CHAPTER 6

Department of Public Safety

ARTICLE 1

General Provisions

**SECTION 23‑6‑10.** Definitions.

 For the purposes of this title, the following words, phrases, and terms are defined as follows:

 (1) “Department” means the Department of Public Safety.

 (2) “Director” means the chief administrative officer of the Department of Public Safety.

HISTORY: 1993 Act No. 181, Section 343(A); 1996 Act No. 459, Section 246A.

CROSS REFERENCES

For regulations pertaining to the Criminal Justice Academy, see S.C. Code of Regulations R. 38‑001 et seq.

**SECTION 23‑6‑20.** Department of Public Safety established; divisions comprising Department; transfer of functions, powers, duties, responsibilities and authority; rules, standards, etc., of former entities remain in effect.

 (A) The Department of Public Safety is established as an administrative agency of state government which is comprised of a South Carolina Highway Patrol Division, a South Carolina State Police Division, and a Division of Training and Continuing Education.

 (B) The functions, powers, duties, responsibilities, and authority statutorily exercised by the following offices, sections, departments, or divisions of the following state agencies as existing on the effective date of this act are transferred to and devolved on the department to include the South Carolina Highway Patrol and the Safety Office Section of the Division of Finance and Administration of the South Carolina Department of Highways and Public Transportation; the Safety Enforcement Officers of the Office of Enforcement within the Transportation Division of the South Carolina Public Service Commission and the Governor’s Office of Public Safety, together with all assets, liabilities, records, property, personnel, unexpended appropriations, and other funds shall be transferred to the control of the department. All rules, regulations, standards, orders, or other actions of these entities shall remain in effect unless specifically changed or voided by the department in accordance with the Administrative Procedures Act, or otherwise provided.

HISTORY: 1993 Act No. 181, Section 343(A); 1996 Act No. 459, Section 34; 2003 Act No. 51, Section 9.

CROSS REFERENCES

Administrative Procedures Act, see Sections 1‑23‑310 et seq.

Driver training schools, within Department of Licensing of Department of Motor Vehicles, see Sections 56‑23‑10 et seq.

Motor Vehicle Financial Responsibility Act, see Sections 56‑9‑10 et seq.

Reciprocity in registration, see Sections 56‑3‑170, 56‑3‑660.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

**SECTION 23‑6‑30.** Duties and powers of department.

 The department shall have the following duties and powers:

 (1) carry out highway and other related safety programs;

 (2) engage in driver training and safety activities;

 (3) enforce the traffic, motor vehicle, commercial vehicle, and related laws;

 (4) enforce size, weight, and safety enforcement statutes relating to commercial motor vehicles;

 (5) operate a comprehensive law enforcement personnel training program;

 (6) promulgate such rules and regulations in accordance with the Administrative Procedures Act and Article 7 of this chapter for the administration and enforcement of the powers delegated to the department by law, which shall have the full force and effect of law;

 (7) operate such programs and disseminate information and material so as to continually improve highway safety;

 (8) receive and disburse funds and grants, including any donations, contributions, funds, grants, or gifts from private individuals, foundations, agencies, corporations, or the state or federal governments, for the purpose of carrying out the programs and objectives of this chapter; and

 (9) do all other functions and responsibilities as required or provided for by law.

HISTORY: 1993 Act No. 181, Section 343(A); 1996 Act No. 459, Section 35; 2003 Act No. 51, Section 10.

CROSS REFERENCES

Administrative Procedures Act, see Sections 1‑23‑310 et seq.

Library References

States 67.

Westlaw Topic No. 360.

C.J.S. States Sections 224 to 227, 249 to 251, 253.

Attorney General’s Opinions

A court would likely find that the Department of Motor Vehicles’ acceptance of equipment and service from a private commercial entity in exchange for commercial advertising time is legally authorized. S.C. Op.Atty.Gen. (Nov. 23, 2010) 2010 WL 4982601.

**SECTION 23‑6‑40.** Director; appointment; duties; deputy directors.

 (A) The Governor, with the advice and consent of the Senate, shall appoint the director of the department who shall serve a term of four years. The director may only be removed pursuant to the provisions of Section 1‑3‑240(C). He shall receive such compensation as may be established under the provisions of Section 8‑11‑160 and for which funds have been authorized in the annual general appropriation act. The term of office for the first appointment under the provisions of this section shall be February 1, 1994 for a term of two years. The Governor shall submit the name of his appointee to the Senate by December first of the year prior to the date on which the term begins. A person appointed by the Governor with the advice and consent of the Senate to fill a vacancy shall serve for the unexpired term only. This shall not prohibit the Governor from reappointing a person who is appointed to fill a vacancy as director of the department. All subsequent appointments shall be made in the manner of the original appointment for a term of four years.

 (B) The director must administer the affairs of the department and must represent the department in its dealings with other state agencies, local governments, special purpose districts, and the federal government. The director must appoint a deputy director for each division and employ such other personnel for each division and prescribe their duties, powers, and functions as he considers necessary and as may be authorized by statute and for which funds have been authorized in the annual general appropriation act.

 (C) The deputy director for each division shall serve at the pleasure of the director and the director shall recommend the salary for each deputy director as allowed by statute or applicable law.

HISTORY: 1993 Act No. 181, Section 343(A); 1995 Act No. 145, Part II, Section 4.

CROSS REFERENCES

Director of Department of Public Safety an ex officio member of South Carolina Public Safety Coordinating Council, see Section 23‑6‑510.

