~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED AND AMENDED

February 27, 2013

**S. 137**

Introduced by Senators Lourie and L. Martin

S. Printed 2/27/13--S. [SEC 3/13/13 4:30 PM]

Read the first time January 8, 2013.

**A** **BILL**

TO AMEND SECTION 56‑1‑286, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SUSPENSION OF A DRIVER’S LICENSE OF A PERSON UNDER THE AGE OF TWENTY‑ONE FOR HAVING AN UNLAWFUL ALCOHOL CONCENTRATION, SO AS TO REVISE THE PENALTIES TO INCLUDE REQUIRING AN OFFENDER WHO OPERATES A VEHICLE TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED ON THE VEHICLE; TO AMEND SECTION 56‑1‑400, AS AMENDED, RELATING TO THE SUSPENSION OF A LICENSE, A LICENSE RENEWAL OR ITS RETURN, AND ISSUANCE OF A LICENSE THAT RESTRICTS THE DRIVER TO ONLY OPERATING A VEHICLE WITH AN IGNITION INTERLOCK DEVICE INSTALLED, SO AS TO PROVIDE FOR THE ISSUANCE OF AN INTERLOCK RESTRICTED LICENSE AND ITS CONTENTS, TO PROVIDE FOR THE CONTENTS OF A DRIVER’S LICENSE ISSUED TO A PERSON WHOSE VEHICLE IS INSTALLED WITH AN IGNITION INTERLOCK DEVISE AND TO PROVIDE ADDITIONAL OFFENSES THAT REQUIRE THE INSTALLATION OF AN IGNITION INTERLOCK RESTRICTED DEVICE AS A PENALTY, TO REVISE THE DRIVER’S LICENSE SUSPENSION PERIOD FOR A PERSON WHO CHOOSES TO OR NOT TO HAVE AN INTERLOCK DEVICE INSTALLED ON HIS VEHICLE, AND TO PROVIDE ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS WHO CHOOSE NOT TO HAVE AN INTERLOCK DEVISE INSTALLED ON THEIR VEHICLES AFTER BEING CONVICTED OF CERTAIN DRIVING OFFENSES; TO AMEND SECTION 56‑1‑748, RELATING TO THE ISSUANCE OF A RESTRICTED DRIVER’S LICENSE TO PERSON’S WHO ARE INELIGIBLE TO OBTAIN A SPECIAL RESTRICTED DRIVER’S LICENSE, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 56‑1‑1320, RELATING TO THE ISSUANCE OF A PROVISIONAL DRIVER’S LICENSE, SO AS TO MAKE TECHNICAL CHANGES, AND TO DELETE THE PROVISION THAT GIVES CERTAIN PERSONS AUTHORITY TO ISSUE A PROVISIONAL DRIVER’S LICENSE AND REVIEW CANCELLATIONS AND SUSPENSION OF DRIVER’S LICENSES; TO AMEND SECTION 56‑5‑2941, RELATING TO PENALTIES THAT MAY BE IMPOSED FOR DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, SO AS TO PROVIDE DURING THE OFFENSES THAT REQUIRE THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE AS A PENALTY, TO PROVIDE A PENALTY FOR A PERSON WHO IS INCAPABLE OF OPERATING AN IGNITION INTERLOCK DEVICE, TO REVISE CERTAIN PENALTIES CONTAINED IN THIS SECTION; THE LENGTH OF TIME AN INTERLOCK DEVICE MUST BE AFFIXED TO A VEHICLE, TO REVISE THE PENALTY FOR AN OFFENDER WHO HAS ACCUMULATED FOUR POINTS UNDER THE INTERLOCK DEVICE POINT SYSTEM, TO PROVIDE FOR THE USE OF FUNDS REMITTED TO THE INTERLOCK DEVICE FUND, TO REVISE THE FEES THAT MUST BE COLLECTED AND REMITTED TO THE INTERLOCK DEVICE FUND, AND TO PROVIDE THAT AN INTERLOCK DEVICE MUST CAPTURE A PHOTOGRAPHIC IMAGE OF A DRIVER AS HE OPERATES THE DEVICE; TO AMEND SECTION 56‑5‑2942, AS AMENDED, RELATING TO THE IMMOBILIZATION OF A PERSON’S VEHICLE UPON HIS CONVICTION OF AN ALCOHOL‑RELATED DRIVING OFFENSE, SO AS TO PROVIDE THAT AS LONG AS A PERSON HOLDS A VALID IGNITION INTERLOCK LICENSE, HE IS NOT REQUIRED TO SURRENDER HIS LICENSE PLATES AND VEHICLE REGISTRATIONS; TO AMEND SECTION 56‑5‑2945, RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL AND GREAT BODILY INJURY OR DEATH OCCURS, SO AS TO PROVIDE THAT A PERSON CONVICTED PURSUANT TO THIS SECTION MAY ENROLL IN THE IGNITION INTERLOCK DEVISE PROGRAM UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 56‑5‑2950, AS AMENDED, RELATING TO A PERSON WHO OPERATES A MOTOR VEHICLE GIVING IMPLIED CONSENT TO CHEMICAL TESTS TO DETERMINE THE PRESENCE OF ALCOHOL OR DRUGS, SO AS TO REVISE THE PENALTY IMPOSED UPON A PERSON WHO REFUSES TO BE SUBJECTED TO A CHEMICAL TEST, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 56‑5‑2951, AS AMENDED, RELATING TO THE SUSPENSION OF A PERSON’S DRIVER’S LICENSE WHO REFUSES TO SUBMIT TO BE TESTED TO DETERMINE HIS ALCOHOL CONCENTRATION, SO AS TO REVISE THE OFFENSES THAT ARE AFFECTED BY THIS SECTION, TO PROVIDE THAT A PERSON MAY ENROLL IN THE IGNITION INTERLOCK DEVICE PROGRAM AS A ALTERNATE IN LIEU OF OTHER PENALTIES PROVIDED IN THIS SECTION; AND TO AMEND SECTION 56‑5‑2990, RELATING TO THE SUSPENSION OF A PERSON’S DRIVER’S LICENSE FOR A VIOLATION OF CERTAIN ALCOHOL AND DRUG RELATED DRIVING OFFENSES, SO AS TO REVISE THE PENALTIES, AND TO INCLUDE REQUIRING CERTAIN PERSONS TO ENROLL IN THE IGNITION INTERLOCK DEVICES PROGRAM.

Amend Title To Conform

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

SECTION 1. This act may be cited as “Emma’s Law”.

SECTION 2. Section 56-1-286 of the 1976 Code is amended to read:

“Section 56-1-286. (A) The Department of Motor Vehicles ~~must~~ shall 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~~ the person’s 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 officer’s 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~~ the person 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~~ the State Law Enforcement Division’s 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~~ the subsection’s provisions. The costs of the tests administered at the officer’s direction ~~of the officer~~ must be paid from the State’s 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~~ shall 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~~ the person’s 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 person’s 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 officer’s direction ~~of the officer~~. The officer ~~must~~ shall 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~~ the State Law Enforcement Division shall 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~~ a judicial or administrative proceeding.

(E) A qualified person and ~~his~~ the person’s 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~~ officer’s direction 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~~ Except as provided in subsection (H), if a person refuses upon the ~~request of the~~ primary investigating ~~officer~~ officer’s request to submit to chemical tests as provided in subsection (C), the department ~~must~~ shall suspend ~~his~~ the person’s license, permit, or ~~any~~ nonresident operating privilege, or deny the issuance of a license or permit to ~~him~~ the person for:

(1) six months; or

(2) one year, if the person, within the ~~five~~ three 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~~ a 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~~ other drugs, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, ~~56‑5‑2950, or~~ 56‑5‑2951, or 56-5-2990.

