



HENRY McMASTER
ATTORNEY GENERAL

June 30, 2010

The Honorable Chandra E. Dillard
Member, House of Representatives
P. O. Box 16616
Greenville, South Carolina 29606

Dear Representative Dillard:

In a letter to this office you referenced the situation involving a constituent, Ms. Ruby Bonner, who has received a notice of suspension pursuant to S.C. Code Ann. §56-9-354 for being in default as to an installment agreement which she had entered into following an accident on February 8, 2008 for which she had no automobile liability coverage. Such provision states in part:

[t]he license and registration and nonresident's operating privilege suspended as provided in § 56-9-351 shall, except as otherwise provided for in § 56-9-361, remain suspended and shall not be renewed nor shall any license or registration be issued to him until:

- (1) He shall deposit or there shall be deposited on his behalf the security required under § 56-9-351;
- (2) Two years shall have elapsed following the date of the accident and evidence satisfactory to the Department of Motor Vehicles has been filed with it that during that period no action for damages arising out of the accident has been instituted; or
- (3) Evidence satisfactory to the Department has been filed with it of a release from liability, a final adjudication of nonliability, a warrant for confession of judgment or a duly acknowledged written agreement, in accordance with item (7) of § 56-9-352; provided, however, in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of default, the Department shall suspend the license and registration or nonresident's operating privilege of the person defaulting, which shall not be restored until the entire amount provided for in 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 default, the Department shall suspend the license and registration or nonresident's operating privilege of the person defaulting, which shall not be restored unless and until (a) he deposits and thereafter maintains security as required under § 56-9-351 in the amount the Department may determine or (b) two years shall have elapsed following the date when the security was required and during that period no action upon the agreement has been instituted in a court in this State.

(emphasis added).

In reviewing your opinion request, I talked with Ms. Annie Phelps with the State Department of Motor Vehicles. She indicated that her Department had reviewed Ms. Bonner's situation with their agency attorney, Mr. Valenta, and all were in agreement as to their construction of the applicable statutes. Their construction, as expressed by you, was that the two year period from "...when the security was required" as specified in Section 56-9-354 runs from the date of her default as to the installment agreement that she had entered with the insurance company. See also: S.C. Code Ann. § 56-9-490 ("[i]n the event the judgment debtor fails to pay any installment as specified by the order, then upon notice of the default the Department shall suspend the license, registration or nonresident's operating privilege of the judgment debtor until the judgement is satisfied....")

As noted in an opinion of this office dated October 26, 2006,

[t]his office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of... (a)... statute in question. See, e.g., Ops. Atty. Gen. dated March 9, 2000 and November 25, 1998. As noted in a prior opinion of this office dated October 20, 1997, "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration... and should not be overruled absent cogent reasons." Moreover, where an administrative interpretation is long-standing and has not been expressly changed by the General Assembly, the agency interpretation is entitled to even greater deference. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (Ct.App. 1983). As recognized in another prior opinion of this office dated March 12, 1997, if an administrative interpretation is reasonable, courts will defer to such construction even if that construction is not the only reasonable one or the one a court would have adopted in the first instance. See also: Op. Atty. Gen. dated February 18, 2010.

Recognizing such, this office would defer to the interpretation by the Department of Motor Vehicles as to the issue in question. See also: Ops. Atty. Gen. dated September 17, 2007 and July 28, 2006.

As to your request regarding how the statute may be rewritten, typically this office does not draft legislation or suggest specific amending language to a statute. I can only suggest that if an

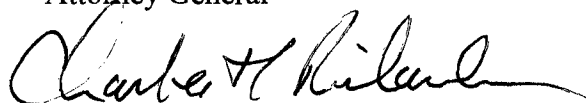
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amendment is desired, you should contact the Legislative Council for amending language that would specifically state that the two year period runs from whatever date that is considered fair.

With kind regards, I am,

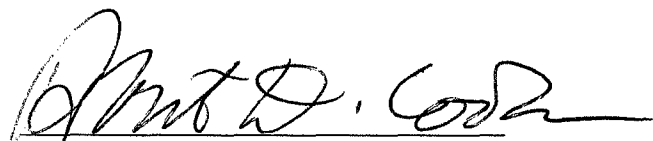
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General