**South Carolina General Assembly**

119th Session, 2011-2012

**A212, R241, H5026**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. J.E. Smith

Document Path: l:\council\bills\agm\19488ab12.docx

Companion/Similar bill(s): 3342

Introduced in the House on March 15, 2012

Introduced in the Senate on March 27, 2012

Last Amended on May 16, 2012

Passed by the General Assembly on May 24, 2012

Governor's Action: June 7, 2012, Signed

Summary: Administrative Law Court

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/15/2012 House Introduced, read first time, placed on calendar without reference ([House Journal‑page 12](file:///h:\hj%20archive\2012\03-15-12.docx))

3/16/2012 Scrivener's error corrected

3/21/2012 House Debate adjourned until Thur., 03‑22‑12 ([House Journal‑page 80](file:///h:\hj%20archive\2012\03-21-12.docx))

3/22/2012 House Read second time ([House Journal‑page 31](file:///h:\hj%20archive\2012\03-22-12.docx))

3/22/2012 House Roll call Yeas‑112 Nays‑0 ([House Journal‑page 32](file:///h:\hj%20archive\2012\03-22-12.docx))

3/22/2012 House Unanimous consent for third reading on next legislative day ([House Journal‑page 33](file:///h:\hj%20archive\2012\03-22-12.docx))

3/23/2012 House Read third time and sent to Senate ([House Journal‑page 2](file:///h:\hj%20archive\2012\03-23-12.docx))

3/27/2012 Senate Introduced and read first time ([Senate Journal‑page 16](file:///h:\sj%20archive\2012\03-27-12.docx))

3/27/2012 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 16](file:///h:\sj%20archive\2012\03-27-12.docx))

4/2/2012 Senate Referred to Subcommittee: Rankin (ch), Hutto, Bright, Davis

5/2/2012 Senate Committee report: Favorable **Judiciary** ([Senate Journal‑page 17](file:///h:\sj%20archive\2012\05-02-12.docx))

5/16/2012 Senate Amended ([Senate Journal‑page 26](file:///h:\sj%20archive\2012\05-16-12.docx))

5/16/2012 Senate Read second time ([Senate Journal‑page 26](file:///h:\sj%20archive\2012\05-16-12.docx))

5/16/2012 Senate Roll call Ayes‑39 Nays‑1 ([Senate Journal‑page 26](file:///h:\sj%20archive\2012\05-16-12.docx))

5/17/2012 Senate Read third time and returned to House with amendments ([Senate Journal‑page 10](file:///h:\sj%20archive\2012\05-17-12.docx))

5/23/2012 House Debate adjourned until Thur., 05‑24‑12 ([House Journal‑page 34](file:///h:\hj%20archive\2012\05-23-12.docx))

5/24/2012 House Concurred in Senate amendment and enrolled ([House Journal‑page 98](file:///h:\hj%20archive\2012\05-24-12.docx))

5/24/2012 House Roll call Yeas‑94 Nays‑0 ([House Journal‑page 98](file:///h:\hj%20archive\2012\05-24-12.docx))

6/5/2012 Ratified R 241

6/7/2012 Signed By Governor

6/18/2012 Effective date 06/07/12

6/19/2012 Act No. 212

**VERSIONS OF THIS BILL**

[3/14/2012](file:///p:\pprever\2011-12\5026_20120314.docx)

[3/15/2012](file:///p:\pprever\2011-12\5026_20120315.docx)

[3/16/2012](file:///p:\pprever\2011-12\5026_20120316.docx)

[5/2/2012](file:///p:\pprever\2011-12\5026_20120502.docx)

[5/16/2012](file:///p:\pprever\2011-12\5026_20120516.docx)

(A212, R241, H5026)

