

Bankruptcy: The Encroachment of the Financial Responsibility Laws on the Policy of the Bankruptcy Act

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BANKRUPTCY: THE ENCROACHMENT OF THE FINANCIAL RESPONSIBILITY LAWS ON THE POLICY OF THE BANKRUPTCY ACT.

In an effort to make our highways safer, states have been enacting ever increasing amounts of legislation. One of the areas of prime concern has been that of the financially irresponsible driver, who each year is responsible for a large number of unpaid judgments, arising from automobile accidents in which he was involved. In attempting to alleviate this problem, some states have tried compulsory liability insurance legislation, which makes the proof of ability to respond in damages to any automobile negligence claim a condition precedent to obtaining a driver's license. This type of legislation has naturally been effective in achieving the end sought, but has been highly criticized for its adverse effect on insurance rates. Another type of legislation, and that with which this article will be concerned, suspends an individual's driving privilege if he fails to satisfy a tort judgment based on his negligent operation of a motor vehicle. Such legislation is generally embodied under the heading of state financial responsibility laws. These laws do not require proof of financial responsibility as a condition precedent to the issuance of a driver's license, but do attempt to influence the financially irresponsible driver to exercise care on the highways through the sanction of loss of driver's license. Under these laws, the state may take away a judgment debtor's driver's license even though the debt has been discharged through bankruptcy proceedings.¹ The revocation having occurred despite the bankruptcy discharge, the judgment debtor may have his license reinstated only upon payment of the discharged debt and a showing of future financial responsibility.

The problem presented by this type of legislation has been dealt with by our courts on numerous occasions, judicial support being given to the state's power in almost every instance. This does not mean that the problem has been resolved, however, as is obvious from the number of dissenting opinions that have accompanied these decisions and the consistency of their objections to validity.² The major question confronting the courts in determining the validity of this legislation is whether it conflicts with the provisions of the Bankruptcy Act³ and is therefore

¹ Bankruptcy Act §63(a) (7), 30 Stat. 562 (1898), 11 U.S.C. §103(a) (7) (1958): "Debts of the bankrupt may be proved and allowed against his estate which are founded upon . . . the right to recover damages in an action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy."

² *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962); *Reitz v. Mealey*, 314 U.S. 33 (1941); *Reitz v. Mealey*, 34 F. Supp. 532 (N.D. N.Y. 1940).

³ Bankruptcy Act §17, 30 Stat. 550 (1898), 11 U.S.C. §35 (1958):

"(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the U.S., or any State, county, district, or municipi-

invalid under the Supremacy Clause of the United States Constitution.

The decision of the United States Supreme Court in *Kesler v. Department of Public Safety*, reaffirmed the majority view, upholding financial responsibility legislation as a proper exercise of the states' police power, designed to promote public safety. The Court also found that no "clear conflict" with the Bankruptcy Act existed.⁴ However, the Court admitted that the statute did make some "inroad on the consequences of the Bankruptcy Act."⁵ What is of particular significance in the *Kesler case* is the fact that the Utah statute, construed therein, included in its provisions the right of the judgment creditor to control its operation.⁶ This case is the first judicial approval of a financial responsibility statute designed to allow the judgment creditor to enforce its provisions.

I. DEVELOPMENT OF FINANCIAL RESPONSIBILITY LEGISLATION

The development of the financial responsibility statutes and their judicial interpretation may be best illustrated in the State of New York which produced the landmark *Reitz* case and other decisions construing

pality; (2) are liable for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance of such employee of the terms of the contract of employment."

⁴ *Kesler v. Department of Public Safety*, *supra* note 2, at 172.

⁵ *Id.* at 171.

⁶ UTAH CODE ANN. §41-12-13, 14, 17 (1953).

"13. Whenever any person fails within sixty days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court that has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said sixty days, a certified copy of such judgment.

