



ALAN WILSON
ATTORNEY GENERAL

May 13, 2015

The Honorable Luke A. Rankin
PO Box 142
Columbia, SC 29202

Dear Senator Rankin:

This Office received your request for an opinion regarding the interpretation of section 56-5-5015(H)(1) of the South Carolina Code. You are specifically asking if this code section, which entails an exemption to the restrictions on sunscreen devices on motor vehicles, applies to the light transmittance, luminous reflectance, or placement of a sunscreen.

LAW/ANALYSIS:

Section 56-5-5015 in its entirety provides:

(A) No person may operate a motor vehicle that is required to be registered in this State on any public highway, road, or street that has a sunscreen device on the windshield, the front side wings, and side windows adjacent to the right and left of the driver and windows to the rear of the driver that do not meet the requirements of this section. If no after-factory installed sunscreen device has been added to the window surface, the provisions of this section regarding light transmittance do not apply.

(B) A sunscreening device must be nonreflective and may not be red, yellow, or amber in color. A sunscreening device may be used only along the top of the windshield and may not extend downward beyond the AS1 line. If the AS1 line is not visible, no sunscreening device may be applied to the windshield.

(C) A single sunscreening device may be installed on the side wings or side windows, or both, located at the immediate right and left of the driver and the side windows behind the driver. The sunscreening device must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must not be less than twenty-seven percent.

(D)(1) A sunscreening device to be applied to the rear-most window must be nonreflective and have a light transmission of not less than

twenty percent. If a sunscreening device is used on the rear-most window, one right and one left outside rearview mirror is required.

(2) Beginning January 1, 1993, a single sunscreening device to be applied to the rear-most window must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must not be less than twenty-seven percent. If a sunscreening device is used on the rear-most window, one right and one left outside rearview mirror is required.

(3) A motor vehicle with a sunscreening device which complied with the requirements of item (1) at the time of installation is not considered to be in violation of this section on January 1, 1993, so long as the original sunscreening device is in place.

(E) Each vehicle equipped with an after-factory sunscreening device, whether installed by a consumer or professional window tinter, at all times must bear a certificate of compliance. The certificate of compliance must be of a size and form prescribed by the Department of Public Safety. Each certificate of compliance must be properly attached to the vehicle on the inside and lower right hand corner of each window containing an after-factory installed sunscreening device and must contain the following information:

(1) the percentage of light transmission allowed by the sunscreening device;

(2) the identity of the installer by name, address, and telephone number; and

(3) date of installation.

(F) Sunscreening devices offered for sale or use in South Carolina must include instructions with the product or material for proper installation. The manufacturer of the sunscreening device offered for sale or use in South Carolina must provide the certificate of compliance specified in subsection (E) and instructions for affixing it to the sunscreening device.

(G) No person may:

(1) offer for sale or for use any sunscreening product or material for motor vehicle use not in compliance with this section;

(2) install any suncreening product or material on vehicles titled for use on public roads without permanently affixing the certificate of compliance specified in this section.

A professional window tinter who violates the provisions of subsections (E) or (G) is guilty of a misdemeanor triable in magistrate's court and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than thirty days, or both, for each offense. A consumer who violates the provisions of subsection (E) or (G) is guilty of a misdemeanor triable in magistrate's court and, upon conviction, must be fined not less than two hundred dollars or imprisoned not more than thirty days for each offense.

(H) The provisions of this section do not apply to:

(1) a motor vehicle registered in this State in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sunscreening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the vehicle at all times during its operation and must be produced at the request of a law enforcement officer. The affidavit must be updated every two years; or

(2) a law enforcement vehicle used regularly to transport a canine trained for law enforcement purposes.

(I) The light transmittance requirement of this section applies to windows behind the driver on pickup trucks, but does not apply to windows behind the driver on other trucks, buses, trailers, mobile homes, multipurpose passenger vehicles, and recreational vehicles.

(J) As used in this section:

(1) "Sunscreening device" means a film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(2) "Light transmission" means the ratio of the amount of total visible light to pass through a product or material to the amount of the total light falling on the product or material.

(3) "Luminous reflectant" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.

(4) "Nonreflective" means a product or material primarily designed to absorb light rather than to reflect it.

(5) "Multipurpose passenger vehicle" means a vehicle with motive power designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

(6) "Motor home" means a vehicular unit designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.

(7) "Truck" means a vehicle with motive power designed primarily for the transportation of property or special purpose equipment.

(8) "Bus" means a vehicle with motive power designed for carrying more than ten persons.

