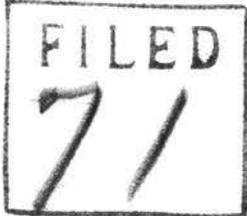


AGRICULTURE: ) A locker plant operator is required to furnish insurance  
 ) to indemnify users against locker content loss, and  
 ) he is not relieved of this duty by the execution by  
 ) the customer of a waiver of insurance for failure to  
 ) furnish such insurance. The Commissioner may revoke  
 ) or suspend the license of the offending operator or  
 ) may refuse to issue a license; or the offending operator  
LOCKERS: ) may be proceeded against by injunction.



July 7, 1953

Honorable Paul L. Porter  
Director of Dairy Division  
Department of Agriculture  
Jefferson City, Missouri

Dear Sir:

We render herewith our opinion based on your request of May 28, 1953, which request reads as follows:

"The operators of all locker plants shall furnish satisfactory locker content insurance to indemnify users against loss.

"The question arises--since the cost of such insurance is to be passed on to the locker patrons--as to whether or not it is proper for them to decide whether or not they wish to pay for and have such insurance.

"The insurance is offered to anyone who desires it and a waiver of insurance from those who do not desire it. See attached copy of letter from Knobnoster Locker Company.

"He was advised on December 18, 1952, by Mr. Stakes, that the insurance was to be provided to the users of locker boxes--regardless of whether or not such patrons desired it. This has not been complied with.

"What procedure should this office follow?"

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The statute to which you refer is Section 196.510, RSMo 1949. The pertinent portion of that statute reads as follows:

"2. The operators of all locker plants shall furnish satisfactory locker content insurance to indemnify users against loss, issued by companies duly authorized and licensed to do and transact business in the state of Missouri, in a minimum amount for each locker or locker plant to be determined by the commissioner; provided, however, that such operator may, and is hereby authorized to, collect the pro rata amount of the premium for such insurance from the user in addition to the locker rental as an additional service."

Let us begin by saying that we have been unable to find any cases to guide our reasoning in this opinion. Other compulsory insurance statutes (i.e., relating to warehouses) are worded in a different way; and even under them the question whether insurance is compulsory regardless of request or waiver on the part of the customer, or compulsory only when requested or not waived by the customer, has never so far as our research has revealed confronted any court. Neither does any other portion of the law relating to the regulation of locker plants, Section 196.450 through 196.515, shed any light on this problem.

However, we have concluded that the above-quoted portion of Section 196.510, properly interpreted, requires the operators of all locker plants to furnish locker content insurance; and that they cannot be relieved of this duty by the execution by the customer of a waiver of insurance.

The operators, by the terms of this statute, "shall furnish" insurance. "Shall" is ordinarily held to be a word of mandate negating permissiveness or discretion on the part of the subject of the action. In *State v. Wade*, 360 Mo. 895, 231 S.W. (2d) 179, 1.c. 181, the court made this observation:

" \* \* \* Certainly statutes that use the word 'shall', and then provide

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a penalty for failure to do what is required, are mandatory statutes.  
\* \* \*"

Notice that Section 196.515 does provide a penalty for failure to comply with the provisions of Section 196.510 in that it authorizes the revocation or suspension of the license of the offending operator.

There are other provisions of the statute which indicate that the duty of furnishing insurance against loss of locker content is not dependent upon request or absence of waiver on the part of the customer. The minimum amount of insurance upon each locker or locker plant is to be determined by the Commissioner of Agriculture. Had it been the legislative intent to permit the customer to determine whether his property was to be covered by insurance, then it seems that he would have been permitted also to determine the minimum amount of insurance.

The omission of words in a statute may sometimes furnish a clue to the legislative intent. In this situation there are no words or phrases, such as "at the request of the user" or "unless waived by the user," which indicate any intent to leave the question of insurance to the customer. It is reasonable to suppose that had the lawmakers intended to leave the question of insurance to the customer that it could easily have been accomplished by the inclusion in the statute of some such phrase. That it did not do so is evidence of an intention to make the furnishing of insurance by the operator mandatory regardless of request or waiver by the customer.

The fact that the operator is permitted to collect from his customers a pro rata amount of the premium for such insurance does not indicate a different conclusion. This portion of the statute is permissive only; the operator may, if he chooses, absorb the cost of the insurance himself.

For failure of the operator to furnish such insurance there are two courses of action open to the Commissioner of Agriculture. They are prescribed by Section 196.515, RSMo 1949, which reads as follows:

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"Revocation of license--enforcement.  
--1. Failure on the part of any locker plant operator to properly comply with the provisions of sections 196.450 to 196.515 shall authorize and empower the commissioner to refuse to license or to revoke or suspend any license of the offending operator.

"2. Injunction may issue by any court of competent jurisdiction to enforce the provisions thereof."

CONCLUSION

It is the opinion of this office that a locker plant operator is required to furnish insurance to indemnify users against locker content loss, and that he is not relieved of this duty by the execution by the customer of a waiver of insurance for failure to furnish such insurance. The Commissioner may revoke or suspend the license of the offending operator or may refuse to issue a license; or the offending operator may be proceeded against by injunction.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK/fh