Library References

States 53.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 147, 154, 162, 165, 167 to 168, 175 to 183, 185 to 187, 192 to 194, 249.

**SECTION 23‑6‑50.** Annual audit; carrying funds into next fiscal year; retention of revenue to meet department expenses.

 The director shall annually cause the department to be audited. The audit must be conducted by a certified public accountant or firm of certified public accountants to be selected by the State Auditor. The department may undergo an Agreed Upon Procedures audit in lieu of audited financial statements. The audit shall be in coordination with the State Auditor’s Office and will be in accordance with generally accepted accounting principles and must comprise all financial records and controls. The audit must be completed by November 1 following the close of the fiscal year. The costs and expenses of the audit must be paid by the department out of its funds.

 Notwithstanding any other provision of law, all revenue generated by the department from the sale of vehicles, various equipment, less the cost of disposition incurred by the Department of Administration Division of Operations, gasoline and insurance claims, during the prior fiscal year may be retained and carried forward into the current fiscal year and expended for the purpose of purchasing like items. Any unexpended balance on June 30 of the prior fiscal year authorized to be expended or used for any federal grant program may be retained and carried forward to the current fiscal year and used for matching committed or unanticipated grant funds, or both. The Department of Motor Vehicles is authorized to carry forward and expend all motor carrier registration fees collected pursuant to Chapter 23 of Title 58 for fiscal years 1996‑1997, 1997‑1998, 1998‑1999 into fiscal year 1999‑2000.

 Notwithstanding any other provision of law, revenue received from the sale of publications, postal reimbursement, photo copying, electronic data from traffic collisions, sale of miscellaneous refuse and recyclable materials, insurance claim receipts, coin operated telephones, and revenue from building management services, and the Department of Public Safety training series shall be retained by the department and expended in budgeted operations for professional training, fees and dues, clothing allowance, and other related services or programs as the Director of the Department of Public Safety may deem necessary. In order to complete projects begun in a prior fiscal year, the department is authorized to expend federal and earmarked funds in the following fiscal year for expenditures incurred in the prior fiscal year.

HISTORY: 1993 Act No. 181, Section 343(A); 1996 Act No. 459, Section 36; 2000 Act No. 386, Section 2; 2008 Act No. 353, Section 2, Pt 12A.1, eff July 1, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2008 amendment, in the first undesignated paragraph, substituted the second and third sentences for the second sentence which provided for issuance of audited financial statements and providing them to the General Assembly; and added the third undesignated paragraph relating to retention of revenue to meet certain department expenses.

Library References

States 113 to 128.

Westlaw Topic No. 360.

C.J.S. States Sections 322 to 387.

**SECTION 23‑6‑60.** Illegal Immigration Enforcement Unit; director, officers, agents and employees; powers; cooperation with other agencies; training.

Text of section effective upon contingency, see editor’s note.

 (A) There is created an Illegal Immigration Enforcement Unit within the Department of Public Safety. The purpose of the Illegal Immigration Enforcement Unit is to enforce immigration laws as authorized pursuant to federal laws and the laws of this State.

 (B) The Illegal Immigration Enforcement Unit is under the administrative direction of the department’s director. The department’s director shall maintain and provide administrative support for the Illegal Immigration Enforcement Unit. The department’s director may appoint appropriate personnel within the department to administer and oversee the operations of the Illegal Immigration Enforcement Unit.

 (C)(1) The Illegal Immigration Enforcement Unit shall have such officers, agents, and employees as the department’s director may deem necessary and proper for the enforcement of immigration laws as authorized pursuant to federal laws and the laws of this State.

 (2)(a) The enforcement of immigration laws as authorized pursuant to federal laws and the laws of this State must be the only responsibility of the officers of the Illegal Immigration Enforcement Unit.

 (b) The officers shall be commissioned by the Governor upon the recommendation of the department’s director.

 (c) The officers shall have the same power to serve criminal processes against offenders as sheriffs of the various counties and also the same power as those sheriffs to arrest without warrants and to detain persons found violating or attempting to violate immigration laws. The officers also shall have the same power and authority held by deputy sheriffs for the enforcement of the criminal laws of the State.

 (d) The department must provide the officers with distinctive uniforms and suitable arms and equipment for use in the performance of their duties. The officers shall at all times, when in the performance of their duties, wear complete uniforms with badges conspicuously displayed on the outside of their uniforms, except officers performing undercover duties. The department director shall prescribe a unique and distinctive official uniform with appropriate insignia to be worn by all officers when on duty and at other times as the department’s director shall order, and a distinctive color or colors and appropriate emblems for all motor vehicles used by the Illegal Immigration Enforcement Unit except those designated by the director. No other law enforcement agency, private security agency, or any person shall wear a similar uniform and insignia that could be confused with the uniform and insignia of the Illegal Immigration Enforcement Unit. An emblem may not be used on a nondepartment motor vehicle, nor may the vehicle be painted in a color or in any manner that would cause the vehicle to be similar to an Illegal Immigration Enforcement Unit vehicle or readily confused with it. The department’s director shall file with the Legislative Council for publication in the State Register a description and illustration of the official Illegal Immigration Enforcement Unit uniform with insignia and the emblems of the official Illegal Immigration Enforcement Unit and motor vehicles including a description of the color of the uniforms and vehicles.

 (D) Notwithstanding any other provision of law, the Illegal Immigration Enforcement Unit must be funded annually by a specific appropriation to the Illegal Immigration Enforcement Unit in the state general appropriations act, separate and distinct from the department’s other appropriations.

