~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 21, 2014

**H. 4476**

Introduced by Reps. Weeks and Gilliard

S. Printed 5/21/14--S.

Read the first time April 15, 2014.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4476) to amend Section 56‑5‑2953, as amended, Code of Laws of South Carolina, 1976, relating to the recording of an incident site and breath test site, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_. Section 56-5-2990(A)(2)(a) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

“(a) If a person is found to have refused to submit to a breath test pursuant to Section 56‑5‑2950 and is convicted of Section 56‑5‑2930 or 56‑5‑2933, ~~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~~ 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 ~~equal to the length of time remaining on the person’s suspension~~ for six months. ~~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~~ The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56.” /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

C. BRADLEY HUTTO GERALD MALLOY

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Department of Public Safety

State Law Enforcement Division

The agencies report that this bill will have no fiscal impact on the General Fund of the State, nor on federal and or other funds.

**LOCAL GOVERNMENT IMPACT:**

The State Budget Division surveyed local governments to assess the impact of this bill. One county responded and indicated there was no fiscal impact.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 56‑5‑2953, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RECORDING OF AN INCIDENT SITE AND BREATH TEST SITE WHEN A PERSON IS CHARGED WITH A TRAFFIC OFFENSE RELATED TO THE UNLAWFUL USE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE, SO AS TO PROVIDE THAT THE VIDEO RECORDING TAKEN AT THE BREATH TEST SITE ALSO MUST INCLUDE AN AUDIBLE RECORDING.

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

SECTION 1. Section 56‑5‑2953 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

Section 56‑5‑2953. (A) A person who violates Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 must have his conduct at the incident site and the breath test site video recorded.

(1)(a) The video recording at the incident site must:

(i) not begin later than the activation of the officer’s blue lights;

(ii) include an audio recording;

(iii) include any field sobriety tests administered; and

~~(iii)~~(iv) include the arrest of a person for a violation of Section 56‑5‑2930 or Section 56‑5‑2933, or a probable cause determination in that the person violated Section 56‑5‑2945, and show the person being advised of his Miranda rights.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) The video recording at the breath test site must:

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; and

(c) also include the person’s conduct during the required twenty‑minute pretest waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.

(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. Failure by the arresting officer to produce the video or audio recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 if the arresting officer submits a sworn affidavit certifying that the video or audio recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video or audio recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens’ arrests, where an arrest has been made and the video and audio recording equipment ~~has~~have not been activated by blue lights, the failure by the arresting officer to produce the video or audio recordings required by this section is not alone a ground for dismissal. However, as soon as video and audio recording is practicable in these circumstances, video and audio recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video or audio recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer’s failure to produce the video or audio recording.

(C) A video or audio recording must not be disposed of in any manner except for its transfer to a master recording for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary video recording equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of video recording equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping and audio equipment for use in all law enforcement vehicles used for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used for traffic enforcement to ensure proper maintenance of video and audio recording equipment.

(E) Beginning one month from the effective date of this section, all of the funds received in accordance with Section 14‑1‑208(C)(9) must be expended by SLED to equip all breath test sites with video recording devices and supplies. Once all breath test sites have been equipped fully with video recording devices and supplies, eighty‑seven and one‑half percent of the funds received in accordance with Section 14‑1‑208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply video recording equipment for vehicles used for traffic enforcement. The remaining twelve and one‑half percent of the funds received in accordance with Section 14‑1‑208(C)(9) must be expended by SLED to purchase, maintain, and supply video recording equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14‑1‑208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of video recording equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department’s and SLED’s annual appropriation request to the General Assembly.

(F) The Department of Public Safety and SLED must promulgate regulations necessary to implement the provisions of this section.

(G) The provisions contained in Section 56‑5‑2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a video recording device. The provisions contained in Section 56‑5‑2953(A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a video recording device.”

SECTION 2. This act takes effect upon approval by the Governor.

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