"14. (a) The commission, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any non-resident's operating privilege of any person against whom such judgment was rendered, . . . except as hereinafter otherwise provided in this section and in section 41-12-17.

"(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or non-resident's operating privilege, the same may be allowed by the commission in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility.

"17. . . . a discharge in bankruptcy following the rendering of such judgment shall not relieve the judgment debtor from any of the requirements of this act."

earlier forms of this statute.⁷ In 1933, New York's financial responsibility statute was interpreted for the first time in the *Perkins* case.⁸ It then provided for the mandatory and permanent suspension of the license of any driver who failed to pay an automobile negligence judgment, even if the same were discharged in bankruptcy.⁹ The statute was held to be invalid as denying the bankrupt the full effect of his discharge.¹⁰ The court found that the statute did not interfere with the supremacy of the bankruptcy court in administering the property of the bankrupt, but that it did deny to the bankrupt the benefit of his discharge. In the same year, the court in *Munz v. Harnett* overruled the *Perkins* case, adopting the position that the statute construed in the *Perkins* case did not contravene the Bankruptcy Act. The court reasoned that a discharge in bankruptcy was not regarded as a satisfaction of a debt, and the exclusion, therefore, of a discharge as a satisfaction, under the statute, did not conflict with the Bankruptcy Act.¹¹

In 1939, the stay of a suit based on the negligent operation of a motor vehicle after the driver had been adjudged bankrupt was denied; held, a stay after adjudication was in the discretion of the court, and the suit was allowed to go to judgment in order to effectuate New York policy as to its highways.¹²

The first substantial change in the New York statute occurred in 1936, when the period of suspension was reduced to three years.¹³ The financially irresponsible driver could have his license restored after this time had elapsed if he could offer proof of financial responsibility in the future, even though the judgment remained unpaid. The statute was further amended in 1936, to provide that the judgment creditor could consent to reinstatement of the judgment debtor's driving privilege and could revoke his consent, causing revocation to occur again.¹⁴ Then in 1939, language was added allowing the judgment creditor to

⁷ *Reitz v. Mealey*, *supra* note 2; *In re Perkins*, 3 F. Supp. 697 (N.D. N.Y. 1933); *Munz v. Harnett*, 6 F. Supp. 158 (S.D. N.Y. 1933); *In re Locker*, 30 F. Supp. 642 (S.D. N.Y. 1939).

⁸ *In re Perkins*, *supra* note 7.

⁹ N.Y. Sess. Laws 1929, ch. 695, §94-b. "The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days therefore to satisfy every judgment . . . rendered against him . . . for damages on account of personal injury . . . resulting from the ownership or operation of a motor vehicle by him . . . shall be forthwith suspended . . . and shall remain so suspended . . . until said judgment or judgments are satisfied or discharged, except by a discharge in bankruptcy. . . ."

¹⁰ *In re Perkins*, *supra* note 7, at 697.

¹¹ *Munz v. Harnett*, *supra* note 7, at 160.

¹² *In re Locker*, *supra* note 7.

¹³ N.Y. Sess. Laws 1936, ch. 448, §94-b: ". . . shall remain so suspended and shall not be renewed . . . , until said judgment or judgments are satisfied or discharged, . . . or three years shall have elapsed since such suspension. . . ."

¹⁴ *Ibid.*, ". . . provided however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, . . . and thereafter until such consent is revoked in writing. . . ."

institute the operation of the statute by a written notice to the clerk of the court.¹⁵

The New York statute as it stood in 1939 was construed in the famous *Reitz* case, wherein the court reiterated the majority's position, holding that there was no violation of or conflict with the Bankruptcy Act.¹⁶ But the court did not consider the validity of the amendments providing for creditor control. Although it did not pass upon the validity of these amendments, the court was impressed with the argument that the addition of the creditor control might deprive the debtor of the immunity of his discharge and thereby bring that portion of the statute into conflict with the Bankruptcy Act.¹⁷ After finding the amendments separable from the original statute, the court further discounted any conflict with the Bankruptcy Act stating:

The penalty . . . is not for the protection of the creditor merely, but to enforce a public policy that irresponsible drivers shall not with impunity, be allowed to injure their fellows . . . it is an enforcement of permissible state policy touching highway safety.¹⁸

The concern that was exhibited in the *Reitz* case over the amendment allowing creditor control was passed over lightly in the *Kesler* case. The position was taken that this amendment merely put into the wording of the statute what was in fact necessary for its proper and effective functioning, i.e., that the clerk of the court usually put the statute into operation only upon the prodding of the judgment creditor.¹⁹

Every state, as well as the District of Columbia, has some form of financial responsibility statute. All of these statutes require the suspension of driving privileges when the automobile judgment debtor has not paid such judgment within a prescribed period.²⁰ Twenty-one states have statutes substantially similar to the one in *Kesler*,²¹ which allow a creditor to suspend, consent to restoration of, and subsequently revoke the driving privileges of the judgment debtor.²² Fifteen other states also allow the creditor to consent to restoration and revoke that consent, but these laws are put into operation by the clerk of the court without

¹⁵ N.Y. Sess. Laws 1939, ch. 618 §94-b: ". . . It shall be the duty of the clerk of the court . . . to forward immediately, upon written demand of the judgment creditor or his attorney . . . to such commissioner a certified copy of such judgment. . ."

¹⁶ *Reitz v. Mealey*, *supra* note 2, at 38.

¹⁷ *Ibid.*, ". . . and there is force in the argument that 94-B as amended, in truth deprives the debtor of the immunity afforded by his discharge, leaves out of view the public policy of the state or makes that public policy subservient to the private interests of the creditor by affording him the opportunity to initiate, remove and revive the suspension of the license upon terms as to payments on account of his claim."

¹⁸ *Id.* at 37.

¹⁹ *Kesler v. Department of Public Safety*, *supra* note 2, at 172.

²⁰ Comment, 48 CORNELL L. Q. 316, 324 (1962-3).

²¹ Note 6 *supra*.

²² *Kesler v. Department of Public Safety*, *supra* note 2, at 165 n. 29.

initial direction by the judgment creditor.²³ Forty-five states allow the judgment debtor to reacquire his license upon a partial satisfaction of the unpaid judgment and a showing of ability to respond financially in the future.²⁴ Thirty-six states allow restoration if the creditor requests such, and the judgment debtor shows proof of future responsibility, regardless of whether any payments have been made toward the judgment.²⁵ In all, forty-seven states specifically reject the discharge in bankruptcy as a satisfaction of a judgment based on negligence.²⁶

Wisconsin's financial responsibility statute, section 344.05 (1), provides that the clerk may initiate suspension with or without written notification by a judgment creditor.²⁷ The revocation is made pursuant to section 344.25.²⁸ Subsection (2) of that section allows the judgment debtor to retain or have reinstated his driving privileges upon written consent by his creditor, if proof of future financial responsibility is furnished and maintained. This subsection also provides that the aforementioned actions are to be subject to the discretion of the commissioner of motor vehicles.²⁹ Under section 344.25 (3), if the judgment debtor is able to obtain a court order for installment payments, and show proof of future financial responsibility, the commissioner must allow him to keep his license.³⁰ A discharge in bankruptcy is specifically excepted as

²³ *Id.* at 167 n. 31; See also Comment, *supra* note 20.

²⁴ Comment, *supra* note 20.

²⁵ *Kesler v. Department of Public Safety*, *supra* note 2, at 165-8 n. 29-34.

²⁶ Comment, *supra* note 20.

²⁷ WIS. STAT. §344.05(1) (1961):

"Whenever any judgment in excess of \$100 for damages arising out of a motor vehicle accident is not satisfied within 30 days after its having become final by expiration without which an appeal might have been perfected or by final affirmation on appeal, the clerk of the court in which such judgment was rendered, shall forthwith forward to the commissioner a certified copy of such judgment."

