Child Care Facilities -- Child-Restraint Devices

Number: INFORMAL

Date: June 27, 2016

The Honorable Mark S. Pafford
Democratic Leader
2240 Palm Beach Lakes Boulevard
Suite 102
West Palm Beach, Florida 33409-3403

Dear Representative Pafford:

This is in response to your letter of February 11, 2016, requesting an opinion as to whether child care facilities are encompassed by section 316.613, Florida Statutes, which requires the use of certain child-restraint devices, including booster seats, when transporting children aged 4 and 5. You state that the Department of Children and Families has issued warnings and citations to child care facilities that have not used booster seats for such children. An amendment was recently proposed in both the House and the Senate and then withdrawn from consideration that would have specifically excluded child care facilities from the scope of the law.[1] You inform us, however, that there is confusion as to whether the current law applies to child care facilities. As discussed below, it appears that public and private child care centers are subject to section 316.613, unless and until the Legislature decides to amend the provisions therein.

Section 316.613(1)(a), Florida Statutes, provides:

"(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.
2. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat may be used."

The final sentence of paragraph (6) of the statute provides:

"It is the obligation and responsibility of the parent, guardian, or *other person responsible for a child's welfare as defined in s. 39.01* to comply with the requirements of this section." (e.s.)

Section 39.01(47), Florida Statutes, contains the definition referred to in paragraph (6):

"'Other persons responsible for a child's welfare' includes … an employee of any school, *public or private child day care center*, residential home, institution, facility, or agency[.]" (e.s.)

Section 316.613 contains express exemptions and exceptions, but none of these encompasses child care facilities. In the following provision, paragraph (1)(a)2 permits transport of children aged 4 and 5 using a safety belt alone without a child restraint device in three limited situations:

“[T]he requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:
a. Is being transported gratuitously by an operator who is not a member of the child’s immediate family;
b. Is being transported in a medical emergency situation involving the child; or
c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.”

The term, “gratuitous,” used in paragraph (1)(a)2.a. above, is defined as: “Done or performed without obligation to do so; given without consideration in circumstances that do not otherwise impose a duty.” Black’s Law Dictionary (10th ed. 2014). Accordingly, “transported gratuitously” does not apply to children being provided transportation by public or private child care facilities.

Paragraph (2) of the statute excludes certain vehicles from the term “motor vehicles”:

“(2) As used in this section, the term “motor vehicle” means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:
(a) A school bus as defined in s. 316.003(68).
(b) A bus used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in s. 316.615(1)(b), or in conjunction with school activities.
(c) A farm tractor or implement of husbandry.
(d) A truck having a gross vehicle weight rating of more than 26,000 pounds.
(e) A motorcycle, moped, or bicycle.”

Paragraph (6) excludes motor vehicles when the driver and vehicle are hired for compensation to provide transport:

“(6) The child restraint requirements imposed by this section do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation.”

None of these provisions constitutes a specific exemption or exception that encompasses child care facilities as a category.

It therefore appears that under the current version of section 316.613, Florida Statutes, public and private child care centers are subject to the statutory obligations included therein.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* HB 7063, 2016 Legislative Session.