy of a dealer registering under section 5 should cover all vehicles 'owned or controlled by him.'"

Identical words used in this section and § 5 of this chapter must be presumed to have been used with same meaning. Liddell v. Standard Accident Ins. Co. (1933) 187 N.E. 39, 283 Mass. 340. In this case the court said: "The words 'owned or controlled by him' are used in both section 34C and section 5 with respect to a 'dealer.' They must be presumed to have been used with the same meaning in each section."

§ 34D. Deposit of cash with state treasurer in lieu of motor vehicle liability bond or policy; interest; payment upon execution to satisfy judgment; public auction of deposited stocks or bonds

The applicant for registration may, in lieu of procuring a motor vehicle liability bond or policy, deposit with the state treasurer cash in the amount of five thousand dollars or bonds, stocks or other evidences of indebtedness satisfactory to said treasurer of a market value of not less than five thousand dollars as security for the payment by such applicant or by any person responsible for the operation of such applicant's motor vehicle with his express or implied consent of all judgments rendered against such applicant or against such person in actions to recover damages for bodily injuries, including death at any time resulting therefrom, judgments rendered as aforesaid for consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services, or for indemnity, in connection with or on account of such bodily injuries or death, and judgments rendered as aforesaid for contribution as a joint tortfeasor in connection with or on account of such bodily injuries, sustained during the term of registration by any person, other than a guest occupant of such motor vehicle or any employee of the owner or registrant of such motor vehicle or of such other person responsible as aforesaid who is entitled to payments or

benefits under the provisions of chapter one hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access to the amount or limit of at least five thousand dollars on account of any such judgment; provided, however, that if the applicant for registration is engaged in the business of leasing motor vehicles under any system referred to in section thirty-two C, such applicant shall deposit with said treasurer additional security in the amount or value of at least one thousand dollars for the payment by such applicant or by any person responsible for the operation of such applicant's motor vehicle with his express or implied consent, including such consent imputed under section thirty-two E, of all judgments rendered against such applicant or against such person in actions to recover damages for injury to property and judgments rendered as aforesaid for indemnity, or for contribution as a joint tortfeasor, sustained during the term of registration by any person, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, to the amount or limit of at least one thousand dollars on account of any such judgment and provided further that no such deposit shall be required in the case of vehicles leased for a term of more than thirty days. The depositor shall be entitled to the interest accruing on his deposit and to the income payable on the securities deposited and may from time to time with the consent of the state treasurer change such securities. Upon presentation to the state treasurer by an officer qualified to serve civil process of an execution issued on any such judgment against the registrant or other person responsible as aforesaid, said treasurer shall pay, out of the cash deposited by the registrant as herein provided, the amount of the execution, including costs and interest, up to but not in excess of five thousand dollars. If the registrant has deposited bonds, stocks or other evidences of indebtedness, the state treasurer shall, on presentation of an execution as aforesaid, cause the said securities or such part thereof as may be necessary to satisfy the judgment to be sold at public auction, giving the registrant three days' notice in writing of the time and place of said sale, and from the proceeds of said sale the state treasurer shall, after paying the expenses thereof, satisfy the execution as hereinbefore provided when a cash deposit has been made. Any payment upon an execution by the state treasurer in accordance with the provisions of this section shall discharge him from all official and personal liability whatever to the registrant to the extent of such payment. The state treasurer shall, whenever the amount of such deposit from any cause falls below the amount required by this section, require, at the option of the

registrant, the deposit of additional cash or securities up to the amount required by this section or a motor vehicle liability bond or policy as provided in this chapter. Money or securities deposited with the state treasurer under the provisions of this section shall not be subject to attachment or execution except as provided in this section. The state treasurer shall deposit any cash received under the provisions of this section in a savings bank or the savings department of a trust company or of a national bank within the commonwealth, or in paid-up shares and accounts of and in co-operative banks, or shall use such cash to purchase share accounts in federal savings and loan associations located in the commonwealth.

Amended by St.1935, c. 459, § 3; St.1949, c. 571, § 4; St.1950, c. 162, § 3; St.1954, c. 126, § 3; St.1959, c. 282, § 4; St.1961, c. 177, § 4; St.1963, c. 358, § 3; St.1964, c. 517, § 3.

Historical Note

St.1925 c. 346 § 2, subs. 34E. St.1928 c. 381 § 4. St.1930 c. 340 § 2.

St.1930, c. 340 extended the coverage under the compulsory motor vehicle liability insurance laws to include certain consequential damages. Section 5 thereof provided: "This act shall not apply to motor vehicle liability policies or bonds, both as defined in section thirty-four A of chapter ninety of the General Laws, or to deposits under section thirty-four D of said chapter, covering motor vehicles registered for operation during the current year or any part thereof."

St.1935, c. 459, eliminated compulsory motor vehicle insurance for the benefit of guests of persons whose liability was covered thereby. Section 5 thereof provided: "The provisions of this act shall not apply to motor vehicle liability policies and bonds, both as defined in section thirty-four A of chapter ninety of the General Laws, issued or executed in connection with the registration of motor vehicles or trailers for operation prior to or during the current year or any part thereof; nor shall said provisions affect the coverage of any deposit made under said section thirty-four D in relation to such operation."

The 1950 amendment authorized the state treasurer to use cash deposits "to purchase share accounts in federal savings and loan associations located in the commonwealth."

The 1954 amendment authorized the state treasurer to use cash deposit for "paid-up shares and accounts of and in co-operative banks."

The 1959 amendment, approved May 6, 1959, added the proviso to the first sentence.

Section 6 of the 1959 amendatory act provided: "The provisions of this act shall apply to the registration of motor vehicles for the year nineteen hundred and sixty and for subsequent years."

The 1961 amendment, approved March 6, 1961, at the end of first sentence, added the words "and provided further that no such deposit shall be required in the case of vehicles leased for a term of more than thirty days".

Section 4 of the amendatory act of 1963 provided: "The provisions of sections thirty-four A and thirty-four D of chapter ninety of the General Laws, as amended by sections one, two and three of this act, shall, on and after the effective date hereof, apply to motor vehicle liability bonds and policies, and to deposits, covering motor vehicles and trailers registered for operation during the year nineteen hundred and sixty-three, with respect, however, only to accidents occurring on or after said effective date."

St.1963, c. 358, § 3, an emergency act, approved May 6, 1963, made changes in first sentence, which were necessitated by enactment of chapter 231B regarding contributions among joint tortfeasors.

St.1964, c. 517, § 3, approved June 12, 1964, and by section 4 made applicable to motor vehicle liability bonds and motor vehicle liability policies issued for the year 1965 and subsequent years, substituted, in the first sentence, the words "of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access" in lieu of "upon the ways of the commonwealth of such motor vehicle".

Cross References

Circumstances making removal bond unnecessary, see c. 231, § 107.

Law Review Commentaries

Compulsory coverage of motor vehicle insurance. J. Albert Burgoyne, 11 Annual Survey of Mass.Law, Boston College, p. 217 (1964).

Co-operative banks, deposit of trust funds held by counties. Andrew A. Caffrey and Arthur B. Tyler, 1 Annual Survey of Mass.Law, Boston College, pp. 79, 80 (1954).

Insurance on leased vehicles. J. Albert Burgoyne, 6 Annual Survey of Mass.Law, Boston College, p. 180 (1959).

Joint tortfeasors. J. Albert Burgoyne, 10 Annual Survey of Mass.Law, Boston College, p. 188 (1963).

Library References

Automobiles ⇐43.
C.J.S. Motor Vehicles § 110.
Comment.
Excess liability of insurer above coverage, see M.P.S. vol. 11, Martin and Hennessey, § 709.

Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

Notes of Decisions

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1. Validity

The statutes making registration of automobile and issuance of number plates therefor conditional upon the applicant for registration giving security covering automobile by automobile liability policy, or bond, or deposit of cash, or security for damages for bodily injuries including death and consequential damages caused by operation of automobile, are constitutional. Poresky v. Registrar of Motor Vehicles (1946) 67 N.E.2d 407, 319 Mass. 717.

2. In general

A licensed owner of automobile which the owner alone drove was not entitled to registration of automobile and issuance of number plates therefor without first giving security covering automobile, by an automobile liability policy or a deposit of cash or securities for damages for bodily injuries including death and consequential damages caused by operation of such automobile, as required by statutes. Poresky v. Registrar of Motor Vehicles (1946) 67 N.E.2d 407, 319 Mass. 717.

The legislature must be held to have been familiar with law as to duty owed a trespasser at time of passing act eliminating compulsory motor vehicle liability insurance for benefit of guest occupants of automobiles. Westgate v. Cen-

Jury I. Indemnity Co. (1941) 35 N.E.2d 218, 309 Mass. 112.

Where insured elected to take out a compulsory automobile liability policy instead of taking advantage of alternatives provided by this section, insured would be deemed to have assented to provisions of policy with full realization of their import, and policy would not fail for lack of "mutuality". Service Mut. Liability Ins. Co. v. Aronofsky (1941) 31 N.E.2d 837, 308 Mass. 249.

"Damages for injuries to person," within statute making registered owner prima facie legally responsible for driver's conduct, did not include medical expenses incurred by husband in caring for wife's injuries. Wilson v. Grace (1930) 173 N.E. 524, 273 Mass. 146.

A liability insurance policy taken out by an owner of a motor vehicle after a deposit is made to cover the registration of the motor vehicle, but before the expiration of the year covered by the registration pursuant to this section would not afford coverage to such owner for accidents which might have occurred prior to the taking out of the policy, and it would therefore be necessary for the division of highways to retain the deposit of security for a period of at least one year from the time when such policy was taken out, to protect persons who might have suffered injury due to the operation of the motor vehicle during such period. 8 Op.Atty.Gen.1926, p. 161.

3. Cash or security

In the case of Blair v. Travelers Ins. Co. (1935) 197 N.E. 60, 291 Mass. 432, the court said: "It is probable that the Legislature intended the amount of security to be the same, whether consisting of cash or insurance."

The division of highways can accept properly transferred savings bank account books as cash or security under the provisions of this section. 8 Op. Atty.Gen.1926, p. 161.

Bonds, stocks and other evidences of indebtedness deposited with the division of highways under the provisions of this section, should be transferred on the company's books, or such other action should be taken in regard to them as will make the right to possession and control in the commission apparent, and the securities immediately available for sale by the commission at any time when it may become necessary to liquidate, without the necessity of any further steps being taken by the depositor. Id.

A certified check is not evidence of indebtedness, within the meaning of this section, and should be converted into money, and in the latter form retained and deposited by the highway commission in accordance with the provisions of this section. Id.

4. Return of deposit

If a deposit is made under the provisions of this section to cover registration of a motor vehicle, and the owner during the fiscal year sells or exchanges the motor vehicle, procuring a new one in its place, the division of highways is not required to return the deposit on the old automobile until one year after the expiration of the registration, and a new deposit should be made by the owner to cover the second motor vehicle registered. 8 Op.Atty.Gen.1926, p. 161.

Deposits made with the division of highways pursuant to the provisions of this section, should be held by the division until the expiration of the time within which actions, the payment of judgments in which are secured by such deposits, may be brought. Id.

5. Interest

In the case of Blair v. Travelers Ins. Co. (1935) 197 N.E. 60, 291 Mass. 432, the court said: "The word 'interest' in the statute quoted [this section] apparently does not refer to interest which has lost its identity by being included in the damages in the verdict or finding. Such interest would require no special mention in the statute to make sure that it was included in the $5,000. The statute evidently refers to some interest separately computed after the verdict or finding in much the same way as the costs, which likewise form part of the judgment and execution. From the date of the verdict or finding to the date of judgment the clerk computes and adds interest in entering judgment. G.L. (Ter.Ed.) c. 235, § 8. It is that interest, we think, to which G.L. (Ter.Ed.) c. 90, § 34D, refers, as being included in the maximum of $5,000."

§ 34E. Receipt for and retention of cash or securities deposited

The state treasurer shall give to the applicant for registration a receipt on a form prescribed by said treasurer of the amount of cash or securities deposited by him with said treasurer under section thirty-four D or thirty-four F. The state treasurer shall retain such cash or securities deposited as aforesaid and shall not deliver the same or the balance thereof to the registrant or his order until the expiration of the time within which actions, the payment of judgments in which are secured by such deposit, may be brought against the registrant or the person responsible for the operation of the registrant's motor vehicle with his express or implied consent, nor in any case if a written notice is filed with the state treasurer stating that such an action has been brought against the registrant or other person responsible as aforesaid, until payment is made as provided in section thirty-four D or satisfactory evidence is presented to said treasurer that such action is finally disposed of.

Amended by St.1949, c. 571, § 5.

Historical Note

St.1925 c. 346 § 2 (subs. 34G). St.1928 c. 381 § 4.

Library References

Automobiles ⇐43.
C.J.S. Motor Vehicles § 110.

Comment. Judgment creditors bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

§ 34F. Notice to registrar upon service of writ or summons in action against depositor

The registrant of a motor vehicle who deposits cash or securities as provided in this section or in section thirty-four D or the person responsible for the operation of the registrant's motor vehicle with his express or implied consent shall immediately upon the service of any writ or summons in any action the payment of the judgment in which is secured by such deposit, give written notice to the registrar and the state treasurer of the bringing of such action in such form as the registrar may prescribe, and thereupon the registrar may require the giving of a motor vehicle liability bond or policy or may require the deposit of further cash or securities as additional security for the payment of judgments in any other such actions. Whoever fails to give the notice required by this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not more than one year or both.

The state treasurer shall forthwith give written notice to the registrar of the failure of a registrant to maintain a deposit as required by this section and section thirty-four D.

Amended by St.1949, c. 571, § 6.

Historical Note

St.1925 c. 346 § 2, subs. 3H.

St.1928 c. 381 § 4.

The words "at the option of the registrant" in connection with the giving of a liability bond or policy were stricken out of the first sentence by the 1949 amendment.

Library References

Automobiles ⇨43.
C.J.S. Motor Vehicles § 110.

Comment. Judgment creditors bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

§ 34G. Action against surety company

If a judgment rendered against the principal on a motor vehicle liability bond or against any person responsible for the operation of the principal's motor vehicle with his express or implied consent is not satisfied within thirty days after its rendition, the judgment creditor may for his use and benefit and at his sole expense bring an action in the name of the commonwealth against the surety company executing the bond.

Historical Note

St.1925 c. 346 § 2, subs. 3IF.

St.1928 c. 381 § 4.

Cross References

Presumption of insured's consent to operation of vehicle, see c. 231, § 85C.
Two year statute of limitations, see c. 260, § 4.

Library References

Automobiles ⇨43.
C.J.S. Motor Vehicles § 110.

Comment. Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

Notes of Decisions

In general 1
Excess of policy limits 2

1. In general

There was no contractual relation between automobile liability insurer and injured person. Chicoine v. State Farm Mut. Auto. Ins. Co. (1967) 223 N.E.2d 510, 351 Mass. 664.

2. Excess of policy limits

Automobile liability insurer was not rendered liable to judgment creditor for amount in excess of policy limits by alleged facts that insurer refused to disclose policy limits in return for offer of settlement within coverage and did not inform insured of offers or advise him to get counsel. Chicoine v. State Farm Mut. Auto. Ins. Co. (1967) 223 N.E.2d 510, 351 Mass. 664.

§ 34H. Revocation of registration of motor vehicle upon notice of cancellation of motor vehicle liability policy or bond; notice to owner; new certificate

In the event that the registrar receives written notice, in conformity with section one hundred and thirteen A of chapter one hundred and seventy-five, from the owner of a motor vehicle cancelling the motor vehicle liability policy or bond covering the same, he shall revoke the registration of such motor vehicle on the effective date of the cancellation as specified in such notice unless not later than two days prior to such effective date the registrar shall have received a new certificate covering the same motor vehicle. The registrar shall, forthwith upon receiving written notice in conformity with said section one hundred and thirteen A from an insurance or surety company purporting to cancel such a policy or bond issued or executed by it, give written notice to the owner of the motor vehicle covered by said policy or bond that the registration thereof will be revoked as of the final effective date of the cancellation as specified in the notice given by such company in case the owner does not file a complaint under section one hundred and thirteen D of said chapter one hundred and seventy-five that he is aggrieved by the issue of such notice, or as specified in an order of the board of appeal on motor vehicle liability policies and bonds affirming such cancellation under said section one hundred and thirteen D in case the owner does not claim an appeal from such order, or as specified in a decree of the superior court or a justice thereof affirming such cancellation on such appeal, or as specified in such a decree ordering a cancellation of such a policy or bond after its reinstatement by said board of appeal, unless not later than two days prior to such effective date as finally specified the registrar shall have received a new certificate covering the same motor vehicle.

The registrar shall forthwith upon receipt of a notice under section thirty-four F of the failure of the owner of a motor vehicle to maintain a deposit send written notice to the owner of the motor vehicle covered by such deposit that the registration thereof will be revoked, unless within five days after the sending of said notice he shall file with the registrar a new certificate.

The registrar shall forthwith upon receipt of a notice under section one hundred and thirteen C of said chapter one hundred and seventy-five of the cessation of the authority of an insurance or surety

company to issue or execute motor vehicle liability policies or bonds in the commonwealth, upon the written request of the commissioner of insurance, send written notice to every owner of a motor vehicle covered by a motor vehicle liability policy or bond issued or executed by such a company that the registration thereof will be revoked unless within five days after the sending of said notice he shall file with the registrar a new certificate; provided, that if the authority of such a company to issue or execute motor vehicle liability policies or bonds in the commonwealth ceases by reason of its merger or consolidation with another company so authorized, and it is proved to the satisfaction of the commissioner of insurance that the new or continuing company has assumed all the obligations and liabilities of such company under any and all such policies and bonds issued by it, such notice of the registrar will not be required with respect to policies or bonds so issued previous to the date of merger or consolidation.

Upon failure of the owner of a motor vehicle to file a new certificate as required by this section, the registrar shall immediately revoke the registration thereof; provided, that if a new certificate as aforesaid is filed prior to the final effective date of the cancellation of the existing policy or bond, he may in his discretion rescind such revocation.

The registrar shall, upon receipt of an attested copy of a finding and order of said board of appeal, or of a decree of the superior court or a justice thereof, ordering the reinstatement of a motor vehicle liability policy or bond, forthwith rescind the revocation of the registration of the motor vehicle covered thereby.

Any notice required by this section to be given by the registrar shall be deemed sufficient if mailed by the registrar, or any person authorized by him to send such notice, postage prepaid, to the address given on the application for registration, and an affidavit of the registrar or such person that such notice has been mailed as aforesaid shall be prima facie evidence thereof.

Amended by St.1933, c. 119, §§ 4, 5; St.1948, c. 39; St.1960, c. 332.

Historical Note

St.1925 c. 346 § 2 (subs. 3III). St.1926 c. 368 § 3. St.1928 c. 381 § 4.

The proviso at the end of the third paragraph, regulating the notice by the registrar of motor vehicles in cases of merged or consolidated insurance companies, was added in 1948.

The 1960 amendment, approved April 25, 1960, struck out the former second paragraph and inserted the present second and third paragraphs, which contain substantially the same subject matter as the former second paragraph.

Cross References

Compulsory motor vehicle liability policies, see c. 175, § 113A.

Law Review Commentaries

Automobile insurance; cancellations and refusals to renew. (Summer 1968) 9 Boston College L.Rev. 998.

Library References

Automobiles ⇨43, 55.
C.J.S. Motor Vehicles §§ 110, 129.

Comment. Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

Notes of Decisions

1. In general

Notice of cancellation of automobile liability insurance was insufficient under statute, where no registration number was given and insured's name was misspelled, even though name given was perhaps idem sonans. Gulesian v. Senibaldi (1935) 194 N.E. 119, 289 Mass. 384.

In prosecution based on an alleged violation of this section, as added by St. 1925, c. 346, § 2, and amended by St. 1926, c. 368, § 3, requiring registration of motor vehicles, evidence was sufficient to require submission of case to jury. Com. v. Henrich (1928) 161 N.E. 815, 263 Mass. 579.

§ 34I. Records and books of registrar

The registrar shall keep such records and books and publish and distribute such forms and information as will facilitate the operation of the provisions of the eight preceding sections, and shall, upon the request of any person, furnish the name of the insurance or surety company issuing the policy or executing as surety the bond covering any particular motor vehicle or of any particular person appearing on his records as registrant of the same.

Amended by St.1949, c. 571, § 7.

Historical Note

St.1925 c. 346 § 2. St.1928 c. 381 § 4.

The words "subject to the approval of the department", in connection with the registrar's keeping of books and records, were stricken out by the 1949 amendment.

Cross References

Records of registrar, generally, see section 30 of this chapter.

Library References

Automobiles ⇨43
C.J.S. Motor Vehicles § 110.

Comment. Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessy, § 1753.

Notes of Decisions

1. In general

Where plaintiff's counsel in personal injury action sought to prove ownership of vehicle which struck plaintiff by letter which he purportedly received from state registry of motor vehicles, answering his questions relating to ownership of certain vehicle, such answers were inadmissible because hearsay, and, since the letter was not among records which registrar was required to keep by statute, the letter was not admissible as a public record. Canney v. Carrier (1956) 130 N.E.2d 879, 333 Mass. 382.

