CHAPTER 5

Uniform Act Regulating Traffic on Highways

ARTICLE 1

General Provisions

**SECTION 56‑5‑10.** Short title.

This chapter may be cited as the “Uniform Act Regulating Traffic on Highways.”

HISTORY: 1962 Code Section 46‑681; 1952 Code Section 46‑681; 1949 (46) 466.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 21, Revocation of License.

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

S.C. Jur. Automobiles and Other Motor Vehicles Section 118, Application to Private Roads.

S.C. Jur. Dedication Section 11, Statutory and Local Law.

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

**SECTION 56‑5‑20.** Applicability of chapter to vehicles operated upon highways; exceptions.

The provision of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways, except:

(1) When a different place is specifically referred to in a given section; and

(2) That the provisions of Articles 9 and 23 shall apply upon highways and elsewhere throughout the State.

HISTORY: 1962 Code Section 46‑288; 1952 Code Section 46‑288; 1949 (46) 466.

CROSS REFERENCES

Chapter’s applicability to private roads under certain conditions, see Sections 56‑5‑6310 et seq.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

Attorney General’s Opinions

Arrest by highway patrolman on private property. Under authority of Code 1962 Section 46‑342, if a person has committed a violation of the laws of this State, a State highway patrolman may enter private property fully within the scope of his authority to arrest the violator without being liable for trespassing. 1970‑71 Op.Atty.Gen. No. 3152, p. 113 (July 23, 1971) 1971 WL 17526.

NOTES OF DECISIONS

In general 1

1. In general

Section 23‑1‑15, which requires signs to be posted informing the public of police jurisdiction over a parking lot before the extension of police jurisdiction is effective, does not preclude a charge for leaving the scene of an accident in a parking lot in violation of Section 56‑5‑1240 in a non‑posted parking lot; the clear purpose of Section 23‑1‑15 was to expand the application of the Uniform Act Regulating Traffic on Highways to parking lots. Stone v. State (City of Orangeburg) (S.C. 1994) 313 S.C. 533, 443 S.E.2d 544.

Section 56‑5‑2930, prohibiting driving under the influence, applied to defendant who operated vehicle on private property since the DUI statute is not limited to public highways but applies to property anywhere within state boundaries. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

In action brought under guest statute, reading of statutes applicable only to vehicles driven or moved on any highway, statute relating to starting a parked vehicle, and statute pertaining to unlawful operation of unsafe vehicles constituted reversible error where accident occurred on private property. Code 1962, Sections 46‑288, 46‑401, 46‑511, 46‑801. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242.

**SECTION 56‑5‑30.** Chapter applicable and uniform throughout State; local regulations.

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in Section 56‑5‑930, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

HISTORY: 1962 Code Section 46‑281; 1952 Code Section 46‑281; 1949 (46) 466.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibilities of all municipalities, see Sections 5‑7‑10 to 5‑7‑60, 5‑7‑80 to 5‑7‑280.

Library References

Automobiles 6, 7, 9.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 24 to 25, 28, 30 to 31, 33 to 40, 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

Attorney General’s Opinions

Discussion of the legality of counties and municipalities issuing tickets for traffic and other offenses under local ordinances as opposed to the Uniform Act Regulating Traffic on Highways. S.C. Op.Atty.Gen. (November 18, 2013) 2013 WL 6337704.

Discussion of the legality of municipalities setting their own fines for speeding violations as opposed to the penalties set forth in the Uniform Act Regulating Traffic on Highways. S.C. Op.Atty.Gen. (November 18, 2013) 2013 WL 6210746.

Local governments are prohibited from enacting ordinances making it unlawful to commit traffic violations which are already expressly unlawful under the Uniform Act Regulating Traffic on Highways. S.C. Op.Atty.Gen. (May 29, 2013) 2013 WL 2450878.

Discussion of the use of aerial traffic observers by the Charleston Police Department’s Aviation Unit. S.C. Op.Atty.Gen. (June 12, 1997) 1997 WL 419892.

Only a court could determine with finality whether a municipal ordinance prohibiting the careless operation of motor vehicles is inconsistent with state statutory provisions regulating the operation of motor vehicles as to preclude enforcement of such ordinance. S.C. Op.Atty.Gen. (February 16, 1988) 1988 WL 383499.

NOTES OF DECISIONS

In general 1

1. In general

The phrase “useable path for bicycles” used in Section 56‑5‑3430’s last paragraph refers only to a path provided “for the exclusive use of bicycles” and, therefore, does not include a “sidewalk,” which is intended for pedestrian use and not for the exclusive use of bicycles. Thus, a city’s bicycle ordinance, which prohibited any person from riding “a bicycle at any time on any of the sidewalks of the city” did not conflict with Section 56‑5‑3430, so as to render it void pursuant to Section 56‑5‑30. Burke v. Davidson (S.C.App. 1989) 298 S.C. 370, 380 S.E.2d 839.

**SECTION 56‑5‑40.** Applicability of chapter to roads on Atomic Energy Commission lands in Aiken, Allendale, and Barnwell counties.

All the provisions of this chapter, except Articles 27, 33, 37, and 39 and Section 56‑5‑910, apply to all roads within the confines of lands in Aiken, Allendale, and Barnwell counties acquired or to be acquired by the United States Government for use of the Department of Energy.

HISTORY: 1962 Code Section 46‑281.1; 1956 (49) 1581; 1990 Act No. 598, Section 7.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

**SECTION 56‑5‑50.** Applicability of chapter to operation of mopeds.

With the exception of Articles 35 and 37, the provisions of Chapter 5 of Title 56 govern the operation of mopeds on the public highways and streets of this State.

HISTORY: 1986 Act No. 528, Section 5; 1991 Act No. 94, Section 2.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

NOTES OF DECISIONS

In general 1

1. In general

Although mopeds are exempted from registration, licensing, and insurance requirements as vehicles, the General Assembly intended that the Driving Under the Influence (DUI) statute, Section 56‑5‑2930, embrace the driving of a moped, and thus the trial judge did not err in charging the jury that a moped is a vehicle as contemplated by the DUI statute. State v. Singleton (S.C. 1995) 319 S.C. 312, 460 S.E.2d 573.

**SECTION 56‑5‑60.** Requirements for envelope containing certain notices.

The envelope in which a notice required by law to be mailed by the Department of Motor Vehicles is mailed, other than by registered or certified mail, must have printed on it in bold letters “Please Forward”.

HISTORY: 1988 Act No. 613; 1993 Act No. 181, Section 1398; 1996 Act No. 459, Section 179.

**SECTION 56‑5‑70.** Certain vehicle requirements suspended during state of emergency; declarations of emergency triggering federal relief under 49 C.F.R. 390.23.

(A)(1) Notwithstanding any provision of this chapter or any other provision of law, during a state of emergency declared by the Governor and in the course of responding to the state of emergency:

(a) requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles traveling on noninterstate routes for up to one hundred twenty days, provided the vehicles do not exceed a gross weight of ninety thousand pounds and do not exceed a width of twelve feet;

(b) requirements relating to time of service suspensions for commercial and utility vehicles traveling on interstate and noninterstate routes are suspended for up to thirty days, unless extended for additional periods in accordance with 49 C.F.R. 390‑399.

(2) All vehicles operated upon the public highways of this State under the authority of this section must:

(a) be operated in a safe manner;

(b) maintain required limits of insurance; and

(c) be clearly identified as a utility vehicle or provide appropriate documentation indicating it is a commercial vehicle responding to the emergency.

(B) When an emergency is declared which triggers relief from regulations pursuant to 49 C.F.R. 390.23 in North Carolina or Georgia, an emergency, as referenced in the regional emergency provision of 49 C.F.R. 390.23(a)(1)(A), must be declared in this State by the Governor.

(C) A declaration of emergency in this State, as described in subsection (B), must not be terminated prior to the termination of the declarations of emergencies in North Carolina and Georgia or the thirtieth day after the initial declaration of emergency in this State, whichever is less.

(D) A declaration of emergency in this State that triggers relief from regulations pursuant to 49 C.F.R. 390.23 must be effective for no less than fourteen days prior to its termination. Unless the initial declaration of emergency contains a termination date, the order may not be terminated until the passage of seven days after notification of the date of termination is issued or the passage of thirty days after the initial declaration of the emergency, whichever is less. If termination of the declaration of emergency is to occur prior to the passage of thirty days after the initial declaration of emergency, the declaration of emergency must be terminated at 11:59 p.m. on a Friday.

(E) Citations for violating a local ordinance or the traffic laws relating to speeding or disregarding traffic control devices based in whole or in part on photographic evidence, whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence, only may be issued for violations that occur while relief from regulations pursuant to 49 C.F.R. 390.23 has been granted due to an emergency. A person who receives a citation for violating traffic laws relating to speeding or disregarding traffic control devices based in whole or in part on photographic evidence must be served in person with notice of the violation within one hour of the occurrence of the violation unless a collision occurred and fault cannot be determined immediately or the party who caused the collision is not immediately accessible due to medical treatment. The provisions of this subsection do not apply to toll collection enforcement.

HISTORY: 2001 Act No. 79, Section 1; 2010 Act No. 250, Section 1, eff June 11, 2010; 2011 Act No. 65, Section 3, eff June 17, 2011; 2015 Act No. 9 (S.358), Section 1, eff May 7, 2015.

Library References

Automobiles 10.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45.

Attorney General’s Opinions

Photographic evidence may not be used in assisting an officer in observing and reviewing a traffic violation except as provided for in Section 56‑5‑70. S.C. Op.Atty.Gen. (June 28, 2010) 2010 WL 2678690.

**SECTION 56‑5‑90.** Driving limitations for intrastate motor carrier driver.

(A) For motor carriers subject to this title, an intrastate motor carrier driver may not drive:

(1) more than twelve hours following eight consecutive hours off duty;

(2) for any period after having been on duty sixteen hours following eight consecutive hours off duty;

(3) after having been on duty seventy hours in seven consecutive days;

(4) more than eighty hours in eight consecutive days.

(B) An intrastate driver is determined by his previous seven days of operation.

HISTORY: 1994 Act No. 417, Section 3; 1995 Act No. 36, Section 1.

Library References

Automobiles 116.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 111 to 123.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

S.C. Jur. Carriers Section 10, Licensing in General.

ARTICLE 3

Definitions

In General

**SECTION 56‑5‑110.** Generally.

For the purposes of this chapter the words, phrases and terms defined in this article shall have the meanings thereby attributed to them.

HISTORY: 1962 Code Section 46‑201; 1952 Code Section 46‑201; 1949 (46) 466.

Attorney General’s Opinions

This chapter may be incorporated by reference as an ordinance of a municipality. 1967‑68 Op.Atty.Gen. No. 2460, p. 125 (June 2, 1968) 1968 WL 9534.

NOTES OF DECISIONS

In general 1

1. In general

As to right of State to regulate carriers using highways, see South Carolina State Highway Department v. Barnwell Bros. (U.S.S.C. 1938) 58 S.Ct. 510, 303 U.S. 177, 82 L.Ed. 734.

Subarticle I

Vehicles and Equipment

**SECTION 56‑5‑120.** Vehicle defined.

Reserved by 2017 Act No. 89, Section 17, effective November 19, 2018.

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks, is a “vehicle.”

HISTORY: 1962 Code Section 46‑211; 1952 Code Section 46‑211; 1949 (46) 466.

CROSS REFERENCES

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Duties of demolishers, surrender of receipts and certificates, records, penalties, see Section 56‑5‑5670.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

Attorney General’s Opinions

A moped may be considered a “vehicle” as used in Section 56‑5‑2930, particularly if the moped which an individual was observed driving while under the influence was not being propelled by human power, but instead was being propelled by its own motor. 1986 Op.Atty.Gen. No. 86‑5, p. 28 (January 10, 1986) 1986 WL 191967.

NOTES OF DECISIONS

In general 1

1. In general

The Mini‑Tow is not a vehicle under this section, it being a triangular‑shaped towing device with four rear wheels on a single axle and one retractible front wheel, so that when attached to a motor vehicle, the motor vehicle can be used for service towing. Mini‑Tow, Inc. v. South Carolina Dept. of Highways and Public Transp. (S.C. 1978) 271 S.C. 11, 244 S.E.2d 516.

A towing apparatus is not a vehicle under this section. Mini‑Tow, Inc. v. South Carolina Dept. of Highways and Public Transp. (S.C. 1978) 271 S.C. 11, 244 S.E.2d 516.

**SECTION 56‑5‑130.** Motor vehicle defined.

Reserved by 2017 Act No. 89, Section 18, effective November 19, 2018.

Every vehicle which is self‑propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, is a “motor vehicle”.

HISTORY: 1962 Code Section 46‑212; 1952 Code Section 46‑212; 1949 (46) 466; 1986 Act No. 528, Section 6.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seatbelt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

**SECTION 56‑5‑140.** Motorcycle defined.

Reserved by 2017 Act No. 89, Section 19, effective November 19, 2018.

Every motor vehicle having no more than two permanent functional wheels in contact with the ground or trailer and having a saddle for the use of the rider, but excluding a tractor, is a “motorcycle”.

HISTORY: 1962 Code Section 46‑213; 1952 Code Section 46‑213; 1949 (46) 466; 1992 Act No. 486, Section 8; 2000 Act No. 375, Section 7.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

Attorney General’s Opinions

A two‑wheeled vehicle which has a motor attached, achieves speed in excess of 20 miles per hour, and does not have pedals is not a bicycle as that term is defined by Section 46‑125 [46‑215, 1976 Code Section 56‑5‑160] 1976‑77 Op.Atty.Gen. No. 77‑147, p. 124 (May 11, 1977) 1977 WL 24489.

**SECTION 56‑5‑145.** Repealed.

HISTORY: Former Section, titled Automotive three‑wheel vehicle defined, had the following history: 1992 Act No. 486, Section 1; 2000 Act No. 375, Section 8. Repealed by 2017 Act No. 34, Section 8, eff November 10, 2017.

**SECTION 56‑5‑150.** Motor‑driven cycle defined.

Reserved by 2017 Act No. 89, Section 20, effective November 19, 2018.

Every motorcycle, including every motor scooter, with a motor which produces not to exceed five horsepower is a “motor‑driven cycle”.

HISTORY: 1962 Code Section 46‑214; 1952 Code Section 46‑214; 1949 (46) 466; 1986 Act No. 528, Section 5.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

Attorney General’s Opinions

A two‑wheeled vehicle which has a motor attached, achieves speed in excess of 20 miles per hour, and does not have pedals is not a bicycle as that term is defined by Section 46‑125 [46‑215, 1976 Code Section 56‑5‑160] 1976‑77 Op.Atty.Gen. No. 77‑147, p. 124 (May 11, 1977) 1977 WL 24489.

**SECTION 56‑5‑155.** Repealed.

HISTORY: Former Section, titled Motorcycle three‑wheel vehicle defined, had the following history: 2000 Act No. 375, Section 9. Repealed by 2017 Act No. 34, Section 8, eff November 10, 2017.

**SECTION 56‑5‑160.** Bicycle defined.

A bicycle is a device propelled solely by pedals, operated by one or more persons, and having two or more wheels, except childrens’ tricycles.

HISTORY: 1962 Code Section 46‑215; 1952 Code Section 46‑215; 1949 (46) 466; 1973 (58) 348; 1974 (58) 2117; 1986 Act No. 528, Section 8; 2008 Act No. 317, Section 1, eff June 10, 2008.

CROSS REFERENCES

Definition of “moped”, see Section 56‑5‑165.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

Attorney General’s Opinions

A two‑wheeled vehicle which has a motor attached, achieves speed in excess of 20 miles per hour, and does not have pedals is not a bicycle as that term is defined by Section 46‑125 [46‑215, 1976 Code Section 56‑5‑160] 1976‑77 Op.Atty.Gen. No. 77‑147, p. 124 (May 11, 1977) 1977 WL 24489.

**SECTION 56‑5‑165.** Moped defined.

Reserved by 2017 Act No. 89, Section 22, effective November 19, 2018.

Notwithstanding the provisions of Section 56‑5‑160, every cycle with pedals to permit propulsion by human power or without pedals and with a motor of not more than fifty cubic centimeters which produces not to exceed two brake horsepower and which is not capable of propelling the vehicle at a speed in excess of thirty miles an hour on level ground is a moped. If an internal combustion engine is used, the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

HISTORY: 1986 Act No. 528, Section 9; 1991 Act No. 94, Section 3.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

**SECTION 56‑5‑170.** Authorized emergency vehicles defined.

(A) Authorized emergency vehicles for purposes of this section include the following:

(1) fire department vehicles;

(2) police vehicles;

(3) ambulances and rescue squad vehicles which are publicly owned;

(4) vehicles of coroners and deputy coroners of the forty‑six counties as designated by the coroners;

(5) emergency vehicles designated by the fire department or the chief of police of a municipality;

(6) county government litter enforcement vehicles used by certified law enforcement Class 3 litter control officers;

(7) Department of Natural Resources vehicles, federal natural resources vehicles, and forestry commission vehicles when being used in the performance of law enforcement duties;

(8) public and private vehicles while transporting individuals actually engaged in emergency activities because one or more occupants belong to a fire department, volunteer fire department, police department, sheriff’s office, authorized county government litter enforcement office, rescue squad, or volunteer rescue squad;

(9) county or municipal government jail or corrections vehicles used by certified jail or corrections officers, and emergency vehicles designated by the Director of the South Carolina Department of Corrections;

(10) vehicles designated by the Commissioner of the Department of Health and Environmental Control when being used in the performance of law enforcement or emergency response duties; and

(11) federal law enforcement, military, and emergency vehicles.

(B) Only authorized emergency vehicles and private security patrol vehicles regulated by the State Law Enforcement Division are allowed use or display of any blue lights or red lights. This includes light bars and smaller lights such as dash, deck, or visor lights. To “display” means to be seen, whether activated or not.

(C) A vehicle shall not display the word ‘police’ unless it is an authorized emergency vehicle for use only by sworn police or other officers who are approved and certified by the South Carolina Criminal Justice Academy.

(D) The provisions of this section do not apply to automobile dealerships, to police equipment suppliers that sell, deliver, or equip police vehicles to or for a law enforcement agency, to vehicles owned solely as collector’s items and used only for participation in club activities, exhibits, tours, parades, and similar uses, or to persons designated by an agency owning such a vehicle to drive the vehicle or drive an auxiliary vehicle transporting such a vehicle.

HISTORY: 1962 Code Section 46‑216; 1952 Code Section 46‑216; 1949 (46) 466; 1975 (59) 76; 1978 Act No. 461 Section 1; 2004 Act No. 285, Section 1.

CROSS REFERENCES

Campus police vehicles as emergency vehicles, see Section 59‑116‑60.

Persons operating authorized emergency vehicles as exceptions to the general rule that no one may operate a commercial motor vehicle without a commercial driver’s license, see Section 56‑1‑2070.

Library References

Automobiles 175.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 814, 870 to 880.

Attorney General’s Opinions

The Legislature, not the Authority Having Jurisdiction, has the authority to determine which vehicles are authorized emergency vehicles. S.C. Op.Atty.Gen. (May 12, 2014) 2014 WL 2538229.

The personal vehicle of a campus police officer cannot be construed as one which is “used primarily for law enforcement purposes” for purposes of Section 56‑5‑4700(C); thus, such vehicles are prohibiting from utilizing or displaying blue lights. S.C. Op.Atty.Gen. (August 6, 2013) 2013 WL 4397079.

Discussion of volunteer fire fighters driving their private vehicles, which are equipped with red lights and sirens, to fire calls; complaints that some volunteer fire fighters are driving their private vehicles in a reckless manner while responding to fire calls; and civil liability in the event of an accident. S.C. Op.Atty.Gen. (December 13, 2012) 2012 WL 6720260.

Displaying foreign police markings on a private vehicle violates the spirit if not the literal language of the statute; such actions violate the legislative intent to prevent individuals from masquerading as police so as to possibly mislead the public or law enforcement. S.C. Op.Atty.Gen. (July 29, 2005) 2005 WL 1983351.

County code enforcement officers commissioned pursuant to Section 4‑9‑145 may use blue lights on their county vehicles when performing law enforcement duties. 1993 Op.Atty.Gen. No. 93‑58 (September 13, 1993) 1993 WL 439030.

Single portable light visible at least 500 feet in all directions in ordinary sunlight, magnetically mounted at top of emergency vehicle, complies with provisions of Section 56‑5‑4700(6). 1984 Op.Atty.Gen. No. 84‑63, p. 157 (May 31, 1984) 1984 WL 159870.

Use of red lights and sirens in private automobiles by full‑time and volunteer firemen engaged in emergency activities is required by statute. 1984 Op.Atty.Gen. No. 84‑17, p. 52 (February 15, 1984) 1984 WL 159825.

Absent a municipal ordinance to the contrary, police chiefs of incorporated municipalities may designate personal cars of police officers as police cars and authorized emergency vehicles provided such vehicles are equipped with the necessary warning devices, and are primarily used for law enforcement purposes. 1974‑75 Op.Atty.Gen. No. 4083, p. 159 (August 18, 1975) 1975 WL 22379.

NOTES OF DECISIONS

In general 1

1. In general

A vehicle in a funeral procession acquires no special status as an “authorized emergency vehicle” as that term is defined by statute. Nabors v. Spencer (S.C. 1974) 262 S.C. 630, 207 S.E.2d 79.

**SECTION 56‑5‑180.** Bus defined.

Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation is a “bus.”

HISTORY: 1962 Code Section 46‑217; 1952 Code Section 46‑217; 1949 (46) 466.

Library References

Automobiles 114.

Westlaw Topic No. 48A.

**SECTION 56‑5‑190.** School bus defined.

Every motor vehicle that complies with the color and identification requirements set forth in Section 59‑67‑30 and State Board of Education Regulations and Specifications Pertaining to School Buses which is used to transport children to or from public school or in connection with school activities, but not including buses operated by common carriers not exclusively engaged in the transportation of school students and vehicles having school bus markings temporarily removed or covered, is a “school bus”.

HISTORY: 1962 Code Section 46‑218; 1952 Code Section 46‑218; 1949 (46) 466; 1978 Act No. 422 Section 1.

Library References

Automobiles 115.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45.

**SECTION 56‑5‑195.** School bus safety standards.

(A) Effective July 1, 2000, any entity transporting preprimary, primary, or secondary school students to or from school, school‑related activities, or child care, and utilizing a vehicle defined as a “school bus” under 49 U.S.C. Section 30125, as defined on April 5, 2000, must transport these students in a vehicle meeting federal school bus safety standards, as contained in 49 U.S.C. Section 30101, et seq., or any successor statutes, and all applicable federal regulations. Nothing in this section prohibits the transportation of children to or from child care in nonconforming vehicles by a State of South Carolina human service provider or public transportation authority as long as each child is accompanied by a parent or legal guardian whose transportation is in connection with his work, education, or training.

(B) Notwithstanding subsection (A) of this section, any vehicle that is purchased before July 1, 2000, and is utilized to transport preprimary, primary, or secondary students to or from school, school‑related activities, or child care is not subject to the requirements contained in subsection (A) of this section until July 1, 2006. A vehicle that is purchased on or after July 1, 2000, and is utilized to transport preprimary, primary, or secondary students to or from school, school‑related activities, or child care is subject to the requirements contained in subsection (A) of this section once the vehicle is utilized for those purposes.

(C) Before July 1, 2006, nothing in this section may be construed to create a duty or other obligation to cease utilizing nonconforming vehicles purchased before the effective date of this act.

(D) To facilitate compliance with the provisions contained in this section, any entity contained in this section may purchase conforming vehicles under the State of South Carolina contracts for purchase of these vehicles.

(E) Nothing in the section prohibits the transportation of students by common carriers that are not exclusively engaged in the transportation of school students or by the entities subject to this section which own or operate these vehicles. However, the motor carriage used by the common carrier or entity to transport students must be designed to carry thirty or more passengers.

HISTORY: 2000 Act No. 301, Section 1.

Library References

Automobiles 115.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45.

Attorney General’s Opinions

Jacob’s law would permit ten or less children to be transported in a personal vehicle, even though the vehicle does not meet federally approved school bus standards. S.C. Op.Atty.Gen. (April 8, 2010) 2010 WL 1808722.

Former charter buses presently owned and operated by the school district which were purchased by the Lugoff‑Elgin band are not required to meet federal school bus safety standards as required for school buses; such interpretation treats common carriers and a school district now owning or operating former charter buses similarly. S.C. Op.Atty.Gen. (October 10, 2008) 2008 WL 4829837.

Jacob’s Law is applicable to the three charter buses purchased by the Mid‑Carolina High School Band Booster Club where title to these three charter buses is in the name of the Newberry County School District and the buses are used to transport members of the Mid‑Carolina High School Band on short and long range trips. S.C. Op.Atty.Gen. (March 7, 2008) 2008 WL 903971.

Jacob’s Law is inapplicable to churches transporting youth groups to church‑related outings, such as the beach or mountains. S.C. Op.Atty.Gen. (June 10, 2005) 2005 WL 1609293.

Legislative or judicial clarification is required to determine if a 15‑passenger van can still be used by church groups. S.C. Op.Atty.Gen. (November 30, 2001) 2001 WL 1736770.

**SECTION 56‑5‑196.** Designation of daycare center as origin or destination for school transportation.

The parents or legal guardians of a student who is eligible to receive public school bus transportation must have the option of designating a child daycare center or other before or after school program as the student’s origin or destination for school transportation.

HISTORY: 2000 Act No. 301, Section 2.

Library References

Education 770.

Westlaw Topic No. 141E.

C.J.S. Civil Rights Section 200.

C.J.S. Schools and School Districts Sections 483 to 484, 687 to 689, 693 to 698, 1030 to 1037, 1039 to 1042, 1065.

**SECTION 56‑5‑200.** Truck defined.

Every motor vehicle designed, used or maintained primarily for the transportation of property is a “truck.”

HISTORY: 1962 Code Section 46‑219; 1952 Code Section 46‑219; 1949 (46) 466.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

NOTES OF DECISIONS

In general 1

1. In general

Regional sewer authority’s pick‑up truck was not a “motor truck” under statute requiring operators of motor trucks to carry flares or reflective devices at night; undefined term motor truck and defined term truck were not synonymous, the plain and ordinary meaning of term motor truck was an automotive truck used for the transportation of goods, and the term motor truck appeared in other statutory sections applicable to larger load‑bearing and load‑towing vehicles suggesting that a motor truck was a truck for the purposes of transporting freight being larger in size or weight than that of a common pick‑up truck. Hughes v. Western Carolina Regional Sewer Authority (S.C.App. 2010) 386 S.C. 641, 689 S.E.2d 638. Automobiles 151; Automobiles 329

**SECTION 56‑5‑210.** Truck tractor defined.

Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn is a “truck tractor.”

HISTORY: 1962 Code Section 46‑220; 1952 Code Section 46‑220; 1949 (46) 466.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

**SECTION 56‑5‑220.** Farm tractor defined.

Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry is a “farm tractor.”

HISTORY: 1962 Code Section 46‑221; 1952 Code Section 46‑221; 1949 (46) 466.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

NOTES OF DECISIONS

In general 1

1. In general

The fact that farm tractors are subject to statutes regulating traffic on highways does not convert farm tractors to motor vehicles within the meaning of motor vehicle insurance laws (Sections 38‑77‑10 et seq.) Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179. Insurance 2653

A farm tractor does not come under the definition of “motor vehicle” under the Motor Vehicle Financial Responsibility Act (Section 38‑77‑150) since it is not designed for use on the highway, although it may be incidentally used on the highway. Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179. Insurance 2653

A farm tractor is not a “motor vehicle” for purposes of uninsured or underinsured motor vehicle coverage, since the uninsured motorist statutes were not intended to apply to injuries inflicted by vehicles not subject to registration or compulsory insurance provisions. Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179.

**SECTION 56‑5‑225.** Farm truck defined.

“Farm truck” is defined as a truck used exclusively by the owner for agricultural, horticultural, dairying, livestock, and poultry operations and includes transporting farm processed horticultural products, including soil amendments and mulches owned by the truck’s owner or another person, including first market. However, farm trucks with an empty weight of less than twenty‑six thousand and one pounds may be used for ordinary domestic purposes and general transportation, but must not be used to transport persons or property for hire. No part of this definition may be interpreted to exempt any commercial motor vehicle less than 26,001 pounds GVW/GVWR/GCW/GCWR from all or part of state laws or regulations applicable to intrastate commerce if the vehicle:

(1) transports hazardous materials requiring a placard; or

(2) is designed or used to transport sixteen or more people, including the driver.

HISTORY: 2012 Act No. 180, Section 1, eff May 25, 2012.

CROSS REFERENCES

Investigation of trucks, see Section 56‑5‑4150.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 9, Exempt Carriers Under South Carolina Law.

**SECTION 56‑5‑230.** Road tractor defined.

Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn is a “road tractor.”

HISTORY: 1962 Code Section 46‑222; 1952 Code Section 46‑222; 1949 (46) 466.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

**SECTION 56‑5‑240.** Trailer defined.

Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle is a “trailer.”

HISTORY: 1962 Code Section 46‑223; 1952 Code Section 46‑223; 1949 (46) 466.

CROSS REFERENCES

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Duties of demolishers, surrender of receipts and certificates, records, penalties, see Section 56‑5‑5670.

**SECTION 56‑5‑250.** Semitrailer defined.

Every vehicle, with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle is a “semitrailer.”

HISTORY: 1962 Code Section 46‑224; 1952 Code Section 46‑224; 1949 (46) 466.

CROSS REFERENCES

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Duties of demolishers, surrender of receipts and certificates, records, penalties, see Section 56‑5‑5670.

**SECTION 56‑5‑260.** Pole trailer defined.

Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections is a “pole trailer.”

HISTORY: 1962 Code Section 46‑225; 1952 Code Section 46‑225; 1949 (46) 466.

CROSS REFERENCES

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Duties of demolishers, surrender of receipts and certificates, records, penalties, see Section 56‑5‑5670.

**SECTION 56‑5‑270.** Railroad defined.

A “railroad” is a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

HISTORY: 1962 Code Section 46‑226; 1952 Code Section 46‑226; 1949 (46) 466.

Library References

Railroads 2.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1 to 22.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 164, Approaching Stopped School Bus.

**SECTION 56‑5‑280.** Railroad train defined.

A “railroad train” is a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, other than a streetcar.

HISTORY: 1962 Code Section 46‑227; 1952 Code Section 46‑227; 1949 (46) 466.

Attorney General’s Opinions

A railroad maintenance vehicle and a single locomotive both constitute a “railroad train.” S.C. Op.Atty.Gen. (June 11, 1996) 1996 WL 452702.

**SECTION 56‑5‑290.** Streetcar defined.

A “streetcar” is a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

HISTORY: 1962 Code Section 46‑228; 1952 Code Section 46‑228; 1949 (46) 466.

**SECTION 56‑5‑300.** Pneumatic tire defined.

Every tire in which compressed air is designed to support the load is a “pneumatic tire.”

HISTORY: 1962 Code Section 46‑229; 1952 Code Section 46‑229; 1949 (46) 466.

**SECTION 56‑5‑310.** Solid tire defined.

Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load is a “solid tire.”

HISTORY: 1962 Code Section 46‑230; 1952 Code Section 46‑230; 1949 (46) 466.

**SECTION 56‑5‑320.** Metal tire defined.

Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material is a “metal tire.”

HISTORY: 1962 Code Section 46‑231; 1952 Code Section 46‑231; 1949 (46) 466.

**SECTION 56‑5‑330.** Safety glass defined.

“Safety glass” shall mean any product composed of glass, so manufactured, fabricated or treated as substantially to prevent shattering and flying of the glass when struck or broken or such other or similar product as may be approved by the Department of Public Safety.

HISTORY: 1962 Code Section 46‑232; 1952 Code Section 46‑232; 1949 (46) 466.

**SECTION 56‑5‑340.** Explosive defined.

An “explosive” is any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

HISTORY: 1962 Code Section 46‑233; 1952 Code Section 46‑233; 1949 (46) 466.

**SECTION 56‑5‑350.** Flammable liquid defined.

Any liquid which has a flash point of 70°F., or less, as determined by a Tagliabue or equivalent closed‑cup test device, is a “flammable liquid.”

HISTORY: 1962 Code Section 46‑234; 1952 Code Section 46‑234; 1949 (46) 466.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

**SECTION 56‑5‑360.** Gross weight defined.

“Gross weight” is the weight of a vehicle without load plus the weight of any load thereon.

HISTORY: 1962 Code Section 46‑235; 1952 Code Section 46‑235; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

Under Section 56‑5‑360, gross weight is the vehicle’s weight without a load plus the weight of the load. Richburg v. Baughman (S.C. 1985) 283 S.C. 599, 325 S.E.2d 326, appeal after new trial 290 S.C. 431, 351 S.E.2d 164.

**SECTION 56‑5‑361.** Passenger car defined.

Section effective until November 19, 2018. See, also, section 56‑5‑361 effective November 19, 2018.

Every motor vehicle except motorcycles and motor‑driven cycles, designed for carrying ten passengers or less and used for the transportation of persons is a “passenger car”.

HISTORY: 1978 Act No. 461 Section 2.

**SECTION 56‑5‑361.** Passenger car defined.

Section effective November 19, 2018. See, also, section 56‑5‑361 effective until November 19, 2018.

Every motor vehicle except motorcycles and mopeds, designed for carrying ten passengers or less and used for the transportation of persons is a “passenger car”.

HISTORY: 1978 Act No. 461 Section 2; 2017 Act No. 89 (H.3247), Section 23, eff November 19, 2018.

Effect of Amendment

2017 Act No. 89, Section 23, substituted “mopeds” for “motor‑driven cycles”.

**SECTION 56‑5‑362.** Truck‑camper defined.

Any structure designed, used or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office or commercial space is a “truck‑camper”.

HISTORY: 1978 Act no. 461 Section 3.

Subarticle II

Governmental Agencies, Pedestrians, Police Officers and Other Persons

**SECTION 56‑5‑380.** Local authority defined.

Every county and municipality in this State and any other local board or body having authority to maintain any public highways or to regulate the traffic thereon, but not including the Department of Public Safety, is a “local authority.”

HISTORY: 1962 Code Section 46‑242; 1952 Code Section 46‑242; 1949 (46) 466.

**SECTION 56‑5‑390.** Pedestrian defined.

Any person afoot is a “pedestrian.”