 (E) The department’s director shall negotiate the terms of a memorandum of agreement with the United States Immigration and Customs Enforcement pursuant to Section 287(g) of the federal Immigration and Nationality Act as soon as possible after the effective date of this act.

 (F) Nothing in this section may be construed to prevent other law enforcement agencies of the State and political subdivisions of the State, including local law enforcement agencies, from enforcing immigration laws as authorized pursuant to federal laws and the laws of this State.

 (G) The department shall develop an illegal immigration enforcement training program which the department shall offer to all local law enforcement agencies to assist any local law enforcement agency wishing to utilize the training program in the proper implementation, management, and enforcement of applicable immigration laws.

HISTORY: 2011 Act No. 69, Section 17, eff upon occurrence of contingency.

Editor’s Note

2011 Act No. 69, Section 20, provides as follows:

“SECTION 17 of this act takes effect upon funding of the Illegal Immigration Enforcement Unit by the General Assembly pursuant to Section 23‑6‑60(D) and upon granting of Section 287(g) of the federal Immigration and Nationality Act authority to the Department of Public Safety pursuant to Section 23‑6‑60(E). The remaining provisions of this act take effect on January 1, 2012.”

Federal Aspects

Powers of immigration officers and employees, see 8 U.S.C.A. Section 1357.

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

**SECTION 23‑6‑90.** Security of government facilities; employment, equipment, and provision of officers.

 The department may employ, equip, and provide such officers as may be necessary to maintain the security of the Governor’s Mansion Compound, and other governmental facilities, including the State Capitol Building, the facilities of the Capitol Complex, and other state buildings. The director must determine the most efficient and effective method of placing these officers within a law enforcement division in the department.

HISTORY: 1996 Act No. 459, Section 37.

ARTICLE 3

Highway Patrol Division

**SECTION 23‑6‑100.** Highway Patrol Division, State Police Division created; distinctive uniforms, emblems, etc.

 (A) There is created a South Carolina Highway Patrol Division and a South Carolina State Police Division within the Department of Public Safety. The South Carolina Highway Patrol Division shall have such troopers, officers, agents and employees as the department may deem necessary and proper for the enforcement of the traffic and other related laws, and the South Carolina State Police Division shall have such troopers, officers, agents and employees as the department may deem necessary and proper for the enforcement of the commercial motor carrier related laws, the enforcement of which is devolved upon the department. Such officers and troopers shall be commissioned by the Governor upon the recommendation of the Director of the Department of Public Safety. Such commissions may be terminated at the pleasure of the director.

 (B) The department must provide the officers of the Highway Patrol and of the State Police with distinctive uniforms and suitable arms and equipment for use in the performance of their duties. Such officers and troopers shall at all times, when in the performance of their duties, wear complete uniforms with badges conspicuously displayed on the outside of their uniforms.

 (C) The commanding officers of the South Carolina Highway Patrol and the South Carolina State Police respectively, with the approval of the director of the department, shall prescribe a unique and distinctive official uniform, with appropriate insignia to be worn by all officers when on duty and at such other times as the director shall order, and a distinctive color or colors and appropriate emblems for all motor vehicles used by the Highway Patrol and the State Police except those designated by the director. No other law enforcement agency, private security agency, or any person shall wear a similar uniform and insignia which may be confused with the uniform and insignia of the Highway Patrol or State Police. An emblem must not be used on a nondepartment motor vehicle, nor may such vehicle be painted in a color or in any manner which would cause the vehicle to be similar to a Highway Patrol or State Police vehicle or readily confused with it.

 (D) The director shall file with the Legislative Council for publication in the State Register a description and illustration of the official highway patrol uniform with insignia and the emblems of the official highway patrol and motor vehicles including a description of the color of such uniforms and vehicles and a description and illustration of the official state police uniform with insignia and the emblems of the official state police and motor vehicles including a description of the color of such uniforms and vehicles.

 (E) The South Carolina Highway Patrol Division shall transfer the service sidearm of an active duty trooper killed in the line of duty to the trooper’s surviving spouse upon request at no charge once the sidearm has been rendered permanently inoperable.

HISTORY: 1993 Act No. 181, Section 343(A); 1994 Act No. 335, Section 1; 1997 Act No. 51, Section 1.

CROSS REFERENCES

Violation of this section may be enjoined, see Section 23‑6‑130.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

**SECTION 23‑6‑110.** Existing uniforms and emblems continued in use during transition.

 In order to carry out the provisions of Section 23‑6‑100 in an orderly and economical manner it is intended that all serviceable uniforms be continued in use until such time as the director considers it necessary for them to be replaced. These provisions shall also apply to the emblems for motor vehicles.

HISTORY: 1993 Act No. 181, Section 343(A).

**SECTION 23‑6‑120.** Troopers and officers to file, or be covered by, bond.

 Every officer and trooper commissioned pursuant to this chapter shall file a bond, or be covered by a surety bond, with the department in the amount of not less than two thousand dollars, subscribed by a duly licensed surety company, which shall be conditioned on the faithful performance of his duties. The duties include but are not limited to the prompt and proper accounting of all funds coming into his hands, the payment of any judgment recovered against him in any court of competent jurisdiction upon a cause of action arising out of breach or abuse of official duty or power, or the payment of damages sustained by any member of the public from any unlawful act of such officer or trooper. Coverage under such bond shall not include damage to persons or property arising out of the negligent operation of a motor vehicle. Such bond may be individual, schedule or blanket and on a form approved by the Attorney General. The premiums on such bonds shall be paid by the department.