(G) ~~If~~ Except as provided in subsection (H), 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~~ shall suspend ~~his~~ the person’s license, permit, or ~~any~~ nonresident operating privilege, or deny the issuance of a license or permit to ~~him~~ the person for:

(1) three months; or

(2) six months, if the person, within the ~~five~~ three 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~~ a 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~~ other drugs, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, ~~56‑5‑2950, or~~ 56‑5‑2951, or 56-5-2990.

(H) In lieu of serving the remainder of a suspension or denial of the issuance of a license or permit, a person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension or denial of the issuance of a license or permit, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension or denial of the issuance of a license or permit. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56-5-2941 and cannot subsequently choose to serve the suspension.

~~(H)~~(I) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension ~~under~~ pursuant to subsection (F) or (G), or ignition interlock restricted license requirement pursuant to subsection (H), has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which ~~he~~ the person is enrolled. After the person's driving privilege is restored, ~~he must~~ the person shall continue to participate in the Alcohol and Drug Safety Action Program in which ~~he~~ the person 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~~ the person completes the Alcohol and Drug Safety Action Program. A person ~~must~~ shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before ~~his~~ the person’s driving privilege ~~can~~ may be restored at the conclusion of the suspension period or ignition interlock restricted license requirement.

~~(I)~~(J) 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~~ the person does not have to take the test or give the samples but that ~~his~~ the person’s privilege to drive must be suspended or denied for at least six months with the option of ending the suspension or denial if the person enrolls in the Ignition Interlock Device Program, if ~~he~~ the person refuses to submit to the tests, and that ~~his~~ the person’s refusal may be used against ~~him~~ the person in court;

(2) ~~his~~ the person’s privilege to drive must be suspended for at least three months with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if ~~he~~ the person takes the test or gives the samples and has an alcohol concentration of two one‑hundredths of one percent or more;

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

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

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

The primary investigating officer ~~must notify promptly~~ shall promptly notify the department of ~~the~~ a person’s refusal ~~of a person~~ to submit to a test requested pursuant to this section as well as the test result of ~~any~~ a 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)~~(K) 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~~ shall 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~~ shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 if ~~he~~ the person 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~~ the person’s license is suspended pursuant to Section 56‑1‑460.

~~(K)~~(L) 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 collected by the Department of Motor Vehicles must be distributed to 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~~ the Department of Motor Vehicle’s 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~~ shall enroll in an Alcohol and Drug Safety Action Program and ~~his~~ 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 periods provided for in subsections (F) and (G); or

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

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

~~(N)~~(O) The notice of suspension must advise the person of the requirement to enroll in an Alcohol and Drug Safety Action Program and of ~~his~~ the person’s 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~~ the person does not request a contested case hearing within thirty days of the issuance of the notice of suspension, ~~he must~~ the person shall enroll in an Alcohol and Drug Safety Action Program, and ~~he~~ the person waives ~~his~~ the person’s right to the contested case hearing, and the suspension continues for the periods provided for in subsections (F) and (G).

~~(O)~~(P) 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)~~(J);

(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~~ the person’s license was suspended before ~~he~~ the person received a temporary alcohol license and requested the contested case hearing.

~~(P)~~(Q) 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)~~(R) 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)~~(S) 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)~~(T) 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)~~(U) A person whose driver's license or permit is suspended under this section is not required to file proof of financial responsibility.

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

~~(V)~~(W) 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~~ the person was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one‑hundredths of one percent.”

SECTION 3. Section 56-1-400 of the 1976 Code is amended to read:

“Section 56-1-400. (A) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that ~~such~~ the license ~~shall~~ be surrendered to the ~~Department of Motor Vehicles~~ department. At the end of the suspension period ~~of suspension~~, other than a suspension for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or pursuant to the point system ~~such license so surrendered shall be returned to the licensee, or in the discretion of the Department of Motor Vehicles~~, the department shall issue a new license ~~issued~~ to ~~him~~ the person. ~~The Department of Motor Vehicles~~ If the person has not held a license within the previous nine months, the department shall not ~~return nor~~ issue or restore a permanent or temporary license which has been suspended for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or for violations under the point system, until the person has filed an application for a new license, submitted to an examination as upon an original application, and ~~has~~ satisfied the ~~Department of Motor Vehicles~~ department, after an investigation of the person's ~~character, habits, and~~ driving ability ~~of the person~~, that it would be safe to grant ~~him~~ the person the privilege of driving a motor vehicle on the public highways. ~~Provided, the Department of Motor Vehicles~~ The department, in ~~its~~ the department's discretion, where the suspension is for a violation under the point system, may waive ~~such~~ the examination, application, and investigation. A record of the suspension ~~shall~~ must be endorsed on the license ~~returned to the licensee, or the new license~~ issued to the ~~licensee~~ person, showing the grounds of ~~such~~ the suspension. ~~In the case of a license suspended for driving under the influence of intoxicants~~ If a person is permitted to operate a motor vehicle only with an ignition interlock device installed pursuant to Section 56-5-2941, the restriction on the license ~~returned to the licensee, or the new license~~ issued to the ~~licensee~~ person~~,~~ must conspicuously identify the ~~licensee~~ person as a person who may only drive a motor vehicle with an ignition interlock device installed, and the restriction must be maintained on the license for the duration of the period for which the ignition interlock device must be maintained pursuant to Section ~~56-5-2941~~ 56-1-286, 56-5-2945, 56-5-2947, 56-5-2951, or 56-5-2990. For purposes of Title 56, the license must be referred to as an ignition interlock restricted license. The fee for an ignition interlock restricted license is one hundred dollars, which shall be placed into a special restricted account by the Comptroller General to be used by the Department of Motor Vehicles to defray the department's expenses. Unless the person establishes that ~~he~~ the person is entitled to the exemption set forth in subsection (B), no ignition interlock restricted license ~~containing an ignition interlock device restriction shall~~ may be issued by the ~~Department of Motor Vehicles~~ department without written notification from the authorized ignition interlock service provider that the ignition interlock device has been installed and confirmed to be in working order. If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended ~~for three years from the date the suspension for driving under the influence of intoxicants ends~~ indefinitely. If ~~during this three-year period~~ the person subsequently decides to have the ignition interlock device installed, the device must be installed for the ~~full suspension period or until the end of the three-year period, whichever comes first~~ length of time set forth in Section 56-1-286, 56-5-2945, 56-5-2947, 56-5-2951, or 56-5-2990. This provision ~~shall~~ does not affect nor bar the reckoning of prior offenses for reckless driving and driving under the influence of intoxicating liquor or narcotic drugs, as provided in Article 23 of Chapter 5 of this title.

(B)(1) A person who does not own a vehicle, as shown in the Department of Motor Vehicles' records, and who certifies that ~~he~~ the person:

(a) cannot obtain a vehicle owner's permission to have an ignition interlock device installed on a vehicle;

(b) will not be driving ~~any~~ a vehicle other than ~~the one~~ a vehicle owned by ~~his~~ the person's employer; and

(c) ~~that he~~ will not own a vehicle during the interlock period, may petition the ~~Department of Motor Vehicles~~ department, on a form provided by ~~it~~ the department, for issuance of ~~a~~ an ignition interlock restricted license ~~containing an ignition interlock device restriction,~~ that permits the person to operate a vehicle specified by the employee according to the employer's needs as contained in the employer's statement during the days and hours specified in the employer's statement without having to show that an ignition interlock device has been installed.