²⁸ WIS. STAT. §344.25 (1961):

"Upon the receipt, pursuant to section 344.05, of a certified copy of a judgment for damages in excess of \$100 arising out of a motor vehicle accident, the commissioner shall forthwith revoke the operating privilege and all registrations of the person against whom such judgment was rendered, subject to the following exceptions"

²⁹ WIS. STAT. §344.25(2) (1961):

"If the judgment creditor consents in writing in such form as the commissioner may prescribe that the judgment debtor be allowed to retain or reinstate his operating privilege and registrations, the same may be allowed by the commissioner, in his discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment or of any installments thereof prescribed in section 344.27 provided the judgment debtor furnishes proof of financial responsibility for the future and maintains such proof at all times when such license and registrations are in effect during a period of 3 years following the entry of the judgment."

³⁰ WIS. STAT. §344.25(3) (1961):

"The commissioner shall not revoke such license or registration if the judgment debtor obtains a court order for installment payments and furnishes proof of financial responsibility as provided in section 344.27."

providing any relief from Wisconsin's financial responsibility laws by section 344.26(2).³¹

II. CONFLICT WITH THE BANKRUPTCY ACT

Underlying the Bankruptcy Act is the basic philosophy of giving an oppressed debtor a new start toward becoming a useful, productive citizen. In working to achieve this end the Bankruptcy Act is first concerned with the distribution of the debtor's estate among his creditors with provable claims. Once this is done the honest debtor is then allowed to re-establish himself economically.³² The accomplishment of the basic objective is then obtained through the discharge the bankrupt receives in the bankruptcy proceedings. The discharge does not actually extinguish his debts, but prevents recovery by acting as a bar in legal proceedings to recover on the debts.³³ Thus in a practical sense the discharge operates as a release of liability on the debt, but not in the sense that the debtor is able to consider his debts paid.³⁴ The discharge, in effect, accelerates the statute of limitations.

It is on this theory that the courts have based their decision that no conflict between financial responsibility legislation and the Bankruptcy Act exists. This position was reiterated in *Kesler*:

A discharge does not free the bankrupt from all traces of the debt . . . a moral obligation to pay the debt survives the discharge and is sufficient to permit a state to grant recovery to the creditor on the basis of a promise subsequent to discharge, even though the promise is not supported by a new consideration.³⁵

The distinction between a discharge and payment or satisfaction may eliminate conflict in the technical sense, but the conflict still remains no less real when viewed in light of the end sought to be achieved by the bankruptcy discharge. The judgment debtor is not freed from the dischargeable debt. The affirmative defense supplied him by his discharge is of little use. If he attempts to assert it he must forsake his driving privilege. Under the Bankruptcy Act the bankrupt may waive his discharge, but under financial responsibility laws he loses it through no action of his own.³⁶ The debtor is forced to forego the benefit of his discharge if he wishes to save his driving privilege. Conflict exists then in undermining the effect sought to be accomplished by affording a discharge to the debtor.

³¹ WIS. STAT. §344.26(2) (1961):

"A discharge in bankruptcy following the rendering of any such judgment does not relieve the judgment debtor from any of the requirements of this section."

³² 1 COLLIER, BANKRUPTCY §17.27 (14th ed. 1956).

³³ *Id.* at §14.02.

³⁴ *Zavelo v. Reeves*, 227 U.S. 625 (1913). "The discharge destroys the remedy, but not the indebtedness"; See also, *Spalding v. New York*, 16 U.S. (4 How.) 12 (1846).

³⁵ *Kesler v. Department of Public Safety*, *supra* note 2, at 170.

³⁶ COLLIER, *op. cit.* *supra* note 33.