HISTORY: 1993 Act No. 181, Section 343(A).

Library References

States 48.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 147 to 150, 152.

NOTES OF DECISIONS

In general 1

Actions against patrolman, his representative, or on bond 4

Amount of liability 5

Improper joinder of actions 6

Meaning of “unlawful act” 3

Rules of construction 2

1. In general

This statutory bond is for the benefit of any member of the public who may secure a judgment against the patrolman because of any breach or abuse of official duty by the patrolman. Middleton v. Pearman (D.C.S.C. 1969) 305 F.Supp. 1203.

Applied in Rosemond v. Employers Mut. Cas. Co. of Des Moines, Iowa, 1965, 238 F.Supp. 657.

Additional related case, see Bryant v. Blue Bird Cab Co. (S.C. 1943) 202 S.C. 456, 25 S.E.2d 489.

Sureties would not be needed on a patrolman’s bond if they would be held only when his acts are legal. They vouch for his acts and bind themselves to make good any damages he may cause to any member of the public by a breach or abuse of his official duty or power, or from any unlawful act while acting under color of his office or by virtue of his office. No other rule would be safe or sensible. Small v. National Sur. Corp. (S.C. 1942) 199 S.C. 392, 19 S.E.2d 658. Highways 97; Public Employment 1023

2. Rules of construction

This section as a whole must receive a practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of the lawmakers. Small v. National Sur. Corp. (S.C. 1942) 199 S.C. 392, 19 S.E.2d 658.

Where a bond filed under this section follows the language thereof, this section is as much a part of the bond as if in terms incorporated therein, and the bond must be construed in the light of this section. Small v. National Sur. Corp. (S.C. 1942) 199 S.C. 392, 19 S.E.2d 658. Highways 97; Public Employment 1021

The liability of the bondsmen provided for in this section depends upon the letter of the bond and is not to be extended by implication. However, such bond is to be reasonably construed, so as not to defeat the purpose of requiring sureties for the protection of the public. Yongue v. National Sur. Corp. (S.C. 1939) 190 S.C. 421, 3 S.E.2d 198. Highways 97; Public Employment 1021

3. Meaning of “unlawful act”

The “unlawful act” referred to in this section must be an act done by the officers virtute officii or colore officii, and not in his individual capacity. Yongue v National Surety Corp. (1939) 190 SC 421, 23 SE2d 198. League v National Surety Corp. (1941) 198 SC 289, 17 SE2d 783.

4. Actions against patrolman, his representative, or on bond

Plaintiffs may, if they are able to sustain their claim of unlawful conduct on the part of any patrolman proximately causing the death of their intestates, recover therefor on the bond of the patrolman but not on the bond of the Chief Highway Commissioner. Middleton v. Pearman (D.C.S.C. 1969) 305 F.Supp. 1203. Highways 97; Public Employment 1023

A bond of a highway patrolman is made for the benefit of the public, and hence, an injured member thereof can bring an action upon such bond. McKenzie v. City of Florence (S.C. 1959) 234 S.C. 428, 108 S.E.2d 825.

The principal on a bond given under this section, although he did not sign the bond or give an indemnity agreement, should be made a party defendant in an action against the surety on the bond for personal injuries allegedly caused by breach or abuse of official duties. Bessinger v. National Sur. Corp. (S.C. 1945) 207 S.C. 365, 35 S.E.2d 658.

A surety on the bond of a State highway patrolman may be sued alone, and the plaintiff does not, as a condition precedent, first have to obtain a judgment against the patrolman. The complaint in such an action would not be demurrable for defect of parties. Bessinger v. National Sur. Corp. (S.C. 1945) 207 S.C. 365, 35 S.E.2d 658.

There is no express requirement in this section that judgment must first be obtained against the person before recourse may be had upon the bond. Small v. National Sur. Corp. (S.C. 1942) 199 S.C. 392, 19 S.E.2d 658.

Looking to the clear intent of the legislature and keeping in mind that the security was manifestly intended for the benefit and protection of the public primarily, an injured party in pursuing his remedy may sue either the offending patrolman, or, in case of his death, his legal representative, or bring his action directly on the official bond. Small v. National Sur. Corp. (S.C. 1942) 199 S.C. 392, 19 S.E.2d 658. Highways 97; Public Employment 1030

5. Amount of liability

The word “any” in this section, and in a bond given pursuant to it, is not to be construed to mean “each and every.” It was not intended that the liability of the principal on the bond should exceed its amount. The wording of the section does not make the bond different from the usual one on which liability may not exceed its amount or the penal sum, although the aggregate of the judgments may exceed such amount. Brown v. National Sur.Corp. of N.Y. (S.C. 1946) 207 S.C. 462, 36 S.E.2d 588.

6. Improper joinder of actions

In Aetna Casualty & Surety Co. v Yonce (1936) 181 SC 369, 187 SE 536, wherein it was alleged that several actions had been brought to recover against the corporate bondsman under a State highway patrolman’s official bond and other claims thereunder were pending, so that several times the penalty named in the bond was being demanded, the court held that an equity action by the corporate bondsman against all known claimants to require the determination of all claims in one action and the proration of the amount of the bond among the established claims, was not a proper remedy, since the bondsman had an adequate remedy at law. Aetna Casualty & Surety Co. v. Yonce (S.C. 1936) 181 S.C. 369, 187 S.E. 536.

**SECTION 23‑6‑130.** Violations of Section 23‑6‑100 may be enjoined; notice, petition, hearing.

 Any violation of Section 23‑6‑100 may be enjoined by the court of common pleas upon petition of the director after due notice to the person violating the provisions of Section 23‑6‑100 and after a hearing on the petition.

