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LEGISLATION

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EXECUTIVE LAW—AMENDMENT PROHIBITING DISCRIMINATION IN PUBLICLY ASSISTED HOUSING ACCOMMODATIONS.—On April 15, 1955, the New York State Legislature amended the executive law to eliminate and prevent discrimination because of race, creed, color or national origin in publicly-assisted housing accommodations.[1]

The term "publicly-assisted housing accommodations" was defined in part as "housing constructed after July 1, 1950, within the State of New York, which is exempt in whole or in part from taxes levied by the State or any of its political subdivisions . . . which is constructed in whole or in part on property acquired or assembled by the State . . . through the power of condemnation or otherwise for the purpose of such construction."[2]

Urban redevelopment housing is constructed by a partnership of public authority and private capital.[3] The New York Redevelopment Companies Law states that private property may be acquired and partial tax exemption granted corporations which undertake the rehabilitation of substandard and unsanitary areas.[4] Since redevelopment housing projects fit squarely into the definition set forth in the housing amendment, its enactment may be crucial for the establishment of future racial patterns in housing in New York State.

Until the passage of this amendment the New York State Statutes contained no provisions against discrimination in housing, although there were many anti-bias laws applicable in other fields.[5] Discrimination was prohibited in places of public accommodation, such as hotels, restaurants, theaters and baseball parks.[6] Labor organizations could not deny a person membership by reason of his race, creed, color or national origin;[7] nor were employment agencies permitted to mention race or color in their advertisements.[8]

However, the problem of housing was more complex. The courts, prior to the passage of this amendment, were faced with the problem of separating unconstitutional public discrimination from permissible private discrimination.[9] The constitutional problem regarding racial segregation in housing in New York State was to distinguish private construction from public construction.

The Fourteenth Amendment provides that: "No state shall . . . deprive any person of life, liberty or property without due process of law;

[1] L. 1955, c. 340.
[2] *Id.* § 2.
[3] L. 1943, c. 234, § 2.
[4] *Ibid.*
[5] N. Y. EXEC. L. §§ 290-301.
[6] N. Y. CIVIL RIGHTS L. § 40.
[7] *Id.*, § 43.
[8] See note 3 *supra*, § 296.
[9] Dorsey v. Stuyvesant Town Corp., 299 N. Y. 512, 87 N. E. 2d 541 (1949).

nor deny to any person within its jurisdiction the equal protection of the laws."[10] Under this Amendment, discriminatory action by state authority has been held unconstitutional.[11] However, in redevelopment housing projects, financed by private investment companies, and accommodating lower middle class tenants, the redevelopment companies' privilege of discrimination has heretofore been upheld.[12] In that case New York City, under authority of the Redevelopment Statute,[13] entered into a contract with Stuyvesant Town and its parent organization, Metropolitan Life Insurance Company, whereby the city used its power of eminent domain to condemn all buildings in a blighted area of 18 square blocks for transfer and sale to Stuyvesant Town. The redevelopment project was granted a partial tax exemption of $50,000,000 over a period of 25 years. In return Stuyvesant Town contracted to enact a project to house 9,000 families, and agreed to a 6% limitation on dividends and maintenance of moderate rent ceilings so long as it accepted the tax subsidy.[14]

On completion, Stuyvesant Town established a policy of racial exclusion. Two Negro applicants for apartments sued, after rejection, to enjoin Stuyvesant Town and the insurance company which paid for it from denying accommodations to any person because of race or color.[15] Relief was denied by a bare majority of the Court of Appeals on the grounds that the public use and purpose was achieved when the new buildings had replaced the slum tenements, and that there was no violation of the New York State Constitution or of the Fourteenth Amendment.[16]

Soon after the *Dorsey* case[17] was decided, the New York City Council passed an ordinance barring segregation in tax exempt projects.[18] However, this ordinance covered only New York City, and it was not until the enactment of the present amendment that the problem of racial discrimination in housing was settled on a state-wide basis.[19]

A similar situation arose when the City of East Orange, New Jersey, built four housing projects with state and local funds. A group of private citizens was appointed by the City Council to screen the applicants for apartments, and without the knowledge of the City Council restricted all four projects to Negroes. An action was instituted against the municipality to restrain this segregation and the lower court granted the injunc-

10 U. S. CONST. amend. XIV, § 1.

11 Smith v. Allwright, 321 U. S. 649, 64 S. Ct. 257, 88 L. Ed. 987 (1944) (state may not exclude Negroes from political primaries); Shelley v. Kraemer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948).