HISTORY: 1962 Code Section 46‑243; 1952 Code Section 46‑243; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

In action for death of decedent struck by one of two trucks approaching from opposite directions as decedent, standing by his vehicle which was parked on highway, attempted to stop trucks, evidence established that driver of truck which struck decedent, was grossly negligent in respect to speed, lookout, and due care, and in failing to warn, to apply brakes, or to take any action to avert injury, and that driver of other truck was grossly negligent in respect to speed, lookout, control and due care, and in driving without proper brakes, and that the gross negligence of each combined to cause decedent’s death. Code 1952 S.Car. Sections 10‑1951 to 10‑1954, 46‑243, 46‑342, 46‑361, 46‑363, 46‑442, 46‑582. Greene v. Miller, 1953, 114 F.Supp. 150.

**SECTION 56‑5‑400.** Driver defined.

Every person who drives or is in actual physical control of a vehicle is a “driver.”

HISTORY: 1962 Code Section 46‑244; 1952 Code Section 46‑244; 1949 (46) 466.

Attorney General’s Opinions

A court would likely find that testing of an autonomous motor vehicle could be conducted in our State so long as the various requirements imposed on drivers and motor vehicles operating on our State’s highways are complied with. S.C. Op.Atty.Gen. (August 6, 2015) 2015 WL 4977735.

**SECTION 56‑5‑410.** Owner defined.

Reserved by 2017 Act No. 89, Section 24, effective November 19, 2018.

An “owner” is a person, other than a lienholder, having the property or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

HISTORY: 1962 Code Section 46‑245; 1952 Code Section 46‑245; 1949 (46) 466; 1978 Act No. 461 Section 4.

**SECTION 56‑5‑420.** Police officer defined.

Every officer authorized to direct or regulate traffic or to make arrests for violations of vehicular and traffic laws is a “police officer.”

HISTORY: 1962 Code Section 46‑246; 1952 Code Section 46‑246; 1949 (46) 466.

Subarticle III

Highways, Districts, Signals and the Like

**SECTION 56‑5‑430.** Street defined; highway defined.

The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel is a “street” or “highway.”

HISTORY: 1962 Code Section 46‑251; 1952 Code Section 46‑251; 1949 (46) 466.

CROSS REFERENCES

General provisions concerning highways, see Section 57‑1‑10 et seq.

NOTES OF DECISIONS

In general 1

1. In general

A sidewalk is part of a street or highway; thus, local authorities may enact regulations concerning the operation of bicycles on the sidewalks under their jurisdiction so long as those regulations do not conflict with the Uniform Act Regulating Traffic on Highways. Burke v. Davidson (S.C.App. 1989) 298 S.C. 370, 380 S.E.2d 839.

Statute prohibiting driving to left side of roadway when approaching within 100 feet of or traversing intersection applies only to intersections of streets or highways which are publicly maintained ways open to use of public for purposes of vehicular travel. Code 1962, Sections 46‑251, 46‑388(2). Edwards Trucking Co., Inc. v. Morrow (S.C. 1973) 260 S.C. 84, 194 S.E.2d 250.

The terms “highway” and “roadway” are not synonymous, and regulation of traffic is generally with reference to the movement of vehicles on the “roadway” of a “highway.” Bates v. Legette (S.C. 1961) 239 S.C. 25, 121 S.E.2d 289. Automobiles 11; Highways 166

For junction of unimproved road and paved highways to be “intersection” within statutes relating to intersections, crosswalks, and right of way of pedestrians and motorists at intersections, both unimproved roads and paved highways must be publicly maintained. Code 1952, Sections 46‑201 et seq., 46‑251, 46‑254, 46‑256 to 46‑258, 46‑433, 46‑435, 46‑442. Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254. Automobiles 160(4)

**SECTION 56‑5‑440.** Through highway defined.

Every highway or portion thereof on which vehicular traffic is given preferential right‑of‑way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right‑of‑way to vehicles on such through highway in obedience to a stop sign, yield sign or other official traffic‑control device, when such signs or devices are erected as provided in this chapter is a “through highway”.

HISTORY: 1962 Code Section 46‑252; 152 Code Section 46‑252; 1949 (46) 466; 1978 Act No. 461 Section 5.

CROSS REFERENCES

General provisions concerning highways, see Section 57‑1‑10 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Evidence established that intersectional collision was proximately caused by sole negligence and recklessness of plaintiff’s decedent in failing to keep a proper lookout, in failing to stop at stop sign as required by law and in proceeding into intersection when such could not be accomplished without constituting an immediate hazard. Code S.C.1962, Sections 46‑252, 46‑423. Copeland v. Petroleum Transit Co., 1964, 233 F.Supp. 286.

Even if allegation with reference to a “primary street” entitled defendant to requested charge relative to a “through highway”, defendants were not entitled to complain of failure of court to allow counsel to reopen arguments to jury, where error, if any, on part of court in refusing to allow jury arguments as to that aspect of case was in effect invited by defendants whose contentions with respect to a “through highway” were based solely on the pleadings and were not presented to court prior to commencement of arguments to jury. Baughman v. South Carolina Ins. Co. (S.C. 1967) 249 S.C. 106, 152 S.E.2d 733.

Erection of sign at single intersection only has effect of making intersection a “stop intersection”, as opposed to making dominant highway at that intersection a “through highway”. Code 1952, Sections 46‑252, 46‑423, 46‑473. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516. Automobiles 171(5)

In automobile collision case, instruction reading to jury part of statute which defines duty of motorist before entering a through highway was not erroneous on ground that street involved was not a through highway, where testimony clearly showed that such street was a through highway as defined by statute with stop signs in place at intersecting highways. Code 1962, Sections 46‑252, 46‑423. Guthke v. Morris (S.C. 1963) 242 S.C. 56, 129 S.E.2d 732. Trial 241

Through street or arterial highway which has been properly designated, and for which appropriate signs have been erected, does not lose its preferred status merely because a stop sign is misplaced, improperly removed, destroyed, or obliterated. Eberhardt v. Forrester (S.C. 1962) 241 S.C. 399, 128 S.E.2d 687. Automobiles 171(5)

City street constituted a “through highway” where stop signs had been placed on all intersecting streets. Code 1952, Section 46‑252. Eberhardt v. Forrester (S.C. 1962) 241 S.C. 399, 128 S.E.2d 687. Highways 103.1

Charge that neither of two intersecting streets was a through street and failure to charge as to rights and duties of motorists meeting at intersection where stop sign has been removed was error in action which arose from collision occurring in intersection of through street and another street after stop sign on other street had been temporarily removed. Code 1952, Sections 46‑421, 46‑423. Eberhardt v. Forrester (S.C. 1962) 241 S.C. 399, 128 S.E.2d 687. Automobiles 246(9)

**SECTION 56‑5‑450.** Private road defined; driveway defined.

Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons is a “private road” or “driveway.”

HISTORY: 1962 Code Section 46‑253; 1952 Code Section 46‑253; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

Section 56‑5‑2930, prohibiting driving under the influence, applied to defendant who operated vehicle on private property since the DUI statute is not limited to public highways but applies to property anywhere within state boundaries. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

The Uniform Act Regulating Traffic, Sections 56‑5‑10 et seq., of which Section 56‑5‑2930 is a part, is automatically applicable to private roads even where there is no written consent to such application from the owner of the road. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

**SECTION 56‑5‑460.** Roadway defined.

A “roadway” is that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder or berm. In the event a highway includes two or more separate roadways, the term “roadway” as used in this chapter shall refer to any such roadway separately but not to all such roadways collectively.

HISTORY: 1962 Code Section 46‑254; 1952 Code Section 46‑254; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

Although the tar and gravel strip adjacent to the concrete portion of US Highway 123 is improved, it is not ordinarily used for vehicular travel and is, therefore considered to be the shoulder or berm. King v. Mattox (S.C. 1965) 246 S.C. 1, 142 S.E.2d 209.

For junction of unimproved road and paved highways to be “intersection” within statutes relating to intersections, crosswalks, and right of way of pedestrians and motorists at intersections, both unimproved roads and paved highways must be publicly maintained. Code 1952, Sections 46‑201 et seq., 46‑251, 46‑254, 46‑256 to 46‑258, 46‑433, 46‑435, 46‑442. Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254. Automobiles 160(4)

**SECTION 56‑5‑470.** Laned roadway defined.

A “laned roadway” is a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

HISTORY: 1962 Code Section 46‑255; 1952 Code Section 46‑255; 1949 (46) 466.

**SECTION 56‑5‑480.** Sidewalk defined.

A “sidewalk” is that portion of a street between the curb lines, or the lateral lines, of a roadway and the adjacent property lines, intended for the use of pedestrians.

HISTORY: 1962 Code Section 46‑256; 1952 Code Section 46‑256; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

A public sidewalk is considered to be part of the street or highway. Epps v. U.S., 1994, 862 F.Supp. 1460.

The phrase “useable path for bicycles” used in Section 56‑5‑3430’s last paragraph refers only to a path provided “for the exclusive use of bicycles” and, therefore, does not include a “sidewalk,” which is intended for pedestrian use and not for the exclusive use of bicycles. Thus, a city’s bicycle ordinance, which prohibited any person from riding “a bicycle at any time on any of the sidewalks of the city” did not conflict with Section 56‑5‑3430, so as to render it void pursuant to Section 56‑5‑30. Burke v. Davidson (S.C.App. 1989) 298 S.C. 370, 380 S.E.2d 839.

A sidewalk is part of a street or highway; thus, local authorities may enact regulations concerning the operation of bicycles on the sidewalks under their jurisdiction so long as those regulations do not conflict with the Uniform Act Regulating Traffic on Highways. Burke v. Davidson (S.C.App. 1989) 298 S.C. 370, 380 S.E.2d 839.

For junction of unimproved road and paved highways to be “intersection” within statutes relating to intersections, crosswalks, and right of way of pedestrians and motorists at intersections, both unimproved roads and paved highways must be publicly maintained. Code 1952, Sections 46‑201 et seq., 46‑251, 46‑254, 46‑256 to 46‑258, 46‑433, 46‑435, 46‑442. Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254. Automobiles 160(4)

**SECTION 56‑5‑490.** Intersection defined.

An “intersection” is the area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in contact.

When a highway includes two roadways thirty feet or more apart, every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, every crossing of two roadways of such highways shall be regarded as a separate intersection.

HISTORY: 1962 Code Section 46‑257; 1952 Code Section 46‑257; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

The junction of an unimproved road, publicly maintained, with a paved highway, is an “intersection,” but both unimproved road and paved highway must be publicly maintained. Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254.

Junction of an unimproved dirt road, maintained by the county, and a State highway constitutes an intersection within the meaning of this section [formerly Code 1962 Section 46‑257]. Reese v. National Sur. Corp. (S.C. 1954) 224 S.C. 489, 80 S.E.2d 47. Automobiles 171(1)

**SECTION 56‑5‑500.** Crosswalk defined.

A “crosswalk” is:

(1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs from the edges of the traversable roadway; or

(2) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

HISTORY: 1962 Code Section 46‑258; 1952 Code Section 46‑258; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

In action for injuries sustained by pedestrian when struck by a tractor‑trailer when she attempted to cross a state highway, under South Carolina law the evidence presented questions for the jury as to pedestrian’s contributory negligence in attempting to walk across the highway in front of defendants’ approaching truck, and as to last clear chance on part of driver of the truck. Code S.C.1952, Sections 46‑258, 46‑433, 46‑436. Bruin v. Tribble (C.A.4 (S.C.) 1956) 238 F.2d 12.

At all crosswalks, the driver of a vehicle must, except when traffic control signals are in operation, yield the right of way to a pedestrian crossing the roadway within the crosswalk, marked or unmarked, when the pedestrian is upon the driver’s half of the roadway, or approaching so closely from the opposite half of the roadway as to be in danger. Carma v Swindler (1956) 288 SC 550, 91 SE2d 254. Anders v. Nash (S.C. 1971) 256 S.C. 102, 180 S.E.2d 878.

Where the plaintiff pedestrian was crossing the street at the time she was struck by the defendant’s automobile in the unmarked crosswalk area defined by this section [formerly Code 1962 Section 46‑258], the respective rights and duties of the parties were determined in the light of the provisions of former Code 1962 Section 46‑433 [see now Section 56‑56‑5‑3130]. Anders v. Nash (S.C. 1971) 256 S.C. 102, 180 S.E.2d 878.

Unmarked crosswalks exist only at intersections of ways “publicly maintained.” Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254.

**SECTION 56‑5‑510.** Safety zone defined.

A “safety zone” is an area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

HISTORY: 1962 Code Section 46‑259; 1952 Code Section 46‑259; 1949 (46) 466.

**SECTION 56‑5‑520.** Business district defined.

A “business district” is the territory contiguous to and including a roadway when within any six hundred feet along such roadway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations and public buildings, which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the roadway.

HISTORY: 1962 Code Section 46‑260; 1952 Code Section 46‑260; 1949 (46) 466.

**SECTION 56‑5‑530.** Residence district defined.

A “residence district” is the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

HISTORY: 1962 Code Section 46‑261; 1952 Code Section 46‑261; 1949 (46) 466.

**SECTION 56‑5‑540.** Official traffic‑control devices defined.

All signs, signals, markings and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic are “official traffic‑control devices.”

HISTORY: 1962 Code Section 46‑262; 1952 Code Section 46‑262; 1949 (46) 466.

Attorney General’s Opinions

Highway Department may place traffic‑controlled devices upon State highways within municipality without any approval by local authorities. 1984 Op.Atty.Gen. No. 84‑107, p. 249 (August 29, 1984) 1984 WL 159914.

**SECTION 56‑5‑550.** Traffic‑control signal defined.

Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed is a “traffic‑control signal.”

HISTORY: 1962 Code Section 46‑263; 1952 Code Section 46‑263; 1949 (46) 466.

Attorney General’s Opinions

Highway Department may place traffic‑controlled devices upon State highways within municipality without any approval by local authorities. 1984 Op.Atty.Gen. No. 84‑107, p. 249 (August 29, 1984) 1984 WL 159914.

**SECTION 56‑5‑560.** Railroad sign or signal defined.

Any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train is a “railroad sign or signal.”

HISTORY: 1962 Code Section 46‑264; 1952 Code Section 46‑264; 1949 (46) 466.

**SECTION 56‑5‑570.** Traffic defined.

Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel are “traffic.”

HISTORY: 1962 Code Section 46‑265; 1952 Code Section 46‑265; 1949 (46) 466.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 140, Passing in Same Direction.

S.C. Jur. Automobiles and Other Motor Vehicles Section 195, Drivers’ Duty to Pedestrians.

**SECTION 56‑5‑580.** Right‑of‑way defined.

“Right‑of‑way” is the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

HISTORY: 1962 Code Section 46‑266; 1952 Code Section 46‑266; 1949 (46) 466; 1978 Act No. 461 Section 6.

**SECTION 56‑5‑590.** Stop defined.

“Stop,” when required, means complete cessation from movement.

HISTORY: 1962 Code Section 46‑267; 1952 Code Section 46‑267; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

Under South Carolina law, motorist approaching stop intersection on servient highway has duty to yield right‑of‑way and is required to exercise due care for approaching traffic on dominant highway. Code S.C.1962, Sections 46‑267, 46‑423. Davenport v. U.S., 1965, 241 F.Supp. 320.

Where host driver approaching intersection was misled by acts of vandals who had removed “stop” sign from highway intersection and replaced it with “stop ahead” sign so that when host driver reached the “stop ahead” sign he took foot off gas and began looking for the “stop” sign and intersection collision occurred, host operated automobile with due regard under the circumstances and was not guilty of intentional, willful or reckless misconduct and was not liable under the guest statute for death of his passenger. Code 1962, Sections 10‑1951 et seq., 46‑267, 46‑801. Powell v. Simons (S.C. 1972) 258 S.C. 242, 188 S.E.2d 386.

This section [formerly Code 1962 Section 46‑267] defines well‑understood meaning of word “stop.” Guthke v. Morris (S.C. 1963) 242 S.C. 56, 129 S.E.2d 732.

**SECTION 56‑5‑600.** Stop, stopping, or standing defined.

“Stop,” “stopping” or “standing,” when prohibited, means any stopping or standing of a vehicle whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic‑control sign or signal.

HISTORY: 1962 Code Section 46‑268; 1952 Code Section 46‑268; 1949 (46) 466.

**SECTION 56‑5‑610.** Park defined.

To “park,” when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

HISTORY: 1962 Code Section 46‑269; 1952 Code Section 46‑269; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

Definition of “park” under Uniform Act Regulating Traffic on Highways, which allows for temporary parking for loading and unloading, did not apply to meaning of “park” as contained in statute proscribing unlawfully parking in a designated handicapped space; thus, defendant was properly convicted of that offense, though he was only in the handicapped space for “less than a minute” to unload heavy items from his car. Clemson University v. Speth (S.C.App. 2001) 344 S.C. 310, 543 S.E.2d 572. Automobiles 333

**SECTION 56‑5‑611.** Alley defined.

A street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic is an “alley”.

HISTORY: 1978 Act No. 461 Section 7.

**SECTION 56‑5‑612.** Arterial street defined.

Any United States—or State‑numbered route, controlled‑access highway or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways is an “arterial street”.

HISTORY: 1978 Act No. 461 Section 8.

**SECTION 56‑5‑613.** Controlled‑access highway defined.

Every highway, street or roadway to which owners or occupants of abutting lands and other persons have no legal right of access to or from except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway is a “controlled‑access highway”.

HISTORY: 1978 Act No. 461 Section 9.

**SECTION 56‑5‑614.** Divided highway defined.

A highway divided into two or more roadways by leaving an intervening space or divided by a physical barrier or by a clearly indicated dividing section so constructed as to impede vehicular traffic is a “divided highway”.

HISTORY: 1978 Act No. 461 Section 10.

**SECTION 56‑5‑615.** Freeway defined.

A “freeway” is a multilane divided highway with full control of access, and grade separated interchanges, of the type comprising the National System of Interstate and Defense Highways, or other highways built essentially in conformance to the standards of them.

HISTORY: 1993 Act No. 98, Section 1.

**SECTION 56‑5‑616.** Interstate system defined.

The interstate system consists of the segments of highways in South Carolina in the officially designated national system of interstate and defense highways.

HISTORY: 1999 Act No. 17, Section 4.

ARTICLE 5

Obedience to and Effect of Traffic Laws

**SECTION 56‑5‑710.** Powers of local authorities.

(A) Subject to the limitations prescribed in Section 56‑5‑930, the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) regulating the standing or parking of vehicles;

(2) regulating traffic by means of police officers or traffic control signals;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways as one‑way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) regulating the speed of vehicles in public parks;

(6) designating any highway as a through highway and requiring that all vehicles stop before entering or crossing it or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;

(7) restricting the use of highways as authorized in Sections 56‑5‑4210 and 56‑5‑4220;

(8) regulating the operation of bicycles and requiring the registration and licensing of them, including the requirement of a registration fee;

(9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) altering the prima facie speed limits as authorized herein; or

(11) adopting such other traffic regulations as are specifically authorized by this chapter.

(B) Nothing in subsection (A) may be construed to permit a local authority to issue a uniform traffic citation for violating a local ordinance or the traffic laws relating to speeding or disregarding traffic control devices based in whole or in part upon photographic evidence whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence.

HISTORY: 1962 Code Section 46‑282; 1952 Code Section 46‑282; 1949 (46) 466; 2011 Act No. 65, Section 2, eff June 17, 2011.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibilities of all municipalities, see Sections 5‑7‑10 to 5‑7‑60, 5‑7‑80 to 5‑7‑280.

Provisions affecting certain cities and towns with respect to streets and sidewalks, see Sections 5‑27‑110 to 5‑27‑180.

Library References

Automobiles 5, 7.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 24, 28 to 38, 43 to 45, 47 to 50, 52 to 74.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

Attorney General’s Opinions

Property owners around the Union County Fair Grounds can not place objects, such as cement blocks, flagging, or signs on the state highway right of way. S.C. Op.Atty.Gen. (October 12, 2015) 2015 WL 6406147.

There are clearly defined statutory rights and responsibilities associated with funeral processions and such should be conducted with deference to such rights and responsibilities. There is the general obligation of a funeral procession to obey the instructions of a traffic control device unless otherwise directed by a law enforcement officer. S.C. Op.Atty.Gen. (April 26, 2010) 2010 WL 1808728.

Officer stationed at intersection may direct funeral procession to proceed against traffic light. However, Supreme court has ruled that where there is no police officer directing traffic so as to supersede traffic light, no South Carolina law exempts driver in funeral procession from obligation to observe traffic control devices. 1991 Op.Atty.Gen. No. 91‑35, p. 95 (May 17, 1991) 1991 WL 474765.

A municipality may require operators of motorized bicycles to wear protective helmets. 1979 Op.Atty.Gen. No. 79‑136, p. 216 (December 11, 1979) 1979 WL 29138.

The Town of Hodges is entitled to receive only such fines, bail or bond forfeitures as are collected by municipal police officers and municipal courts.

The State Highway Department is given the authority by State statute to establish the maximum speed limits for all State Primary Highway extensions into and through the Town of Hodges; however, the Town of Hodges is permitted to alter those established speed limits within their jurisdiction, as indicated in Section 56‑5‑1540(a), Code of Laws of S.C., 1976, such alteration being subject to approval by the State Highway Department.

The Town of Hodges has the authority to declare the maximum speed limit on arterial streets within their jurisdiction based upon proper investigation. 1976‑77 Op.Atty.Gen. No. 77‑381, p. 305 (December 2, 1977) 1977 WL 24718.

The proposed ordinance by the City of Folly Beach is not a reasonable exercise of its authority to regulate parking and is, therefore, invalid. 1976‑77 Op.Atty.Gen. No.77‑151, p. 127 (May 11, 1977) 1977 WL 24493.

Extent of power to regulate traffic. The police power of a municipality to regulate traffic may be exercised only within the boundaries of such municipality and in a reasonable and nondiscriminatory manner. 1969‑70 Op.Atty.Gen. No. 2953, p. 212 (August 17, 1970) 1970 WL 12230.

**SECTION 56‑5‑715.** Liability for municipal parking or traffic violations.

The registered owner of any motor vehicle leased or rented to another is not liable for any municipal traffic or parking violation occurring while the leased or rented vehicle was not in his possession or control, if upon notice of the violation the registered owner notifies the clerk, city recorder, or other appropriate municipal official of the court in which the case is pending of the name, address, and driver’s license number of the lessee of the vehicle on the date the violation occurred. This notice must be notarized. If the registered owner fails to submit the notice within seven working days of receipt of the violation, the court in which the case is heard may take such action as the interest of justice requires, including finding the registered owner of the motor vehicle liable for the violation.

HISTORY: 1984 Act No. 371, Section 7.

CROSS REFERENCES

Traffic tickets, generally, see Section 56‑7‑10 et seq.

Library References

Automobiles 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1749, 1753 to 1754.

**SECTION 56‑5‑720.** Notice of local regulations required.

No ordinances or regulations enacted under items (4), (5), (6), (7), (9) or (10) of Section 56‑5‑710 shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

HISTORY: 1962 Code Section 46‑284; 1952 Code Section 46‑284; 1949 (46) 466.

Library References

Automobiles 7.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 24, 28, 30 to 31, 33 to 38.

**SECTION 56‑5‑730.** Required obedience to traffic laws.

It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter.

HISTORY: 1962 Code Section 46‑286; 1952 Code Section 46‑286; 1949 (46) 466.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

**SECTION 56‑5‑740.** Obedience to authorized persons directing traffic.

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, fireman or uniformed adult school crossing guard invested by law with authority to direct, control or regulate traffic.

HISTORY: 1962 Code Section 46‑287; 1952 Code Section 46‑287; 1949 (46) 466; 1977 Act No. 149 Section 1.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 119, Compliance With Lawful Orders, Generally.

Attorney General’s Opinions

Discussion of whether a County School District may use either Adult Uniformed Security Guards or State Constables to direct traffic on and around school property. S.C. Op.Atty.Gen. (January 15, 2014) 2014 WL 1398597.

A uniformed adult school crossing guard is authorized to order compliance with the direction, control or regulation of traffic. 1989 Op.Atty.Gen. No. 89‑88, p. 237 (September 5, 1989) 1989 WL 406178.

**SECTION 56‑5‑750.** Failure to stop motor vehicle when signaled by law‑enforcement vehicle.

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The Department of Motor Vehicles must suspend the person’s driver’s license for at least thirty days; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. The person’s driver’s license must be suspended by the department for a period of one year from the date of the conviction.

(C) A person who violates the provisions of subsection (A) and when driving performs an act forbidden by law or neglects a duty imposed by law in the driving of the vehicle:

(1) where great bodily injury resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years; or

(2) where death resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty‑five years.

(D) The department must revoke the driver’s license of any person who is convicted pursuant to subsection (C)(1) or (C)(2) for a period to include any term of imprisonment, suspended sentence, parole, or probation, plus three years.

(E) “Great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss of or impairment of the function of a bodily member or organ.

(F) After a conviction pursuant to subsection (B)(1) for a first offense, the person may, after three years from the date of completion of all terms and conditions of his sentence for the first offense, apply, or cause someone acting on his behalf to apply, to the court for an order expunging the records of the arrest and conviction. This provision does not apply to any crime classified as a felony. If the person has had no other conviction during the three‑year period following the completion of the terms and conditions of the sentence, the court shall issue an order expunging the records. No person has any rights under this section more than one time. After the expungement, the South Carolina Law Enforcement Division and the Department of Motor Vehicles are required to keep a nonpublic record of the offense and the date of its expungement to ensure that no person takes advantage of the rights permitted by this subsection more than once. This nonpublic record is not subject to release under the Freedom of Information Act or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this subsection from being taken advantage of more than once.

(G)(1) If a person is employed or enrolled in a college or university at any time while his driver’s license is suspended pursuant to subsection (B) of this section, he may apply for a special restricted driver’s license permitting him to drive only to and from work or his place of education and in the course of his employment or education during the period of suspension. The department may issue the special restricted driver’s license only upon a showing by the person that he is employed or enrolled in a college or university, and that he lives further than one mile from his place of employment or place of education.

(2) If the department issues a special restricted driver’s license, it shall designate reasonable restrictions on the times during which and routes on which the person may operate a motor vehicle. A change in the employment hours, place of employment, status as a student, or residence must be reported immediately to the department by the licensee.

(3) The fee for each special restricted driver’s license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee twenty dollars must be distributed to the general fund and eighty 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.

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

HISTORY: 1962 Code Section 46‑359; 1968 (55) 2497; 1988 Act No. 532, Section 14; 1993 Act No. 184, Section 251; 1995 Act No. 65, Section 1; 1996 Act No. 459, Section 180; 1999 Act No. 115, Section 6; 2001 Act No. 79, Section 2.H; 2016 Act No. 275 (S.1258), Section 73, eff July 1, 2016.

CROSS REFERENCES

Fees and fines credited to the State Highway Fund, see Section 11‑43‑167.

Ignition interlock device, see Section 56‑5‑2941.

Persons issued restricted driver’s license ineligible for issuance of special restricted driver’s license, route restricted driver’s license, see Section 56‑1‑748.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑1‑400.

Violent crimes defined, see Section 16‑1‑60.

Library References

Automobiles 335.

Obstructing Justice 122.

Westlaw Topic Nos. 48A, 282.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

C.J.S. Obstructing Justice or Governmental Administration Sections 12, 85.

RESEARCH REFERENCES

ALR Library

119 ALR, Federal 319 , What Constitutes “Violent Felony” for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. Section 924(E)(1)).

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 120, Compliance With Lawful Orders, Generally‑Failure to Stop When Signaled.

Attorney General’s Opinions

There is no retroactive expungement of convictions for crimes committed prior to the effective date of this section, absent a court determination to such effect. S.C. Op.Atty.Gen. (January 22, 1996) 1996 WL 82897.

Three years after the completion of the last term and condition imposed by the sentencing judge for the first offense violation, if the person has had no other conviction during that period the court shall issue an order expunging the records. S.C. Op.Atty.Gen. (January 22, 1996) 1996 WL 82897.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 4

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Indictment 3

Sufficiency of evidence 5

1. In general

A successful prosecution of the South Carolina blue light statute must prove the following elements: (1) that the defendant was driving a motor vehicle; (2) that he was driving it on a road, street or highway of the state of South Carolina; (3) that he was signaled to stop by a law‑enforcement vehicle by means of a siren or flashing light; and (4) that he did not stop. U.S. v. Rivers (C.A.4 (S.C.) 2010) 595 F.3d 558. Obstructing Justice 122

An official signal requiring a motorist to stop may be given by way of a siren or flashing light, but both are not required. State v. Seay (S.C. 1975) 263 S.C. 496, 211 S.E.2d 649. Automobiles 324

In order to establish a violation of this section [former Code 1962 Section 46‑359], according to the plain meaning of the statute, the State must show (1) that the defendant was driving a motor vehicle; (2) that he was driving it on a road, street or highway of this State; (3) that he was signaled to stop by a law‑enforcement vehicle by means of a siren or flashing light; and (4) that he did not stop. State v. Hoffman (S.C. 1972) 257 S.C. 461, 186 S.E.2d 421. U.S. v. James (CA4 (S.C.) 2003) 337 F.3d 387, certiorari denied 124 S.Ct. 1111, 157 L.Ed.2d 939. Automobiles 324

This section [formerly Code 1962 Section 46‑359] does not make a violation of another law by the defendant prior to being signaled to stop, an element of the offense. State v. Hoffman (S.C. 1972) 257 S.C. 461, 186 S.E.2d 421.

2. Collateral considerations

Defendant’s prior South Carolina state court conviction for failure to stop for a blue light was a “violent felony,” within the meaning of the armed career criminal (ACC) statute; state statute provided that offense was punishable by term of imprisonment of up to three years, and since most cases of failing to stop for blue light involved the deliberate choice by the driver to disobey a police officer’s signal, offense posed threat of direct confrontation between officer and driver, so that it involved conduct that presented a serious potential risk of injury to the officer, the other occupants of the vehicle and others. U.S. v. James (C.A.4 (S.C.) 2003) 337 F.3d 387, certiorari denied 124 S.Ct. 1111, 540 U.S. 1134, 157 L.Ed.2d 939, post‑conviction relief dismissed 2009 WL 320606, affirmed 342 Fed.Appx. 865, 2009 WL 2757891, certiorari denied 130 S.Ct. 1549, 559 U.S. 955, 176 L.Ed.2d 140, habeas corpus denied 2011 WL 2471034, motion to amend denied 2011 WL 4828841, affirmed 473 Fed.Appx. 217, 2012 WL 1593027. Sentencing And Punishment 1285

Under South Carolina law, as predicted by Court of Appeals, whether great bodily injury resulted from defendant’s failure to stop his car when signaled by law enforcement vehicle was element of failure‑to‑stop offense, rather than mere sentencing factor, and, because indictment did not allege that great bodily injury resulted, defendant could not be sentenced under subsection containing that element. U.S. v. Davis (C.A.4 (S.C.) 1999) 184 F.3d 366. Automobiles 352

Defendant’s two prior South Carolina convictions, upon guilty pleas for failure to stop for a blue light, were not crimes of violence justifying an enhanced sentence under Armed Career Criminal Act (ACCA); South Carolina did not define the offense as requiring any criminal intent, and negligently failing to stop for blue light did not necessarily create an immediate, serious, and foreseeable physical risk. U.S. v. Johnson, 2009, 648 F.Supp.2d 764. Sentencing And Punishment 1285

Defendant’s previous South Carolina convictions for failure to stop for a blue light did not qualify as crimes of violence under modified categorical approach to determining whether a conviction qualified as a predicate offense under Armed Career Criminal Act (ACCA), even though indictment included the word “intentional.” U.S. v. Johnson, 2009, 648 F.Supp.2d 764. Sentencing And Punishment 1285

Defendant’s subsequent state conviction for failing to stop for a blue light constituted a Class A violation and crime of violence under the Sentencing Guidelines as to warrant imposition of enhanced supervised release revocation sentence; offense was a crime of violence punishable by a maximum term of more than one year, under laws of state of conviction. U.S. v. Reid (C.A.4 (S.C.) 2007) 259 Fed.Appx. 528, 2007 WL 4322264, Unreported. Sentencing And Punishment 2032

3. Indictment

Neither indictment’s citation to subsection of South Carolina statute prohibiting failure to stop for law enforcement vehicle that applied where great bodily injury resulted, nor indictment’s reference to maximum sentence that applied where great bodily injury resulted, was sufficient to charge defendant under that subsection. U.S. v. Davis (C.A.4 (S.C.) 1999) 184 F.3d 366. Automobiles 351.1

Even if indictment was sufficient to charge defendant with failure to stop for a law enforcement vehicle where great bodily injury resulted, defendant did not enter valid guilty plea under that subsection, but only pleaded guilty to failure‑to‑stop offense without great bodily injury, where district court, when advising defendant of nature of charge against him, twice failed to include great bodily injury in listing elements of the crime. U.S. v. Davis (C.A.4 (S.C.) 1999) 184 F.3d 366. Criminal Law 273.1(4)

4. Admissibility of evidence

Evidence that defendant killed state trooper was admissible as part of res gestae of later crimes for which defendant was on trial; killing provided context and motivation for later crimes and was relevant to show complete, whole, unfragmented story regarding defendant’s crimes, killing explained why police pursued defendant and reason defendant shot at, harmed, and threatened officers who attempted to apprehend him, crimes were temporally related, killing took place only two hours before later crimes, and two crimes comprised part of same episode. State v. Wood (S.C.App. 2004) 362 S.C. 520, 608 S.E.2d 435, rehearing denied, certiorari denied. Criminal Law 368.98

Where defendant who claimed that he was passenger and improperly charged for failing to stop on signal of law enforcement vehicle claimed in trial court that witness’s testimony as to statements made to her by alleged driver were admissible as part of res gestae, reviewing court would not consider claim that trial court’s action in sustaining objection to such testimony was error because such testimony was admissible as declarations against penal interest. State v. Cox (S.C. 1972) 258 S.C. 114, 187 S.E.2d 525.

5. Sufficiency of evidence

Evidence that defendant owned vehicle involved, that he was good friend of party he claimed to have been driver, that automobile was seen by officer alongside another vehicle, and that when ultimately stopped after high speed race defendant attempted to flee scene was sufficient to sustain conviction of charge of failing to stop on signal of law‑enforcement vehicle notwithstanding defendant’s claim that he was passenger and not driver. Code 1962, Section 46‑359. State v. Cox (S.C. 1972) 258 S.C. 114, 187 S.E.2d 525.

