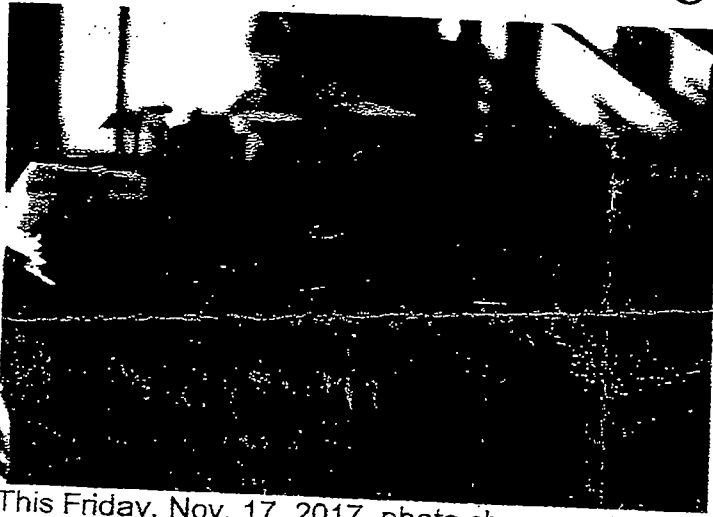


National

## 1st lawsuit filed over missing South Carolina seal



This Friday, Nov. 17, 2017, photo shows a stack of legislation missing the Great Seal of the State of South Carolina, a mark that's required by the state constitution for bills to be officially enacted, at the South Carolina Department of Archives and History in Columbia, S.C. Secretary of State Mark Hammond, who says he discovered in August some acts were missing the seal, told The Associated Press on Friday he'll ensure new bills have the mark going forward but that he expects hearings over the missing ones. (Meg Kinnard/Associated Press)

By Meg Kinnard | AP November 21

COLUMBIA, S.C. — The first legal challenge has been filed following the discovery that more than a hundred South Carolina laws are missing the state seal.

Greenville attorney Joshua Hawkins filed a lawsuit on Monday seeking confirmation to determine if two tort reform bills passed in 2005 and 2011 have the state's Great Seal. If not, Hawkins says the laws would be invalid, as the South Carolina Constitution requires the mark for acts to officially become law.

The lawsuit comes a week after The Associated Press reported more than 100 laws were missing the state seal. According to the state constitution, "No bill or joint resolution shall have the force of law until it ... has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives."

*True Certified Copy*

# South Carolina Legislative Council

DAVID H. WILKINS, CHAIRMAN  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

GLENN F. McCONNELL  
CHAIRMAN, SENATE JUDICIARY COMMITTEE  
THE SENATE

JAMES H. HARRISON  
CHAIRMAN, HOUSE JUDICIARY COMMITTEE  
THE HOUSE OF REPRESENTATIVES

ROBERT L. PEELER  
PRESIDENT OF THE SENATE

JIM MILES  
SECRETARY OF STATE



STATE HOUSE, FIRST FLOOR  
AND  
DENNIS BUILDING, SUITE 434  
1000 ASSEMBLY STREET  
P.O. BOX 11489, COLUMBIA, S.C. 29211-1489  
TELEPHONE: (803) 734-2145  
FAX: (803) 734-2425

STEPHEN T. DRAFFIN  
CODE COMMISSIONER AND DIRECTOR

October 21, 2002

Mr. Spencer Hewitt  
Secretary of State's Office  
Edgar Brown Building  
Columbia, South Carolina 29211

Dear Spencer:

You asked us recently to help locate the original of H.4323 of 1994 (Ratification Number 585 of 1994 and Act Number 7 of 1995) which became law on January 12, 1995, without the signature of the Governor. As we indicated in our telephone conversation, the Governor's office sends acts directly to the Secretary of State's office without transmitting them back through any office of the General Assembly. It is our best guess if you have no record of it that the original was lost during the changeover from the Campbell administration to the Beasley administration in January 1995, especially since the Governor didn't sign it. We asked Steve Tuttle at Archives to go through the boxed materials of these administrations, and he indicated that after doing so the original of this act could not be found. We did not check with Governor Hodges' office but it may be worth trying to follow up there although this would be a long shot.

