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**S. 192**

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Summary: DUI Blood Draw & Implied Consent

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[01/14/2025](https://www.scstatehouse.gov/sess126_2025-2026/prever/192_20250114.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 56‑5‑2950, RELATING TO IMPLIED CONSENT TO TESTING FOR ALCOHOL OR DRUGS, PROCEDURES, AND INFERENCE OF DUI, SO AS TO ALLOW FOR THE LAW ENFORCEMENT AGENCY TO DETERMINE WHICH TESTS SHALL BE ADMINISTERED, REMOVE THE REQUIREMENT THAT A BREATH TEST BE ADMINISTERED BEFORE OTHER TESTS, AND PROVIDE FOR THE TRAINING OF PERSONNEL TO BECOME QUALIFIED TO OBTAIN BLOOD TEST SAMPLES; BY AMENDING SECTION 24‑13‑100, RELATING TO THE DEFINITION OF A “NO PAROLE OFFENSE”, SO AS TO PROVIDE THAT FELONY DRIVING UNDER THE INFLUENCE OR FELONY DRIVING WITH AN UNLAWFUL ALCOHOL CONCENTRATION RESULTING IN DEATH IS NOT A “NO PAROLE OFFENSE”; BY AMENDING SECTION 56‑5‑2951, RELATING TO THE SUSPENSION OF A LICENSE FOR REFUSAL TO SUBMIT TO TESTING OR FOR CERTAIN LEVEL OF ALCOHOL CONCENTRATION, TEMPORARY ALCOHOL LICENSES, RESTRICTED DRIVER’S LICENSES, AND PENALTIES, SO AS TO REMOVE THE TEMPORARY ALCOHOL LICENSE AND PROVIDE SUSPENSION PENALTIES; AND BY AMENDING SECTION 56‑5‑2953, RELATING TO INCIDENT SITE AND BREATH TEST SITE VIDEO RECORDING, SO AS TO PROVIDE THAT LAW ENFORCEMENT OFFICERS MUST MAKE REASONABLE EFFORTS TO ENSURE VIDEO RECORDING OF THE STOP, TESTS, AND ARREST OF A PERSON FOR A DUI.

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

SECTION 1. Sections 56‑5‑2950(A), (C), (E), and (F) of the S.C. Code are amended to read:

 Section 56‑5‑2950. (A)(1) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, 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 testThe test or combination of tests chosen by the law enforcement agency 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 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

 (2) If a breath test is administered, then the 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.

 (3) Any additional tests to collect other samples must be collected within two hours of the arrest. 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 or other medical personnel trained and qualified 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.

 (C) A hospital, physician, qualified technician, chemist, or registered nurse, or other personnel trained and qualified to obtain the samples, 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.

 (E) The arresting officer 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 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 a judicial or administrative proceeding.

 SLED shall administer the provisions of this subsection and shall make regulations necessary to carry out 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. 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 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 test or combination of tests used in the process of obtaining the samples or of conducting the test in accordance with this section breath testing devices, breath testing site video program, and the cost of the 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 grossly 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.

SECTION 2. Section 24‑13‑100 of the S.C. Code is amended to read:

 Section 24‑13‑100. (A) For purposes of definition under South Carolina law, a “no parole offense” means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16‑1‑10(d), which is punishable by a maximum term of imprisonment for twenty years or more.

 (B) Felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death pursuant to Section 56‑5‑2945(A)(2) is not a “no parole offense.”

SECTION 3. Sections 56‑5‑2951(B) through (F), (H), and (I) of the S.C. Code are amended to read:

 Section 56‑5‑2951. (B)(1) Within thirty days of the issuance of the notice of suspension, the person may:

 (a) request a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure; and, either:

 (b) enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941.; or

 (c) obtain a temporary alcohol license from the Department of Motor Vehicles. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license and such fee must be held in trust by the Department of Motor Vehicles until final disposition of any contested case hearing. Should the temporary suspension provided for in this subsection be upheld during the contested case hearing, 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, while the remaining seventy‑five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57‑11‑20, to be distributed as provided in Section 11‑43‑167. 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), this section, 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 pursuant to subsection (H).

 (2) At the contested case hearing, if:

 (a) the suspension is upheld, then 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 shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 and must enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941;

 (b) the suspension is overturned, then the person must have the person's driver's license, permit, or nonresident operating privilege reinstated and the person must be reimbursed by the Department of Motor Vehicles in the amount of the fees provided for in subsection (B)(1)(c).

 (3) If the suspension is overturned, then the person's driver's license, permit, or nonresident operating privilege must be reinstated.

 (4) 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, then the person waives the person's right to the hearing, and 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 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) that, if the person does not request a contested case hearing within thirty days of the issuance of the notice of suspension, then the person waives the person's right to the contested case hearing, and the suspension continues for the period provided for in subsection (I); and

 (3) that, if the suspension is upheld at the contested case hearing or the person does not request a contested case hearing, then the person shall enroll in an Alcohol and Drug Safety Action Program.

 (F)(1) 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:

 (a) was lawfully arrested or detained;

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

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

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

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

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

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

 (iv) machine was working properly.

 (2) 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.

 (3) 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, then the person must receive credit for the number of days the person's license was suspended before the person received a temporary alcohol license and requested the contested case hearing and must receive credit for the number of days, if any, the person maintained an ignition interlock restriction on the temporary alcohol license.

 (4) 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, then 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.

 (H) If the person did not request a contested case hearing or the suspension is upheld at the contested case hearing, then the person shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990.

 (I)(1) Except as provided in item (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 a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section 56‑1‑286, 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.; or

 (c) six months for a person who refuses to submit to field sobriety tests if he is physically able to do so.

 (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, a person who has been convicted previously for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or another law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section 56‑1‑286, 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 the person refuses to submit to a test pursuant to Section 56‑5‑2950 or if the person refuses to submit to a field sobriety test if he is physically able to do so, or two months if 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 the person refuses to submit to a test pursuant to Section 56‑5‑2950 or if the person refuses to submit to a field sobriety test if he is physically able to do so, or three months if 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 the person refuses to submit to a test pursuant to Section 56‑5‑2950 or if the person refuses to submit to a field sobriety test if he is physically able to do so, or four months if 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)(a) 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.

 (b) The person must receive credit for the number of days the person maintained an ignition interlock restriction on the temporary alcohol license.

 (c)(b) 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.

SECTION 4. Section 56‑5‑2953(A) of the S.C. Code is 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 law enforcement officer initiating a traffic stop must make reasonable efforts to ensure that the video recording at the incident site must:

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

 (ii) includeincludes any field sobriety tests administered; and

 (iii) includeincludes 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 showshows or audibly records 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 law enforcement officer initiating a traffic stop must make reasonable efforts to ensure that the video recording at the breath test site must:

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

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

 (c) also include includes the person's conduct during the required twenty‑minute pre‑test 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.

SECTION 5. This act takes effect upon approval by the Governor.

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