HISTORY: 1993 Act No. 181, Section 343(A).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Injunctions Section 22, Use of Certain Official Insignia.

**SECTION 23‑6‑140.** Powers, duties and responsibilities of officers and troopers.

 The patrol of the highways of the State and the enforcement of the laws of the State relative to highway traffic, traffic safety, and motor vehicles shall be the primary responsibility of the troopers and officers of the South Carolina Highway Patrol. The troopers and officers of the State Police shall have the primary responsibility for the enforcement of laws relating to commercial motor carriers relating to size, weight, permits, licensing, and inspections for size and weight tolerance and safety. All officers and troopers shall have the same power to serve criminal processes against offenders as sheriffs of the various counties and also the same power as such sheriffs to arrest without warrants and to detain persons found violating or attempting to violate any laws of the State relative to highway traffic, motor vehicles or commercial motor carriers. These officers and troopers shall also have the same power and authority held by deputy sheriffs for the enforcement of the criminal laws of the State.

HISTORY: 1993 Act No. 181, Section 343(A).

Library References

States 65.

Westlaw Topic No. 360.

C.J.S. States Sections 224 to 227, 230, 240 to 253.

NOTES OF DECISIONS

In general 1

Deputy sheriff 3

Game warden 2

Jury duty 5

Offenses committed in officer’s presence 4

1. In general

Section 23‑13‑60, and therefore this section, grants to highway patrolman authority to arrest defendant where patrolman arriving at scene of accident finds two cars, each damaged by other, and defendant, admitted driver of one vehicle, is highly intoxicated. State v. Martin (S.C. 1980) 275 S.C. 141, 268 S.E.2d 105.

A highway patrolman, under the terms of this section is required to enforce the laws of this State relative to highway traffic. Accordingly, he has a right to arrest, without a warrant, for the violation of the statute with reference to the operation of a motor vehicle upon a public highway without tail lights and a party has no legal right to resist this lawful authority. State v. Young (S.C. 1963) 243 S.C. 187, 133 S.E.2d 210, certiorari denied 85 S.Ct. 85, 379 U.S. 868, 13 L.Ed.2d 71, rehearing denied 85 S.Ct. 334, 379 U.S. 940, 13 L.Ed.2d 351.

Where a patrolman is also a State constable, it is the duty of the officer in making an arrest to state his official character, the cause of the arrest, and to exhibit his warrant, if he has one. But the failure to take these precautions does not justify homicide or even physical resistance by the party arrested, without inquiry on his part as to the authority for his arrest. State v. Luster (S.C. 1935) 178 S.C. 199, 182 S.E. 427.

Quoted in Rosemond v. Employers Mut. Cas. Co. of Des Moines, Iowa, 1965, 238 F.Supp. 657.

2. Game warden

A State game warden stands on the same footing as a sheriff and occupies a position similar to that of a highway patrolman. Wyndham v. U.S., 1961, 197 F.Supp. 856. Game 6

3. Deputy sheriff

This section gives highway patrolmen the same authority and power possessed by a deputy sheriff to enforce the criminal laws of this State; accordingly, a highway patrolman is empowered to arrest without a warrant any person who commits a misdemeanor in his presence. State v. Williams (S.C. 1960) 237 S.C. 252, 116 S.E.2d 858.

4. Offenses committed in officer’s presence

A crime is committed in the presence of an officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case. State v. Williams (S.C. 1960) 237 S.C. 252, 116 S.E.2d 858.

This section does not confer upon the officers the authority to make arrests without warrants for misdemeanors not committed in their presence. Yongue v. National Sur. Corp. (S.C. 1939) 190 S.C. 421, 3 S.E.2d 198. Arrest 63.3

Where a highway patrolman is also a State constable, he is vested with all the powers of a peace officer of the State, and he has the right to arrest without a warrant any person who commits a misdemeanor in his sight or hearing. State v. Luster (S.C. 1935) 178 S.C. 199, 182 S.E. 427.

5. Jury duty

The trial judge erred in failing to disqualify uniformed highway patrolman from jury to try the defendant charged with capital murder, since a highway patrolman is functionally equivalent to a deputy sheriff. State v. Cooper (S.C. 1986) 291 S.C. 332, 353 S.E.2d 441.

**SECTION 23‑6‑145.** Traffic stop by commissioned officer or uniformed officer; requirement of reasonable belief of violation of law.

 A commissioned officer or a uniformed officer of the department may, upon reasonable belief that any vehicle is being operated in violation of any provision of statutory law, require the driver thereof to stop and exhibit the registration card issued for the vehicle, the individual’s driver’s license, and submit to an inspection of such vehicle and license.

HISTORY: 1996 Act No. 459, Section 38; 2000 Act No. 252, Section 2.

Library References

Automobiles 349(11).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1321 to 1332, 1334 to 1335.

United States Supreme Court Annotations

Searches and seizures, traffic stops, police questioning unrelated to stop, patdown of passenger, see Arizona v. Johnson, 2009, 129 S.Ct. 781, 555 U.S. 323, 172 L.Ed.2d 694, on remand 220 Ariz. 551, 207 P.3d 804, review denied.