In order that you can have a record of this act in the Secretary of State's office, we have prepared a duplicate from the computer files maintained by Legislative Printing. This is the same procedure we follow from time to time when bills are misplaced while under the consideration of the General Assembly. This should provide you with a sufficient record of what was ratified by the General Assembly and what became law without the signature of the Governor. If we can be of further help, please let us know.

Very truly yours,

A handwritten signature in black ink, appearing to be "SK" followed by a long horizontal line.

Stephen T. Draffin

STD/gjk  
Enc.



ALAN WILSON  
ATTORNEY GENERAL

December 1, 2017

The ~~Honorable Joshua A. Putnam~~ Member  
South Carolina House of Representatives  
District No. 10  
436-D Blatt Building  
Columbia, SC 29211

Dear Representative Putnam:

You have requested an opinion of this Office regarding the constitutional requirement to affix the Great Seal of the State upon a legislative act when enacted. By way of background, your letter states as follows:

With the recent events surrounding the Great Seal of the State not being affixed to an unknown number of legislative acts over the past fifteen years, it has called into question the legitimacy of such Acts.

Pursuant to South Carolina Constitution, Article III, Section 18. "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only".

I personally discovered, with the help of staff at the South Carolina Department of Archives and History on Friday 17th, 2017, that during the legislative years of 2003 and 2004 that 109 legislative acts did not receive the Great Seal of the State affixed to them pursuant to the State Constitutional requirements regarding what is required of a Bill or Resolution to receive the force of law within this State. As you may also know from media reports, that the current Secretary of State, Mark Hammond has admitted within the AP that other Bills and Resolutions within other legislative years under his fifteen year tenure as Secretary didn't receive the Great Seal of the State.

As the magnitude of this failure to affix the Great Seal of the State to legislation over the past fifteen years is not fully known, there are constitutional questions surrounding the legitimacy of these Bills and Resolutions having not received the Great Seal of the State. There are also questions regarding when the Great Seal of the State must be affixed to such Bills and Resolutions. Can such Acts receive the Great Seal of the State within a later legislative session, other than the year it originated,

2  
The Honorable Joshua A. Putnam

Page 2

December 1, 2017

since a Bill or Resolution is prohibited from being carried over to the next legislative session?

I raise these questions with your office and request an opinion regarding these matters because as an elected State Representative I took the Oath of Office "that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States."

The essential legal questions for your office to address are (a) what are the Constitutional requirements that a Bill or Joint Resolution must satisfy in order to receive the force of law within our state; (b) whether a Bill or Joint Resolution at the time it is without the Great Seal of the State affixed to it is considered constitutional and/or carry the force of law; (c) Whether there is a time requirement that the Great Seal of the State must be affixed to a Bill or Joint Resolution; (d) can the Great Seal of the State be affixed to a Bill and Joint Resolution that originated within a prior legislative session.

#### Law/Analysis

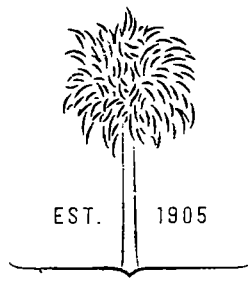
As your letter states, Art. III, § 18 of the South Carolina Constitution (1895 as amended) provides as follows:

[n]o Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

There is no doubt that the provisions of the Constitution, including those contained in Art. III, § 18, are mandatory and must be followed. Art. I, § 23 states the following:

[t]he provisions of this Constitution shall be taken, deemed and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms.

Moreover, as our Supreme Court stated in Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 823 (1903), "[t]here being nothing in the provision under discussion [Art. III, § 16 relating to the style of laws] indicating that it is directory merely, we are bound to hold it as mandatory." However, the Court in Jennings went on to say that "[w]e cannot bring our mind to hold that an absolutely literal compliance with the form prescribed is essential to valid legislation." Thus, "[w]e hold, while the constitutional provision as to form of enacting clause is mandatory, that a substantial compliance with the mandate will be sufficient." 45 S.E. at 824 (emphasis added). The Court cited several South Carolina decisions upholding a "substantial compliance" with a particular constitutional provision. See State v. Robinson, 27 S.C. 618, 4 S.E. 570 (1888); State



SOUTH CAROLINA DEPARTMENT OF  
**ARCHIVES & HISTORY**

September 6, 2018

Mr. David M. McClure, Jr.  
SCDC# 247676 F1A176  
386 Redemption Way  
McCormick Correctional Institution  
McCormick, SC 29899