Aside from a conflict with the effect of the discharge, another possible conflict may be shown. Due to the fact that it is also the purpose of the Bankruptcy Act to distribute the debtor's non-exempt property among his creditors, any procedure that would give a particular creditor a preferred status would be in conflict with this first objective of bankruptcy. The possibility of the financial responsibility laws giving such a preferred status to tort judgment creditors was pointed out by Justice Black in his dissenting opinion in the *Kesler* case:

It means that a . . . automobile-accident judgment creditor will be given a decided advantage over all other creditors suffering loss from the bankruptcy . . . only he can prove his claim, share in the distribution of the bankrupt's estate and still, at the same time retain the power to force the bankrupt to pay the rest of the claim.³⁷

Although the financial responsibility laws do not explicitly grant an additional legal remedy to judgment creditors, they do supply a device that survives the discharge in bankruptcy which is tantamount to such a grant. The purpose of these laws may be to promote highway safety, but they also impose a condition requiring the relinquishment of a right created by Congress. Such state laws will be invalid when they stand as an obstacle to the accomplishment or execution of the purposes of such laws as Congress may enact.³⁸

It is also of note that in many of the cases that have arisen under the various financial responsibility laws the debtor-motorist involved has been one whose very livelihood depended upon his driving privileges.³⁹ It is in this type of situation that the practical pressure of these laws becomes obvious. The debtor's license and in effect his livelihood is pledged as security for the payment of his debt, and he is thereby forced to bargain with his creditor, by making some sort of arrangement to pay the debt in order to retain his license. Although assignment of wages or future earning power have been held not to survive a bankruptcy proceeding,⁴⁰ here is in effect a pledge of future earning power. In answer to this argument, it has been advanced that the bankrupt need not continue to pursue this source for his livelihood in that all other fields of economic endeavor are open to him with complete freedom.⁴¹ Thus the debtor is allowed to start anew, but with one qualification, he must start out in a completely new field of endeavor. Under

³⁷ *Kesler v. Department of Public Safety*, *supra* note 2, at 183.

³⁸ *International Shoe Co. v. Pinkus*, 278 U.S. 261 (1929); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 (1942); *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Ex parte Morgan*, 86 Cal. App. 2d 217, 194 P. 2d 800 (1948). See also, 81 C.J.S. States §7, at 874, 887 (1953).

³⁹ *Kesler v. Department of Public Safety*, *supra* note 2; *Reitz v. Mealey*, *supra* note 2; *Munz v. Harnett*, *supra* note 7.

⁴⁰ *Local Loan v. Hunt*, 292 U.S. 234 (1934).

⁴¹ Note, 43 YALE L. J. 344 (1933-4); 47 HARV. L. REV. 870 (1933-4).

this reasoning it seems obvious that the statute imposes a penalty on the debtor for having resorted to bankruptcy.⁴²

The addition of the provision allowing the creditor to control the functioning of the statute makes the law's practical pressure even more apparent. This was brought out by Justice Cooper in his dissenting opinion in *Reitz v. Mealey* where he stated: "This section makes the commissioner of motor vehicles a disguised collection agent for the judgment creditor."⁴³ The advantage to the creditor is said to be merely incidental to the purpose of protecting the public against financially irresponsible drivers, but allowing the creditor to control the statute's operation, thereby giving him this collection advantage, seems more than incidental.

A Maryland court interpreting its financial responsibility law, which did not specifically exclude a discharge in bankruptcy, held that a bankruptcy discharge did amount to a satisfaction under their statute.⁴⁴ The court felt that the interpretation must be such that no conflict with the Bankruptcy Act would result. In stating that "these provisions demonstrate that it was not the intention of the legislature to apply the law to judgment debtors who have been discharged in bankruptcy," the court recognized that an obvious and irreconcilable conflict would arise if the bankruptcy discharge was excluded.⁴⁵ Based on this reasoning the mere exception of a discharge by the statute would result in conflict.