Notes of Decisions

Tinted windows 1

1. Tinted windows

Trooper’s questioning of defendant and his passenger during traffic stop for having illegally tinted windows about matters unrelated to the reason for the traffic stop did not amount to an unconstitutional delay or extension of the traffic stop; trooper completed the entire traffic stop, including the brief questioning of defendant and the passenger, the examination of papers, the calling of his dispatcher to relate information, the testing of the tinted windows, and the issuance of a warning ticket, within a period of less than 11 minutes, and the one to two of the 11 minutes devoted to questioning on matters not directly related to the traffic stop was only a slight delay. U.S. v. Mason (C.A.4 (S.C.) 2010) 628 F.3d 123, certiorari denied 132 S.Ct. 329, 565 U.S. 914, 181 L.Ed.2d 204, post‑conviction relief dismissed 2012 WL 5845807, affirmed 774 F.3d 824, certiorari denied 136 S.Ct. 514, 193 L.Ed.2d 405. Automobiles 349(18)

**SECTION 23‑6‑150.** Summons; bail.

 When any person is apprehended by a officer upon a charge of violating any laws of the State relative to highway traffic, motor vehicles or commercial motor carriers such person shall immediately be served with an official summons. The person charged may deposit bail with the arresting officer in lieu of being immediately brought before the proper magistrate, recorder, or other judicial officer to enter into a formal recognizance or make direct the deposit of a proper sum of money in lieu of a recognizance or incarceration. The apprehending officer may accept a sum of money as bail, not less than the minimum nor more than the maximum fine, but in no case to exceed two hundred dollars, to be in due course turned over to the judicial officer as money for bail. The bail deposited shall be in lieu of entering into a recognizance for his appearance for trial as set in the aforesaid summons or being incarcerated by the arresting officer and held for further action by the appropriate judicial officer. A receipt for the sum so deposited shall be given to such person by the arresting officer. The summons duly served as herein provided shall give the judicial officer jurisdiction to dispose of the matter. Upon receipt of the fixed sum of money the officer may release the person so charged as above provided for his further appearance before the proper judicial officer as provided for and required by the summons.

HISTORY: 1993 Act No. 181, Section 343(A).

Library References

Automobiles 351.

Bail 42.

Westlaw Topic Nos. 48A, 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 6, 9 to 15, 17 to 18, 24 to 25, 31 to 32.

C.J.S. Motor Vehicles Sections 1344 to 1345, 1365 to 1372, 1397 to 1401, 1442 to 1444, 1473 to 1475, 1486 to 1487, 1496, 1508 to 1509, 1518, 1526, 1532, 1543 to 1547, 1550.

**SECTION 23‑6‑170.** Promotions; adoption of promotion policy.

 No officer or trooper may be promoted to a higher rank until such time as the council adopts a promotion policy for commissioned personnel and officers as provided for in Section 23‑6‑520.

HISTORY: 1993 Act No. 181, Section 343(A).

Library References

States 53.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 147, 154, 162, 165, 167 to 168, 175 to 183, 185 to 187, 192 to 194, 249.

**SECTION 23‑6‑180.** Retention of Patrolmen’s permanent records after death or retirement.

 The Department of Public Safety is directed to keep permanent records of all Highway Patrolmen who are killed in the line of duty or die in any other manner while actively employed as well as records of those who are retired.

HISTORY: 2003 Act No. 61, Section 14.

**SECTION 23‑6‑185.** Enforcement by State Transport Police Division funded by motor carrier registration fees.

 Notwithstanding any other provisions of law, enforcement by the State Transport Police Division, of Articles 3 and 5, Chapter 23 of Title 58, shall be funded from the motor carrier registration fees collected by the Department of Motor Vehicles that previously were collected by the Public Service Commission and the Department of Public Safety. Additionally, the State Transport Police is authorized to expend the motor carrier registration fees to build or renovate weigh stations. All unexpended funds from prior years collected pursuant to this section may be retained and carried forward by the department for the same purposes.

HISTORY: 2008 Act No. 353, Section 2, Pt 12B, eff July 1, 2009.

**SECTION 23‑6‑187.** Witness fees for trooper trained in Advanced Accident Investigation testifying in civil matters.

 The department may charge a witness fee of one hundred thirty dollars per hour, up to one thousand dollars per day for each trooper trained in Advanced Accident Investigation testifying in civil matters which do not involve the State as a party in interest. The fee shall be charged in addition to any court prescribed payment due as compensation or reimbursement for judicial appearances and deposited into a designated revenue account. The department is authorized to receive, expend, retain, and carry forward these funds.

HISTORY: 2008 Act No. 353, Section 2, Pt 12B, eff July 1, 2009.

**SECTION 23‑6‑190.** Support of Highway Patrol.

 All monies collected in the Department of Public Safety Building Fund, as established in Section 56‑3‑840 that exceed the annual bond payment and the amount needed for building repair must be utilized by the department to support the Highway Patrol.

HISTORY: 2008 Act No. 353, Section 2, Pt 12D, eff July 1, 2009.

**SECTION 23‑6‑191.** Physical examination costs.

 The Department may pay the cost of physical examinations for department personnel who are required to receive physical examinations prior to or after receiving a law enforcement commission.

HISTORY: 2008 Act No. 353, Section 2, Pt 12B, eff July 1, 2009.

**SECTION 23‑6‑193.** Reimbursement for expenditures incurred during emergency; retention and expenditure of funds.

 The department may collect, expend, retain, and carry forward all funds received from other state or federal agencies as reimbursement for expenditures incurred when personnel and equipment are mobilized and expenses incurred due to an emergency.

HISTORY: 2008 Act No. 353, Section 2, Pt 12B, eff July 1, 2009.