**AN ACT TO AMEND SECTION 1‑23‑600, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HEARINGS AND PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW COURT, SO AS TO DELETE AN OBSOLETE REFERENCE EXEMPTING APPEALS FROM THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE TO THE COURT; TO AMEND SECTION 56‑1‑286, AS AMENDED, RELATING TO THE SUSPENSION OR DENIAL OF THE DRIVER’S LICENSE, PERMIT, OR NONRESIDENT’S OPERATING PRIVILEGE OF A PERSON WHO DRIVES AN AUTOMOBILE WHILE HAVING AN ALCOHOL CONCENTRATION OF TWO‑HUNDREDTHS OF ONE PERCENT, SO AS TO PROVIDE HE MAY SEEK A CONTESTED CASE HEARING BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS FOR A SUSPENSION UNDER THIS SECTION, TO MAKE CONFORMING CHANGES, TO PROVIDE THE DEPARTMENT AND ARRESTING OFFICER HAVE THE BURDEN OF PROOF IN THIS CONTESTED CASE, AND TO PROVIDE THE HEARING OFFICER SHALL RESCIND THE SUSPENSION IF NEITHER THE DEPARTMENT NOR ARRESTING OFFICER APPEAR AT THE HEARING, REGARDLESS OF WHETHER THE PERSON REQUESTING THE HEARING OR HIS ATTORNEY APPEARS AT THE HEARING; TO AMEND SECTION 56‑5‑2942, AS AMENDED, RELATING TO MANDATORY IMMOBILIZATION OF CERTAIN MOTOR VEHICLES, SO AS TO PROVIDE THE DEPARTMENT MAY ISSUE A DETERMINATION PERMITTING OR DENYING THE RELEASE OF THE VEHICLE TO ITS REGISTERED OWNER OR A MEMBER OF THE HOUSEHOLD OF THE REGISTERED OWNER BASED ON AN AFFIDAVIT FROM HIM CONTAINING CERTAIN INFORMATION, AND TO PROVIDE FOR AN APPEAL FROM A DEPARTMENT DETERMINATION TO THE OFFICE OF MOTOR VEHICLES FOR A CONTESTED HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT AND THE RULES AND PROCEDURES OF THE DEPARTMENT; TO AMEND SECTION 56‑5‑2951, AS AMENDED, RELATING TO THE SUSPENSION OR DENIAL OF THE DRIVER’S LICENSE, PERMIT, OR NONRESIDENT’S OPERATING PRIVILEGE OF A PERSON WHO REFUSES TO SUBMIT TO CERTAIN ALCOHOL CONCENTRATION TESTING, AMONG OTHER THINGS, SO AS TO PROVIDE A PERSON MAY SEEK A CONTESTED CASE HEARING BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS FOR A SUSPENSION UNDER THIS SECTION, TO MAKE CONFORMING CHANGES, AND TO PROVIDE THE DEPARTMENT AND ARRESTING OFFICER HAVE THE BURDEN OF PROOF IN THIS CONTESTED CASE, AND TO PROVIDE THE HEARING OFFICER SHALL RESCIND THE SUSPENSION IF NEITHER THE DEPARTMENT NOR ARRESTING OFFICER APPEAR AT THE HEARING, REGARDLESS OF WHETHER THE PERSON REQUESTING THE HEARING OR HIS ATTORNEY APPEARS AT THE HEARING; AND TO AMEND SECTION 56‑5‑2952, AS AMENDED, RELATING TO THE FILING FEE FOR A CONTESTED CASE HEARING, SO AS TO INCREASE THE FEE TO TWO HUNDRED DOLLARS OR AS OTHERWISE PROVIDED BY THE OFFICE OF MOTOR VEHICLES, AND TO PROVIDE FUNDS RECEIVED FROM THE FEE MUST BE RETAINED BY THE ADMINISTRATIVE LAW COURT AND MUST FIRST BE USED TO MEET THE EXPENSES OF THE OFFICE OF MOTOR VEHICLE HEARINGS IN A CERTAIN MANNER.**

Be it enacted by the General Assembly of the State of South Carolina:

**Appeals from Department of Employment and Workforce to Administrative Law Courts, obsolete references corrected**

SECTION 1. Section 1‑23‑600(D) of the 1976 Code, as last amended by Act 334 of 2008, is further amended to read:

“(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11‑35‑4410, and an appeal from the Workers’ Compensation Commission is to the court of appeals as provided in Section 42‑17‑60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence‑related credits pursuant to Section 24‑13‑210(A) or Section 24‑13‑230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.”