In action against taxicab company for injuries sustained by passenger in collision, papers from the registry of motor vehicles, which showed taxicab driver's record as to violation of motor vehicle law and suspension and reissuance of his license, were properly excluded from evidence as showing driver's unfitness, and they were not admissible as public records. Finnegan v. Checker Taxi Co. (1938) 14 N.E.2d 127, 300 Mass. 62.

§ 34J. Operating motor vehicle without liability policy, bond or security deposit; penalty; exception

Whoever operates or permits to be operated a motor vehicle which is subject to the provisions of section one A during such time as the motor vehicle liability policy or bond or deposit required by the provisions of this chapter has not been provided and maintained in accordance therewith shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than one year. This section shall not apply to a person who operates a motor vehicle leased under any system referred to in section thirty-two C without knowledge that the lessor thereof has not complied with the provisions of section thirty-two E relative to providing indemnity, protection or security for property damage.

Amended by St.1959, c. 282, § 5.

Historical Note

St.1925 c. 346 § 2, subs. 34H. St.1926 c. 368 § 3. St.1928 c. 381 § 4.

The 1959 amendment, approved May 6, 1959, added the second sentence.

Section 6 of the amendatory act provided: "The provisions of this act shall apply to the registration of motor vehicles for the year nineteen hundred and sixty and for subsequent years."

Law Review Commentaries

Insurance on leased vehicles. J. Albert Burgoyne, 6 Annual Survey of Mass.Law, Boston College, p. 180 (1959).

Library References

Automobiles ⇐13, 326.
C.J.S. Motor Vehicles §§ 110, 638.
Comment.
Criminal offenses, see M.P.S. vol. 11, Martin and Hennessey, § 792.
Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1755.

Notes of Decisions

1. In general

Person to whom owner voluntarily intrusts automobile would be "responsible" to owner for operation of automobile within meaning of compulsory motor vehicle insurance law. Fallon v. Mains (1939) 19 N.E.2d 68, 302 Mass. 166.

Where automobile was falsely registered and insured under compulsory motor vehicle liability insurance statutes in name of owner's nephew, and at time of accident was driven by owner, with consent of nephew, insurer was liable to person injured in such accident. Id.

2. Right to counsel

Where proceedings relating to five complaints constituted a trial on charges including some which were sufficiently serious to have resulted in confinement of defendant, defendant was entitled to be represented by counsel. Williams v. Com. (1966) 216 N.E.2d 779, 350 Mass. 732.

An indigent defendant who was complained of in district court and after a probable cause hearing was bound over to grand jury did not have constitutional right to counsel in such proceeding; omission to furnish counsel did not invalidate that proceeding and pleas in abatement to indictments were required to be overruled where no right of defendant had been lost because of absence of counsel in district court. Com. v. O'Leary (1964) 198 N.E.2d 403, 347 Mass. 387.

3. Review

There is no appeal from a revocation of license or registration by registrar of motor vehicles in cases where such revocation is required by a statute. Op. Atty.Gen. Nov. 2, 1962, p. 77.

§ 34K. Cancellation of policies

No power of attorney in connection with the cancellation of a motor vehicle liability policy as defined in section thirty-four A shall be exercised until ten days' notice has been given to the policyholder by registered or certified mail, return receipt requested, by the person or corporation exercising the power of attorney, and a statement signed under the penalties of perjury has been filed with the registry of motor vehicles certifying that said notice has been sent to the policyholder. Notice to the insurance company of the cancellation of such a policy by a person or corporation exercising the power of attorney shall be accompanied by a statement of compliance with this section, and the insurance company may rely upon such statement.

Added by St.1960, c. 360.

Cross References

Notice by premium finance agency of cancellation of insurance policy, see c. 255C, § 21.
Revocation of notice of cancellation of liability policies, see c. 255C, § 21.

Law Review Commentaries

Motor vehicle insurance. J. Albert Burgoyne and George E. Donovan. 13 Annual Survey of Mass.Law. Boston College, p. 262 (1966).

Library References

Automobiles ⇨13.
Insurance ⇨228, 229.
C.J.S. Insurance §§ 115–153.
C.J.S. Motor Vehicles § 110.

Notes of Decisions

1. In general

This section does not operate to exclude the applicability of c. 175, § 113A, relating to necessity of giving notice when policy is cancelled, since former c. 175, § 113A, gave a specific protection to policyholder but did not imply that when a finance company purports to act under latter c. 175, § 113A, it need not conform thereto. White v. Edwards (1967) 227 N.E.2d 351, 352 Mass. 655.

§ 34L. Repealed by St.1968, c. 613, § 6

Historical Note

The repealed section provided for uninsured motor vehicle coverage and was derived from St.1966, c. 260. See, now, c. 175, § 113L.

St.1968, c. 613, repealing this section was approved on July 16, 1968.

AIRCRAFT

St.1935, c. 418 established a uniform aeronautical code. Section 2 struck out sections 35–60 inclusive of the General Laws (Ter.Ed.), as amended, and inserted new sections 35–50 in place thereof.

St.1939, c. 393, among other things, revised the laws relating to aviation. Section 3 struck out sections 35–50, inclusive, added by St.1935, c. 418, § 2, as amended, and added in place thereof new sections 35–52.

Law Review Commentaries

Aviation law. Thomas F. Lambert, Jr. (1962) 28 NACCA L.J. 435.

§ 35. Definitions

The following words and phrases used in sections thirty-five to fifty-two, inclusive, shall have the following meanings, unless a different meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intention of the general court:

(*a*) "Aeronautics", transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories; the repair, packing and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports, restricted landing areas

or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(*b*) "Aircraft", any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(*c*) "Public aircraft", an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(*d*) "Civil aircraft", any aircraft other than a public aircraft.

(*e*) "Airport", any area of land or water other than a restricted landing area, which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(*f*) "Restricted landing area", any area of land or water other than an airport which is used, or is made available, for the landing and take-off of aircraft; provided, that the use of such an area may be restricted from time to time by the commission.

(*g*) "Airport hazard", any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area, or is otherwise hazardous to such landing or taking off.

(*h*) "Air navigation facility", any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area, and any combination of any or all of such facilities.

(*i*) "Airman", any person who engages, as the person in command, or as pilot, mechanic or member of the crew, in the navigation of aircraft while under way, and any person who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft engines, propellers or appliances, and any person who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator; but does not include any person employed outside the United States,

The department shall define high-accident locations and shall establish standards, and regulations, and shall determine final allocation of funds of the cities and towns. amount to be paid by the treasurer shall be based upon certification to the treasure the department of the amount due. Payments in the amounts so certified shall be by the state treasurer out of the Highway Fund, and shall be in addition to any funds allocated to the several cities and towns for the improvement, maintenance, or construction of highways. Federal funds may be substituted for the commonwe share whenever such funds are available.

The amounts certified by the department to the treasurer pursuant to this section not exceed, in the aggregate, five million dollars in any one year.

Amended by St.1972, c. 87; St.1973, c. 303.

1972 Amendment. St.1972, c. 87, approved March 10, 1972, rewrote the introductory paragraph; and, in the second sentence of the second paragraph, deleted "to each such city or town" following the word "treasurer" where first appearing, and also deleted "such city or town" following the word "due" at the end thereof.

1973 Amendment. St.1973, c. 303, appro May 21, 1973, in the introductory paragra substituted "signs, or safety devices, and structing necessary safety improvements" "d ices".

§ 34. Disposition of fees; appropriation of highway fund

The fees received under the preceding sections, together with all other fees received the registrar or any other person under the laws of the commonwealth relating to the and operation of motor vehicles and trailers, shall be paid by the registrar or by person collecting the same into the treasury of the commonwealth, and said fees, toget with all contributions and assessments paid into the state treasury by cities, towns counties for maintaining, repairing, improving and constructing ways, whether before after the work is completed, all refunds and rebates made on account of expenditures ways by the department of public works, all receipts paid into the treasury of the commonwealth under the provisions of chapter sixty-four A, all monies received by the commonwealth in satisfaction of claims by the commonwealth for damage to highway safety signs, signals, guardrails, curbing and other highway related facilities and all receipts received by the state treasurer under the provisions of section eight of chapter ten shall be credited on the books of the commonwealth to a fund to be known as the Highway Fund. Said Highway Fund, subject to appropriation, shall be used as follows:

[See main volume for text of clauses (1) and (2)]

Amended by St.1979, c. 653.

1979 Amendment. St.1979, c. 653, approved Oct. 25, 1979, in the first sentence of the introductory paragraph inserted "all monies received by the commonwealth in satisfaction of claims by the commonwealth for damage to highway safety signs, signals, guardrails, curbing and other highway related facilities".

1976 Related Laws. St.1976, c. 88, approved April 30, 1976, provided:

"Notwithstanding the provisions of any general or special law to the contrary, appropriations made by a co[illegible] specific projects for prior and current fiscal years to implement the provisions of section thirty-four of chapter ninety of the General Laws may be diverted to the extent that such funds may be used for projects previously approved by the department of public works for those prior years."

Cross References.

Temporary registration plates, certificate in effect prior to issuance, see § 2D of this chapter.

Law Review Commentaries.

Little F.T.C. Act; applicability to insurance companies. (1977) 62 Mass.L.Q. 169.

Notes of Decisions

Insurance rates 7

7. Insurance rates

In proceeding brought by the Automobile Rating and Accident Prevention Bureau for review of decision of the Commissioner of Insurance in fixing industry-wide automobile insurance rates for one year, evidence supported decision of the Commissioner in making offsetting adjustment for small claims effect and applied frequency factors for property-damage and collision coverage about midway between recommendations of the Bureau and the Division of Insurance. Massachusetts Auto. Rating and Acc. Prevention Bureau v. Commissioner of Ins. (1980) 411 N.E.2d 762, 381 Mass. 592, appeal after remand 424 N.E.2d 1127, 381 Mass. 592.

Decision of the Commissioner of Insurance, in fixing industry-wide automobile insurance rates for one year, to allow $.65 property-damage liability policy for costs of administrating merit rating plan had reasonable support in evidence. Id.

COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE

Library References

Law Review Commentaries

Massachusetts tries no-fault. (1971) 57 A.B.A.J. 431.

No-fault in Massachusetts. Raymond J. Kenney, Jr. (1971) 56 Mass.L.Q. 441.

No-fault insurance. Kathleen T. Ryan Dacey (1970) 6 New England L.Rev. 79.

Comment.

Compulsory insurance, see M.P.S. vol. 36, Alperin and Chase, § 364 et seq.

§ 34A. Definitions

The following words, as used in sections thirty-four A to thirty-four N, inclusive, shall have the following meanings:—

"Certificate", the certificate of an insurance company authorized to issue in the commonwealth a motor vehicle liability policy, stating that it has or will insure the applicant for registration of a motor vehicle with respect to such motor vehicle for a period at least coterminous with that of such registration under such a motor vehicle liability policy or a renewal or extension of such a policy, which conforms to the provisions of section one hundred and thirteen A of chapter one hundred and seventy-five or that it has executed a binder, as defined in said section one hundred and thirteen A, under and in conformity with said section covering such motor vehicle pending the issue of a motor vehicle liability policy; or the certificate of a surety company authorized to transact business in the commonwealth under section one hundred and five of said chapter on hundred and seventy-five as surety, stating that it has or will guarantee performance by the applicant for registration of a motor vehicle with respect to such motor vehicle for a period at least coterminous with that of such registration under a motor vehicle liability bond or renewal or extension thereof, payable to the commonwealth, which conforms to the provisions of said section one hundred and thirteen A and has been executed by such applicant as principal and by such surety company as surety; or the certificate of the state treasurer stating that cash or securities have been deposited with said treasurer as provided in section thirty-four D.

[See main volume for text of definitions of "Guest Occupant" to "Motor vehicle"]

"Motor vehicle liability bond", a bond conditioned that the obligor shall within thirty days after the rendition thereof satisfy all judgments rendered against him or against any person responsible for the operation of the obligor's motor vehicle with his express or implied consent in actions to recover damages for bodily injuries, including death at any time resulting therefrom, and judgments rendered as aforesaid for consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services, or for indemnity, in connection with or on account of such bodily injuries or death, and judgments rendered as aforesaid for contribution as

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a joint tortfeasor in connection with or on account of such bodily injuries, sustained during the term of said bond by any person, other than a guest occupant of such motor vehicle or any employee of the owner or registrant of such vehicle or of such other person responsible as aforesaid who is entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code,[1] to the amount or limit of at least ten thousand dollars on account of injury to or death of any one person, and subject to such limits as respects injury to or death of one person, of at least twenty thousand dollars on account of any one accident resulting in injury to or death of more than one person; provided, however, that in the case of a person who is engaged in the business of leasing motor vehicles under any system referred to in section thirty-two C, the words "motor vehicle liability bond" shall mean a bond as described herein but conditioned further, except in the case of vehicles leased for a term of more than thirty days, that the obligor shall within thirty days after the rendition thereof satisfy all judgments rendered against him or against any person responsible for the operation of the obligor's motor vehicle with his express or implied consent, including such consent imputed under section thirty-two E, in actions to recover damages for injury to property, and judgments rendered as aforesaid for indemnity, or for contribution as a joint tortfeasor, in connection with or on account of such injury to property, sustained during the term of said bond by any person, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code, to the amount or limit of at least one thousand dollars on account of any such injury to property.

"Motor vehicle liability policy", a policy of liability insurance which provides indemnity for or protection to the insured and any person responsible for the operation of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services, or for indemnity, in connection with or on account of such bodily injuries or death, or by reason of the liability for contribution as a joint tortfeasor, in connection with or on account of such bodily injuries, sustained during the term of said policy by any person, other than a guest occupant of such motor vehicle or of any employee of the owner or registrant of such vehicle or of such other person responsible as aforesaid who is entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code, to the amount or limit of at least ten thousand dollars on account of injury to or death of any one person, and, subject to such limits as respects injury to or death of one person, of at least twenty thousand dollars on account of any one accident resulting in injury to or death of more than one person, or a binder as defined in section one hundred and thirteen A of said chapter one hundred and seventy-five providing indemnity or protection as aforesaid pending the issue of such a policy; provided, however, that in the case of a person who is engaged in the business of leasing motor vehicles under any system referred to in section thirty-two C, the words "motor vehicle liability policy" shall

mean a policy of liability insurance as described herein and providing, in addition, except in the case of vehicles leased for a term of more than thirty days, indemnity for or protection to the insured and any any person responsible for the operation of the insured's motor vehicle with his express or implied consent, including such consent imputed under section thirty-two E, against loss by reason of the liability to pay damages to others for injury to property or by reason of the liability for indemnity, or for contribution as a joint tortfeasor, in connection with or on account of such injury to property, other than by an employee of the federal government while acting within the scope of his office or employment and covered by the provisions of section 2679 of Title 28, United States Code, sustained during the term of the policy by any person, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, to the amount or limit of at least one thousand dollars on account of any such injury to property.

"Personal injury protection," provisions of a motor vehicle liability policy or motor vehicle liability bond which provide for payment to the named insured in any such motor vehicle liability policy, the obligor of any motor vehicle liability bond, members of the insured's or obligor's household, any authorized operator or passenger of the insured's or obligor's motor vehicle including a guest occupant, and any pedestrian struck by the insured's or obligor's motor vehicle, unless any of the aforesaid is a person entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, of all reasonable expenses incurred within two years from the date of accident for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services, and in the case of persons employed or self-employed at the time of an accident of any amounts actually lost by reason of inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of an injured person's employment, and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for members of his household, and in the case of persons not employed or self-employed at the time of an accident of any loss by reason of diminution of earning power and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, as a result of bodily injury, sickness or disease, including death at any time resulting therefrom, caused by accident and not suffered intentionally while in or upon, or while entering into or alighting from, or being struck as a pedestrian by, the insured's or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind, to the amount or limit of at least two thousand dollars on account of injury to or death of any one person, except that payments for loss of wages or salary or their equivalent or, in the case of persons not employed, loss by reason of diminution of earning power, shall be limited to amounts actually lost by reason of the accident and further limited (1) in the case of persons entitled to wages or salary or their equivalent under any program for continuation of said wages or salary or their equivalent to an amount that, together with any payments due under such a program, will provide seventy-five per cent of any such person's average weekly wage or salary or its equivalent for the year immediately preceding the accident, provided that the insurer shall reimburse those wage continuation programs or their equivalent which provide for accumulated benefits which can be converted into either cash or additional retirement credit for the amount said program or its equivalent actually pays to the insured, not to exceed seventy-five per cent of the

insured's average weekly wages or salary or its equivalent for the year immediately preceding the accident, or (2) in the case of persons not entitled to wages or salary or their equivalent under any program for continuation of said wages or salary or their equivalent to an amount that will provide seventy-five per cent of any such person's average weekly wage or salary or its equivalent for the year immediately preceding the accident. In any case where amounts paid for loss of wage, salary or their equivalent are reduced as a result of any program for continuation of the same and such reduction produces a subsequent loss, as when the limit of any such program for continuation of wage or salary or their equivalent is exhausted with the result that an injured person cannot recover for a later injury or illness as he would have been entitled to but for such a reduction, such subsequent loss to an amount equalling the reduction in personal injury protection made in accordance with this section shall, if incurred within one year after the receipt of the last benefit provided under this section, be treated as a loss of wages, salary or their equivalent incurred as a result of the injury to which personal injury protection applied. In all cases where an insured is compensated under such a wage continuation program and also recovers these benefits from another source, he shall be entitled to reimburse the wage continuation program with no loss in standing under such a program.

Personal injury protection shall also provide for payment, to the named insured or obligor and members of their households, all amounts defined in this section in any case where such persons incur such expense or loss as a result of such injury while in, upon, entering into or alighting from, or by being struck as a pedestrian by, a motor vehicle not insured by a policy or bond providing personal injury protection unless such person recovers such expenses or loss in an action of tort. Insurers may exclude a person from personal injury protection benefits if such person's conduct contributed to his injury in any of the following ways while operating a motor vehicle in the commonwealth:

(1) while under the influence of alcohol or a narcotic drug as defined in section one hundred and ninety-seven of chapter ninety-four;

(2) while committing a felony or seeking to avoid lawful apprehension or arrest by a police officer; or

(3) with the specific intent of causing injury or damage to himself or others.

The term "pedestrian" shall include persons operating bicycles, tricycles and similar vehicles and persons upon horseback or in vehicles drawn by horses or other draft animals.

Amended by St.1970, c. 670, §§ 1, 2; St.1971, c. 794; St.1973, c. 599, § 2; St.1973, c. 806, § 4; St.1976, c. 266, § 6; St.1979, c. 611, §§ 1, 2.

1 28 U.S.C.A. § 2679.

Comment—1971

By James W. Smith

Chapter 670 of the Acts of 1970 established in Massachusetts a limited no fault recovery plan for actual losses sustained as a result of motor vehicle accidents. Under the plan the automobile owner insures himself up to a certain amount against actual loss sustained rather than relying solely upon the liability insurance carried by the other party to the accident. No fault under Chapter 670 was limited to personal injury.

Chapter 978 of the Acts of 1971 extends the concept of "no fault" to property damage. Every person having a policy or bond, as defined in Mass.G.L. c. 90, § 34A (personal injury protection) must also maintain either property protection insurance or a bond providing equivalent benefits.

Besides providing some liability benefits, property protection insurance shall also provide the policyholder with protection under one of three options with respect to his own

automobile: (1) All Risk Coverage; (2) Restricted Coverage; (3) No Coverage for Own Car. Payments under option (1) and under some of the clauses of option (2) shall be due and payable within fifteen days after receipt by the insurer of reasonable proof that the claimant is, in fact, a policyholder, that an accident occurred, and of the amount of loss or damage claimed. In any case where the insurer fails to make payment within fifteen days of receipt of such reasonable proof, the insured may commence an action in contract for payments claimed to be due. If the court determines that the insurer was unreasonable in refusing to pay insured's claim, the claimant shall be entitled to recover double the amount of damages claimed plus his costs and reasonable attorney's fees fixed by the court.

Every owner, authorized operator or other person legally responsible for the operation of any motor vehicle to which the no fault property provisions apply, regardless of the coverage option or deduction option elected by the policyholder, shall be exempt from all liability every property protection insurance policyholder and his insurer might otherwise have been entitled to claim, by subrogation or otherwise, for accidental loss of or damage to any vehicle to which the provisions apply.

All motor vehicles insured for compulsory motor vehicle insurance are required to be also insured by property protection insurance on and after January 1, 1972.

1970 Amendment. St.1970, c. 670, § 1, approved Aug. 13, 1970, substituted "thirty-four N" "or "thirty-four J" in introductory clause.

Section 2 of St.1970, c. 670, inserted definition of "Personal injury protection".

Section 10 of St. 1970, c. 670, as amended by St.1970, c. 744, § 2, provided that this section [St.1970, c. 670, § 1] shall take effect on Jan. 1, 1971, and that for the purpose of the issuance of motor vehicle liability policies or bonds for the calendar year 1971 all things necessary to be done prior to said effective date may be done.

