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TEXAS DEPARTMENT OF PUBLIC SAFETY

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RQ 419

July 6, 1992

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Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Sr. Building
209 West 14th Street
Austin, Texas

Re: Request for Attorney General Opinion on Section 4A, Article 6701h, V.T.C.S.
(Texas Safety Responsibility Act)

Dear General Morales:

The purpose of this letter is to request your opinion as to the constitutionality and statutory construction of Section 4A, Article 6701h, V.T.C.S. (Texas Motor Vehicle Safety Responsibility Act). That section provides for impoundment of a motor vehicle not registered in Texas which has been involved in an accident resulting in injury or death, or damage to property to an apparent extent of \$500 or more, if the owner or operator of the vehicle fails to furnish evidence of financial responsibility or of exemption from that requirement. Pertinent portions of Section 4A, Article 6701h, are as follows:

"(a) A person who is the owner or operator of a motor vehicle that is not registered in this state and that is involved in a motor vehicle accident in this state that results in injury to or death of any person, or damage to property of any one person to an apparent extent of \$500 or more, shall furnish evidence of financial responsibility to a law enforcement officer of the state or a political subdivision of the state who is conducting an investigation of the accident.

"(b) On failure to furnish evidence of financial responsibility to a law enforcement officer, the person shall be taken as soon as practicable before a magistrate.

"(c) The magistrate shall conduct an inquiry on the issues of negligence and liability for any death, injury, or property damage sustained in the accident.

"(d) If the magistrate determines that there is a reasonable possibility of a judgment being rendered against the person for any death, injury, or property damage sustained in the accident, the magistrate shall order the person to furnish evidence of financial

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responsibility for the death, injury, or property damage, or evidence that the person is exempt from the requirement of Section 1A(a) of this Act.

"(e) On failure of the person to furnish evidence satisfactory to the magistrate of financial responsibility or of exemption from the requirements of Section 1A(a) of this Act, the magistrate shall enter an order of directing the sheriff of the county or the chief of police of the municipality to impound the vehicle owned or operated by the person that was involved in the motor vehicle accident.

"(f) A motor vehicle impounded under Subsection (e) of this section remains in impoundment until the owner or operator of the impounded vehicle or other person authorized by the owner obtains from the Department a certificate of release and presents to the person authorized to release the motor vehicle from impoundment the certificate of release and payment for the cost of impoundment.

"(g) The Department shall issue a certificate of release to the owner or operator of an impounded motor vehicle or a person authorized by the owner on submission to the Department of:

"(1) evidence of financial responsibility as defined by Section 1B(b) of this Act that reflects that at the time of the accident the motor vehicle was covered by a policy of liability insurance or was otherwise exempt as provided by Section 1A of this Act;

"(2) a release executed by each person damaged in the accident other than the operator of the motor vehicle for which the certificate of release is requested; or

"(3) security in a form and amount determined by the Department to secure the payment of any damages for which the operator may be liable.

"(h) A person may satisfy the requirement in Subsection (g)(1) or (2) of this section by submitting to the Department a photocopy of the item required.

"(i) The Department shall determine and adopt the form, content, and procedures for issuance of a certificate of release.

"(j) The owner of an impounded motor vehicle is liable for the payment of the cost of the impoundment.

"(k) On presentation to the person authorized to release an impounded motor vehicle of a certificate of release and payment of the cost of impoundment by the owner or operator of the impounded motor vehicle or a person authorized by the owner, the person authorized to release the motor vehicle from impoundment shall release the vehicle.

"(l) A determination of negligence or liability by a magistrate under Subsection (d) of this section is independent of and has no effect under the doctrine of collateral estoppel on any issue in any

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adjudication, criminal or civil, arising from the motor vehicle accident."

In preparing to implement Section 4A, Article 6701h, the Department has identified the following questions which need to be answered.

1. Does Section 4A, Article 6701h, V.T.C.S., violate the constitutional provisions relating to equal protection or the commerce clause?
2. Does the duty of the Department of Public Safety under Section 4A, Article 6701h, to issue a certificate of release and to determine the amount of security to be posted by a vehicle owner or operator require a prior hearing under Article 6252-13a, V.T.C.S. (Administrative Procedure and Texas Register Act)?
3. What is the minimum amount of security which the Department may require in order to issue a certificate of release under Section 4A, Article 6701h?
4. What standards should the Department apply in determining the amount of security that is required by the Department?

In preparing to implement this statutory provision, the Department anticipates that it would apply to an out-of-state family traveling through Texas on vacation, as well as to a commercial vehicle registered in another state which is operating in interstate commerce on the highways of this state. If, for some reason, either of those vehicles was not covered by insurance in the minimum amounts required by Article 6701h, V.T.C.S., at the time the vehicle was involved in an accident in this state, the provisions of Section 4A, Article 6701h, would apply. A peace officer would be required, upon failure of the owner or operator of the vehicle to produce evidence of financial responsibility, to take the person as soon as practicable before a magistrate. The magistrate is required under the provision of Section 4A(c) to conduct an inquiry on the issues of negligence and liability for any death, injury, or property damage sustained in the accident. If the magistrate determined that there was a reasonable possibility of a judgment being rendered against the person arising out of the accident, the magistrate would be required to order the person to furnish evidence of financial responsibility, or evidence of exemption from that requirement. If either the vacationing owner/operator or the commercial vehicle owner/operator was unable to furnish evidence of financial responsibility, or of exemption, the magistrate would be required to order the sheriff or chief of police to impound the vehicle.