**Contested hearings and burden of proof for suspension of driver**’**s license for persons driving with certain alcohol concentration**

SECTION 2. Section 56‑1‑286 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“Section 56‑1‑286. (A) The Department of Motor Vehicles must suspend the driver’s license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to a person under the age of twenty‑one who drives a motor vehicle and has an alcohol concentration of two one‑hundredths of one percent or more. In cases in which a law enforcement officer initiates suspension proceedings for a violation of this section, the officer has elected to pursue a violation of this section and is subsequently prohibited from prosecuting the person for a violation of Section 63‑19‑2440, 63‑19‑2450, 56‑5‑2930, or 56‑5‑2933, arising from the same incident.

(B) A person under the age of twenty‑one who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath or blood for the purpose of determining the presence of alcohol.

(C) A law enforcement officer who has arrested a person under the age of twenty‑one for a violation of Chapter 5 of this title (Uniform Act Regulating Traffic on Highways), or any other traffic offense established by a political subdivision of this State, and has reasonable suspicion that the person under the age of twenty‑one has consumed alcoholic beverages and driven a motor vehicle may order the testing of the person arrested to determine the person’s alcohol concentration.

A law enforcement officer may detain and order the testing of a person to determine the person’s alcohol concentration if the officer has reasonable suspicion that a motor vehicle is being driven by a person under the age of twenty‑one who has consumed alcoholic beverages.

(D) A test must be administered at the direction of the primary investigating law enforcement officer. At the direction of the officer, the person first must be offered a breath test to determine the person’s alcohol concentration. If the person physically is unable to provide an acceptable breath sample because he has an injured mouth or is unconscious or dead, or for any other reason considered acceptable by licensed medical personnel, a blood sample may be taken. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. The primary investigating officer may administer the test. Blood samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, or other medical personnel trained to obtain these samples in a licensed medical facility. Blood samples must be obtained and handled in accordance with procedures approved by the division. The division shall administer the provisions of this subsection and shall promulgate regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the officer must be paid from the general fund of the State. However, if the person is subsequently convicted of violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, then, upon conviction, the person must pay twenty‑five dollars for the costs of the tests. The twenty‑five dollars must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

The person tested or giving samples for testing may have a qualified person of his choice conduct additional tests at the person’s expense and must be notified in writing of that right. A person’s request or failure to request additional blood tests is not admissible against the person in any proceeding. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the direction of the officer. The officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance shall, at a minimum, include providing transportation for the person to the nearest medical facility which provides blood tests to determine a person’s alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood to determine the person’s alcohol concentration, SLED must test the blood and provide the result to the person and to the officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in any judicial or administrative proceeding.

(E) A qualified person and his employer who obtain samples or administer the tests or assist in obtaining samples or administering of tests at the direction of the primary investigating officer are immune from civil and criminal liability unless the obtaining of samples or the administering of tests is performed in a negligent, reckless, or fraudulent manner. A person may not be required by the officer ordering the tests to obtain or take any sample of blood or urine.

(F) If a person refuses upon the request of the primary investigating officer to submit to chemical tests as provided in subsection (C), the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) six months; or

(2) one year, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug or has had a previous suspension imposed pursuant to Section 56‑1‑286, 56‑5‑2950, or 56‑5‑2951.

(G) If a person submits to a chemical test and the test result indicates an alcohol concentration of two one‑hundredths of one percent or more, the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) three months; or

(2) six months, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug or has had a previous suspension imposed pursuant to Section 56‑1‑286, 56‑5‑2950, or 56‑5‑2951.

(H) A person’s driver’s license, permit, or nonresident operating privilege must be restored when the person’s period of suspension under subsection (F) or (G) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person’s driving privilege is restored, he must continue to participate in the Alcohol and Drug Safety Action Program in which he is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person’s license must be suspended until he completes the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before his driving privilege can be restored at the conclusion of the suspension period.

(I) A test may not be administered or samples taken unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) he does not have to take the test or give the samples but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the tests and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least three months if he takes the test or gives the samples and has an alcohol concentration of two one‑hundredths of one percent or more;

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) he must enroll in an Alcohol and Drug Safety Action Program within thirty days of the issuance of the notice of suspension if he does not request an administrative hearing or within thirty days of the issuance of notice that the suspension has been upheld at the administrative hearing.

The primary investigating officer must notify promptly the department of the refusal of a person to submit to a test requested pursuant to this section as well as the test result of any person who submits to a test pursuant to this section and registers an alcohol concentration of two one‑hundredths of one percent or more. The notification must be in a manner prescribed by the department.