Section 11 of St. 1970, c. 670, was a severability clause. See, also, note under c. 175, § 113B.

1971 Amendment. St.1971, c. 794, approved Sept. 22, 1971, added the concluding sentence of the first paragraph in the definition of "Personal injury protection".

1973 Amendments. St.1973, c. 599, § 2, approved Aug. 8, 1973, in the first sentence of the first paragraph of the definition of "Personal injury protection", inserted the proviso in cl. (1) relating to wage continuation programs.

Section 3 of St.1973, c. 599, provided:

"This act shall take effect on January first, nineteen hundred and seventy-four and shall apply only to claims or causes of action arising on or after said date and only to policies issued on or after said date."

St.1973, c. 806, § 4, approved Sept. 21, 1973, added the paragraph defining the term "pedestrian" in the definition of "Personal injury protection".

1976 Amendment. St.1976, c. 266, § 6, in the definition of "Certificate", deleted "which contains an anniversary date of December thirty-first" following the words "motor vehicle liability policy" where secondly appearing.

St.1976, c. 266, § 6, was approved Aug. 4, 1976, and by § 23 made effective Jan. 1, 1977. Emergency declaration by the Governor was filed Aug. 4, 1976.

1979 Amendment. St.1979, c. 611, § 1, in the paragraph defining "Motor vehicle liability bond", substituted "ten" thousand dollars for "five" thousand dollars preceding "on account of injury to" and "twenty" thousand dollars for "ten" thousand dollars preceding "on account of any one accident".

Section 2 of St.1979, c. 611, in the paragraph defining "Motor vehicle liability policy", substituted "ten" thousand dollars for "five" thousand dollars preceding "on account of injury to" and "twenty" thousand dollars for "ten" thousand dollars preceding "on account of any one accident".

St.1979, c. 611 was approved Oct. 5, 1979, and by § 3 made effective Jan. 1, 1980, and applicable to all motor vehicle liability bonds and motor vehicle liability policies issued on or after that date. Emergency declaration by the Governor was filed Nov. 29, 1979.

Comparative Laws:

Colo.—C.R.S. 10-4-701.
Conn.—C.G.S.A. § 38-319 et seq.
Fla.—West's F.S.A. §§ 627.730 to 627.741.
Ga.—O.C.G.A. §§ 33-34-1 to 33-34-13.
Hawaii—H.R.S. 294-1 to 294-41.
Kan.—K.S.A. 40-3101 to 40-3121.
Md.—Code 1957, art. 48A, §§ 538 to 547.
Mich.—M.C.L.A. §§ 500.3101 to 500.3179.
Minn.—M.S.A. §§ 65B.41 to 65B.71.
N.J.—N.J.S.A. 39:6A-1 et seq.
N.Y.—McKinney's Ins.Law §§ 5101 to 5108.
N.D.—NDCC 26-41-01 to 26-41-19.
Ore.—O.R.S. 743.800 et seq.

Pa.—40 P.S. §§ 1009.101 to 1009.701.
S.C.—Code 1976, §§ 56-11-10 to 56-11-780.
Utah—U.C.A.1953, 31-41-1 to 31-41-13.4.

Code of Massachusetts Regulations

Ambulances, insurance, see 105 CMR 170.125.

1976 automobile bodily injury coverage rates, opinion, findings, decision, see 211 CMR 83.01 et seq.

Cross References

Classifications of risks and premium charges, surcharges and discounts, see c. 175, § 113B.

Compulsory personal injury protection, assigned claim benefits, see § 34M of this chapter.

Damages for pain and suffering in tort actions arising out of operation, etc. of motor vehicles, see c. 231, § 6D.

Fraudulent claims board, see c. 26, § 8B.

Group marketing of automobile insurance, see c. 175, § 193R.

Insurance companies, authorization to insure against loss of or damage to motor vehicle, see c. 175, § 54C.

Notice of intention not to issue, extend or renew policies by company, applicability of this section, see c. 175, § 113F.

Regulation of rates for motor vehicle insurance, application of this section, see c. 175E, § 2.

Renewal of policies, see c. 175, §§ 22E to 22H.

Uninsured vehicle coverage, see c. 175, §§ 111D, 113L.

Law Review Commentaries

Automobile guest doctrine. 15 Annual Survey of Mass. Law, Boston College, p. 107 (1968).

Automobile guests. Peter A. Donovan, 15 Annual Survey of Mass. Law, Boston College, p. 61 (1968).

Constitutionality of No Fault Jurisprudence. Josephine Y. King (1982) 4 Utah L.Rev. 797.

Fairness and utility in tort theory. George P. Fletcher (1972) 85 Harvard L.Rev. 537.

Liability insurance, additional or omnibus insured. Joseph F. Ryan and Walter J. Connelly, 17 Annual Survey of Mass. Law, Boston College, p. 521 (1970).

Massachusetts no-fault automobile insurance. Alan I. Widiss (1976) 56 Boston U.L.Rev. 323.

Motor vehicle insurance. J. Albert Burgoyne, 14 Annual Survey of Mass. Law, Boston College, p. 250 (1967).

Motor vehicle insurance, interpretation of policy language. Robert R. Rich Jr., 16 Annual Survey of Mass. Law, Boston College, p. 440 (1969).

No-fault automobile insurance. John G. Ryan, 17 Annual Survey of Mass. Law, Boston College, p. 530 (1970).

"No-fault" motor vehicle insurance in Massachusetts. Raymond J. Kenney, Jr. and Clement McCarthy (1970) 55 Mass.L.Q. 23.

No Fault Systems. Josephine Y. King (Winter 1984) 4 Pace L.Rev. 297.

Library References

Comment

Compulsory insurance, see M.P.S. vol. 36, Alperin and Chase, § 864 et seq

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Notes of Decisions

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1. Validity

"No-fault" insurance scheme for motor vehicle personal injury protection benefits did not violate provisions of Const. Pt. 2, c. 1, § 1, art. 4 requiring remedies by recourse to the law to be free, complete and prompt, preserving right to trial by jury and requiring separation of powers. Pinnick v. Cleary (1971) 271 N.E.2d 592, 360 Mass. 1, 42 A.L.R.3d 194.

"No-fault" insurance scheme for motor vehicle personal injury protection benefits did not violate provisions of Constitution requiring remedies by recourse to the law to be free, complete and prompt, preserving right to trial by jury and requiring separation of powers. Id.

2. In general

United States could not, as party plaintiff, bring action for damages in federal district court under c. 93A, § 11, relating to employment by persons engaged in trade or commerce of unfair method of competition or unfair or deceptive act or practice; in absence of any allegation to effect that any sovereign or quasi-sovereign interest of United States was involved in defendant's use of United States mails for charging customers premiums for automobile insurance computed at rates which exceeded rates set for such insurance coverage by Massachusetts Commissioner of Insurance, once injunction against such

activity had been obtained, United States likewise could not assert money claims in its capacity as parens patriae. U. S. v. Roche (D.C.1977) 425 F.Supp. 743.

Federal district court would not, on basis of doctrine of pendent jurisdiction, entertain United States' suit to recover damages from insurance agency which had improperly used mails to charge customers premiums for automobile insurance computed at rate which exceeded rate set for such insurance coverage by Massachusetts Commissioner of Insurance; even assuming that United States had cause of action available to it based on Massachusetts law, which it did not, suit was not appropriate one for exercise for district court's discretion where all claims which United States sought to assert had already been asserted in separate suit in state court brought by Massachusetts Attorney General. Id.

Where United States itself had not purchased automobile insurance offered for sale by defendant at rates exceeding rates set for such insurance by Massachusetts Commissioner of Insurance, and was thus not member of class it sought to represent, United States could not maintain suit against defendant for damages as class action with itself serving as class representative, and fact that, during its investigation, Government sent two post office inspectors to purchase insurance from one of defendant's agencies for purpose of corroborating claims which bona fide customer had made to postal authorities did not convert such isolated investigative purchases into purchases "for personal, family or household purposes" as required by c. 93A, § 9. Id.

Purchaser of insurance policy acquires contractual right to payment, a form of personal property. DiMarzo v. American Mut. Ins. Co. (1983) 449 N.E.2d 1189, 389 Mass. 85.

If policy clause attempts improperly to enlarge exception permitted by law, then, despite any approval of the form of policy by Commissioner of Insurance, clause is to be regarded as having been replaced implicitly by clause conforming to the law. Mailhot v. Travelers Ins. Co. (1978) 377 N.E.2d 681, 375 Mass. 842.

Motor vehicle liability policy, which excluded personal injury protection benefits for "bodily injury to any person who is entitled to payment for benefits under the provisions of any workmen's compensation laws," did not enlarge the exception permitted by law; reference to state's Workmen's Compensation Act (c. 152, § 1 et seq.) within this section which excepts from PIP benefits "a person entitled to payments or benefits under the provisions of the chapter one hundred and fifty-two" of the general laws, was not to be taken as fully expressive of the applicable law. Id.

Passenger, injured aboard bus owned and operated by common carrier, was not entitled to recover damages for pain and suffering in her tort action where her medical expenses did not reach the monetary threshold requirement of the no-fault statute (c. 231, § 6D), where bus was covered by motor vehicle liability policy providing personal injury protection, and was not entitled to recover on action of contract since to allow recovery for pain and suffering in such action would be contrary to purpose behind no-fault law. Scandura v. Trombly Motor Coach Service, Inc. (1976) 351 N.E.2d 202, 370 Mass. 612.

Unlike tort recovery for injuries, no-fault coverage is contractual in nature. Cyr v. Farias (1975) 327 N.E.2d 890, 367 Mass. 720.

State may properly choose to provide no-fault benefits only to its citizens since they are ones who have paid for insurance. Id.

It was not the purpose of the legislature, in enacting the no-fault insurance statute, to preclude meritorious claims by imposing rigid standards and heavy burden of proof unknown in traditional negligence suits for compensation for medical expenses. Victum v. Martin (1975) 326 N.E.2d 12, 367 Mass. 404.

No-fault insurance statute was not intended to abrogate common-law principles of damages. Id.

Where insured had three separate policies issued by same insurer and with uninsured motorist coverage in amount of $5,000 each and each policy contained clause providing that if insured had other similar available insurance, damages should be deemed not to exceed higher of applicable limits of liability of policy and such other insurance and company should not be liable for greater proportion of any loss to which coverage applies than limit of liability bore to sum of applicable limits of liability of policy and other insurance, clause meant that insurer's liability was limited to $5,000 but in view of this section requiring minimum uninsured motorist coverage in amount of $5,000 such clause was invalid and insurer could be held liable on each policy in amount equal to one-third of damages with upper limit of $5,000 on each policy. Johnson v. Travelers Indem. Co. (1971) 269 N.E.2d 700, 359 Mass. 525.

Chapter 231, § 6D, relating to damages for pain and suffering in tort actions arising out of

operation of motor vehicles, does not distinguish between insured and uninsured plaintiffs. Cyr v. Farias (1974) 54 Mass.App.Dec. 170, affirmed 327 N.E.2d 890.

Rights of nonresidents injured by motor vehicles in Massachusetts are the same and no greater than Massachusetts residents and therefore to recover for pain and suffering their medical and hospital expenses must exceed $500. Id.

Insurance coverage under an issued policy of insurance cannot become operative unless and until the named insured owns or has a financial interest in the property specified in the policy. Kilfoyle v. Liberty Mutual Insurance Co. (1975) 56 Mass.App. Dec. 134.

Amounts paid by an employer or third person to employee as gratuities equal to amounts that would have been paid to him as wages, during the period of his disability caused by a motor vehicle accident, prevents the employee from recovering for loss of wages from the insurer of the motorist who caused his injuries. Pope v. Breton (1975) 56 Mass.App.Dec. 91.

An employee who has suffered no loss of wages during the period of his disability to work caused by a motor vehicle accident covered by this section and § 34B et seq., may yet recover for his loss of earning capacity. Id.

Section 34A et seq. of this chapter, which extends compulsory liability coverage to operators of leased vehicles even where the lessee violated the terms of the rental agreement by permitting operator to drive the vehicle pertained to liability incurred in connection with the operation of the vehicle "upon the ways of the Commonwealth" and did not apply to accident in New Hampshire involving vehicle rented in Massachusetts. Whittaker v. Royal Globe Ins. Companies (N.H.1983) 471 A.2d 1149, 124 N.H. 300.

New York law, which limits rescission of automobile liability policy after loss, rather than Massachusetts law, which might permit rescission, applied to determine right of insurer, which issued policy in Massachusetts to applicant who applied for and obtained coverage under false name, to rescind after applicant, a New York resident, was involved in accident in New York with other New York residents. Allstate Ins. Co. v. Sullam (1977) 349 N.Y.S.2d 550, 76 Misc.2d 87.

3. Purpose of law

This chapter was adopted to reduce number of small motor vehicle tort cases being entered in courts of the Commonwealth, to provide prompt, inexpensive means of reimbursing claimants for out-of-pocket expenses, and to address high cost of motor vehicle insurance in Commonwealth. Flanagan v. Liberty Mut. Ins. Co. (1981) 417 N.E.2d 1216, 383 Mass. 195.

Primary objective of compulsory motor vehicle insurance is to provide security for payment of damages to travelers on public highways and not to protect owner or operator from loss. Chipman v. Massachusetts Bay Transp. Authority (1974) 316 N.E.2d 725, 366 Mass. 253.

Principal purpose behind no-fault legislation was reduction of liability insurance payments for Massachusetts motor vehicle owners. Id.

This section and § 34B et seq. of this chapter afford protection to the owner and operator of a motor vehicle insured in accordance with these provisions although the vehicle is registered only in a foreign state. Kulch v. Jones (1975) 56 Mass.App.Dec. 168.

8. Creditors and creditors rights

Rights of judgment creditor against motor vehicle liability insurer are no greater than those of judgment debtor. Musichuk v. Liberty Mut. Ins. Co. (1974) 311 N.E.2d 558, 2 Mass.App. 266.

9. Policy—In general

Where vehicle liability policy excluded optional coverage while insured motor vehicle was used for towing of any trailer owned or hired by insured and not covered by like insurance in defendant insurance company or while any trailer covered by policy was used with any motor vehicle owned or hired by insured and not covered by like insurance in defendant company, manifest purpose of exclusion was to disavow undertaking of any risk in connection with accident to insured trailer while it was being hauled by tractor owned or hired by policyholder or anyone using trailer with policyholder's consent unless insurer was compensated for coverage on both trailer and tractor. Desrosiers v. Royal Ins. Co. of America (1984) 468 N.E.2d 623, 393 Mass. 37.

Motor vehicle policy whose form was approved by the Commissioner of Insurance and which specified whether recovery of lost wages was limited to lost wages of accident survivors would be entitled to weight as administrative determination of this section. Flanagan v. Liberty Mut. Ins. Co. (1981) 417 N.E.2d 1216, 383 Mass. 195.

13. —— Reformation of policy

Oral agreement to extend time for payment of insurance premium may be enforceable in some circumstances. Lapierre v. Maryland Cas. Co. (1982) 438 N.E.2d 356, 14 Mass.App. 248.

14. Construction of terms of policy—In general

Where language of standard policy is prescribed by this section and controlled by Division of Insurance rather than the individual insurer, rule of construction resolving ambiguities in a policy against the insurer is inapplicable; instead, court must ascertain bear meaning of the language used as applied to the subject matter. Bilodeau v. Lumbermens Mut. Cas. Co. (1984) 467 N.E.2d 137, 392 Mass. 537.

Under wording of standard automobile liability policies, each loss of consortium claimant was a separate "person" entitled to an independent "per person" recovery within "per accident" limit; thus, under standard Massachusetts automobile liability policy providing "per person" coverage for bodily injury as well as a higher "per accident" liability limit, an insurer that has exhausted its "per person" liability to a person sustaining bodily injury in an automobile accident is obligated to make additional payments within the "per accident" limit for loss of consortium claims by victim's spouse or children. Bilodeau v. Lumbermens Mut. Cas. Co. (1984) 467 N.E.2d 137, 392 Mass. 537.

Wife of insured who slipped on patch of ice and fell at time when her right hand was on the insured vehicle and she was two or three feet from handle of door by which she intended to enter the vehicle was not "in, upon, entering into, or getting out of" the insured vehicle and thus was not entitled to personal injury protection or medical payments benefits. Rosebrooks v. National General Ins. Co. (1982) 434 N.E.2d 675, 13 Mass.App. 1049.

Reference, in this section refers to individuals whose conduct contributed to their injury while under influence of alcohol or drugs or while committing felony or while intentionally causing injury to themselves or others and does not refer to other persons excluded from coverage under no-fault statute such as those who are entitled to payment of benefits under Workmen's Compensation Act. Flaherty v. Travelers Ins. Co. (1976) 340 N.E.2d 888, 369 Mass. 482.

Words "any person" within noncompulsory motor vehicle clause of policy which provided that insurer would pay on behalf of insured all sums which insured should become legally obligated to pay as damages because of bodily injury sustained by any person caused by accident and arising out of ownership, maintenance or use of motor vehicle included insured owner of automobile. Transamerica Ins. Co. v. Norfolk & Dedham Mut. Fire Ins. Co. (1972) 279 N.E.2d 686, 361 Mass. 144.

A single policy of motor vehicle liability insurance issued which covers two vehicles and provides that the insurer shall be liable for medical expenses not exceeding one thousand dollars, limits the insurer's total liability to that sum and does not make it liable as if the vehicles were insured separately. Boudreau v. Aetna Life and Casualty Co. (1975) 56 Mass.App.Dec. 162.

Any ambiguity in the words, terms or schedules in an insurance policy is to be resolved against the insurer and in favor of the insured. Kilfoyle v. Liberty Mutual Insurance Co. (1975) 56 Mass.App.Dec. 134.

14.5. —— Personal injury protection coverage, construction of terms of policy

Under § 34M of this chapter governing personal injury protection, insured was exempt from any tort liability to extent that injured party received personal injury protection payments, and accordingly, insured could never become legally implicated to pay first $2,000 of damages incurred by injured party for which injured party received personal injury protection benefits; therefore, where under terms of policy, $20,000 of coverage was to the applied against any sum which insured became legally obligated to pay as damages because of bodily injury, payment by insured's insurer to injured party's personal injury protection insurer was not to satisfy claim which insured was "legally obligated" to pay, and consequently full amount of policy remained available for settlement. Di-Marzo v. American Mut. Ins. Co. (1983), 449 N.E.2d 1189, 389 Mass. 85.

Terms of policy did not authorize insurer to deduct amount of personal injury benefits paid to injured party in determining maximum policy limits. Id.

Evidence in action brought against insurance company by injured party on behalf of himself and as assignee of insured, including evidence that Insurance Commissioner's office believed that it was practice of insurance industry not to reduce policy limits by amount of personal injury protection payments made, was sufficient to warrant trial judge's conclusion that insurer acted in bad faith and did not have bona fide belief in reasonableness of its position in reducing insured's coverage by personal injury protection payments made to injured party. Id.

Whether conduct of insurer in reducing coverage under policy by payment of personal injury benefits received by injured party was unfair or deceptive act or practice was question for trier of fact. Id.

In action for recovery of personal injury protection benefits for lost wages under compulsory no-fault motor vehicle insurance, where the vehicle insurance policy was not included in report and no argument was made based on provisions of the poli right to recover would be found, at all, in definition of "personal injury protection" in this section. Flanagan v. Liberty Mut. Ins. Co. (1981) 417 N.E.2d 1216, 383 Mass. 195.

In action to recover personal injury benefits for lost wages of person killed instantly in motor vehicle accident, where trial judge had insurance policy before him but such policy was neither included in report nor basis for argument on report, Supreme Judicial Court would hesitate to disagree with his conclusion that personal injury protection coverage did not extend to lost wages. Id.

Words "amounts actually lost by reason of inability to work and earn wages" in personal injury protection provisions of this section contemplate a living individual, and "inability to work" within context of this section does not include inability due to death. Id.

Person covered under personal injury protection coverage of this section may not recover personal injury protection benefits for lost wages when he is killed instantly in motor vehicle accident. Id.

Personal injury protection coverage of this section is largely concerned with immediate out-of-pocket losses and expenses and not at all with adding net assets to a deceased's estate; thus, funeral expenses and actual lost wages of living person might reasonably be included in such coverage as reimbursement for out-of-pocket expenses, whereas payment for deceased's loss of future earning capacity would not be so regarded. Id.

This section did not require an insurer to pay lost wages where the decedent died instantly as result of an automobile collision. Flanagan v. Liberty Mut. Ins. Co., 1980 Mass.App.Div. 128, affirmed 417 N.E.2d 1216.

14.7. —— Pedestrians, construction of terms of policy

Individual, who was seated in unregistered and uninsured vehicle stored on private property at time insured's vehicle struck the vehicle and killed him, did not constitute a "pedestrian" within purview of insurance policy and thus individual's wife could not recover benefits. Pilotte v. Aetna Cas. & Sur. Co. (1981) 427 N.E.2d 746, 384 Mass. 805.