The only way to obtain release of the vehicle from impoundment is for the owner or operator to obtain a certificate of release from the Department of Public Safety. The Department may only issue the certificate of release if the person submits evidence of financial responsibility that reflects that at the time of the accident the motor vehicle was covered by a policy of liability insurance or was otherwise exempt, a release executed by each person damaged in the accident, or security in a form and amount determined by the Department to secure the payment of any damages for which the operator may be liable. It is clear that the procedures set forth in Section 4A could present a lengthy delay and possibly great expense on the owner or operator of the vehicle which is not

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registered in Texas, depending upon the circumstances. The vacationing family could be without the use of its vehicle for an extended period of time. If a commercial motor vehicle was carrying a load of perishable goods, a potentially even greater financial burden might be imposed upon the owner or operator of the vehicle registered in a foreign state. None of these provisions would apply to a vehicle registered in Texas.

As to the first question in Attorney General Opinion No. JM-826 (1987), the Attorney General addressed the issue of whether requiring mandatory liability insurance for vehicles operated in Texas by non-residents was an impermissible burden on foreign or interstate commerce, and thus a violation of the United States Constitution. U.S.Const., art. I, §8, cl.3. That opinion concluded that the application of the Safety-Responsibility Act to all vehicles operated on the highways of Texas, whether by a resident or a non-resident, could not be considered to be an unconstitutional burden on foreign and interstate commerce.

The situation under Section 4A, Article 6701h, is somewhat different in that a significantly more onerous burden is placed upon owners and operators of vehicles not registered in Texas which become involved in traffic accidents for which there is a reasonable probability of judgment against that owner or operator. Section 4A authorizes a magistrate to order the sheriff or chief of police to impound the vehicle upon the owner or operator's failure to furnish evidence of financial responsibility or an exemption from the requirements of Section 1A(a) of the Act. To obtain release from impoundment, the person must submit to the Department one of the three methods of obtaining a certificate of release. Failure to do so would result in the vehicle continuing to be impounded.

The cases cited in Attorney General Opinion No. JM-826 indicate that a state may impose on vehicles using its highways in interstate and foreign commerce nondiscriminatory regulations to protect the public. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959). Under Section 4A, however, owners and operators of vehicles not registered in Texas are not treated in the same manner as those whose vehicles are registered in this state. Section 4A would also, obviously, impact foreign nationals operating vehicles in this state.

The United States Supreme Court has addressed the issue of aliens and the equal protection clause in Plyler v. Doe, 102 S.Ct. 2382 (1982). The court in Plyler held that the illegal aliens who were plaintiffs in that case challenging a Texas statute could claim the benefit of the equal protection clause, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

The second question concerns whether the Department would be required to conduct a hearing under Article 6252-13a, V.T.C.S. (APTRA), prior to issuing a certificate of release. In Wright v. Malloy, 373 F.Supp. 1011 (D.Vt. 1974), the court held unconstitutional a financial responsibility statute which permitted the setting of security without a hearing to determine the amount of security. Wright, at 1021. The provisions of Section 4A, Article 6701h, do not provide for a hearing by the Department of Public Safety prior to issuing a certificate of release. The Department requests your opinion with regard to whether a prior hearing is required to be conducted under Article 6252-13a, V.T.C.S. It should be noted that Article 6252-13f, V.T.C.S., now requires the Department of Public Safety to conduct all of its APTRA hearings before a hearing officer employed by

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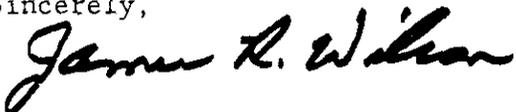
the State Office of Administrative Hearings (SOAH). If your determination is that the Department's issuance of a certificate of release is required to be preceded by notice and an opportunity for hearing, and that such a certificate falls under the definition of "license" in Section 3(3), Article 6252-13a, then the contested case provisions of APTRA would apply, and any hearing would have to be conducted by the SOAH, probably in Austin, Texas.

The third question concerns the minimum amount of security which the Department may require a person to post in order to obtain a certificate of release under Section 4A, Article 6701h. In Section 4A(a), it is apparent in an accident involving only property damage, the impoundment provisions would not apply if the damage caused was less than \$500. In Section 9, Article 6701h, it is provided that the Department may require no less than \$1,000 security under that article. This \$1,000 minimum security amount is consistent with the threshold damage amount contained in a separate provision relating to driver's license suspensions following accidents. Section 5, Article 6701h. It is likely that accidents will occur, which otherwise come under the provisions of Section 4A, but which involve property damage in between \$500 and \$1,000. In such a case, there appears to be a conflict between the jurisdictional requirement that at least \$500 in property damage must have occurred, and the minimum \$1,000 security requirement. Your opinion is requested as to whether the Department may require security to be posted in an amount less than \$1,000.

Lastly, the Department requests your opinion as to what standards should the Department apply in making this determination as to the amount of security to require? For example, is a repair estimate enough or should actual testimony of some competent witness be require. Could an affidavit be used to satisfy those standards? We seek your advise and guidance on this issue also.

Your opinion is respectfully requested on these issues which we believe to be of significance.

Sincerely,



James R. Wilson
Director

JRW:DMD:cw