

VOLUME NO. 38

OPINION NO. 49

ARREST - Failure to comply with compulsory motor vehicle liability protection statute;

INSURANCE - Motor vehicle liability policy, who must be insured;

MOTOR VEHICLES - Compulsory liability protection;

MOTOR VEHICLES, MOTOR VEHICLE LICENSE AND REGISTRATION -  
Proof of liability protection, when required;  
PEACE OFFICERS - Power of arrest for failure to comply with  
compulsory motor vehicle liability protection statute;  
STATUTES - Effective date;  
MONTANA CODE ANNOTATED - Sections 1-2-201(1), 46-1-201,  
46-1-201(8), 46-6-401(4), 46-6-404, 61-5-116.

- HELD: 1. Owners of motor vehicles registered and operated  
in Montana must secure and maintain motor vehicle  
liability protection from and after July 1, 1979.
2. Where compliance with chapter 592 is through the  
motor vehicle liability insurance option, both the  
owner and drivers operating the vehicle with the  
owner's permission must be insured.
3. Both peace officers and private citizens who have  
reasonable grounds to believe an individual is not  
in compliance with chapter 592 may initiate the  
prosecution of that individual.
4. Both the owner and any non-owner operator of a  
motor vehicle registered and operated in Montana  
with the owner's permission are in violation of  
law if the operator is not insured.
5. Subsequent to the execution of a notice to appear  
or sworn complaint alleging failure to maintain  
motor vehicle liability protection, prosecution is  
the responsibility of the city or county attorney.  
The prosecuting attorney may cause the dismissal  
of the charge upon proof that the defendant was in  
fact maintaining liability protection at the time  
alleged in the citation/complaint.

31 October 1979

Jim Nugent, Esq.  
Missoula City Attorney  
City of Missoula  
Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion on a number of issues raised  
by the enactment of House Bill 708 [now chapter 592, 1979

Laws of Montana] during the last legislative session. The statutory scheme for motor vehicle liability protection contemplated by this enactment includes the alternatives of posting an indemnity bond, providing a certificate of self-insurance, or purchasing and maintaining an automobile liability insurance policy. Since the overwhelming majority of the motoring public will likely comply with this statutory mandate via the liability insurance option, the issues will be discussed with primary reference to motor vehicle liability insurance.

- I. From what date must owners of motor vehicles registered and operated in Montana secure and maintain motor vehicle liability protection?

Chapter 592, 1979 Laws of Montana, was approved by the Governor on April 17, 1979. The bill did not by its terms specify an effective date.

Section 1-2-201(1), MCA, provides the clear answer to your initial inquiry. "Every statute, unless a different time is prescribed therein, takes effect on July 1 of the year of its passage and approval." Therefore, from and after July 1, owners of motor vehicles registered and operated in Montana must be covered by a current policy of motor vehicle liability insurance or satisfy one of the other two statutory alternatives for liability protection.

- II. Must both the motor vehicle and the operator be insured?

A response to your question must be prefaced by some clarification of the nature of motor vehicle liability insurance.

The "risk" covered by the policy of insurance required by chapter 592 is identified in section 2 of the statute.

[L]oss resulting from liability imposed by law for bodily injury or death or damage to property suffered by a person caused by the maintenance or use of a motor vehicle....

In the law of insurance, protection against such loss has been characterized as motor vehicle liability insurance. The distinguishing features of such insurance are (a) the relation of the loss to the maintenance or use of a motor

vehicle, and (b) the legal liability of a person "insured" under the policy. See Blashfield, Automobile Law and Practice, 3rd Ed. (1965), at § 314.1,

Given that the legal liability of an "insured" is a precondition to the obligations undertaken by an insurance company pursuant to this contract of insurance, the identification of the person or persons insured is of critical legal import. The typical owner's liability insurance policy identifies the owner and his or her spouse as the "named insured." Typically, the owner's liability insurance policy will identify another class of persons whose legal liability for a loss involving the permissive use of the owned vehicle will trigger obligations on the part of the insurance company. This class of "insured" is known as "additional insured;" the policy provision creating this class is referred to as an "omnibus clause."

Section 1 of chapter 592 provides as follows:

Every owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person. . . (Emphasis added.) 1979 Mont. Laws, ch. 592, § 1.