Plaintiff's intestate, who was killed while seated in an unregistered and uninsured vehicle stored on private property when a motor vehicle operated by the insured left the highway and struck the stored vehicle, was not a "pedestrian" at the time of the accident and therefore no coverage was provided under automobile insurance policy and none was required to be furnished under this section. Pilotte v. Aetna Cas. & Sur. Co., 1981 Mass.App.Div. 39, affirmed 427 N.E.2d 746, 384 Mass. 805.

15. —— Liberal construction

While policies of insurance are construed liberally in favor of insured and strictly against the insurer, in the absence of ambiguity, the words of a policy are given their ordinary meaning. Boudreau v. Aetna Life and Casualty Co. (1975) 56 Mass.App.Dec. 162.

17. —— Loading and unloading vehicles

Where employee of propane gas distributor took by pickup truck a new tank of gas to address at which two different customers lived, where the employee, after asking young boy where the tanks were located, then proceeded to remove a tank and connect the new tank, where the employee in fact mistakenly connected new tank at wrong location, and where, four hours later, an explosion occurred, the ensuing loss was covered by the "loading and unloading" provision of distributor's motor vehicle liability policy; that is, the delivery was not "complete" until the gas reached its intended buyer. LaPointe v. Shelby Mut. Ins. Co. (1972) 281 N.E.2d 253, 361 Mass. 558.

Not every negligent act committed during the unloading process gives rise to liability within the meaning of a motor vehicle liability policy covering loading and unloading; rather, there must be a causal connection between the use of the vehicle, which includes loading and unloading, and the accident; and this is not a question of proximate cause in the ordinary tort sense, but is a question of interpretation of the extent of coverage intended by words of insurance contract. Id.

18. —— Garage liability

Even though legislature used words "policies or bonds", as opposed to "coverage", in section 113C of chapter 175, rate "freeze" provision applied to compulsory bodily injury liability coverage and not to automobile property damage liability coverage. Insurance Rating Bd. v. Commissioner of Ins. (1969) 248 N.E.2d 500, 356 Mass. 184.

Quoted words, in section 113C of chapter 175 authorizing insurers issuing compulsory bodily injury liability coverage policies or bonds to issue to any person purchasing such policy or bond "at his option" additional coverage of property damage and providing that rates for such additional coverage should be subject to approval of commissioner, signified nothing more than desire by legislature to make clear that insured was not required to purchase additional coverage, and rates for additional coverage would not be governed by c. 175, even if insurer "voluntarily" offered coverage. Id.

19. Other insured

Where vehicle liability policy excluded optional coverage while insured motor vehicle was used for towing of any trailer owned or hired by insured and not covered by like insurance in defendant insurer or while any trailer covered by policy was used with any motor vehicle owned or hired by insured and not covered by like insurance in insurer, such tractor trailer exclusion was not to be read out of policy so as to give effect to severability of interest provision which did not expressly focus on use of tractors with trailers and was unclear as to purpose and application, and word "insured" was to be taken as including named insured and all omnibus insured without regard to which was seeking coverage. Desrosiers v. Royal Ins. Co. of America (1984) 468 N.E.2d 625, 393 Mass. 37.

21. Responsibility and consent—In general

Goodney v. Smith (1968) 242 N.E.2d 413, 354 Mass. 734 [main volume] appeal after remand 269 N.E.2d 707, 359 Mass. 749.

22. —— Persons indemnified

Where father had given his son general dominion over automobile involved in accident, no restrictions were placed on its use, and where the son, in effect, was solely responsible for its operation since son was away at college, delegation by father of such broad responsibility to son made it reasonable to assume that driving of automobile by girl friend of son at time of collision, while son was riding in it and for son's purposes, was impliedly sanctioned by the father, so that girl friend's operation of automobile was within the "scope" of owner's permission within meaning of automobile liability policy issued to father. Drescher v. Travelers Ins. Co. (1971) 269 N.E.2d 651, 359 Mass. 458.

23.5. Doctrine of parental immunity

In tort action for negligence arising from automobile accident and brought by unemancipated minor child against parent, doctrine of parental immunity is abrogated to extent of parent's automobile liability insurance coverage; overruling Luster v. Luster, 13 N.E.2d 438, and Oliveria v. Oliveria, 25 N.E.2d 766. Sorensen v. Sorensen (1975) 339 N.E.2d 907, 369 Mass. 360.

Unemancipated daughter could maintain action, on theories of negligence and gross negligence, against her insured father for injuries sustained when car driven by father collided with another car. Id.

24. Injuries covered—In general

For coverage under automobile liability policy to apply, there must be causal relationship between use of automobile and injury. Sabatinelli v. Travelers Ins. Co. (1976) 341 N.E.2d 880, 369 Mass. 674.

25. —— Wilful or intentional wrong

Automobile liability policy did not cover injuries sustained when insured, who was seated in his automobile with motor running, intentionally shot pedestrian. Sabatinelli v. Travelers Ins. Co. (1976) 341 N.E.2d 880, 369 Mass. 674.

28. Guest occupant—In general

Where the plaintiff became a nonpaying passenger in the defendant's automobile to accompany a third person, who the defendant, was transporting gratis to a business meeting, the plaintiff's status was that of a free passenger, who was not conferring any benefit of value to the defendant, and could not recover for injuries caused by the simple, not gross, negligence of the defendant in her operation of the automobile. Ruby v. Dumais (1972) 49 Mass.App.Dec. 154.

30. —— Gross negligence

Host driver, who approached intersection at which there was a stop sign and a blinking red light facing him, who did not stop for stop sign but diminished his speed prior to entry into intersection, who halfway across intersection saw another car coming fast and accelerated his vehicle to get out of way, and who was unable to do so and collided with other car, may have been negligent, but was not grossly negligent, and hence was not liable for injury sustained by guest passenger. Lapre v. Silvia (1972) 285 N.E.2d 450, 362 Mass. 862.

33. Employees

In view of liability policy provision clearly designed to meet requirements of law (c. 90, § 34A et seq.) and no more, with optional coverage provided elsewhere in policy, policy provision excluding such coverage for bodily injury to "any employee of the insured" entitled to workers' compensation benefits was to be taken as using word "insured" to include trailer owner as well as operator of tractor, owned by another party and insured by a different insurer, regard-

less whether trailer owner or tractor operator was seeking coverage, and same was true despite severability of interest provision in the policy. Desrosiers v. Royal Ins. Co. of America (1984) 468 N.E.2d 625, 393 Mass. 37.

Employee of tractor's lessee was within coverage of tractor owner's motor vehicle liability policy, as a person using vehicle with "permission of the named insured," when employee was driving rig composed of leased tractor and lessee's trailer, despite exclusion in policy for use by any person or organization other than named insured with respect to "a motor vehicle while used with any trailer owned or hired by such person or organization not covered by like insurance" with same insurer where he was using tractor with permission lessor, trailer was neither owned nor leased by him, and clause was not inconsistent with severability of interest clause in policy. Reliance Ins. Co. v. Aetna Cas. & Sur. Co. (1984) 468 N.E.2d 621, 393 Mass. 48.

Legislature intended to entirely remove class of injured persons who are entitled to payments or benefits under Workmen's Compensation Act from protection of no-fault statute (this section and sections 34B to 34O of this chapter) which provides that any unpaid party shall be deemed party to contract with insurer responsible for payment and therefore have right to commence action in contract against insurer for no-fault benefits. Flaherty v. Traveler Ins. Co. (1976) 340 ...E.2d 888, 369 Mass. 482.

Truck driver, who was entitled to payments or benefits under Workmen's Compensation Act for eight and one-half weeks he was out of work after truck he was operating overturned on highway, was precluded from receiving personal injury protection benefits under no-fault statute from truck insurer. Id.

Municipality is not liable for negligence of its agents or servants in performance of a public function, even though it may, as a matter of discretion, indemnify such agents and employees should they be held personally liable for their negligence in the performance of a public function. Celata v. Larcom (1971) 46 Mass.App.Dec. 160.

Chapter 41, § 100A, permits a municipality to indemnify an agent or servant who is held liable for his negligence in the performance of a public function of the municipality, but it does not permit a direct action against a municipality for such negligence. Id.

34. Leased vehicles

Corporate defendant, whose driver negligently damaged rented truck, was liable for the damage on contract principles, since corporate defendant, as part of the written rental agreement, had obligated itself to pay for "all overhead damages." Semple Truck Rental & Leasing, Inc. v. P & B Wholesalers, Inc. (1981) 429 N.E.2d 52, 12 Mass.App. 764.

Owner of trailer who leased tractor from insured for purpose of hauling trailer from New York to Maine, where, under lease agreement, tractor-trailer combination was in continuous possession and control of insured's employee, was not an "omnibus insured" within lessor's motor vehicle policy extending coverage to named insured and any other person responsible for operation of motor vehicle with express or implied consent of named insured. Hemingway Bros. Interstate Trucking Co. v. Great Am. Indem. Co. (1969) 252 N.E.2d 883, 356 Mass. 436.

Entrusting a prospective buyer with a motor vehicle, insured against theft, to check mileage and equipment does not constitute a bailment-lease within the exclusionary provision of the insurance policy. Keating v. Travelers Insurance Co., 59 Mass.App.Dec. 25.

34.5. Public transportation

Right of bus passenger, who had no recourse to personal injury protection benefits, to recover from bus company for pain and suffering sustained when door closed on her while she was boarding bus was not barred by no-fault insurance statute (c. 231, § 6D), where bus company was expressly exempted from the statute. Chipman v. Massachusetts Bay Transp. Authority (1974) 316 N.E.2d 725, 366 Mass. 253.

Buses and motor vehicles of street railway companies, including the Massachusetts Bay Transportation Authority are not governed by no fault standards set forth in c. 231, § 6D but are controlled by this section which requires compulsory motor vehicle insurance, to the same extent as other motor vehicles; thus, a passenger of a bus, operated by a street railway company, may recover for injuries due to the negligence of its driver, including pain and suffering, without regard to the amount of his medical expenses. Chipman v. Massachusetts Bay Transp. Authority (1973) 51 Mass.App.Dec. 147, affirmed 316 N.E.2d 725, 366 Mass. 253.

35. Registration

The intentional furnishing by an insured of false information of a material nature to an insurer either before or at trial is a breach of the cooperation clause. Employers' Liability Assur. Corp., Ltd. v. Vella (1975) 321 N.E.2d 910, 366 Mass. 651.

37. Accidents outside state

With regard to injuries sustained by Massachusetts insured in automobile accident which involved uninsured motorist and which occurred in New York after July 1, 1973, applicable limit of such insured's recovery under uninsured motorist coverage of automobile liability policy, which provided for all the coverages mandated under Massachusetts law including uninsured motorist coverage of $5,000 per person/$10,000 per occurrence, was the higher $10,000 New York State limit. O'Wyatt v. New Hampshire Ins. Co. (1976) 385 N.Y.S.2d 627, 53 A.D.2d 454.

39. Co-operation clause

Where despite opportunity to do so, insurer made no effort to reserve its rights to assert defense of noncooperation and disclaim liability, but instead chose to proceed without insured to master's hearing which resulted in finding against insured in amount of $75,000, which was admissible at subsequent trial and constituted prima facie evidence of liability of insured, insurer waived defense of noncooperation. DiMarzo v. American Mut. Ins. Co. (1983) 449 N.E.2d 1189, 389 Mass. 85.

Intentional furnishing of false information of a material nature either before or at trial is a breach of a cooperation clause within automobile liability policy and it is not necessary that insurer show that it has been prejudiced by such a breach. Musichuk v. Liberty Mut. Ins. Co. (1974) 311 N.E.2d 558, 2 Mass.App. 266.

Evidence, in action by holders of executions issued on judgments, which had been obtained in actions arising out of accident involving automobile driven by judgment debtor and owned by his father, to recover under combination motor vehicle policy, which had been issued to father, did not indicate that judgment debtor had made any intentionally false statements to insurer so as to breach policy terms concerning cooperation. Id.

An insurer may terminate its liability under automobile liability policy if the insured commits material breach of the cooperation clause. Foshee v. Insurance Co. of North America (1971) 269 N.E.2d 677, 359 Mass. 471.

Evidence supported trial court's finding that insured committed material breach of cooperation clause of automobile liability policy by not keeping insurer informed of his address or how he might be located, in not appearing in municipal court of city of Boston for trial of negligence action, that insurer exercised due diligence and good faith in attempting to locate the insured and that there was no conduct by the insurer sufficient to constitute waiver of its rights under the policy or an estoppel against its assertion thereof. Id.

Great difficulty encountered by automobile liability insurer's counsel in locating and communicating with the insured during pendency of action against insured constituted lack of cooperation and justified the insurer in disclaiming liability after it had failed by reasonable methods to secure the attendance of the insured as witness at trial. Id.

39.5. Notice and proof of loss

Although motor vehicle liability policy required insured to give written notice as soon as practicable, and although the insured did not write insurer about accident, involving explosion caused by employee of insured connecting propane gas tank at wrong location until about one month after the accident, insured's notice was nevertheless timely, since the insured, within a day or two of the accident, did contact the agent who wrote the policy and discuss the accident with him; moreover, since insurer denied coverage and refused to take over defense of suits brought against the insured, it could hardly have been prejudiced by the delay in receiving notice. LaPointe v. Shelby Mut. Ins. Co. (1972) 281 N.E.2d 253, 361 Mass. 558.

44. Defense available to insurer

Where insurer's efforts at locating missing insured primarily consisted of repeated attempts to locate insured at address where he obviously no longer resided, trial judge was free to conclude that insurer's feeble and untimely attempt after beginning of trial to reserve its right to disclaim liability was taken in bad faith. DiMarzo v. American Mut. Ins. Co. (1983) 449 N.E.2d 1189, 389 Mass. 85.

45. Declaratory judgment actions

In suit brought by retail distributor of bottled propane gas on behalf of its supplier's liability insurer, which settled several suits brought against the distributor in connection with an explosion caused by employee of the distributor connecting gas tank to wrong location, seeking a declaration that plaintiff's motor vehicle liability insurer was indebted to plaintiff for the amount paid in settlement of the suits, the supplier's liability insurer was not a necessary party, since the accident occurred during the "unloading" phase of the gas delivery and since the policy of supplier's insurer specifically did not apply to such a situation. LaPointe v. Shelby Mut. Ins. Co. (1972) 281 N.E.2d 253, 361 Mass. 558.

§ 34C. Single motor vehicle liability policy or bond covering several motor vehicles

Notes of Decisions

1. In general

A single policy of motor vehicle liability insurance issued which covers two vehicles and provides that the insurer shall be liable for medical expenses not exceeding one thousand dollars limits the insurer's total liability to that sum and does not make it liable as if the vehicles were insured separately. Boudreau v. Aetna Life and Casualty Co. (1975) 56 Mass.App.Dec. 162.

§ 34L. Deposit of cash with state treasurer in lieu of motor vehicle liability bond or policy; interest; payment upon execution to satisfy judgment; public auction of deposited stocks or bonds

The applicant for registration may, in lieu of procuring a motor vehicle liability bond or policy, deposit with the state treasurer cash in the amount of ten thousand dollars or bonds, stocks or other evidences of indebtedness satisfactory to said treasurer of a market value of not less than ten thousand dollars as security for the payment by such applicant or by any person responsible for the operation of such applicant's motor vehicle with his express or implied consent of all judgments rendered against such applicant or against such person in actions to recover damages for bodily injuries, including death at any time resulting therefrom, judgments rendered as aforesaid for consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services, or for indemnity, in connection with or on account of such bodily injuries or death, and judgments rendered as aforesaid for contribution as a joint tortfeasor in connection with or on account of such bodily injuries, sustained during the term of registration by any person other than a guest occupant of such motor vehicle or any employee of the owner or registrant of such motor vehicle or of such other person responsible as aforesaid, who is entitled to payments or benefits under the provisions of chapter one hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use of such motor vehicle upon the ways of the commonwealth or in any place therein to which the public has a right of access, to the amount or limit of at least ten thousand dollars on account of any such judgment; provided, however, that if the applicant for registration is engaged in the business of leasing motor vehicles under any system referred to in section thirty-two C, such applicant shall deposit with said treasurer additional security in the amount or value of at least one thousand dollars for the payment by such applicant or by any person responsible for the operation of such applicant's motor vehicle with his express or implied consent, including such consent imputed under section thirty-two E, of all judgments rendered against such applicant or against such person in actions to recover damages for injury to property and judgments rendered as aforesaid for indemnity, or for contribution as a joint tortfeasor, sustained during the term of registration by any person, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, to the amount or limit of at least one thousand dollars on account of any such judgment and provided further that no such deposit shall be required in the case of vehicles leased for a term of more than thirty days and the depositor shall in writing authorize the state treasurer to pay over to the insurer assigned a claim under section thirty-four N any and all amounts, including without limitation the reasonable costs of investigating and settling any such claim and such other reasonable expenses expended by it to satisfy a claim for personal injury protection made against it by any person, other than the depositor or members of his household, who is entitled to such payments as a result of the unavailability of personal injury protection benefits on said depositor's motor vehicle. The depositor shall be entitled to the interest accruing on his deposit and to the income payable on the securities deposited and may from time to time with the consent of the state treasurer change such securities. Upon presentation to the state treasurer by

an officer qualified to serve civil process or an execution issued on any such judgment against the registrant or other person responsible as aforesaid, said treasurer shall pay, out of the cash deposited by the registrant as herein provided, the amount of the execution, including costs and interest, up to but not in excess of ten thousand dollars. If the registrant has deposited bonds, stocks or other evidences of indebtedness, the state treasurer shall, on presentation of an execution as aforesaid, cause the said securities or such part thereof as may be necessary to satisfy the judgment to be sold at public auction, giving the registrant three days' notice in writing of the time and place of said sale, and from the proceeds of said sale the state treasurer shall, after paying the expenses thereof, satisfy the execution as hereinbefore provided when a cash deposit has been made. Any payment upon an execution by the state treasurer in accordance with the provisions of this section shall discharge him from all official and personal liability whatever to the registrant to the extent of such payment. The state treasurer shall, whenever the amount of such deposit from any cause falls below the amount required by this section, require, at the option of the registrant, the deposit of additional cash or securities up to the amount required by this section or a motor vehicle liability bond or policy as provided in this chapter. Money or securities deposited with the state treasurer under the provisions of this section shall not be subject to attachment or execution except as provided in this section. The state treasurer shall deposit any cash received under the provisions of this section in a savings bank or the savings department of a trust company or of a national bank within the commonwealth, or on paid-up shares and accounts of and in co-operative banks, or shall use such cash to purchase share accounts in federal savings and loan associations located in the commonwealth.

Amended by St.1970, c. 670, § 3; St.1983, c. 548, § 1.

1970 Amendment. St.1970, c. 670, § 3, approved Aug. 13, 1970, and by § 10, as amended by St.1970, c. 744, § 2, made effective Jan. 1, 1971, inserted provision at end of first sentence, requiring depositor to authorize state treasurer to pay over to insurer amounts expended settling a personal injury protection claim assigned under § 34N. See, also, note under § 34A of this chapter.

1983 Amendment. St.1983, c. 548, § 1, an emergency act, approved Dec. 10, 1983, and by § 2 made effective Jan. 1, 1984, substituted "ten thousand" for "five thousand" throughout, and in the third sentence substituted "civil process or" for "civil process of".

Law Review Commentaries

Constitutionality of No Fault Jurisprudence. Josephine Y. King (1982) 4 Utah L.Rev. 797.

Massachusetts tries no-fault. (1971) 57 A.B.A.J. 431.

"No-fault" motor vehicle insurance in Massachusetts. Raymond J. Kenney, Jr. and Clement McCarthy (1970) 55 Mass.L.Q. 23.

No Fault Systems. Josephine Y. King (Winter 1984) 4 Pace L.Rev. 297.

Notes of Decisions

2.5. Purpose

Principal purpose behind no-fault legislation was reduction of liability insurance payments for Massachusetts motor vehicle owners. Chipman v. Massachusetts Bay Transp. Authority (1974) 316 N.E.2d 725, 366 Mass. 253.

§ 34G. Actions against surety company

Notes of Decisions

Arbitration 3

1. In general

Surety on bond providing benefits equivalent to property protection insurance on motor vehicle is an "insurer" for purposes of section 34O of this chapter providing for arbitration of interinsurer subrogation claims. Hartford Acc. & Indem. Co. v. Seaboard Sur. Co. (1975) 322 N.E.2d 739, 366 Mass. 731.

3. Arbitration

Under section 34O of this chapter, although motor vehicle owner, which had property protection bond rather than insurance policy covering its vehicle, had not agreed in writing to arbitrate, the owner was obligated to arbitrate claim of insurer of another vehicle which was involved in collision with owner's vehicle. Lumbermens Mut. Cas. Corp. v. Bay State Truck Lease, Inc. (1975) 322 N.E.2d 737, 366 Mass. 727.

Under section 34O of this chapter, vehicle owner in effect elected to become a self-insurer when it decided to maintain a motor vehicle liability bond rather than an insurance policy and was required to accept all consequences of that election, including obligation to submit to arbitration with respect to claim brought by insurer of vehicle which collided with owner's vehicle; requirement that it submit to arbitration did not violate any right of motor vehicle owner to a jury trial. Id.