12 See note 9 *supra.*

13 See note 3 *supra.*

14 Agreement of June 3, 1943, as approved by State Commission of Insurance and the New York City Planning Commission on May 30, 1943.

15 See note 9 *supra.*

16 *Ibid.*

17 *Ibid.*

18 ADM. CODE N. Y. C. § J41-1.2 (passed July 3, 1944).

19 L. 1955, c. 340; ADM. CODE N. Y. C. § J41-1.2 (July 3, 1944); Dorsey v. Stuyvesant Town Corp., 299 512, 87 N. E. 2d 541 (1949).

tion. However, the State Supreme Court reversed on the ground that the committees responsible for the segregation were acting without the authority of the city.[20] In this case no official authority was ever given by the municipality to practice discrimination, whereas in the *Dorsey* case the City of New York permitted the exclusion of Negroes by excepting the project in question from the anti-discrimination law.[21]

Today, however, the decision in the *Dorsey* case would be quite different. Since the passage of the new amendment no publicly-assisted housing project in New York State may practice discrimination in the selection of its tenants.[22]

LEGISLATION—COMPULSORY AUTOMOBILE INSURANCE—LEGISLATIVE PROPOSALS IN NEW YORK.—There has been increasing awareness in recent years that something must be done to ease the financial burden imposed upon innocent victims as a result of the negligence of financially irresponsible drivers. To meet this problem, the New York State Joint Legislative Committee on Unsatisfied Judgment Fund was created by a resolution of the Rules Committee of the Legislature, adopted on March 22, 1950. This Committee investigated the problem and proposed legislation based upon a study of the following principles.

A. FINANCIAL RESPONSIBILITY.—In 1941 the existing system of motor vehicle safety responsibility was enacted in New York, commonly known as the "one-bite" law.[1] It provides that an uninsured automobile owner whose vehicle is involved in an accident must deposit security for the protection of persons injured in the accident, or must obtain releases from them. The owner must also post bond as security against future accidents, and upon failure to comply with these provisions, a motorist loses his driving privileges.

The Committee has three objections to the present law. In the first place, the law does not require the motorist to carry insurance until he has already been involved in an accident. Secondly, the release obtained by the financially irresponsible driver may not truly reflect the extent of the victim's injury—since the injured party knows that he cannot recover from the financially irresponsible party, he may settle for an amount substantially less than his actual damages, rather than receive nothing. Thirdly, the fact that the negligent and irresponsible driver may lose his driving privileges is of no benefit to the injured party.[2]

B. UNSATISFIED JUDGMENT FUND.—Under one feature of the proposed legislation, a fund would be established from which the judgment

[20] Seawell v. MacWhitney, 67 A. 2d 309 (N. J. Eq. 1949).
[21] REPPY, CIVIL RIGHTS IN THE UNITED STATES, c. 6, 161-162 (New York, 1951).
[22] See note 1 *supra*.

[1] L. 1941, c. 872, § 1.
[2] McKinney's Session Laws of New York, 176th Regular Session, First Extra Session (1953), p. 1880.

creditors of financially irresponsible motorists might recover after their other remedies had been exhausted. This plan would call for the adoption of impoundment acts whereby an uninsured vehicle which is involved in an accident would be impounded until any judgments arising out of the accidents had been satisfied.

