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December 12, 1972

FILE NO. S-542

INSURANCE:
Effect of invalidity of "no-fault" automobile insurance law on statute repealed thereby.

Honorable James Baylor
Director of Insurance
State of Illinois
525 West Jefferson Street
Springfield, Illinois 62706

Dear Director Baylor:

I have your recent letter in which you state:

"Article XXXV of the Illinois Insurance Code - Compensation of Automobile Accident Victims - was declared unconstitutional by the Supreme Court of Illinois by an opinion filed April 17, 1972, in the case of Michael J. Grace vs. Michael J. Howlett, et al.

The repealed [sic] 'no-fault automobile insurance law' (Article XXXV) specifically allowed an insured to reject uninsured motorist coverage if he purchased excess loss coverage under the act (Section 601 - Illinois Insurance Code).

> In order to provide consistency with the then existing mandatory uninsured motorist provisions, Article XXXV specifically repealed Section 143a of the Illinois Insurance Code.
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> The 1971 Illinois Revised Statutes and Insurance Codes were printed prior to the Supreme Court's decision; and therefore, Section 143a is shown as repealed. It is our opinion that the repeal of Section 143a fails with the Supreme Court's decision, and Section 143a is in full force and effect as if it never were repealed. In support of our opinion we refer you to Illinois Attorney General's Opinion No. 188 - December 26, 1950, involving the same issue.
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> We would like to notify all insurance companies doing business in the State that Section 143a is effective, and therefore request your opinion confirming that our interpretation of the effect of the Supreme Court decision is correct."

It should first be pointed out that Grace v. Howlett (51 Ill. 2d 478), which you cite in your letter, held Article XXXV of the Insurance Code (Ill. Rev. Stat. 1971, ch. 73, pars. 1065.150, et seq.) to be invalid in its entirety. Public Act 77-1430 (the so-called "no-fault" law) contains Section 613 covering the partial invalidity of the Act, (Ill. Rev. Stat. 1971, ch. 73, par. 1065.163), which provides in pertinent part as follows:

> "* * * However, Section 608, or any part thereof, of this Article is expressly made inseverable."

For this purpose, the word "inseverable" expresses the intent of the General Assembly that, in the event Section 608 was deemed invalid by the courts, the entire Article XXXV would be a nullity. As our Supreme Court said in Grace v. Howlett, (supra),

> "It is important to note at the outset that sections 600 and 608 are both aimed at a single problem. They are part of a single act directed toward evils in the existing method of disposing of personal injury claims arising out of motor vehicle accidents. That singleness of purpose is emphasized by the severability section (section 613), the effect of which is a legislative declaration that without the limitations upon recovery established in section 608, the other provisions of article XXXV would not have been enacted."
> 51 Ill. 2d, 478, 485.

Accordingly, the result of our Supreme Court's ruling in Grace v. Howlett is that all of Article XXXV of the Illinois Insurance Code is invalid.

What, then, is the effect of the invalidity of the principal portion of the Public Act 77-1430, which also contained the repeal of Section 143a of the Illinois Insurance Code, on the repealer provision? The leading Illinois case on this question is People v. Fox, 294 Ill. 263, in which our Supreme Court set forth the following rule:

> "The rule regarding the construction of repealing clauses is based upon legislative intent. Where it is seen from the new act and the act sought to be repealed that it was the legislative intent that the repealing clause should in all events be valid such clause will be held to be valid, but where it is seen that the repeal is intended to clear the way for the operation of the act containing the repealing clause and to displace the old law with the new, then, if the new law be unconstitutional, the repealing clause becomes dependent and inoperative and falls with the main purpose of the act containing it."
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> 294 Ill. 263, 269.

In Fiorito v. Jones, 39 Ill. 2d 531, our Supreme Court held that the invalidity of the 1967 amendments to the Service Occupation and Service Use Tax Acts, which effectively re-wrote those Acts, acted to strike the repealers as well and restore those Acts to the form which they had had before the enactment of the invalid provisions. See also People ex rel. Barrett v. Sbarbaro, 386 Ill. 581.

It is also instructive to note that one of the invalidated amendments to the Illinois Insurance Code, Section 601, re-enacted the provisions of Section 143a for all policies not containing the excess loss coverage prescribed in the invalid Section 600.

Based upon the foregoing, it is my opinion that the intent of the General Assembly is clear that the repeal of Section 143a was intended to be effective only in connection with the effectiveness of Article XXXV of the Illinois Insurance Code and that, upon the declaration by the Supreme Court that Article XXXV was constitutionally invalid and a nullity, the repeal of Section 143a became ineffective. Accordingly, Section 143a of the Illinois Insurance Code, as amended by Public Act 77-929, remains in full force and effect.

Very truly yours,

ATTORNEY GENERAL