§ 34H. Revocation of registration of motor vehicle upon notice of cancellation of motor vehicle liability policy or bond; notice to owner; new certificate

In the event that the registrar receives written notice, in conformity with section one hundred and thirteen A of chapter one hundred and seventy-five, he shall revoke the registration of such motor vehicle on the effective date of the cancellation as specified in such notice unless not later than two days prior to such effective date the registrar shall have received a new certificate covering the same motor vehicle, or in case the owner does not file a complaint under section one hundred and thirteen D of said chapter one hundred and seventy-five that he is aggrieved by the issue of such notice, or as specified in an order of the board of appeal on motor vehicle liability policies and bonds affirming such cancellation under said section one hundred and thirteen D in case the owner does not claim an appeal from such order, or as specified in a decree of the superior court or a justice thereof affirming such cancellation on such appeal, or as specified in such a decree ordering a cancellation of such a policy or bond after its reinstatement by said board of appeal, unless not later than two days prior to such effective date as finally specified the registrar shall have received a new certificate covering the same motor vehicle.

The registrar shall forthwith upon receipt of a notice under section thirty-four F of the failure of the owner of a motor vehicle to maintain a deposit send written notice to the owner of the motor vehicle covered by such deposit that the registration thereof will be revoked, unless within five days after the sending of said notice he shall file with the registrar a new certificate.

The registrar shall forthwith upon receipt of a notice under section one hundred and thirteen C of said chapter one hundred and seventy-five of the cessation of the authority of an insurance or surety company to issue or execute motor vehicle liability policies or bonds in the commonwealth, upon the written request of the commissioner of insurance, send written notice to every owner of a motor vehicle covered by a motor vehicle liability policy or bond issued or executed by such a company that the registration thereof will be revoked unless within five days after the sending of said notice he shall file with the registrar a new certificate; provided, that if the authority of such a company to issue or execute motor vehicle liability policies or bonds in the commonwealth ceases by reason of its merger or consolidation with another company so authorized, and it is proved to the satisfaction of the commissioner of insurance that the new or continuing company has assumed all the obligations and liabilities of such company under any and all such policies and bonds issued by it, such notice of the registrar will not be required with respect to policies or bonds so issued previous to the date of merger or consolidation.

Upon failure of the owner of a motor vehicle to file a new certificate as required by this section, the registrar shall immediately revoke the registration thereof; provided, that if a new certificate as aforesaid is filed prior to the final effective date of the cancellation of the existing policy or bond, he may in his discretion rescind such revocation.

The registrar shall, upon receipt of an attested copy of a finding and order of said board of appeal, or of a decree of the superior court or a justice thereof, ordering the reinstatement of a motor vehicle liability policy or bond, forthwith rescind the revocation of the registration of the motor vehicle covered thereby.

Any notice required by this section to be given by the registrar shall be deemed sufficient if mailed by the registrar, or any person authorized by him to send such notice, postage prepaid, to the address given on the application for registration, and an affidavit of the registrar or such person that such notice has been mailed as aforesaid shall be prima facie evidence thereof.

Amended by St.1971, c. 939, § 1.

1971 Amendment. St.1971, c. 939, § 1, an emergency act, approved Oct. 26, 1971, and by § 7 made effective Nov. 15, 1971, rewrote the first paragraph.

§ 34I. Records and books of registrar

Notes of Decisions

1. In general

Under c. 66, § 10, the Registrar of Motor Vehicles may make available records of all suspensions and revocations in computer processable form to members of insurance industry, and Registrar may allow members of insurance industry to use computer terminal to inquire directly into the Registry's computer, as long as there is no undue interference and a reasonable fee is paid. Op.Atty.Gen., Aug. 28, 1970, p. 43.

While this section and §§ 2, 26, 30, of this chapter contain no direct and explicit requirement that the Registrar of Motor Vehicles keep records of suspensions and revocations, such requirement is necessarily implied and must have been intended by the legislature. Id.

§ 34J. Operating motor vehicle without liability policy, bond or security deposit; penalty; exception

Whoever operates or permits to be operated a motor vehicle which is subject to the provisions of section one A during such time as the motor vehicle liability policy or bond or deposit required by the provisions of this chapter has not been provided and maintained in accordance therewith shall be punished by a fine of not less than one hundred nor more than one thousand five hundred dollars or by imprisonment for not more than one year in a house of correction, or both. This section shall not apply to a person who operates a motor vehicle leased under any system referred to in section thirty-two C without knowledge that the lessor thereof has not complied with the provisions of section thirty-two E relative to providing indemnity, protection or security for property damage.

Amended by St.1983, c. 465, § 2.

1983 Amendment. St.1983, c. 465, § 2, an emergency act, approved Nov. 3, 1983, inserted "one thousand" and "in a house of correction, or both" in the first sentence.

Notes of Decisions

Evidence 2.5
Instructions 2,8

1. In general

In prosecution for operating an uninsured motor vehicle, Commonwealth must prove as element of crime charged that motor vehicle was in fact uninsured. Com. v. Munoz (1981) 426 N.E.2d 1161, 384 Mass. 503.

Whatever effect noncompliance with provision might have on the legal relations of those concerned with the motor vehicle, failure of prior owner to comply with provisions of c. 90D, § 15 prescribing certain formalities, which must be completed to transfer a motor vehicle was not intended to be available to a subsequent owner

as a defense to criminal charge of failing to properly register and insure the vehicle. Com. v. Sepulveda (1977) 369 N.E.2d 1023, 373 Mass. 862.

Contention, raised on appeal from conviction for operating an unregistered motor vehicle and for driving an uninsured automobile, that failure of prior owner to comply with provisions of c. 90D, § 15 prescribing formalities for transferring vehicle precluded conclusion that a transfer of the car had occurred was not properly before the Supreme Judicial Court where bill of exceptions failed to indicate that issue was raised in the trial court. Id.

Evidence that vehicle registration form which driver produced in response to police officer's request indicated that the car was registered in the name of a person other than the driver, taken together with evidence that the car had been transferred by the registered owner to the person from whom the driver stated he had purchased permitted, though it did not require, finding that a transfer of the car had occurred and that, therefore, provisions of c. 90D, § 15 pertaining to the automatic expiration of registration upon transfer of ownership and to the automatic termination of insurance upon a sale or transfer were applicable and thus that driver had violated statute by operating an unregistered and uninsured automobile. Id.

2.5. Evidence

Excluding question to insurance agent as to legal sufficiency of defendant's coverage was not error in prosecution for operation of an uninsured motor vehicle inasmuch as defendant sought from witness an opinion on legality of his actions and, thus, in effect sought an opinion involving at once a conclusion of law and a view on ultimate issue of his guilt. Com. v. Brady (1976) 351 N.E.2d 199, 370 Mass. 630.

2.8. Instructions

Trial judge's instructions to jury on uninsured motor vehicle charge were improper because "overall impact" of instructions was to place burden of proof on defendant as to absence of insurance, an essential element of the crime. Com. v. Munoz (1981) 426 N.E.2d 1161, 384 Mass. 503.

§ 34K. Cancellation of policies

No power of attorney in connection with the cancellation of a motor vehicle liability policy as defined in section thirty-four A shall be exercised until ten days' notice has been given to the policyholder by registered or certified mail, return receipt requested, by the person or corporation exercising the power of attorney. Notice to the insurance company of the cancellation of such a policy by a person or corporation exercising the power of attorney shall be accompanied by a statement of compliance with this section, and the insurance company may rely upon such statement.

Amended by St.1971, c. 939, § 2.

1971 Amendment. St.1971, c. 939, § 2, an emergency act, approved Oct. 26, 1971, and by § 7 made effective Nov. 15, 1971, in the first sentence, deleted the form provision for the filing of a certified statement of sending notice to the policyholder.

Notes of Decisions

Notice 2

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1. In general

Failure of a motor vehicle insurer to comply with mandatory provisions of this section and c. 175, § 113A in attempting to cancel the insurance policy renders the attempted cancellation ineffective. Maia v. U. S. Fidelity & Guaranty Co. (1975) 56 Mass.App.Dec. 28.

2. Notice

A motor vehicle liability insurance policy issued in conformity with c. 175, § 113A is properly cancelled where the notice of cancellation contains the correct number under which the vehicle is registered, even though the notice has a slight misspelling of the name of the insured. Paparo v. Consumers Financial Services, Inc. (1975) 56 Mass.App.Dec. 183.

In order to cancel a motor vehicle property protection policy an insurer must give written notice of its intention to cancel, and the notice must state with certainty reasons for cancellation, must clearly identify the policy, must apprise the insured that he can avoid cancellation by remedying the default on or before a certain date, and the notice must be given to the Massachusetts Registrar of Motor Vehicles. Maia v. U. S. Fidelity & Guaranty Co. (1975) 56 Mass. App.Dec. 28.

Where policy of motor vehicle liability insurance was cancelled by person having power of attorney from assured, this section by implication recognizes responsibility for filing notice in accordance with c. 175, § 113A, as resting on person or corporation holding power of attorney to cancel policy, and insurance company was relieved of any responsibility with respects to details involved in legal exercise of power of cancellation. Lurie v. American Fidelity Co. (1967) 37 Mass.App.Dec. 11.

Where policy of motor vehicle liability insurance was cancelled by person having power of attorney from the assured, this section put no burden on the insured to give a ten day notice. Id.

§ 34M. Personal injury protection; assigned claim benefits; tort liability exemption; presentation of claims; investigation; payments; unpaid benefits; speedy trial and costs; subrogation; deductible

Every motor vehicle liability policy and every motor vehicle liability bond, as defined in section thirty-four A, issued or executed in this commonwealth shall provide personal injury protection benefits as defined therein except to the extent such defined benefits to an insured or obligor or members of an insured's or obligor's household may be modified, reduced or eliminated by the purchase of the deductible authorized in this section. The benefits due and payable under any motor vehicle liability policy or bond as a result of the provisions therein providing personal injury protection benefits, and any benefits due any person entitled to make claim under the assigned claims plan established in accordance with section thirty-four N, are granted in lieu of damages otherwise recoverable by the injured person or persons in tort as a result of an accident occurring within this commonwealth.

Every owner, registrant, operator or occupant of a motor vehicle to which personal injury protection benefits apply who would otherwise be liable in tort, and any person or organization legally responsible for his acts or omissions, is hereby made exempt from tort liability for damages because of bodily injury, sickness, disease or death arising out of the ownership, operation, maintenance or use of such motor vehicle to the extent that the injured party is, or would be had he or someone for him not purchased a deductible authorized by this section, entitled to recover under those provisions of a motor vehicle liability policy or bond that provide personal injury protection benefits or from the insurer assigned. No such exemption from tort liability shall apply in the case of an accident occurring outside the commonwealth. However, if any person claiming or entitled to benefits under the personal injury protection provisions of a policy or bond insuring a vehicle registered in this commonwealth brings, in such a case, an action in tort against the owner or person responsible for the operation of such a vehicle, amounts otherwise due such a person under the provisions of section thirty-four A shall not become due and payable until a settlement is reached or a final judgment is rendered in such a case and the amounts then due shall be reduced to that extent that damages for expenses and loss otherwise recoverable as a personal injury protection benefit are included in any such settlement or judgment.

Claim for benefits due under the provisions of personal injury protection or from the insurer assigned shall be presented to the company providing such benefits as soon as practicable after the accident occurs from which such claim arises, and in every case, within at least two years from the date of accident, and shall include a written description of the nature and extent of injuries sustained, treatment received and contemplated and such other information as may assist in determining the amount due and payable. If benefits for loss of wage or salary, or in the case of the self-employed their equivalent, are claimed the party presenting such a claim shall authorize the insurer to obtain details

Massachusetts Mandatory insurance

Note 54

ceding liability for loss or damage while automobile was "used in any illicit or prohibited trade or transportation", Globe Discount & Finance Corporation v. New Jersey Ins. Co. (1936) 199 N.E. 823, 297 Mass. 267.

55. Instructions

In automobile accident case, where there was evidence that "John" appeared as defendant's middle name in his citizenship papers and other instruments, but that "John" appeared as defendant's first name in registration of automobile, but there was no evidence that defendant was not acting in good faith in having automobile registered in that name or that he did so to conceal his identity, instruction that if defendant was commonly and usually known as "John," the automobile was legally registered in that name, otherwise the registration in the name of "John" was not legal, was proper. Puro v. Heikkinen (1941) 35 N.E.2d 762, 310 Mass. 262.

In death action by administratrix against operator of automobile registered in name of a third party, alleged inadequacy of charge for failure to include a specific instruction that registration was illegal if a third party was part owner either with the third party's husband and defendant or with defendant could not be asserted by administratrix where administratrix failed to bring asserted inadequacy to attention of trial court for any necessary correction and court had otherwise in its charge dealt in considerable detail with the subject. Squires v. Traska (1938) 17 N.E.2d 693, 301 Mass. 474.

56. Proof of ownership

Where plaintiff's counsel in personal injury action sought to prove ownership of vehicle which struck plaintiff by letter which he purportedly received from state registry of motor vehicles, answering his questions relating to ownership of certain vehicle, such answers were inadmissible because hearsay, and, since the letter was not among records which registrar was required to keep by statute, the letter was not admissible as a public record. Canney v. Carrier (1956) 130 N.E.2d 879, 333 Mass. 382.

In action for injuries resulting from the alleged illegal operation of an automobile, agreement between attorneys at trial that the application for registration contained motorist's name as owner did not amount to an admission by plaintiff that motorist was owner when she registered automobile. Harnden v. Smith (1940) 26 N.E.2d 310, 305 Mass. 485.

In automobile driver's action for injuries sustained in collision with trolley car, owner's application for registration of automobile was properly admitted. Crean v. Boston Elevated Ry. Co. (1935) 198 N.E. 172, 292 Mass. 226.

To establish the ownership by defendant of an automobile, causing negligent injury on the highway, the certificate of registration bearing the same number as the car is admissible in evidence, since, till rebutted, the presumption is that the owner has complied with St.1903, c. 473, §§ 1, 3, requiring such registration. Trombley v. Stevens-Duryea Co. (1910) 92 N.E. 764, 206 Mass. 516.

The fact that an automobile in which defendant was riding at the time he was charged with operating it at an excessive rate of speed was registered with the Massachusetts highway commission by defendant, and in his own name, warranted a finding that he was the general owner thereof, or that he had such a special property in it as to give him control thereof, under St.1903, p. 507, c. 473 as amended by St.1905, p. 228, c. 311, § 2 regulating automobiles and requiring that they shall be registered "by the owner or person in control thereof." Com. v. Sherman (1906) 78 N. E. 98, 191 Mass. 439.

§ 2A. Application for registration of motor vehicle or trailer owned by minor

An application for the registration of a motor vehicle or trailer owned by a minor shall, if not made by the minor, be made by his

parent or legal guardian for registration in the name of the minor as owner. In addition to the pertinent provisions of this chapter the application shall contain a statement of the name, age, place of residence, and address of such minor and also of the applicant.

Added by St.1953, c. 579.

Cross References

Minimum age for issuance of license, see section 8 of this chapter.
Persons less than 16 years of age, operation of vehicle by, see section 10 of this chapter.

Library References

Automobiles ⇨32. C.J.S. Motor Vehicles § 70.

§ 3. Operation of motor vehicles owned by non-residents; limitation; liability insurance; vehicles used in connection with place of business; suspension or revocation of right to operate vehicle

Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year or, in any case where the owner thereof acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after the acquisition thereof, except during such time as the owner thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

In any prosecution or proceeding other than an action to recover damages for bodily injuries or death arising out of an accident in

which such a motor vehicle or trailer was involved, proof that the owner or operator of such a motor vehicle or trailer, while operating the same during such additional time, fails to have on his person or in the vehicle in an easily accessible place a policy providing such insurance or a certificate of an insurance company stating that such a policy has been issued, shall be prima facie evidence that insurance was not being maintained as required by this section, and in any such action to recover damages proof of such failure at the time of the accident shall create a presumption, which may be rebutted, that such insurance was not then being maintained as so required.

Every nonresident enrolled as a student at a school or college in the commonwealth who operates a motor vehicle registered in another state or country for more than thirty days in the aggregate within the commonwealth during any period beginning on September first of any year and ending on August thirty-first of the following year shall, on or before such thirtieth day, file in triplicate with the police department of the city or town in which such school or college is located, on a form approved by the registrar of motor vehicles, a statement signed by him under the penalties of perjury providing the following information:—the registration number and make of the motor vehicle and the state or country of registration, the name and address of the owner, the names and addresses of all insurers providing liability insurance covering operation of the motor vehicle, the legal residence of such nonresident and his residence while attending such school or college, and the name and address of the school or college which he is attending. The police department with whom any such statement is filed in triplicate shall send one copy thereof to the registrar of motor vehicles and one copy to such school or college. Any such nonresident who fails to comply with the provisions of this paragraph shall be punished by a fine of not more than fifty dollars. From the copies of the statements received from the police department, as hereinbefore provided, each such school or college shall compile and maintain a register of all such nonresidents enrolled as students thereat which shall be available for inspection at all reasonable times by the registrar, his agents, and police officers, and shall issue to each such student such serially numbered or lettered decal as may be prescribed by the registrar, which decal shall be affixed to the uppermost center portion of the windshield. Such register shall contain the numbers or letters of the decal issued to each such student, the name and address of the owner of the motor vehicle, the residential address of the student within the commonwealth, if any, while attending such school or college, the residential address of the student without the commonwealth, the registration number, make and type of the motor vehicle and the state, province or country of registration, and the names and addresses of all insurers providing liability insurance covering the operation of the motor vehicle. Any such school or college which fails to compile and maintain a register or to issue a decal as required by this paragraph shall be punished by a fine of not more than one hundred dollars for each such offense.

A motor vehicle or trailer owned by a non-resident and used in direct connection with a place of business of such non-resident within this commonwealth shall be registered in this commonwealth; provided, that a non-resident who uses motor vehicles or trailers both in direct connection with his place of business in this commonwealth and in connection with a place or places of business outside the commonwealth need not register in this commonwealth more than the number of his vehicles which equals the average number of his vehicles regularly used in connection with his place of business in this commonwealth. For the purposes of such registration, the registrar may determine what vehicles or what proportion of vehicles owned by such non-resident are so used.

The registrar may suspend the right of any nonresident operator to operate in this commonwealth, and may suspend the right of any nonresident owner to operate or have operated in this commonwealth any motor vehicle or trailer for the same causes and under the same conditions that he can take such action regarding resident owners, operators, motor vehicles and trailers owned in this commonwealth. Every such vehicle so operated shall have displayed upon it number plates, substantially as provided in section six, bearing the distinguishing number or mark of the state or country in which such vehicle is registered, and none other except as authorized by this chapter.

A corporation organized under the laws of this commonwealth, or a person resident therein, having a place of business in another state or a foreign country shall, with respect to the operation upon the ways of this commonwealth of a commercial motor vehicle, trailer or semi-trailer which is used in connection with such place of business, is customarily garaged in such other state or foreign country and is registered therein, have the rights and privileges and be subject to the obligations imposed by this section.

Amended by St.1933, c. 188; St.1939, c. 325; St.1941, c. 282; St. 1953, c. 463, §§ 2, 3; St.1962, c. 19, § 1; St.1966, c. 144, § 1; St.1967, c. 580.

Historical Note

St.1903 c. 473 § 6.
St.1905 c. 311 §§ 2, 7.
St.1906 c. 412 § 8.
St.1907 c. 580 § 1.
St.1908 c. 618 § 3.
St.1909 c. 534 §§ 3, 31.
St.1910 c. 605 § 1.
St.1914 c. 204 § 2.
St.1919 c. 294 § 4.
St.1923 c. 431 § 1.
St.1931 c. 142 § 2.

The words "in this section and" near the beginning of the first sentence were inserted in 1953.

St.1953, c. 423, § 3 inserted the present fourth paragraph.

St.1962, c. 19, approved Jan. 25, 1962, and by section 2 made effective Sept. 1, 1962, inserted the third paragraph, relating to non-resident students.

St.1966, c. 144, § 1, approved April 11, 1966, deleted, in the first sentence of the fifth paragraph, "or revoke" following "suspend" in two instances.

St.1967, c. 580, approved Aug. 29, 1967, modified the third paragraph by requiring statements in triplicate rather than duplicate; by requiring, in such statements, "the names and addresses of all insurers providing liability insurance covering operation of the motor vehicle"; by requiring police departments to send a copy of statement to school or college attended by student; and by inserting fourth, fifth and sixth sentences.

Cross References

License of non-residents, see section 10 of this chapter.
Non-resident, definition of, see section 1 of this chapter.
Operation of unregistered vehicles, see section 9 of this chapter.
Way, definition of, see section 1 of this chapter.

Law Review Commentaries

Long arm statute for Massachusetts; jurisdiction over non-domiciliaries. Harold Brown (Sept.1968) 12 Boston Bar J.No. 8, p. 9.

Plates on non-resident trailers. (Dec. 1939) 38 Mass.L.Q. No. 5, p. 63.

Reciprocal and retaliatory tax statutes. (Feb.1930) 43 Harvard L.Rev. 611.