The Committee also studied another type of unsatisfied judgment plan which has been enacted in New Jersey. Under this scheme a fund is created which is administered by a board consisting of the State Treasurer, plus one representative from each of various classes of insurance companies. The initial monies in the fund are raised by a one-half of one per cent assessment on the net direct automobile liability premiums written by insurers in the state, plus a contribution of one dollar from each insured motorist. The New York Committee objected to this plan on the ground that the cost would be borne by the insured motorists and by the insurance companies, rather than the uninsured drivers who should bear primary responsibility for such a fund. Further, the possibility of fraudulent and exaggerated claims would be increased under such a set-up. Finally, the Committee was of the opinion that such a plan would not guarantee that the greatest number of motorists would be insured.[3]

The unsatisfied judgment fund does close a gap in the financial responsibility plan in that it provides a remedy for persons injured by "hit and run" drivers, drivers of stolen vehicles, the "willful evader", and the uninsured non-resident motorist. Under this plan, the innocent victim would be indemnified for his damage and the irresponsible motorist would not be permitted to drive until he had repaid the State.

C. COMPENSATION PLAN.—This type of proposal would place automobile insurance on a compensation basis and would result in the adoption of a rule of absolute liability. Advocates of this plan believe that the major financial burden of traffic accidents should be placed on those who operate motor vehicles. The problem of determining negligence or contributory fault would be avoided under this scheme, and awards could be made without the delay which attends litigation. Furthermore, the contention is made that under the present system a large part of the recovery is siphoned off by lawyers' fees and court costs.[4]

The Committee's Report[5] is strongly opposed to the liability-without-fault theory of compensation in motor vehicle accident cases. Specifically, the Committee objected on the ground that the plan permits an individual to benefit as a result of his own negligent conduct. A new administrative organization, complete with investigators, clerks, and reporters would have to be set up. A proper benefit-payment level would be difficult to establish. Finally, in the opinion of the Committee, the present goal is to make motorists financially responsible as individuals and not one of making all motorists financially responsible for all accidents, regardless of cause or fault.

[3] *Id.* at 1882.
[4] *Id.* at 1881.
[5] *Ibid.*

D. VOLUNTARY PLAN.—Some representatives of casualty insurance carriers and a few trade organizations have offered a so-called "Voluntary Plan" to meet the problem created by these financially irresponsible drivers. This scheme is designed to enable insurers, transacting automobile liability business in this state, to offer at an additional premium, coverage against loss suffered by innocent victims of financially irresponsible motorists. Voluntary coverage would be sold on a $300 deductible basis to car-owning and non-car-owning families alike, for a premium charge of at least two per cent of the $10,000/$20,000/$50,000 liability premium applicable to the territory in which the insured resides. This coverage would be furnished by a corporation set up by law; and the corporation would have the right to appear and defend a financially irresponsible motorist where a claim is made under any of the policies issued by such corporation.[6]

A supplemental bill has been proposed which would complement this plan by requiring the impoundment of vehicles belonging to financially irresponsible motorists involved in accidents.[7]

The Committee, in rejecting the voluntary plan, enumerated several objections.[8] The first is that the voluntary scheme would permit a financially irresponsible motorist to operate a motor vehicle in this state until he had injured or killed an innocent victim. Secondly, the additional cost to protect these victims would be placed on the insured motorists, rather than on the uninsured drivers. Thirdly, the Committee felt that this plan would involve a "strange concept" in liability insurance, since the insured, although paying for coverage, might be forced to retain an attorney in some cases in order to obtain recovery from his own insurance company. In the fourth place, the application of the $300 deductible feature would eliminate about ninety-five per cent of all property damage claims and about sixty-two per cent of all personal injury claims.[9] Finally, in the opinion of the Committee as expressed in its report,[10] it is unlikely that many non-car-owning families would buy this insurance and probably only a few of the insured motorists would buy it. The Committee points out (and these estimates are substantiated by records of the Insurance Department), that only about thirty-five per cent of insured car owners in New York purchase excess limits, and less than sixty per cent purchase medical payments coverage.[11]

E. COMPULSORY AUTOMOBILE LIABILITY INSURANCE.—Simply stated, this plan provides that no vehicle will be licensed to operate on the roads without evidence of the owner's financial responsibility. It is recommended as a simple, direct and effective scheme to get the maximum percentage of

[6] McKinney's Session Laws of New York, 176th Session, Second Extra Session, 177th Regular Session (1954), p. 1279.