Where officer testified that defendant was driver of vehicle and gave basis of his identification, as against defendant’s claim that he was passenger in vehicle, court properly denied motion for directed verdict in prosecution for failing to stop when signaled by law enforcement vehicle. Code 1962, Section 46‑359. State v. Cox (S.C. 1972) 258 S.C. 114, 187 S.E.2d 525.

**SECTION 56‑5‑760.** Operation of authorized emergency vehicles.

(A) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions of this section.

(B) The driver of an authorized emergency vehicle may:

(1) park or stand, notwithstanding any other provision of this chapter;

(2) proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation;

(3) exceed the maximum speed limit if he does not endanger life or property;

(4) disregard regulations governing direction of movement or turning in specified directions.

(C) The exemptions in this section granted to an authorized emergency vehicle apply only when the vehicle is making use of an audible signal meeting the requirements of Section 56‑5‑4970 and visual signals meeting the requirements of Section 56‑5‑4700 of this chapter, except that an authorized emergency vehicle operated as a police vehicle need not use an audible signal nor display a visual signal when the vehicle is being used to:

(1) obtain evidence of a speeding violation;

(2) respond to a suspected crime in progress when use of an audible or visual signal, or both, could reasonably result in the destruction of evidence or escape of a suspect; or

(3) surveil another vehicle or its occupants who are suspected of involvement in a crime.

(D) The provisions of this section do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.

(E) The Criminal Justice Academy shall promulgate regulations pursuant to the Administrative Procedures Act so as to provide uniform guidelines and training programs for law enforcement agencies which use emergency vehicles. Law enforcement agencies authorized to use emergency vehicles shall use the regulations developed by the Criminal Justice Academy to provide written guidelines and to provide training programs for its officers and employees regarding the operation of emergency vehicles.

HISTORY: 1962 Code Section 46‑291; 1952 Code Section 46‑291; 1949 (46) 466; 1977 Act No. 149 Section 3; 1990 Act No. 580, Section 1.

CROSS REFERENCES

Authorized police patrol bicycles operating as emergency vehicles, see Section 56‑5‑3515.

Siren, whistle or bell on authorized emergency vehicles, see Section 56‑5‑4970.

Library References

Automobiles 320.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1507 to 1510, 1557, 1647, 1699, 1710.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 122, Authorized Emergency Vehicles.

S.C. Jur. Automobiles and Other Motor Vehicles Section 187, Generally; Equipment.

Treatises and Practice Aids

29 Causes of Action 655, Cause of Action for Injury Suffered in Collision Involving Ambulance.

1 Causes of Action 2d 819, Cause of Action for Injury Caused by Negligent Operation of Police Vehicle.

Attorney General’s Opinions

Wildlife conservation officer who operates a private vehicle which does not contain the audible and visual signals required by Section 56‑5‑760 may not exceed the posted highway speed limits even while pursuing alleged violators of the fish and game laws. 1979 Op.Atty.Gen. No. 79‑106, p. 150 (September 5, 1979) 1979 WL 34737.

Emergency vehicles may violate traffic regulations, as authorized by statute, but such violation must take into account the safety of the motoring public, and must be reasonable under the circumstances then and there existing. 1975‑76 Op.Atty.Gen. No. 4538, p. 404 (December 7, 1976) 1976 WL 23155.

NOTES OF DECISIONS

In general 1

1. In general

In a personal injury action arising out of an automobile accident in which a highway patrolman was injured while pursuing defendant for traffic violations, the patrolman’s excessive speed could not be deemed negligence per se since Section 56‑5‑760 explicitly authorizes a police officer using his siren and flashing light to disregard certain traffic regulations and to exceed the maximum speed limits and this section absolves the driver of an authorized emergency vehicle from negligence, and imposes liability only when the conduct becomes reckless. Jones v. Way (S.C. 1982) 278 S.C. 295, 294 S.E.2d 432.

Compliance with this section [formerly Code 1962 Section 46‑291] calls for the exercise of considerable judgment by the operator of an emergency vehicle in the interest of haste on the one hand and public safety on the other. Gossett v. Burnett (S.C. 1968) 251 S.C. 548, 164 S.E.2d 578.

Causative violation of this section [formerly Code 1962 Section 46‑291] constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671.

Violations of this section [formerly Code 1962 Section 46‑291], if the proximate cause of a collision, would justify punitive as well as actual damages. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671.

**SECTION 56‑5‑765.** Investigations of traffic collisions involving a motor vehicle or motorcycle of a law enforcement agency.

(A) When a motor vehicle or motorcycle of a law enforcement agency, except a motor vehicle or motorcycle of the Department of Public Safety, is involved in a traffic collision that: (1) results in an injury or a death, or (2) involves a privately‑owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the State Highway Patrol must investigate the collision and must file a report with findings on whether the agency motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(B) When a motor vehicle or motorcycle of the Department of Public Safety is involved in a traffic collision that: (1) results in an injury or a death, or (2) involves a privately‑owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the sheriff of the county in which the collision occurred must investigate the collision, regardless of whether the collision occurred within an incorporated jurisdiction, and must file a report with findings on whether the Department of Public Safety’s motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(C) A law enforcement department or agency must not investigate a traffic collision in which a motor vehicle, a motorcycle, or an employee of that department or agency is involved that: (1) results in an injury or a death, or (2) involves a privately‑owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved.

(D) A law enforcement agency that has primary responsibility for an investigation involving a motor vehicle, a motorcycle, or an employee of another department or agency, but lacks the expertise to conduct a proper investigation, may request assistance from another agency that has the appropriate expertise, as long as the assisting agency or an employee of the assisting agency is not a subject of the investigation. A request made pursuant to this subsection shall result in a joint investigation conducted by both agencies.

(E) A person who knowingly and wilfully violates the provisions of subsection (C) is subject to punishment as provided for in Section 8‑1‑80, even if the person’s authority extends beyond a single election or judicial district.

(F) An investigation of a traffic collision involving a motor vehicle, a motorcycle, or an employee of a law enforcement agency or department must include a field investigation to identify possible witnesses, including possible witnesses not involved in the traffic collision, but who may have witnessed the traffic collision from a vantage point other than the collision site.

(G) For purposes of this section, “involved in a traffic collision” includes a law enforcement motor vehicle or motorcycle engaged in a pursuit when a traffic collision occurs.

HISTORY: 1994 Act No. 439, Section 1; 1995 Act No. 138, Section 5; 1996 Act No. 425, Section 3; 1996 Act No. 459, Section 181; 2002 Act No. 277, Section 1; 2004 Act No. 269, Section 1; 2004 Act No. 286, Section 5.

Library References

Automobiles 175.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 814, 870 to 880.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 122, Authorized Emergency Vehicles.

S.C. Jur. Automobiles and Other Motor Vehicles Section 152, Duty When Accident Involves Death or Personal Injury.

Attorney General’s Opinions

The South Carolina Law Enforcement Division is the agency best suited and has the most resources available to investigate the traffic collisions involving the patrol vehicles of the Sheriffs Office and DPS/Highway Patrol. S.C. Op.Atty.Gen. (March 20, 2013) 2013 WL 1695521.

The term “employee” in this section encompasses all police department employees, and includes local motor pool vehicles not used for policing or emergencies. S.C. Op.Atty.Gen. (June 18, 1998) 1998 WL 746030.

A law enforcement agency is prohibited from investigating collisions in which an employee of that agency was involved, regardless of whether the employee was driving his own private vehicle or the private vehicle of another. S.C. Op.Atty.Gen. (July 10, 1996) 1996 WL 494732.

Even when a police vehicle does not collide with another vehicle, if, but for the chase by the police vehicle, there would have been no collision, it could be held to be involved in the collision. S.C. Op.Atty.Gen. (July 19, 1995) 1995 WL 803716.

The accident investigation by the State Highway Patrol requirement of Subsection (A) of Section 56‑5‑765 would include a motor vehicle being used by jail personnel when transporting inmates. S.C. Op.Atty.Gen. (October 26, 1994) 1994 WL 649311.

Any motor vehicle of the Department of Public Safety, including motor pool vehicles not used for policing purposes or emergency vehicles, would be covered under Subsection (B). Any traffic collision involving such vehicles would have to be investigated by the sheriff of the county where the collision occurred. S.C. Op.Atty.Gen. (October 26, 1994) 1994 WL 649311.

Where a law enforcement officer is involved in a collision driving his or her private vehicle, that person’s agency should not conduct the investigation. S.C. Op.Atty.Gen. (October 26, 1994) 1994 WL 649311.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

State statute which required that collisions involving a vehicle of the Department of Public Safety that results in injury or death or involving a privately owned vehicle be investigated by the sheriff’s office in the county where the collision occurred was violated when the Highway Patrol’s Multi‑disciplinary Accident Investigation Team (MAIT) investigated the collision of a State Trooper and private individual. State v. Sheldon (S.C.App. 2001) 344 S.C. 340, 543 S.E.2d 585. Automobiles 349(11)

2. Admissibility of evidence

Statutory violation occurring when Highway Patrol’s Multi‑disciplinary Accident Investigation Team (MAIT) investigated collision between defendant who was a State Trooper and an individual did not require suppression of the MAIT report, absent any findings that defendant, indicted on two charges of reckless homicide, would be prejudiced by MAIT’s investigation of the collision. State v. Sheldon (S.C.App. 2001) 344 S.C. 340, 543 S.E.2d 585. Criminal Law 392.23

**SECTION 56‑5‑790.** Application to persons riding animals, driving animal‑drawn vehicles or pushing pushcarts.

Every person riding an animal or driving any animal‑drawn vehicle or pushing a pushcart upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

HISTORY: 1962 Code Section 46‑289; 1952 Code Section 46‑289; 1949 (46) 466.

Library References

Automobiles 176(5), 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 883, 928, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

**SECTION 56‑5‑800.** Persons working on highways; exceptions.

Unless specifically made applicable, the provisions of this chapter except those contained in Articles 3, 9 and 23 and Sections 56‑5‑1590 to 56‑5‑1620 shall not apply to persons, motor vehicles and other equipment while actually engaged in work upon a highway but shall apply to such persons and vehicles when traveling to or from such work.

HISTORY: 1962 Code Section 46‑290; 1952 Code Section 46‑290; 1949 (46) 466; 1977 Act No. 149 Section 2.

Library References

Automobiles 163.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 889.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 79, Evidence at Trial.

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: torts: Motor Vehicle Tort Claims Act. 28 S.C. L. Rev. 401.

NOTES OF DECISIONS

In general 1

Questions for jury 2

Review 3

1. In general

Government‑owned pickup truck which had been parked partially on the pavement of a highway and partially on the shoulder prior to changing a flat tire on a government‑owned road grader was not within exception to traffic act, since neither the driver nor the truck itself was “actually engaged in work upon the service of a highway” within the meaning and intent of the exemption, in that stopping the truck where it was stopped was neither necessary nor incidental to the performance of any work upon the service of the highway. Truesdale v. South Carolina Highway Dept. (S.C. 1975) 264 S.C. 221, 213 S.E.2d 740.

Motor vehicles and other equipment while actually engaged in work upon surface of a highway exempted from requirements of provisions of Uniform Act Regulating Traffic. Taylor v. South Carolina State Highway Dept. (S.C. 1963) 242 S.C. 171, 130 S.E.2d 418. Automobiles 173(4)

2. Questions for jury

Whether Department of Highways employee was negligent when he drove tractor with mower deck onto highway was issue for jury; statute exempting highway department vehicles and employees from standard traffic laws did not preclude negligence finding, but merely precluded finding of per se negligence based on violation of traffic law. Howard v. South Carolina Dept. of Highways (S.C.App. 2000) 343 S.C. 149, 538 S.E.2d 291, rehearing withdrawn. Automobiles 147; Automobiles 245(2.1)

3. Review

Department of Transportation’s (DOT) claim that statute, providing that certain provisions of Uniform Act Regulating Traffic on Highways shall not apply to motor vehicles engaged in work upon highway, shielded it from liability for purposes of negligence action brought by motorist whose vehicle hit DOT truck, was waived for purposes of appeal, since DOT did not raise argument in trial court or in any post‑trial motion. Trivelas v. South Carolina Dept. of Transp. (S.C.App. 2001) 348 S.C. 125, 558 S.E.2d 271. Appeal And Error 173(13); Appeal And Error 179(1)

**SECTION 56‑5‑810.** Rights of owner who permits traffic on his property.

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, from requiring other or different or additional conditions than those specified in this chapter or from otherwise regulating such use as may seem best to such owner.

HISTORY: 1962 Code Section 46‑294; 1952 Code Section 46‑294; 1949 (46) 466.

Library References

Automobiles 5(1).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 28 to 32, 47 to 50, 52, 55.

Attorney General’s Opinions

A court would likely find that a school bus traveling twice a day on school days on a private road to pick‑up or drop‑off a handicapped student would be considered a reasonable use of the easement. S.C. Op.Atty.Gen. (Sept. 13, 2010) 2010 WL 3896169.

**SECTION 56‑5‑820.** Violations of low speed vehicle laws; penalty.

(A) A person operating a low speed vehicle on a highway must comply with all statutes regarding low speed vehicles in this title.

(B) Each violation of low speed vehicle laws constitutes a separate offense.

(C) The penalty for a violation of this section is contained in Section 56‑5‑6190.

HISTORY: 2005 Act No. 170, Section 4, eff 6 months after approval by the Governor (approved June 7, 2005).

ARTICLE 7

Traffic Signs, Signals, and Markings

**SECTION 56‑5‑910.** Approval by Department of Transportation of stop signs or traffic‑control signals placed by local authorities.

No local authority shall erect or maintain any stop sign or traffic‑control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation.

HISTORY: 1962 Code Section 46‑283; 1952 Code Section 46‑283; 1949 (46) 466; 1993 Act No. 181, Section 1400.

Library References

Automobiles 5(5).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 53 to 54, 56.

LAW REVIEW AND JOURNAL COMMENTARIES

Statutory Duty of Care. 23 S.C. L. Rev. 681.

**SECTION 56‑5‑920.** Adoption of uniform system of traffic‑control devices.

The Department of Transportation may adopt a manual of standards and specifications for a uniform system of traffic‑control devices, consistent with the provisions of this chapter, for use upon highways and streets within this State.

HISTORY: 1962 Code Section 46‑301; 1952 Code Section 46‑301; 1949 (46) 466; 1993 Act No. 181, Section 1401.

CROSS REFERENCES

Agritourism and Tourism‑Oriented Directional Signing, see S.C. Code of Regulations R. 63‑339.

General duties and powers of State Highway Department, see Section 57‑3‑600 et seq.

Permissible heights of vehicles, see Section 56‑5‑4060.

Railroad’s responsibility for signs at railroad crossings, see Section 58‑17‑1390.

Library References

Automobiles 5(5), 277.

Westlaw Topic No. 48A.

C.J.S. Highways Sections 440 to 445.

C.J.S. Motor Vehicles Sections 53 to 54, 56, 508 to 509, 511 to 512, 516, 519 to 525, 535, 564 to 567.

C.J.S. Schools and School Districts Sections 687 to 694, 1065.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

NOTES OF DECISIONS

In general 1

1. In general

In action for wrongful death arising out of an accident in which the two victims had been killed when their automobile crashed into a bridge under construction, the judgment against the builder would be affirmed where the evidence established that it had failed to abide by the standards for adequate warning devices at highway construction sites contained in the contract and in Section 56‑5‑920 and where the presence of car tracks and litter at the site had given notice to the builder of the use of the restricted area by the public, and where the absence of proper warning lights or barricades, and not the high rate of speed of the accident vehicle, had been the major contributing factor in the accident. Taylor v. Bridgebuilders, Inc. (S.C. 1980) 275 S.C. 236, 269 S.E.2d 337.

The pertinent statutory authority of the State Highway Department to erect traffic control signs or devices is found in this section [formerly Code 1962 Section 46‑301] and former Code 1962 Sections 46‑302, 46‑304, and 46‑367 see now Sections 56‑5‑930, 56‑5‑940 and 56‑5‑1580]. Rochester v. Bussey (S.C. 1968) 251 S.C. 347, 162 S.E.2d 841.

Where a sign is erected by the Highway Department in accordance with statutory authority, it is an official traffic control device and, as such, traffic is required to comply with its instructions. Rochester v. Bussey (S.C. 1968) 251 S.C. 347, 162 S.E.2d 841.

**SECTION 56‑5‑930.** Placing and maintaining traffic‑control devices on state highways.

The Department of Transportation may place and maintain such traffic‑control devices, conforming to its manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn or guide traffic. No local authority shall place or maintain any traffic‑control devices upon any state highway without having first obtained the written approval of the Department of Transportation.

HISTORY: 1962 Code Section 46‑302; 1952 Code Section 46‑302; 1949 (46) 466; 1993 Act No. 181, Section 1402.

CROSS REFERENCES

Definition of traffic‑control signal, see Section 56‑5‑550.

General duties and powers of State Highway Department, see Section 57‑3‑600 et seq.

Library References

Automobiles 5(5), 277.

Westlaw Topic No. 48A.

C.J.S. Highways Sections 440 to 445.

C.J.S. Motor Vehicles Sections 53 to 54, 56, 508 to 509, 511 to 512, 516, 519 to 525, 535, 564 to 567.

C.J.S. Schools and School Districts Sections 687 to 694, 1065.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

Attorney General’s Opinions

Highway Department may place traffic‑controlled devices upon State highways within municipality without any approval by local authorities. 1984 Op.Atty.Gen. No. 84‑107, p. 249 (August 29, 1984) 1984 WL 159914.

NOTES OF DECISIONS

In general 1

1. In general

In a personal injury action arising out of an automobile accident at an intersection where there were no signs or markings indicating that the approaches to the intersection were no‑passing zones for distances of 100 feet from the intersection, the defendant Department of Highways and Public Transportation was not entitled to discretionary immunity for its failure to place either striping or signs on the highway to indicate a no‑passing zone, without some evidence that the Department actually weighed competing considerations and made a conscious choice not to place either striping or signs on the highway at the location in question. The fact that Sections 56‑5‑930 and 56‑5‑1890 allow the Department in certain instances to exercise discretion regarding the placement of traffic control devices, signs, and markings does not constitute evidence that the Department actually made a decision and exercised its discretion when a failure to place signs or markings at a particular location is called into question. Niver v. S.C. Dept. of Highways and Public Transp. (S.C.App. 1990) 302 S.C. 461, 395 S.E.2d 728.

**SECTION 56‑5‑935.** Traffic control devices in Aiken, Allendale, and Barnwell counties on federal land; control by U.S. Department of Energy.

The United States Department of Energy is authorized to place and maintain traffic control devices upon roads within the confines of the lands in Aiken, Allendale, and Barnwell counties acquired or to be acquired by the United States Government. The Department of Energy is not required to obtain written approval of the Department of Transportation as provided in Sections 56‑5‑910 and 56‑5‑930.

The driver of a vehicle must obey the instruction of any traffic control device or sign placed as provided in this section unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

HISTORY: 1990 Act No. 598, Section 4; 1993 Act No. 181, Section 1403.

Library References

Automobiles 5(5).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 53 to 54, 56.

**SECTION 56‑5‑940.** Local traffic‑control devices.

Subject to the limitations prescribed in Section 56‑5‑930, local authorities in their respective jurisdictions shall place and maintain such traffic‑control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All such traffic‑control devices so erected by such local authorities shall conform to the State manual and specifications.

HISTORY: 1962 Code Section 46‑303; 1952 Code Section 46‑303; 1949 (46) 466.

Library References

Automobiles 7.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 24, 28, 30 to 31, 33 to 38.

Attorney General’s Opinions

When traffic control devices required on local roads. Once local roads, not part of the State highway system, are accepted into the county system of highways, the public authorities of that county are required to place traffic control devices thereon. 1971‑72 Op.Atty.Gen. No. 3290, p. 101 (March 27, 1972) 1972 WL 20434.

**SECTION 56‑5‑950.** Obedience to and required traffic‑control devices.

(a) The driver of any vehicle shall obey the instructions of any official traffic‑control device, applicable thereto placed or held in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(b) No provision of this chapter for which official traffic‑control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic‑control devices are required, such section shall be effective even though no devices are erected or in place.

(c) Whenever official traffic‑control devices are placed or held in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed or held by the official act or direction of lawful authority unless the contrary shall be established by competent evidence.

(d) Any official traffic‑control device placed or held pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirement of this chapter, unless the contrary shall be established by competent evidence.

HISTORY: 1962 Code Section 46‑304; 1952 Code Section 46‑304; 1949 (46) 466; 1977 Act No. 147 Section 4.

Library References

Automobiles 171(9), 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 824 to 827, 837 to 840, 863, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 126, Obedience to Traffic‑Control Devices.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: torts: statutory violation as negligence per se. 27 S.C. L. Rev. 578.

Automobiles. 24 S.C. L. Rev. 598.

Statutory Duty of Care. 23 S.C. L. Rev. 681.

Attorney General’s Opinions

There are clearly defined statutory rights and responsibilities associated with funeral processions and such should be conducted with deference to such rights and responsibilities. There is the general obligation of a funeral procession to obey the instructions of a traffic control device unless otherwise directed by a law enforcement officer. S.C. Op.Atty.Gen. (April 26, 2010) 2010 WL 1808728.

Funeral processions have no specific traffic rights under state law. S.C. Op.Atty.Gen. (October 15, 1996) 1996 WL 679475.

Officer stationed at intersection may direct funeral procession to proceed against traffic light. However, Supreme court has ruled that where there is no police officer directing traffic so as to supersede traffic light, no South Carolina law exempts driver in funeral procession from obligation to observe traffic control devices. S.C. Op.Atty.Gen. (May 17, 1991) 1991 WL 474765.

Local Law enforcement personnel are empowered to enforce the mandates of traffic control devices upon any highway which is maintained by public funds. Accidents occurring on ways maintained by public funds, whether it be school property or not, are subject to investigation and the enforcement powers of local authorities. S.C. Op.Atty.Gen. (May 26, 1981) 1981 WL 96574.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

Questions for jury 3

Review 5

Sufficiency of evidence 4

1. In general

A vehicle in a funeral procession acquires no special status as an “authorized emergency vehicle.” Nabors v. Spencer (S.C. 1974) 262 S.C. 630, 207 S.E.2d 79.

A group of cars which were going to a funeral home to form a funeral procession, but which had no police escort and no permit for a funeral procession and was not accompanying a hearse, was not a funeral procession, and the drivers of all vehicles should have abided by all traffic laws. Jones v. Grissett (S.C. 1972) 258 S.C. 22, 186 S.E.2d 829.

2. Admissibility of evidence

Plaintiff’s allegations, in automobile accident case, that warning signs were posted near intersection at which accident occurred showing on top sign “school bus crossing” and on lower sign “35 M.P.H.” were relevant on issue whether defendant’s automobile was operated at excessive speed and were erroneously stricken from complaint on ground that plaintiff was not passenger on school bus, school bus was not involved in accident, and accident occurred at time when school bus would not ordinarily be using highway. Code 1962, Sections 46‑304, 46‑367 et seq. Rochester v. North Greenville Junior College (S.C. 1967) 249 S.C. 123, 153 S.E.2d 121.

3. Questions for jury

Evidence, in action to recover actual and punitive damages for personal injuries sustained when defendant motorist’s automobile struck rear of vehicle behind that of plaintiff, causing it to strike vehicle of plaintiff, who was stopping for traffic light, that defendant was following more closely than was reasonable and prudent under circumstances was sufficient for jury, and thus submission of issue as to punitive damages was also required. Code 1962, Sections 46‑301 et seq., 46‑304, 46‑393. Jarvis v. Green (S.C. 1972) 257 S.C. 558, 186 S.E.2d 765.

4. Sufficiency of evidence

In prosecution for failing to stop at a stop sign before entering an intersection, evidence was insufficient to support conviction. Code 1952, Section 46‑474. City of Spartanburg v. Winters (S.C. 1958) 233 S.C. 526, 105 S.E.2d 703. Automobiles 355(1)

5. Review

Finding of a judge of county court on appeal from a conviction in municipal court for failing to stop at a stop sign before entering intersection, that defendant was not guilty, was an acquittal on such charge and an appeal from such judgment by city did not lie. Code 1952, Section 46‑474. City of Spartanburg v. Winters (S.C. 1958) 233 S.C. 526, 105 S.E.2d 703. Criminal Law 1024(5)

**SECTION 56‑5‑970.** Traffic‑control signal legend.

Whenever traffic is controlled by traffic‑control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors, green, red, and yellow, shall be used except for special pedestrian signals carrying a word legend. Such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(A) Green indication:

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right‑of‑way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right‑of‑way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian‑control signal, as provided in Section 56‑5‑990, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(B) Steady yellow indication:

(1) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

(2) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian‑control signal as provided in Section 56‑5‑990, are advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(C) Steady red indication:

(1) Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in item (3).

(2) Vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow, and unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication permitting the movement indicated by such arrow is shown except as provided in items (3) and (5).

(3) Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right or to turn left from a one‑way street into a one‑way street after stopping as required by item (1) or (2). Such vehicular traffic shall yield the right‑of‑way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) Unless otherwise directed by a pedestrian‑control signal as provided in Section 56‑5‑3110, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway.

(5) Notwithstanding any other provision of law, if a driver of a motorcycle or moped, or a bicycle rider, approaches an intersection that is controlled by a traffic‑control device, the driver may proceed through the intersection on a steady red light only if the driver or rider, as the case may be:

(a) comes to a full and complete stop at the intersection for one hundred twenty seconds; and

(b) exercises due care as provided by law, otherwise treats the traffic control device as a stop sign, and determines it is safe to proceed.

HISTORY: 1962 Code Section 46‑306; 1952 Code Section 46‑306; 1949 (46) 466; 1975 (59) 76; 1977 Act No. 11; 1977 Act No. 149 Section 5; 2008 Act No. 240, Section 1, eff May 27, 2008.

Library References

Automobiles 171(9).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 824 to 827, 837 to 840, 863.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

LAW REVIEW AND JOURNAL COMMENTARIES

Statutory Duty of Care. 23 S.C. L. Rev. 681.

Attorney General’s Opinions

Officer stationed at intersection may direct funeral procession to proceed against traffic light. However, Supreme court has ruled that where there is no police officer directing traffic so as to supersede traffic light, no South Carolina law exempts driver in funeral procession from obligation to observe traffic control devices. 1991 Op.Atty.Gen. No. 91‑35, p. 95 (May 17, 1991) 1991 WL 474765.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

The driver is required to yield the right of way to the vehicle which is already lawfully in the intersection. McClure v. Price (C.A.4 (S.C.) 1962) 300 F.2d 538. Automobiles 171(5)

Where the evidence was directly conflicting, each party claiming to have the right of way over the other and each party claiming to have entered the intersection on the green light, refusal of defendant’s motions for a directed verdict was proper. Pepsi‑Cola Distributors of Charleston, Inc. v. Barker (C.A.4 (S.C.) 1960) 274 F.2d 372.

Violation of this section [formerly Code 1962 Section 46‑306] is negligence per se. Harris v. Marion Concrete Co. (D.C.S.C. 1970) 320 F.Supp. 16, affirmed 435 F.2d 561. Negligence 259

The fact that a pedestrian having the right of way under this section [former Code 1962 Section 46‑306] is in a marked crosswalk when injured does not necessarily show freedom from contributory negligence. Williams v. Kalutz (S.C. 1960) 237 S.C. 398, 117 S.E.2d 591.

2. Instructions

Where the trial judge instructed the jury on the basis of Section 56‑5‑2310 as to the right of way at intersections, generally, whereas the applicable statute was Section 56‑5‑970 governing the right of way at intersections controlled by a traffic‑control signal, but the judge promptly corrected his error and rendered it harmless, there was no basis for a new trial. When an instruction has been corrected by the court and it appears with reasonable certainty that the jury was not misled, it will be presumed on appeal that the jury accepted the correction as the law of the case and applied it. Coogler v. Thompson (S.C.App. 1985) 286 S.C. 168, 332 S.E.2d 215.

In pedestrian’s action against motorist for injuries sustained in intersection collision, refusal of trial court to give requested instruction that pedestrian had right to cross street and that jury should return verdict for plaintiff if they should find that pedestrian was in street when light changed to green, and that motorist did not stop to avoid hitting plaintiff, was not error where request entirely eliminated from consideration question of contributory negligence and proximate cause. Durant v. Stuckey (S.C. 1952) 221 S.C. 342, 70 S.E.2d 473. Trial 253(4)

**SECTION 56‑5‑990.** Pedestrian “walk” and “wait” signals.

Whenever special pedestrian control signals exhibiting the words “Walk” or “Wait” are in place such signals shall indicate as follows:

(1) “Walk” indicates that a pedestrian facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles; and

(2) “Wait” indicates that no pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

HISTORY: 1962 Code Section 46‑308; 1952 Code Section 46‑308; 1949 (46) 466.

Library References

Automobiles 160(3).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 663 to 670.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑1000.** Flashing signals.

(a) Whenever an illuminated flashing red or yellow light is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(b) This section shall not apply at railroad grade crossings. Conduct of drivers approaching grade crossings shall be governed by the rules set forth in Section 56‑5‑2710 of this chapter.

HISTORY: 1962 Code Section 46‑309; 1952 Code Section 46‑309; 1949 (46) 466; 1977 Act No. 149 Section 6.

Library References

Automobiles 171(9), 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 824 to 827, 837 to 840, 863, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

NOTES OF DECISIONS

Questions for jury 1

1. Questions for jury

Since the real and efficient cause of the collision at an intersection was the automobile driver’s negligent act of turning her car suddenly into the path of the motorcycle as the motorcyclist entered the intersection, any question as to the motorcyclist’s contributory negligence in failing to observe warning sign, flashing light, and reducing speed before and as he entered the intersection need not be submitted to the jury, especially since the evidence showed that the motorcyclist was not traveling at an excessive rate of speed prior to the collision and, in fact, it was undisputed that he slowed down as he entered the intersection. Campbell v. Paschal (S.C.App. 1986) 290 S.C. 1, 347 S.E.2d 892.

Under evidence disclosing that passenger and driver were proceeding in automobile to hospital to secure treatment of passenger’s thumb which had just been severed, and authorizing inference that automobile entered stop intersection at speed of 50 miles per hour, that passenger observed operation of automobile, saw flashing red signal while some distance away and had opportunity to observe approaching danger but gave no warning or protest to driver, it was for jury to determine if driver was negligent and whether such negligence was apparent to passenger and whether passenger’s failure to exercise due care for his own safety proximately contributed to his injury. Stone v. Barnes (S.C. 1966) 248 S.C. 28, 148 S.E.2d 738.

**SECTION 56‑5‑1010.** Railroad signs at grade crossings.

All railroad companies operating railroads in the State shall place and maintain at every crossing of a highway and railroad at grade standard cross‑buck signs in accordance with the requirements of the manual of standards and specifications for uniform traffic‑control devices referred to in Section 56‑5‑920.

HISTORY: 1962 Code Section 46‑310; 1952 Code Section 46‑310; 1949 (46) 466.

CROSS REFERENCES

Signs at railroad crossings, see Section 58‑17‑1390.

Stop signs at railroad crossings, see Section 56‑5‑2710.

Library References

Railroads 243.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 788 to 789.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

S.C. Jur. Carriers Section 36, Regulation of Crossings.

Treatises and Practice Aids

60 Causes of Action 2d 1, Cause of Action for Accident at Railroad Tracks or Crossing.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Instructions 4

Presumptions and burden of proof 2

Review 5

1. In general

This section was not intended to relieve railroads of their common‑law duty to provide safe passage across their rails. Bowman v. Norfolk Southern Ry. Co., 1993, 832 F.Supp. 1014, affirmed 66 F.3d 315.

Under “occupied crossing doctrine” a railroad company, in absence of special hazard, has right to occupy a crossing for its legitimate purposes, furnishing only such warning to travelers as may be required by statute. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

Where crossing at state highway was in rural area, highway was straight for 1,500 feet from the last crest south of the crossing, grades were insignificant, weather was fair, motorist’s headlights furnished good visibility for 400 feet and there were no obstructions to his view of the train as it moved across the highway directly in front of him, railroad company’s alleged failure to give warning of the train’s occupancy of the crossing did not constitute negligence in the operation of its railroad. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

In absence of evidence that railroad company knew, or should have known, that on approach to crossing from the south, automobile headlights would be incapable of performing the function for which they were designed, railroad was not negligent in operation of its railroad by its failure to take extraordinary precautions to give warning of the train’s occupancy of the crossing. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

2. Presumptions and burden of proof

The burden on railroad company to take extraordinary precautions in an occupied crossing situation does not arrive until it knows or by the exercise of due care should have known of unusual hazard existing at the crossing. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

3. Admissibility of evidence

Photographs of scene of train‑automobile collision, including photograph which was taken on night of the collision and photographs which were taken in daytime about two weeks after the accident, which corroborated oral testimony that the downhill‑uphill grades on approach to the crossing were only slight, that the roadway was straight and that the vegetation and trees in the area did not obstruct a motorist’s view of the crossing were properly admitted in evidence in motorist’s personal injury action against railroad and State Highway Department. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

4. Instructions

Railroad and Department of Transportation were entitled to jury instructions on statutes related to placement of signs at railroad crossings and Department’s authority to close unsafe crossings, in negligence action against railroad and Department for traumatic brain injury minor sustained when train collided with automobile; statutes were relevant, as plaintiff alleged that railroad was negligent in maintaining unreasonably hazardous and unsafe crossing, expert opined that crossing could have been made safer with installation of active traffic‑control devices, and jury was informed that railroad could not close crossing of its own accord. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(2); Evidence 571(6); Railroads 351(1)

Evidence in negligence action against railroad and state department of transportation arising from automobile‑train collision supported charging jury on statute requiring railroad companies to install and maintain cross‑buck signs at crossings; guardian ad litem who brought action on behalf of minor automobile passenger alleged in complaint that railroad was negligent in maintaining an unreasonably hazardous and unsafe crossing and in failing to maintain adequate warning devices at the crossing, and evidence showed that vehicle traffic at crossing in question was controlled by a stop sign, a stop line, and a cross‑buck. Stephens ex rel. Lillian C. v. CSX Transp., Inc. (S.C.App. 2012) 400 S.C. 503, 735 S.E.2d 505, rehearing denied, affirmed in part, reversed in part 415 S.C. 182, 781 S.E.2d 534. Railroads 351(7)

5. Review

Where plaintiff motorist did not except to direction of verdict in favor of railroad on ground that railroad’s failure to comply with its statutory duty to paint cross arms of crossbuck signs in manner prescribed by highway department manual required submission of case to jury, no issue with respect to the marking of the crossing was presented for review. Code 1962, Sections 46‑310, 58‑999; Supreme Court Rules, rule 8, Section 3. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

**SECTION 56‑5‑1015.** Lane use control signals.

When lane use control signals are placed over individual lanes the signals shall indicate and apply to drivers of vehicles as follows:

(a) Green indication. Vehicular traffic may travel in any lane over which a green signal is shown.

