

**OPINION
63-152**

April 10, 1963 (OPINION)

HIGHWAYS

RE: Driver's License - Judgment Debtor

This office acknowledges receipt of your letter of February 8, 1963, in which you request the interpretation of this office of chapter 39-16 of the North Dakota Century Code.

The question involved could be stated as follows:

If a person whose driver's license was suspended under the provisions of chapter 39-16 of the North Dakota Century Code for failure to comply with section 39-16-05 or for failure to satisfy a judgment of a private party under the provisions of section 39-16-13(4), is he entitled to be issued a license upon proper application after the judgment against him has lapsed due to such judgment not having been renewed within ten years after it was entered in the docket of the Clerk of the District Court?

Chapter 39-16 is entitled "FINANCIAL RESPONSIBILITY OF OWNERS AND OPERATORS." It seems to us that the purpose of the chapter is to demand financial responsibility on the part of those who use the highways of the state, and to make provision for those who are injured or whose property is damaged through accident arising out of the negligent operation of a motor vehicle. It is our view that the motive running through this chapter is that of providing the legal mechanics by which some relief can be had by those who through no fault of their own suffer injury or damage on the road. It is not essentially a punitive statute.

In section 39-16-01(9) "PROOF OF FINANCIAL RESPONSIBILITY" is defined as follows:

'Proof of financial responsibility' means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars because of injury to or destruction of property of others in any one accident;'

Having the ability to respond in damages on account of an accident is one of the qualifications that the operator of a motor vehicle should possess.

Your letter deals with two different bases for suspension of a driver's license. The first falls under section 39-16-05 of the North Dakota Century Code which provides that the state highway commissioner, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of one hundred dollars, shall suspend the license of each driver of each vehicle in any manner involved in such accident. This section does not apply under certain conditions, notably where the driver is covered by adequate liability insurance or some other type of coverage offering substantially the same relief.

Release from suspension made under the provisions of section 39-16-05 is made possible by compliance with one of the conditions contained in section 39-16-07 which reads as follows:

RELEASE FROM SUSPENSION OR REMOVAL OF LICENSE. The license or nonresident's operating privilege suspended as provided in section 39-16-05 shall remain so suspended and shall not be renewed nor shall any such license be issued to such person until:

1. Such person shall deposit or there shall be deposited on his behalf the security required under section 39-16-05;
2. One year shall have elapsed following the date of such accident and evidence satisfactory to the commissioner has been filed with him that during such period no action for damages arising out of such accident has been instituted; or
3. Evidence satisfactory to the commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a confession of judgment, or a duly acknowledged written agreement, in accordance with subsection 4 of section 39-16-06; provided, in the event there shall be any default in the payment of any installment under any confession of judgment, then upon notice of such default, the commissioner shall forthwith suspend the license or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the commissioner shall forthwith suspend the license or nonresident's operating privilege of such person defaulting which shall not be restored unless and until such person deposits and thereafter maintains security as required under section 39-16-05 in such amount as the commissioner may then determine, or one year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state."

The second type of suspension to which you refer is found in section

39-16-13. This section provides, among other things, that the commissioner, upon receipt of a certified copy of a judgment, shall forthwith suspend the license of any person against whom such judgement was rendered except as provided in section 39-16-15, which is the section that makes provision for installment payments.

Your main question is, as I understand it, may the judgment debtor have the suspension lifted and his license restored after the judgment against him is dead because of the failure of the judgment creditor to have it renewed of record?

Section 39-16-13(4) of the North Dakota Century Code reads as follows:

4. A license or nonresident's operating privilege shall remain suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 39-16-13 and 39-16-15."

The contention may be made that under subsection 4 the burden is on the judgment debtor to satisfy the judgment either within the ten year period or subsequently before he may have his license renewed. This may seem to be substantiated by section 39-16-14 which says that judgments as referred to in chapter 39-16 shall be deemed "satisfied" when ten thousand dollars, or twenty thousand dollars, or five thousand dollars (depending upon the injury or damage sustained) have been paid by the judgment debtor.

Nevertheless, it is difficult for us to see why a judgment debtor should be required to satisfy a judgment which is utterly unenforceable, especially in view of the fact that chapter 39-16 was enacted to give some relief to those entitled to a judgment. While the judgment creditor could certainly fail to collect anything on his judgment or enforce an execution against the judgment debtor during the ten year period, he certainly could at the least with little difficulty or cost to himself, renew the judgment for another ten year period. To hold otherwise would mean that the man who is unable to raise five, ten, or twenty thousand dollars, as the case might be, would never be able to have his license renewed even though he produced ample proof of financial responsibility by purchasing liability insurance or equally effective coverage.

Section 39-16-13(5) states that a discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of chapter 39-16. This may seem to be analogous to the judgement situation.

The debt against the debtor is made legally unenforceable through bankruptcy. In this respect a judgment which is legally unenforceable is similar. We think it is significant that the legislature singled out bankruptcy as not relieving a judgment debtor from the requirements of chapter 39-16. (It is not considered as having satisfied the judgement.) This is an implication that

unenforceable judgments for reasons other than bankruptcy do not alone deprive the judgment debtor from being able to obtain a license. We can see a valid reason for this distinction. Bankruptcy proceedings may be instituted voluntarily at any time, whereas the unenforceability of a judgment is dependent upon the passage of time.

We do not believe that the legislature had in mind to deprive any person indefinitely, (lifetime in some cases), from ever being permitted to drive without first satisfying a judgment regardless whether such judgment is enforceable or unenforceable. The opposite view would indicate that a debt must be paid as a condition being permitted to obtain a driver's license. The latter view if followed implicitly would cast some doubt as to the constitutionality of the law.

It is, therefore, our opinion that a judgment which is legally not enforceable and is not assigned to the unsatisfied judgment fund does not in itself prevent the judgment debtor from obtaining a driver's license, provided satisfactory proof is made that he is financially responsible as defined in section 39-16-06 of the North Dakota Century Code.

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Section 39-17-10 is not affected by this opinion.