Library References

Automobiles ⇐36, 43, 56, 144.1(1).
C.J.S. Motor Vehicles §§ 66, 110, 133-135, 160.

Comment. Negligent operation of motor vehicles, see M.P.S. vol. 10, Rodman, § 541.

Notes of Decisions

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1. Validity

This section, which prior to 1939 amendment required permit from registrar of motor vehicles for operation of nonresident's motor vehicle in Commonwealth, was valid as providing reasonable means for suppressing use of vehicles not covered by liability insurance required to be obtained before registration thereof, though act includes nonresidents already having such insurance, and was not invalid as violating "equal protection" clause of U.S.C.A.Const. Amend. 14. Apger v. New York Cent. R. R. (1942) 38 N.E.2d 652, 310 Mass. 405.

2. In general

No one is permitted to have his motor vehicle operated on highways of Massachusetts without registration, except as authorized by this and section 9 of this chapter, and under this section a resident of Commonwealth who owns motor vehicle which is registered in another state or foreign country can lawfully operate it on Massachusetts highways only if (1) he has place of business in another state or foreign country, (2) vehicle is a commercial vehicle, trailer or semitrailer used in connection with place of business, (3) vehicle is customarily garaged in jurisdiction in which place of business is located, and (4) it is registered there. Companion v. Colombo (1959) 156 N.E.2d 692, 338 Mass. 620.

A resident, as distinguished from non-resident, of commonwealth, must obtain registration of his motor vehicle therein in order to operate it on ways of commonwealth. Rummel v. Peters (1943) 51 N.E.2d 57, 314 Mass. 501.

This section expresses a definite "public policy" as to motor vehicles not legally registered. Malloy v. Newman (1941) 37 N.E.2d 1001, 310 Mass. 269.

In action by nonresident truck driver for injuries in collision with automobile in 1935, error in exclusion of evidence whether driver had license or permit from registry of motor vehicles in Massachusetts to operate the truck was not harmless, because driver had admitted that truck was not registered in Massachusetts and had no Massachusetts registration plates and carried no Massachusetts compulsory insurance, since such evidence standing alone would not require a finding that truck owner had not complied with statute by maintaining a liability policy and had not received a permit for operation of the truck. Conningford v. Cote (1941) 32 N.E.2d 692, 308 Mass. 472.

The statutory prohibition of operation of unregistered motor vehicles is general, and does not exempt unregistered motor vehicles of nonresidents, except under specific statutory exemption contemplating temporary sojourns within state. Knapp v. Amero (1937) 11 N.E.2d 467, 298 Mass. 517.

That nonresident operator, with permission of nonresident owner, operated plaintiff's unregistered automobile without required operator's license, was not violation of this section requiring registration, where automobile was otherwise within exemption from registration as to nonresidents, as respects question whether recovery for collision with defendant's automobile was barred as matter of law. Peabody v. Currier (1934) 190 N.E. 521, 286 Mass. 295.

Use of unlicensed motor vehicles on highways by nonresidents may be prohibited. Pawloski v. Hess (1925) 141 N.E. 760, 250 Mass. 22, 35 A.L.R. 945, affirmed 47 S.Ct. 632, 274 U.S. 352, 71 L.Ed. 1091.

3. Purpose

This section was intended to safeguard travelers rightfully using highways from risk of injury by a motor vehicle not properly registered, and to make mere presence of such vehicle on a highway at any time or place unlawful. Malloy v. Newman (1941) 37 N.E.2d 1001, 310 Mass. 269.

This section governing operation of automobiles owned by nonresidents manifests intent to afford nonresident protection by virtue of registration in his home state or country during limited temporary sojourn. Knapp v. Amero (1937) 11 N.E.2d 467, 298 Mass. 517.

In the case of Jenkins v. North Shore Dye House (1932) 178 N.E. 644, 277 Mass. 440, the court said: "The statute is designed to afford to such nonresident the protection of the automobile registration of his home state or country during a temporary sojourn within this commonwealth not exceeding a period of thirty days."

4. Interstate commerce

State may regulate use of highways, so long as not burdening or interfering with interstate commerce. Interstate Busses Corporation v. Holyoke St. Ry. Co. (1927) 47 S.Ct. 298, 273 U.S. 45, 71 L.Ed. 530.

During period in which Congress fails to exercise power given it by federal constitution to regulate interstate commerce, a state may regulate matters generally considered as of local concern, such as use of highways constructed and maintained by state at its own ex-

jurisdiction, though interstate commerce is affected thereby. Acker v. New York Cent. R. R. (1942) 38 N.E.2d 652, 310 Mass. 405.

This section, which prior to 1939 amendment required permit from registrar of motor vehicles for operation of nonresidents' motor vehicles in state after 30 days in any year was not in conflict with provisions of Federal Motor Carrier Act or Interstate Commerce Commission's regulations of portion of interstate commerce conducted by motor vehicles. Id.

General state regulations for protection of highways, public health, and safety of travel, and promotion of general welfare, are valid though interstate commerce may be incidentally affected. Com. v. New England Transp. Co. (1934) 185 N.E. 23, 282 Mass. 429.

Use of commonwealth highways in interstate commerce subject to state regulation. Barrows v. Farnum's Stage Lines (1926) 150 N.E. 206, 254 Mass. 240.

5. "Non-resident"—In general

A person whose legal residence is not in commonwealth may be "nonresident", entitled to operate his automobile, registered elsewhere in Massachusetts without registration therein, though he has acquired and maintained indefinitely a "regular place of abode", that is regular "residence," in commonwealth, if he has not become domiciled therein. Rummel v. Peters (1943) 51 N.E.2d 57, 314 Mass. 504.

In action for damage to plaintiff's automobile, not registered in Massachusetts, evidence that plaintiff lived in Pennsylvania all his life, that automobile was registered therein in his name at time of accident, that he returned to Pennsylvania for summer and Christmas vacations during years in which he studied at universities and taught school in Massachusetts, and that he owned property, paid poll taxes, and voted in Pennsylvania, justified trial judge's finding that plaintiff was "nonresident", entitled to operate automobile in Massachusetts without registration therein, even if he had no residence in Pennsylvania. Id.

"Legal residence", within statutory definition of "nonresident", entitled to operate automobile in commonwealth without registration therein, as any person whose legal residence is not within commonwealth, is something more than ordinary "residence", which is word of varied meanings, ranging from "domicile" down to personal presence with some slight degree of permanence, and means, in general, personal presence at some place of abode, with no present intention of definite and early removal therefrom and with purpose to remain for undetermined period, not infrequently, but not necessarily, combined with design to stay permanently. Id.

The statute defining "nonresident", permitted to operate in commonwealth an automobile not registered therein, as any person whose legal residence is not within commonwealth, contemplates that a man may be nonresident, though he has regular place of abode or residence in commonwealth, and uses expression "legal residence" in sense of "domicile". Id.

A person may have more than one "regular place of abode" or "residence" within this section respecting registration of nonresidents' motor vehicles. Id.

Owner of automobile did not cease to be resident of Rhode Island as a matter of law so as to bar administratrix from recovering for his death in automobile accident occurring in Massachusetts on ground of nonregistration of automobile in Massachusetts because owner had given up his room in a lodging house in Rhode Island, left automobile there, and went on a vacation to Maine, and had stayed 24 days at his wife's home in Massachusetts. Jenkins v. North Shore Dye House (1935) 194 N.E. 823, 289 Mass. 561.

Evidence sustained finding that operator of automobile not registered in Massachusetts was a resident of Rhode Island, and hence nonregistration did not preclude his administratrix from recovering for his death in automobile accident. Id.

As regards rights of nonresident owner to operate automobile without registration in Massachusetts, motorist may have "residence" in more than one state. Id.

In determining whether deceased operator of automobile in Massachusetts

was "nonresident" owner and his administratrix barred from recovering for his death in automobile accident on ground of nonregistration of automobile in Massachusetts, time spent in Massachusetts before purchase of automobile should not be added to time spent thereafterwards in computing 30-day period during which he, as nonresident owner, was privileged to operate vehicle in Massachusetts during year without registration. Id.

Under this section relating to rights of "nonresident" owners to operate automobiles for limited period in Massachusetts without registration, word "resident," which may have different meanings or shades of signification dependent on connection in which it occurs and result designed to be accomplished by its use, should be given broad and general and not restricted construction. Id.

6. —— Student as nonresident

The supreme judicial court cannot go behind determination of registrar of motor vehicles, under statutory authority, that Pennsylvania law authorizes unlimited operation of motor vehicles by students during school term, as does Massachusetts statute, so as to entitle Massachusetts student, owning automobile registered in Pennsylvania to operate it in Massachusetts without registration therein. Rummel v. Peters (1943) 51 N.E.2d 57, 314 Mass. 504.

In action for damage to plaintiff's automobile, not registered in Massachusetts, evidence that plaintiff lived in Pennsylvania all his life, that automobile was registered therein in his name at time of accident, that he returned to Pennsylvania for summer and Christmas vacations during years in which he studied at universities and taught school in Massachusetts, and that he owned property, paid poll taxes, and voted in Pennsylvania, justified trial judge's finding that plaintiff was "nonresident", entitled to operate automobile in Massachusetts without registration therein, even if he had no residence in Pennsylvania. Id.

A student, entitled under statute to operate his automobile in Massachusetts during school term without registration therein because of like provision as to operation of students' automobiles in state of registration of such automobile did not lose his status as "student" merely because he earned money to help pay his tuition and living expenses. Id.

7. Former residents

One who ceases to be commonwealth resident by moving to another state is nevertheless entitled to 30 days' immunity from registration of automobile during subsequent temporary sojourn within commonwealth. Bellenger v. Nally (1933) 185 N.E. 346, 282 Mass. 523. In this case the court said: "The statute cannot rightly be construed to mean that one who formerly was a resident here, but who has ceased to be a resident, because he has removed his residence from the commonwealth to another state or country, is not included within its terms, and not entitled to the thirty days' immunity during a subsequent temporary sojourn within this commonwealth. The statute reads 'has' and not 'has or has had no regular place of abode or business in the commonwealth for a period of more than thirty days in the year.'"

On issue whether plaintiff, former commonwealth resident, was unlawfully on highway at time of accident, evidence of plaintiff's intention to remain in state where his automobile was registered was admissible. Bellenger v. Nally (1933) 185 N.E. 346, 282 Mass. 523.

8. Reciprocity

North Carolina corporation was required to register vehicles which it owned and used in Massachusetts and customarily kept in North Carolina, under Massachusetts statute governing operation of nonresidents' motor vehicles, and was thus not entitled to exemption from Massachusetts excise tax under Massachusetts and North Carolina reciprocity statutes, although North Carolina administrative officials would not have required registration of Massachusetts vehicles in same category. Akers Motor Lines, Inc. v. State Tax Commission (1962) 182 N.E.2d 476, 344 Mass. 359.

Evidence failed to show that the reciprocity provisions in c. 60A, § 1, imposing excise tax on registered motor vehicles in lieu of local tax, as applied to

corporate formalization trustee of common carrier of passengers by both interstate and intra-state buses caused any discrimination which aggrieved the trustee. O'Brien v. State Tax Commission (1950) 178 N.E.2d 146, 330 Mass. 56.

Under this section a visiting automobile is permitted operation in the state without local registration to the extent that visitor's state permits out of state automobiles to be operated in that state, provided that an automobile visiting the state may not operate here without registration for more than 30 days in a calendar year unless fully insured, in which case it may be operated to the extent that the visitors home state permits the operation of unregistered, foreign automobiles. Chevy Chase Motor Co. v. Schneisser (1953) 5 Mass.App.Dec. 129.

9. Thirty day period—In general

In the case of Van Dresser v. Firlings (1940) 24 N.E.2d 969, 305 Mass. 51, the court said: "It is to be noted that the statute has again been amended by St. 1939, c. 325, so that the alternatives now consist of (1) 'thirty days in the aggregate in any one year,' the word 'period' and any reference to a date of beginning being omitted, and 'aggregate' inserted, and (2) 'a period of thirty days after the acquisition' of a regular place of abode or business."

10. —— Prior to 1939 amendment

A plaintiff whose truck allegedly was properly registered in Maine could not recover for injuries sustained in automobile accident in Massachusetts on December 7, 1938, where plaintiff first entered Massachusetts with the truck during March, 1938, and his right to operate the truck in Massachusetts expired at the end of 30 days and his illegal act in operating the truck was a unit and had not ceased to exist before the injury was done. Rozzi v. Caggiano (1942) 39 N.E.2d 951, 310 Mass. 752.

A nonresident's operation of his motortruck in commonwealth more than 30 days after date of its first trip therein during same year without permit from registrar of motor vehicles, was illegal, though permit had been issued to such owner by Department of Public Utilities. Apger v. New York Cent. R. R. (1942) 38 N.E.2d 652, 310 Mass. 495.

A plaintiff whose truck allegedly was properly registered in Maine could not recover for injuries sustained in automobile accident in Massachusetts on December 7, 1938, where plaintiff first entered Massachusetts with the truck during March, 1938, and his right to operate the truck in Massachusetts expired at the end of 30 days and his illegal act in operating the truck was a unit and had not ceased to exist before the injury was done. Crofoot v. Rozewski (1942) 38 N.E.2d 217, 310 Mass. 824.

Though nonresident's automobile was registered in state where he resided, it could not be lawfully operated on highways of Massachusetts beyond 30-day period without registration in Massachusetts unless he maintained a policy of liability insurance and while operating car during such additional time had on his person or in a easily accessible place in vehicle a permit authorizing operation without registration. Malloy v. Newman (1941) 37 N.E.2d 1001, 310 Mass. 269.

In action by nonresident truck driver for injuries sustained in collision with automobile in 1935, exclusion of evidence as to whether truck driver had any license or permit from registry of motor vehicles to operate the truck, on ground that total number of days that driver operated truck in Massachusetts did not in the aggregate total 30 days in 1935 was error, since the period of 30 days fixed by statute must be computed from date of first entry of the vehicle. Conningford v. Cote (1941) 32 N.E.2d 692, 308 Mass. 472.

Nonresident motorist and wife were not precluded from recovering for damages resulting from automobile collision by reason of alleged violation of statute prohibiting operation of motor vehicles by nonresidents without liability insurance beyond a "period of thirty days" after date of entry in any one year, in absence of showing that prior entries into the state were by automobile. Knowles v. Cashman (1940) 24 N.E.2d 973, 305 Mass. 56.

The operation of automobile in the commonwealth by a nonresident beyond expiration of 30 consecutive days after

date of entry of vehicle in the year 1936 without registration and without insurance and a permit would be a violation of statute prohibiting operation of motor vehicles by nonresidents without liability insurance beyond a "period of thirty days" after date of entry in any one year. Id.

Where non-resident motorist whose automobile was not registered in Massachusetts and who had no permit from the registrar of motor vehicles to operate without registration, entered commonwealth with his automobile on June 27 and thereafter spent week-ends with his family at a summer place within the commonwealth, motorist was a "trespasser" on the highway at time of collision on August 22, by reason of his violation of statute prohibiting operation of motor vehicles by nonresidents without liability insurance, beyond a "period of thirty days" after date of entry in any one year or acquisition of a place of abode or business, and was precluded from recovering damages sustained in an automobile accident. Boettjer v. Clark (1940) 24 N.E.2d 971, 305 Mass. 59.

"Period of thirty days" within statute prohibiting operation of motor vehicle by nonresident without liability insurance beyond a "period of thirty days" after date of entry in any one year or acquisition of a place of abode or business, does not mean an aggregate of 30 days in all, spread over a longer time, but means a single period of 30 consecutive days, and hence nonresident who entered commonwealth on July 1 and left the next morning, but again passed through the commonwealth on August 14, was a "trespasser" by reason of failure to secure registration or liability insurance and was precluded from recovering damages sustained in an automobile accident. Van Dresser v. Firlings (1940) 24 N.E.2d 969, 305 Mass. 51.

Automobile of nonresident operated within commonwealth for at least one hundred days in the aggregate, though not for any continuous period of thirty days without leaving the commonwealth, was operated beyond the expiration of a period of thirty days so as to require permit under the statute, the word "period" being limited in meaning to a total of not over thirty days during a calendar year. English v. Blacher (1937) 8 N.E.2d 313, 297 Mass. 76.

Whether owner of automobile had regular place of abode in state for more than 30 days before accident was for jury. Avila v. Du Pont (1932) 180 N.E. 124, 278 Mass. 83.

Where St.1903, p. 507, c. 473, as amended by St.1905, p. 227, c. 311, prohibited the operation of an automobile upon a public highway unless it had been licensed and registered and section 2 authorized any nonresident owner of an automobile who had complied with the laws of his own state to operate it on the highways of this state for a period not exceeding 15 days without a license and plaintiff, who resided in Connecticut and had complied with the laws of that state, entered this state in his automobile on September 13th without taking out a license, and remained here until September 29th, when the accident occurred, except that he drove into Connecticut on September 14th, returning the same evening, and also went to Vermont for a day, but did not stay overnight, and his machine was thereafter in the repair shop for a day and a half after his return and both of the excursions to the other states were temporary, without any intention of a permanent stay, plaintiff's temporary trips to other states and the time his machine was being repaired could not be excluded in determining the period he was within the state so that he had exceeded his privilege of operating the automobile 15 days without a license. Dudley v. Northampton St. Ry. Co. (1909) 89 N.E. 25, 202 Mass. 443, 23 L.R.A.,N.S., 561.

11. Abode

The registration of an automobile in Texas was not illegal in Massachusetts because owner was living in Boston hotel when accident occurred in Massachusetts, where domicile of owner was in Texas. Rolfe v. Walsh (1946) 61 N.E.2d 16, 318 Mass. 733.

If owner had place of abode in state for more than 30 days prior to accident, nonregistered automobile was trespasser. Avila v. Du Pont (1932) 180 N.E. 124, 278 Mass. 83.

One may have "place of abode," apart from domicile. Id.

One who abandoned foreign residence and took up abode within commonwealth was not entitled to immunity extended nonresidents by this section. Jenkins v. North Shore Dye House (1931) 178 N.E. 644, 277 Mass. 440.

One employed in theater in state for three months, occupying room in state part time had "regular abode," in state precluding his recovery for damages sustained while operating unregistered automobile. Hanson v. Culton (1929) 169 N.E. 272, 269 Mass. 471.

12. Business, definition of

"Business" is anything which occupies the time, attention, and labor of a man for the purpose of profit. Hanson v. Culton (1930) 169 N.E. 272, 269 Mass. 471.

13. Liability insurance

In personal injury action against nonresident motorist who pleaded limitations defense, it would be presumed that defendant was subject to general portion of statute providing for compulsory insurance, rather than to portion thereof exempting nonresidents operating within commonwealth for less than 30 days, and that one-year statute, applicable where compulsory insurance is required, governed action. Smith v. Pasqualetto (D.C.1956) 146 F.Supp. 680.

In action for damages sustained in automobile collision, where there was evidence that plaintiff's automobile was registered in New Hampshire, that plaintiff resided therein, and that he had on his person a policy complying with Massachusetts compulsory insurance statute at time of accident, trial judge rightly denied defendant's requests for rulings that plaintiff's automobile was not lawfully on highway at time of accident. Godfrey v. Caswell (1947) 72 N.E.2d 402, 321 Mass. 161.

Inasmuch as the treaty entered into by the United States and fourteen other American republics concerning the regulation of Inter-American Automotive Traffic makes no special provision for the existence of a policy of liability insurance as necessary to registration or use of a motor vehicle, the privileges rendered by the treaty render inoperative the non-resident insurance provision set forth in this section, with relation to those motor vehicles to which the treaty relates. Op.Atty.Gen. March 25, 1947, p. 88.

14. Non-resident with place of business

The provisions of the automobile law respecting nonresidents were not applicable to a foreign corporation which had places of business in Massachusetts, and i. was subject, respecting all its automobiles within the commonwealth, to the absolute prohibition against operating them on the highway unless registered in accordance with St.1909, c. 534, § 9. Gondek v. Cudahy Packing Co. (1915) 123 N.E. 398, 233 Mass. 105.

Nonresident who maintained an office or telephone and loading platform in this commonwealth comes within purview of this section, providing for registration of vehicles of nonresidents operated in connection with such places. Op.Atty.Gen. March 13, 1959, p. 88.

15. Domestic corporations

Massachusetts corporation with its principal offices within state and a branch office in the state of Rhode Island was a resident of the state and not entitled to 30-day period in which to register after operating vehicle within the state. Superior Motors Transp. Co. v. Baier (1941) 2 Mass.App.Dec. 12.

16. Violation, effect of

Action of automobile owner and his agent in allowing unregistered automobile to remain on public way, or to remain in private parking lot with keys over sun visor, was not proximate cause of injuries sustained by pedestrian who, while crossing street in exercise of due care, was struck by automobile which was negligently driven by thief who had stolen automobile, but conduct of thief was intervening cause which owner and agent were not bound to anticipate and guard against, and hence owner and agent were not liable for such injuries either on theory of negligence or on theory of nuisance. Galbraith v. Levin (1948) 81 N.E.2d 560, 323 Mass. 255.