(2) The form must contain:

(a) identifying information about the employer's noncommercial vehicles that the person will be operating;

(b) a statement that explains the circumstances in which the person will be operating the employer's vehicles; and (c) the notarized signature of the person's employer.

(3) This subsection does not apply to a person who is self-employed or to a person who is employed by a business owned in whole or in part by the person or a member of the person's household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle's ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section.

(4) Whenever the person operates the employer's vehicle pursuant to this subsection, the person shall have with the person a copy of the form specified by this subsection.

(5) The determination of eligibility for ~~this~~ the waiver is subject to periodic review at the discretion of the ~~Department of Motor Vehicles~~ department. The ~~Department of Motor Vehicles must~~ department shall revoke a ~~license~~ waiver issued pursuant to this exemption if ~~it~~ the department determines that the person has been driving a vehicle other than the ~~one~~ vehicle owned by ~~his~~ the person's employer or has been operating the person's employer's vehicle outside the locations, days, or hours specified by the employer in the department's records. The person may seek relief from the ~~Department of Motor Vehicle's~~ department's determination 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. However, the filing of a request for a contested case hearing will not stay the revocation of the waiver pending the hearing.

(C) ~~Any~~ A person whose license has been suspended or revoked for an offense within the jurisdiction of the court of general sessions shall provide the ~~Department of Motor Vehicles~~ department with proof that the fine owed by the person has been paid before the ~~Department of Motor Vehicles~~ department may ~~return or~~ issue the person a license. Proof that the fine has been paid may be a receipt from the clerk of court of the county in which the conviction occurred stating that the fine has been paid in full.”

SECTION 4. Section 56-1-460 of the 1976 Code is amended to read:

“Section 56-1-460. (A)(1) Except as provided in item (2), a person who drives a motor vehicle on ~~any~~ a public highway of this State when ~~his~~ the person’s license to drive is canceled, suspended, or revoked must, upon conviction, be punished as follows:

(a) for a first offense, fined three hundred dollars or imprisoned for up to thirty days, or both;

(b) for a second offense, fined six hundred dollars or imprisoned for up to sixty consecutive days, or both; and

(c) for a third ~~and~~ or subsequent offense, fined one thousand dollars, and imprisoned for up to ninety days or confined to a person's place of residence pursuant to the Home Detention Act for ~~not less than~~ up to ninety days ~~nor more than six months~~. No portion of a term of imprisonment or confinement under home detention may be suspended by the trial judge except when the court is suspending a term of imprisonment upon successful completion of the terms and conditions of confinement under home detention. For purposes of this item, a person sentenced to confinement pursuant to the Home Detention Act is required to pay for the cost of such confinement.

(d) Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, an offense punishable under this item may be tried in magistrates or municipal court.

(e)(i) A person convicted of a first or second offense of this item, as determined by the records of the department, and who is employed or enrolled in a college or university at any time while ~~his~~ the person’s driver's license is suspended pursuant to this item, may apply for a route restricted driver's license permitting ~~him~~ the person to drive only to and from work or ~~his~~ the person’s place of education and in the course of ~~his~~ the person’s employment or education during the period of suspension. The department may issue the route restricted driver's license only upon a showing by the person that ~~he~~ the person is employed or enrolled in a college or university and that ~~he~~ the person lives further than one mile from ~~his~~ the person’s place of employment or place of education.

(ii) When the department issues a route restricted driver's license, it shall designate reasonable restrictions on the times during which and routes on which the person may operate a motor vehicle. A person holding a route restricted driver's license pursuant to this item ~~must~~ shall report to the department immediately any change in ~~his~~ the person’s employment hours, place of employment, status as a student, or residence.

(iii) The fee for a route restricted driver's license issued pursuant to this item is one hundred dollars, but no additional fee is due when changes occur in the place and hours of employment, education, or residence. Of this fee, 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 ~~its~~ the Department of Motor Vehicle’s expenses. The remainder of the fees collected pursuant to this item must be credited to the Department of Transportation State Non‑Federal Aid Highway Fund.

(iv) The operation of a motor vehicle outside the time limits and route imposed by a route restricted license ~~by the person issued that license~~ is a violation of subsection (A)(1).

(2) A person who drives a motor vehicle on ~~any~~ a public highway of this State when ~~his~~ the person’s license has been suspended or revoked pursuant to the provisions of Section 56‑5‑2990 or 56-5-2945 must, upon conviction, be punished as follows:

(a) for a first offense, fined three hundred dollars or imprisoned for not less than ten nor more than thirty days;

(b) for a second offense, fined six hundred dollars or imprisoned for not less than sixty days nor more than six months;

(c) for a third ~~and~~ or subsequent offense, fined one thousand dollars and imprisoned for not less than six months nor more than three years;

~~(d)~~ ~~no~~No portion of the minimum sentence imposed ~~under~~ pursuant to this item may be suspended.

(B) The Department of Motor Vehicles, upon receiving a record of ~~the conviction of any person under~~ a person’s conviction pursuant to this section upon a charge of driving a vehicle while ~~his~~ the person’s license was suspended for a definite period of time, shall extend the suspension period ~~of the suspension~~ for an additional like period. If the original period of suspension has expired or terminated before trial and conviction, the department shall again suspend the person’s license ~~of the person~~ for an additional like period of time. If the suspension is not for a definite period of time, the suspension must be for an additional three months. If the license of a person cited for a violation of this section is suspended solely pursuant to the provisions of Section 56‑25‑20, the additional period of suspension pursuant to this section is thirty days, and the person does not have to offer proof of financial responsibility as required ~~under~~ pursuant to Section 56‑9‑500 prior to ~~his~~ the person’s license being reinstated. If the conviction was for a charge of driving while a license was revoked, the department shall not issue a new license for an additional period of one year from the date the person could otherwise have applied for a new license. Only those violations which occurred within a period of five years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

(C) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.”

SECTION 5. Section 56-1-748 of the 1976 Code is amended to read:

“Section 56‑1‑748. (A) No person issued a restricted driver’s license under the provisions of Section ~~56‑1‑170(B)~~ 56‑1‑170, ~~Section 56‑1‑320(A)~~ 56‑1‑320, ~~Section 56‑1‑740(B)~~ 56‑1‑740, 56‑1‑745, ~~Section 56‑1‑746 (D)~~ 56‑1‑746, ~~Section 56‑5‑750(G)~~ 56‑5‑750, ~~Section 56‑9‑430(B)~~ 56‑9‑430, ~~Section 56‑10‑260(B)~~ 56‑10‑260, ~~Section 56‑10‑270(C)~~ 56‑10‑270, ~~or Section 56‑5‑2951(H)~~ 56‑5‑2951 shall subsequently be eligible for issuance of a restricted driver’s license under these provisions.

(B) A person who obtains a route restricted driver’s license and who is required to attend an Alcohol and Drug Safety Action Program or a court ordered drug program as a condition of reinstatement of the person’s driving privileges may use the route restricted driver’s license to attend the Alcohol and Drug Safety Action Program classes or court ordered drug program in addition to the other permitted uses of the route restricted driver’s license.”

SECTION 6. Section 56-1-1310 of the 1976 Code is repealed.

