

The State of South Carolina



Office of the Attorney General

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May 25, 1989

Perry W. Brown, Deputy Director
State of South Carolina
Division of Public Safety Programs
Edgar A. Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Brown:

You have requested an opinion from this Office concerning whether "the exceptions to the old child restraint law still apply to the new law." By 1988 S.C. Acts 532, the South Carolina General Assembly, inter alia, amended S.C. Code Ann. §§56-5-6410, 56-5-6420, & 56-5-6430 (1976 & 1988 Cum. Supp.) and added S.C. Code Ann. §56-5-6445 (1976 & 1988 Cum. Supp.). Your inquiry concerns this legislation.

Section 56-4-6410, as effective January 1, 1989, following the amendment in 1988, provides:

Every driver of a motor vehicle (passenger car, pickup truck, van, or recreational vehicle) registered in this State or primarily operated on the highways and streets of this State when transporting a child under six years of age upon the public streets and highways of the State shall provide an appropriate child passenger restraint system and shall secure the child as follows:

- (1) Any child less than one year of age must be properly secured in a child restraint system which meets the standards prescribed by the National Highway Traffic Safety Administration.

- (2) Any child under four years of age when transported in the front seat must be properly secured in a child restraint system meeting standards prescribed by the National Highway Traffic Safety Administration.
- (3) Any child four until six years of age when transported in the front seat must be secured by a safety belt provided in the motor vehicle.
- (4) Any child one year of age or more and under six years of age when transported in a rear seat must be properly secured in a child restraint system which meets the standards prescribed by the National Highway Traffic Safety Administration unless the child is secured by a safety belt provided in the motor vehicle.

Any child restraint system of a type sufficient to meet the physical standards prescribed by the National Highway Traffic Safety Administration at the time of its manufacture is sufficient to meet the requirements of this article.

1988 S.C. Acts 532, §16 (codified at S.C. Code Ann. §56-5-6410 (1976 & 1988 Cum. Supp.)). This amendment essentially changed "four years of age" in the first paragraph to "six years of age," added item (3), renumbered former item (3) as item (4), and changed in item (4) "one year through three years of age" to "one year of age or more and under six years of age." Compare 1988 S.C. Acts 532, §16 with S.C. Code Ann. §56-5-6410 (1976 & 1987 Cum. Supp.). As amended to change the age requirement from three to six years of age, §56-5-6420 provides:

If all the seating positions with restraint devices are occupied by children under the age of six years, a child may be transported and the driver of the motor vehicle is not in violation of the provisions of this article, but priority must be given to children under the age of six years, according to their ages.

1988 S.C. Acts 532, §17 (codified at S.C. Code Ann. §56-5-6420 (1976 & 1988 Cum. Supp.)). As amended to change the phrase "the vehicle safety belt" to "safety belts," §56-5-6430 provides:

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The provisions of this article do not apply if a child being transported is being fed, has a physical impairment, or a medical problem or any distress which makes it impractical to use a child restraint system. Alternate restraint protection, such as safety belts, must be utilized if possible..

1988 S.C. Acts 532, §18 (codified at S.C. Code Ann. §56-5-6430 (1976 & 1988 Cum. Supp.)). New §56-5-6445 provides that "[t]he provisions of this article apply to all motor vehicles equipped with safety belts." 1988 S.C. Acts 532, §19 (codified at S.C. Code Ann. §56-5-6445 (1976 & 1988 Cum. Supp.)).

S.C. Code Ann. §56-5-6440 (1976 & 1988 Cum. Supp.) was not amended by 1988 S.C. Acts 532. Section 56-5-6440 provides:

The provisions of this article do not apply to:

- (1) Taxi drivers.
- (2) Drivers of emergency vehicles when operating in an emergency situation.
- (3) Church, day care and school bus drivers.
- (4) Public transportation operators.
- (5) Commercial vehicles.

Apparently, you question the continued applicability of the exceptions contained in §56-5-6440.

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (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 the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute,

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the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, supra. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979).

In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The legislature is presumed to have fully understood the import of the words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 196 S.E. 523 (1936).

Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

One legal commentator has stated:

In accordance with the general rule of construction that a statute should be read as a whole, as to future transactions the provisions introduced by the amendatory act should be read together with the provisions of the original section that were reenacted or left unchanged, in the amendatory act, as if they had been originally enacted as one section. Effect is to be given to each part, and they are to be interpreted so that they do not conflict. If the new provisions and the reenacted or unchanged portions of the original section cannot be harmonized, the new provisions should prevail as the latest declaration of the legislative will. However, if the amendment is declared unconstitutional and invalid, the original act remains in force and effect. In the absence of express evidence to the contrary, the new provisions are applicable only to the unchanged portions of the original section, and have the same scope. [Footnotes omitted.]

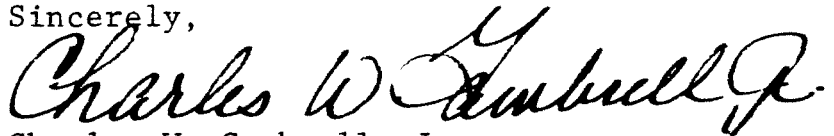
Sutherland Stat. Constr. §22.34 (4th ed. 1985).

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Applying these rules of statutory construction to the legislation at issue here, the provisions of 1988 S.C. Acts 532, §§16-19 should be read together with §56-5-6440, which was left unchanged, as if they had been originally enacted together. Effect is to be given to each of the amended sections, including new §56-5-6445, as well as §56-5-6440 and they are to be interpreted, if possible, so that they do not conflict. Sections 56-5-6440 and 56-5-6445 can both reasonably be given effect by first applying the exceptions contained in §56-5-6440 and by then applying the provisions of §56-5-6445. Therefore, the exceptions contained in §56-5-6440 appear to remain applicable along with the relevant amendments contained within 1988 S.C. Acts 532.

If I can answer any further questions concerning this matter, please advise me.

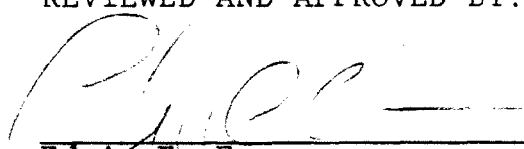
Sincerely,

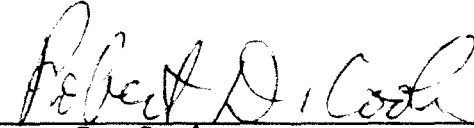


Charles W. Gambrell, Jr.
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