



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
 ATTORNEY GENERAL

May 13, 2005

The Honorable Glenn F. McConnell
 President *Pro Tempore*
 The Senate
 P. O. Box 142
 Columbia, S.C. 29202

Dear Senator McConnell:

You have requested an opinion concerning the applicability of the Motorcycle Safety Instruction Program to the private sector. In your letter, you explain that Section 59-53-2010 et seq. is ambiguous as to whether it precludes private companies from providing services for motorcycle safety training. You explain that the Motorcycle Foundation and the President of Technical Colleges appear to be operating under the assumption that private companies are precluded from providing motorcycle safety training. However, you indicate that you do not read the statute to preclude private sector participation and seek guidance as to the applicability of the statute. Finally, you mention that upon completion of the state supported safety program, an individual may apply for an insurance reduction. We advise that the Motorcycle Safety Instruction Program does not preclude private companies from offering motorcycle safety training.

Law / Analysis

S.C. Code Ann. Section 59-23-2020 provides as follows:

(A) The State Board for Technical and Comprehensive Education is authorized to establish a Motorcycle Safety Instruction Program. The board shall designate an individual who is currently an employee of the technical education system to coordinate and administer the program subject to the availability of funds necessary to support such activity. The executive director of the board, or his designee, is responsible for the planning, curriculum, and completion requirements of the program in accordance with subsection (C).

(B) The program must be implemented through the state technical education system at institutions which choose to provide the program. The coordinator shall select and facilitate the training and certification of instructors who shall implement the program.

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(C) The program of instruction must incorporate the Motorcycle Safety Foundation Motorcycle Rider Course core curriculum or equivalent as determined by the executive director.

A number of principles of statutory construction are pertinent to your inquiry. The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App. 1999) cert. denied as improvidently granted, *State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253 (2001). The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan*, 352 S.C. at 366, 547 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.* Undefined statutory terms must be interpreted in accordance with their usual and customary meaning. *Id.* Courts must apply clear and unambiguous terms of a statute according to their literal meaning. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). A court should consider, not merely the language of the particular clause being construed, but the words and meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Hudson, supra*.

When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct.App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.* Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. *Id.*; *City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck*, 330 S.C. 371, 498 S.E.2d 894 (Ct.App. 1998).

As you suggest in your letter, nothing contained in the above-referenced statutory language indicates that private companies are precluded from providing motorcycle safety training. Indeed, the first sentence of § 59-53-2020 simply states that the State Board for Technical and Comprehensive Education is "authorized" to establish "a" Motorcycle Safety Instruction Program. Typically, the word "a" may mean "one" or it may connote "any." As our Supreme Court stated in *Brown v. Sikes*, 188 S.C. 288, 198 S.E. 854, 856 (1938), "[o]f itself [the word "a"] ... is in no sense a term of limitation." See also, § 59-53-2010(1) [term "program" means "a" statewide motorcycle safety instruction program." Moreover, § 59-53-2020(B) provides that the "program must be implemented through the technical education system at institutions which choose to provide the program." (emphasis added). The fact that local institutions are given the option of offering or not offering "the program" is further indication that the Motorcycle Safety Instruction Program provided

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by the TEC system was not intended to be exclusive. Based upon the literal language of § 59-53-2020, we thus cannot conclude that private companies are prohibited from providing motorcycle safety training.

We note also that § 59-53-2050 states that

[a] person may apply for a reduction in motorcycle insurance rates under the jurisdiction of the Department of Insurance *upon proof of satisfactory completion of the program.*

(emphasis added). While at first glance, this provision appears to authorize insurance rate reduction only for those persons completing the TEC training program authorized by § 59-53-2020, this alone is not determinative of your question. We note also that § 38-73-737, enacted subsequent to § 59-53-2050, provides in pertinent part as follows:

(A) Premium rates charged for liability coverages and collision coverage *under a private passenger automobile insurance policy* are subject to an appropriate driver training course credit once satisfactory evidence is presented that an applicant for the credit, who is not subject to the youthful operator approved driver training course credit mandated by Regulation 69-13.2(C), has completed successfully an approved driver training course. The amount of the credit may be determined by each individual insurer based upon factually or statistically supported data and is subject to prior approval by the commissioner. The credit must be afforded to the operator for thirty-six months from the date the approved driver training course was completed. The insurer may require as a condition of providing and maintaining the credit, that the insured for a three-year period after course completion not be involved in an accident for which the insured is at fault. The credit must be afforded by each insurer in a nondiscriminatory manner to all applicants, other than those considered within Regulation 69-13.2(C).

(B) "An approved driver training course" for purposes of this section is a driver training course which has been approved by the Department of Motor Vehicles and was conducted by:

- (1) a recognized college or university;
- (2) instructors certified by the Department of Motor Vehicles; or
- (3) any other school approved and supervised by the Department of Motor Vehicles.