SECTION 7. Section 56-1-1320 of the 1976 Code is amended to read:

“Section 56-1-1320. (A) A person with a South Carolina driver's license, a person who had a South Carolina driver's license at the time of the offense referenced below, or a person exempted from the licensing requirements by Section 56‑1‑30, who is or has been convicted of a first offense violation of ~~an ordinance of~~ a ~~municipality, or~~ a law of this State~~,~~ that prohibits a person from operating a vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including ~~Section~~ Sections 56‑5‑2930 and ~~Section~~ 56‑5‑2933, and whose license is not presently suspended for any other reason, may apply to the Department of Motor Vehicles to obtain a provisional driver's license of a design to be determined by the department to operate a motor vehicle. This section does not apply to a person who refused to submit to a breath test pursuant to Section 56-5-2950 or submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of twelve one hundredths of one percent or more. The person shall enter an Alcohol and Drug Safety Action Program ~~as provided for in~~ pursuant to Section 56‑1‑1330, ~~shall furnish proof of responsibility as provided for in Section 56‑1‑1350~~, and shall pay to the department a fee of one hundred dollars for the provisional driver's license. The provisional driver's license is not valid for more than six months from the date of issue shown on the license. ~~The determination of whether or not a provisional driver's license may be issued pursuant to the provisions of this article as well as reviews of cancellations or suspensions under Sections 56‑1‑370 and 56‑1‑820 must be made by the director of the department or his designee.~~

(B) Ninety‑five dollars of the collected fee must be credited to the State’s General Fund ~~of the State~~ for use of the Department of Public Safety in the hiring, training, and equipping of members of the South Carolina Highway Patrol and Transportation Police and in the operations of the South Carolina Highway Patrol and Transportation Police.”

SECTION 8. Section 56-1-1350 of the 1976 Code is repealed.

SECTION 9. Section 56-5-2941 of the 1976 Code is amended to read:

“Section 56-5-2941. (A) ~~Except as otherwise provided in this section, in addition to the penalties required and authorized to be imposed against a person violating the provisions of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or violating the provisions of another law of any other another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs the~~ The Department of Motor Vehicles ~~must~~ shall require ~~the~~ a person~~, if he is a subsequent offender and~~ who is a resident of this State~~,~~ and who has violated the provisions of Section 56-5-2930, 56-5-2933, 56-5-2945, 56-5-2947, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offense violation of Section 56-5-2930 or 56-5-2933, unless the person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of twelve one hundredths of one percent or more. The ~~Department of Motor Vehicles~~ department may waive the requirements of this section if ~~it finds~~ the department determines that the ~~offender~~ person has a medical condition that makes ~~him~~ the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person’s driver’s license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person’s medical condition has improved to the extent that the person has become capable of properly operating an installed device. The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver’s license suspension or denial of the issuance of a driver’s license or permit to have an ignition interlock device installed on any motor vehicle the person drives.

The length of time that ~~an interlock~~ a device is required to be affixed to a motor vehicle ~~following the completion of a period of license suspension imposed on the offender person is two years for a second offense, three years for a third offense, and the remainder of the offender's person’s life for a fourth or subsequent offense~~ is set forth in Sections 56-1-286, 56-5-2945, 56-5-2947, 56-5-2951, and 56-5-2990.

(B) Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that ~~an interlock~~ a device is required to be affixed to a motor vehicle is based on the Department of Motor Vehicle's records for offenses pursuant to Section 56-1-286, 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, 56-5-2947, 56-5-2950, or 56-5-2951.

~~(B)~~(C) If a ~~person who is a subsequent offender and a~~ resident of this State is convicted of violating ~~the provisions of~~ a law of ~~any other~~ another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, and, as a result of the conviction, the person is subject to an ignition interlock device requirement in the other state, the person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

~~(C)~~(D) If a person from another state becomes a resident of South Carolina while subject to an ignition interlock device requirement in another state, the person may only obtain a South Carolina driver's license if the person enrolls in the South Carolina ~~ignition interlock device program~~ Ignition Interlock Device Program pursuant to this section. The person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

~~(D)~~(E) The ~~offender shall~~ person must be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services. ~~An offender receiving~~ A person accumulating a total of:

(1) two points or more, but less than three points, ~~will~~ must have ~~their~~ the length of time that the ~~interlock~~ device is required extended by two months~~.~~;

(2) ~~An offender receiving a total of~~ three points or more, but less than four points, ~~will~~ must have ~~their~~ the length of time that the ~~interlock~~ device is required extended by four months, ~~and must~~ shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and shall successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the ~~individual~~ person not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles ~~must~~ shall suspend the ~~individual's driver’s~~ person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan~~.~~;

(3) ~~An offender receiving a total of~~ four points or more ~~shall~~ must have ~~their~~ the person’s ignition interlock restricted license suspended for a period of ~~one year~~ six months, ~~and~~ shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and shall successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. ~~Completion of the plan is mandatory as a condition of reinstatement of the person's driving privileges~~ Should the person not complete the recommended plan or not make progress toward completing the plan, the Department of Motor Vehicles shall leave the person’s ignition interlock restricted license in suspended status, or, if the license has already been reinstated following the six-month suspension, shall resuspend the person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan. The Department of Alcohol and Other Drug Abuse Services is responsible for notifying the Department of Motor Vehicles of ~~an individual's~~ a person’s completion and compliance with education and treatment programs. Upon reinstatement of driving privileges following the six-month suspension, the Department of Probation, Parole and Pardon Services shall reset the person’s point total to zero points, and the person shall complete the remaining period of time on the ignition interlock device.

~~(E)~~(F) The cost of the ~~interlock~~ device must be borne by the ~~offender~~ person. However, if the ~~offender~~ ~~believes he~~ person is indigent and cannot afford the cost of the ~~ignition interlock~~ device, the ~~offender~~ person may submit an affidavit of indigency to the Department of Probation, Parole and Pardon Services for a determination of indigency as it pertains to the cost of the ~~ignition interlock~~ device. The affidavit of indigency form must be made publicly accessible on the Department of Probation, Parole and Pardon Services' Internet web site. If the Department of Probation, Parole and Pardon Services determines that the ~~offender~~ person is indigent as it pertains to the ~~ignition interlock~~ device, ~~it~~ the Department of Probation, Parole and Pardon Services may authorize ~~an interlock~~ a device to be affixed to the motor vehicle and the cost of the initial installation and standard use of the ~~ignition interlock~~ device to be paid for by the Ignition Interlock Device Fund managed by the Department of Probation, Parole and Pardon Services. Funds remitted to the Department of Probation, Parole and Pardon Services for the Ignition Interlock Device Fund also may be used by the Department of Probation, Parole and Pardon Services to support the Ignition Interlock Device Program. For purposes of this section, a person is indigent if the person is financially unable to afford the cost of the ignition interlock device. In making a determination whether a person is indigent, all factors concerning the person's financial conditions should be considered including, but not limited to, income, debts, assets, number of ~~dependants~~ dependents claimed for tax purposes, living expenses, and family situation. A presumption that the person is indigent is created if the person's net family income is less than or equal to the poverty guidelines established and revised annually by the United States Department of Health and Human Services published in the Federal Register. ‘Net income’ means gross income minus deductions required by law. The determination of indigency is subject to periodic review at the discretion of the Department of Probation, Parole and Pardon Services.

~~(F)~~(G) The ignition interlock service provider ~~must~~ shall collect and remit monthly to the Ignition Interlock Device Fund a fee as determined by the Department of Probation, Parole and Pardon Services not to exceed ~~three hundred sixty~~ thirty dollars per ~~year~~ month for each ~~year~~ month the person is required to drive a vehicle with ~~an ignition interlock~~ a device. ~~Any~~ A ~~ignition~~ service provider ~~failing~~ who fails to properly remit funds to the Ignition Interlock Device Fund may be decertified as ~~an ignition interlock~~ a service provider by the Department of Probation, Parole and Pardon Services. If a service provider is decertified for failing to remit funds to the Ignition Interlock Device Fund, the cost for removal and replacement of ~~an ignition interlock~~ a device must be borne by the service provider.