An owner of motor vehicle, not duly registered in commonwealth and not permitted on ways thereof by statute

could not recover therein for injury to vehicle or his person because of another's negligence while vehicle was unlawfully on such ways in violation of this section. Rommel v. Peters (1943) 51 N.E.2d 57, 314 Mass. 504.

A nonresident, illegally operating his motortruck on highways in commonwealth in violation of this section, could not recover from railroad company for personal injuries and damage to truck because of negligent operation of defendant's freight train over public crossing. Apger v. New York Cent. R. R. (1942) 38 N.E.2d 652, 310 Mass. 495.

The violation of a statute imposing a criminal liability, such as this section prohibiting operation of motor vehicle by nonresident without liability insurance after certain period, was evidence of violator's negligence as to all consequences that statute was intended to prevent. Malloy v. Newman (1941) 37 N.E.2d 1001, 310 Mass. 269.

In order to find nonresident motorist liable for negligence in leaving his unregistered motor vehicle on street, unattended and unlocked, in violation of registration statute, it was not necessary that he should have foreseen that his negligent conduct would be followed by the negligence of a thief in operation of the vehicle resulting in death of police officer. Id.

The violation of this section was evidence of negligence and if it had any causal connection with collision plaintiff could not recover. Conningford v. Cote (1941) 32 N.E.2d 692, 308 Mass. 472.

In action for injuries to nonresident truck driver in collision with automobile in Massachusetts in 1935, while proof of violation of statute prohibiting operation of motor vehicle by nonresident without liability insurance and without permit beyond period of 30 days, where not specifically pleaded, would not be conclusive as matter of law against right of recovery, under defense of contributory negligence, it would be evidence of negligence for consideration of jury. Id.

A Connecticut automobile dealer which lent automobile and dealer's license plates to office manager for his personal use was not liable for injuries resulting from manager's operation of automobile in Massachusetts in violation of this section, where manager acted wholly for his own purposes and was the only person in control. Strogoff v. Motor Sales Co. (1933) 18 N.E.2d 1016, 302 Mass. 345.

The loan of an automobile and number plates by Connecticut dealer to office manager for his personal use violated Connecticut statutes, and when brought into Massachusetts automobile became a "trespasser" and "nuisance" under Massachusetts law, and manager was liable to a person exercising due care for injury proximately resulting from his operation. Id.

Auditor's findings that, while guest in nonresident's unregistered automobile, which was being operated illegally without guest's knowledge, guest was injured in collision when defendant, who was intoxicated, suddenly swerved his approaching automobile to wrong side of highway, authorized recovery for guest's resulting injuries on ground that defendant's negligence was sole cause of injury. Knapp v. Amero (1937) 11 N.E.2d 467, 298 Mass. 517.

Automobile of nonresident if operated within commonwealth in violation of this section was a trespasser on the highway. English v. Blacher (1937) 8 N.E.2d 343, 297 Mass. 76.

If prior to accident nonresident deceased resided within commonwealth, failure to register automobile in commonwealth made automobile trespasser upon highway, precluding recovery for death of deceased in accident. Jenkins v. North Shore Dye House (1931) 178 N.E. 644, 277 Mass. 440.

17. Burden of proof

In actions arising out of motor vehicle collision, burden of establishing such absence of local registration as would justify application of trespasser doctrine was on defendant. Companion v. Colombo, (1959) 156 N.E.2d 692, 338 Mass. 620.

18. Questions for jury

In action arising out of collision between defendant's automobile and a tractor-trailer unit, wherein defense was

tive when it contains the correct number of the policy, even though it misspells insured's name and misstates the number of the motor vehicle. Id.

55. Instructions

Refusal to instruct jury on two-day grace period an individual is required to carry a bill of sale for a newly acquired vehicle was not error in prosecution for violation of this section prescribing operation of an unregistered motor vehicle inasmuch as defendant's asserted good faith in failing to have a bill of sale on his person was not a basis for establishing a good faith defense under statute. Com. v. Brady (1976) 351 N.E.2d 199, 370 Mass. 630.

Instruction relating to whether defendant, as owner or person in control of vehicle with which plaintiff's vehicle collided in intersectional collision, was shown to have had actual prior knowledge of operator's incompetence or his violations of law was prejudicially erroneous in permitting jury to find liability against defendant if operator in any way committed a violation without reference to causal relationship between unlawful conduct and accident. Leone v. Doran (1973) 292 N.E.2d 19, 363 Mass. 1, vacated in part 297 N.E.2d 493.

56. Proof of ownership

An individual purchasing a new vehicle must carry a bill of sale for vehicle with him when he drives it during the two-day period following the date of transfer. Com. v. Brady (1976) 351 N.E.2d 199, 370 Mass. 630.

§ 2B. Removal of registration upon transfer of ownership

The owner of a motor vehicle who transfers the ownership thereof to another or who terminates the registration thereof shall thereupon remove from the vehicle any visible evidence furnished to him by the registrar under the provisions of section two relative to the validity of the plates in use on said vehicle.

Added by St.1969, c. 282.

1969 Enactment. St.1969, c. 282, was approved May 8, 1969.

§ 2C. Repealed by St.1973, c. 925, § 11

St.1973, c. 925, establishing the age of majority at eighteen years for certain legal purposes, and which by § 11 repealed this section, was approved Oct. 17, 1973, and by § 84 made effective Jan. 1, 1974. Emergency declaration by the Governor was filed Dec. 20, 1973.

The repealed section provided for the legal capacity of minors eighteen years or older in contracts for the purchase, etc. of motor vehicles, parts or accessories; and was derived from St.1969, c. 405.

See, now, c. 231, § 85O.

§ 2D. Temporary registration plates

The registrar is hereby authorized and empowered to design, issue and regulate the use of temporary registration plates. Such temporary plates may be issued to dealers, upon application accompanied by the proper fee, as shall be established by the registrar, for use by purchasers of motor vehicles; said plates shall be valid for not more than twenty days, pending receipt of registration plates issued under the provisions of section two. Satisfactory proof shall be furnished that a certificate, as defined in section thirty-four A, is in effect prior to the issuance of temporary plates.

The registrar is hereby empowered to issue and enforce regulations for the administration of this section.

Added by St.1982, c. 266.

1982 Enactment. St.1982, c. 266, was approved July 7, 1982.

C.J.S. Motor Vehicles § 59.

Library References

Automobiles ⇐21 et seq.

§ 3. Operation of motor vehicles owned by non-residents; limitation; liability insurance; vehicles used in connection with place of business; suspension or revocation of right to operate vehicle; registration

Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year or, in any case where the owner thereof acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after the acquisition thereof, except during such time as the owner thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the operation of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

In any prosecution or proceeding other than an action to recover damages for bodily injuries or death arising out of an accident in which such a motor vehicle or trailer was involved, proof that the owner or operator of such a motor vehicle or trailer, while operating the same during such additional time, fails to have on his person or in the vehicle in an easily accessible place a policy providing such insurance or a certificate of an insurance company stating that such a policy has been issued, shall be prima facie evidence that insurance was not being maintained as required by this section, and in any such action to recover damages proof of such failure at the time of the accident shall create a presumption, which may be rebutted, that such insurance was not then being maintained as so required.

Every nonresident enrolled as a student at a school or college in the commonwealth who operates a motor vehicle registered in another state or country during any period beginning on September the first of any year and ending on August the thirty-first of the following year shall file in triplicate with the police department of the city or town in which such school or college is located, on a form approved by the registrar of motor vehicles, a statement signed by him under the penalties of perjury providing the following information:—the registration number and make of the motor vehicle and the state or country of registration, the name and address of the owner, the names and addresses of all insurers providing liability insurance covering operation of the motor vehicle, the legal residence of such nonresident and his residence while attending such school or college and the name and address of the school or college which he is attending. He shall also maintain in full force a policy of liability insurance providing indemnity for or protection to him and to any person responsible for the operation of such motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others

for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A. The police department with whom any such statement is filed in triplicate shall send one copy thereof to the registrar of motor vehicles and one copy to such school or college. Any such nonresident who fails to comply with the provisions of this paragraph shall be punished by a fine of not more than fifty dollars. From the copies of the statements received from the police department, as hereinbefore provided, each such school or college shall compile and maintain a register of all such nonresidents enrolled as students thereat which shall be available for inspection at all reasonable times by the registrar, his agents, and police officers, and shall issue to each such student such serially numbered or lettered decal as may be prescribed by the registrar, which decal shall be affixed to the uppermost center portion of the windshield. Such register shall contain the numbers or letters of the decal issued to each such student, the name and address of the owner of the motor vehicle, the residential address of the student within the commonwealth, if any, while attending such school or college, the residential address of the student without the commonwealth, the registration number, make and type of the motor vehicle and the state, province or country of registration, and the names and addresses of all insurers providing liability insurance covering the operation of the motor vehicle. Any such school or college which fails to compile and maintain a register or to issue a decal as required by this paragraph shall be punished by a fine of not more than one hundred dollars for each such offense.

A motor vehicle or trailer owned by a non-resident and used in direct connection with a place of business of such non-resident within this commonwealth shall be registered in this commonwealth; provided, that a non-resident who uses motor vehicles or trailers both in direct connection with his place of business in this commonwealth and in connection with a place or places of business outside the commonwealth need not register in this commonwealth more than the number of his vehicles which equals the average number of his vehicles regularly used in connection with his place of business in this commonwealth. For the purposes of such registration, the registrar may determine what vehicles or what proportion of vehicles owned by such non-resident are so used, and such determination shall be final.

The registrar may suspend the right of any nonresident operator to operate in this commonwealth, and may suspend the right of any nonresident owner to operate or have operated in this commonwealth any motor vehicle or trailer for the same causes and under the same conditions that he can take such action regarding resident owners, operators, motor vehicles and trailers owned in this commonwealth. Every such vehicle so operated shall have displayed upon it number plates, substantially as provided in section six, bearing the distinguishing number or mark of the state or country in which such vehicle is registered, and none other except as authorized by this chapter.

A corporation organized under the laws of this commonwealth, or a person resident therein, having a place of business in another state or a foreign country shall, with respect to the operation upon the ways of this commonwealth of a commercial motor vehicle, trailer or semi-trailer which is used in connection with such place of business, is customarily garaged in such other state or foreign country and is registered therein, have the rights and privileges and be subject to the obligations imposed by this section.

Except as provided in the preceding paragraph, a motor vehicle or trailer, owned by a non-resident, that is in the possession or under the control of a resident of this commonwealth for a period greater than thirty days, in the aggregate within a calendar year, whether under terms of a lease, or otherwise, and such vehicle is registered in another state or country, shall not be operated on the ways of this commonwealth, unless

registered under this chapter. Whoever operates or allows to be operated a motor vehicle or trailer in violation of this paragraph, shall be punished by a fine of not less than one hundred nor more than two hundred fifty dollars.

Notwithstanding any other provisions of this chapter, when records maintained by the registrar show that the use of a motor vehicle or trailer owned by any person or corporation has resulted in three or more convictions for a violation of this section within any twenty-four month period, he may suspend the right to operate, or right to have operated, in this commonwealth any motor vehicle or trailer owned by such person or corporation for a period not to exceed six months.

Amended by St.1970, c. 353; St.1971, c. 500; St.1972, c. 732, § 2; St.1974, c. 660, §§ 1, 2.

1970 Amendment. St.1970, c. 353, approved May 21, 1970, modified third paragraph by deleting "for more than thirty days in the aggregate within the commonwealth" following word "country" where first appearing, and deleting "on or before such thirtieth day" following word "shall," in first sentence; and by inserting second sentence relating to liability insurance requirement.

1971 Amendment. St.1971, c. 500, approved July 12, 1971, inserted "and such determination shall be final" in the second sentence of the fourth paragraph.

1972 Amendment. St.1972, c. 732, § 2, an emergency act, approved July 17, 1972, added the penultimate paragraph.

1974 Amendment. St.1974, c. 660, § 1, approved July 31, 1974, added the second sentence of the penultimate paragraph.

Section 2 of St.1974, c. 660, added the last paragraph.

Code of Massachusetts Regulations

Ambulances, insurance, see 105 CMR 170.125.

Law Review Commentaries

Long-arm jurisdiction. John H. Curtin, Jr. and William G. Young, 17 Annual Survey of Mass. Law, Boston College, p. 687 (1970).

Notes of Decisions

2. In general

New York law, which limits rescission of automobile liability policy after loss, rather than Massachusetts law, which might permit rescission, applied to determine right of insurer, which issued policy in Massachusetts to applicant who applied for and obtained coverage under false name, to rescind after applicant, a New York resident, was involved in accident in New York with other New York residents. Allstate Ins. Co. v. Sullam (1973) 349 N.Y.S.2d 550, 76 Misc.2d 87.

§ 3A. Appointment of registrar as attorney as result of acceptance of rights and privileges of section 3 by non-resident

Notes of Decisions

Limitation of actions 7

2. In general

Where daughter of nonresident automobile owner permitted her resident friend to drive and daughter's friend was not employee of owner or performing any service for him, friend was not agent of owner, and this section authorizing service of process upon registrar of motor vehicles was not applicable, either in wording or intent, to authorize service upon registrar as attorney of owner. Segal v. Yates (1969) 253 N.E.2d 841, 356 Mass. 449.

This section authorizing service of process in certain cases upon registrar of motor vehicles as attorney of nonresidents operating vehicles in state by selves or agents was intended to assure, to one sustaining injury or damage due to operation in state of automobile by nonresident, the opportunity to seek redress in state courts rather than to be remitted to bringing action outside commonwealth. Id.

Chapter 231, § 85A, under which registration of motor vehicle in name of defendant is prima facie evidence of driver's agency and c. 231, § 85B, creating presumption of owner's responsibility from registration are procedural in nature relating solely to evidence and not to substantive rights, and operate to render unnecessary proof of driver's agency only where defendant is properly made subject to jurisdiction of court; they are not intended to extend scope of

Massachusetts Mandatory insurance

Note 16

public money for the public use and convenience. Street railway tracks, apart from special authority, are located in public ways. G.L. c. 161, § 54. It would be highly improbable that the main road from Pittsfield to Lenox should be a private way. The jury had the right to infer from the testimony that the street was a way within the meaning of the statute."

Open square 110 by 125 feet without crosswalks, but with five streets leading from it in different directions, was a "way" within this section. Com. v. Leone (1925) 146 N.E. 26, 250 Mass. 512.

§ 1A. Registration of motor vehicles; certificate of insurer; school bus registration

No motor vehicle or trailer, except one owned by a person, firm or corporation, for the operation of which security is required to be furnished under section six of chapter one hundred and fifty-nine A, or one owned by a person, firm or corporation subject to the supervision and control of the department of public utilities, as to which said department has issued a certificate as hereinafter described, or one owned by a street railway company under public control, or by the commonwealth or any political subdivision th , shall be registered under sections two to five, inclusive, unless th application therefor is accompanied by a certificate as defined in section thirty-four A. Said department shall issue a certificate hereinabove mentioned upon the filing of a bond, satisfactory to the department in form and amount, covering all motor vehicles and trailers of the obligor for which application for registration may be made, containing the condition of a motor vehicle liability bond, as defined in section thirty-four A, except as to amount, which bond shall, upon a showing to said department's satisfaction of the obligor's financial ability, be without surety. Such a certificate shall also be issued by said department upon presentation to it of satisfactory evidence of adequate personal injury liability insurance providing indemnity or protection equal to motor vehicle liability policies, as defined in said section thirty-four A. Such certificate, when issued by said department, shall be filed with the registrar. Ambulances owned and operated by any hospital or other institution or association supported wholly or in part by public or private donations for charitable purposes, and motor vehicles and trailers used by the fire or police department of any city or town or park board solely for the official business of such department or board shall not be subject to the requirements of this section.

No motor vehicle used as a school bus, except a vehicle so used under contract with a city or town and insured as provided in section four of chapter forty of the General Laws, or a vehicle for the operation of which security is required to be furnished under section six of chapter one hundred and fifty-nine A, shall be registered under sections two to five, inclusive, unless the policy or bond as defined in

section thirty-four A, or the binder as described in the definition of "certificate" in said section provides indemnity, protection or security in the case of any one accident resulting in injury to or death of more than one person up to the amount of fifty thousand dollars.

Amended by St.1934, c. 264, § 2; St.1948, c. 572, § 1; St.1950, c. 471; St.1950, c. 502, § 5; St.1955, c. 172.

Historical Note

St.1925 c. 346 § 1.
St.1926 c. 368 § 1.
St.1930 c. 332 § 2.
St.1931 c. 47 § 2.
St.1931 c. 408 § 6.
St.1933 c. 372 § 3.

The last sentence of the first paragraph, exempting ambulances of hospitals and vehicles and trailers used by fire or police departments from the requirements of compulsory insurance, was inserted by the 1948 amendment in place of a sentence which related to the same subject matter in a more brief form.

Prior to amendment by St.1950, c. 471, this section provided: "No motor vehicle or trailer, except one owned by a person, firm or corporation for the operation of which security is required to be furnished under section six of chapter one hundred and fifty-nine A, or one owned by any other corporation subject to the supervision and control of the department of public utilities other than one subject thereto solely under chapter one hundred and fifty-nine B, or one owned by a street railway company under public control, or by the commonwealth or any political subdivision thereof, shall be registered under sections two to five, inclusive, unless the application therefor is accompanied by a certificate as defined in section thirty-four A. Ambulances, fire engines and apparatus, police patrol wagons and other vehicles used by the police department of any city or town or park board solely for the official business of such department or board (whether or not owned as aforesaid) shall not be subject to the requirements of this section."

The second paragraph, exempting a school bus or a vehicle for the operation of which security is required from registration unless the policy or bond required pursuant to a certain section provides indemnity, protection or security, was added by St.1950, c. 502, § 5.

The 1955 amendment inserted in the second sentence following the words "motor vehicles" the words "and trailers."

Cross References

Penalty for operating vehicle without policy, see section 34J of this chapter.
Registry of motor vehicles, see c. 16, § 9.
Thirty day exemption to vehicles who have registration and plates issued by U. S. armed forces in foreign countries, see section 9B of this chapter.

Law Review Commentaries

Compulsory motor vehicle insurance. Warren G. Reed (April, 1960) 45 Mass. L.Q.No. 1, p. 12.

Insurance on leased vehicles. J. Albert Burgoyne, 6 Annual Survey of Mass.Law, Boston College, p. 180 (1959).

Insurance policies. J. Albert Burgoyne, 9 Annual Survey of Mass.Law, Boston College, p. 193 (1962).

Should motor vehicle insurance for cars owned by municipalities and charitable organizations be provided for and, if so, how? Frank W. Grinnell (July-Sept.1940) 25 Mass.L.Q. No. 6, p. 11.

Library References

Automobiles ⇨37, 77, 78.
C.J.S. Motor Vehicles §§ 63-65, 82-94.

Comment. Judgment creditor's bill in equity to reach and apply liability insurance, see M.P.S. vol. 12, Martin and Hennessey, § 1753.

Notes of Decisions

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1. Validity

The statutes making registration of automobile and issuance of number plates therefor conditional upon the applicant for registration giving security covering automobile by automobile liability policy, or bond, or deposit of cash, or security for damages for bodily injuries including death and consequential damages caused by operation of automobile, are constitutional. Poresky v. Registrar of Motor Vehicles (1946) 67 N.E.2d 407, 319 Mass. 717.

2. In general

For full development of cases relating to compulsory motor vehicle liability insurance, see Notes of Decisions under section 34A et seq. of this chapter.

"Owner" within statutes governing motor vehicle registration is broadly construed and includes those having interests other than full legal and beneficial title. Coyle v. Swanson (1962) 185 N.E.2d 741, 345 Mass. 126.

Motor vehicle may be registered in name of person having special property therein as well as in name of person who has the general property in it. Id.

Automobile which struck wall, killing driver and injuring occupant, was not trespasser on highway, and owner was not liable for injuries, where owner had permitted driver to use automobile and had instructed driver to register and insure automobile in driver's name and driver had done so. Id.

3. Purpose

Fundamental purpose of compulsory automobile liability insurance statute is the protection of travelers. Fields v. Parsons (1968) 234 N.E.2d 744, 353 Mass. 706.

Compliance with notice requirement of c. 175, § 113A for cancellation of compulsory automobile liability policy is important to effective administration of compulsory motor vehicle insurance law since legislative purpose was to make validity of registration coterminous with maintenance of the minimum security, and requirement also serves as safeguard against unintentional or mistaken action to detriment of traveling public and to the insured. Id.

The dominant purpose of statutes making registration of automobile and issuance of number plates therefor conditional upon applicant giving security is to make provision for security in collection of compensation for damages sustained without fault by travelers or on highway through negligent operation of motor vehicles. Poresky v. Registrar of Motor Vehicles (1946) 80 N.E.2d 521, 323 Mass. 752.

Purpose of compulsory motor vehicle liability insurance statutes was that all registered motor vehicles should be protected by such insurance so that persons injured by their operation might have some security for collection of damages sustained. Caccavo v. Kearney (1934) 190 N.E. 817, 286 Mass. 480.