III. EXERCISE OF POLICE POWER

In situations of grave national concern, individual states, with certain qualifications, may exercise their police power to alleviate the problem in their respective localities. Here, the states' concern being the safety of their highways, any legislation designed to promote such safety has been held to be a valid exercise of police power, unless a "clear collision" with that national law can be shown.⁴⁶ The portion of the New York statute interpreted in the *Reitz* case seems to be such a valid exercise of police power. In this case a state official, applying the statute, suspended the license of all the drivers who had not satisfied a tort judgment. The statute also required of such a driver that he show proof of future responsibility. Therefore, the statute was "reasonably designed to induce careful driving and to assure compensation in case of liability."⁴⁷ For any such statute to be a valid exercise, these reasons must be primary and not incidental to its operation.

The addition of the right of the creditor to control the operation of this type of statute has a distinct effect upon its purpose. Under a

⁴² 30 GEO. L. J. 568 (1941-2).

⁴³ *Reitz v. Mealey*, *supra* note 2, at 537.

⁴⁴ *Ellis v. Rudy*, 171 Md. 280, 189 Atl. 281 (1937); See also, Comment, 5 U. PITT. L. REV. 26 (1939).

⁴⁵ *Ellis v. Rudy*, *supra* note 44, at 282.

⁴⁶ *Kesler v. Department of Public Safety*, *supra* note 2, at 172.

⁴⁷ 8 U. CHI. L. REV. 326, 327 (1940).

statute with such control added, as illustrated by the statute in *Kesler*, the state official must do as the creditor directs. The commissioner is left with no initial discretion at all. Thus, a judgment creditor upon making some arrangement with the debtor, may totally prevent the statute's operation. In this situation it is difficult to see where the public good is being served. All that is being served is the creditor's private financial interests; such an effect would seem to indicate that the state is not interested in keeping financially irresponsible drivers off the road.⁴⁸

One of the basic weaknesses of this legislation, in the first instance, is that it becomes operative only after a financially irresponsible driver has had an accident. After his first accident, the driver is then required to show proof that he will be able to respond to any damage claim. Under statutes that allow a creditor to control their operation, the law may never be imposed against a financially irresponsible driver if he makes a proper arrangement with his creditor. Such legislation can hardly be said to secure financial responsibility among motorists, for it is applied only against some at the whim of the creditor.

Another question surrounding the creditor control type of statute is the validity of delegating the enforcement of police power. Under this form of statute, the enforcement of the exercise of state police power is delegated to a single, unknown and undetermined individual. Discussing this characteristic, Justice Cooper in *Reitz v. Mealey* stated: "It is held in substance that the police power can neither be abdicated nor bargained away and is inalienable even by express grant."⁴⁹ This consideration, along with the realization that the individual delegatee acts only for his own purpose rather than for the public good, seems to put the creditor control provision beyond the borders of the valid exercise of police power.

Colorado, in deciding that its statute was unconstitutional, held that the public received no protection whatsoever and that the statute was designed merely to secure the payment of a private obligation. It was pointed out that this form of legislation did not have the effect of requiring a continued showing of financial responsibility of all drivers on the road. If all drivers were required to show financial responsibility before being allowed to drive, then this would have a real bearing upon the public safety.⁵⁰

The argument that police power should not be struck down unless a "clear conflict exists" becomes of less force if the exercise of that police power can be successfully attacked. If the public safety becomes incidental and an assistance to creditors as a collection device becomes

⁴⁸ 111 U. PA. L. REV. 113 (1962).

⁴⁹ *Reitz v. Mealey*, *supra* note 2, at 538.

⁵⁰ *People v. Nothaus*, 147 Col. 210, 363 P. 2d 180 (1961).

paramount in its operation, then a creditor control statute would not be a valid exercise of police power and would not be entitled to the benefit of a "clear conflict" rule.

