

The State of South Carolina



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June 6, 1988

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Dear Ed:

As you are aware, your letter dated May 3, 1988, to Attorney General Medlock has been referred to me for response. By your letter and attachment, you have inquired, according to S.C. Code Ann. §56-11-110 (1976, as amended), "where are assigned benefits to be sent, and who in fact has rights to the assigned benefits?"

Effective January 1, 1988, the South Carolina General Assembly amended §56-11-110 by 1987 S.C. Acts 155, §25 [codified at S.C. Code Ann. §38-77-240 (1976, as amended)]. Section 38-77-240 provides, inter alia, the minimum medical, hospital, and disability benefits required in South Carolina and states:

No benefit payable pursuant to this section is subject to subrogation or assignment except that assignments may be made to hospitals, physicians, or other medical providers, provided, however, that no medical provider may require assignment as a condition of treatment.

The primary purpose in interpreting or construing a statute is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Companies, 280 S.C. 69, 310 S.E.2d 814 (1983). In construing a statute, it is to be assumed that words and phrases are

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used in their technical meaning if they have acquired one, and in their popular meaning if they have not, and the phrases and sentences are to be construed according to the rules of grammar. Poole v. Saxon Mills, 192 S.C. 339, 6 S.E.2d 761 (1940). Where a statute uses a word having a well-recognized meaning in law, the presumption is that the Legislature intended to use the word in that sense. Coakley v. Tidewater Construction Corp., 194 S.C. 284, 9 S.E.2d 724 (1940).

Section 38-77-240 is silent concerning the specific questions you have posed. The word "assignment" used in §38-77-240 does, however, have a well-recognized legal meaning.

According to 45 C.J.S. Insurance §410:

[a]s a general rule, in the absence of statutory or contractual prohibitions, an insurance policy, being a chose in action and also property, . . . , may properly be the subject of an assignment or transfer, although consent of insurer may be required. . . . Except as otherwise controlled by statutory provisions or provisions in the policy itself, the usual rules as to assignability, as to the requisites, validity, operation, and effect of assignments. . . . , apply to assignments of insurance policies. Statutory provisions as to assignments of choses in action have been held applicable to assignment of life policies, and in jurisdictions where a chose in action is assignable in equity only, an assignment of the policy does not vest the legal title in the assignee, but such assignment will be effectual in equity. An assignment of a policy is a contract distinct from the policy. [Footnotes omitted.]

Similarly, 45 C.J.S. Insurance §435 provides:

The operation and effect of an assignment of an insurance policy are in general, governed by the rules pertaining to other assignments. The effect of an assignment on the insurance contract is controlled by the terms and the circumstances of the contract

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of assignment itself. In the absence of any limitation in the assignment, it passes to the assignee all the rights of insured, but the assignee can acquire no greater rights than the assignor had at the time of the assignment.

....[Footnotes omitted.]

An assignment does not pass to the assignee a legal right to the security or debt, but merely vests in him an equitable interest, which the courts of law will protect. Wadsworth v. Griswold, Harp. 17 (S.C. 1823). Cf. Slater Corp. v. South Carolina Tax Comm'n, 280 S.C. 584, 314 S.E.2d 31 (Ct. App. 1984) (A chose in action can be validly assigned in either law or equity.); Perryclear v. Jacobs, 2 Hill, Eq. 504, Riley, Eq. 47 (S.C. 1837) (An assignee cannot pass an interest when he has none.). A debtor, before receiving notice of an assignment, may discharge himself from liability to the assignee by making payment to the assignor or a third party succeeding to his interest, but not thereafter. Patten v. Mutual Benefits Life Ins. Co., 192 S.C 189, 6 S.E.2d 26 (1940).

According to 6A C.J.S. Assignments §87(a):

After an indebtedness has been validly assigned by the creditor, a payment to the assignee is ordinarily a valid discharge of the indebtedness, irrespective of the question whether the indebtedness was or was not legally assignable, or what application the assignee made of the funds. If an assignee refuses payment, the debtor cannot pay the assignor but must keep his tender to the assignee good.

....[Footnotes omitted.]

Cf. A. E. Finley & Assoc., Inc. v. Hendrix, 271 S.C. 312, 249 S.E.2d 328 (1978) (The owner's refusal to pay a specific amount to the prime contractor and the subcontractor, pursuant to the assignment, was wrongful.). In addition, 6A C.J.S. Assignments §87(b) states:

Before the debtor has received notice of the assignment he may make a payment of the indebtedness, which will be binding on the assignee, either to the assignor, or to a third person succeeding to the latter's

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interest and having apparent authority to receive the payment, even though the debt is not due at the time the payment is made; and inquiry need not be made as to whether the debt has been assigned.

After notice of a valid assignment, however, a payment to the assignor or any person other than the assignee is at the debtor's peril and does not discharge him from liability to the assignee, although the latter has previously refused to accept a tender of payment; but, payment into court of the fund which is the subject of the assignment will operate to discharge the obligation of the debtor to the assignee thereof. The duty of the debtor to pay the assignee arises irrespective of who gives notice of the assignment.

Nevertheless, notice to the debtor of an assignment does not preclude him from discharging himself by making payment to the assignor if the assignment is invalid or a partial one, so that the debtor is not bound to recognize the same unless he has assented thereto, or if under the contract of assignment, the assignor is the agent of the assignee for the purpose of receiving and indorsing over to the assignee items made payable to and sent to the assignor. Moreover, where the assignment is for security, the assignee can recover from the debtor paying the assignor in disregard of the notice of assignment only if the assignee's security has been adversely affected, that is, only if the assignee has suffered a loss. So, in such case, the debtor is not liable for payments made to the assignor at a time the assignor was not indebted to the assignee. [Footnotes omitted.]

Consequently, the responses to both of your questions depend on the terms of the specific contract of assignment as well as other facts and circumstances relative to the assignment.

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Therefore, definitive answers to your questions are not possible. Nevertheless, the assigned benefits generally should be sent where the assignment provides that they be sent. Absent such a provision in the contract of assignment, a debtor may discharge his liability, before receiving notice of an assignment, by paying either the assignor or a third party succeeding to the assignor's interest, but not thereafter. See Patten, supra. Furthermore, the assignor generally has legal right to the security or debt and the assignee is vested with an equitable interest. The assignee of a claim against a person has no greater right against that person than the assignor. W. M. Kirkland, Inc. v. Providence Washington Ins. Co., 264 S.C. 573, 216 S.E.2d 518 (1975).

I hope that you will find the above discussion helpful. If I can be of further assistance, please advise me.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:

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