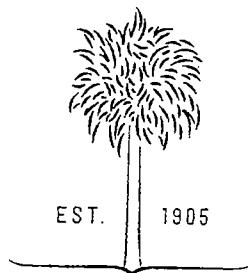
Dear Mr. McClure,

16-3-10 references a section of the Code of Laws of South Carolina. It does not reference individual acts. The code does not require a seal, as it is merely a compilation of all acts that are in force at the time of publication. Acts passed by the General Assembly are required to have the Great Seal of the state affixed by the State Constitution. We can check to see if an act has an impression of the Great Seal, but you must provide the year and specific act to be checked. We cannot undertake legal research nor can we offer legal advice or interpretation.

Sincerely,

Wade H. Dorsey  
Reference Archivist  
Reference Services

*Rec'd  
9/11/18*



SOUTH CAROLINA DEPARTMENT OF  
ARCHIVES & HISTORY

18 September 2018

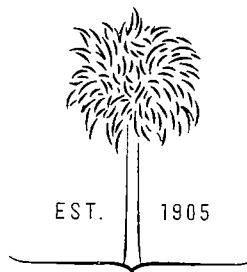
Mr. David M. McClure #247676  
McCormick Correctional Institution F1A 176  
386 Redemption Way  
McCormick, SC 29899

Dear Mr. McClure:

I have not been able to locate any legislation prior to Article I Section 16 of the 1790 South Carolina Constitution that required a law passed in South Carolina to have the Great Seal affixed to it.

Sincerely,

Steven D. Tuttle  
Deputy Director  
Archives & Records Management



SOUTH CAROLINA DEPARTMENT OF  
**ARCHIVES & HISTORY**

19 July 2018

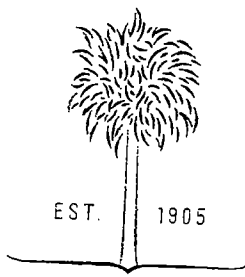
Mr. Max Knoten #253916  
McCormick Correctional Institution F1A-176  
386 Redemption Way  
McCormick, SC 29899

Dear Mr. Knoten:

I checked the following acts that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184 and 1996 Act No. 317. I checked the following acts that you requested and found a visible impression of the Great Seal: 1988 Act No. 372 and 1991 Act No. 117.

Sincerely,

Steven D. Tuttle  
Deputy Director  
Archives & Records Management



SOUTH CAROLINA DEPARTMENT OF  
**ARCHIVES • HISTORY**

6 July 2018

Mr. Max Knoten #253916  
McCormick Correctional Institution F1A-176  
386 Redemption Way  
McCormick, SC 29899

Dear Mr. Knoten:

I checked the following acts that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184; 1995 Act No. 7; and 1999 Act No. 56.

Sincerely,

Steven D. Tuttle  
Deputy Director  
Archives & Records Management

No. R. 377  
CLERK OF THE SENATE

No. 377  
CODE COMMISSIONER

### AN ACT

TO AMEND SECTION 16-3-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PUNISHMENT FOR MURDER, SO AS TO INCLUDE THE MURDER OF A WITNESS OR POTENTIAL WITNESS COMMITTED AT ANY TIME DURING THE CRIMINAL PROCESS FOR THE PURPOSE OF IMPEDING OR DETERRING PROSECUTION OF ANY CRIME AS AN AGGRAVATING CIRCUMSTANCE IN CONSIDERATION OF IMPOSING THE DEATH PENALTY.

I Certify that the Within Originated in the House of Representatives.

Correctly Enrolled \_\_\_\_\_

*Andra L. McEvoy*  
Clerk of the House

*Peden B. McLeod*  
Peden B. McLeod, Director  
Legislative Council

Delivered to the Governor this MAY 14 1996

day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_

*[Signature]*  
Clerk of the Senate

Delivered to the Secretary of State this \_\_\_\_\_

day of Jim Miles SECRETARY OF STATE A. D. 19 \_\_\_\_\_

**FILED**  
MAY 20 1996  
AM PM  
7|8|9|10|11|12|1|2|3|4|5|6

accounts of the judicial department for the judicial appointees, and from funds appropriated to the Office of the Governor for gubernatorial appointees.