(b) Steady yellow indication. Vehicular traffic is thereby warned that a lane control change is being made.

(c) Steady red indication. Vehicular traffic shall not enter or travel in any lane over which a red signal is shown.

(d) Flashing yellow indication. Vehicular traffic may use the lane only for the purpose of approaching and making a left turn.

HISTORY: 1962 Code Section 46‑310.1; 1977 Act No. 149 Section 7.

Library References

Automobiles 151.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

**SECTION 56‑5‑1020.** Unauthorized signs, signals, or devices prohibited; exception; removal.

No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which (a) purports to be or is an imitation of or resembles an official traffic‑control device or railroad sign or signal, (b) attempts to direct the movement of traffic or (c) hides from view or interferes with the effectiveness of any official traffic‑control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign, signal or control device bearing thereon any commercial advertisement. This provision shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over the highway may remove it or cause it to be removed without notice.

HISTORY: 1962 Code Section 46‑311; 1952 Code Section 46‑311; 1949 (46) 466.

CROSS REFERENCES

Use for advertising of cross usually used as crossing sign by railroads, see Section 58‑15‑890.

Library References

Highways 153.

Westlaw Topic No. 200.

C.J.S. Gas Section 128.

C.J.S. Highways Sections 334 to 338.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 125, Unauthorized Placement; Interference.

S.C. Jur. Public Nuisance Section 14, Unauthorized Traffic‑Control Signs, Signals, or Like Devices.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Subdivision owner had no duty to erect stop sign at intersection of subdivision street and public road; erection of traffic signs is the sole responsibility of public authorities and private individuals are enjoined by law from doing so. Gallman v. Sewell (S.C. 1975) 265 S.C. 434, 219 S.E.2d 905.

2. Instructions

Evidence in negligence action against railroad and state department of transportation (DOT) arising from automobile‑train collision supported charging jury on statute that prohibited unauthorized signs, signals, or other devices at crossings; complaint alleged that railroad was negligent in maintaining an unreasonably hazardous and unsafe crossing and in failing to maintain adequate warning devices at the crossing, and charge in question informed jury that railroad could not legally install active traffic‑control devices without DOT’s authorization. Stephens ex rel. Lillian C. v. CSX Transp., Inc. (S.C.App. 2012) 400 S.C. 503, 735 S.E.2d 505, rehearing denied, affirmed in part, reversed in part 415 S.C. 182, 781 S.E.2d 534. Railroads 351(7)

**SECTION 56‑5‑1030.** Interference with traffic‑control devices or railroad signs or signals prohibited.

(A) No person shall wilfully without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove an official traffic‑control device or a railroad sign or signal or its inscriptions, shields, or insignia.

(B) A person violating the provisions of this section is guilty of a felony and, upon conviction, must be:

(1) fined not less than one thousand dollars or imprisoned not more than five years, or both. The driver’s license of a person convicted under this section must be revoked for not less than five years. In any case where a license has not been issued, the person is not eligible to obtain a license for five years from the date of conviction;

(2) fined not less than one thousand dollars or imprisoned not more than ten years if injury results;

(3) imprisoned not more than thirty years if death results.

HISTORY: 1962 Code Section 46‑312; 1952 Code Section 46‑312; 1949 (46) 466; 1969 (56) 698; 1993 Act No. 184, Section 82.

CROSS REFERENCES

Post‑conviction DNA procedures, see Sections 17‑28‑10 et seq.

Preservation of DNA evidence, see Sections 17‑28‑310 et seq.

Violent crimes defined, see Section 16‑1‑60.

Library References

Highways 162.

Railroads 255(1).

Westlaw Topic Nos. 200, 320.

C.J.S. Highways Sections 355 to 358.

C.J.S. Railroads Sections 805 to 806, 1280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 125, Unauthorized Placement; Interference.

Treatises and Practice Aids

12 Causes of Action 1, Cause of Action for Injury or Death Suffered in Motor Vehicle Accident Caused by Failure to Properly Warn of Road Construction or Repair Hazards.

NOTES OF DECISIONS

Instructions 1

1. Instructions

The trial court did not err by charging the jury with the language of both Section 56‑5‑1030, the general vandalism statute, and Section 58‑9‑2020, relating to telephone lines, where a stop sign was removed for repairs to a telephone line, the sign was not properly replaced, a driver failed to stop at the intersection where the stop sign should have been and struck the plaintiff’s vehicle, which had the right of way; when statutes are not in conflict, one need not govern the other. Gamble v. Stevenson (S.C. 1991) 305 S.C. 104, 406 S.E.2d 350.

ARTICLE 9

Accidents and Reports

**SECTION 56‑5‑1210.** Duties of drivers involved in accident resulting in death or personal injury; moving or removing vehicles.

(A) The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56‑5‑1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than is necessary. A person who fails to stop or to comply with the requirements of this section is guilty of:

(1) a misdemeanor and, upon conviction, must be imprisoned not less than thirty days nor more than one year or fined not less than one hundred dollars nor more than five thousand dollars, or both, when injury results but great bodily injury or death does not result;

(2) a felony and, upon conviction, must be imprisoned not less than thirty days nor more than ten years and fined not less than five thousand dollars nor more than ten thousand dollars when great bodily injury results; or

(3) a felony and, upon conviction, must be imprisoned not less than one year nor more than twenty‑five years and fined not less than ten thousand dollars nor more than twenty‑five thousand dollars when death results.

(B) Law enforcement officers or authorized employees of the Department of Transportation may move or have removed from the traveled way all disabled vehicles and vehicles involved in an accident and any debris caused by motor vehicle traffic collisions where it can be accomplished safely and may result in the improved safety or traffic flow upon the road; however, where a vehicle has been involved in an accident resulting in great bodily injury or death to a person, the vehicle shall not be moved until it is authorized by the investigating law enforcement officer. The State, its political subdivisions, and its officers and employees are not liable for any damages to vehicles that result from the removal unless the removal was carried out in a reckless or grossly negligent manner. The vehicle owner and any driver, or the owner’s, driver’s, or the at‑fault party’s insurance company, of a vehicle removed under this subsection, or the owner’s, driver’s, or the at‑fault party’s insurance company, shall bear all reasonable costs of removal.

Nothing in this section shall bar recovery from an at‑fault party when the accident was caused by the actions of that party.

(C) As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(D) The Department of Motor Vehicles shall revoke the driver’s license of the person convicted pursuant to this section.

HISTORY: 1962 Code Section 46‑321; 1952 Code Section 46‑321; 1949 (46) 466; 1996 Act No. 398, Section 1; 2004 Act No. 286, Section 1.

CROSS REFERENCES

Right of a person to file a claim on the basis of being a victim of a crime, see Section 16‑3‑1110 et seq.

Section’s effect on status of motor vehicle license, as authorized by Driver License Compact where offense resulting in conviction occurred out of state, see Section 56‑1‑650.

Violent crimes defined, see Section 16‑1‑60.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

S.C. Jur. Automobiles and Other Motor Vehicles Section 152, Duty When Accident Involves Death or Personal Injury.

Attorney General’s Opinions

Victims involved in accidents with drunk drivers are eligible for Victims Compensation provided that all other eligibility requirements are met. 1984 Op.Atty.Gen. No. 84‑50, p. 122 (May 2, 1984) 1984 WL 159857.

Leaving scene of accident violation may be committed on private property. 1969‑70 Op.Atty.Gen. No. 3033, p. 323 (December 1, 1970) 1970 WL 12304.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Harmless error 4

Sentence 3

1. In general

Failure to stop and render assistance and evidence of conscious indifference to consequences after accident are not sufficient to warrant finding of wantonness. Dean v. Cole (C.A.4 (S.C.) 1964) 326 F.2d 907, certiorari denied 84 S.Ct. 1168, 377 U.S. 909, 12 L.Ed.2d 178, rehearing denied 84 S.Ct. 1911, 377 U.S. 1010, 12 L.Ed.2d 1059.

The offense of “hit and run” involves moral turpitude and may be properly admitted into evidence as bearing on a witness’ credibility. State v. Horton (S.C. 1978) 271 S.C. 413, 248 S.E.2d 263. Witnesses 337(23)

Motorist’s application for reissuance of driver’s license upon receiving pardon for reckless homicide and leaving scene of accident convictions was properly denied because license suspension is civil in nature and is not part of punishment or sentence for crime. Bay v. South Carolina Highway Dept. (S.C. 1975) 266 S.C. 9, 221 S.E.2d 106.

2. Constitutional issues

Interjurisdictional analysis did not demonstrate that statute governing offense leaving the scene of the accident where death occurs, providing that defendant could be sentenced to 25 years’ imprisonment, or to as little as one year in jail, provided penalty that was significantly harsher than other states, or that was unsupported by reasonable and rationally related policy objectives. State v. Harrison (S.C. 2013) 402 S.C. 288, 741 S.E.2d 727, rehearing denied. Automobiles 359.1; Sentencing and Punishment 1500

Intrajurisdictional analysis did not support an inference of gross disproportionality with regard to statute governing offense leaving the scene of the accident where death occurs, providing that defendant could be sentenced to 25 years’ imprisonment, or to as little as one year in jail; offenders sentenced under statute were not necessarily subject to harsher punishment than criminals convicted of more serious crimes, and sentencing scheme merely allowed trial court discretion in balancing the many factors at play in cases where operation of a motor vehicle resulted in death. State v. Harrison (S.C. 2013) 402 S.C. 288, 741 S.E.2d 727, rehearing denied. Automobiles 359.1; Sentencing and Punishment 1500

Penalty provision of statute governing offense of leaving the scene of the accident where death occurs, providing that defendant could be imprisoned for at least one year, but not more than 25 years, and fined between $10,000 and $25,000 dollars, was not grossly disproportionate to offense, in proceeding in which defendant was sentenced to 20 years’ imprisonment for offense; defendant caused accident, left scene of that accident, and when confronted with possibility that other party to accident had been severely injured or killed, refused to return to scene of accident, and General Assembly could rationally conclude that conduct posed risk substantial enough to support penalty portion of statute. State v. Harrison (S.C. 2013) 402 S.C. 288, 741 S.E.2d 727, rehearing denied. Automobiles 359.1; Sentencing and Punishment 1500

3. Sentence

Periods of driver’s license suspension, resulting from convictions for reckless homicide and leaving scene of accident, may run consecutively and need not run concurrently, even though court imposed concurrent sentences for same driving offenses. Bay v. South Carolina Highway Dept. (S.C. 1975) 266 S.C. 9, 221 S.E.2d 106. Automobiles 144.5

4. Harmless error

Trial court’s error, if any, in admitting coroner’s lay opinion testimony, that victim’s death was homicide, was harmless as to defendant’s conviction for offense of hit and run, since relevant inquiries for hit and run were whether defendant was aware he was involved in incident involving vehicle and whether he complied with statute which required him to remain at scene of incident and statute which required him to provide certain personal information, and coroner’s testimony offered no opinion as to defendant’s actions or intent following incident, and, further, defendant admitted he realized he hit victim and stopped to check on him, and defendant admitted that he left scene without ever contacting police, rendering aid to victim, or providing required information. State v. Westmoreland (S.C.App. 2017) 2017 WL 2961161. Criminal Law 1169.9

**SECTION 56‑5‑1220.** Duties of driver involved in accident resulting in damage to attended vehicles.

(A) The driver of a vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible, but shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56‑5‑1230. However, he may temporarily leave the scene to report the accident to the proper authorities. A person who fails to stop or comply with the requirements of this subsection is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than one hundred dollars nor more than five thousand dollars, or both.

(B) If a disabled vehicle or a vehicle involved in an accident resulting only in damage to a vehicle is obstructing traffic, the driver of the vehicle shall make every reasonable effort to move any vehicle that is capable of being driven safely off the roadway as defined by Section 56‑5‑460 so as not to block the flow of traffic. The driver or any other person who has moved a motor vehicle to facilitate the flow of traffic as provided in this subsection before the arrival of a law enforcement officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this section.

(C) State and local authorities may erect signs along highways and streets that instruct the public that the driver of a disabled vehicle or a vehicle involved in an accident resulting only in damage to vehicles shall make every reasonable effort to move any vehicle that is capable of being driven off the roadway.

HISTORY: 1962 Code Section 46‑322; 1952 Code Section 46‑322; 1949 (46) 466; 1996 Act No. 398, Section 2; 2004 Act No. 286, Section 2.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 153, Accident Involving Only Vehicle Damage.

**SECTION 56‑5‑1230.** Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver’s license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

HISTORY: 1962 Code Section 46‑323; 1952 Code Section 46‑323; 1949 (46) 466.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 152, Duty When Accident Involves Death or Personal Injury.

S.C. Jur. Automobiles and Other Motor Vehicles Section 153, Accident Involving Only Vehicle Damage.

Notes of Decisions

In general 1

1. In general

Trial court’s error, if any, in admitting coroner’s lay opinion testimony, that victim’s death was homicide, was harmless as to defendant’s conviction for offense of hit and run, since relevant inquiries for hit and run were whether defendant was aware he was involved in incident involving vehicle and whether he complied with statute which required him to remain at scene of incident and statute which required him to provide certain personal information, and coroner’s testimony offered no opinion as to defendant’s actions or intent following incident, and, further, defendant admitted he realized he hit victim and stopped to check on him, and defendant admitted that he left scene without ever contacting police, rendering aid to victim, or providing required information. State v. Westmoreland (S.C.App. 2017) 2017 WL 2961161. Criminal Law 1169.9

**SECTION 56‑5‑1240.** Duties of driver involved in accident involving unattended vehicle.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

HISTORY: 1962 Code Section 46‑324; 1952 Code Section 46‑324; 1949 (46) 466.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 154, Accident Involving Unattended Vehicle or Fixtures.

NOTES OF DECISIONS

In general 1

1. In general

Section 23‑1‑15, which requires signs to be posted informing the public of police jurisdiction over a parking lot before the extension of police jurisdiction is effective, does not preclude a charge for leaving the scene of an accident in a parking lot in violation of Section 56‑5‑1240 in a non‑posted parking lot; the clear purpose of Section 23‑1‑15 was to expand the application of the Uniform Act Regulating Traffic on Highways to parking lots. Stone v. State (City of Orangeburg) (S.C. 1994) 313 S.C. 533, 443 S.E.2d 544.

**SECTION 56‑5‑1250.** Duties of driver striking fixtures upon or adjacent to highway.

The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver’s license and shall make report of such accident when and as required in Section 56‑5‑1270.

HISTORY: 1962 Code Section 46‑325; 1952 Code Section 46‑325; 1949 (46) 466.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 154, Accident Involving Unattended Vehicle or Fixtures.

**SECTION 56‑5‑1260.** Immediate report of accidents resulting in personal injury or death.

The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication, whether oral or written, give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the South Carolina Highway Patrol.

HISTORY: 1962 Code Section 46‑326; 1952 Code Section 46‑326; 1949 (46) 466.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 152, Duty When Accident Involves Death or Personal Injury.

S.C. Jur. Automobiles and Other Motor Vehicles Section 156, Use of Accident Reports.

S.C. Jur. Evidence Section 106, Public Records and Reports.

LAW REVIEW AND JOURNAL COMMENTARIES

Voluntarily given accident reports admissible for impeachment. 39 S.C. L. Rev. 104 (Autumn 1987).

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

An operator or owner of a vehicle involved in an accident is not required to report to the police anything more than the fact of the accident itself and then only if the accident resulted in personal injury or death. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

Duty of reporting imposed on driver under this section [former Code 1962 Section 46‑326] and former Code 1962 Sections 46‑327 and 46‑329 [see now Sections 56‑5‑1270 and 56‑5‑1300]. Marshall v. Thomason (S.C. 1962) 241 S.C. 84, 127 S.E.2d 177.

2. Admissibility of evidence

The trial court properly refused to permit the plaintiff, in an automobile negligence case, to impeach the defendant with a statement contained in an incident report prepared by a police officer, even though the defendant had signed the report, where the report was statutorily required, rather than voluntarily given, and the defendant testified that she had signed it at the officer’s request, without reading it. Branham v. Leaphart (S.C. 1993) 311 S.C. 231, 428 S.E.2d 707.

Only the “written report” of a motor vehicle accident prepared by an investigating officer and forwarded to the Department of Highways and Public Transportation pursuant to Section 56‑5‑1270 is confidential, so, where an operator or owner of a motor vehicle involved in an accident investigated by a law enforcement officer voluntarily gives a handwritten statement to the officer at the scene of the accident and the officer later sends the statement to the department, neither Section 56‑5‑1290 nor Section 56‑5‑1340 renders the operator’s or owner’s statement either confidential or unusable at a subsequent trial. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

**SECTION 56‑5‑1270.** Operators, owners, and law enforcement officers shall make written reports of certain accidents and investigations.

The operator or owner of a motor vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars or more which was not investigated by a law enforcement officer, within fifteen days after the accident, shall forward a written report and verification of liability insurance coverage of the accident to the Department of Motor Vehicles, the proof and report to be in a manner prescribed by the Department of Motor Vehicles and the Department of Public Safety. The completed and verified form must be returned by the operator or owner to the Department of Motor Vehicles within fifteen days from the accident date. Failure to forward the accident report verified in the proper manner in respect to liability insurance coverage for the operation of the vehicle involved in the accident is prima facie evidence that the vehicle was uninsured.

Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident that results in injury to or death of any person or total property damage to an apparent extent of one thousand dollars or more either at the time of and at the scene of the accident or after the accident by interviewing participants or witnesses, within twenty‑four hours after completing the investigation, must forward a written report of the accident to the Department of Motor Vehicles including the names of interviewed participants and witnesses. If a two‑wheeled motorized vehicle is involved in the accident and the operator or a passenger of the vehicle suffers a head injury, the injury must be indicated on the report.

HISTORY: 1962 Code Section 46‑327; 1952 Code Section 46‑327; 1949 (46) 466; 1968 (55) 2591; 1971 (57) 297; 1977 Act No. 195 Section 1; 1988 Act No. 665, Section 1; 1996 Act No. 459, Section 182.

CROSS REFERENCES

Reports and investigations under the General Railroad Law, see Sections 58‑17‑1610 et seq.

Safety and notice of accidents under the General Railroad Law, see Sections 58‑17‑3310 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 154, Accident Involving Unattended Vehicle or Fixtures.

LAW REVIEW AND JOURNAL COMMENTARIES

Voluntarily given accident reports admissible for impeachment. 39 S.C. L. Rev. 104 (Autumn 1987).

Attorney General’s Opinions

The confidentiality requirements of Sections 56‑5‑1340 and 56‑5‑1360 should be construed as being applicable only to accident reports made by individuals involved in an accident and are inapplicable to those reports filed by law enforcement officers. Accident reports filed by law enforcement officers pursuant to Section 56‑5‑1270 are not confidential. 1986 Op.Atty.Gen. No. 86‑23, p. 82 (February 13, 1986) 1986 WL 191985.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

Duty of reporting imposed on driver under this section [formerly Code 1962 Section 46‑327] and former Code 1962 Sections 46‑326 and 46‑329 see now Sections 56‑5‑1270 and 56‑5‑1300]. Marshall v. Thomason (S.C. 1962) 241 S.C. 84, 127 S.E.2d 177.

2. Admissibility of evidence

Only the “written report” of a motor vehicle accident prepared by an investigating officer and forwarded to the Department of Highways and Public Transportation pursuant to Section 56‑5‑1270 is confidential, so, where an operator or owner of a motor vehicle involved in an accident investigated by a law enforcement officer voluntarily gives a handwritten statement to the officer at the scene of the accident and the officer later sends the statement to the department, neither Section 56‑5‑1290 nor Section 56‑5‑1340 renders the operator’s or owner’s statement either confidential or unusable at a subsequent trial. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

**SECTION 56‑5‑1275.** Requests for accident investigation reports; dissemination of reports.

With respect to a motor vehicle accident, no employee of any law enforcement agency shall allow any person to examine or obtain a copy of any accident report or related investigative report when the employee knows or should reasonably know that the request for access to the report is for commercial solicitation purposes. No person shall request any law enforcement agency to permit examination or to furnish a copy of any such report for commercial solicitation purposes. All persons, except law enforcement personnel and persons named in the report, shall be required to submit a separate written request to the law enforcement agency for each report. A written request under this section must state the requestor’s name, address, and the intended use of the report in sufficient detail that the law enforcement agency may ascertain that the intended use is not for commercial solicitation purposes. A person who knowingly makes any false statement in any written request under this section shall be subject to the provisions of Section 56‑3‑2520.

HISTORY: 1991 Act No. 155, Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 156, Use of Accident Reports.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Section 56‑5‑1275 does not violate the equal protection clause because (1) the statute is reasonably related to the legislative purpose of protecting the privacy of accident victims, (2) all members of the class are treated similarly since no persons are permitted access to the reports for purposes of commercial solicitation, and (3) the Legislature’s desire to protect the privacy of accident victims is reasonable. Walker v. South Carolina Dept. of Highways and Public Transp. (S.C. 1995) 320 S.C. 496, 466 S.E.2d 346, rehearing denied.

Section 56‑5‑1275, prohibiting any law enforcement agency from furnishing copies of vehicle accident reports requested for the purpose of commercial solicitation, did not abridge an attorney’s First Amendment right to free speech where the attorney sought the reports so that she could solicit accident victims as clients; the attorney had numerous alternatives through which to obtain the information, and the statute is not aimed solely at lawyers but is an across the board regulation on access to information. Walker v. South Carolina Dept. of Highways and Public Transp. (S.C. 1995) 320 S.C. 496, 466 S.E.2d 346, rehearing denied.

The State’s interest in protecting the privacy of accident victims would be sufficient to justify Section 56‑5‑1275’s restriction on the release of vehicle accident reports for the purpose of commercial solicitation even in light of a First Amendment challenge. Walker v. South Carolina Dept. of Highways and Public Transp. (S.C. 1995) 320 S.C. 496, 466 S.E.2d 346, rehearing denied.

Section 56‑5‑1275, prohibiting any law enforcement agency from furnishing copies of vehicle accident reports requested for the purpose of commercial solicitation did not violate an attorney’s due process right because where the attorney sought the reports so that she could solicit accident victims as clients; the statute in no way prohibits the attorney’s commercial speech. Walker v. South Carolina Dept. of Highways and Public Transp. (S.C. 1995) 320 S.C. 496, 466 S.E.2d 346, rehearing denied.

**SECTION 56‑5‑1280.** When driver unable to report, other occupant or owner shall report.

Whenever the driver of a vehicle is physically incapable of making an immediate or a written report of an accident as required in Section 56‑5‑1260 and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made such report not made by the driver. Whenever the driver is so physically incapable of making a written report as required in Section 56‑5‑1270 and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within five days after learning of the accident make such report not made by the driver.

HISTORY: 1962 Code Section 46‑328; 1952 Code Section 46‑328; 1949 (46) 466.

Library References

Automobiles 336.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1692 to 1708.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 152, Duty When Accident Involves Death or Personal Injury.

S.C. Jur. Automobiles and Other Motor Vehicles Section 156, Use of Accident Reports.

S.C. Jur. Evidence Section 106, Public Records and Reports.

NOTES OF DECISIONS

In general 1

1. In general

Owner required to report only when driver physically unable to do so. Marshall v. Thomason (S.C. 1962) 241 S.C. 84, 127 S.E.2d 177.

**SECTION 56‑5‑1290.** Evidentiary use of reports.

None of the reports required by Sections 56‑5‑1260 to 56‑5‑1280 may be evidence of the negligence or due care of either party at the trial of any action at law to recover damages. However, law enforcement officers may refer to these reports when testifying in order to refresh their recollection of events.

HISTORY: 1962 Code Section 46‑328.1; 1952 (47) 1853; 1998 Act No. 350, Section 1.

CROSS REFERENCES

Admission of public documents, records and books, see Sections 19‑5‑10 et seq.

Reports not being used as evidence in any trial arising from accident, see Section 56‑5‑1340.

Library References

Evidence 325.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1080, 1098 to 1103, 1105, 1199.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 156, Use of Accident Reports.

Treatises and Practice Aids

American Law of Products Liability 3d Section 54:38, Public Records‑Matters Observed Pursuant to Legal Duty.

LAW REVIEW AND JOURNAL COMMENTARIES

Voluntarily given accident reports admissible for impeachment. 39 S.C. L. Rev. 104 (Autumn 1987).

NOTES OF DECISIONS

In general 1

1. In general

The trial court properly refused to permit the plaintiff, in an automobile negligence case, to impeach the defendant with a statement contained in an incident report prepared by a police officer, even though the defendant had signed the report, where the report was statutorily required, rather than voluntarily given, and the defendant testified that she had signed it at the officer’s request, without reading it. Branham v. Leaphart (S.C. 1993) 311 S.C. 231, 428 S.E.2d 707.

Only the “written report” of a motor vehicle accident prepared by an investigating officer and forwarded to the Department of Highways and Public Transportation pursuant to Section 56‑5‑1270 is confidential, so, where an operator or owner of a motor vehicle involved in an accident investigated by a law enforcement officer voluntarily gives a handwritten statement to the officer at the scene of the accident and the officer later sends the statement to the department, neither Section 56‑5‑1290 nor Section 56‑5‑1340 renders the operator’s or owner’s statement either confidential or unusable at a subsequent trial. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

Sections 56‑5‑1290 and 56‑5‑1340 make confidential only statutorily required accident reports and nothing else, and neither of these statutes was ever intended to prohibit a reference to or use as evidence at trial of an oral or handwritten statement which is voluntarily given to an investigating officer at an accident scene by an operator or owner of a vehicle involved in the accident and in which the operator or owner details how the accident occurred. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

**SECTION 56‑5‑1300.** Accident report forms.

The Department of Public Safety shall prepare and upon request supply to police departments, coroners, sheriffs, garages and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing and the persons and vehicles involved. Every accident report required to be made in writing shall be made on the appropriate form approved by the Department and shall contain all of the information required therein unless not available.

HISTORY: 1962 Code Section 46‑329; 1952 Code Section 46‑329; 1949 (46) 466.

NOTES OF DECISIONS

In general 1

1. In general

Duty of reporting imposed on driver under this section [formerly Code 1962 Section 46‑329] and former Code 1962 Sections 46‑326 and 46‑327 [see now Sections 56‑5‑1260 and 56‑5‑1270]. Marshall v. Thomason (S.C. 1962) 241 S.C. 84, 127 S.E.2d 177.

**SECTION 56‑5‑1320.** Coroners shall report traffic deaths.

Every coroner or other official performing like functions shall on or before the tenth day of each month report in writing to the Department of Public Safety the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident, giving the time and place of the accident and the circumstances relating thereto.

HISTORY: 1962 Code Section 46‑331; 1952 Code Section 46‑331; 1949 (46) 466.

CROSS REFERENCES

Coroners, generally, see Sections 17‑5‑10 et seq.

Duty of coroners to determine percentage of alcohol in blood of person killed in traffic accident, see Section 17‑7‑80.

Library References

Coroners 8.

Westlaw Topic No. 100.

C.J.S. Coroners and Medical Examiners Sections 7 to 8.

**SECTION 56‑5‑1330.** Garages or repair shops shall report accidents or bullet damages.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in Section 56‑5‑1270 or struck by any bullet shall report to the Department of Public Safety within twenty‑four hours after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner or operator of such vehicle.

HISTORY: 1962 Code Section 46‑332; 1952 Code Section 46‑332; 1949 (46) 466.

Library References

Automobiles 363.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1758 to 1760, 1835 to 1837, 1889, 1920 to 1923.

**SECTION 56‑5‑1340.** Accident reports without prejudice and confidential; use; permissible disclosures.

All accident reports made by persons involved in accidents shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department of Motor Vehicles, Department of Public Safety, or other State agencies having use for the records for accident prevention purposes. The Department of Motor Vehicles may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident and may upon request disclose to any person who has suffered injury to his person or property any information contained on any report regarding the existence of insurance. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the Department of Motor Vehicles shall furnish, upon demand of any person who has, or claims to have, made such a report or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the Department of Motor Vehicles solely to prove a compliance or a failure to comply with the requirement that such a report be made to the Department of Motor Vehicles.

HISTORY: 1962 Code Section 46‑333; 1952 Code Section 46‑333; 1949 (46) 466; 1959 (51) 567; 1977 Act No. 195 Section 2.

CROSS REFERENCES

Reports not to be used as evidence of negligence in actions for damages, see Section 56‑5‑1290.

Library References

Records 31.

Westlaw Topic No. 326.

C.J.S. Colleges and Universities Section 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 156, Use of Accident Reports.

LAW REVIEW AND JOURNAL COMMENTARIES

Voluntarily given accident reports admissible for impeachment. 39 S.C. L. Rev. 104 (Autumn 1987).

Attorney General’s Opinions

The confidentiality requirements of Sections 56‑5‑1340 and 56‑5‑1360 should be construed as being applicable only to accident reports made by individuals involved in an accident and are inapplicable to those reports filed by law enforcement officers. Accident reports filed by law enforcement officers pursuant to Section 56‑5‑1270 are not confidential. 1986 Op.Atty.Gen. No. 86‑23, p. 82 (February 13, 1986) 1986 WL 191985.

NOTES OF DECISIONS

In general 1

1. In general

Only the “written report” of a motor vehicle accident prepared by an investigating officer and forwarded to the Department of Highways and Public Transportation pursuant to Section 56‑5‑1270 is confidential, so, where an operator or owner of a motor vehicle involved in an accident investigated by a law enforcement officer voluntarily gives a handwritten statement to the officer at the scene of the accident and the officer later sends the statement to the department, neither Section 56‑5‑1290 nor Section 56‑5‑1340 renders the operator’s or owner’s statement either confidential or unusable at a subsequent trial. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

Sections 56‑5‑1290 and 56‑5‑1340 make confidential only statutorily required accident reports and nothing else, and neither of these statutes was ever intended to prohibit a reference to or use as evidence at trial of an oral or handwritten statement which is voluntarily given to an investigating officer at an accident scene by an operator or owner of a vehicle involved in the accident and in which the operator or owner details how the accident occurred. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

Required reports confidential and their use in any trial is prohibited. Marshall v. Thomason (S.C. 1962) 241 S.C. 84, 127 S.E.2d 177.

**SECTION 56‑5‑1350.** Tabulation and analysis of reports; publication of statistical information.

The Department of Public Safety must tabulate and may analyze all accident reports as required in Section 56‑5‑1270 and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

HISTORY: 1962 Code Section 46‑334; 1952 Code Section 46‑334; 1949 (46) 466; 1996 Act No. 459, Section 183.

**SECTION 56‑5‑1360.** Municipality may require accident reports; use.

Any incorporated city or town may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the Department of Motor Vehicles. All such reports shall be for the confidential use of the city department and subject to the provisions of Section 56‑5‑1340.

HISTORY: 1962 Code Section 46‑335; 1952 Code Section 46‑335; 1949 (46) 466.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibilities of all municipalities, see Sections 5‑7‑10 et seq.

Attorney General’s Opinions

The confidentiality requirements of Sections 56‑5‑1340 and 56‑5‑1360 should be construed as being applicable only to accident reports made by individuals involved in an accident and are inapplicable to those reports filed by law enforcement officers. Accident reports filed by law enforcement officers pursuant to Section 56‑5‑1270 are not confidential. 1986 Op.Atty.Gen. No. 86‑23, p. 82 (February 13, 1986) 1986 WL 191985.

ARTICLE 11

Restrictions on Speed; Racing

**SECTION 56‑5‑1520.** General rules as to maximum speed limits; lower speeds may be required.

(A) A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

(B) Except when a special hazard exists that requires lower speed for compliance with subsection (A), the limits specified in this section or established as hereinafter authorized are maximum lawful speeds, and a person shall not drive a vehicle on a highway at a speed in excess of these maximum limits:

(1) seventy miles an hour on the interstate highway system and other freeways where official signs giving notice of this speed are posted;

(2) sixty miles an hour on multilane divided primary highways where official signs giving notice of this speed limit are posted;

(3) fifty‑five miles an hour in other locations or on other sections of highways and unpaved roads are limited to the speed of forty miles an hour; and

(4) manufactured, modular, or mobile homes must not be transported at a speed in excess of ten miles below the maximum posted speed limit when the maximum posted speed limit is in excess of forty‑five miles an hour, and never in excess of fifty‑five miles an hour.

(C) Thirty miles an hour is the maximum speed in an urban district. “Urban district” means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more.

(D) A local authority on the basis of an engineering and traffic investigation may determine that the maximum speed limit permitted under this article is less than thirty miles an hour in an urban district. If this determination is made, the maximum speed limit for the urban district is enforceable by all law enforcement officers authorized to enforce the traffic laws in the urban district. However, this subsection does not apply to highways within the state highway system contained in Section 56‑5‑1530.

(E) The maximum speed limits set forth in this section may be altered pursuant to Sections 56‑5‑1530 and 56‑5‑1540.

(F) The driver of a vehicle shall drive, consistent with the requirements of subsection (A), at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, approaching a hillcrest, when traveling upon any narrow bridge, narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(G) A person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows:

(1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty‑five dollars;

(2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than twenty‑five dollars nor more than fifty dollars;

(3) in excess of fifteen miles an hour but less than twenty‑five miles an hour above the posted limit by a fine of not less than fifty dollars nor more than seventy‑five dollars; and

(4) in excess of twenty‑five miles an hour above the posted limit by a fine of not less than seventy‑five dollars nor more than two hundred dollars or imprisoned for not more than thirty days.

(H) A citation for violating the speed limits issued by any authorized officer must note on it the rate of speed for which the citation is issued.