(C) The requirements of the course, in order to qualify for the insurance credit, must include the following minimum criteria:

- (1) eight hours of classroom instruction;
- (2) the teaching method must include group discussion, lecture, and visual presentations;
- (3) the course materials must include age-related physical changes affecting older drivers, accident prevention measures, and a basic review of the rules-of-the-road including, but not limited to, rights of way, backing, entering, and leaving interstate highways; and
- (4) a relevant test on the course material.

(D) For purposes of this section “satisfactory evidence” is a certificate signed by an official of the school or the Department of Motor Vehicles, which certifies that:

- (1) the person achieved a passing grade on a relevant test on the course material;
- (2) the course was approved by and the instructors were certified by the Department of Motor Vehicles; and
- (3) the school was approved and supervised by the Department of Motor Vehicles. (emphasis added).

Courts have differed as to whether a motorcycle is included within the term “automobile” for purposes of automobile insurance. *See, Shipley v. American Standard Insurance Company of Wisconsin*, 183 Neb. 109, 158 N.W.2d 238 (1968) [word “automobile” in exclusion clause ordinarily includes motorcycles]; *State v. N.C. ex rel. Commissioner of Insurance v. N.C. Automobile Rate Administrative Office*, 24 N.C. App. 223, 210 S.E.2d 441 (1974) [term “automobile” as used in statutes which provide for the creation and functions of the Automobile Rate Administrative Office includes the term “motorcycle” and same laws apply to liability insurance for both]; *In the Matter of Country-Wide Insurance Co.*, 45 N.Y.2d 581, 412 N.Y.S.2d 106, 384 N.E.2d 653 (1978) [“automobile” within automobile accident indemnification endorsement includes “motorcycle”]; *contra, Katanik v. State Farm Mutual Automobile Ins. Co.*, 455 N.E.2d 1340 (Ohio 1982) [words “automobile” and “motorcycle” are not synonymous, nor does the term “automobile” include a motorcycle].

Section 38-73-737 provides further evidence that the General Assembly has envisioned that formal training relating to the operation of motor vehicles may be performed by the private sector. As our Supreme Court has recognized, different statutes in *para materia*, although enacted at

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different times, and not referring to each other, must be construed together as one system and as explanatory of each other. *Fishburne v. Fishburne*, 171 S.C. 408, 172 S.E. 426 (1934). Moreover, a statute must be interpreted with common sense to avoid unreasonable consequences. *United States v. Rippetoe*, 178 S.C. 735 (4th Cir. 1949). A sensible construction, rather than one which leads to irrational results, is always warranted. *McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964).

Here, the underlying purpose of § 59-53-2020, in providing for motorcycle safety training, is the preservation of public safety. Safety regulations governing vehicles on public roadways represents the exercise of the Legislature's police power to protect the public. *See, People v. Elkins*, 12 Cal. App. 4th Supp 1, 16 Cal. Reprtr.2d 504 (1992). In our view, it would be incongruous to construe § 59-53-2020 as precluding private businesses from assisting in the task of motorcycle safety training. Not only is there no express language in the statute to suggest this narrow interpretation, but such a construction would be unreasonable and inconsistent with the Legislature's purpose in promoting public safety on the highways through motorcycle safety training. Thus, we concur in your reading that the statute does not prohibit private businesses from providing motorcycle safety training.

Conclusion

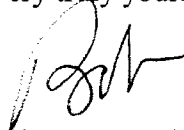
It is our opinion that neither § 59-53-2020, nor any other statute of which we are aware, precludes private businesses from providing motorcycle safety training. In our view, any reading that the Motorcycle Safety Instruction Program – authorized by § 59-53-2020 – is the exclusive motorcycle safety training program which may be offered is not mandated either by the language of the statute or by the Legislature's purpose in protecting and promoting public safety on the highways. In other words, any construction that the Motorcycle Safety Instruction Program precludes private companies from offering such a program is anti-competitive and thus, in our opinion, unreasonable. Of course, a state agency may exercise only such authority as is expressly conferred upon it by the General Assembly or which may be reasonably implied from such express authority. *Op. S.C. Atty. Gen.*, November 29, 1995. Thus, we read § 59-53-2020 as you do – merely authorizing the Motorcycle Safety Instruction Program, but not excluding private companies from operating or offering a similar program.

As to your question regarding potential amendments or legislative clarification, as you indicate, legislation to make absolutely clear that private businesses may offer motorcycle safety training may be advisable in order to avoid any dispute. Moreover, you may wish to seek clarification as to whether or not § 38-73-737 is applicable to motorcycle safety training. As mentioned above, this statute provides for a credit on "private passenger automobile insurance" rates for participation by a driver in an authorized education training course, including those offered by private companies. While we believe a court is likely to conclude that § 38-73-737 is applicable to motorcycle safety training, it is not absolutely clear whether motorcycles are covered by this statute, or are governed instead only by § 59-53-2020 which authorizes reduction in insurance rates for

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participation in the Motorcycle Safety Instruction Program, established pursuant to § 59-53-2020. Of course, such a clarifying amendment would be a policy question for the General Assembly, but would serve to clear up questions in this area.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General