~~(G)~~(H)(1) The ~~offender must~~ person shall have the ~~interlock~~ device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the ~~offender's~~ person’s alcohol content at each attempt to start and running ~~re-test~~ retest during each sixty‑day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

(2) Only a service provider authorized by the Department of Probation, Parole and Pardon Services to perform inspections on ignition interlock devices may conduct inspections. The service provider immediately ~~must~~ shall report ~~any~~ devices that fail inspection to the Department of Probation, Parole and Pardon Services. The report must contain the person’s name ~~of the offender~~, identify the vehicle upon which the failed device is installed, and the reason for the failed inspection~~, and~~.

(3) If the inspection report reflects that the person has failed to complete a running retest, the person must be assessed one ignition interlock device point.

(4) The inspection report must indicate the ~~offender's~~ person’s alcohol content at each attempt to start and running ~~re‑test~~ retest during each sixty‑day period. ~~Failure of the offender to have the interlock device inspected every sixty days will result in one ignition interlock device point. Upon review of the ignition interlock device inspection report, if the report reflects that the offender attempted to start the motor vehicle with an alcohol concentration of two one‑hundredths of one percent or more, the offender is assessed one‑half interlock device point. Upon review of the interlock device inspection report, if~~ If the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration of:

(a) ~~between~~ two one‑hundredths of one percent or more ~~and~~ but less than four one‑hundredths of one percent, the ~~offender is~~ person must be assessed one‑half ignition interlock device point~~.~~;

(b) ~~Upon review of the interlock device inspection report, if the report reflects that the offender person violated a running re‑test retest by having an alcohol concentration between~~ four one‑hundredths of one percent or more ~~and~~ but less than fifteen one‑hundredths of one percent, the ~~offender is~~ person must be assessed one ignition interlock device point~~.~~; or

(c) ~~Upon review of the interlock device inspection report, if the report reflects that the offender person violated a running re‑test retest by having an alcohol concentration above~~ fifteen one‑hundredths of one percent or more, the ~~offender is~~ person must be assessed two ignition interlock device points.

(5) ~~An individual~~ A person may appeal ~~any~~ interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer's decision on appeal ~~shall be~~ is final and no appeal ~~from such decision shall be~~ is allowed.

~~(H)~~(I) ~~Ten~~ Five years from the date of the person's ~~last conviction~~ driver’s license reinstatement and every five years thereafter a fourth or subsequent offender whose license has been reinstated pursuant to Section 56‑1‑385 may apply to the Department of Probation, Parole and Pardon Services for removal of the ignition interlock device and the removal of the restriction from ~~his~~ the person’s driver's license. The Department of Probation, Parole and Pardon Services may, for good cause shown, ~~remove the device and remove the restriction~~ notify the Department of Motor Vehicles that the person is eligible to have the restriction removed from the ~~offender's~~ person’s license.

~~(I)~~(J)(1) Except as otherwise provided in this section, it is unlawful for a person ~~issued a driver's license with an ignition interlock restriction~~ who is subject to the provisions of this section to drive a motor vehicle that is not equipped with a properly operating, certified ignition interlock device. A person who violates this ~~section must be punished in the manner provided by law~~ subsection:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than one year. The person must have the length of time that the ignition interlock device is required extended by six months;

(b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than five thousand dollars or imprisoned not more than three years. The person must have the length of time that the ignition interlock device is required extended by one year; and

(c) for a third or subsequent offense, is guilty of a felony, and, upon conviction, must be fined not less than ten thousand dollars or imprisoned not more than ten years. The person must have the length of time that the ignition interlock device is required extended by three years.

(2) No portion of the minimum sentence imposed pursuant to this subsection may be suspended.

(3) Notwithstanding any other provision of law, a first or second offense punishable pursuant to this subsection may be tried in summary court.

~~(J)~~(K)(1) ~~An offender that~~ A person who is required in the course and scope of ~~his~~ the person’s employment to drive a motor vehicle owned by the ~~offender's~~ person’s employer may drive ~~his~~ the employer's motor vehicle without installation of an ignition interlock device, provided that the ~~offender's~~ person’s use of the employer's motor vehicle is solely for the employer's business purposes. This subsection does not apply to ~~an offender~~ a person who is self‑employed or to ~~an offender~~ a person who is employed by a business owned in whole or in part by the ~~offender~~ person or a member of the ~~offender's~~ person’s household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle's ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section.

(2) Whenever the person operates the employer’s vehicle pursuant to this subsection, the person shall have with the person a copy of the Department of Motor Vehicle’s form specified by Section 56-1-400(B).

(3) This subsection will be construed in parallel with the requirements of subsection 56-1-400(B). A waiver issued pursuant to this subsection will be subject to the same review and revocation as described in subsection 56-1-400(B).

~~(K)~~(L) It is unlawful for a person to tamper with or disable, or attempt to tamper with or disable, an ignition interlock device installed on a motor vehicle pursuant to this section. Obstructing or obscuring the camera lens of an ignition interlock device constitutes tampering. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(L)~~(M) It is unlawful for a person to knowingly rent, lease, or otherwise provide ~~an offender~~ a person who is subject to this section with a motor vehicle without a properly operating, certified ignition interlock device. This subsection does not apply if the person began the lease contract period for the motor vehicle prior to the person’s arrest for a first offense violation of Section 56-5-2930 or Section 56-5-2933. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(M)~~(N) It is unlawful for ~~an offender~~ a person who is subject to the provisions of this section to solicit or request another person, or for a person to solicit or request another person on behalf of ~~an offender~~ a person who is subject to the provisions of this section, to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(N)~~(O) It is unlawful for another person to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

~~(O)~~(P) Only ignition interlock devices certified by the Department of Probation, Parole and Pardon Services may be used to fulfill the requirements of this section.

(1) The Department of Probation, Parole and Pardon Services ~~must~~ shall certify whether a device meets the accuracy requirements and specifications provided in guidelines or regulations adopted by the National Highway Traffic Safety Administration, as amended from time to time. All devices certified to be used in South Carolina must be set to prohibit the starting of a motor vehicle when an alcohol concentration of two one‑hundredths of one percent or more is measured and all running ~~re‑tests~~ retests must record violations of an alcohol concentration of two one‑hundredths of one percent or more, and must capture a photographic image of the driver as the driver is operating the ignition interlock device. The photographic images recorded by the ignition interlock device may be used by the Department of Probation, Parole and Pardon Services to aid in the Department of Probation, Parole and Pardon Services’ management of the Ignition Interlock Device Program; however, neither the Department of Probation, Parole and Pardon Services, the Department of Probation, Parole and Pardon Services’ employees, nor any other political subdivision of this State may be held liable for any injury caused by a driver or other person who operates a motor vehicle after the use or attempted use of an ignition interlock device.

(2) The Department of Probation, Parole and Pardon Services shall maintain a current list of certified ignition interlock devices and ~~their~~ manufacturers. The list must be updated at least quarterly. If a particular certified device fails to continue to meet federal requirements, the device must be decertified, may not be used until it is compliant with federal requirements, and must be replaced with a device that meets federal requirements. The cost for removal and replacement must be borne by the manufacturer of the noncertified device.