(9) "Manufacturer" means a person engaged in the manufacturing or assembling of sunscreening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

(10) "Recreational vehicle" means a self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes, and is used solely as a family/personal conveyance.

(11) "AS1" means a glazing material position marking as defined in 49 Code of Federal Regulations, Section 571.205, Subsection S5.1.1.

(12) "Trailer" means every vehicle without motive power designed to carry persons or property, and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(13) "Professional window tinter" means a person who installs suncreening devices for profit.

(K) A person who owns or operates a motor vehicle in violation of the provisions of this section is guilty of a misdemeanor triable in magistrate's court and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

S.C. Code Ann. § 56-5-5015 (1976 Code, as amended) (emphasis added).

To answer your question, we need to consider the principles of statutory construction. In our August 14, 2014 opinion, we stated the following:

[a]s our Supreme Court explained in SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009) regarding the generally applicable rules of construction,

[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2008). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used; as that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537, 537 So.2d 543, 546 (2000). The Court should give the words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. Sloan v. S.C. Bd. of Physical Therapy Exam'rs. 370 S.C. 452, 469, 636 S.E.2d 598 (2006;.

In addition, "courts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intent." State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct App. 2011) Where the language of a statute is ambiguous or "lends itself to equally logical interpretations," a court may look beyond the borders of the act itself to determine the Legislature's intent. Kennedy v. S.C. Ret. Systems, 345 S.C. 339, 348 549 S.E.2d 243, 247 (2001).

Op. S.C. Atty. Gen., August 14, 2014 (2014 WL 4253409).

We added in our February 17, 2015 opinion:

The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute

was passed can be used to assist in interpreting a statute. *Id.* An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. *Id.* at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." *U.S. v. Rippetoe*, 178 F.2d 735, 737 (4th Cir. 1950).

Op. S.C. Atty. Gen., February 17, 2015 (2015 WL 836506).

Section 56-5-5015(H)(1) states that a physician or optometrist has to provide an affidavit that a person has a physical condition that makes it necessary to equip the motor vehicle of such person or his legal guardian with a sunscreen which would violate the light transmittance or luminous reflectance provisions of section 56-5-5015. This seems to indicate that the exception only applies to the light transmittance and luminous reflectance portions of the statute.

However, section 56-5-5015(H) begins with the language "[t]he provisions of this section do not apply to:". This plain and simple language shows that the exception applies to all of the portions of the statute - the placement of sunscreens on vehicles as well as the light transmittance and luminous reflectance of a sunscreen.

This is supported by the history of the statute. 1992 Act No. 462 first provides for a medical affidavit exception, stating:

(H) The provisions of this section do not apply to a motor vehicle registered in this State in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with suncreening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the vehicle at all times during its operation and must be produced at the request of a law enforcement officer. The affidavit must be updated every two years.

(emphasis added).

The 1992 Act uses the same language as the current statute and provides for the light transmittance, luminous reflectance, and placement of a sunscreen on a vehicle:

(B) A sunscreening device must be nonreflective and may not be red, yellow, or amber in color. A sunscreening device may be used only along the top of the windshield and may not extend downward beyond the AS1 line. If the AS1 line is not visible, no sunscreening device may be applied to the windshield.

(C) A single sunscreening device may be installed on the side wings or side windows, or both, located at the immediate right and left of the driver and the side windows behind the driver. The sunscreening device must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must not be less than twenty-seven percent.

(D)(1) A sunscreening device to be applied to the rear-most window must be nonreflective and have a light transmission of not less than twenty percent. If a sunscreening device is used on the rear-most window, one right and one left outside rearview mirror is required.

(2) Beginning January 1, 1993, a single sunscreening device to be applied to the rear-most window must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must not be less than twenty-seven percent. If a sunscreening device is used on the rear-most window, one right and one left outside rearview mirror is required.

(3) A motor vehicle with a sunscreening device which complied with the requirements of item (1) at the time of installation is not considered to be in violation of this section on January 1, 1993, so long as the original sunscreening device is in place.

Id.

The plain and ordinary meaning of the 1992 Act proves that the original legislative intent was for the exception to apply to the light transmittance, luminous reflectance, and placement of a sunscreening device on a vehicle.

CONCLUSION:

We believe that the intent of the Legislature is for section 56-5-5015(H)(1) to apply to the light transmittance, luminous reflectance, and placement of a sunscreening device on a vehicle.

Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

The Honorable Luke A. Rankin
Page 8
May 13, 2015

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General