(I) In expending the funds credited to the state general fund from fines generated under subsection (G), the Department of Public Safety first shall consider the need for additional highway patrolmen.

HISTORY: 1993 Act No. 181, Section 1404; 1994 Act No. 497, Part II, Section 36R; 1999 Act No. 17, Section 1.

CROSS REFERENCES

Conditions under which load and speed limits may be reduced, see Sections 56‑5‑4210, 56‑5‑4220.

Effect of provisions as to prima facie speed limitations on burden of proof in negligence action, see Section 19‑1‑70.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 130, Maximum Speed.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 230 , Introductory Comments.

Attorney General’s Opinions

Discussion of whether speeds posted on yellow traffic warning signs are legally enforceable or merely warnings to motorists. S.C. Op.Atty.Gen. (June 3, 2014) 2014 WL 2757537.

Discussion of the legality of counties and municipalities issuing tickets for traffic and other offenses under local ordinances as opposed to the Uniform Act Regulating Traffic on Highways. S.C. Op.Atty.Gen. (November 18, 2013) 2013 WL 6337704.

Discussion of the legality of municipalities setting their own fines for speeding violations as opposed to the penalties set forth in the Uniform Act Regulating Traffic on Highways. S.C. Op.Atty.Gen. (November 18, 2013) 2013 WL 6210746.

Discussion of the punishment for speeding in terms of the number of offenses committed. S.C. Op.Atty.Gen. (April 2, 1996) 1996 WL 265505.

While no statute absolutely prohibits a municipality’s use of photo radar by virtue of an ordinance, the General Assembly would be the more appropriate body to authorize its use. S.C. Op.Atty.Gen. (March 19, 1996) 1996 WL 190752.

A violator cannot be sentenced to jail as an alternative to a fine for exceeding the posted speed limit by less than ten miles. S.C. Op.Atty.Gen. (February 10, 1994) 1994 WL 84342.

Prior opinion date July 12, 1973, concluding that Section 56‑5‑1520 requires notation of rate of speed on citation only when that speed has been clocked by speedometer or other mechanical means remains opinion of this Office. S.C. Op.Atty.Gen. (June 20, 1984) 1984 WL 159876.

Court need not find speed involved was same as noted on traffic ticket. A court may lawfully find a defendant motorist guilty of exceeding the maximum speed limit, but, based upon testimony or other evidence, find as a fact that the speed involved was greater or lesser than that noted on the traffic ticket by the arresting officer. S.C. Op.Atty.Gen. (July 7, 1972) 1972 WL 20476.

Jurisdiction where motorist was speeding in two counties. If it is established that a motorist was speeding in two counties, then either county has jurisdiction over the offense. S.C. Op.Atty.Gen. (July 20, 1971) 1971 WL 17522.

NOTES OF DECISIONS

In general 1

Construction with other laws 2

Contributory negligence 5

Damages 15

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Summary judgment 10

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1. In general

In a personal injury action arising from a vehicular collision, testimony that, as the plaintiff approached an intersection, the car being driven by the defendant was postured to turn, and further testimony that the traffic light was changing from green to yellow, was sufficient evidence that a “special hazard” existed within the meaning of Section 56‑5‑1520(c). Husted v. Bostick (S.C.App. 1988) 295 S.C. 248, 368 S.E.2d 67.

The posted sign, which gave notice of the possible presence of children, and the presence upon the highway of a vehicle parked partly in defendant’s lane of travel, were circumstances properly to be considered by the jury in determining whether the defendant was operating her automobile at the time at a reasonable speed. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246.

2. Construction with other laws

Subsection (a) of this section [formerly Code 1962 Section 46‑361] qualified former Code 1962 $ 46‑362(a) [see now Section 56‑5‑1530(a)]. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896.

3. Duty of motorist

The common‑law rules of the road governing the operation of motor vehicles in this State also require the operator of all motor vehicles to have his vehicle under proper control and to keep a proper lookout so as to be able to slow down, stop or turn his vehicle in order to avoid colliding with other vehicles upon the highway. Seitz v. Hammond (D.C.S.C. 1967) 265 F.Supp. 162. Automobiles 150; Automobiles 168(1)

In the exercise of due care one must recognize that an automobile which is reducing its speed or stopping is likely to make a turn, and a driver of an overtaking automobile under such circumstances, especially in the nighttime, should sound the horn to give notice to the driver of the lead automobile that he is about to attempt to pass him. Seitz v. Hammond (D.C.S.C. 1967) 265 F.Supp. 162. Automobiles 172(8)

Driver of motor vehicle owes duty to sound horn in order that pedestrian, unaware of his approach, may have timely warning, and if it appears that pedestrian is oblivious for the moment of nearness of automobile and of speed at which it is approaching, ordinary care requires driver to blow horn, slow down, and, if necessary, stop to avoid inflicting injuries. Greene v. Miller, 1953, 114 F.Supp. 150.

A motorist whose vision is obscured by unfavorable weather conditions must exercise care commensurate with the conditions of travel. Burgess Brogdon, Inc. v. Lake (S.C. 1986) 288 S.C. 16, 339 S.E.2d 507. Automobiles 168(8)

A motorist must make certain that pedestrians in front of him are aware of his approach and, when pedestrian is apparently oblivious thereof, is bound to realize hazard of driving vehicle at high speed so close to pedestrian that he might be taken unawares by sudden discovery thereof and make such deviation as to bring him in front of vehicle. Dawson v. South Carolina Power Co. (S.C. 1951) 220 S.C. 26, 66 S.E.2d 322. Automobiles 160(1); Automobiles 168(4)

4. Effect of posted speed limit

A defendant driving fifty to fifty‑five miles per hour in a fifty‑five mile per hour zone, when the highway was wet and slippery, was guilty of negligence in that he was driving too fast for the existing conditions. Simmons v. Fenters, 1964, 233 F.Supp. 550.

The fact that the posted speed limit in the area was thirty‑five miles per hour did not authorize such speed under all conditions. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246.

5. Contributory negligence

Violation of subsection (b) of this section [former Code 1962 Section 46‑361] is negligence per se, but pedestrian’s contributory negligence and contributory recklessness in going upon highway in drunken condition without making any attempt to observe approaching traffic or to get out of way of approaching automobile which by exercise of ordinary care she could have seen in time to avoid being struck, will defeat recovery. Page v. U. S., 1963, 212 F.Supp. 668.

Evidence established that guest passenger had not been guilty of contributory negligence, or contributory recklessness, willfulness or wantonness, and that driver had been negligent and reckless in failing to have his automobile under proper control and in failing to drive at appropriately reduced rate of speed, when approaching and going around sharp curve known to him and of which he had been warned by adequate and proper sign, and that such negligence and recklessness was proximate cause of injuries sustained by guest when automobile left highway and collided with concrete culvert. Wade v. Dargan, 1961, 195 F.Supp. 1.

In absence of any fact or circumstance indicating that driver is incompetent or careless, occupant of vehicle is not required to anticipate negligence on part of driver; and in absence of any fact or circumstance indicating contrary, occupant need not anticipate that driver, who has exclusive control and management of vehicle, will enter sphere of danger, omit to exercise proper care, omit to observe warning signs, fail to keep speed of vehicle within proper limits or otherwise improperly increase common risks of travel. Wade v. Dargan, 1961, 195 F.Supp. 1.

Since violation of a statute can be considered by the jury as some evidence of recklessness, where the complaint charged the defendants with violation of Sections 56‑5‑2510, 56‑5‑4450, 56‑5‑4640 and 56‑5‑5090, and the answer alleged that plaintiff violated Section 56‑5‑1520, and there was evidence in the record to support such allegations, the trial court did not err in instructing the jury concerning recklessness and contributory recklessness. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

Even had the jury concluded that plaintiff’s intestate was guilty of negligence in entering highway from private driveway without stopping, in violation of former Code 1962 $ 46‑424 [see now Section 56‑5‑2350], such negligence would not bar, as a matter of law, plaintiff’s intestate’s right to recover if defendant was guilty of gross negligence and recklessness, or negligent to the point of willfulness and wantonness, in driving at a grossly excessive rate of speed under the known conditions. (Commented on in 12 SCLQ 370 (1960)) Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

6. Violation as negligence per se

The violation of subsections (a) and (b) of this section [formerly Code 1962 Section 46‑361] constitutes negligence per se. McClure v. Price (C.A.4 (S.C.) 1962) 300 F.2d 538.

It has been firmly established by the Supreme Court of South Carolina that the violation of applicable statutes governing the operation of motor vehicles upon the highway is negligence per se, and whether such breach constitutes a proximate cause of the injury complained of is ordinarily a question for the jury. Grooms v Minute‑Maid (1959, CA4 SC) 267 F2d 541. McClure v. Price (C.A.4 (S.C.) 1962) 300 F.2d 538.

A violation of this section [formerly Code 1962 Section 46‑361] constitutes negligence per se. Rowe v Frick (1968) 250 SC 499, 159 SE2d 47. Harris v. Marion Concrete Co. (D.C.S.C. 1970) 320 F.Supp. 16, affirmed 435 F.2d 561.

Violation of this section [formerly Code 1962 Section 46‑361] and former Code 1962 Section 46‑363 [see now Section 56‑5‑1340] constitutes negligence per se, or negligence as a matter of law. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101. Automobiles 168(2)

Even though the violation of an applicable statute is negligence per se and some evidence of recklessness, willfulness and wantonness, whether or not such breach contributed as a proximate cause to plaintiff’s injury is ordinarily a question for the jury. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47. Automobiles 245(51)

Generally, violation of applicable statute is negligence per se, and whether such breach contributed as proximate cause to plaintiff’s injury is ordinarily a question for jury, but as an exception or modification to the general rule violations of statutory provisions declaring prima facie speed limitation will not be construed to relieve plaintiff in any civil action from burden of proving negligence on part of defendant as proximate cause of the accident. Acts June 7, 1949, 46 St. at Large, pp. 489. Chapman v. Associated Transport (S.C. 1951) 218 S.C. 554, 63 S.E.2d 465. Automobiles 242(7); Negligence 259; Negligence 1713

7. Violation as evidence of recklessness

Causative violation of this section [formerly Code 1962 Section 46‑361], and former Code 1962 Sections 46‑362 and 46‑363 [see now Sections 56‑5‑1530 and 56‑5‑1540] is evidence of recklessness, willfulness, and wantonness. Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Shearer v De Shon (1962) 240 SC 472, 126 SE2d 514.

Causative violation of subsections (a) and (c) of this section [formerly Code 1962 $ 46‑361] is some evidence of recklessness, willfulness, and wantonness. Simmons v. Fenters, 1964, 233 F.Supp. 550.

A violation of this section [formerly Code 1962 Section 46‑361] is evidence of recklessness, willfulness and wantonness. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

8. Proximate cause

Violation of subsections (a) and (c) contributing to injury as proximate cause. Simmons v. Fenters, 1964, 233 F.Supp. 550.

Violation of subsection (a) regarded as coincidental rather than causal. Horton v. Greyhound Corp. (S.C. 1962) 241 S.C. 430, 128 S.E.2d 776.

Violation of section contributing to injury as proximate cause. Thompson v. Brewer (S.C. 1954) 225 S.C. 460, 82 S.E.2d 685.

9. Venue

Where first automobile, while traveling about 70 miles an hour, struck second automobile in rear, forcing it over onto left of highway into path of third automobile coming from opposite direction on its proper side of highway, and third automobile collided with second automobile, and occupant of second automobile was killed, death action against employer of driver of first automobile could not be maintained away from county of employer’s residence and in county of residence of driver of third automobile, even if driver of third automobile had been violating speed statute, by joining driver of third automobile as a defendant, since any negligence of driver of third automobile was not proximate cause of collision. Act June 7, 1949, Section 60(b), 46 St. at Large, p. 486; Code 1942, Section 422. Moody v. Burns (S.C. 1952) 222 S.C. 258, 72 S.E.2d 189. Venue 22(6)

10. Summary judgment

It is impossible to determine whether driver of car was guilty of contributory negligence as matter of law entitling defendant railroad to summary judgment, where inadequate sight distance at crossing created reasonable inference that driver was placed in position of vulnerability to oncoming train before he could see the train or react. Wessinger v. Southern Ry. Co., Inc. (D.C.S.C. 1977) 438 F.Supp. 1256.

11. Presumptions and burden of proof

The burden of proof as to the violation of subsection (a) is upon the plaintiff. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

12. Questions for jury

Jury question existed as to whether man who had traveled road only once before was grossly unreasonable in doing more than following suggested speed limit, in light of fact that he was under no absolute duty to stop, look, and listen before crossing railroad track, and his ability to use his senses might have been prevented by railroad’s negligence. Wessinger v. Southern Ry. Co., Inc. (D.C.S.C. 1977) 438 F.Supp. 1256. Railroads 350(13)

Whether driver’s alleged violation of traffic statutes prohibiting driving at unsafe speed and following too closely amounted to recklessness, as basis for award of punitive damages, was question for jury, in motorist’s action against driver. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Automobiles 245(5); Automobiles 249.2

Issue of whether commercial truck driver who struck minivan driver from behind was reckless by virtue of his alleged statutory violations of following minivan too closely and speeding, such as would support punitive damages award against him, was for jury, in minivan driver’s negligence suit against truck driver arising out of accident. Fairchild v. South Carolina Dept. of Transp. (S.C.App. 2009) 385 S.C. 344, 683 S.E.2d 818, rehearing denied, certiorari granted, affirmed 398 S.C. 90, 727 S.E.2d 407. Automobiles 245(5); Automobiles 249.2

Issue of whether motorist, who braked when she saw deer, failed to keep her vehicle under control and adjust her speed to conditions of which she either was or should have been aware was for jury in motorist’s action for damages arising from accident, allegedly involving loose stones or gravel on road following resurfacing, caused by Department of Transportation’s (DOT) alleged failure to maintain road in a safe condition and to warn travelers on the road that dangerous conditions existed. Jeter v. South Carolina Dept. of Transp. (S.C.App. 2004) 358 S.C. 528, 595 S.E.2d 827, rehearing denied, certiorari granted, affirmed in part, reversed in part 369 S.C. 433, 633 S.E.2d 143. Automobiles 308(11)

Where the jury could reasonably infer from the evidence that the plaintiff did not exercise due care for his own safety in that he failed to keep a proper lookout, drove too fast for conditions, violated the laws regulating traffic at a stop intersection, and failed to take evasive action, the plaintiff’s motion for a directed verdict at the conclusion of the evidence was properly denied. Brown v. Howell (S.C.App. 1985) 284 S.C. 605, 327 S.E.2d 659. Automobiles 245(78); Automobiles 245(80)

Under evidence that forward motorist slowed down, gave a right turn signal but instead turned left in front of following motorist, and that following motorist was driving his automobile within posted speed limit and reduced speed as he approached intersection, question of whether following motorist was guilty of contributory negligence and recklessness causing ensuing collision was for jury. Code 1962, Sections 46‑361, 46‑363, 46‑388(2), 46‑402(1), 46‑402(2), 46‑405, 46‑406, 46‑408. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

Violation of subsections (a) and (c) held to be a jury question. Beverly v. Sarvis (S.C. 1965) 246 S.C. 470, 144 S.E.2d 220.

Whether motorist who struck preceding truck making right turn was negligent in traveling too fast, failing to have automobile under control, and following too closely was for jury. Code 1952, Sections 46‑361, 46‑393. West v. Sowell (S.C. 1961) 237 S.C. 641, 118 S.E.2d 692. Automobiles 245(81)

In action for injuries resulting from shock when defendant’s panel truck struck plaintiff’s home when driver turned off highway to avoid collision with oncoming tanker truck which made left turn into plaintiff’s yard, questions whether driver of panel truck was negligent and willful in failing to keep a proper lookout, in failing to have panel truck under control, and in driving at an excessive rate of speed in violation of posted speed limit were for jury. Code 1952, Sections 46‑362, 46‑367. Padgett v. Colonial Wholesale Distributing Co. (S.C. 1958) 232 S.C. 593, 103 S.E.2d 265. Automobiles 245(4)

In action for damages resulting from automobile collision between defendant’s automobile which overtook and passed plaintiff’s automobile which made a left turn without signal, where damage to plaintiff’s automobile was severe, evidence of defendant’s negligence in driving at a speed which was not reasonable and prudent was sufficient for jury. Code 1952, Section 46‑361. Howle v. Woods (S.C. 1957) 231 S.C. 75, 97 S.E.2d 205. Automobiles 245(43)

In action for wrongful death of motorist which resulted from collision occurring when automobile driven by motorist and truck‑trailer owned by defendant met on a narrow bridge, evidence of operation of truck in violation of statutory provisions against excessive speed and traveling on wrong side of highway, warranted submission to jury of issues of causative negligence and willfulness, and the resulting actual and punitive damages. Code 1952, Section 46‑361 et seq. Morrow v. Evans (S.C. 1953) 223 S.C. 288, 75 S.E.2d 598. Automobiles 245(59); Death 103(4)

In action for wrongful death of motorist which resulted from collision occurring when automobile driven by motorist and truck‑trailer owned by defendant met on a narrow bridge, whether speed with which truck was attempted to be driven upon the narrow bridge, with lights of motorist’s approaching automobile visible beforehand to truck driver, constituted negligence, recklessness and willfulness, was an issue for jury. Code 1952, Section 46‑361 et seq. Morrow v. Evans (S.C. 1953) 223 S.C. 288, 75 S.E.2d 598. Automobiles 245(41)

In action for wrongful death which resulted when decedent was struck by passenger bus while crossing road, whether bus was operated negligently and in wilful disregard of safety of deceased, at excessive speed, without proper lookout and without use of horn or brakes, were questions for jury. Code 1942, Sections 411, 412; Act June 7, 1949, Section 60(a, b), 46 St. at Large, pp. 486, 487; Act June 7, 1949, Sections 92, 93, 46 St. at Large, p. 497. Dawson v. South Carolina Power Co. (S.C. 1951) 220 S.C. 26, 66 S.E.2d 322. Automobiles 245(5); Automobiles 245(6); Automobiles 245(42)

Evidence that defendant’s driver of truck‑trailer was driving at speed of 45 miles per hour within 35 feet of automobile ahead of the truck‑trailer in district where speed limit was 35 miles per hour, and that defendant failed to keep proper lookout ahead and collided with rear of the automobile, presented question for jury as to whether defendant’s driver was guilty of wilfulness and wantonness, so as to authorize inclusion of award of punitive damages in fixing damages for injuries to child who was occupant of the automobile. Act June 7, 1949, 46 St. at Large, pp. 486, 487, 489, 490, 492. Chapman v. Associated Transport (S.C. 1951) 218 S.C. 554, 63 S.E.2d 465. Automobiles 245(5)

13. Instructions

Omission of statutory language that emphasized the duty of care of all drivers in a “too fast for conditions” scenario from jury instruction regarding maximum speed prejudiced following driver, in action brought by injured rear‑ended driver for damages resulting from collision, in that portion of statute charged did not fully state the applicable law. Cohens v. Atkins (S.C.App. 1998) 333 S.C. 345, 509 S.E.2d 286, rehearing denied. Appeal And Error 1064.1(3); Automobiles 246(20)

Trial judge was in error by refusing to charge jury as to this section [formerly 1962 Code $ 46‑361], where totality of circumstances (flashing lights, car to immediate right slowed almost to stopping, a patrolman in front of nearly stopped car signalling its driver to change lanes), could lead reasonable men to conclude that maintaining speed enabling driver to pass car at that point was a violation of statute and a contributory, proximate cause of accident. Cornwell v. Plummer (S.C. 1975) 265 S.C. 587, 220 S.E.2d 879.

Subsections (a) and (c) properly charged. Yaun v. Baldridge (S.C. 1964) 243 S.C. 414, 134 S.E.2d 248.

Under circumstances in intersection accident case, including evidence that area was residential district and that there were posted speed limit signs, request to judge, who had originally instructed only on reasonable and prudent speed rule, to charge other statutes relating to speed was request to charge all applicable portions of those statutes, and failure to charge statutory provision that prima facie speed limits may be altered, and instructing that there was no testimony that area was business or residential district, was error. Code 1952, Sections 46‑252, 46‑361 to 46‑363. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516. Trial 241

In intersection accident case, wherein it appeared that there were posted speed limits and there was evidence that area was residential, and judge read prima facie speed limits and remarked that there was no evidence that area was business or residential, exception which complained of judge’s language and pointed out undisputed existence of speed limit signs was sufficient as embracing meritorious assignment of prejudicial error. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516. Appeal And Error 727

In action for injuries to plaintiff when truck driven by him collided with automobile operated by defendant, wherein issue existed as to speed of plaintiff’s truck, refusal of defendant’s request for charge on statute pertaining to speed restrictions was reversible error, even though judge had charged that every person was obligated to drive at a rate of speed that was safe under the circumstances, and to have his automobile under proper control at all times, even in absence of statutory requirements. Act June 7, 1949, Section 60(a, b), 46 St. at Large, p. 486. Wall v. Parker (S.C. 1953) 223 S.C. 79, 74 S.E.2d 418.

14. Sufficiency of evidence

The driver of plaintiff’s heavily loaded tractor‑trailer who on coming out of an “S” curve saw defendant’s farm tractor some distance ahead was negligent in going too fast for conditions and failing to have his vehicle under proper control as required by common‑law rules of road and South Carolina statute regardless of whether plaintiff’s driver at last moment realized he was approaching farm tractor too fast and hit the brakes steering off to the left, or whether when he saw an approaching pickup he was going too fast to remain behind defendant’s tractor. Code S.C.1962, Section 46‑361. Pilot Freight Carriers, Inc. v. Spivey, 1967, 278 F.Supp. 520.

Where driver of government’s vehicle was familiar with residential are and he had often seen many children playing along roadway he violated South Carolina law prohibiting driving vehicle at speed greater than is reasonable and prudent under conditions by driving through area at speed of 50 m.p.h. 28 U.S.C.A. Section 1346(b); Code S.C.1962, Sections 46‑361, 46‑362. Gregg v. Coleman, 1964, 235 F.Supp. 237.

In action by truck driver for personal injuries sustained when truck in which he was driving and making a left‑hand turn off highway onto an unpaved country road was struck by following vehicle attempting to pass, evidence disclosed negligence of driver of following vehicle, in attempting to pass within 100 feet of intersection contrary to statute, in disregarding turning signal given by truck driver, in passing at a high and excessive rate of speed, and in failing to give any warning or signal of intention to pass. Code S.C.1952, Sections 46‑361 to 46‑363, 46‑384, 46‑388(2), 46‑582. Hicks v. Kosa, 1958, 167 F.Supp. 289.

In action for death of decedent struck by one of two trucks approaching from opposite directions as decedent, standing by his vehicle which was parked on highway, attempted to stop trucks, evidence established that driver of truck which struck decedent, was grossly negligent in respect to speed, lookout, and due care, and in failing to warn, to apply brakes, or to take any action to avert injury, and that driver of other truck was grossly negligent in respect to speed, lookout, control and due care, and in driving without proper brakes, and that the gross negligence of each combined to cause decedent’s death. Code 1952 S.Car. Sections 10‑1951 to 10‑1954, 46‑243, 46‑342, 46‑361, 46‑363, 46‑442, 46‑582. Greene v. Miller, 1953, 114 F.Supp. 150.

15. Damages

Award of punitive damages in a negligence action arising out of a rear end motor vehicle collision was supported by evidence that defendant was guilty of gross negligence and recklessness and that defendant’s agent did not have defendant’s vehicle under control at the time of the accident, was driving too fast for the wet conditions of the road in violation of Section 56‑5‑1520, and was following plaintiff’s vehicle too closely. Bethea v. Pedro Land, Inc. (S.C.App. 1986) 290 S.C. 341, 350 S.E.2d 392, certiorari dismissed 291 S.C. 359, 353 S.E.2d 456. Automobiles 244(1)

An award of punitive damages against a motorist whose car collided with a bicyclist was supported by evidence from which the jury could have inferred that the motorist violated Section 56‑5‑1520(a) relating to maximum speed limits. Copeland v. Nabors (S.C.App. 1985) 285 S.C. 340, 329 S.E.2d 457.

Where a driver failed to stop before entering the intersection of a “through highway,” in violation of former Code 1962 Section 46‑423 [see now Section 56‑5‑2330], and was, just before and at the time of entering the intersection, driving at a speed in violation of this article, these statutory violations, if the proximate cause of the collision, would justify punitive as well as actual damages. Smith v. Lynch (S.C. 1958) 232 S.C. 608, 103 S.E.2d 54.

In action for wrongful death of motorist which resulted from collision occurring when automobile driven by motorist and defendant’s truck‑trailer met on a narrow bridge, award of $15,000 punitive damages was not so excessive as to show prejudice and caprice, in view of the wanton wrong found by jury to have been committed in operating truck in violation of statutory provisions against excessive speed and traveling on wrong side of highway, and in absence of any showing as to defendant’s financial worth. Code 1952, Section 46‑361 et seq. Morrow v. Evans (S.C. 1953) 223 S.C. 288, 75 S.E.2d 598. Death 99(1)

**SECTION 56‑5‑1530.** Alteration of speed limits on state highway system by Department of Transportation; signs.

(a) Establishing speed zones. Whenever the Department of Transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway system, the Department of Transportation may determine and declare a reasonable and safe maximum limit thereat, which shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(b) Setting maximum limits in state highway extensions in urban districts. The Department of Transportation shall determine the proper maximum speed for all state primary highway extensions into and through urban districts and shall declare a reasonable and safe maximum speed limit thereon which may be greater or less than the maximum speed otherwise permitted under this article for an urban district and such maximum speed limits shall be effective at all times during hours of darkness and at other times as may be determined when appropriate official signs giving notice thereof are erected upon such street or highway.

HISTORY: 1962 Code Section 46‑362; 1952 Code Sections 46‑367, 46‑369; 1949 (46) 466; 1966 (54) 2244; 1993 Act No. 181, Section 1405.

CROSS REFERENCES

Conditions under which load and speed limits may be reduced, see Sections 56‑5‑4210, 56‑5‑4220.

Library References

Automobiles 5(4).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 53 to 54, 56, 69 to 74.

NOTES OF DECISIONS

In general 1

1. In general

This section [formerly Code 1962 Section 46‑362] is qualified by former Code 1962 Section 46‑361 [see now Section 56‑5‑1520]. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896.

**SECTION 56‑5‑1535.** Endangerment of a highway worker; penalties; definitions.

(A) A person commits endangerment of a highway worker if the person is operating a motor vehicle within a highway work zone at anytime one or more highway workers are in the highway work zone and in proximity to the area where the act or omission occurs and the person:

(1) drives through or around a work zone in any lane not clearly designated for use by motor vehicles traveling through or around a work zone; or

(2) fails to obey traffic control devices erected for the purpose of controlling the flow of motor vehicles through the work zone for any reason other than:

(a) an emergency;

(b) the avoidance of an obstacle; or

(c) the protection of the health and safety of another person.

(B)(1) A person who violates the endangerment of a highway worker provision where the highway worker suffers no physical injury must be fined not more than one thousand dollars and not less than five hundred dollars.

(2) A person who violates the endangerment of a highway worker provision where the highway worker suffers physical injury and the violation was the sole proximate cause of the injury must be fined not more than two thousand dollars and not less than one thousand dollars.

(3) A person who violates the endangerment of a highway worker provision where the highway worker suffers great bodily injury, as defined in Section 56‑5‑2945(B), and the violation was the sole proximate cause of the injury must be fined not more than five thousand dollars and not less than two thousand dollars.

(C) A person who violates Section 56‑5‑1535(A) must have two points assessed against his motor vehicle operating record or four points assessed against his motor vehicle operating record if an injury to the highway worker occurred at the time of the incident and the violation is the sole proximate cause of the injury.

(D) Any fine imposed pursuant to this section is mandatory and may not be waived or reduced below the minimum as provided in subsection (B). Sixty‑five percent of the fine must be remitted to the Treasurer and deposited in a special account, separate and apart from the general fund, designated for use by the Department of Public Safety to be used for work zone enforcement. Twenty‑five percent of the fine must be deposited in the State Highway Fund and designated for use by the Department of Transportation to hire off‑duty state, county, or municipal police officers to monitor construction or maintenance zones. Ten percent of the fine must be remitted to the county governing body in which the charge was disposed, or the municipality if the charge was disposed in municipal court.

(E) No person shall be cited for endangerment of a highway worker for any act or omission otherwise constituting a violation under this section if the act or omission results, in whole or in part, from mechanical failure of the person’s motor vehicle or from the negligence of a highway worker or another person.

(F) For purposes of this section:

(1) “Highway work zone” means an area of a roadway, bridge, shoulder, median, or associated right of way, where construction, maintenance, utility work, accident response, or other incident response is being performed. The work zone must be marked by signs, channeling devices, barriers, pavement markings, or work vehicles, and extends from the first traffic control device erected for purposes of controlling the flow of motor vehicles through the work zone, including signs reducing the normal speed limit, to the “END ROAD WORK” sign or the last temporary traffic control device. The signs, channeling devices, barriers, pavement markings, or work vehicles must meet state Department of Transportation standards, the provisions of Section 56‑5‑4700, or National Fire Protection (NFPA) standards, and must be installed properly.

(2) “Highway worker” means a person who is required to perform work in highway work zones, including:

(a) a person who performs maintenance, repair, or construction;

(b) a person who operates a truck, loader, or other equipment;

(c) a person who performs any other related maintenance work, as required;

(d) a public safety officer who enforces work zone‑related transportation management or traffic control;

(e) a law enforcement officer who conducts traffic control or enforcement operations; and

(f) an officer or firefighter, an emergency medical services provider, or any other authorized person who removes hazards or who responds to accidents and other incidents.

(G) Magistrates and municipal court judges have exclusive jurisdiction pursuant to this section.

HISTORY: 1994 Act No. 409, Section 1; 1999 Act No. 17, Section 2; 2017 Act No. 81 (H.4033), Section 1, eff May 19, 2017.

Effect of Amendment

2017 Act No. 81, Section 1, rewrote the section, deleting the provision relating to speeding in work zones, creating the offense of “endangerment of a highway worker”, and providing a penalty for this offense.

CROSS REFERENCES

Removal or covering of a sign when a work zone becomes inactive for more than three days, see Section 57‑3‑785.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 132, Special Speed Limits.

**SECTION 56‑5‑1536.** Repealed.

HISTORY: Former Section, titled Driving in a temporary work zone; penalty, had the following history: 2004 Act No. 286, Section 4; 2011 Act No. 49, Section 1, eff June 14, 2011. Repealed by 2017 Act No. 81, Section 3, eff May 19, 2017.

**SECTION 56‑5‑1538.** Emergency scene management; definitions

(A) An emergency scene is a location designated by the potential need to provide emergency medical care and is identified by emergency vehicles with flashing lights, rescue equipment, or emergency personnel on the scene.

(B) An emergency scene is a special hazard.

(C) An emergency scene is under the authority of the first arriving emergency personnel, which includes emergency medical services personnel, until the arrival of the fire or law enforcement officials having jurisdiction. All motor vehicles passing through an emergency scene and pedestrians observing an emergency scene must obey and not interfere with the duties of emergency personnel. Motor vehicles and bystanders may not block access to or exit from an emergency scene.

(D) The management authority of emergency medical services is limited to managing patient care and preventing further injury to the patients and on‑scene personnel. This authority may be delegated by emergency personnel to provide an adequate level of safety.

(E) A paid or volunteer worker at an emergency scene has proper authority to be at and control the scene in a manner consistent with his training.

(F) The driver of a vehicle shall ensure that the vehicle is kept under control when approaching or passing an emergency scene or authorized emergency vehicle stopped on or near the right‑of‑way of a street or highway with emergency lights flashing. The exercise of control required for a driver to comply with this section is that control possible and necessary by the driver to prevent a collision, to prevent injury to persons or property, and to avoid interference with the performance of emergency duties by emergency personnel.

(G) A person driving a vehicle approaching a stationary authorized emergency vehicle that is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights, or amber or yellow warning lights shall proceed with due caution, significantly reduce the speed of the vehicle, and:

(1) yield the right‑of‑way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle; or

(2) maintain a safe speed for road conditions, if changing lanes is impossible or unsafe.

(H) A person who violates the provisions of this section is guilty of the misdemeanor of endangering emergency services personnel and, upon conviction, must be fined not less than three hundred dollars nor more than five hundred dollars.

(I) For purposes of this section:

(1) “Authorized emergency vehicle” means any ambulance, police, fire, rescue, recovery, or towing vehicle authorized by this State, county, or municipality to respond to a traffic incident.

(2) “Emergency services personnel” means fire, police, or emergency medical services personnel (EMS) responding to an emergency incident.

HISTORY: 1996 Act No. 256, Section 1; 2002 Act No. 348, Section 8.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 121, Emergency Scenes.

S.C. Jur. Automobiles and Other Motor Vehicles Section 130, Maximum Speed.

**SECTION 56‑5‑1540.** Alteration of speed limits by local authorities; signs; approval by Department of Transportation.

(a) Establishing speed zones. Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under this article is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:

(1) decreases the limit at intersections; or

(2) increases the limit within an urban district but not to more than seventy miles an hour; or

(3) decreases the limit outside an urban district, but not to less than thirty‑five miles an hour.

(b) Setting maximum limits on arterial streets. Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under this article for an urban district.

(c) Signs. Any altered limit established as hereinabove authorized is effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon the street or highway.

(d) Approval of altered limits by Department of Transportation. Any alteration of maximum limits on state highways or extensions thereof in a municipality by local authorities is not effective until the alteration has been approved by the Department of Transportation.

(e) Limitations on alterations. Not more than six such alterations as authorized above may be made for each mile along a street or highway, except in the case of reduced limits at intersections, and the difference between adjacent limits must not be more than ten miles an hour.

HISTORY: 1962 Code Section 46‑363; 1952 Code Sections 46‑368, 46‑370, 46‑371; 1949 (46) 466; 1966 (54) 2244; 1987 Act No. 189 Section 3; 1993 Act No. 181, Section 1406; 1999 Act No. 17, Section 3.

Library References

Automobiles 5(4).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 53 to 54, 56, 69 to 74.

Attorney General’s Opinions

The Town of Hodges is entitled to receive only such fines, bail or bond forfeitures as are collected by municipal police officers and municipal courts.