**SECTION 23‑6‑195.** Providing meals during emergencies.

 The department may provide meals to employees of the department who are not permitted to leave assigned duty stations and are required to work during deployment, emergency simulation exercises, and when the Governor declares a state of emergency.

HISTORY: 2008 Act No. 353, Section 2, Pt 12B, eff July 1, 2009.

ARTICLE 5

Department of Public Safety Special Constable

**SECTION 23‑6‑200.** Definitions.

 For purposes of this article:

 (1) “Former law enforcement officer” means:

 (a) an officer who was previously commissioned by the Governor and who during his law enforcement career worked for the department;

 (b) an officer who was commissioned by the Governor, and whose agency, office, or unit was transferred to the department pursuant to governmental restructuring, including former retired officers;

 (c) an officer who was previously commissioned by the Governor whose agency, office, or unit was transferred to the department pursuant to governmental restructuring or any subsequent restructuring, including former retired officers; or

 (d) other formerly commissioned law enforcement officers or retired officers in good standing from any law enforcement agency, state constables, or volunteer state constables serving without compensation whose appointment is certified by the State Law Enforcement Division as having completed the requisite training to maintain an active commission.

 (2) “Department of Public Safety Special Constable” means a commission authorized by the department for a former law enforcement officer as defined in (1).

 (3) “Director” means the chief administrative officer of the Department of Public Safety.

 (4) “Department” means Department of Public Safety.

HISTORY: 2000 Act No. 252, Section 1.

**SECTION 23‑6‑210.** Commissioning of special constables; powers and duties; removal; training.

 (A) The director is authorized to establish programs for the commissioning of former law enforcement officers of the department. An individual commissioned pursuant to this section shall receive a Department of Public Safety Special Constable commission.

 (B) The powers and duties of these special constables shall be determined by the director and specified in writing, and individuals commissioned pursuant to this section shall be subject to removal by the director at any time. Before assuming their duties, special constables shall take the oath of office required by law and successfully complete a course of training specified by the director.

 (C) A constable shall be entitled to enforce the laws of this State and exercise the duties of his office throughout the State except as may be limited in subsection (B).

 (D) The course of training required in subsection (B) does not apply to former officers holding a valid commission issued by another agency or governmental entity, except that all officers shall meet any annual continuing training requirements established by the director in order to maintain their commissions.

HISTORY: 2000 Act No. 252, Section 1.

Library References

Sheriffs and Constables 9, 10.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 21 to 23.

**SECTION 23‑6‑220.** Compensation; uniforms and equipment; workers’ compensation and death benefits.

 (A) Constables may not receive compensation including, but not limited to, salary for services rendered absent specific statutory authorization.

 (B) Any uniforms and equipment issued by the department shall remain the property of the department, but may, in the discretion of the director, be entrusted to the care and control of the constables. A constable assisting a full‑time department law enforcement officer shall wear uniforms or other insignia which identify the constable as a special law enforcement officer assisting the department.

 (C) Workers’ compensation benefits may be provided on an as needed basis for special constables by the director in the same manner as benefits are provided for full‑time officers. For purposes of compensation or benefits arising from duty‑related injury or death, special constables shall be considered as employees of the department.

HISTORY: 2000 Act No. 252, Section 1.

Library References

Sheriffs and Constables 28 to 76.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 469 to 513.

**SECTION 23‑6‑230.** Identification cards.

 Identification cards registering a special constable must be issued by the Department of Public Safety for all individuals commissioned pursuant to this article.

HISTORY: 2000 Act No. 252, Section 1.

**SECTION 23‑6‑240.** Authority to carry pistols.

 Notwithstanding any other provision of law, constables who have received the required training shall be authorized by the director to carry pistols on and about their persons unless otherwise restricted by the director in writing. However, the director, after hearing and for cause, may deny such privilege to any constable pursuant to this section who is guilty of using his pistol at any time in a manner inconsistent with accepted law enforcement procedures as determined by the director or who has been convicted of any crime for which a penalty of imprisonment for more than one year may be imposed. The term “conviction” shall include a plea of guilty, a plea of nolo contendere, or forfeiture of bail.

HISTORY: 2000 Act No. 252, Section 1.

ARTICLE 9

Division of Training and Continuing Education [Repealed]

**SECTIONS 23‑6‑400 to 23‑6‑495.** Repealed by 2006 Act No. 317, Section 7, eff May 30, 2006.

Editor’s Note

Former Section 23‑6‑400 was entitled “Intent of article; Division of Training and Continuing Education created; minimum standards for selection and training; goal for standards to exceed minimum; definitions” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

Former Section 23‑6‑405 was entitled “Governmental entity defined; successful completion of mandatory training while employed by governmental entity; reimbursement by subsequent hiring governmental entities” and was derived from 1997 Act No. 129, Section 1.

Former Section 23‑6‑410 was entitled “Central training facility; training of officers; responsibilities of Deputy Director of Division” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

Former Section 23‑6‑420 was entitled “Law Enforcement Training Advisory Council created; composition; terms; officers; meetings; procedures; no compensation; vacancies” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3; 2000 Act No. 396, Section 6.

Former Section 23‑6‑430 was entitled “‘Qualified’ certification requirement; exceptions; qualification under equivalent programs in other states” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3; 2002 Act No. 298, Section 1.

Former Section 23‑6‑435 was entitled “Continuing Law Enforcement Education Credits in domestic violence” and was derived from 2000 Act No. 379, Section 1.

Former Section 23‑6‑440 was entitled “Certification requirements; inspection of training facilities; expiration and renewal of certification; domestic violence offense conviction” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3; 2005 Act No. 118, Section 1; 2005 Act No. 166, Section 14.