The inroads made upon the Bankruptcy Act through the police power of the states in the name of financial responsibility laws are based on the theory that the operation of an automobile on the states' highways is a privilege. A state appends conditions to the retention of the privilege and may suspend the privilege for violation of them.⁵¹ This concept gives rise to the question, "In what other areas of privilege may it be possible for the state through its police power to legislate against the effects of bankruptcy?" In 1905, a New York court ruled that a fireman could not be dismissed from his job for having resorted to bankruptcy proceedings.⁵² Such action by the state was held to amount to penalizing a person for using bankruptcy. The *Reitz* case criticized this holding, stating that ability to pay debts was a proper criteria for determining admissibility to hold certain jobs.⁵³

The concept of privilege giving rise to the right of the states to condition its retention is a broad basis for thwarting bankruptcy proceedings. The reasoning of the *Kesler* case would allow a state to use this right to condition privileges in such a manner as to exclude recourse to bankruptcy as long as some public policy reason could be shown why a particular debt should be paid. This reasoning may be extended to all areas of privilege that come into contact with public interests. If so, then, the licensing of automobile drivers is only the first area of privilege under which the Bankruptcy Act will be successfully legislated against.

IV. CONCLUSION

The questions the court was faced with in the *Reitz* and *Kesler* cases are often raised in regard to financial responsibility legislation. By reason of the widespread adoption of these laws and their reasonably uniform character, the conclusion can be drawn that inceptually, at least, such laws have been advanced to further the policy of controlling a problem of nationwide concern, *i.e.*, highway safety. It is conceded that such legislation should be given judicial interpretation as will best augment the desired effect, even to the degree that, unless it transgressed upon grounds specifically reserved to the federal government, it will be protected. But a statute like the one involved in the *Kesler* case,⁵⁴ which on its face is designed to promote the public welfare, and in operation and effect is primarily a device to secure payment of discharged debts, must be held to be in such conflict with federal bankruptcy laws as to necessitate its invalidation.

⁵¹ *Doyle v. Kahl*, 242 Iowa 153, 46 N.W. 2d 52 (1951); *DeVries v. Sec. of State*, 329 Mich. 64, 44 N.W. 2d 82 (1950); *Smith v. Hayes*, 60 Ohio Op. 112, 133 N.E. 2d 443 (1955).

⁵² *In re Hicks*, 133 F. 739 (N.D.N.Y. 1905).

⁵³ *Reitz v. Mealey*, *supra* note 2, at 535.

⁵⁴ Note 6 *supra*.

It is urged that the automobile accident judgment creditor deserves a strong social policy in his favor because his association with his debtor is involuntary, rather than voluntary in nature, as are most debtor-creditor relationships in bankruptcy.⁵⁵ But the Bankruptcy Act does not provide for such a preferred status, and none should be read into it, so as to eliminate the plain conflict that exists between the Act and these state laws.

It has been argued that the conflict alluded to should be resolved in a practical manner in accord with judicial accommodation.⁵⁶ The resolution of such conflicts is generally made so that the proper exercise of neither the state nor the federal law is impaired. Such a result would certainly be desirable here. But, in order to reach a solution of this nature it would be necessary to close the eyes of the judiciary to a conflict that is direct and positive. The Bankruptcy Act frees the automobile judgment debtor of the consequences of his debt, while the state statute provides a method by which the creditor may still force payment. In such instance either a state statute or the Bankruptcy Act will have to be inoperative. A more acceptable solution in light of the obvious conflict and the importance of protecting our highways might be to provide specifically for such an exception in the Bankruptcy Act.⁵⁷ The justifications offered by court decisions on the financial responsibility laws merely create a further problem in that they have established a basis upon which more (and even less acceptable) inroads on bankruptcy may be made.

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⁵⁵ 48 CORNELL L. Q. 316, 324 (1962-3).

⁵⁶ *Id.* at 325; *Hill v. Florida*, 325 U.S. 538 (1944); See also Note, *supra* note 41, at 346.

⁵⁷ U. ILL. L. F. 467, 469 (1962).