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Opinion No. 03-084

Documentation of Auto Insurance Coverage for Tenn. Code Ann. § 55-12-139

QUESTIONS

Under Tenn. Code Ann. § 55-12-139, a driver of a motor vehicle, if stopped for a traffic violation, is required to produce documentation of financial responsibility that meets the requirements of the Tennessee Financial Responsibility Law of 1977, Tenn. Code Ann. §§ 55-12-101, *et seq.* (TFRL).

1. May a driver comply with subsection (b)(1) of § 55-12-139 by producing an insurance card or the declaration page of an insurance policy establishing that the owner of the vehicle has such insurance coverage, and that the driver is operating the vehicle with the owner's consent; or is it necessary that the driver produce an insurance card or a declaration page showing that a policy of insurance has been issued in the name of the driver?

2. When an insurance company issues insurance cards to a person who has obtained coverage for other family members under one policy, for example, a spouse or children, is it necessary for the insurance company to issue separate insurance cards to each named insured, or is it sufficient compliance with the law that an insurance card is issued to the owner of the vehicle?

OPINION

1. If the driver has insurance coverage because of the vehicle owner's policy, as opposed to his or her own policy, then producing documentation of the owner's policy should suffice to comply with the statute. Written evidence that the driver is operating the vehicle with the owner's permission would be helpful but is not required. If the driver instead is insured by another policy of insurance, such as an operator's policy, then the driver should produce evidence of that policy.

2. State law does not currently require an auto insurance company to issue cards to its insureds. Thus, if an insurance company provides coverage under one policy to a named insured and the members of his or her family, the company is not required by law to issue a separate card to each member of the family. Because Tenn. Code Ann. § 55-12-139(b) does not require an original card, declarations page or binder, each family member could comply with the statute by producing a photocopy of a single insurance card or other appropriate documentation issued with the policy.

ANALYSIS

These questions concern the duty of drivers in Tennessee to provide evidence of financial responsibility as set forth in Tenn. Code Ann. § 55-12-139, effective January 1, 2002. Before this statute was enacted, the Tennessee Financial Responsibility Law of 1977, Title 55, Chapter 12 (TFRL), mandated filing proof of financial responsibility with the State primarily after a motorist had a qualifying accident (*see* Tenn. Code Ann. § 55-12-104), and Tennessee was not characterized as a "compulsory insurance" state. Financial responsibility could be demonstrated to the Tennessee Department of Safety by filing information *after* an accident had occurred, in connection with that Department's authority over the licensing of drivers and registration of vehicles. This accident-related system in essence allowed a motorist a "first bite at the apple" before requiring that he or she carry insurance or meet any particular insurance coverage requirements. *McManus v. State Farm Mut. Auto. Ins. Co.*, 225 Tenn. 106, 109, 463 S.W.2d 702, 703 (1971).

Tenn. Code Ann. § 55-12-139 changes the obligations of drivers in Tennessee by imposing an ongoing requirement that all vehicles operated on the highways of Tennessee comply with the TFRL. Moreover, Tenn. Code Ann. § 55-12-139(b) relies for its enforcement on the requirement that drivers of such vehicles show law enforcement officers on-the-spot evidence of current financial responsibility in connection with traffic citations, regardless whether an accident has occurred. This Opinion concerns the standards for showing evidence of financial responsibility when an insurance policy provides the driver with coverage.

1. **Evidence of an Insurance Policy for Persons Operating Vehicles Owned by Others.**

The requirement to produce evidence of a policy is found in subsection (b)(1) of Tenn. Code Ann. § 55-12-139. The relevant portions of that statute provide:

> (a) Every vehicle driven on the highways of this state must be in compliance with the financial responsibility law.
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> (b) At the time the driver of a motor vehicle is charged with any moving violation under title 55, chapters 8 and 10, parts 1-5, chapter 50; any other local ordinance regulating traffic; or at the time of an accident for which notice is required under § 55-10-106, the **officer shall request evidence of financial responsibility as required by this section**. In case of an accident for which notice is required under § 55-10-106, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault. **For the purposes of this section, "financial responsibility" means:**
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> **(1) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance company authorized to do business in Tennessee, stating that a policy of insurance meeting the requirements of the Tennessee Financial**

> **Responsibility Law of 1977, compiled in chapter 12 of this title, has been issued**;
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> (2) A certificate, valid for one (1) year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by the Tennessee Financial Responsibility Law of 1977, compiled in chapter 12 of this title, has been paid or filed with the commissioner, or has qualified as a self-insurer under § 55-12-111; or
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> (3) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the department of safety or the interstate commerce commission, or was owned by the United States, this state or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.
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> (c) **It is an offense to fail to provide evidence of financial responsibility pursuant to this section**. Any violation is a Class C misdemeanor punishable only by a fine of not more than one hundred dollars ($100).
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> (e) **On or before the court date, the person so charged may submit evidence of compliance with this section at the time of the violation**. If the court is satisfied that compliance was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed.

(Emphasis added). Showing evidence of financial responsibility to an officer under § -139 is different from the existing (and still applicable) process of filing proof of financial responsibility with the Department of Safety after an accident, due to the summary nature of the information to be provided to the officer.[1] Under § -139, the officer is to request evidence, which is documentation of the policy *and not the policy itself*, that states in some manner that a TFRL-compliant policy "has been issued." The statute contains a check on the officer's judgment about the sufficiency of this documentation in subsection (e) which provides that the court may dismiss a charge of failure to provide evidence if the court is satisfied that "compliance was in effect" at the time of the violation, even though apparently the officer found that the driver had not furnished sufficient evidence. Moreover, under Tenn. Code Ann. § 55-12-140(b), the court is to dismiss any citation under Tenn.