4. Necessity for security

A licensed owner of automobile which the owner alone drove was not entitled to registration of automobile and issuance of number plates therefor without first giving security required by the motor vehicle compulsory insurance statutes, on the ground that he had an immemorial right to use of highway in the ordinary and usual manner. Poresky v. Registrar of Motor Vehicles (1946) 77 N.E.2d 314, 322 Mass. 742; Poresky v. Registrar of Motor Vehicles (1946) 67 N.E.2d 407, 319 Mass. 717.

Owner was not entitled to register his motor vehicle without compliance with statutes making registration of automobile and issuance of number plates therefor conditional upon applicant giving security covering automobile by automobile liability policy, or bond, or deposit of cash, or security for damages for bodily injuries including death and consequential damages caused by operation of automobile. Poresky v. Registrar of Motor Vehicles (1946) 77 N.E.2d 314, 322 Mass. 742.

In the case of O'Roak v. Lloyds Casualty Co. (1934) 189 N.E. 571, 285 Mass. 532, the court said: "No motor vehicle can be registered until it is insured or other provision made for the protection of those injured through its negligent use or operation on public ways as provided in G.L.(Ter.Ed.) c. 90, §§ 1A, 34A, 34B, 34D."

On the basis of this section registry of motor vehicles shall continue to exempt cities and towns from requirement of furnishing compulsory insurance certificates as condition to registering municipally owned vehicles. Op.Atty.Gen. May 18, 1964, p. 239.

5. Interstate commerce

The registrar of motor vehicles could require certificates as provided in this section, precedent to registration of vehicles for which the interstate commerce commission has issued permits of interstate transportation of passengers and which are used solely in such interstate transportation, only if the type of coverage required by Massachusetts does not conflict with the coverage required by the interstate commerce commission. Op.Atty.Gen. May 17, 1949, p. 77.

6. Insurance policies, generally

Where standard automobile liability policy covering licensed vehicles used in plaintiff's business of conducting sightseeing tours was in effect at time one of plaintiff's automobiles was involved in accident during sightseeing tour, fact that particular automobile had not been individually listed and inspected by department of public utilities as required by department rules did not relieve insurer from liability on policy on ground that automobile was not "licensed" within meaning of policy, where department had excepted plaintiff from compliance. Gray Line v. Great Am. Indem. Co. (D.C.1950) 87 F.Supp. 793.

Where automobile used by plaintiff in its business of conducting sightseeing tours had been registered with registry of motor vehicles and had been licensed as sightseeing vehicle by police commissioner of city of Boston, and department of public utilities had issued to plaintiff a certificate of public convenience and necessity, proof that plaintiff had violated rules of department in failing to have automobile individually listed and inspected did not automatically render license void and remove automobile from coverage of standard automobile liability policy covering "licensed" vehicles. Id.

The definition in garage liability policy of motor vehicles covered by it must be construed with reference to statutes with which coverage was intended to comply and with which commissioner of insurance must have believed it complied when, presumable, he approved its form or allowed its use under statute. Kenner v. Century Indem. Co. (1946) 67 N.E.2d 769, 320 Mass. 6, 165 A.L.R. 1463.

In suit on compulsory automobile liability policy which was not introduced in evidence, the only presumptions permissible were that owner had registered automobile in compliance with the law, that a liability policy had been issued and that the policy conformed to statutory mandate. Joyce v. London & Lancashire Indemnity Co. of America (1942) 44 N.E.2d 776, 312 Mass. 354.

Person whose name was substituted on certificate of compulsory automobile liability insurance after registration of automobile by alteration of owner's name, which appeared thereon at time of execution, was not directly insured by policy so as to impose liability on insurer for judgment against such person for injuries received in operation of automobile covered by policy, regardless of whether application for registration in name of such person, which was attached to certificate, or certificates, was

Note 6

filled out and signed first. Leonardo v. Ins. Co. of North America (1955) 126 N.E. 2d 261, 332 Mass. 286.

In determining insurer's liability under compulsory motor vehicle liability insurance statutes the statutes and policies must be construed together in the light of the General Court's dominant purpose in undertaking to deal with the subject of motor vehicle liability insurance. Chicopee v. Kearney (1934) 190 N.E. 917, 286 Mass. 480.

Certificate of coverage under Compulsory Motor Vehicle Liability Insurance Law required by this section as condition of registration can appear on the face of the application for registration instead of being an individual stub attached thereto. Op.Atty.Gen. March 14, 1961, p. 111.

7. Burden of proof

Taxpayer had burden of proving that aggregate burden of excises under this and chapters 60A and 61A, relating to registration fee or excise and motor vehicle excise and gasoline excise was in its general application unreasonable or that the taxes were in any respect discriminatory. O'Brien v. State Tax Commission (1959) 158 N.E. 106, 339 Mass. 56.

§ 2. Application for registration of motor vehicles and trailers; duties of registrar; transfer of ownership; plates

Application for the registration of motor vehicles and trailers may be made by the owner thereof. The application shall contain, in addition to such other particulars as may be required by the registrar, a statement of the name, place of residence and address of the applicant, with a brief description of the motor vehicle or trailer, including the name of the maker, such number or numbers as may be required by the registrar to properly identify the vehicle, the character of the motor power, and the type of transmission. The registration fee as required in section thirty-three shall accompany such application.

The registrar or his duly authorized agents shall register in a book or upon suitable index cards to be kept for the purpose the motor vehicle or trailer described in the application, giving to the vehicle a distinguishing mark or number to be known as the register number for that vehicle, and shall thereupon issue to the applicant a certificate of registration. The certificate shall contain the name, place of residence and address of the applicant and the register number or mark, and shall be in such form and contain such further information as the registrar may determine.

Upon the transfer of ownership of any motor vehicle or trailer its registration shall expire, and the person in whose name such motor vehicle or trailer is registered shall forthwith return the certificate of registration to the registrar with a written notice containing the date of the transfer of ownership and the name, place of residence and address of the new owner; provided, that, on the death, insolvency or bankruptcy of any owner of a motor vehicle or trailer, its registration shall be deemed to continue in force as a valid registration until the expiration date appearing on the certificate of registration or until the ownership of such motor vehicle or trailer is transferred by the legal representative of the estate of such owner, whichever occurs first, subject otherwise to all provisions of law applicable generally to registrations of motor vehicles or trailers; and provided, further, that if the owner of a motor vehicle or trailer for which a certificate of registration has been issued dies prior to the effective date appearing on the certificate of registration, such motor vehicle or trailer shall be deemed to be validly registered and said registration shall continue in force until the expiration date appearing on the certificate of registration, or until the ownership of such vehicle or trailer is transferred by the legal representative of the estate of such owner, whichever occurs first, subject, however, to all provisions of law applicable generally to registrations of motor vehicles or trailers.

A person who transfers the ownership of a registered motor vehicle or trailer owned by him to another or loses possession thereof or desires to transfer the registration from one motor vehicle or trailer owned by him to another motor vehicle or trailer owned by him, upon the filing of a new application and upon payment of the proper substitution fee provided in section thirty-three, may have registered in his name for the period of time remaining before the expiration date appearing on the certificate of registration another motor vehicle or trailer; provided that if the fee provided for registration of the vehicle sought to be registered is more than the fee for registration of the vehicle transferred as aforesaid, the applicant shall pay, in addition to the substitution fee, the difference between said fees for registration. A person who has attained twenty-one years of age and who transfers the ownershio of a registered motor vehicle or trailer owned by him to another or who loses possession thereof and who intends to transfer the registration of such motor vehicle or trailer to a newly acquired vehicle of the same type and having the same number of wheels may, subject to other provisions of this chapter, operate such newly acquired motor vehicle or trailer for a period beginning from the date of transfer until five o'clock post meridian of the second registry business day following the date of transfer within the period for which the transferred vehicle was registered; provided, that the number plates issued upon registration of the transferred motor vehicle or trailer are attached to the newly acquired vehicle. During such period any operator of the newly acquired vehicle shall carry an original copy of the bill of sale reciting the registration number to be transferred from the former vehicle to the newly acquired vehicle or a certificate of transfer issued by the dealer on a form approved by the registrar in place of the certificate of registration.

1984 Amendments. St.1984, c. 77, § 2, approved June 15, 1984, in the definition of "Motor vehicles", in the first sentence, inserted "provided, however, that the exception for trackless trolleys provided herein shall not apply to sections seventeen, twenty-one, twenty-four I, twenty-five and twenty-six".

Section 3 of St.1984, c. 77, in the definition of "Operator", added "or trackless trolley".

Section 4 of St.1984, c. 77, inserted the definition of "Trackless trolley".

St.1984, c. 115, § 1, approved June 28, 1984, in the definition of "Motorcycle", substituted "Motorcycle" for "Motor cycle".

St.1984, c. 167, § 2, an emergency act, approved July 9, 1984, inserted the definition of "Automobile transporter".

Section 3 of St.1984, c. 167, inserted the definitions of "Tandem unit" and "Terminal".

Section 4 of St.1984, c. 167, inserted the definition of "Routes of reasonable access".

Section 12 of St.1984, c. 167, provided:

"Nothing in this act shall prohibit the use of trailers or semi-trailers of such dimensions authorized by applicable law in the commonwealth and in actual and lawful use on December first, nineteen hundred and eighty-two."

Code of Massachusetts Regulations

Motor vehicle regulations, see 540 CMR 2.01 et seq.

Cross References

Hunting from motor vehicle restricted, see c. 131, § 65.

Tampering with speedometer or odometer by dealer, as defined by this section, as prima facie evidence of intent to misrepresent, see c. 266, § 141A.

Time and hours of travel of tandem units, see c. 85, § 2B.

Library References

Comments.

Motor vehicles, see M.P.S. vol. 36, Alperin and Chase, § 411 et seq.

Motor vehicle offenses, see M.P.S. vol. 32, Nolan, § 551 et seq.

Notes of Decisions

1. Validity

Requirement of § 7 of this chapter of protective headgear for a motorcyclist but not for a rider of a "motorized bicycle * * * which is capable of a maximum design speed of no more than twenty-five miles per hour" was not a classification unjustified by any conceivable set of facts or findings such as would violate equal protection. Com. v. Guest (1981) 425 N.E.2d 779, 12 Mass.App. 941.

2. In general

Mere fact that an offense involves a motor vehicle does not ipso facto make it an "automobile law violation." Com. v. Giannino (1977) 358 N.E.2d 1008, 371 Mass. 700.

Reference in brief to fact that officer who issued traffic violation complaints was state police officer assigned to state Turnpike Authority, and arguments that officer had only power of constable when not on turnpike duty and that constable could not stop or arrest anyone unless he was in uniform or displayed badge of office, were not properly before Supreme Judicial Court where bill of exceptions referred to officer as state police officer and made no reference to Turnpike Authority. Com. v. Pizzano (1970) 260 N.E.2d 643, 357 Mass. 636.

8.5. Motorized bicycles

That § 1 of this chapter specifically excludes "motorized bicycles" from definition of "motor vehicles" did not preclude charge of operating a motorized bicycle upon a public way while under the influence of intoxicating liquor, as § 1B of this chapter states that the operator of motorized bicycle is subject to the traffic laws and regulations of the Commonwealth. Com. v. Griswold (1984) 459 N.E.2d 142, 17 Mass.App. 461, review denied 462 N.E.2d 1374, 391 Mass. 1104.

9. Motor vehicle

Term "motor vehicle" as used in this section, and as incorporated by reference in c. 93B, § 1, providing for regulation of business practices between motor vehicle manufacturers, distributors and dealers, includes only the vehicles which are designed for regular use in the transportation of persons and property on the travelled part of public highways, and exclude many kinds of special vehicles, such as tracked vehicles used in construction work. Hein-Werner Corp. v. Jackson Industries, Inc. (1974) 306 N.E.2d 440, 364 Mass. 523.

Within chapter 93B purporting to regulate business practices between motor vehicle manufacturers, distributors and dealers, term "motor vehicle" is not limited to an "automobile" as the latter term is commonly understood; rather, term "motor vehicle" has the same definition as set out in this section, regardless of whether the use of the vehicle in question is such as to require to be registered, and not subject to the exceptions set out in c. 90, § 9 prohibiting operation of unregistered motor vehicles. Id.

Town police chief who saw vehicle which was designed for propulsion by power other than muscular power and which bore in-state registration plates being driven under its own power along a public way by operator whom he knew to have no license to operate motor vehicles and who had no knowledge of any facts, about such vehicle, which would take it out of general part of complicated statutory definition of motor vehicles and place it within exceptions in the definition acted with probable cause in prosecuting such operator for operating a motor vehicle after suspension and before restoration of his license. Lincoln v. Shea (1972) 277 N.E.2d 699, 361 Mass. 1.

13. Owner

Testimony of plaintiff that he saw defendant's insignia on truck from which a spare tire had fallen, striking plaintiff's following vehicle, was insufficient, without proof that defendant was owner of truck, to establish defendant's responsibility to plaintiff. Jacobs v. Hertz Corp. (1970) 265 N.E.2d 588, 358 Mass. 541.

15. Trailer

In the absence of a permit from the Department of Public Works, section 19 of chapter 90, prohibits the use of a certain T-shaped device similar in appearance to a small boat trailer which permits the towing of another motor vehicle by fitting its two wheels under the front or rear wheels of the towed vehicle leaving the vehicle's other two wheels in contact with the ground in combination with the motor vehicle, to tow another vehicle on any way of the Commonwealth. Op.Atty.Gen., Nov. 1, 1968, p. 64.

If a "mobile home" meets the definition of a "trailer" in this section it qualifies for the trade-in deduction under the sales tax. Op.Atty.Gen., Sept. 8, 1967, p. 89.

§ 1A. Registration of motor vehicles; liability insurance, certificate accompanying application, failure to maintain; revocation of certificate of registration; exemptions; school buses

No motor vehicle or trailer, except one owned by a person, firm or corporation, for the operation of which security is required to be furnished under section six of chapter one hundred and fifty-nine A, or one owned by a person, firm or corporation subject to the supervision and control of the department of public utilities, except supervision and control under chapter one hundred and fifty-nine B, as to which said department has issued a certificate as hereinafter described, or one owned by a street railway company under public control, or by the commonwealth or any political subdivision thereof, shall be registered under sections two to five, inclusive, unless the application therefor is accompanied by a certificate as defined in section thirty-four A. The registrar may revoke without a hearing any certificate of registration if he is satisfied that the certificate, as defined in said section thirty-four A, accompanying the registration application has not been maintained for a period at least coterminous with that of any registration he may have issued in connection with a registration application. Said department shall issue a certificate hereinabove mentioned upon the filing of a bond, satisfactory to the department in form and amount, covering all motor vehicles and trailers of the obligor for which application for registration may be made, containing the condition of a motor vehicle liability bond, as defined in section thirty-four A, except as to amount, which bond shall, upon a showing to said department's satisfaction of the obligor's financial ability, be without surety. Such a certificate shall also be issued by said department upon presentation to it of satisfactory evidence of adequate personal injury liability insurance providing indemnity or protection equal to motor vehicle liability policies, as defined in said section thirty-four A. Such certificate, when issued by said department, shall be filed with the registrar. Ambulances owned and operated by any hospital or other institution or association supported wholly or in part by public or private donations for charitable purposes, and motor vehicles and trailers used by the fire or police department of any city

or town or park board solely for the official business of such department or board shall not be subject to the requirements of this section.

No motor vehicle used as a school bus, except a vehicle so used under contract with a city or town and insured as provided in section four of chapter forty of the General Laws, or a vehicle for the operation of which security is required to be furnished under section six of chapter one hundred and fifty-nine A, shall be registered under sections two to five, inclusive, unless the policy or bond as defined in section thirty-four A, or the binder as described in the definition of "certificate" in said section provides indemnity, protection or security in the case of any one accident resulting in injury to or death of more than one person up to the amount of fifty thousand dollars.

The registrar may refuse to accept an application for registration when the application is not accompanied by proof of payment, in the form prescribed by the United States Department of the Treasury, that the federal heavy vehicle use tax imposed by section 4481 of the Internal Revenue Code [1] has been paid.

Amended by St.1971, c. 211; St.1972, c. 69; St.1984, c. 438.

[1] 26 U.S.C.A. § 4481.

1971 Amendment. St.1971, c. 211, approved April 22, 1971, in the first paragraph, inserted the second sentence relating to revocation of certificate of registration.

1972 Amendment. St.1972, c. 69, approved March 9, 1972, inserted "except supervision and control under chapter one hundred and fifty-nine B," in the first sentence.

1984 Amendment. St.1984, c. 438, approved Dec. 31, 1984, added the third paragraph.

Code of Massachusetts Regulations

Certificates running to registrar of motor vehicles, see 220 CMR 153.00.

Law Review Commentaries

Massachusetts no-fault automobile insurance. Alan I. Widiss (1976) 56 Boston U.L.Rev. 323.

Notes of Decisions

Exemptions 6.5

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2. In general

Registration of a motor vehicle in the name of a person is prima facie evidence of his ownership of the vehicle. Mezoff v. Jack Madden Ford Sales, Inc. (1973) 53 Mass.App.Dec. 78.

6.5. Exemptions

Right of bus passenger, who had no recourse to personal injury protection benefits, to recover from bus company for pain and suffering sustained when door closed on her while she was boarding bus was not barred by no-fault insurance statute (c. 231, § 6D), where bus company was expressly exempted from the statute. Chipman v. Massachusetts Bay Transp. Authority (1974) 316 N.E.2d 725, 366 Mass. 253.

§ 1B. Motorized bicycles; age of operators; speed limit; driver's license or learner's permit required; application of traffic laws and regulations

A motorized bicycle shall not be operated upon any way, as defined in section one within the commonwealth by any person under sixteen years of age, nor at a speed in excess of twenty-five miles per hour. A motorized bicycle shall not be operated on any way by any person not possessing a valid driver's license or learner's permit. Every person operating a motorized bicycle upon a way shall have the right to use all public ways in the commonwealth except limited access or express state highways where signs specifically prohibiting bicycles have been posted, and shall be subject to the traffic laws and regulations of the commonwealth and the regulations contained in this section, except that: (1) the motorized bicycle operator may keep to the right when passing a motor vehicle which is moving in the travel lane of the way, and (2) the motorized bicycle operator shall signal by either hand his intention to stop or turn. Motorized bicycles may be operated on bicycle lanes adjacent to the various ways, but shall be excluded from off-street recreational bicycle paths.

Added by St.1976, c. 261, § 4.

1976 Enactment. St.1976, c. 261, § 4, an emergency act, was approved July 27, 1976.

Law Review Commentaries

Regulation of mopeds: A legislative proposal. (1977) 13 New England L.Rev. 303.

Library References

Automobiles ⇐11.
C.J.S. Motor Vehicles § 20 et seq.

Notes of Decisions

1. In general

That § 1 of this chapter specifically excludes "motorized bicycles" from definition of "motor vehicles" did not preclude charge of operating a motorized bicycle upon a public way while under the influence of intoxicating liquor, as § 1B of this chapter states that the operator of motorized bicycle is subject to the traffic laws and regulations of the Commonwealth. Com. v. Griswold (1984) 469 N.E.2d 142, 17 Mass.App. 461, review denied 462 N.E.2d 1374, 391 Mass. 1104.

Bylaw which was adopted by voters at a special town meeting and which operated to prohibit any person from renting, hiring or offering to rent or hire any motorcycle, motorbike, moped, motorized bicycle, motor scooter, or similar transport in town was invalid as being inconsistent with this section giving every person operating a motorized bicycle the right to use any public ways in the Commonwealth. Rogers v. Town of Provincetown (1981) 424 N.E.2d 239, 384 Mass. 179.

§ 1C. Motorized bicycles; compliance with federal standards

Motorized bicycles shall comply with all applicable federal motor vehicle safety standards.

Added by St.1976, c. 261, § 4.

1976 Enactment. St.1976, c. 261, § 4, an emergency act, was approved July 27, 1976.

§ 1D. Motorized bicycles; sales; number sticker or plate

Any person who is engaged in the business of buying or selling bicycles or motorized bicycles shall, upon the sale of such motorized bicycle, affix a sticker or plate which shall bear a distinctive number, as prescribed by the registrar, to said bicycle upon a fee to be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Said fee shall be forwarded to the registry of motor vehicles by such person. Said sticker shall be renewed biannually in the manner prescribed by the registrar.

Added by St.1976, c. 261, § 4. Amended by St.1980, c. 572, § 32.

Expiration of St.1980, c. 572

St.1980, c. 572, § 417, as amended by St.1982, c. 602, § 2 and St.1983, c. 714, § 2, provided:

"This act shall expire on June thirtieth, nineteen hundred and eighty-five."

1976 Enactment. St.1976, c. 261, § 4, an emergency act, was approved July 27, 1976.

1980 Amendment. St.1980, c. 572, § 32, approved July 16, 1980, substituted "to be determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "of three dollars" in the first sentence.

Sections 416 to 417B of St.1980, c. 572, provided:

"Section 416. Notwithstanding any general or special law to the contrary, for the period beginning July first, nineteen hundred and eighty, and ending December thirty-first, nineteen hundred and eighty-two, the secretary of administration shall determine the amount to be charged for any service, registration, regulation, license, fee, permit or public function which is not provided for by any other section of this act provided, however, that said secretary shall not