

1979 S.C. Op. Atty. Gen. 205 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-129, 1979 WL 29131

Office of the Attorney General

State of South Carolina

Opinion No. 79-129

November 19, 1979

**\*1 (1) The Department of Highways and Public Transportation must suspend the license of a driver who fails to submit a written verification of insurance (Form FR-10) after being involved in a motor vehicle accident.**

**(2) The Department must continue a suspension imposed on a driver because of his failure to satisfy a judgment in a cause of action arising out of a motor vehicle accident until such time as the judgment is satisfied or declared, by a court of competent jurisdiction, to be void.**

Financial Responsibility Section

QUESTION:

1. Is the Department of Highways and Public Transportation required to suspend the license of a driver involved in a motor vehicle accident who thereafter fails to submit a written verification of insurance (Form FR-10) even though it appears clear from the accident report that the driver had no responsibility for the accident.
2. Should the Department keep a driver's license under suspension if he has satisfied one judgment in a cause of action arising out of a motor vehicle accident when the Department has received a second judgment in favor of the same plaintiff arising out of the same cause of action.

DISCUSSION:

(1) Section 56-9-350 requires that the operator of a motor vehicle involved in an accident must return to the Department a completed and verified FR-10. That section specified that the failure to return the form, properly verified, will be prima facie evidence that the vehicle is uninsured.

Section 56-9-351 requires the Department to suspend the driver's license of each operator, together with all the registrations of each owner, of all of the motor vehicles involved in an accident which results in personal injury or property damage over \$200, unless the owner posts a bond deemed to be sufficient by the Department to cover the damages which resulted from the accident. Section 56-9-352 states that § 56-9-351 shall not apply in certain situations where there was adequate insurance.

None of the above sections speak to a determination of the responsibility for the accident. The basis for the suspension is the lack of insurance—not a question of who is at fault. If the owner or the operator wishes to contest the decision of the Department to suspend his driver's license or registrations, he may appeal the decision of the Department, requesting an administrative hearing wherein he may show that there is no reasonable possibility that he will be found liable for damages caused by the accident. This procedure is available to the owner or the operator *after* the decision is made by the Department that the owner or operator has failed to comply with §§ 56-9-350 and 56-9-351 and that he does not come under the exemptions provided in § 56-9-352.

Therefore, it is the opinion of this office that the Department is required to suspend the driver's license of any operator and the registrations of the owner of any vehicle involved in a traffic accident if the operator or owner fails to return to the Department within fifteen (15) days a completed and verified FR-10. The failure of the owner or operator to timely return the FR-10 is evidence that the vehicle is uninsured, and the Department must act to effect the proper suspensions. The failure of an investigating officer to assign fault or issue a traffic citation is immaterial to the Department's action. Once the Department has effected the suspension, it is up to the individual to show that he is excluded from the provisions of § 56-9-351.

\*2 (2) Your second question concerns the effect of a second judgment against a defendant/operator by the same plaintiff from the same cause of action arising out of an automobile accident.

S. C. Code § 56-9-430 requires the Department to suspend the license and registration of any person against whom a judgment is rendered upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicles. No provision is made for the Department to determine the validity of the judgment. If the judgment is properly certified by the Clerk of Court or by a Magistrate, the Department is required to act upon it. The fact that a judgment might be defeated by a subsequent court determination is of no concern of the Department.

In the specific case you asked me to review, the fact that the second judgment might be subject to attack on the grounds that it was barred by *res judicata* cannot be considered by the Department. (I note in passing that *res judicata* is an affirmative defense, and the defendant's failure to raise it may bar him from attacking the judgment on that basis.) The Department must suspend the Defendant's driver's license until both judgments are satisfied or until notification of subsequent court action voiding the second judgment.

Therefore, it is the opinion of this office that when the Department receives a properly certified copy of an unsatisfied judgment, the Department must suspend the Defendant's driver's license and registration until such time as the judgment is satisfied under the provisions of §§ 56-9-470 and 56-9-480, except as otherwise provided in §§ 56-9-440 to 56-9-460, and 56-9-490, or until the Department has been notified of court action voiding the judgment.

Further, it is the recommendation of this office that the Department require that any judgment be identified as having resulted from a cause of action 'arising out of the ownership, maintenance or use of any motor vehicle.' This requirement might be met by having a certified copy of the complaint or by having the judgment specifically identify the cause of action as having arisen from an automobile accident.

#### CONCLUSION:

(1) The Department of Highways and Public Transportation must suspend the license of a driver who fails to submit a written verification of insurance (Form FR-10) after being involved in a motor vehicle accident.

(2) The Department must continue a suspension imposed on a driver because of his failure to satisfy a judgment in a cause of action arising out of a motor vehicle accident until such time as the judgment is satisfied or voided by a court of competent jurisdiction.

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