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[1] Compare Tenn. Code Ann. § 55-12-139(b)(1), describing insurance documentation to be provided to a police officer as proof of financial responsibility as defined by that statute, to the statutes setting forth how an owner or operator of a motor vehicle proves financial security to the Commissioner of Safety after certain accidents: Tenn. Code Ann. §§ 55-12-105 & -106 (acceptable proof of financial security after an accident); § 55-12-107 (minimum requirements of insurance policies acceptable under § -106); § 55-12-119 (proof of financial responsibility that may be given with respect to motor vehicle or a person who is not the vehicle's owner); and §§ 55-12-120 &-121 (certificate of insurance obtained from insurance company). *See also Burress v. Sanders*, 31 S.W.3d 259 (Tenn. Ct. App. 2000), *p.t.a. denied* (2000) (discussing TFRL requirements before enactment of § 55-12-139).

Code Ann. § 55-12-139(c) without costs to the defendant, if the person was in compliance with the TFRL at the time of the citation but was unable to produce evidence of compliance at the time.

Further, we think the statute contemplates an owner's policy or an operator's policy as described in Tenn. Code Ann. § 55-12-122, which states:[2]

> (a) **An owner's policy of liability insurance shall designate**, by explicit description or by appropriate reference, **all motor vehicles with respect to which coverage is thereby granted; and shall insure the person named therein, and any other person using any such motor vehicle or motor vehicles with the express or implied permission of such named insured**, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs, with respect to each such motor vehicle, which are set forth in § 55-12-102.
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> (b) **An operator's policy of liability insurance shall insure the person named as insured therein** against loss from the liability imposed upon the insured by law for damages arising out of the use by the insured of any motor vehicle not owned by the insured within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(Emphasis added). Under the TFRL, a "motor vehicle liability policy" means:

> an "owner's policy" or "operator's policy" of liability insurance, certified as provided in § 55-12-120 or § 55-12-121 as proof of financial responsibility, and issued, except as otherwise provided in § 55-12-121 [for non-residents] by an insurance carrier duly licensed or admitted to transact business in this state, to or for the benefit of the person named therein as insured.

Tenn. Code Ann. § 55-12-102(7). Under the statutes referred to in this definition, a person proves financial responsibility by filing with the Commissioner of Safety a written certificate of insurance from an insurance company. Tenn. Code Ann. §§ 55-12-120 & -121. According to case law, the process is usually more informal. "Once [the Division of Financial Responsibility] receives the post-

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[2] An operator means "every person who is in actual physical control of a motor vehicle whether or not licensed as an operator or chauffeur under the laws of this state." Tenn. Code. Ann. § 55-12-102(10). An owner is "a person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this chapter." Tenn. Code Ann. § 55-12-102(11).

accident owner/operator report showing a motorist as insured, the Division confirms the coverage in writing by contacting the listed insurer by letter." *Burress v. Sanders*, 31 S.W.3d 259, 264, n. 4 (Tenn. Ct. App. 2000), *p.t.a. denied* (2000). The accident-related provisions of the TFRL are therefore different from § -139. Tenn. Code Ann. § 55-12-139(b) does not require the driver of a motor vehicle to provide a police officer with a certified liability policy as defined in §§ 55-12-102(7) and -122.

Your question is whether a driver may satisfy § -139 by showing the officer proof of the vehicle owner's insurance and the driver's permission to be operating the vehicle, or whether the driver must show proof of insurance issued in his or her own name. We do not think the statute requires a driver to show proof of insurance issued in his or her own name, because the TFRL contemplates that an "owner's policy" will insure persons using the vehicle "with the express or implied permission of such named insured." Thus, if the driver is using the vehicle with the owner's permission, and the owner has insurance compliant with the TFRL (as your question assumes), then it should be sufficient for the driver to comply with § -139 by showing the police officer proof of the owner's insurance. The question assumes the driver also will be able to produce *written* evidence of the vehicle owner's consent for the driver to be operating the vehicle. While that would be helpful, we do not think it is required if the driver otherwise produces documentation of an owner's policy and is driving the vehicle with the owner's consent. Whether the driver is in fact covered by any given policy is a legal coverage matter that could only be determined under specific facts and circumstances. Thus, if a driver is excluded from the owner's policy, then he or she should comply with the statute by showing evidence of a policy affording liability coverage, such as an operator's policy.

2. Names Appearing on Insurance Cards for Automobile Policies covering Family Members.

The next question is whether an insurance company that issues an insurance card to a person who has obtained coverage for other family members under one policy must issue separate insurance cards to each named insured, or whether it is sufficient compliance with the law for an insurance card to be issued to the owner of the vehicle. We have not identified any statute or rule under the TFRL or the insurance code (Title 56 of the Tennessee Code) that requires an auto insurance company to issue cards to its insureds. Unlike some states, Tennessee has not established a uniform content for insurance cards and has not mandated insurance companies to issue such cards.[3] It follows, therefore, that an insurance company that chooses to issue an insurance card to a person who has obtained coverage for other family members under one policy is not required to issue a separate card for each covered family member. Because Tenn. Code Ann. § 55-12-139(b) does not require an

[3] Illinois, for example, requires operators of motor vehicles to carry evidence of their required liability insurance policy and requires insurers to produce insurance cards with a specified form, content and manner of issuance for each motor vehicle insured by the insurer. Illinois Vehicle Code, 625 ILCS 5/7-601 and 5/7-602.

original card, declarations page or binder, each family member could comply with the statute by producing a photocopy of a single insurance card, declarations page or binder issued with the policy.

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