(3) Only ignition interlock installers certified by the Department of Probation, Parole and Pardon Services may install and service ignition interlock devices required pursuant to this section. The Department of Probation, Parole and Pardon Services shall maintain a current list of vendors that are certified to install the devices.

~~(P)~~(Q) In addition to availability under the Freedom of Information Act, any Department of Probation, Parole and Pardon Services policy concerning ignition interlock devices must be made publicly accessible on the Department of Probation, Parole and Pardon ~~Service's~~ Services’ Internet web site. Information obtained by the Department of Probation, Parole and Pardon Services and ignition interlock service providers regarding a person’s participation in the Ignition Interlock Device Program is to be used for internal purposes only and is not subject to the Freedom of Information Act. A person participating in the Ignition Interlock Device Program or the person’s family member may request that the Department of Probation, Parole and Pardon Services provide the person or family member with information obtained by the department and ignition interlock service providers. The Department of Probation, Parole and Pardon Services may release the information to the person or family member at the department’s discretion. The Department of Probation, Parole and Pardon Services and ignition interlock service providers may retain information regarding a person’s participation in the Ignition Interlock Device Program for a period not to exceed eighteen months from the date of the person’s completion of the Ignition Interlock Device Program.

~~(Q)~~(R) The Department of Probation, Parole and Pardon Services shall develop policies including, but not limited to, the certification, use, maintenance, and operation of ignition interlock devices and the Ignition Interlock Device Fund.”

SECTION 10. Section 56-5-2942 of the 1976 Code is amended to read:

“Section 56-5-2942. (A) A person who is convicted of or pleads guilty or nolo contendere to a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 must have all motor vehicles owned by or registered to ~~him~~ the person immobilized if the person is a resident of this State, unless the vehicle has been confiscated pursuant to Section 56‑5‑6240 or the person is a holder of a valid ignition interlock restricted license.

(B) For purposes of this section, ‘immobilized’ and ‘immobilization’ mean suspension and surrender of the registration and motor vehicle license plate.

(C) Upon receipt of a conviction by the department from the court for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, the department ~~must~~ shall determine all vehicles registered to the ~~convicted~~ person, both solely and jointly, and suspend all vehicles registered to the person, unless the person is a holder of a valid ignition interlock restricted license.

(D) Upon notification by a court in this State or ~~by any other~~ another state of a conviction for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, the department ~~must~~ shall require the person, unless the person is a holder of a valid ignition interlock restricted license, ~~convicted~~ to surrender all license plates and vehicle registrations subject to immobilization pursuant to this section. The immobilization is for a period of thirty days to take place during the driver's license suspension pursuant to a conviction for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. The department ~~must~~ shall maintain a record of all vehicles immobilized pursuant to this section.

(E) An immobilized motor vehicle must be released to the holder of a bona fide lien on the motor vehicle when possession of the motor vehicle is requested, as provided by law, by the lienholder for the purpose of foreclosing on and satisfying the lien.

(F) An immobilized motor vehicle may be released by the department without legal or physical restraints to a person who has not been convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, if that person is a registered owner of the motor vehicle or a member of the household of a registered owner. The vehicle must be released if an affidavit is submitted by that person to the department stating that:

(1) ~~he~~ the person regularly drives the motor vehicle subject to immobilization;

(2) the immobilized motor vehicle is necessary to ~~his~~ the person’s employment, transportation to an educational facility, or for the performance of essential household duties;

(3) no other motor vehicle is available for the person's use;

(4) the person will not authorize the use of the motor vehicle by any other person known by ~~him~~ the person to have been convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945; or

(5) the person will report immediately to a local law enforcement agency any unauthorized use of the motor vehicle by a person known by ~~him~~ the person to have been convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945.

(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.

(H) A person who drives an immobilized motor vehicle except as provided in subsections (E) and (F) is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(I) A person who fails to surrender registrations and license plates pursuant to this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(J) A fee of fifty dollars must be paid to the department for each motor vehicle that was suspended before any of the suspended registrations and license plates may be registered or before the motor vehicle may be released pursuant to subsection (F). This fee must be placed by the Comptroller General into a special restricted interest bearing account to be used by the Department of Motor Vehicles to defray ~~its~~ the Department of Motor Vehicle’s expenses.

(K) For purposes of this article, a conviction of or plea of nolo contendere to Section 56‑5‑2933 is considered a prior offense of Section 56‑5‑2930.”

SECTION 11. Section 56-5-2945 of the 1976 Code is amended to read:

“Section 56-5-2945. (A) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to ~~a~~ another person ~~other than himself~~, is guilty of the offense of felony driving under the influence, and, upon conviction, must be punished:

(1) by a mandatory fine of not less than five thousand one hundred dollars nor more than ten thousand one hundred dollars and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results;

(2) by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty‑five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty‑five years when death results.

A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation must not be granted for any portion.

(B) As used in this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(C)(1) The Department of Motor Vehicles ~~must~~ shall suspend the driver's license of a person who is convicted ~~or who receives sentence upon a plea of guilty or nolo contendere~~ pursuant to this section ~~for a period to include a period of incarceration plus three years for a conviction of Section 56‑5‑2945 when ‘great bodily injury’ occurs and five years when a death occurs. This period of incarceration shall must not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision.~~ For suspension purposes of this section, convictions arising out of a single incident shall must run concurrently.

(2) After the person is released from prison, the person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for three years when ‘great bodily injury’ results and five years when a death occurs.

~~(C)~~(D) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.”

SECTION 12. Section 56-5-2947 of the 1976 Code is amended to read:

“Section 56-5-2947. (A) A person eighteen years of age or ~~over~~ older is guilty of child endangerment when:

(1) the person ~~is in violation of~~ violates:

(a) Section 56‑5‑750;

(b) Section 56‑5‑2930;

(c) Section 56‑5‑2933; or

(d) Section 56‑5‑2945; and

(2) the person has one or more passengers ~~under~~ younger than sixteen years of age in the motor vehicle when the violation occurs.

If more than one passenger ~~under~~ younger than sixteen years of age is in the vehicle when a violation ~~of subsection (A)(1)~~ occurs, the person may be charged with only one violation of this section.

(B) Upon conviction, the person must be ~~punished by~~:

(1) ~~a fine of~~ fined not more than one‑half of the maximum fine allowed for committing the violation ~~enumerated~~ in subsection (A)(1), when the person is fined for that offense;

(2) ~~a term of imprisonment of~~ imprisoned not more than one‑half of the maximum term of imprisonment allowed for committing the violation ~~enumerated~~ listed in subsection (A)(1), when the person is imprisoned for the offense; or

(3) ~~both a fine and imprisonment~~ fined and imprisoned as prescribed in items (1) and (2) when the person is fined and imprisoned for the offense.

(C) No portion of the penalty assessed ~~under~~ pursuant to subsection (B) may be suspended or revoked and probation may not be awarded.

(D)(1) In addition to imposing the penalties for offenses ~~enumerated~~ listed in subsection (A)(1) and the penalties contained in subsection (B), the Department of Motor Vehicles ~~must~~ shall suspend the person's driver's license ~~for sixty days~~.

(2) The person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for three months.

(3) Sections 56‑1‑1320 and 56‑5‑2990 as they relate to enrollment in an alcohol and drug safety action program and to the issuance of a provisional driver's license will not be effective until the ~~sixty‑day suspension~~ ignition interlock restricted license period is completed.

(E) A person may be convicted ~~under~~ pursuant to this section for child endangerment in addition to being convicted for an offense ~~enumerated~~ listed in subsection (A)(1).