(J) If the test registers an alcohol concentration of two one‑hundredths of one percent or more or if the person refuses to be tested, the primary investigating officer must issue a notice of suspension, and the suspension is effective beginning on the date of the alleged violation of this section. The person, within thirty days of the issuance of the notice of suspension, must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 if he does not request an administrative hearing. If the person does not request an administrative hearing and does not enroll in an Alcohol and Drug Safety Action Program within thirty days, the suspension remains in effect, and a temporary alcohol license must not be issued. If the person drives a motor vehicle during the period of suspension without a temporary alcohol license, the person must be penalized for driving while his license is suspended pursuant to Section 56‑1‑460.

(K) Within thirty days of the issuance of the notice of suspension the person may:

(1) obtain a temporary alcohol license by filing with the department a form for this purpose. A one‑hundred‑dollar fee must be assessed for obtaining a temporary alcohol license. Twenty‑five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy‑five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary alcohol license allows the person to drive a motor vehicle without any restrictive conditions pending the outcome of the contested case hearing provided for in this section or the final decision or disposition of the matter; and

(2) request a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure.

At the contested case hearing if:

(a) the suspension is upheld, the person must enroll in an Alcohol and Drug Safety Action Program and his driver’s license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension periods provided for in subsections (F) and (G); or

(b) the suspension is overturned, the person must have his driver’s license, permit, or nonresident operating privilege reinstated.

(L) The periods of suspension provided for in subsections (F) and (G) begin on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continue until the person applies for a temporary alcohol license and requests an administrative hearing.

(M) If a person does not request a contested case hearing, he shall have waived his right to the hearing and his suspension must not be stayed but shall continue for the periods provided for in subsections (F) and (G).

(N) The notice of suspension must advise the person of the requirement to enroll in an Alcohol and Drug Safety Action Program and of his right to obtain a temporary alcohol license and to request a contested case hearing. The notice of suspension also must advise the person that, if he does not request a contested case hearing within thirty days of the issuance of the notice of suspension, he must enroll in an Alcohol and Drug Safety Action Program, and he waives his right to the contested case hearing, and the suspension continues for the periods provided for in subsections (F) and (G).

(O) A contested case hearing must be held after the request for the hearing is received by the Office of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

(1) was lawfully arrested or detained;

(2) was given a written copy of and verbally informed of the rights enumerated in subsection (I);

(3) refused to submit to a test pursuant to this section; or

(4) consented to taking a test pursuant to this section, and the:

(a) reported alcohol concentration at the time of testing was two one‑hundredths of one percent or more;

(b) individual who administered the test or took samples was qualified pursuant to this section;

(c) test administered and samples taken were conducted pursuant to this section; and

(d) the machine was operating properly.

Nothing in this section prohibits the introduction of evidence at the contested case hearing on the issue of the accuracy of the breath test result.

The Department of Motor Vehicles and the arresting officer shall have the burden of proof in contested case hearings conducted pursuant to this section. If neither the Department of Motor Vehicles nor the arresting officer appears at the contested case hearing, the hearing officer shall rescind the suspension of the person’s license, permit, or nonresident’s operating privilege regardless of whether the person requesting the contested case hearing or the person’s attorney appears at the contested case hearing.

A written order must be issued to all parties either reversing or upholding the suspension of the person’s license, permit, or nonresident’s operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days his license was suspended before he received a temporary alcohol license and requested the contested case hearing.

(P) A contested case hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal shall stay the suspension until a final decision is issued.

(Q) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided for in subsection (B) of this section.

(R) When a nonresident’s privilege to drive a motor vehicle in this State has been suspended under the procedures of this section, the department shall give written notice of the action taken to the motor vehicle administrator of the state of the person’s residence and of any state in which he has a license or permit.

(S) A person required to submit to a test must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of any additional tests to the officer before any trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(T) A person whose driver’s license or permit is suspended under this section is not required to file proof of financial responsibility.

(U) The department shall administer the provisions of this section, not including subsection (D), and shall promulgate regulations necessary to carry out its provisions.

(V) Notwithstanding any other provision of law, no suspension imposed pursuant to this section is counted as a demerit or result in any insurance penalty for automobile insurance purposes if at the time he was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one‑hundredths of one percent.”