The State Highway Department is given the authority by State statute to establish the maximum speed limits for all State Primary Highway extensions into and through the Town of Hodges; however, the Town of Hodges is permitted to alter those established speed limits within their jurisdiction, as indicated in Section 56‑5‑1540(a), Code of Laws of S.C., 1976, such alteration being subject to approval by the State Highway Department.

The Town of Hodges has the authority to declare the maximum speed limit on arterial streets within their jurisdiction based upon proper investigation. 1976‑77 Op.Atty.Gen. No. 77‑381, p. 305 (December 2, 1977) 1977 WL 24718.

NOTES OF DECISIONS

In general 1

Jury question 2

1. In general

Violation of this section [formerly Code 1962 Section 46‑363] and former Code 1962 Section 46‑361 [see now Section 56‑5‑1520] constitutes negligence per se, or negligence as a matter of law. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101. Automobiles 168(2)

A violation of this section [formerly Code 1962 Section 46‑363] constitutes negligence per se. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

A violation of this section [formerly Code 1962 Section 46‑363] is evidence of recklessness, willfulness and wantonness. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

2. Jury question

Under evidence that forward motorist slowed down, gave a right turn signal but instead turned left in front of following motorist, and that following motorist was driving his automobile within posted speed limit and reduced speed as he approached intersection, question of whether following motorist was guilty of contributory negligence and recklessness causing ensuing collision was for jury. Code 1962, Sections 46‑361, 46‑363, 46‑388(2), 46‑402(1), 46‑402(2), 46‑405, 46‑406, 46‑408. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

Even though the violation of an applicable statute is negligence per se and some evidence of recklessness, willfulness and wantonness, whether or not such breach contributed as a proximate cause to plaintiff’s injury is ordinarily a question for the jury. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47. Automobiles 245(51)

**SECTION 56‑5‑1550.** Speed limitation on motor‑driven cycles.

Reserved by 2017 Act No. 89, Section 25, effective November 19, 2018.

No person shall operate any motor‑driven cycle at any time mentioned in Section 56‑5‑4450 at a speed greater than thirty‑five miles per hour unless such motor‑driven cycle is equipped with head lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead.

HISTORY: 1962 Code Section 46‑364; 1952 Code Section 46‑364; 1949 (46) 466; 1966 (54) 2244.

CROSS REFERENCES

Lighting equipment on motor‑driven cycles, see Section 56‑5‑4800.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 132, Special Speed Limits.

**SECTION 56‑5‑1555.** Speed limitation on mopeds.

Reserved by 2017 Act No. 89, Section 26, effective November 19, 2018.

No person may operate a moped at a speed in excess of twenty‑five miles an hour. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1986 Act No. 528, Section 10; 1991 Act No. 94, Section 4.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 132, Special Speed Limits.

**SECTION 56‑5‑1560.** Minimum speed limits.

(a) Impeding traffic by slow speed prohibited. —No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Establishing minimum speed zones; signs. Whenever the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the Department of Transportation or local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, when appropriate signs giving notice thereof are erected along the part of the highway for which a minimum speed limit is established. Also any minimum speed limit adopted by a municipality for a section of the state highway within the municipality shall not be effective until such minimum speed has been approved by the Department of Transportation.

HISTORY: 1962 Code Section 46‑365; 1952 Code Section 46‑372; 1949 (46) 466; 1956 (49) 1648; 1966 (54) 2244; 1993 Act No. 181, Section 1407.

CROSS REFERENCES

Posting notice of reduced load and speed limits on bridges, etc., see Sections 56‑5‑4210, 56‑5‑4220.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 131, Minimum Speed.

NOTES OF DECISIONS

Summary judgment 1

1. Summary judgment

Material issues of fact as to whether driver of Department of Transportation (DOT) truck violated statutes governing minimum speed limits and driving on undivided highways, thus constituting negligence per se, precluded summary judgment for motorist on negligence claim brought against DOT, stemming from motorist’s vehicle striking DOT truck. Trivelas v. South Carolina Dept. of Transp. (S.C.App. 2001) 348 S.C. 125, 558 S.E.2d 271. Judgment 181(33)

**SECTION 56‑5‑1570.** Special speed limitations for certain vehicles and places.

(a) Vehicles towing house trailers. —No person shall drive a vehicle which is towing a house trailer at a speed greater than a maximum of forty‑five miles per hour.

(b) Vehicles with solid rubber or cushion tires. —No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten miles per hour.

(c) On elevated structures; safe speed not to be exceeded. —No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(d) Same; establishing safe maximum limit. The Department of Transportation upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it finds that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the Department of Transportation shall determine and declare the maximum speed of vehicles which such structure can safely withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(e) Same; proof of limit and signs conclusive evidence of safe speed. Upon the trial of any person charged with a violation of this section, proof of determination of the maximum speed by the Department of Transportation and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

HISTORY: 1962 Code Section 46‑366; 1952 Code Sections 46‑365, 46‑366; 1949 (46) 466; 1966 (54) 2244; 1993 Act No. 181, Section 1408.

CROSS REFERENCES

General duties and powers of Department of Highways and Public Transportation, see Sections 57‑3‑600 et seq.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 132, Special Speed Limits.

**SECTION 56‑5‑1580.** Contents of complaint and summons or notice to appear charging speeding.

In every charge of violation of any speed regulation in this article, the complaint and summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

HISTORY: 1962 Code Section 46‑367; 1966 (54) 2244.

Library References

Automobiles 351.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1506, 1537, 1558 to 1563, 1602 to 1605, 1649, 1677, 1690 to 1691, 1700, 1712, 1722, 1730, 1736, 1745 to 1747, 1750 to 1751, 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 130, Maximum Speed.

NOTES OF DECISIONS

In general 1

1. In general

Plaintiff’s allegations, in automobile accident case, that warning signs were posted near intersection at which accident occurred showing on top sign “school bus crossing” and on lower sign “35 M.P.H.” were relevant on issue whether defendant’s automobile was operated at excessive speed and were erroneously stricken from complaint on ground that plaintiff was not passenger on school bus, school bus was not involved in accident, and accident occurred at time when school bus would not ordinarily be using highway. Code 1962, Sections 46‑304, 46‑367 et seq. Rochester v. North Greenville Junior College (S.C. 1967) 249 S.C. 123, 153 S.E.2d 121.

**SECTION 56‑5‑1590.** Unlawful to race or assist in racing on public roads.

It shall be unlawful to engage in a motor vehicle race or contest for speed on any public road, street or highway in this State or to aid, abet or assist in any manner whatsoever in any such race or contest. Altering, changing, tampering with or “souping up” a motor vehicle for the purpose of racing or speeding on any public road, street or highway in this State shall be considered as aiding, abetting or assisting for the purposes of Sections 56‑5‑1590 to 56‑5‑1620.

HISTORY: 1962 Code Section 46‑356; 1957 (50) 133.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 133, Prohibition Against Racing.

Attorney General’s Opinions

One may commit a traffic offense on private property unless one’s presence on a public highway is made an element of the offense by the statute which creates it. 1968‑69 Op.Atty.Gen. No. 2634, p. 39 (February 13, 1969) 1969 WL 10637.

Mere presence at the scene of an illegal race with nothing more, does not constitute aiding and abetting the principals. 1964‑65 Op.Atty.Gen. No. 1790, p. 27 (January 28, 1965) 1965 WL 7956.

NOTES OF DECISIONS

In general 1

1. In general

The evidence, in action against driver of automobile for death of his guest passenger, raised jury question as to whether passenger was guilty of contributory recklessness in that he participated, aided and abetted in an automobile race. Code 1962, Sections 10‑1951 et seq., 46‑356, 46‑801 Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747. Automobiles 245(87)

Violation of this section is negligence per se, and whether or not such breach contributed as a proximate cause to plaintiff’s injury is ordinarily question for jury. Skipper v. Hartley (S.C. 1963) 242 S.C. 221, 130 S.E.2d 486, 13 A.L.R.3d 426. Negligence 259; Negligence 1713

Racing motor vehicles on public highway is negligence and all who engage in race do so at their peril and are liable for injury sustained by third person as result thereof, although only one of vehicles engaged in race actually inflicts the injury. Skipper v. Hartley (S.C. 1963) 242 S.C. 221, 130 S.E.2d 486, 13 A.L.R.3d 426. Automobiles 168(10.1); Automobiles 201(2)

**SECTION 56‑5‑1600.** Unlawful to acquiesce in or permit use of car in race.

It shall also be unlawful for any owner of a motor vehicle to acquiesce in or permit his car to be used by another in any motor vehicle race or contest for speed on any public road, street or highway in this State.

HISTORY: 1962 Code Section 46‑357; 1957 (50) 133.

Library References

Automobiles 331.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1551, 1641 to 1657.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 133, Prohibition Against Racing.

**SECTION 56‑5‑1610.** “Acquiescence” defined.

For the purpose of Sections 56‑5‑1590 to 56‑5‑1620, the word “acquiescence” shall mean actual knowledge that the car was to be used for the purpose of racing on a public road, street or highway.

HISTORY: 1962 Code Section 46‑355; 1957 (50) 133.

CROSS REFERENCES

Speed limit on certain State property in Columbia, see Section 10‑11‑60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 133, Prohibition Against Racing.

**SECTION 56‑5‑1620.** Penalties for racing; revocation or suspension of drivers’ licenses and registrations.

Any person violating the provisions of Sections 56‑5‑1590 to 56‑5‑1620 by driving a motor vehicle shall, upon conviction, be fined not less than two hundred dollars nor more than six hundred dollars or imprisoned for not less than two months nor more than six months, or both, in the discretion of the trial judge. In addition to such penalty the driver of any vehicle who violates the provisions of Sections 56‑5‑1590 to 56‑5‑1620 shall upon conviction, entry of a plea of guilty or forfeiture of bail have his driver’s license revoked for a period of one year. Any person violating the provisions of Sections 56‑5‑1590 to 56‑5‑1620 by acquiescing in or permitting the driving of his car shall, upon conviction, be fined not to exceed one hundred dollars or imprisoned for a period not to exceed thirty days, or both, in the discretion of the court and, in addition thereto, shall have his driver’s license and the registration of his vehicle suspended for a period of three months.

HISTORY: 1962 Code Section 46‑358; 1957 (50) 133.

Library References

Automobiles 144.1(2), 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1656, 1707, 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 133, Prohibition Against Racing.

ARTICLE 13

Driving on Right Side of Roadway; Overtaking and Passing; Following

**SECTION 56‑5‑1810.** Drive on the right side of roadways; exceptions.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

2. When an obstruction exists making it necessary to drive to the left of the center of the highway. Any person so doing shall yield the right‑of‑way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance so as not to constitute an immediate hazard.

3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon.

4. Upon a roadway restricted to one‑way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right‑hand lane then available for traffic or as close as practicable to the right‑hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two‑way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic‑control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under item 2 of subsection (a). This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

HISTORY: 1962 Code Section 46‑381; 1952 Code Section 46‑381; 1949 (46) 466; 1977 Act No. 143 Section 1.

Library References

Automobiles 153, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 641, 643 to 649, 652 to 661, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 134, Driving on Right Side of Roadway.

S.C. Jur. Automobiles and Other Motor Vehicles Section 141, No Passing Zones.

NOTES OF DECISIONS

In general 1

Instructions 3

Questions for jury 2

Sufficiency of evidence 4

1. In general

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the fact that the arresting officer personally observed defendant driving across the middle of a two‑land road was itself sufficient to justify stopping and arresting him. State v. Parker (S.C. 1978) 271 S.C. 159, 245 S.E.2d 904.

The terms “highway” and “roadway” are not synonymous, and regulation of traffic is generally with reference to the movement of vehicles on the “roadway” of a “highway.” Bates v. Legette (S.C. 1961) 239 S.C. 25, 121 S.E.2d 289. Automobiles 11; Highways 166

A mere custom of driving on the left side of a street or highway at a particular point will not justify violation of a statute or ordinance requiring vehicles to keep to the right; one who violates the law of the road by driving on the wrong side assumes the risk of such an experiment, and is required to use greater care than if he had kept on the right side of the road. Utsey v. Williams (S.C. 1956) 229 S.C. 176, 92 S.E.2d 159.

2. Questions for jury

Issue of whether motorist, who braked when she saw deer, failed to keep her vehicle under control and adjust her speed to conditions of which she either was or should have been aware was for jury in motorist’s action for damages arising from accident, allegedly involving loose stones or gravel on road following resurfacing, caused by Department of Transportation’s (DOT) alleged failure to maintain road in a safe condition and to warn travelers on the road that dangerous conditions existed. Jeter v. South Carolina Dept. of Transp. (S.C.App. 2004) 358 S.C. 528, 595 S.E.2d 827, rehearing denied, certiorari granted, affirmed in part, reversed in part 369 S.C. 433, 633 S.E.2d 143. Automobiles 308(11)

One should technically violate this section [formerly Code 1962 Section 46‑381] if by so doing he may prevent injuries and damages to himself or to another, but whether or not a reasonably prudent person would have done so in a particular case is a matter for the jury. Coffee v. Anderson County (S.C. 1954) 224 S.C. 477, 80 S.E.2d 51. Automobiles 204

3. Instructions

In a prosecution for driving under the influence, the trial court did not improperly charge Section 56‑5‑1810, which requires vehicles to be driven on the right side of the roadway under most circumstances, where direct testimony from 3 witnesses placed the defendant driving outside the right lane numerous times. Additionally, it was not error for the trial court to charge an “act forbidden by law” which was not alleged in the indictment, where the indictment alleged that the defendant “veered from the highway”; the indictment was sufficient for the defendant to answer the charge, the trial court knew what judgment to pronounce, and the defendant’s conviction could be pleaded as a bar to any subsequent prosecution. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

4. Sufficiency of evidence

Evidence was sufficient to support finding that defendant committed an act prohibited by law or failed to observe a duty imposed by the law, as required to convict him for felony driving under the influence (DUI); trooper testified that a pool of sand and debris and tire mark at the scene established that defendant never drove in the correct lane after executing a legal turn‑around. State v. Galimore (S.C.App. 2012) 396 S.C. 471, 721 S.E.2d 475, rehearing denied, certiorari denied. Automobiles 355(6)

**SECTION 56‑5‑1830.** Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one half of the main‑traveled portion of the roadway, as nearly as possible.

HISTORY: 1962 Code Section 46‑383; 1952 Code Section 46‑383; 1949 (46) 466.

Library References

Automobiles 153, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 641, 643 to 649, 652 to 661, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 139, Passing in Opposite Directions.

NOTES OF DECISIONS

In general 1

1. In general

Under facts including showing that defendant’s truck proceeding at proper speed collided with automobile of plaintiff’s decedent who was turning at T intersection at time when truck was so close as to constitute an immediate hazard, defendant was not negligent, decedent was contributorily negligent, and defendant had no opportunity to avoid the collision, precluding recovery for decedent’s death under South Carolina law. Code S.C.1962, Sections 10‑1951 et seq., 46‑381, 46‑383, 46‑405, 46‑422. McCombs v. Anderson Truck Line, 1965, 241 F.Supp. 26.

In action for death of minor bicyclist who was struck by the automobile of the defendant when the bicyclist suddenly entered the highway from a private driveway, where plaintiff did not charge a violation of the statute respecting driving to the left side of the roadway as a specification of negligence and there was no evidence that the unimproved intersecting road was publicly maintained, the statute was inapplicable. Code 1952, Sections 46‑388(2), 46‑383. Williams v. Clinton (S.C. 1960) 236 S.C. 373, 114 S.E.2d 490. Automobiles 162(7)

In determining whether a person is justified in turning out to the left, the usual rules applicable to acts in emergencies generally apply, and a driver confronted with a sudden peril brought about by the negligence of another is not held to the exercise of the same degree of care as when he has time for reflection; if he has used due care to avoid meeting such an emergency, and after it arises he exercises such care as a reasonably prudent driver would use under the attendant circumstances, he is not negligent. Melton v. Ritch (S.C. 1957) 231 S.C. 146, 97 S.E.2d 509.

Whether a person in meeting a car coming from the opposite direction is justified in turning to the left instead of to the right depends upon the surrounding circumstances; the test is whether he uses due care, which ordinarily presents factual issues for the jury to decide. Melton v. Ritch (S.C. 1957) 231 S.C. 146, 97 S.E.2d 509. Automobiles 170(1); Automobiles 245(13)

Failure to keep to the right is not necessarily negligence, for a motorist may be bound to technically violate a statute regulating traffic if by so doing he can avoid inflicting injury to person or property. Melton v. Ritch (S.C. 1957) 231 S.C. 146, 97 S.E.2d 509. Automobiles 147

**SECTION 56‑5‑1840.** Overtaking and passing vehicles proceeding in same direction.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

HISTORY: 1962 Code Section 46‑384; 1952 Code Section 46‑384; 1949 (46) 466.

CROSS REFERENCES

Use of horn in overtaking vehicle, see Section 56‑5‑4960.

Library References

Automobiles 172, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 695, 697, 699 to 702, 704 to 706, 708, 715, 723 to 750, 800 to 803, 882, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 140, Passing in Same Direction.

Attorney General’s Opinions

An overtaking motorist does not have a lawful right to exceed the maximum speed limit in passing a slower vehicle. 1975‑76 Op.Atty.Gen. No. 4507, p. 368 (October 29, 1976) 1976 WL 23124.

NOTES OF DECISIONS

In general 1

1. In general

This section [formerly Code 1962 Section 46‑384] and former Code 1962 Section 46‑582 [see now Section 56‑49‑60], construed together, require that the horn of an overtaking vehicle be sounded, not under all circumstances, but only where conditions are such that the sounding of a horn is reasonably necessary to insure the safe operation of the vehicle. Woods v Wilhelm (1957) 232 SC 108, 101 SE2d 252. Nationwide Mut. Ins. Co. v. De Loach (C.A.4 (S.C.) 1959) 262 F.2d 775.

In action by truck driver for personal injuries sustained when truck in which he was driving and making a left‑hand turn off highway onto an unpaved country road was struck by following vehicle attempting to pass, evidence disclosed negligence of driver of following vehicle, in attempting to pass within 100 feet of intersection contrary to statute, in disregarding turning signal given by truck driver, in passing at a high and excessive rate of speed, and in failing to give any warning or signal of intention to pass. Code S.C.1952, Sections 46‑361 to 46‑363, 46‑384, 46‑388(2), 46‑582. Hicks v. Kosa, 1958, 167 F.Supp. 289.

An award of punitive damages against a motorist whose vehicle collided with a bicyclist was supported by evidence from which the jury could have inferred that the motorist violated Section 56‑5‑1840(1) relating to overtaking and passing vehicles proceeding in the same direction. Copeland v. Nabors (S.C.App. 1985) 285 S.C. 340, 329 S.E.2d 457.

In action for damages resulting from collision between defendant’s automobile which overtook and passed plaintiff’s automobile which made a left turn without signal, evidence of defendant’s negligence in failing to sound his horn was sufficient for jury. Code 1952, Sections 46‑384, 46‑582. Howle v. Woods (S.C. 1957) 231 S.C. 75, 97 S.E.2d 205. Automobiles 245(15)

**SECTION 56‑5‑1850.** When passing on the right is permitted.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn.

2. Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being travelled by the overtaking vehicle.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway.

HISTORY: 1962 Code Section 46‑385; 1952 Code Section 46‑385; 1949 (46) 466; 1977 Act No. 143 Section 2.

Library References

Automobiles 172, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 695, 697, 699 to 702, 704 to 706, 708, 715, 723 to 750, 800 to 803, 882, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 140, Passing in Same Direction.

NOTES OF DECISIONS

In general 1

1. In general

In action for wrongful death, the jury should have been charged on the applicable law for overtaking and passing vehicles on the right where the victim had been killed when a truck, in attempting to pass between an automobile traveling in the inside lane and the motorbike driven by the victim proceeding in the outside lane approaching a parked vehicle, passed the automobile on the right. Carraway v. Pee Dee Block, Inc. (S.C. 1980) 275 S.C. 511, 273 S.E.2d 340. Automobiles 245(82)

Where defendant attempting a right turn from the left lane in violation of former Code 1962 Sections 46‑402 and 46‑405 [see now Code 1976 Sections 56‑5‑2120 and 56‑5‑2150] collided with plaintiff who had pulled up next to defendant in right‑hand lane, question of plaintiff’s contributory negligence in passing on the right in violation of former Code 1962 Sections 46‑385 and 46‑388(2) [see now Code 1976 Sections 56‑5‑1850, 56‑5‑1880(3)] and in failing to observe defendant’s right turn blinker was for jury, precluding directed verdict for plaintiff on issue of defendant’s negligence. Williams v. Kinney (S.C. 1976) 267 S.C. 163, 226 S.E.2d 555.

**SECTION 56‑5‑1860.** Limitations on overtaking on the left.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

HISTORY: 1962 Code Section 46‑386; 1952 Code Section 46‑386; 1949 (46) 466; 1977 Act No. 143 Section 3.

Library References

Automobiles 172, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 695, 697, 699 to 702, 704 to 706, 708, 715, 723 to 750, 800 to 803, 882, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 140, Passing in Same Direction.

Attorney General’s Opinions

An overtaking motorist does not have a lawful right to exceed the maximum speed limit in passing a slower vehicle. 1975‑76 Op.Atty.Gen. No 4507, p. 368 (October 29, 1976) 1976 WL 23124.

NOTES OF DECISIONS

In general 1

Damages 2

1. In general

In a negligence action brought by a pedestrian who had been struck by a car, the jury should have been allowed to determine whether the driver of the car violated motor vehicle statutes Sections 56‑5‑1860, 56‑5‑3230, and 56‑5‑4770 where the inferences deducible from controverted evidence in the record raised questions of fact as to whether the driver violated these statutes. Cooper by Cooper v. County of Florence (S.C. 1991) 306 S.C. 408, 412 S.E.2d 417.

A vehicle which temporarily stops in its lane of travel is “proceeding” within statutory rule that overtaking driver shall pass at safe distance to left of vehicle “proceeding” in same direction. Weaks v. South Carolina State Highway Dept. (S.C. 1968) 250 S.C. 535, 159 S.E.2d 234.

2. Damages

Violation of this section [formerly Code 1962 Section 46‑386] and speed of eighty miles an hour was held sufficient to submit the question of punitive damages to the jury. Hider v. Gelbach, 1943, 135 F.2d 693.

**SECTION 56‑5‑1880.** Further limitations on driving to left of center of roadway.

(a) No vehicle shall be driven on the left side of the roadway under the following conditions:

1. When approaching or upon the crest of a grade or a curve in the highway where the driver’s view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

2. When approaching within one hundred feet of or traversing any intersection.

3. When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one‑way roadway, nor under the conditions described in item 2, subsection (a) of Section 56‑5‑1810 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

HISTORY: 1962 Code Section 46‑388; 1952 Code Section 46‑388; 1949 (46) 466; 1977 Act No. 143 Section 4; 1992 Act No. 399, Section 6.

Library References

Automobiles 153, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 641, 643 to 649, 652 to 661, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 134, Driving on Right Side of Roadway.

NOTES OF DECISIONS

In general 1

Contributory negligence 5

One‑way roadway 2

Proximate cause 4

Questions for jury 6

Sufficiency of evidence 7

Violation as negligence per se 3

1. In general

If the driver was faced with a sudden emergency and exercised due care under the circumstances, in turning his automobile to the left in an effort to avoid colliding with another automobile, he was not guilty of negligence and recklessness. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

In determining whether a statutory violation is mere negligence or is willfullness, all of the circumstances have to be considered. Jumper v. Goodwin (S.C. 1962) 239 S.C. 508, 123 S.E.2d 857.

2. One‑way roadway

Where a collision occurred on a four‑lane highway consisting of two roadways separated by a median strip and providing two lanes for traffic in each direction, at or near one of the paved crossovers, where there also was an unimproved dirt road leading from the paved highway, since the collision occurred upon a one‑way roadway, the prohibition of this section [formerly Code 1962 Section 46‑388] against driving to the left of the center line was inapplicable. Watson v. Wilkinson Trucking Co. (S.C. 1964) 244 S.C. 217, 136 S.E.2d 286.

3. Violation as negligence per se

Violation of this section [formerly Code 1962 Section 46‑388] is negligence per se. Reese v National Surety Corp. (1954) 224 SC 489, 80 SE2d 47. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Davenport v United States (1965, DC SC) 241 F Supp 320. Grainger v Nationwide Mut. Ins. Co. (1966) 247 SC 293, 147 SE2d 262.

4. Proximate cause

Negligence through violation of section is actionable if it proximately causes injury. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Davenport v United States (1965, DC SC) 241 F Supp 320.

While violation of this section [formerly Code 1962 Section 46‑388] is negligence per se, whether or not such breach contributed as a proximate cause to a plaintiff’s injury is ordinarily a question for the jury. Jumper v Goodwin (1962) 239 SC 508, 123 SE2d 857. Grainger v Nationwide Mut. Ins. Co. (1966) 247 SC 293, 147 SE2d 262.

The driver of an overtaken vehicle who undertakes to make a left turn into an unmarked, small dirt road suddenly, without warning and without looking, in the face of traffic which is very likely to be approaching him at a speed of 55 miles per hour, certainly renders himself much more liable to an inference of willful conduct than a driver who inadvertently makes an improper turn at a street intersection in a city. Jumper v. Goodwin (S.C. 1962) 239 S.C. 508, 123 S.E.2d 857. Automobiles 169

5. Contributory negligence

Plaintiff held contributorily negligent. Grainger v. Nationwide Mut. Ins. Co. (S.C. 1966) 247 S.C. 293, 147 S.E.2d 262.

The determination of the question of contributory negligence is controlled by the facts and circumstances of a particular case and the court will not decide it as one of law if testimony is conflicting or if the inferences to be drawn therefrom are doubtful. Jumper v Goodwin (1962) 239 SC 508, 123 SE2d 857. Grainger v. Nationwide Mut. Ins. Co. (S.C. 1966) 247 S.C. 293, 147 S.E.2d 262. Negligence 502(1); Negligence 1717(1)

If the negligence of plaintiff’s decedent operated only remotely and not proximately to cause the injury, the plaintiff is not barred of redress. Jumper v. Goodwin (S.C. 1962) 239 S.C. 508, 123 S.E.2d 857.

Where plaintiff passed defendant’s car within one hundred feet of an intersection, in violation of this section [formerly Code 1962 46‑388], he was guilty of negligence as a matter of law, and the trial judge erred in refusing to grant defendant’s motion for a directed verdict. Sewell v. Hyder (S.C. 1956) 229 S.C. 480, 93 S.E.2d 637.

6. Questions for jury

Where defendant attempting a right turn from the left lane in violation of former Code 1962 Sections 46‑402 and 46‑405 [see new Code 1976 Sections 56‑5‑2120 and 56‑5‑2150] collided with plaintiff who had pulled up next to defendant in right‑hand lane, question of plaintiff’s contributory negligence in passing on the right in violation of former Code 1962 Sections 46‑385 and 46‑388(2) [see now Code 1976 Sections 56‑5‑1850, 56‑5‑1880(3)] and in failing to observe defendant’s right turn blinker was for jury, precluding directed verdict for plaintiff on issue of defendant’s negligence. Williams v. Kinney (S.C. 1976) 267 S.C. 163, 226 S.E.2d 555.

Where evidence of plaintiff, viewed in the light most favorable to his case, was susceptible of inference that his car was in the act of passing a truck, and would have passed it at a distance of more than one hundred feet from junction of side road had not the truck borne to the left and struck it, the trial judge properly submitted the issue of contributory negligence to the jury. Hucks v. Sellars (S.C. 1960) 236 S.C. 239, 113 S.E.2d 753.

7. Sufficiency of evidence

In action by truck driver for personal injuries sustained when truck in which he was driving and making a left‑hand turn off highway onto an unpaved country road was struck by following vehicle attempting to pass, evidence disclosed negligence of driver of following vehicle, in attempting to pass within 100 feet of intersection contrary to statute, in disregarding turning signal given by truck driver, in passing at a high and excessive rate of speed, and in failing to give any warning or signal of intention to pass. Code S.C.1952, Sections 46‑361 to 46‑363, 46‑384, 46‑388(2), 46‑582. Hicks v. Kosa, 1958, 167 F.Supp. 289.

**SECTION 56‑5‑1890.** No‑passing zones.

(a) The Department of Transportation and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no‑passing zone as set forth in subsection (a) no driver shall at any time drive on the left side of the roadway within such or on the left side of any pavement striping designed to mark such no‑passing zone throughout its length.

(c) This section shall not apply under the conditions described in item 2, subsection (a) of Section 56‑5‑1810 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

HISTORY: 1962 Code Section 46‑389; 1952 Code Section 46‑389; 1949 (46) 466; 1977 Act No. 143 Section 5; 1993 Act No. 181, Section 1409.

Library References

Automobiles 172, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 695, 697, 699 to 702, 704 to 706, 708, 715, 723 to 750, 800 to 803, 882, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 141, No Passing Zones.

NOTES OF DECISIONS

In general 1

Absence of markings 2

1. In general

The terms “highway” and “roadway” are not synonymous, and regulation of traffic is generally with reference to the movement of vehicles on the “roadway” of a “highway.” Bates v. Legette (S.C. 1961) 239 S.C. 25, 121 S.E.2d 289. Automobiles 11; Highways 166

It is not always an act of negligence for a motorist to make a left turn across a yellow barrier line for the purpose of entering a private driveway. Green v. Boney (S.C. 1958) 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370. Automobiles 167(1)

Negligence in making such crossing is a jury question. Green v. Boney (S.C. 1958) 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370.

2. Absence of markings

In a personal injury action arising out of an automobile accident at an intersection where there were no signs or markings indicating that the approaches to the intersection were no‑passing zones for distances of 100 feet from the intersection, the defendant Department of Highways and Public Transportation was not entitled to discretionary immunity for its failure to place either striping or signs on the highway to indicate a no‑passing zone, without some evidence that the Department actually weighed competing considerations and made a conscious choice not to place either striping or signs on the highway at the location in question. The fact that Sections 56‑5‑930 and 56‑5‑1890 allow the Department in certain instances to exercise discretion regarding the placement of traffic control devices, signs, and markings does not constitute evidence that the Department actually made a decision and exercised its discretion when a failure to place signs or markings at a particular location is called into question. Niver v. S.C. Dept. of Highways and Public Transp. (S.C.App. 1990) 302 S.C. 461, 395 S.E.2d 728.

Where there were no signs posted where a wreck took place, or markings of any kind prohibiting a vehicle from being driven to the left of the center line of the roadway, the plaintiff’s actions in driving to the left of the center line to pass the truck of the defendant were governed only by the common‑law rules requiring the exercise of due care. Watson v. Wilkinson Trucking Co. (S.C. 1964) 244 S.C. 217, 136 S.E.2d 286.

**SECTION 56‑5‑1895.** Passing prohibited in highway work zones; penalties.

No vehicle may be driven so as to overtake and pass another vehicle in a highway work zone where road maintenance or construction work is underway and passing would be hazardous to the highway worker. A person who violates the provisions of this section must be punished as provided in Section 56‑5‑6190.

HISTORY: 1994 Act No. 409, Section 2, eff May 25, 1994.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 141, No Passing Zones.

**SECTION 56‑5‑1900.** Driving on roadways laned for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes and provides for two‑way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance or in preparation for making a left turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic‑control devices.

(c) Official traffic‑control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.

(d) Official traffic‑control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of such devices.

HISTORY: 1962 Code Section 46‑390; 1952 Code Section 46‑390; 1949 (46) 466; 1977 Act No. 143 Section 6.

Library References

Automobiles 153, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 641, 643 to 649, 652 to 661, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 135, Driving on Laned Highways; Changing Lanes.

NOTES OF DECISIONS

In general 1

1. In general

Trooper was justified in stopping defendant for a perceived violation of statute requiring drivers to remain within their lanes; defendant’s front tire crossed into the area between the double yellow lines that separated opposing lanes of traffic in a “no passing” zone, and this action, in and of itself, was a violation of the statute, and there were no other cars on the road during that time that would have prompted defendant’s decision to cross the center line. State v. Vinson (S.C.App. 2012) 400 S.C. 347, 734 S.E.2d 182, rehearing denied. Automobiles 349(2.1)

Evidence, in wrongful death action, was sufficient to find violation of former 1962 Code Sections 46‑389, 46‑390 [see now 1976 Code Sections 56‑5‑1890, 56‑5‑1900] where it was shown that most of the debris of auto accident was found in plaintiff’s lane, and that both vehicles after the collision were turned sideways in the plaintiff’s lane, only the rear wheel of the defendant’s auto straddling the yellow line, combined with the statement of the defendant in his deposition that “I didn’t have time enough to cross that yellow line by much,” and such evidence was sufficient for the jury to conclude that the accident was caused by this violation. Lucht v. Youngblood (S.C. 1976) 266 S.C. 127, 221 S.E.2d 854.

**SECTION 56‑5‑1910.** One‑way roadways and rotary traffic islands.

(a) The Department of Transportation and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic‑control devices.

(b) Upon a roadway so designated for one‑way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic‑control devices.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

HISTORY: 1962 Code Section 46‑391; 1952 Code Section 46‑391; 1949 (46) 466; 1977 Act No. 143 Section 7; 1993 Act No. 181, Section 1410.

Library References

Automobiles 153, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 641, 643 to 649, 652 to 661, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 137, One‑Way Roadways; Traffic Islands.

**SECTION 56‑5‑1920.** Driving on divided highways.

Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right‑hand roadway unless directed or permitted to use another roadway by official traffic‑control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically prohibited by public authority. For clarification, a left turn across a painted median is authorized unless prohibited by an official traffic‑control device.

HISTORY: 1962 Code Section 46‑392; 1952 Code Section 46‑392; 1949 (46) 466; 1956 (49) 1594; 1977 Act No. 143 Section 8.

Library References

Automobiles 153, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 641, 643 to 649, 652 to 661, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 136, Driving on Divided Highways.

NOTES OF DECISIONS

In general 1

Questions for jury 2

1. In general

Where automobile was driven across median of highway in violation of statute, such driving was negligence sufficient to make out a prima facie case for the respondent and to cast upon the appellants the burden of proof of producing evidence in explanation. Davis v. Boyd (S.C. 1974) 262 S.C. 679, 207 S.E.2d 101. Automobiles 242(1)

Where driver was traveling north in an avenue reserved for southbound traffic, this constituted negligence in the absence of explanatory or excusatory circumstances. Myers v. Evans (S.C. 1954) 225 S.C. 80, 81 S.E.2d 32. Automobiles 153

2. Questions for jury

Question whether motorist who collided with vehicle that crossed over three lanes of traffic to make u‑turn failed to keep proper lookout was for jury in motorist’s negligence action against driver who made u‑turn. Thomasko v. Poole (S.C. 2002) 349 S.C. 7, 561 S.E.2d 597, rehearing denied. Automobiles 245(80)

**SECTION 56‑5‑1930.** Following too closely.

(A) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(B) The operator of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.