(F) The court that has jurisdiction over an offense ~~enumerated~~ listed in subsection (A)(1) has jurisdiction over the offense of child endangerment.

(G) A first offense charge for a violation of this section may not be used as the only evidence for taking a child into protective custody pursuant to Sections 63‑7‑620(A) and 63‑7‑660.”

SECTION 13. Section 56-5-2950 of the 1976 Code is amended to read:

“Section 56-5-2950. (A) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of ~~his~~ the person’s breath, blood, or urine for the purpose of determining the presence of alcohol, ~~or~~ drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of a law enforcement officer who has arrested a person for driving a motor vehicle in this State while under the influence of alcohol, drugs, or a combination of alcohol and drugs. At the direction of the arresting officer, the person first must be offered a breath test to determine the person's alcohol concentration. If the person is physically unable to provide an acceptable breath sample because ~~he~~ the person has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing. A breath sample taken for testing must be collected within two hours of the arrest. Any additional tests to collect other samples must be collected within three hours of the arrest. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. Before the breath test is administered, an eight one‑hundredths of one percent simulator test must be performed and the result must reflect a reading between 0.076 percent and 0.084 percent. Blood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility. Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED.

(B) No tests may be administered or samples obtained 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~~ the person does not have to take the test or give the samples, but that ~~his~~ the person’s privilege to drive must be suspended or denied for at least six months with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if ~~he~~ the person refuses to submit to the test, and that ~~his~~ the person’s refusal may be used against ~~him~~ the person in court;

(2) ~~his~~ the person’s privilege to drive must be suspended for at least one month with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if ~~he~~ the person takes the test or gives the samples and has an alcohol concentration of fifteen one‑hundredths of one percent or more;

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

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

(5) if ~~he~~ the person does not request ~~an administrative~~ a contested case hearing or if ~~his~~ the person’s suspension is upheld at the ~~administrative~~ contested case hearing, ~~he must~~ the person shall enroll in an Alcohol and Drug Safety Action Program.

(C) A hospital, physician, qualified technician, chemist, or registered nurse who obtains the samples or conducts the test or participates in the process of obtaining the samples or conducting the test in accordance with this section is not subject to a cause of action for assault, battery, or another cause alleging that the drawing of blood or taking samples at the request of the arrested person or a law enforcement officer was wrongful. This release from liability does not reduce the standard of medical care required of the person obtaining the samples or conducting the test. This qualified release also applies to the employer of the person who conducts the test or obtains the samples.

(D) The person tested or giving samples for testing may have a qualified person of ~~his~~ the person’s own choosing conduct additional tests at ~~his~~ the person’s expense and must be notified in writing of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial. 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 obtained at the direction of the law enforcement officer.

(E) The arresting officer ~~must~~ shall provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs 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 sample to determine the person's alcohol concentration, SLED ~~must~~ shall test the blood sample and provide the result to the person and to the arresting officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in ~~any~~ a judicial or administrative proceeding.

SLED ~~must~~ shall administer the provisions of this subsection and ~~must~~ shall make regulations necessary to carry out ~~its~~ this subsection’s provisions. The costs of the tests administered at the direction of the law enforcement officer must be paid from the State’s 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~~ shall 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.

(F) A qualified person who obtains samples or administers the tests or assists in obtaining samples or the administration of tests at the direction of a law enforcement officer is released from civil and criminal liability unless the obtaining of samples or tests is performed in a negligent, reckless, or fraudulent manner. No person may be required by the arresting officer, or by another law enforcement officer, to obtain or take any sample of blood or urine.

(G) In the criminal prosecution for a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

(1) if the alcohol concentration was at that time five one‑hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol;

(2) if the alcohol concentration was at that time in excess of five one‑hundredths of one percent but less than eight one‑hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person; or

(3) if the alcohol concentration was at that time eight one‑hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

The provisions of this section must not be construed as limiting the introduction of any other evidence bearing upon the question of whether or not the person was under the influence of alcohol, drugs, or a combination of ~~them~~ alcohol and drugs.

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

(I) A person required to submit to tests by the arresting law enforcement officer 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 trial or other proceeding in which the results of the tests are used as evidence. A person who obtains additional tests ~~must~~ shall furnish a copy of the time, method, and results of ~~any tests~~ such tests to the officer before ~~any~~ a trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(J) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow ~~any of these~~ policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence of any test results, if the trial judge or hearing officer finds that this failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure and the court trial judge or hearing officer rules specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure.

(K) If a state employee charged with the maintenance of breath testing devices in this State and the administration of breath testing policy is required to testify at ~~an administrative~~ a contested case hearing or court proceeding, the entity employing the witness may charge a reasonable fee to the defendant for ~~these~~ such services.”

SECTION 14. Section 56-5-2951 of the 1976 Code is amended to read:

“Section 56-5-2951. (A) The Department of Motor Vehicles ~~must~~ shall 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~~ shall 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~~ from 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 distributed by the Department of Motor Vehicles to 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~~ the Department of Motor Vehicle’s 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~~ the person 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~~ the Office of Motor Vehicle Hearings’ 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~~ shall 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~~ the person’s 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~~ the person waives ~~his~~ the person’s right to the hearing, and ~~his~~ the person’s suspension must not be stayed but continues for the period provided for in subsection (I).

(E) The notice of suspension must advise the person:

(1) of ~~his~~ the person’s right to obtain a temporary alcohol driver's license and to request a contested case hearing before the Office of Motor Vehicle Hearings~~.~~;

(2) ~~The notice of suspension also must advise the person~~ that, if ~~he~~ the person does not request a contested case hearing within thirty days of the issuance of the notice of suspension, ~~he~~ the person waives ~~his~~ the person’s right to the ~~administrative~~ contested case hearing, and the suspension continues for the period provided for in subsection (I)~~.~~; and

(3) ~~The notice of suspension also must advise the person~~ that if the suspension is upheld at the contested case hearing or ~~if he~~ the person does not request a contested case hearing, ~~he~~ the person ~~must~~ shall 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~~ the person’s license was suspended before ~~he~~ the person 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~~ the Administrative Law Court’s appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(H)(1) If the person did not request a contested case hearing or the suspension is upheld at the ~~administrative~~ contested case hearing, the person ~~must~~ shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990, and may apply for a restricted license if ~~he~~ the person is employed or enrolled in a college or university. The restricted license permits ~~him~~ the person to drive only to and from work and ~~his~~ the person’s place of education and in the course of ~~his~~ the person’s employment or education during the period of suspension. The restricted license also permits ~~him~~ the person 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~~ person that ~~he~~ the person is employed or enrolled in a college or university, that ~~he~~ the person lives further than one mile from ~~his~~ the person’s place of employment, place of education, or location of ~~his~~ the person’s Alcohol and Drug Safety Action Program classes, or the location of ~~his~~ the person’s court‑ordered drug program, and that there is no adequate public transportation between ~~his~~ the person’s residence and ~~his~~ the person’s place of employment, ~~his~~ the person’s place of education, the location of ~~his~~ the person’s Alcohol and Drug Safety Action Program classes, or the location of ~~his~~ the person’s court‑ordered drug program.

(2) If the department issues a restricted license pursuant to this subsection, ~~it must~~ the department shall designate reasonable restrictions on the times during which and routes on which the ~~individual~~ person 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~~ the person’s court‑ordered drug program, or residence must be reported immediately to the department by the ~~licensee~~ person.

(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~~ state’s 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~~ Vehicle’s expenses.