SECTION 268. Section 267 of this act takes effect July 1, 1993.

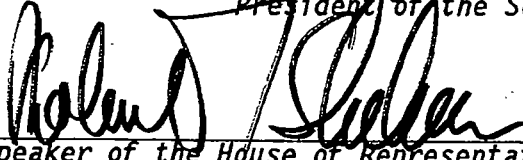
SECTION 269. This act, other than Sections 267 and 268, takes effect January 1, 1994.

-----XX-----

In the Senate House JUN 15 1993

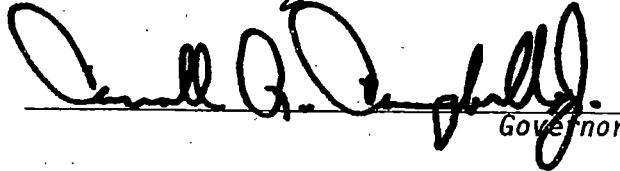


President of the Senate



Speaker of the House of Representatives

Approved the 21<sup>st</sup> day of June, 1993.

  
Governor

No. R275  
CLERK OF THE SENATE

No. 184  
CODE COMMISSIONER

### AN ACT

TO AMEND SECTION 16-1-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FELONIES, SO AS TO PROVIDE A CLASSIFICATION SYSTEM FOR ALL FELONY AND MISDEMEANOR CRIMES AND OFFENSES AND EXCEPTIONS; TO AMEND SECTION 16-1-20, RELATING TO CLASSIFICATION OF OTHER CRIMES, SO AS TO PROVIDE THE MAXIMUM TERM OF IMPRISONMENT, TO EXEMPT OFFENSES WHICH REFER TO A MANDATORY MINIMUM TERM OF IMPRISONMENT, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 16-1-30, RELATING TO CLASSIFICATION OF NEW OFFENSES, SO AS TO REQUIRE ALL NEW OFFENSES TO BE CLASSIFIED PURSUANT TO SECTIONS 16-1-10 AND 16-1-20; TO AMEND SECTIONS 16-1-40 AND 16-1-50, RELATING TO ACCESSORIES BEFORE THE FACT AND INDICTMENT AND CONVICTION OF ACCESSORIES, SO AS TO MAKE GRAMMATICAL CHANGES; TO AMEND THE 1976 CODE BY ADDING SECTION 16-1-55 SO AS TO CLASSIFY THE OFFENSE OF ACCESSORY AFTER THE FACT; BY ADDING SECTION 16-1-57 SO AS TO PROVIDE FOR CLASSIFICATION FOR A THIRD OR SUBSEQUENT CONVICTION FOR CERTAIN PROPERTY OFFENSES; TO AMEND SECTION 16-1-60, RELATING TO THE LIST OF VIOLENT CRIMES, SO AS TO ADD CRIMINAL SEXUAL CONDUCT WITH MINORS AND ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT; TO AMEND THE 1976 CODE BY ADDING SECTION 16-1-80 SO AS TO CLASSIFY AN ATTEMPT; TO AMEND THE 1976 CODE BY ADDING SECTIONS 16-1-90 AND 16-1-100 SO AS TO PROVIDE A LIST OF EACH CRIME AND OFFENSE AND ITS CLASSIFICATION; TO AMEND THE 1976 CODE BY ADDING SECTION 16-1-110 SO AS TO PROVIDE FOR CRIMES OR OFFENSES INADVERTENTLY OMITTED FROM CLASSIFICATION; TO AMEND THE 1976 CODE BY ADDING SECTION 16-11-325 SO AS TO PROVIDE THAT COMMON LAW ROBBERY IS A FELONY AND TO SET THE MAXIMUM TERM OF IMPRISONMENT; TO AMEND SECTIONS 7-25-50, 7-25-60, 7-25-80, 7-25-190, 8-1-20, 12-7-2750, 12-9-840, 12-21-2716, 12-27-50, 12-29-610, 12-31-670, 12-45-110, 16-5-10, 16-7-160, AS AMENDED, 16-9-320, AS AMENDED, 16-9-340, 16-11-20, 16-11-170, 16-11-617, 16-11-740, AS AMENDED, 16-13-160, 16-13-170, 16-13-290, 16-15-140, 16-15-385, AS AMENDED, 16-17-410, 16-17-430, 16-17-600, AS AMENDED, 16-21-10, 16-21-40, 16-21-130, 16-21-140, 16-23-220, AS AMENDED, 16-23-230, AS AMENDED, 16-23-240, AS AMENDED, 16-23-260, AS AMENDED, 16-23-410, 16-23-420, 16-23-430, AS AMENDED, 16-23-440, AS AMENDED, 16-23-480, 16-23-490, 16-23-520, 17-13-50, 17-15-90, 20-7-50, 20-7-60, 20-7-80, 23-31-340, AS AMENDED, 23-31-360,