(C) Motor vehicles being operated upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

(D) This section does not apply to the operator of any nonleading commercial motor vehicle subject to Federal Motor Carrier Safety Regulations and traveling in a series of commercial vehicles using cooperative adaptive cruise control or any other automated driving technology.

HISTORY: 1962 Code Section 46‑393; 1952 Code Section 46‑393; 1949 (46) 466; 1977 Act No. 143 Section 9; 2017 Act No. 66 (H.3289), Section 1, eff May 19, 2017.

Effect of Amendment

2017 Act No. 66, Section 1, in (A) and (B), substituted “The operator” for “The driver”; in (C), substituted “being operated” for “being driven”; added (D), relating to the applicability of the section; and made nonsubstantive changes.

Federal Aspects

Federal Motor Carrier Safety Regulations, see 49 C.F.R Section 383.1 et seq.

Library References

Automobiles 168(1), 168(2), 172, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 671 to 673, 675, 678, 680 to 681, 683 to 687, 689 to 692, 695, 697, 699 to 702, 704 to 706, 708, 715, 723 to 750, 800 to 803, 834, 882, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 149, Following Too Closely.

Treatises and Practice Aids

60 Causes of Action 2d 451, Cause of Action Against Motorist for Negligence in Causing Rear‑End Collision.

NOTES OF DECISIONS

In general 1

Damages 7

Duty of driver of following vehicle 6

Duty of driver of leading vehicle 5

Effect of violation of statute 3

Instructions 8

Legal position of leading vehicle 4

Purpose and intent 2

Questions for jury 9

1. In general

The statutory injunction in this statute [formerly Code 1962 Section 46‑393] is simply that the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of the vehicles and traffic conditions at the time. McCowan v. Southerland (S.C. 1969) 253 S.C. 9, 168 S.E.2d 573.

2. Purpose and intent

This section [formerly Code 1962 Section 46‑393] was enacted to guard against the dangers from vehicles following too closely on the highways. McCowan v. Southerland (S.C. 1969) 253 S.C. 9, 168 S.E.2d 573.

3. Effect of violation of statute

The violation of Section 56‑5‑1930, prohibiting motorists from following vehicles more closely than reasonable, is negligence per se and thus evidence of recklessness from which the jury may find the violator guilty of reckless conduct, and consequently, liable for punitive damages. Wise v. Broadway (S.C. 1993) 315 S.C. 273, 433 S.E.2d 857, rehearing denied.

Violation of this section [formerly Code 1962 Section 46‑393] is negligence per se. Jarvis v. Green (S.C. 1972) 257 S.C. 558, 186 S.E.2d 765.

A violation of this section [formerly Code 1962 Section 46‑393] is evidence of recklessness and willfulness requiring the submission of the issue of punitive damages to the jury. Jarvis v. Green (S.C. 1972) 257 S.C. 558, 186 S.E.2d 765.

4. Legal position of leading vehicle

This section [formerly Code 1962 Section 46‑393] does not mean that a leading vehicle has an absolute legal position superior to that of one following. West v Sowell (1961) 237 SC 641, 118 SE2d 692. Oliver v Blakeney (1964) 244 SC 565, 137 SE2d 772. Ray v Simon (1965) 245 SC 346, 140 SE2d 575.

A leading vehicle has no absolute legal position superior to that of one following. Each driver must exercise due care under the circumstances. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

5. Duty of driver of leading vehicle

The driver of the leading vehicle is required to make reasonable observations under the circumstances to determine that the particular movement of his vehicle, such as turning, slowing up, or stopping, can be made with safety to others, and to give adequate warning or signal of his intentions. Still v Blake (1970) 255 SC 95, 177 SE2d 469. Ray v Simon (1965) 245 SC 346, 140 SE2d 575.

6. Duty of driver of following vehicle

The proper distance to be maintained in all cases between a following vehicle and the one ahead cannot be determined by any mathematical formula. Oliver v Blakeney (1964) 244 SC 565, 137 SE2d 772. Ray v Simon (1965) 245 SC 346, 140 SE2d 575. McCowan v Southerland (1969) 253 SC 9, 168 SE2d 573. Still v Blake (1970) 255 SC 95, 177 SE2d 469.

The driver of the following vehicle owes a reciprocal duty to keep his vehicle under reasonable control and not to follow too closely. McCowan v Southerland (1969) 253 SC 9, 168 SE2d 573. Oliver v Blakeney (1964) 244 SC 565, 137 SE2d 772. Ray v Simon (1965) 245 SC 346, 140 SE2d 575.

7. Damages

Jury was not required to find for injured driver and award damages after judge directed verdict for him on the issue of rear‑ending motorist’s negligence; to make award, jury was also required to find damages proximately caused by negligence. Hinds v. Elms (S.C.App. 2004) 358 S.C. 581, 595 S.E.2d 855, rehearing denied. Automobiles 247; Damages 221(7)

Trial judge erred in holding there was no evidence of recklessness to sustain award for punitive damages where plaintiff and witness gave evidence from which jury could have reasonably inferred defendant was following too closely in violation of Section 56‑5‑1930, which is negligence per se, and evidence of recklessness and willfulness. Daniels v. Bernard (S.C. 1978) 270 S.C. 51, 240 S.E.2d 518.

8. Instructions

Although pleadings do not expressly raise issue of “following too closely,” there was evidence from which jury could reasonably infer that defendant violated Section 56‑5‑1930, and trial court was obligated to instruct jury concerning that statute, where, according to plaintiff’s testimony, he was riding his bicycle on far right portion of pavement between solid white line of highway and dirt shoulder when his bicycle was struck from behind by defendant’s car without any prior warning, impact caused him to be thrown from bicycle into air, and he saw defendant’s car run onto dirt shoulder as he fell, and where photographs in evidence show bent rear wheel, and defendant testified that he saw plaintiff riding his bicycle ahead of him on right‑hand side of highway inside white line and that he attempted to pass plaintiff. Mouzon v. Moore & Stewart, Inc. (S.C.App. 1984) 282 S.C. 233, 317 S.E.2d 756.

9. Questions for jury

Just how close to a vehicle in the lead a following vehicle ought, in the exercise of ordinary care, to be driven, and just what precautions a driver of such a vehicle must, in the exercise of ordinary care, take to avoid colliding with a leading vehicle which slows, stops, turns, or swerves in front of him, may not be laid down by any hard and fast or general rule. In each case except when reasonable minds may not differ, what due care so required, and whether it was exercised, is for the jury. West v Sowell (1961) 237 SC 641, 118 SE2d 692. Jarvis v Green (1972) 257 SC 558, 186 SE2d 765.

The question of whether due care was exercised under this section [formerly Code 1962 Section 46‑393] is controlled by the circumstances of the particular case and will not be determined by the court as a matter of law if the testimony is conflicting or the inferences to be drawn therefrom are doubtful. Oliver v Blakeney (1964) 244 SC 565, 137 SE2d 772. McCowan v Southerland (1969) 253 SC 9, 168 SE2d 573. Still v Blake (1970) 255 SC 95, 177 SE2d 469. Jarvis v Green (1972) 257 SC 558, 186 SE2d 765.

Whether driver’s alleged violation of traffic statutes prohibiting driving at unsafe speed and following too closely amounted to recklessness, as basis for award of punitive damages, was question for jury, in motorist’s action against driver. Fairchild v. South Carolina Dept. of Transp. (S.C. 2012) 398 S.C. 90, 727 S.E.2d 407, rehearing denied. Automobiles 245(5); Automobiles 249.2

Issue of whether commercial truck driver who struck minivan driver from behind was reckless by virtue of his alleged statutory violations of following minivan too closely and speeding, such as would support punitive damages award against him, was for jury, in minivan driver’s negligence suit against truck driver arising out of accident. Fairchild v. South Carolina Dept. of Transp. (S.C.App. 2009) 385 S.C. 344, 683 S.E.2d 818, rehearing denied, certiorari granted, affirmed 398 S.C. 90, 727 S.E.2d 407. Automobiles 245(5); Automobiles 249.2

The determination of whether or not there has been a violation of this section [formerly Code 1962 Section 46‑393] is ordinarily a jury question. Jarvis v. Green (S.C. 1972) 257 S.C. 558, 186 S.E.2d 765.

Where first automobile was stopped in street without lights though it was dark, and driver of pickup truck, when blinded by lights of oncoming automobiles, ran into rear of first automobile, and almost immediately driver of second automobile ran into rear of pickup truck, questions whether driver of second automobile was negligent in following pickup truck more closely than was reasonable and prudent and whether there was causal connection between alleged negligence of driver of second automobile and collision were for jury. Code 1962, Sections 46‑393, 46‑481. Brave v. Blakely (S.C. 1967) 250 S.C. 353, 157 S.E.2d 726.

In action for damages resulting from collision between plaintiff’s automobile which was making a left turn without signal as defendant’s overtaking automobile passed, evidence of defendant’s negligence in following plaintiff’s vehicle more closely than was reasonable and prudent under the circumstances was sufficient for jury. Code 1952, Section 46‑393. Howle v. Woods (S.C. 1957) 231 S.C. 75, 97 S.E.2d 205. Automobiles 245(15)

**SECTION 56‑5‑1960.** Following fire apparatus prohibited.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to an emergency closer than five hundred feet or stop such vehicle within five hundred feet of any fire apparatus stopped in answer to an emergency.

HISTORY: 1962 Code Section 46‑496; 1952 Code Section 46‑496; 1949 (46) 466; 1976 Act No. 534; 1978 Act No. 451 Section 5; 1998 Act No. 392, Section 2.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 149, Following Too Closely.

**SECTION 56‑5‑1970.** Restricted access.

No person shall drive a vehicle onto or from any controlled‑access roadway except at such entrances and exits as are established by public authority.

HISTORY: 1962 Code Section 46‑397; 1977 Act No. 143 Section 10.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 138, Controlled Access Roadways.

**SECTION 56‑5‑1980.** Restrictions on use of controlled‑access roadway.

(a) The Commission of the Department of Transportation by resolution or order entered in its minutes, and local authorities by ordinance, may regulate or prohibit the use of any controlled‑access roadway or highway within their respective jurisdictions by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(b) The commission or local authority adopting any such prohibition shall erect and maintain official traffic‑control devices on the controlled‑access highway on which such prohibitions are applicable and when in place no person shall disobey the restrictions stated on such devices.

HISTORY: 1962 Code Section 46‑398; 1977 Act No. 143 Section 11; 1993 Act No. 181, Section 1411.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 138, Controlled Access Roadways.

ARTICLE 15

Starting and Turning; Signaling

**SECTION 56‑5‑2110.** Starting of a vehicle.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

HISTORY: 1962 Code Section 46‑401; 1952 Code Section 46‑401; 1949 (46) 466.

Library References

Automobiles 146.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 22, 46, 582 to 586, 590 to 593, 641 to 642, 647, 650 to 651.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 142, Starting.

NOTES OF DECISIONS

In general 1

1. In general

This section [formerly Code 1962 Section 46‑401] was not intended to regulate the operation of automobiles on private property. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242.

This section [formerly Code 1962 Section 46‑401], when read together with former Code 1962 Section 46‑288 [see now Section 56‑5‑20], applies only to vehicles operated upon the highways. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242.

**SECTION 56‑5‑2120.** Required position and method of turning.

The driver of a vehicle intending to turn shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right‑hand curb or edge of the roadway.

(b) Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left‑hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection so as to leave the intersection or other location in the extreme left‑hand lane lawfully available to traffic moving in the same direction as the vehicle on the roadway being entered.

(c) The Department of Transportation and local authorities in their respective jurisdictions may cause official traffic‑control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles and when such devices are so placed no driver shall turn a vehicle other than as directed and required by such devices.

(d) Two‑way left turn lanes. Where a special lane for making left turns by drivers proceeding in the opposite directions has been indicated by official traffic‑control devices:

1. A left turn shall not be made from any other lane.

2. A vehicle shall not be driven in the lane except when preparing for or making a left turn from or into the roadway or when preparing for or making a U turn when otherwise permitted by law.

HISTORY: 1962 Code Section 46‑402; 1952 Code Section 46‑402; 1949 (46) 466; 1977 Act No. 144 Section 1; 1993 Act No. 181, Section 1412.

CROSS REFERENCES

Left or U‑turns on controlled‑access or other divided highways, see Section 56‑5‑1920.

Library References

Automobiles 169, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 693 to 695, 697 to 706, 865 to 869, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

96 Am. Jur. Proof of Facts 3d 169, Proof Establishing Right Turn Violation.

S.C. Jur. Automobiles and Other Motor Vehicles Section 143, Turning, Generally.

NOTES OF DECISIONS

In general 1

Contributory negligence 2

Instructions 4

Questions for jury 3

1. In general

Negligence per se is actionable if it proximately causes injury. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Davenport v United States (1965, DC SC) 241 F Supp 320.

A violation of this section [formerly Code 1962 Section 46‑402] constitutes negligence per se. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Davenport v United States (1965, DC SC) 241 F Supp 320. Still v Blake (1970) 255 SC 95, 177 SE2d 469.

Under South Carolina statutes prescribing proper position of vehicles and method of making left turns at intersections, truck driver was not prohibited from making left turn from second lane from concrete dividing strip separating eastbound from westbound traffic lanes. Code S.C.1962, Sections 46‑402, 46‑403. Smith v. Humble Oil & Refining Co. (C.A.4 (S.C.) 1968) 399 F.2d 370.

Negligence per se is also evidence of recklessness and willfulness. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

2. Contributory negligence

Where motorist, upon entering highway about 5:00 A.M., made sharp left turn and proceeded along curb on left side of highway and then stopped and put on his parking lights immediately before head‑on collision with oncoming vehicle which attempted to turn to right of motorist and then to left, motorist was guilty of contributory negligence. Code 1952, Sections 46‑381, 46‑402. Utsey v. Williams (S.C. 1956) 229 S.C. 176, 92 S.E.2d 159. Automobiles 211

3. Questions for jury

Question whether motorist who collided with vehicle that crossed over three lanes of traffic to make u‑turn failed to keep proper lookout was for jury in motorist’s negligence action against driver who made u‑turn. Thomasko v. Poole (S.C. 2002) 349 S.C. 7, 561 S.E.2d 597, rehearing denied. Automobiles 245(80)

Jury could have found violation of this section, because testimony of investigating highway patrolman regarding skid marks made by plaintiff’s motorcycle coupled with location of the vehicles after the accident created inference that instead of making a 90 degree left hand turn as required by the statute, defendant “cut the corner”. Muhleck v. Tamanini (S.C. 1978) 271 S.C. 57, 244 S.E.2d 535. Automobiles 242(4.3); Automobiles 246(47)

Where defendant attempting a right turn from the left lane in violation of former Code 1962 Sections 46‑402 and 46‑405 [see now Code 1976 Sections 56‑5‑2120, 56‑5‑2150] collided with plaintiff who had pulled up next to defendant in right‑hand lane, question of plaintiff’s contributory negligence in passing on the right in violation of former Code 1962 Sections 46‑385 and 46‑388(2) [see now Code 1976 Sections 56‑5‑1850, 56‑5‑1880(e)] and in failing to observe defendant’s right turn blinker was for jury, precluding directed verdict for plaintiff on issue of defendant’s negligence. Williams v. Kinney (S.C. 1976) 267 S.C. 163, 226 S.E.2d 555.

When the driver of a vehicle has indicated an intention to turn right off of a highway or street and has positioned his vehicle as required by this section and has given an appropriate signal as required by formerly Code 1962 Section 46‑406 [see now Section 56‑5‑2150], the driver of a motor vehicle to the rear is warranted in concluding that the vehicle in front will continue its indicated course, and if the lead vehicle is suddenly turned to the left under such circumstances so as to be brought into collision with the following vehicle, the question of whether the driver of the following vehicle was guilty of contributory negligence and willfulness is for the determination of the jury. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

Even though the violation of an applicable statute is negligence per se and some evidence of recklessness and willfulness, whether or not such violation contributed as a proximate cause is ordinarily a question for the jury. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469. Negligence 1713

4. Instructions

Trial judge erred in refusing plaintiff’s timely request to charge jury concerning this statute in action seeking to recover damages for personal injuries sustained in collision between a motorcycle and an automobile, since the statute was applicable to facts of case. Muhleck v. Tamanini (S.C. 1978) 271 S.C. 57, 244 S.E.2d 535.

**SECTION 56‑5‑2140.** Limitations on turning around.

(a) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

(b) No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

HISTORY: 1962 Code Section 46‑404; 1952 Code Section 46‑404; 1949 (46) 466; 1953 (48) 313; 1977 Act No. 144 Section 2.

Library References

Automobiles 169, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 693 to 695, 697 to 706, 865 to 869, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 144, Turning Around.

Attorney General’s Opinions

The Clemson City ordinance prohibiting U‑turns is presumptively valid until a state court orders that it is invalid and sets it aside, but the ordinance does appear to be in direct conflict with state law. S.C. Op.Atty.Gen. (June 4, 2003) 2003 WL 21471503.

Making a left turn in the business district in order to park in on‑street angle parking constitutes a U‑turn and is prohibited. S.C. Op.Atty.Gen. (October 25, 1995) 1995 WL 805837.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Question whether motorist who collided with vehicle that crossed over three lanes of traffic to make u‑turn failed to keep proper lookout was for jury in motorist’s negligence action against driver who made u‑turn. Thomasko v. Poole (S.C. 2002) 349 S.C. 7, 561 S.E.2d 597, rehearing denied. Automobiles 245(80)

In an action arising out of a collision between 2 cars, the trial court did not err in granting the defendant’s motion for directed verdict where (1) the plaintiff, who was attempting to make a U‑turn failed to show the relevance of the disputed issue of whether she stopped or simply slowed before trying to make the U‑turn, (2) there was no evidence that the defendant was speeding at the time of the accident, and (3) there was no evidence that the defendant crossed the double yellow line in an effort to pass the plaintiff. Hopson v. Clary (S.C.App. 1996) 321 S.C. 312, 468 S.E.2d 305.

2. Review

Whether State proved the constitutionality of driver’s license checkpoint was preserved for appeal; during the hearing, the State maintained that, even if it had not proved the checkpoint was constitutional, it did not need to because defendant did not go through the checkpoint, and State argued trooper had probable cause to believe defendant had violated the U‑turn statute or had a reasonable suspicion that criminal activity was afoot due to the U‑turn before the checkpoint. State v. Williams (S.C.App. 2016) 417 S.C. 209, 789 S.E.2d 582. Criminal Law 1031(1)

**SECTION 56‑5‑2150.** Turning movements and required signals.

(A) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal as provided for in this section.

(B) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(C) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(D) The signals required on vehicles by subsection (B) of Section 56‑5‑2180, shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or ‘do pass’ signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

(E) A person who violates the provisions of this section must be fined twenty‑five dollars, all or part of which may not be suspended. In addition no court costs, assessments, surcharges, or points may be assessed against the person or his driving record.”

HISTORY: 1962 Code Section 46‑405; 1952 Code Section 46‑405; 1949 (46) 466; 1977 Act No. 144 Section 3; 2017 Act No. 81 (H.4033), Section 5.B, eff May 19, 2017.

Effect of Amendment

2017 Act No. 81, Section 5.B, added (E), providing a penalty for a violation of the section, and made nonsubstantive changes.

Library References

Automobiles 169, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 693 to 695, 697 to 706, 865 to 869, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 145, Turning Movements; Signals.

NOTES OF DECISIONS

In general 1

Actionable negligence 3

Admissibility of evidence 10

Degree of care required generally 5

Duty of driver of following vehicle 8

Duty of driver of leading vehicle 7

Negligence per se 2

Proximate cause 4

Questions for jury 9

Turning into path of on‑coming vehicle 6

1. In general

The phrase “with reasonable safety” does not mean that a left turn into a private driveway can only be made when it can be done free from all possibility of danger, or that the party making such turn must be certain of absolute safety before he turns. Green v Boney (1958) 233 SC 49, 103 SE2d 732. Griffin v Pitt County Transp. Co. (1963) 242 SC 424, 131 SE2d 253. Jowers v Dupriest (1967) 249 SC 506, 154 SE2d 922.

2. Negligence per se

A violation of this section [formerly Code 1962 Section 46‑405] constitutes negligence per se. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Davenport v United States (1965, DC SC) 241 F Supp 320. Seitz v Hammond (1967, DC SC) 265 F Supp 162. Still v Blake (1970) 255 SC 95, 177 SE2d 469.

Defendant’s violation of this section [formerly Code 1962 Section 46‑405] constituted negligence per se or negligence as a matter of law. Simmons v. Fenters, 1964, 233 F.Supp. 550.

The fact that defendant’s truck was brought to a stop on the traveled portion of the highway without prior warning or signal of such intention was a violation of this section and as such was not only negligence per se but was evidence of recklessness and willfulness. Oliver v. Blakeney (S.C. 1964) 244 S.C. 565, 137 S.E.2d 772.

3. Actionable negligence

Negligence in violating section is actionable if it proximately causes injury. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Davenport v United States (1965, DC SC) 241 F Supp 320.

Violation of section is also evidence of recklessness and willfulness. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

4. Proximate cause

Where school bus turned abruptly to the left to enter roadway without giving signal and struck passing motorist, evidence sustained finding that proximate cause of injuries to driver of passing motor vehicle was negligence of the school bus driver, and that the driver of motor vehicle in the act of passing was not guilty of contributory negligence. Nationwide Mut. Ins. Co. v. De Loach (C.A.4 (S.C.) 1959) 262 F.2d 775.

All of circumstances have to be considered in determining proximate cause of a collision. Jumper v. Goodwin (S.C. 1962) 239 S.C. 508, 123 S.E.2d 857.

5. Degree of care required generally

The driver making the left turn must exercise that degree of care that should be exercised by a person of reasonable caution and prudence under the same circumstances. Green v Boney (1958) 233 SC 49, 103 SE2d 732. Griffin v Pitt County Transp. Co. (1963) 242 SC 424, 131 SE2d 253. Jowers v Dupriest (1967) 249 SC 506, 154 SE2d 922.

One intending to make a left turn who perfunctorily gives the requisite statutory signal of his intention to do so may not rely completely upon such signal, but must also keep a proper lookout for other traffic. Seitz v. Hammond (D.C.S.C. 1967) 265 F.Supp. 162. Automobiles 169

The driver of a truck when making a turn into an intersecting street must obey the law and exercise the degree of care generally commensurate with the hazard produced by his failure to do so. Davenport v. U. S., 1965, 241 F.Supp. 320. Automobiles 171(12)

In considering whether he can turn with safety, the driver of a motor vehicle, who undertakes to make a left turn in front of an approaching motorist, has the right to take it for granted, in the absence of notice to the contrary, that the oncoming motorist will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care to avoid collision with the turning vehicle. Green v. Boney (S.C. 1958) 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370.

6. Turning into path of on‑coming vehicle

Defendant was guilty of actionable negligence in the operation of the truck in that he attempted to make a sudden left‑hand turn from a highway into a private driveway in the path of an oncoming car when such turn could not be made with reasonable safety, as required by this section [formerly Code 1962 Section 46‑405], and without giving an appropriate signal. Simmons v. Fenters, 1964, 233 F.Supp. 550.

7. Duty of driver of leading vehicle

Under facts including showing that defendant’s truck proceeding at proper speed collided with automobile of plaintiff’s decedent who was turning at T intersection at time when truck was so close as to constitute an immediate hazard, defendant was not negligent, decedent was contributorily negligent, and defendant had no opportunity to avoid the collision, precluding recovery for decedent’s death under South Carolina law. Code S.C.1962, Sections 10‑1951 et seq., 46‑381, 46‑383, 46‑405, 46‑422. McCombs v. Anderson Truck Line, 1965, 241 F.Supp. 26.

Minivan driver did not breach her duty to signal to motorists traveling behind her when she was slowing down and preparing to stop, and, thus, driver was not comparatively negligence with respect to accident that occurred when commercial truck driver struck minivan from behind; minivan driver “flashed” her brakes to indicate to motorists behind her she might have to stop, she had her foot on the brake as she continued to coast in order to stay ahead of vehicle behind her and not hit trailer obstructing highway, and truck driver saw minivan driver’s brake lights after the cars between his and minivan moved to right lane. Fairchild v. South Carolina Dept. of Transp. (S.C.App. 2009) 385 S.C. 344, 683 S.E.2d 818, rehearing denied, certiorari granted, affirmed 398 S.C. 90, 727 S.E.2d 407. Automobiles 204

The driver of the leading vehicle is required to make reasonable observations under the circumstances to determine that the particular movement of his vehicle, such as turning, slowing up, or stopping, can be made with safety to others and to give adequate warning or signal of his intentions. Oliver v. Blakeney (S.C. 1964) 244 S.C. 565, 137 S.E.2d 772. Automobiles 172(5.1)

8. Duty of driver of following vehicle

The driver of defendant’s farm tractor which was struck from the rear by plaintiff’s tractor‑trailer was negligent in not keeping a proper lookout and in making a left turn when he knew or should have known that plaintiff’s tractor‑trailer was approaching from his rear and that he could not make a left turn with reasonable safety, in violation of common‑law rules of the road and South Carolina statute. Code S.C.1962, Sections 46‑405, 46‑406. Pilot Freight Carriers, Inc. v. Spivey, 1967, 278 F.Supp. 520.

The following driver is under no duty to anticipate the negligent or willful acts on the part of the signalling driver. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

9. Questions for jury

Verdict was improperly directed against the driver of a vehicle which rear‑ended another vehicle since, if he never discerned any brake lights nor any turn signals on the vehicle which was rear‑ended, a reasonable inference was that the driver of that vehicle either gave no stop and turn signals at all or gave stop and turn signals that were inappropriate under the circumstances. Satterfield v. Bright (S.C.App. 1986) 289 S.C. 254, 345 S.E.2d 769. Automobiles 242(4.1)

Where defendant attempting a right turn from the left lane in violation of former Code 1962 Sections 46‑402 and 46‑405 [see now Code 1976 Sections 56‑5‑2120, 56‑5‑2150] collided with plaintiff who had pulled up next to defendant in right‑hand lane, question of plaintiff’s contributory negligence in passing on the right in violation of former Code 1962 Sections 46‑385 and 46‑388(2) [see now Code 1976 Sections 56‑5‑1850, 56‑5‑1880(e)] and in failing to observe defendant’s right turn blinker was for jury, precluding directed verdict for plaintiff on issue of defendant’s negligence. Williams v. Kinney (S.C. 1976) 267 S.C. 163, 226 S.E.2d 555.

Even though the violation of an applicable statute is negligence per se and some evidence of recklessness and willfulness, whether or not such violation contributed as a proximate cause is ordinarily a question for the jury. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469. Negligence 1713

When the driver of a vehicle has indicated an intention to turn right off of a highway or street and has positioned his vehicle as required by former Code 1962 Section 46‑402(1) [see now Section 56‑5‑2120], and has given an appropriate signal as required by this section, the driver of a motor vehicle to the rear is warranted in concluding that the vehicle in front will continue its indicated course, and if the lead vehicle is suddenly turned to the left under such circumstances so as to be brought into collision with the following vehicle, the question of whether the driver of the following vehicle was guilty of contributory negligence and willfulness was for the determination of the jury. Still v. Blake (S.C. 1970) 255 S.C. 95, 177 S.E.2d 469.

Where the testimony was conflicting but was susceptible of the reasonable inference that at the time of the collision the plaintiff was proceeding to pass the truck of the defendant in a lawful manner while on the other hand, there was evidence that the driver of the defendant’s vehicle turned from a direct course and moved left upon the roadway without taking any care or precaution to see that such movement could be made with reasonable safety in violation of this section [former Code 1962 Section 46‑405], that he attempted a left turn from the right‑hand lane, in violation of the posted highway signs, and that he failed to give a signal indicating his intention to make a left turn, in violation of former Code 1962 Section 46‑407 [see now Section 56‑5‑2170], under all of these facts, the issues of negligence, contributory negligence, and proximate cause were properly submitted by the lower court to the jury for determination. Watson v. Wilkinson Trucking Co. (S.C. 1964) 244 S.C. 217, 136 S.E.2d 286.

In action for injuries sustained by plaintiff when her automobile was struck from the rear by a defendant’s automobile when plaintiff was attempting to make a left hand turn into a driveway where evidence warranted the conclusion that accident was proximately caused by defendant’s gross negligence in driving at an excessive speed, trial court properly submitted the plaintiff’s contributory negligence to the jury since such negligence would not have been a defense to the gross negligence of the defendant. Code 1952, Sections 46‑405, 46‑406. Anderson v. Davis (S.C. 1956) 229 S.C. 223, 92 S.E.2d 469. Automobiles 245(81)

10. Admissibility of evidence

Traffic violations committed by drug defendant constituted intervening illegal act breaking trail of taint arising from unlawful warrantless installation of tracking device on defendant’s vehicle, rendering vehicle stop lawful and permitting admission at trial of any contraband lawfully obtained during such stop. State v. Adams (S.C.App. 2012) 397 S.C. 481, 725 S.E.2d 523, rehearing denied, certiorari granted, reversed 409 S.C. 641, 763 S.E.2d 341. Criminal Law 392.39(10)

**SECTION 56‑5‑2170.** Method of giving hand and arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner, and such signals shall indicate as follows:

(1) Left turn, hand and arm extended horizontally;

(2) Right turn, hand and arm extended upward; and

(3) Stop or decrease speed, hand and arm extended downward.

HISTORY: 1962 Code Section 46‑407; 1952 Code Section 46‑407; 1949 (46) 466.

Library References

Automobiles 169, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 693 to 695, 697 to 706, 865 to 869, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 145, Turning Movements; Signals.

NOTES OF DECISIONS

In general 1

1. In general

A violation of this section [formerly Code 1962 Section 46‑407] constitutes negligence per se. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Ray v Simon (1965) 245 SC 346, 140 SE2d 575.

Negligence per se is actionable if it proximately causes injury. West v Sowell (1961) 237 SC 641, 118 SE2d 692, citing Field v Gregory (1956) 230 SC 39, 94 SE2d 15. Ray v Simon (1965) 245 SC 346, 140 SE2d 575.

In action by driver of automobile for damage to his automobile and for injuries sustained in a collision which occurred when automobile was struck by school bus as bus driver attempted to make a left turn to enter a roadway leading to a school just as motorist was attempting to pass, evidence sustained finding that proximate cause of motorist’s injury and automobile damage was negligence of bus driver in turning to the left without giving a signal or warning for a left turn and that motorist was not guilty of contributory negligence. Code S.C.1952, Sections 46‑384, 46‑405, 46‑407, 46‑408, 46‑582; Fed.Rules Civ.Proc. rule 52(a), 28 U.S.C.A. Nationwide Mut. Ins. Co. v. De Loach (C.A.4 (S.C.) 1959) 262 F.2d 775.

All the circumstances have to be considered in determining the proximate cause of a collision. Jumper v. Goodwin (S.C. 1962) 239 S.C. 508, 123 S.E.2d 857.

**SECTION 56‑5‑2180.** Signals given by hand and arm or signal lamps.

(a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps except as otherwise provided in subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty‑four inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle or to any combination of vehicles.

HISTORY: 1962 Code Section 46‑408; 1952 Code Section 46‑408; 1949 (46) 466; 1977 Act No. 144 Section 4.

Library References

Automobiles 169, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 693 to 695, 697 to 706, 865 to 869, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 145, Turning Movements; Signals.

NOTES OF DECISIONS

In general 1

1. In general

In action by driver of automobile for damage to his automobile and for injuries sustained in a collision which occurred when automobile was struck by school bus as bus driver attempted to make a left turn to enter a roadway leading to a school just as motorist was attempting to pass, evidence sustained finding that proximate cause of motorist’s injury and automobile damage was negligence of bus driver in turning to the left without giving a signal or warning for a left turn and that motorist was not guilty of contributory negligence. Code S.C.1952, Sections 46‑384, 46‑405, 46‑407, 46‑408, 46‑582; Fed.Rules Civ.Proc. rule 52(a), 28 U.S.C.A. Nationwide Mut. Ins. Co. v. De Loach (C.A.4 (S.C.) 1959) 262 F.2d 775.

Minivan driver did not breach her duty to signal to motorists traveling behind her when she was slowing down and preparing to stop, and, thus, driver was not comparatively negligence with respect to accident that occurred when commercial truck driver struck minivan from behind; minivan driver “flashed” her brakes to indicate to motorists behind her she might have to stop, she had her foot on the brake as she continued to coast in order to stay ahead of vehicle behind her and not hit trailer obstructing highway, and truck driver saw minivan driver’s brake lights after the cars between his and minivan moved to right lane. Fairchild v. South Carolina Dept. of Transp. (S.C.App. 2009) 385 S.C. 344, 683 S.E.2d 818, rehearing denied, certiorari granted, affirmed 398 S.C. 90, 727 S.E.2d 407. Automobiles 204

Issue of contributory negligence and willfulness of motorist who was involved in collision as she was struck in the rear by following tractor‑trailer while turning left off highway was for jury. Code 1962, Sections 46‑405, 46‑406, 46‑408. Griffin v. Pitt County Transp. Co. (S.C. 1963) 242 S.C. 424, 131 S.E.2d 253. Automobiles 245(81)

Where stop lights, required in the alternative by this section [formerly Code 1962 Section 46‑408], were so dirty on the rear of a bus as to be ineffective, instructions as to failure to give stop signals were not improper. Robinson v. Duke Power Co. (S.C. 1948) 213 S.C. 185, 48 S.E.2d 808.

ARTICLE 17

Right‑of‑Way

**SECTION 56‑5‑2310.** Vehicles approaching or entering intersection.

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right‑of‑way to the vehicle on the right.

(b) The right‑of‑way rule in subsection (a) is modified at through highways and as otherwise provided in this chapter.

HISTORY: 1962 Code Section 46‑421; 1952 Code Section 46‑421; 1949 (46) 466; 1977 Act No. 144 Section 5.

