1981 S.C. Op. Atty. Gen. 54 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-33, 1981 WL 96559

Office of the Attorney General

State of South Carolina
Opinion No. 81-33
April 2, 1981

***1 SUBJECT: Insurance, Automobiles—Personal Buying Protection**

No minimum medical, hospital, disability, and loss of income benefits, payable pursuant to the requirements of the South Carolina Automobile Reparation Reform Act shall be subject to subrogation or assignment. §§ 56–11–10, et seq., Code of Laws, South Carolina, 1976, as amended.

To: L. Kennedy Boggs
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QUESTION:

1. Are the minimum medical, hospital, disability, and loss of income benefits, payable pursuant to the requirements of the South Carolina Automobile Reparation Reform Act, §§ 56–11–10, et seq., Code of Laws, South Carolina, 1976, as amended, subject to subrogation or assignment?

DISCUSSION:

The South Carolina Reparation Reform Act of 1974, § 56–11–10, et seq., Code of Laws, South Carolina, 1976, as amended, requires by § 56–11–110 that no policy of automobile liability insurance may be issued, delivered, sold, or renewed in South Carolina after October 1, 1978, unless such policy at the option of the insured offers certain minimal medical, hospital, disability, and loss of income benefits. Such benefits are known as Personal Injury Protection benefits (PIP). These benefits must cover the named insured and, among others, other persons injured while occupying the insured motor vehicle as a passenger. Section 56–11–110 further provides that no benefit payable pursuant to this section shall be subject to subrogation or assignment.

When the Automobile Reparation Reform Act was first passed in 1974, the statute provided that PIP benefits recovered under § 56–11–110 could be subrogated or assigned, but only as provided in § 56–11–130(b). Former § 56–11–110 states in pertinent part that:
. . . No benefit payable pursuant to this section shall be subject to subrogation or assignment except as provided for in § 56–11–130(b).

Former § 56–11–130(b) provided that a claimant who had recovered benefits of economic loss from his insurer, and subsequently prevailed in an action against a third party, must reduce his recovery by the amount of the benefits paid for economic loss by the insurer.

In 1978, the General Assembly, by means of Act No. 569, amended several provisions of the Automobile Reparation Reform Act of 1974. Among these amendments was the deletion in § 56–11–110 of the prior reference to § 56–11–130(b), and further to repeal § 56–11–130(b) in its entirety. Therefore, it appeared that the General Assembly intended by the above referenced

amendments that the benefits as provided for in § 56–11–110 could not now be offset against any recovery by an injured claimant as previously allowed by means of § 56–11–130(b).

However, some ambiguity has arisen with respect to the provisions of § 56–11–150(f). That section, which was not amended, states that:
(f) Nothing in this chapter shall be deemed to affect the right of any person to claim and sue for damages, as provided by law, sustained by him as a result of a motor vehicle accident, except that benefits received or recovered under the no-fault provisions required by Article I of this chapter [South Carolina Automobile Reparation Reform Act] shall be deducted from any tort recovery, settlement, or judgment for bodily injury.

***2** That section specifically states that nothing in the Automobile Reparation Reform Act shall affect the right of an injured claimant to claim and sue for damages, except that benefits recovered under the no-fault provisions shall be deducted from any tort recovery, settlement or judgment. This section is in direct conflict with the amendments to § 56–11–110 and the repeal of § 56–11–130(b), as provided for in Act No. 569 of 1978.

It is presumed that in adopting an amendment to a statute that the Legislature intended to make some changes in the existing law. Vernon v. Harleysville Mutual Casualty Co., 244 S.C. 152, 135 S.E.2d 841 (1964); 82 C.J.S. Statutes § 384(b)(2)(1953). That the legislature intended to make such a change in the 1974 Act is buttressed by the fact that the title of Act No. 569 of 1978 states in pertinent part that:
. . . And to Amend Section 56–11–130, Relating To General Releases And Reduction Of The Amount Recovered By A Claimant, So As To Delete Provisions Relating To Reduction Of Verdicts Because Of Benefits For Economic Loss Recovered From Other Persons Or Insureds.

See Lindsay v. Southern Farm Bureau Casualty Insurance Co., 258 S.C. 272, 188 S.E.2d 374 (1972).

It is further axiomatic in statutory construction that unchanged sections to an act and the amendments thereto are to be interpreted in such a way that they do not conflict. The sections of the original statute and the amendments are both to be given effect and reconciled if possible. However, in a situation, as with the conflict stated above, where an unaltered section and an amended section cannot be reconciled, the provision of the amendatory act, being the last expression of the will of the legislature, must prevail. 2 SUTHERLAND, Statutory Construction, Vol. 1A, § 22.35 (1972); 82 C.J.S. Statutes § 385(b)(1953).

CONCLUSION:

The South Carolina Automobile Reparation Reform Act of 1974, § 56–11–10, et seq., as amended by Act No. 569, Acts and Joint Resolutions, 1978, provides that the minimum medical, hospital, disability and loss of income benefits payable pursuant to § 56–11–110 shall not be subject to subrogation or assignment.

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