[7] *Ibid.*

[8] *Id.* at 1279, 1280.

[9] *Id.* at 1280.

[10] *Ibid.*

[11] *Ibid.*

vehicles insured. However, effective as this plan may be in compelling the insuring of a maximum percentage of automotive vehicles, it does not afford any remedy for the victims of "hit-and-run" drivers, drivers of stolen vehicles, "willful evaders," and uninsured non-resident motorists.[12] Contingencies of this character are provided for under the Unsatisfied Judgment Fund Plan.

Despite certain obvious advantages of this plan, the New York State Bar Association, as well as many local bar associations, have strongly disapproved of a Compulsory Automobile Insurance program as not being in the public interest.[13] They contend, first of all, that compulsory automobile insurance does not contribute to highway safety. Secondly, they feel it cannot protect all victims of financially irresponsible motorists, *e.g.* the uninsured out-of-state driver, the "hit-and-run" driver, etc. Thirdly, the New York State Bar Association has argued that compulsory automobile insurance has not been successful in Massachusetts, the only state where it has been tried.[14] (This latter objection has been one that the opponents of compulsory automobile insurance urge most vociferously).

The Committee's report[15] answers the "precedent" objection by pointing out that the Superintendent of Insurance in New York now approves rates for more than 3,800,000 car owners. More than 300,000 minors in New York are now under compulsory automobile insurance.[16] There have been no complaints that insurance rate-making in New York is political. At most, 400,000 additional persons would have to be insured were automobile insurance to be made compulsory, and there is no reason to believe that the addition of this group would cause politics to enter into rate-making.[17]

Other objections include those raised by insurance agents and brokers who claim that their commission rates on automobile liability insurance would be reduced under compulsory insurance, and that it would be difficult for them to place their business. The major objection of the insurance companies is that any such compulsory automobile insurance programs would result in the creation of a state fund for the underwriting of automobile insurance risks.

After a study of the various plans and solutions offered, the Committee in its 1953 report recommended the enactment of a Motor Vehicle Financial Responsibility Act, coupled with an Assigned Case Plan Act. This latter act would set up procedures whereby accident cases involving either financially irresponsible or unidentifiable motorists are assigned to insurance companies for disposition, in the same manner as if such companies were the

[12] *Supra,* note 2 at 1883.
[13] Comment on Motor Vehicle Legislation, New York State Bar Association, Circular No. 86, January 31, 1955.
[14] *Id.* at 341, 342.
[15] *Supra,* note 6 at 1281.
[16] L. 1952, c. 244, 493; L. 1951, c. 296.
[17] *Supra,* note 6 at 1281.

insurer of the vehicle operated by the irresponsible, unknown or non-resident motorist or "willful evader."[18] Under the Assigned Case Plan, a person who has a cause of action for injury to person or property in excess of one hundred dollars files an affidavit to that effect with the Superintendent of Insurance. The case is then assigned to an insurance company to defend, and all losses or expenses are borne by the participating company.[19] This Plan, when coupled with compulsory automobile insurance, should provide one hundred per cent protection to New York residents.

Enactment of compulsory automobile liability insurance and the Assigned Case Plan was again recommended by the Committee in its report submitted to the Legislature on March 8, 1954.[20]

On March 16, 1954, the bill passed the Assembly but on March 20, 1954 it was defeated in the Senate. The proposal was not enacted by the 178th session of the Legislature which ended early in 1955.

CONCLUSION.—The existence of the problem of the financially irresponsible driver is not denied by the opponents of the compulsory insurance program. All are agreed that a remedy is needed, but the controversy lies in the formulation of this remedy. In this day of increased motor travel, the financially irresponsible driver leaves in his wake numerous unsatisfied judgments which occasion misery, poverty, and unhappiness to many families. In light of this situation, it is to be expected that a compulsory automobile insurance bill will again be before the next session of the Legislature.

[18] *Supra,* note 2 at 1886.
[19] *Supra,* note 6 at 1282, 1283.
[20] *Supra,* note 6.