Former Section 23‑6‑445 was entitled “Certificate as law enforcement officer” and was derived from 1998 Act No. 258, Section 16; 2002 Act No. 298, Section 2.

Former Section 23‑6‑450 was entitled “Powers of Director of Department of Public Safety” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

Former Section 23‑6‑460 was entitled “Certain reports, communications, etc. made pursuant to this chapter or regulations thereunder not actionable for slander or libel” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

Former Section 23‑6‑480 was entitled “Violation by public law enforcement agency; compliance orders, injunctions; civil penalties; appeals” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

Former Section 23‑6‑490 was entitled “Sheriff or equivalent officer to provide patrolling in event single municipal law enforcement officer is in attendance at training” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

Former Section 23‑6‑493 was entitled “Savannah River Site Law Enforcement Officer authorized to train at the Criminal Justice Academy” and was derived from 2003 Act No. 90, Section 3.

Former Section 23‑6‑495 was entitled “‘Department’ is Department of Public Safety; ‘Division’ is Division of Training and Continuing Education within Department” and was derived from 1993 Act No. 181, Section 343(A); 1994 Act No. 505, Section 3.

ARTICLE 11

South Carolina Public Safety Coordinating Council

**SECTION 23‑6‑500.** South Carolina Public Safety Coordinating Council created; purpose.

 There is created a council to administer certain responsibilities of the Department of Public Safety and coordinate certain activities between the department, the Office of the Attorney General, the South Carolina Law Enforcement Division and municipal and county law enforcement agencies. The council is to be known as the South Carolina Public Safety Coordinating Council.

HISTORY: 1993 Act No. 181, Section 343(A); 2017 Act No. 96 (S.289), Section 8.B, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 8.B, inserted “the Office of the Attorney General,”.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

**SECTION 23‑6‑510.** Composition; filling of vacancies.

 (A) The council is composed of the following persons for terms as indicated:

 (1) the Governor or his designee, to serve as chairman, for the term of the Governor;

 (2) the Chief of the South Carolina Law Enforcement Division for the term of office for which he is appointed;

 (3) the Chairman of the Senate Judiciary Committee for his term of office in the Senate or his designee;

 (4) the Chairman of the House of Representatives Judiciary Committee for his term of office in the House of Representatives or his designee;

 (5) the Director of the Department of Public Safety;

 (6) a sheriff appointed by the Governor for the term of office for which he is elected;

 (7) the Attorney General or his designee;

 (8) a municipal police chief appointed by the Governor for a term of two years;

 (9) a victim representative appointed by the Governor for a term of four years; and

 (10) a victim with a documented history of victimization appointed by the Attorney General for a term of four years.

 (B) Any vacancy occurring must be filled in the manner of the original appointment for the unexpired portion of the term.

HISTORY: 1993 Act No. 181, Section 343(A); 1996 Act No. 414, Section 1; 2017 Act No. 96 (S.289), Section 8.C, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 8.C, inserted the (A) and (B) identifiers; in (A), inserted (7), relating to the Attorney General, redesignated accordingly, and added (10), relating to a victim with a documented history of victimization appointed by the Attorney General for a term of four years; and made a nonsubstantive change.

CROSS REFERENCES

Chief of South Carolina Law Enforcement Division, see Sections 23‑3‑10 et seq.

Director of Department of Public Safety, see Section 23‑6‑40.

Library References

States 46.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 158 to 161, 163 to 165, 195.

**SECTION 23‑6‑520.** Duties.

 The council has the following duties to:

 (1) recommend a hiring and promotion policy for commissioned personnel or officers to be administered under the sole authority of the director;

 (2) establish a process for the solicitation of applications for public safety grants and to review and approve the disbursement of funds available under Section 402 of Chapter 4 of Title 1 of the Federal Highway Safety Program, Public Law 89‑564 in a fair and equitable manner;

 (3) coordinate the use of department personnel by other state or local agencies or political subdivisions;

 (4) advise and consult on questions of jurisdiction and law enforcement and public safety activities between the Department of Public Safety, the South Carolina Law Enforcement Division and law enforcement agencies of local political subdivisions; and

 (5) in collaboration with the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Assistance grants, establish a process to solicit and administer the disbursement of funds for Victims of Crime Act grants, the Violence Against Women Act grants, the State Victim’s Assistance Program grants available under Public Law 98‑473 establishing the Victims of Crime Act of 1984 and the Violence Against Women Act (VAWA‑I) established under Title IV of the Violent Crime Control and Law Enforcement Act of 1944, Public Law No. 103‑322, 108 Stat. 1796 (September 13, 1994), and all other crime victim service funding as provided by law, including, but not limited to, the authority to solicit for federal formula or discretionary grant awards and foundation funding.

HISTORY: 1993 Act No. 181, Section 343(A); 2017 Act No. 96 (S.289), Section 8.D, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 8.D, added (5), relating to soliciting and administering the disbursement of funds; and made nonsubstantive changes.

CROSS REFERENCES

No officer or trooper may be promoted until promotion policy for commissioned personnel is adopted as provided in this section, see Section 23‑6‑170.

**SECTION 23‑6‑530.** Council may elect officers; service is without pay; per diem, mileage and subsistence.

 The council may elect such other officers as it deems necessary from its membership and the members of the council shall serve without pay but are authorized, as eligible, to receive the usual per diem, mileage and subsistence provided for by law.

HISTORY: 1993 Act No. 181, Section 343(A).