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Summary: Officer of motor vehicle hearings

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**VERSIONS OF THIS BILL**

[12/16/2008](file:///p:\pprever\2009-10\3136_20081216.docx)

**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 OR PERMIT, OR THE DENIAL OF THE ISSUANCE OF A LICENSE OR A PERMIT TO A PERSON UNDER THE AGE OF TWENTY‑ONE WHO HAS OPERATED A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, SO AS TO DELETE THE TERM “ADMINISTRATIVE HEARING” AND REPLACE IT WITH THE TERM “CONTESTED CASE HEARING”, AND TO PROVIDE THAT A CONTESTED CASE HEARING MUST BE CONDUCTED BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS PURSUANT TO ITS RULES OF PROCEDURE; TO AMEND SECTION 56‑5‑2942, AS AMENDED, RELATING TO THE IMMOBILIZATION OF A MOTOR VEHICLE OWNED BY A PERSON WHO HAS BEEN CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE, SO AS TO DELETE THE PROVISION THAT ALLOWS THE DEPARTMENT OF MOTOR VEHICLES TO CONDUCT A HEARING AND RECEIVE TESTIMONY REGARDING THE VERACITY OF CERTAIN AFFIDAVITS IT RECEIVES REGARDING THE RELEASE OF AN IMMOBILIZED VEHICLE, PROVIDE THAT THE DEPARTMENT MAY ISSUE A DETERMINATION PERMITTING OR DENYING THE RELEASE OF AN IMMOBILIZED VEHICLE BASED ON CERTAIN AFFIDAVITS, AND TO REVISE THE PROCEDURE TO OBTAIN RELIEF FROM A DEPARTMENTAL DETERMINATION THAT IMMOBILIZES A VEHICLE OR DENIES THE RELEASE OF A VEHICLE; AND TO AMEND SECTION 56‑5‑2951, AS AMENDED, RELATING TO THE SUSPENSION OF A PERSON’S PRIVILEGE TO OPERATE A MOTOR VEHICLE, SO AS TO DELETE THE TERM “ADMINISTRATIVE HEARING” AND REPLACE IT WITH THE TERM “CONTESTED CASE HEARING”, TO DELETE THE TERM “DEPARTMENT OF MOTOR VEHICLES” AND REPLACE IT WITH THE TERM “OFFICE OF MOTOR VEHICLE HEARINGS” AND TO PROVIDE THAT A CONTESTED CASE HEARING MUST BE CONDUCTED BEFORE THE OFFICE OF MOTOR VEHICLE HEARINGS.

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

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

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

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

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

At the ~~administrative~~ contested case hearing if:

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

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

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

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

SECTION 3. Section 56‑1‑286(N) of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

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

SECTION 4. Section 56‑1‑286(O) of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

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

(1) was lawfully arrested or detained;

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

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

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

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

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

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

(d) the machine was operating properly.

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

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

SECTION 5. Section 56‑5‑2942(G) of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“(G) The department may ~~conduct a hearing and receive testimony regarding the veracity of an affidavit submitted pursuant to subsection (F) or~~ issue ~~an agency decision~~ a determination ~~to permit~~ permitting or ~~deny~~ denying the release of the vehicle based on the affidavit submitted pursuant to subsection (F). A person may seek relief ~~pursuant to the provisions of the Administrative Procedures Act~~ from ~~an agency action~~ a department determination immobilizing a vehicle or denying the release of the 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.”

SECTION 6. Section 56‑5‑2951 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

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

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

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

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

At the ~~administrative~~ contested case hearing if:

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

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

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

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

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

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

(F) ~~An administrative~~ A contested case hearing must be held after the request for the hearing is received by the ~~Division~~ 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 ~~administrative~~ contested case hearing on the issue of the accuracy of the breath test result.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(P) If a person does not request ~~an administrative~~ 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 ~~an administrative~~ 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 7. This act takes effect upon approval by the Governor.

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