I Certify that the Within Originated in the House of Representatives.

*Andrea L. McHenry*  
Clerk of the House

Correctly Enrolled

*P. B. McLeod*

Peden B. McLeod, Director  
Legislative Council

Delivered to the Governor this JUN 15 1993

day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_

*Jim Milas*  
Clerk of the Senate

Delivered to the Secretary of State this  
**FILED**  
Day of JUN 21 1993, A. D. 19 \_\_\_\_\_  
AM \_\_\_\_\_ PM \_\_\_\_\_  
7 8 9 10 11 12 1 2 3 4 5 6

No. R.585  
CLERK OF THE SENATE

No. 7  
CODE COMMISSIONER

*Duplicate*

### AN ACT

AN ACT TO AMEND SECTION 16-1-20, AS AMENDED, RELATING TO CLASSES OF FELONIES AND MISDEMEANORS, SO AS TO PROVIDE THAT THE MINIMUM TERM OF IMPRISONMENT DOES NOT APPLY TO MISDEMEANORS LISTED IN SECTION 16-1-100 AND TO FURTHER PROVIDE THAT THIS PROVISION DOES NOT APPLY WHEN THE OFFENSE PROHIBITS SUSPENSION OF ANY PART OF THE SENTENCE; TO AMEND SECTION 16-1-57, RELATING TO THE CLASSIFICATION OF REPEAT OFFENDERS FOR CERTAIN PROPERTY CRIMES, SO AS TO PROVIDE THAT THIRD OR SUBSEQUENT OFFENSES ARE CLASS E FELONIES; TO AMEND SECTION 16-1-60, AS AMENDED, RELATING TO VIOLENT CRIMES, SO AS TO ADD THE OFFENSE OF TRAFFICKING IN CRACK COCAINE, AND THE OFFENSE OF ENGAGING A CHILD FOR A SEXUAL PERFORMANCE, AND TO INCLUDE ACCESSORY AND ATTEMPT TO COMMIT ANY VIOLENT CRIME AS A VIOLENT CRIME AND TO REPEAL THE PROVISION REQUIRING THE CRIME TO BE DEFINED AS A VIOLENT CRIME AT THE TIME IT WAS COMMITTED; TO AMEND SECTION 16-11-330, AS AMENDED, RELATING TO ARMED ROBBERY, SO AS TO REQUIRE A MANDATORY MINIMUM TERM OF IMPRISONMENT OF NOT LESS THAN TEN YEARS, NO PART OF WHICH MAY BE SUSPENDED OR PROBATION GRANTED; TO AMEND SECTION 16-13-10, AS AMENDED, RELATING TO FORGERY, SECTION 16-13-210, AS AMENDED, RELATING TO EMBEZZLEMENT, SECTION 16-13-385, AS AMENDED, RELATING TO TAMPERING OF UTILITY METERS, AND SECTION 16-13-425, AS AMENDED, RELATING TO THE FAILURE TO RETURN VIDEO AND CASSETTE TAPES, SO AS TO REVISE THE PENALTIES FOR THESE OFFENSES; TO AMEND SECTION 16-14-20, SECTIONS 16-14-40, AS AMENDED, 16-14-60, AS

I Certify that the Within Originated in the House of Representatives.

Correctly Enrolled

*Duplicate*

Clerk of the House

*Duplicate*

Stephen T. Draffin, Director  
Legislative Council

Delivered to the Governor this \_\_\_\_\_

Delivered to the Secretary of State this 24<sup>th</sup>

day of \_\_\_\_\_, A.D. 20\_\_

day of October, A.D. 2002

Clerk of the Senate