**Determinations by Department of Motor Vehicles on release of immobilized vehicles**

SECTION 3. Section 56‑5‑2942(G) of the 1976 Code, as added by Act 61 of 2003, is amended to read:

“(G) The department may issue a determination permitting or denying the release of the vehicle based on the affidavit submitted pursuant to subsection (F). A person may seek relief from a department determination immobilizing a motor vehicle or denying the release of the motor vehicle by filing a request for a contested case hearing with the Office of Motor Vehicle Hearings pursuant to the Administrative Procedures Act and the rules of procedure for the Office of Motor Vehicle Hearings.”

**Contested hearings and burden of proof for suspension of driver**’**s license for refusal to submit to alcohol concentration testing**

SECTION 4. Section 56‑5‑2951 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“Section 56‑5‑2951. (A) The Department of Motor Vehicles must suspend the driver’s license, permit, or nonresident operating privilege of or deny the issuance of a license or permit to a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56‑5‑2950 or has an alcohol concentration of fifteen one‑hundredths of one percent or more. The arresting officer must issue a notice of suspension which is effective beginning on the date of the alleged violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945.

(B) Within thirty days of the issuance of the notice of suspension, the person may:

(1) obtain a temporary alcohol license by filing with the Department of Motor Vehicles a form for this purpose. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty‑five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy‑five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary alcohol license allows the person to drive without any restrictive conditions pending the outcome of the contested case hearing provided for in subsection (F) or the final decision or disposition of the matter. If the suspension is upheld at the contested case hearing, the temporary alcohol license remains in effect until the Office of Motor Vehicle Hearings issues the hearing officer’s decision and the Department of Motor Vehicles sends notice to the person that he is eligible to receive a restricted license pursuant to subsection (H); and

(2) request a contested case hearing before the Office of Motor Vehicle Hearings in accordance with its rules of procedure.

At the contested case hearing if:

(a) the suspension is upheld, the person’s driver’s license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension period provided for in subsection (I). Within thirty days of the issuance of the notice that the suspension has been upheld, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990;

(b) the suspension is overturned, the person must have his driver’s license, permit, or nonresident operating privilege reinstated.

The provisions of this subsection do not affect the trial for a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945.

(C) The period of suspension provided for in subsection (I) begins on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continues until the person applies for a temporary alcohol license and requests a contested case hearing.

(D) If a person does not request a contested case hearing, he waives his right to the hearing, and his suspension must not be stayed but continues for the period provided for in subsection (I).

(E) The notice of suspension must advise the person of his right to obtain a temporary alcohol driver’s license and to request a contested case hearing before the Office of Motor Vehicle Hearings. The notice of suspension also must advise the person that, if he does not request a contested case hearing within thirty days of the issuance of the notice of suspension, he waives his right to the administrative hearing, and the suspension continues for the period provided for in subsection (I). The notice of suspension also must advise the person that if the suspension is upheld at the contested case hearing or if he does not request a contested case hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(F) A contested case hearing must be held after the request for the hearing is received by the Office of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

(1) was lawfully arrested or detained;

(2) was given a written copy of and verbally informed of the rights enumerated in Section 56‑5‑2950;

(3) refused to submit to a test pursuant to Section 56‑5‑2950; or

(4) consented to taking a test pursuant to Section 56‑5‑2950, and the:

(a) reported alcohol concentration at the time of testing was fifteen one‑hundredths of one percent or more;

(b) individual who administered the test or took samples was qualified pursuant to Section 56‑5‑2950;

(c) tests administered and samples obtained were conducted pursuant to Section 56‑5‑2950; and

(d) machine was working properly.

Nothing in this section prohibits the introduction of evidence at the contested case hearing on the issue of the accuracy of the breath test result.

A written order must be issued to all parties either reversing or upholding the suspension of the person’s license, permit, or nonresident’s operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days his license was suspended before he received a temporary alcohol license and requested the contested case hearing.

The Department of Motor Vehicles and the arresting officer shall have the burden of proof in contested case hearings conducted pursuant to this section. If neither the Department of Motor Vehicles nor the arresting officer appears at the contested case hearing, the hearing officer shall rescind the suspension of the person’s license, permit, or nonresident’s operating privilege regardless of whether the person requesting the contested case hearing or the person’s attorney appears at the contested case hearing.

