**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1036**

**STATUS INFORMATION**

General Bill

Sponsors: Senators L. Martin and Elliott

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Introduced in the Senate on January 10, 2012

Currently residing in the Senate Committee on **Judiciary**

Summary: DUI testing

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/5/2011 Senate Prefiled

12/5/2011 Senate Referred to Committee on **Judiciary**

1/10/2012 Senate Introduced and read first time ([Senate Journal‑page 24](file:///h:\sj%20archive\2012\01-10-12.docx))

1/10/2012 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 24](file:///h:\sj%20archive\2012\01-10-12.docx))

1/9/2012 Senate Referred to Subcommittee: L.Martin (ch), Hutto, Massey

**VERSIONS OF THIS BILL**

[12/5/2011](file:///p:\pprever\2011-12\1036_20111205.docx)

**A** **BILL**

TO AMEND SECTIONS 56‑5‑2946 AND 56‑5‑2950, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE IMPLIED CONSENT TO TESTING OF A MOTORIST’S BODILY FLUIDS TO DETERMINE THE PRESENCE OF ALCOHOL OR DRUGS IN HIS SYSTEM, SO AS TO PROVIDE THAT CHEMICAL TESTS OF A PERSON’S SALIVA MAY BE USED TO DETERMINE THE ALCOHOL OR DRUGS IN HIS SYSTEM.

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

SECTION 1. Section 56‑5‑2946 of the 1976 Code is amended to read:

“Section 56‑5‑2946. Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, saliva, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56‑5‑2945.

The tests must be administered at the direction of a law enforcement officer who has probable cause to believe that the person violated or is under arrest for a violation of Section 56‑5‑2945. The administration of one test does not preclude the administration of other tests. The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at the trial of the offense which precipitated the requirement for testing. A person who is tested or gives samples for testing may have a qualified person of his choice conduct additional tests at his expense and must be notified of that right. A person’s request or failure to request additional blood, saliva, or urine tests is not admissible against the person in the criminal trial.

The provisions of Section 56‑5‑2950, relating to the administration of tests to determine a person’s alcohol concentration, additional tests at the person’s expense, the availability of other evidence on the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them, availability of test information to the person or his attorney, and the liability of medical institutions and persons administering the tests are applicable to this section and also extend to the officer requesting the test, the State or its political subdivisions, or governmental agency, or entity which employs the officer making the request, and the agency, institution, or employer, either governmental or private, of persons administering the tests. Notwithstanding any other provision of state law pertaining to confidentiality of hospital records or other medical records, information regarding tests performed pursuant to this section must be released, upon subpoena, to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of Section 56‑5‑2945.”

SECTION 2. Section 56‑5‑2950(A) of the 1976 Code, as last amended by Act 201 of 2008 is further amended to read:

“(A) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, saliva, 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 or saliva 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 or saliva test to determine the person’s alcohol concentration. If the person is physically unable to provide an acceptable breath or saliva sample because he 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 or saliva 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~~ and saliva tests 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, saliva, and urine samples must be obtained and handled in accordance with procedures approved by SLED.”

SECTION 3. This act takes effect upon approval by the Governor.

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