(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~~ Except as provided in subsection (I)(3), 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~~ a 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~~ other drugs within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section ~~56‑5‑2950~~ 56-1-286, ~~or~~ 56‑5‑2951, or 56-5-2990, 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~~ a person who has been convicted previously for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or ~~any other~~ 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 within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section ~~56‑5‑2950~~ 56-1-286, ~~or~~ 56‑5‑2951, or 56-5-2990, within the ten years preceding a violation of this section is:

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

(3) In lieu of serving the remainder of a suspension or denial of the issuance of a license or permit, a person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension or denial of the issuance of a license or permit, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension or denial of the issuance of a license or permit. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56-5-2941 and cannot subsequently choose to serve the suspension.

(J) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension or ignition interlock restricted license requirement ~~under~~ pursuant to 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~~ the person shall 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~~ shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before ~~his~~ the person’s driving privilege can be restored at the conclusion of the suspension period or ignition interlock restricted license requirement.

(K) When a nonresident's privilege to drive a motor vehicle in this State has been suspended ~~under~~ pursuant to the provisions of this section, the department ~~must~~ 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~~ the person has a license or permit.

(L) The department ~~must~~ shall 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~~ pursuant to 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~~ shall 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~~ a law of ~~this State~~ another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or ~~another drug~~ other drugs based solely on the violation unless ~~he~~ the person is convicted of the violation.

(O) The department ~~must~~ shall 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.~~”

SECTION 15. Section 56-5-2990 of the 1976 Code is amended to read:

“Section 56-5-2990. (A)(1) The Department of Motor Vehicles shall suspend the driver's license of a person who is convicted~~, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted~~ for a violation of Section 56‑5‑2930, 56‑5‑2933, or ~~for the violation of another law or ordinance of this State or of a municipality of this State~~ a law of another state that prohibits a person from driving a motor vehicle while under the influence of ~~intoxicating liquor, drugs, or narcotics for six months for the first conviction, plea of guilty or nolo contendre, or forfeiture of bail; one year for the a second conviction, plea of guilty or of nolo contendere, or forfeiture of bail; two years for the a third conviction, plea of guilty or of nolo contendere, or forfeiture of bail; and a permanent revocation of the driver's license for the a fourth or subsequent conviction, plea of guilty or of nolo contendere, or forfeiture of bail. Only those violations which occurred within ten years including and immediately preceding the date of the last violation shall constitute prior violations within the meaning of this section. However, if the third conviction occurs within five years from the date of the first offense, then the department shall suspend the driver's license for four years. A person whose license is revoked following conviction for a fourth offense as provided in this section is forever barred from being issued any license by the Department of Motor Vehicles to operate a motor vehicle except as provided in Section 56‑1‑385~~ alcohol or other drugs.

(2) For a first offense:

(a) If a person refused to submit to a breath test pursuant to Section 56-5-2950, the person’s driver’s license must be suspended six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56-5-2941 and cannot subsequently choose to serve the suspension.

(b) If a person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of less than twelve one hundredths of one percent, the person’s driver’s license must be suspended six months. The person is eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56-5-2941 and cannot subsequently choose to serve the suspension.

(c) If a person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of twelve one hundredths of one percent or more, the person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56.

(3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for two years.

(4) For a third offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for three years. If the third offense occurs within five years from the date of the first offense, the ignition interlock device is required to be affixed to the motor vehicle for four years.

(5) For a fourth or subsequent offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for life.

(6) Except as provided in subsection (A)(4), only those offenses which occurred within ten years, including and immediately preceding the date of the last offense, shall constitute prior offenses within the meaning of this section.

(B) A person whose license is suspended ~~under the provisions~~ pursuant to this section, Section 56‑1‑286, Section 56‑5‑2945, or Section 56‑5‑2951 must be notified by the department of the suspension and of the requirement to enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. ~~A person who must complete an Alcohol and Drug Safety Action Program as a condition of reinstatement of his driving privileges or a court‑ordered drug program may use the route restricted or special restricted driver’s license to attend the Alcohol and Drug Safety Action Program classes or court‑ordered drug program in addition to the other permitted uses of a route restricted driver’s license or a special restricted driver’s license.~~ An assessment of the extent and nature of the alcohol and drug abuse problem, if any, of the ~~applicant~~ person must be prepared and a plan of education or treatment, or both, must be developed for the ~~applicant~~ person. Entry into and successful completion of the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the ~~applicant~~ person is a mandatory requirement of the issuance of an ignition interlock restricted license and restoration of driving privileges to the ~~applicant~~ person whose license is suspended pursuant to this section. The Alcohol and Drug Safety Action Program shall determine if the ~~applicant~~ person has successfully completed the services. Alcohol and Drug Safety Action Programs shall meet at least once a month. The person whose license is suspended ~~must~~ shall attend the first Alcohol and Drug Safety Action Program available after the date of enrollment.

(C) The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each ~~applicant~~ person shall bear the cost of services recommended in the ~~applicant’s~~ person's plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. No ~~applicant~~ person may be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the ~~applicant~~ person has successfully completed services. ~~An applicant~~ A person who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the ~~applicant~~ person has successfully completed services. The Department of Alcohol and Other Drug Abuse Services ~~will~~ shall report annually to the House Ways and Means Committee and Senate Finance Committee on the number of first and multiple offenders completing the Alcohol and Drug Safety Action Program, the amount of fees collected and expenses incurred by each Alcohol and Drug Safety Action Program, and the number of community service hours performed in lieu of payment.

(D) If the ~~applicant~~ person has not successfully completed the services as directed by the Alcohol and Drug Safety Action Program within one year of enrollment, a hearing must be provided by the Alcohol and Drug Safety Action Program whose decision is appealable to the Department of Alcohol and Other Drug Abuse Services. If the ~~applicant~~ person is unsuccessful in the Alcohol and Drug Safety Action Program, the Department of Motor Vehicles may ~~restore the privilege to drive a motor vehicle~~ waive the successful completion of the program as a mandatory requirement of the issuance of an ignition interlock restricted license upon the recommendation of the Medical Advisory Board as utilized by the ~~department~~ Department of Motor Vehicles, if ~~it~~ the Medical Advisory Board determines public safety and welfare of the ~~petitioner~~ person may not be endangered.

(E) The Department of Motor Vehicles and the Department of Alcohol and Other Drug Abuse Services shall develop procedures necessary for the communication of information pertaining to relicensing, or otherwise. These procedures must be consistent with the confidentiality laws of the State and the United States. If ~~the drivers~~ a person’s driver’s license ~~of any a person~~ is suspended ~~by authority of~~ pursuant to this section, ~~no~~ an insurance company ~~may~~ shall not refuse to issue insurance to cover the remaining members of ~~his~~ the person’s family, but the insurance company is not liable for any actions of the person whose license has been suspended or who has voluntarily turned ~~his~~ the person’s license in to the Department of Motor Vehicles.

~~(F)~~ ~~Except as provided for in Section 56‑1‑365(D) and (E), the driver's license suspension periods under this section begin on the date the person is convicted, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for the a violation of Section 56‑5‑2930, 56‑5‑2933, or for the violation of any other a law of this State or ordinance of a county or municipality of this State that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, or narcotics; however, a person is not prohibited from filing a notice of appeal and receiving a certificate which entitles him to operate a motor vehicle for a period of sixty days after the conviction, plea of guilty or nolo contendere, or bail forfeiture pursuant to Section 56‑1‑365(F).~~”

SECTION 16. 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.

SECTION 17. This act takes effect on October 1, 2014.

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