An oft-repeated rule for construing statutes is that the intent of the Legislature as embodied in the plain words of the statute is controlling. See Dunphy v. Anaconda, 151 Mont. 76, 438 P.2d 660 (1968); State ex rel. Zander v. District Court, 591 P.2d 656, 662 (Mont. 1979). The statute indicates in unambiguous terms that protection must be secured for the circumstances in which either the owner or a person who has the owner's permission is operating the motor vehicle. In the context of liability insurance, the mandated protection is provided where the operator meets the definition of an "insured" under the terms of an applicable policy of insurance.

III. May the statute be enforced by peace officers or accident investigators dispatched to investigate automobile accidents?

Section 4, Chapter 592, provides in part:

It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect....

Clearly, peace officers who have reasonable grounds to believe that an individual is in violation of Montana's compulsory insurance law may either effect the person's immediate arrest (§ 46-6-401(4), MCA) or issue a notice to appear (§ 46-6-404, MCA).

However, you have indicated that accident investigators of the type utilized in Missoula are not vested by law with the power to make arrests. They are, therefore, not within the definition of "peace officer" set forth in section 46-1-201(8), MCA. Consequently, their role and authority in enforcing Montana law is the same as that of private persons. The appropriate procedure to be followed by such investigator involves the execution of a sworn complaint indicating reasonable cause to believe an offense has been committed. See § 46-6-201, MCA.

IV. If the owner and operator of the motor vehicle are separate individuals and neither individual has liability protection, may both be issued citations?

An owner who permits another to drive the owner's motor vehicle must see to it that that person is insured.<sup>1</sup>

Section 1, chapter 592. Failure to provide such protection is a crime and a citation may be issued to the owner:

Penalties.

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A violation of [sections 2 through 4] is a misdemeanor.... 1979 Mont. Laws, ch. 592, § 4.

Operation of a motor vehicle by one who is not insured is just as clearly a crime and a citation therefor may be issued as well.

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<sup>1</sup> This can be accomplished through the purchase of a typical owner's policy with an "omnibus clause." See discussion in II, A., supra.

Penalties. It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect. \*\*\* Id.

- V. If an individual cannot produce proof of liability protection at the scene of an accident, is it reasonable and acceptable to give him a period of time in which to come to the Missoula Police Department and produce such proof?

Section 2, chapter 592, provides in part:

Proof of compliance. (1) Before any applicant required to register his motor vehicle may do so the applicant must certify and display to the county treasurer an automobile liability insurance policy, a certificate of self-insurance, a posted indemnity bond, or eligibility for an exemption covering the motor vehicle.

The above represents the sole instance in which the owner of a motor vehicle is under an affirmative duty to exhibit proof of compliance with Montana's compulsory insurance law. Nowhere in the law do I find a duty to carry such proof and exhibit it upon demand following an accident. The Legislature clearly could have enacted a requirement similar to that which mandates the possession and exhibition upon appropriate demand of an operator's permit by those operating a motor vehicle. Cf. § 61-5-116, MCA. It did not do so.<sup>2</sup> Consequently, a notice to appear or sworn complaint alleging failure to comply with Montana's compulsory insurance law lacks reasonable cause if it is grounded solely on an operator's failure to provide proof of insurance at the scene of an accident. Subsequent to the execution of a notice to appear or sworn complaint which is founded on reasonable cause, however, a city attorney could exercise prosecutorial discretion and cause the dismissal of

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<sup>2</sup> It is of some note that the legislature considered and rejected an amendment to chapter 592 that would have required display of proof of liability protection at a time other than registration. Viz., purchase from an automobile dealer.



a charge upon an adequate showing that the defendant was in fact maintaining appropriate liability protection at the time the citation was issued. Cf., Holliday v. State Bank of Fairfield, 66 Mont. 111, 212 P. 861 at 118 (1923).

THEREFORE, IT IS MY OPINION:

1. Owners of motor vehicles registered and operated in Montana must secure and maintain motor vehicle liability protection from and after July 1, 1979.
2. Where compliance with chapter 592 is through the motor vehicle liability insurance option, both the owner and drivers operating the vehicle with the owner's permission must be insured.
3. Both peace officers and private citizens who have reasonable grounds to believe an individual is not in compliance with chapter 592 may initiate the prosecution of that individual.
4. Both the owner and any non-owner operator of a motor vehicle registered and operated in Montana with the owner's permission are in violation of law if the operator is not insured.
5. Subsequent to the execution of a notice to appear or sworn complaint alleging failure to maintain motor vehicle liability protection, prosecution is the responsibility of the city or county attorney. The prosecuting attorney may cause the dismissal of the charge upon proof that the defendant was in fact maintaining liability protection at the time alleged in the citation/complaint.

Very truly yours,

MIKE GREELY  
Attorney General