(G) A contested case hearing is governed by the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(H)(1) If the suspension is upheld at the contested case hearing, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 and may apply for a restricted license if he is employed or enrolled in a college or university. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from the Alcohol Drug Safety Action Program classes or to a court‑ordered drug program. The department may issue the restricted license only upon showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, or location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program.

(2) If the department issues a restricted license, it must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of attendance of his court‑ordered drug program, or residence must be reported immediately to the department by the licensee.

(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state general fund, and eighty dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles.

(4) Driving a motor vehicle outside the time limits and route imposed by a restricted license by the person issued that license is a violation of Section 56‑1‑460.

(I)(1) The period of a driver’s license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has no previous convictions for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section 56‑5‑2950 or 56‑5‑2951 within the ten years preceding a violation of this section is:

(a) six months for a person who refuses to submit to a test pursuant to Section 56‑5‑2950; or

(b) one month for a person who takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more.

(2) The period of a driver’s license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has been convicted previously for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section 56‑5‑2950 or 56‑5‑2951 within the ten years preceding a violation of this section is:

(a) for a second offense, nine months if he refuses to submit to a test pursuant to Section 56‑5‑2950 or two months if he takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more;

(b) for a third offense, twelve months if he refuses to submit to a test pursuant to Section 56‑5‑2950 or three months if he takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more; and

(c) for a fourth or subsequent offense, fifteen months if he refuses to submit to a test pursuant to Section 56‑5‑2950 or four months if he takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more.

(J) A person’s driver’s license, permit, or nonresident operating privilege must be restored when the person’s period of suspension under subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person’s driving privilege is restored, he must continue the services of the Alcohol and Drug Safety Action Program in which he is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person’s license must be suspended until the completion of the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before his driving privilege can be restored at the conclusion of the suspension period.

(K) When a nonresident’s privilege to drive a motor vehicle in this State has been suspended under the provisions of this section, the department must give written notice of the action taken to the motor vehicle administrator of the state of the person’s residence and of any state in which he has a license or permit.

(L) The department must not suspend the privilege to drive of a person under the age of twenty‑one pursuant to Section 56‑1‑286 if the person’s privilege to drive has been suspended under this section arising from the same incident.

(M) A person whose driver’s license or permit is suspended pursuant to this section is not required to file proof of financial responsibility.

(N) An insurer may not increase premiums on, add surcharges to, or cancel the automobile insurance of a person charged with a violation of Section 56‑1‑286, 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or another law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug based solely on the violation unless he is convicted of the violation.

(O) The department must administer the provisions of this section and must promulgate regulations necessary to carry out its provisions.

(P) If a person does not request a contested case hearing within the thirty‑day period as authorized pursuant to this section, the person may file with the department a form after enrolling in a certified Alcohol and Drug Safety Action Program to apply for a restricted license. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from Alcohol and Drug Safety Action Program classes or a court‑ordered drug program. The department may issue the restricted license at any time following the suspension upon a showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program. The department must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of his court‑ordered drug program, or residence must be reported immediately to the department by the licensee. The route restrictions, requirements, and fees imposed by the department for the issuance of the restricted license issued pursuant to this item are the same as those provided in this section had the person requested a contested case hearing. A restricted license is valid until the person successfully completes a certified Alcohol and Drug Safety Action Program, unless the person fails to complete or make satisfactory progress to complete the program.”

**Filing fee for certain contested case hearings, retention and use**

SECTION 5. Section 56‑5‑2952 of the 1976 Code, as last amended by Act 279 of 2008, is further amended to read:

“Section 56‑5‑2952. The filing fee to request a contested case hearing before the Office of Motor Vehicle Hearings of the Administrative Law Court is two hundred dollars, or as otherwise prescribed by the rules of procedure for the Office of Motor Vehicle Hearings. Funds generated from the collection of this fee must be retained by the Administrative Law Court, provided, however, that these funds first must be used to meet the expenses of the Office of Motor Vehicle Hearings, including the salaries of its employees, as directed by the chief judge of the Administrative Law Court.”

**Savings clause**

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Time effective**

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 5th day of June, 2012.

Approved the 7th day of June, 2012.

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