CROSS REFERENCES

Vehicle entering through highway or stop intersection, see Section 56‑5‑2330.

Library References

Automobiles 171(4), 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 843 to 853, 855 to 856, 858 to 864, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 182 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Violation of this section [formerly Code 1962 Section 46‑421] and Code 1962 Section 46‑423 [see Section 56‑5‑2330] constitutes negligence per se. Murphy v. Smith, 1965, 243 F.Supp. 1006.

This section [formerly Code 1962 Section 46‑421] applies at intersections where neither stop signs nor other traffic‑control devices have been erected. Mickle v. Blackmon (S.C. 1969) 252 S.C. 202, 166 S.E.2d 173, 42 A.L.R.3d 525.

It is the duty of a driver on approaching an intersection to exercise due care, notwithstanding his knowledge that traffic approaching such intersection from his left is required to yield the right of way to him. Field v. Gregory (S.C. 1956) 230 S.C. 39, 94 S.E.2d 15.

Violation of this section [formerly Code 1962 Section 46‑421] is negligence per se, and whether or not such breach contributed as a proximate cause to plaintiff’s injury is ordinarily a question for the jury. Field v. Gregory (S.C. 1956) 230 S.C. 39, 94 S.E.2d 15. Automobiles 147; Automobiles 245(51)

Even when a motorist entering an intersection has the right of way, he is still bound to exercise due care for his own safety, and to prevent injury to others. Gillespie v. Ford (S.C. 1952) 222 S.C. 46, 71 S.E.2d 596.

2. Instructions

Even though bicyclist was only six years old when she was injured in intersectional collision with car after bicyclist failed to stop at stop sign, motorist was entitled to jury instruction stating that motorist on preferred highway is entitled to assume that vehicle approaching on secondary highway will stop; there was evidence in record that bicyclist knew to stop at stop sign, yet intentionally failed to do so. Jones ex rel. Castor v. Carter (S.C.App. 1999) 336 S.C. 110, 518 S.E.2d 619. Automobiles 246(58)

Even if jury instruction on assumption that stop signs will be obeyed should not have been given in personal injury action against motorist by six‑year‑old bicyclist who collided with motorist after bicyclist failed to stop at stop sign, any error arising from that instruction was harmless; judge also explained to jury that, when driver is traveling in area where children may be reasonably expected to be playing, driver is under duty “to anticipate the likelihood of the child running into or across the street in obedience to childish impulses and to exercise due care under these circumstances for the safety of the child or children.” Jones ex rel. Castor v. Carter (S.C.App. 1999) 336 S.C. 110, 518 S.E.2d 619. Appeal And Error 1064.1(4)

Where the trial judge instructed the jury on the basis of Section 56‑5‑2310 as to the right of way at intersections, generally, whereas the applicable statute was Section 56‑5‑970 governing the right of way at intersections controlled by a traffic‑control signal, but the judge promptly corrected his error and rendered it harmless, there was no basis for a new trial. When an instruction has been corrected by the court and it appears with reasonable certainty that the jury was not misled, it will be presumed on appeal that the jury accepted the correction as the law of the case and applied it. Coogler v. Thompson (S.C.App. 1985) 286 S.C. 168, 332 S.E.2d 215.

On evidence that road from which defendant driver was making left‑hand turn onto road used by plaintiff driver resulting in collision was a through street and other evidence that it was not such a through street but instead a stop intersection, trial court’s charging jury with respect to vehicles entering either through highway or stop intersection and rights and duties of respective drivers was proper. Code 1962, Sections 46‑421, 46‑423, 46‑473. Terrell v. James (S.C. 1968) 250 S.C. 506, 159 S.E.2d 240.

Trial judge erroneously refused to charge last sentence of this section [formerly Code 1962 Section 46‑421] where stop sign on through highway or street was absent at time of collision. Eberhardt v. Forrester (S.C. 1962) 241 S.C. 399, 128 S.E.2d 687.

Where trial judge charged jury in the language of this section [formerly Code 1962 Section 46‑421] there was no error, since the language of the section is not involved nor couched in words that are not understandable by a layman, and there are no words used in the section that have any unusual legal meaning. Field v. Gregory (S.C. 1956) 230 S.C. 39, 94 S.E.2d 15.

**SECTION 56‑5‑2320.** Vehicle turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right‑of‑way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

HISTORY: 1962 Code Section 46‑422; 1952 Code Section 46‑422; 1949 (46) 466; 1977 Act No. 144 Section 6.

Library References

Automobiles 171(4), 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 843 to 853, 855 to 856, 858 to 864, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 218 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Under South Carolina law, United States was guilty of actionable negligence and recklessness where its agent truck driver failed to heed stop sign on servient highway, and made left turn so as to completely block dominant highway, and neither driver nor signalman on highway gave warning to driver of approaching vehicle which collided with it at intersection. Code S.C.1962, Sections 46‑267, 46‑388, 46‑402, 46‑405, 46‑422, 46‑423. Davenport v. U.S., 1965, 241 F.Supp. 320.

Under facts including showing that defendant’s truck proceeding at proper speed collided with automobile of plaintiff’s decedent who was turning at T intersection at time when truck was so close as to constitute an immediate hazard, defendant was not negligent, decedent was contributorily negligent, and defendant had no opportunity to avoid the collision, precluding recovery for decedent’s death under South Carolina law. Code S.C.1962, Sections 10‑1951 et seq., 46‑381, 46‑383, 46‑405, 46‑422. McCombs v. Anderson Truck Line, 1965, 241 F.Supp. 26.

Illegal left turn into path of oncoming vehicle, in violation of Code Section 56‑5‑2320 which requires drivers of vehicles turning left to yield the right‑of‑way to any vehicle approaching from opposite direction which is within intersection or so close thereto as to constitute immediate hazard, is evidence of reckless, willful and wanton misconduct, and it is error for trial court, presiding over action for personal injuries arising out of motor vehicle collision caused by alleged failure to yield the right‑of‑way, to strike allegations of willfulness and recklessness from plaintiff’s complaint on basis of lack of evidence to support such allegations. Johnson v. Parker (S.C. 1983) 279 S.C. 132, 303 S.E.2d 95.

The violation of this section [Code 1962 Section 46‑422] is negligence per se, and whether or not such breach contributed as a proximate cause to plaintiff’s injury is ordinarily a question for the jury. Hicks v. Coleman (S.C. 1962) 240 S.C. 223, 125 S.E.2d 470. Negligence 259; Negligence 1713

**SECTION 56‑5‑2330.** Stop signs and yield signs.

(a) Preferential right‑of‑way may be indicated by stop signs or yield signs as authorized by the Department of Transportation or local authorities.

(b) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right‑of‑way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(c) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line but, if none, before entering the cross‑walk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting road before entering it. After slowing or stopping, the driver shall yield the right‑of‑way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways. If such driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield right‑of‑way.

HISTORY: 1962 Code Section 46‑423; 1952 Code Section 46‑423; 1949 (46) 466; 1977 Act No. 144 Section 7; 1993 Act No. 181, Section 1413.

CROSS REFERENCES

Definition of “through highway”, see Section 56‑5‑440.

Vehicles approaching or entering intersection, see Section 56‑5‑2310.

Library References

Automobiles 171(4), 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 843 to 853, 855 to 856, 858 to 864, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 147, Stop Signs.

S.C. Jur. Automobiles and Other Motor Vehicles Section 148, Yield Signs.

S.C. Jur. Automobiles and Other Motor Vehicles Section 225, Negligence.

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1. In general

This section is relative only and must be construed reasonably and applied according to the circumstances of each case. Lawter v War Emergency Co‑operative Ass’n (1948) 213 SC 286, 49 SE2d 227. Allen v Hatchell (1963) 242 SC 458, 131 SE2d 516.

The first paragraph of this section [formerly Code 1962 Section 46‑423] is applicable to “through highways” while second paragraph is applicable to “stop intersections”, and the duty of driver on servient highway is substantially the same as to both a “through highway” and a “stop intersection” but duty of driver on dominant highway only set forth in first paragraph while the second paragraph does not expressly impose a similar duty on him. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516.

2. Stop signs

Motorist on preferred highway entitled to assume that vehicle approaching on secondary highway will stop unless he has knowledge of absence of sign or is otherwise put on notice that vehicle on intersecting street is not going to stop. Eberhardt v Forrester (1962) 241 SC 399, 128 SE2d 687. Vaughan v Southern Bakeries Co. (1965, DC SC) 247 F Supp 782.

The erection by the State Highway Department of a stop sign at an intersection has the effect of making the intersection a “stop intersection.” Davenport v. U. S., 1965, 241 F.Supp. 320. Automobiles 171(11)

Stop signs unnecessary at intersection of private drive with through highway as defined by former Code 1962 Section 46‑252 [see now Section 56‑5‑440] where stop signs were in place at intersecting highways. Guthke v. Morris (S.C. 1963) 242 S.C. 56, 129 S.E.2d 732.

Once through street properly designated and appropriate signs erected, preferred status of highway not lost merely because stop sign misplaced, improperly removed, destroyed or obliterated. Eberhardt v. Forrester (S.C. 1962) 241 S.C. 399, 128 S.E.2d 687. Automobiles 171(5)

Motorist on secondary highway required to stop if he has knowledge of nature of preferred highway even though sign is absent, but without such knowledge he is not required to stop in temporary absence of stop sign, but he still may be liable if otherwise negligent. Eberhardt v. Forrester (S.C. 1962) 241 S.C. 399, 128 S.E.2d 687. Automobiles 171(11)

3. Negligence

Where a person fails to look for approaching traffic before entering the intersection, he is guilty of negligence, and if he looks and sees a truck approaching, he is negligent as a matter of law in not yielding the right of way and in undertaking to cross the intersection. Lawter v War Emergency Co‑operative Ass’n (1948) 213 SC 286, 49 SE2d 227. Copeland v Petroleum Transit Co., (1964, DC SC) 233 F Supp 286.

Travelers on both favored and unfavored highways must use ordinary care in keeping proper lookout for vehicles approaching intersection. Warren v Watkins Motor Lines (1963) 242 SC 331, 130 SE2d 896. Carter v Beals (1966) 248 SC 526, 151 SE2d 671.

Plaintiff could reasonably conclude that mandate of stop sign would be obeyed where it was apparent that defendant’s driver was in a position to see the warning devices and that he was in fact slowing down to a negligible speed as he approached the intersection. Vaughan v. Southern Bakeries Co. (D.C.S.C. 1965) 247 F.Supp. 782.

Violation of this section [formerly Code 1962 Section 46‑423] and Code 1962 Section 46‑421 [see Section 56‑5‑2310] constitutes negligence per se. Murphy v. Smith, 1965, 243 F.Supp. 1006.

A motorist approaching a stop intersection on a servient highway has the duty to yield the right of way and is required to exercise due care for approaching traffic on the dominant highway. Davenport v. U. S., 1965, 241 F.Supp. 320. Automobiles 171(5)

One who without excuse drives through a stop sign into a dominant highway is negligent per se. Davenport v. U. S., 1965, 241 F.Supp. 320. Automobiles 171(11)

Where a driver enters the favored highway, knowing his view is obstructed and he cannot see if there is oncoming traffic, such a driver negligent as a matter of law. Miller v. FerrellGas, L.P., Inc. (S.C. 2011) 392 S.C. 295, 709 S.E.2d 616. Automobiles 171(10)

Driver approaching uncontrolled intersection had duty to stop and yield right of way to motor vehicle approaching from favored highway, and to not proceed into intersection until view of favored highway was clear of visual obstruction and it was safe to proceed. Miller v. FerrellGas, L.P., Inc. (S.C. 2011) 392 S.C. 295, 709 S.E.2d 616. Automobiles 171(10); Automobiles 171(11)

Negligence is established as matter of law if only inference is that either driver did not look or did so in such careless fashion as not to see what was in plain view, such that motorist who struck truck broadside after stopping at intersection for stop sign, in absence of any evidence that truckdriver was traveling at excessive rate of speed or that view was obstructed leaves only inference that if automobile driver did look it must have been in such careless fashion as not to see what was in plain view. Crosby v. Sawyer (S.C. 1987) 291 S.C. 474, 354 S.E.2d 387.

Where the jury could reasonably infer from the evidence that the plaintiff’s vehicle did not constitute an “immediate hazard” and the defendant had a right to proceed into the intersection, the plaintiff’s motion for a directed verdict at the conclusion of the evidence was properly denied. Brown v. Howell (S.C.App. 1985) 284 S.C. 605, 327 S.E.2d 659. Automobiles 245(14)

The driver on the unfavored highway has a duty to stop and yield the right of way to any vehicle approaching the intersection on the favored highway so closely as to constitute an immediate hazard under Section 56‑5‑2330. However, if there is no traffic approaching so near as to constitute an immediate hazard, the driver on the unfavored highway has a right to enter the intersection, and it then becomes the duty of those approaching the intersection on the favored highway to yield the right of way to him. Cope v. Eckert (S.C.App. 1985) 284 S.C. 516, 327 S.E.2d 367.

Having lawfully entered the highway, a driver has a right to be there and expect others to honor such right. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671. Automobiles 171(13)

Correlative rights and duties of drivers. In application of statutes regulating traffic, correlative rights and duties of drivers on highway must be kept in mind. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896.

When motorist lawfully enters through highway it becomes duty of those on through highway approaching intersection to yield right of way to him. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896.

Failure to yield right of way is negligence. If motorist looks and sees traffic approaching so closely as to constitute immediate hazard, he is negligent as matter of law in not yielding right of way. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896. Automobiles 171(5)

Motorist on unfavored highway must stop. Where motorist on unfavored highway fails to stop he is guilty of negligence, and such stop must be for such time and in such position as to be able to observe traffic conditions on favored highway and govern his conduct accordingly. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896. Automobiles 171(11)

Where motorist stopped but failed to look for approaching traffic before entering intersection he was guilty of negligence. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896.

Under South Carolina law, motorist on favored highway had duty to yield right of way to truck that entered intersection from unfavored highway, even if truck driver had breached his duty to yield to oncoming traffic. Weaver v. Chambless (C.A.4 (S.C.) 2003) 65 Fed.Appx. 462, 2003 WL 21213706, Unreported. Automobiles 171(5)

4. Damages

One entering an intersection of an express street or highway from a side or cross street or road, in order to become entitled to the right of way, must have entered the intersection in a lawful manner. Otherwise, he cannot ordinarily recover damages, unless his violation is found not to have been a proximate cause of an ensuing accident. Pruitte v MacHen (1949) 215 SC 13, 53 SE2d 866. Copeland v Petroleum Transit Co. (1964, DC SC) 233 F Supp 286.

Tractor‑trailer driver violated the law by failing to stop and yield the right of way to motorist’s vehicle, and because driver violated a statute, it was proper to award punitive damages to motorist and his wife, who were both injured when tractor‑trailer truck struck their automobile. Austin v. Specialty Transp. Services, Inc. (S.C.App. 2004) 358 S.C. 298, 594 S.E.2d 867. Automobiles 249.2

Where a driver failed to stop before entering the intersection of a through highway, in violation of this section [formerly Code 1962 Section 46‑423], and was just before and at the time of entering the intersection, driving at a speed in violation of article 7 of this chapter, these statutory violations, if the proximate cause of the collision would justify punitive as well as actual damages. Smith v. Lynch (S.C. 1958) 232 S.C. 608, 103 S.E.2d 54.

5. Admissibility of evidence

That defendant saw plaintiff’s vehicle for only an “instant” before intersection collision did not render defendant’s estimate of speed of plaintiff’s vehicle without probative value, inasmuch as estimate was not based solely on defendant’s observation of vehicle before collision but also upon nature and extent of impact experienced by her. Livingston v. Oakman (S.C. 1968) 251 S.C. 611, 164 S.E.2d 758.

Introduction, at trial for personal injuries arising from automobile collision, of photographs taken after the collision and at time when stop sign had been replaced at intersection from which defendant driver was making left‑hand turn and offered as fair representation of appearance of intersection with stipulation that stop sign was not in place at time of collision and with instruction to jury to that effect was not prejudicial error. Terrell v. James (S.C. 1968) 250 S.C. 506, 159 S.E.2d 240.

6. Presumptions and burden of proof

Presumption of lawful operation of vehicle on dominant highway. Driver of vehicle on servient highway and duty to yield right of way, but not required to anticipate approach of vehicle on dominant highway operated in unlawful manner. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516. Automobiles 171(5); Automobiles 171(13)

7. Questions for jury

Whether plaintiff westbound motorist was contributorily negligent or reckless in that he was proceeding through intersection in violation of laws regulating traffic at stopped intersection, at excessive and unlawful rate of speed, without keeping proper lookout, at time of collision with southbound motorist was on record, jury question. Livingston v. Oakman (S.C. 1968) 251 S.C. 611, 164 S.E.2d 758.

If there is a conflict in the testimony as to whether a car on the through highway was approaching so closely as to constitute an immediate hazard or if the conclusion to be drawn therefrom is doubtful and uncertain, the court will not decide the question as one of law and it must be submitted to the jury. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671. Automobiles 245(14)

The question whether a particular vehicle constitutes an immediate hazard is ordinarily one for the jury. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671.

Question of motorist’s contributory negligence was for jury in action by motorist against city to recover for injuries sustained by motorist in collision with city’s truck where failure of city’s driver to stop at intersection or his failure to yield right‑of‑way and his sudden driving into path of motorist would reasonably explain motorist’s failure, although looking, to see or anticipate entry of city’s vehicle into intersection until too late to avoid collision. Code 1962, Sections 46‑423, 47‑71. Clawson v. City of Sumter (S.C. 1966) 247 S.C. 499, 148 S.E.2d 350.

If there is conflict in testimony as to whether car on through highway approaching so closely as to constitute immediate hazard or if conclusion to be drawn therefrom is doubtful and uncertain, question must be submitted to jury. Warren v. Watkins Motor Lines (S.C. 1963) 242 S.C. 331, 130 S.E.2d 896. Automobiles 245(14)

8. Instructions

On evidence that road from which defendant driver was making left‑hand turn onto road used by plaintiff driver resulting in collision was a through street and other evidence that it was not such a through street but instead a stop intersection, trial court’s charging jury with respect to vehicles entering either through highway or stop intersection and rights and duties of respective drivers was proper. Code 1962, Sections 46‑421, 46‑423, 46‑473 Terrell v. James (S.C. 1968) 250 S.C. 506, 159 S.E.2d 240.

In intersection accident case where there was evidence that one of intersecting highways was a “through highway”, it was error to fail to charge first paragraph of this section [formerly Code 1962 Section 46‑423]. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516.

9. Sufficiency of evidence

Evidence was sufficient in motorist’s action against city to recover for injuries sustained in motorist’s collision with city’s truck to sustain inference that driver of city’s truck did not stop at intersection as required by law and, if he did, that he failed to then yield right‑of‑way and suddenly drove into path of automobile which was so close to intersection as to constitute an immediate hazard. Code 1962, Section 46‑423. Clawson v. City of Sumter (S.C. 1966) 247 S.C. 499, 148 S.E.2d 350.

**SECTION 56‑5‑2350.** Vehicle entering roadway.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right‑of‑way to all vehicles approaching on the roadway to be entered or crossed.

HISTORY: 1962 Code Section 46‑424; 1952 Code Section 46‑424; 1949 (46) 466; 1977 Act No. 144 Section 8.

Library References

Automobiles 154, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 843 to 853, 855 to 860, 862, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 246 , Introductory Comments.

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1. In general

This section [formerly Code 1962 Section 46‑424] must be given a reasonable construction. Spencer v Kirby (1959) 234 SC 59, 106 SE2d 883, commented on in 12 SCLQ 370 (1960). Williams v Davis (1964) 243 SC 524, 134 SE2d 760.

The requirement to yield prescribed by this section [formerly Code 1962 Section 46‑424] alerts one to possible danger and requires the use of one’s senses to apprehend that possible danger. Spencer v Kirby (1959) 234 SC 59, 106 SE2d 883, commented on in 12 SCLQ 370 (1960). Williams v Davis (1964) 243 SC 524, 134 SE2d 760. Ward v Zelinski (1973) 260 SC 229, 195 SE2d 385.

Circumstances requiring stopping. Where situation which confronted motorist was such that she could obey mandate of this section [formerly Code 1962 Section 46‑424] to yield the right of way only by stopping, failure to do so violated this section. Guthke v. Morris (S.C. 1963) 242 S.C. 56, 129 S.E.2d 732.

Under certain circumstances, it may be incumbent upon one to stop before entering the highway, while under other circumstances a slowing down would be sufficient to “yield” to oncoming traffic; and conceivably, under different circumstances, one might “yield” without even slacking his speed; but under any and all circumstances, he would be required to exercise such care as a reasonable and prudent person would exercise under such circumstances. The circumstances of each case must govern, and this ordinarily becomes a question for the jury. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

2. Effect of violation of statute

The violation of this section [formerly Code 1962 Section 46‑424] is negligence per se. Green v Sparks (1958) 232 SC 414, 102 SE2d 435. Spencer v Kirby (1959) 234 SC 59, 106 SE2d 883, commented on in 12 SCLQ (1960). Ward v Zelinski (1973) 260 SC 229, 195 SE2d 385.

Violations of a statute in South Carolina constitute negligence and are evidence of recklessness. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

The violation of this section [formerly Code 1962 Section 46‑424] constitutes negligence per se. Emory v. Piedmont Chemical Co., 1965, 242 F.Supp. 344.

Even had the jury concluded that plaintiff’s intestate was guilty of negligence in entering highway from private driveway without stopping in violation of this section [formerly Code 1962 Section 46‑424], such negligence would not bar, as a matter of law, plaintiff’s intestate’s right to recover if defendant was guilty of gross negligence and recklessness, or negligent to the point of willfulness and wantonness in driving at a grossly excessive rate of speed under the known conditions. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

3. Proximate cause

Causative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness and willfulness. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

The violation of an applicable statute is negligence per se, but in order to prevail, defendant must go further and show that the violation contributed as a proximate cause to the injury. Williams v. Davis (S.C. 1964) 243 S.C. 524, 134 S.E.2d 760.

4. Duty of motorist entering highway

Defendant was guilty of actionable negligence by his failure to exercise due care in the operation of his vehicle, as required by the common‑law rules of the road and the statutory laws of the State of South Carolina, by failing to yield the right of way to the plaintiff and the automobile in which she was riding, in violation of this section [formerly Code 1962 Section 46‑424] when he drove his large and long tractor and tanker into and across a very heavily traveled highway from a private driveway. Emory v. Piedmont Chemical Co., 1965, 242 F.Supp. 344.

Reasonable caution and prudence would dictate that a driver, before entering a main artery of travel from a private drive, should look for vehicles, which might reasonably be expected thereon, and wait until he could safely enter into the highway. A motorist entering a highway must look for traffic thereon in such a manner that the purpose of looking is accomplished, and he is under a duty to see what is in plain sight, unless some reasonable excuse for not seeing is shown. Williams v. Davis (S.C. 1964) 243 S.C. 524, 134 S.E.2d 760.

Although the driver of an automobile is not necessarily guilty of contributory negligence by driving onto a highway from a private road or drive in front of an oncoming vehicle approaching from some distance away, if the driver, not having the right of way, observes another vehicle near to or approaching close to the private road or drive so that it is apparent that he cannot enter the highway in safety, he is required by statute to yield the right of way; and the fact that he stopped before entering the highway from the other vehicle’s right does not give him the right to proceed in the face of oncoming traffic. Williams v. Davis (S.C. 1964) 243 S.C. 524, 134 S.E.2d 760. Automobiles 204

Entering driver held guilty of negligence as matter of law. Where plaintiff’s intestate drove onto a highway from a private road or drive, it was his duty before attempting to enter the highway to yield to oncoming traffic. Failing to look, he was guilty of contributory negligence or having looked and entered directly in front of defendant’s vehicle, he was negligent. It is obvious, therefore, that he either did not look or he did so in such careless fashion as not to see what was in plain view. In either case, he was guilty of contributory negligence as a matter of law. Williams v. Davis (S.C. 1964) 243 S.C. 524, 134 S.E.2d 760.

It is the duty of a motorist when backing out a private driveway into a highway to be vigilant and watchful and to anticipate and expect the presence of other vehicles upon the highway, and to ascertain whether the highway is clear, so that he may enter without interfering with the use thereof by approaching vehicles. Green v. Sparks (S.C. 1958) 232 S.C. 414, 102 S.E.2d 435. Automobiles 169

5. Unreasonable wait

One about to enter upon a highway from a driveway or private road would not be required to wait unreasonably upon an oncoming vehicle traveling slowly and approaching from a great distance. Spencer v Kirby (1959) 234 SC 59, 106 SE2d 883, commented on in 12 SCLQ 370 (1960). Williams v Davis (1964) 243 SC 524, 134 SE2d 760. Ward v Zelinski (1973) 260 SC 229, 195 SE2d 385.

6. Questions for jury

It is for the jury to say whether alleged violator of this section [formerly Code 1962 Section 46‑424] had exercised such care as an ordinary, reasonable person would have exercised under the circumstances, or entered upon the highway heedlessly and without regard for the safety of others. Grier v. Cornelius (S.C. 1966) 247 S.C. 521, 148 S.E.2d 338.

It is for the jury to say whether plaintiff’s intestate exercised such care as an ordinary, reasonable person would have exercised under the circumstances, or entered upon the highway heedlessly and without regard for the safety of others in violation of this section [former Code 1962 Section 46‑424], which would constitute negligence per se, and if so, whether or not such negligent act contributed as a proximate cause to the injury, thereby barring recovery as a matter of law, or whether the injury was brought about through the gross negligent, reckless, and wanton acts of the defendant. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

7. Sufficiency of evidence

Although defendant motorist was slightly exceeding speed limit at time of fatal collision, decedent’s negligence in attempting to cross highway from private drive was sole cause of accident where all testimony supported defendant’s assertions that the plaintiff pulled directly in front of the defendant; that the defendant had changed lanes 500 or 600 feet prior to the accident, which required him to look in his rear view mirror; and that he checked for merging traffic and did not observe the deceased in the road until he was 30 feet away. Blanding v. Hammell (S.C. 1976) 267 S.C. 352, 228 S.E.2d 271.

Evidence in action arising out of collision between southbound truck and automobile which had pulled out of truck stop and was driving in northerly direction warranted inference that automobile driver failed to yield the right of way while driving under the influence of intoxicating beverages, that his condition was known to his passenger before she volunteered to ride with him and that conduct of automobile driver and passenger was a proximate cause of their deaths and constituted contributory negligence barring recovery by automobile driver’s estate from truck owner or by passenger’s estate from her driver or truck owner. Code 1962, Section 46‑424. Dixon v. Weir Fuel Co. (S.C. 1968) 251 S.C. 74, 160 S.E.2d 194.

**SECTION 56‑5‑2360.** Operation of vehicles on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of Section 56‑5‑4970 and visual signals meeting the requirements of Section 56‑5‑4700, or of a police vehicle properly and lawfully making use of an audible signal or visual signal, the driver of every other vehicle traveling along a two‑lane roadway shall yield the right‑of‑way and shall immediately drive to a position parallel to, and as close as possible, to the right hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. A driver of a vehicle traveling along a multilane roadway shall yield the right‑of‑way and shall remain in, or move to a location that allows the emergency vehicle or police vehicle to pass safely, except as otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

HISTORY: 1962 Code Section 46‑425; 1952 Code Section 46‑425; 1949 (46) 466; 1977 Act No. 144 Section 9; 2002 Act No. 348, Section 5.

CROSS REFERENCES

Use of signal equipment imposing duty to yield right‑of‑way and stop as prescribed in this section, see Section 56‑5‑4700.

Library References

Automobiles 175(3), 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

Treatises and Practice Aids

29 Causes of Action 655, Cause of Action for Injury Suffered in Collision Involving Ambulance.

1 Causes of Action 2d 819, Cause of Action for Injury Caused by Negligent Operation of Police Vehicle.

Attorney General’s Opinions

An officer who is engaged in giving chase to one who is driving his motor vehicle in a fast and reckless manner is viewed as operating an authorized emergency vehicle within the meaning of this section [Code 1962 Section 46‑425]. 1965‑66 Op.Atty.Gen. No. 2026, p. 98 (April 20, 1966) 1966 WL 8497.

Section is a penal statute. This section [Code 1962 Section 46‑425], requiring a driver to yield right‑of‑way upon approach of an authorized emergency vehicle, is a penal statute. 1965‑66 Op.Atty.Gen. No. 2026, p. 98 (April 20, 1966) 1966 WL 8497.

**SECTION 56‑5‑2370.** Highway construction and maintenance.

(a) The driver of a vehicle shall yield the right‑of‑way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway traffic construction or maintenance area indicated by official traffic‑control devices.

(b) The driver of a vehicle shall yield the right‑of‑way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of Section 56‑5‑4650.

HISTORY: 1962 Code Section 46‑426; 1977 Act No. 144 Section 10.

Library References

Automobiles 154, 163, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 843 to 853, 855 to 860, 862, 889, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

ARTICLE 19

Stopping, Standing and Parking

**SECTION 56‑5‑2510.** Stopping, standing, or parking outside of business or residential district.

(A) No person shall stop, park, or leave standing a vehicle, whether attended or unattended, upon the roadway outside a business or residential district when it is practicable to stop, park, or leave the vehicle off the roadway. An unobstructed width of the highway opposite a standing vehicle must be left for the free passage of other vehicles and a clear view of the stopped vehicle must be available from a distance of two hundred feet in each direction upon the highway.

(B) This section and Sections 56‑5‑2530 and 56‑5‑2560 do not apply to the driver of a vehicle which is disabled making it impossible to avoid stopping and temporarily leaving the vehicle in the roadway.

(C) Notwithstanding another provision of law, a vehicle used solely for the purpose of collecting municipal solid waste as defined in Section 44‑96‑40(46) or recovered materials as defined in Section 44‑96‑40(34) may stop or stand on the road, street, or highway for the purpose of collecting solid waste or recovered materials. The vehicle shall maintain flashing hazard lights when engaged in stopping or standing to collect solid waste or recovered materials.

HISTORY: 1962 Code Section 46‑481; 1952 Code Section 46‑481; 1949 (46) 466; 1979 Act No. 105 Section 1; 1996 Act No. 298, Section 1.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 157, General Restrictions.

S.C. Jur. Automobiles and Other Motor Vehicles Section 159, Removal of Noncomplying Vehicles.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 366 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 443 , Introductory Comments.

Treatises and Practice Aids

21 Causes of Action 693, Cause of Action for Injury or Death Suffered in Collision With Parked or Disabled Vehicle.

Attorney General’s Opinions

Section 56‑5‑2510 dealing with improper parking outside of business or residential district is inapplicable to parking lot in shopping center. 1990 Op.Atty.Gen. No. 90‑26 (February 28, 1990) 1990 WL 482414.

NOTES OF DECISIONS

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1. In general

The danger from leaving a vehicle standing on the traveled portion of a highway is well known. Jeffers v. Hardeman (S.C. 1957) 231 S.C. 578, 99 S.E.2d 402.

The test of the requirement that a vehicle be brought to a stop off the paved or main traveled part of a highway is practicability, not possibility. Phillips v. Davis (S.C. 1954) 225 S.C. 395, 82 S.E.2d 515.

2. Construction of statutory terms

Where highway was widened by the addition of 4 1⁄2 feet of asphalt paving on either side of a concrete strip, there was no doubt that the “paved or main traveled part of the highway” included the entire width of the paved portion of the road. Collins v. Risner (C.A.4 (S.C.) 1959) 269 F.2d 654, certiorari denied 80 S.Ct. 293, 361 U.S. 924, 4 L.Ed.2d 240.

For construction of “practicable” in former statute similar to this section [formerly Code 1962 Section 46‑481], in relation to stopping or parking vehicles off the main part of the highway, see Locklear v. Southeastern Stages (S.C. 1940) 193 S.C. 309, 8 S.E.2d 321.

3. Effect of violation of statute

If there is sufficient space for stopping off the traveled portion of the highway or if there is a driveway or side road near, and the stopping motorist is able to move his vehicle into that area, he may be charged with negligence in failing to do so. Suber v Smith (1964) 243 SC 458, 134 SE2d 404. Gray v Barnes (1964) 244 SC 454, 137 SE2d 594.

Violation of this section [formerly Code 1962 Section 46‑481] is conceded to be negligence per se. Jeffers v Hardeman (1957) 231 SC 578, 99 SE2d 402. Gray v Barnes (1964) 244 SC 454, 137 SE2d 594.

Defendants guilty of negligence in violating this section [formerly Code 1962 Section 46‑481]. Griffing v. Atlas Van Lines, Inc., 1957, 153 F.Supp. 10.

Where decedent was killed when struck by one of two approaching trucks as decedent was standing by his vehicle, parked on highway, and attempting to stop the trucks, parking of decedent’s truck in violation of parking statute was not proximate cause of damages, nor did it contribute to damages as a proximate cause. Code 1952, S.Car. Section 46‑481. Greene v. Miller, 1953, 114 F.Supp. 150.

Since violation of a statute can be considered by the jury as some evidence of recklessness, where the complaint charged the defendants with violation of Sections 56‑5‑2510, 56‑5‑4450, 56‑5‑4640 and 56‑5‑5090, and the answer alleged that plaintiff violated Section 56‑5‑1520, and there was evidence in the record to support such allegations, the trial court did not err in instructing the jury concerning recklessness and contributory recklessness. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

Violation of this section [formerly Code 1962 Section 46‑481] would not only constitute actionable negligence but, under some circumstances would be some evidence of reckless conduct on the part of the employees of the defendant. Dudley Trucking Co. v. Hollingsworth (S.C. 1964) 243 S.C. 439, 134 S.E.2d 399.

A violator of a safety statute may be held to foresight of injury within the prospect of the enactment, even though it be contributed to by the concurrent delict of another. The latter should be foreseen if it is of the nature of injuries sought to have been guarded against by the regulation. Ayers v. Atlantic Greyhound Corp. (S.C. 1946) 208 S.C. 267, 37 S.E.2d 737. Negligence 409; Negligence 423

4. Duty of driver making left turn

A driver can lawfully stop in his traffic lane of a highway long enough to wait for oncoming traffic to clear the opposite or left traffic lane before making a left turn. Mann v. Bowman Transp., Inc. (C.A.4 (S.C.) 1962) 300 F.2d 505.

It cannot reasonably be contended that a driver preparing immediately to make a left turn off a public highway can practicably move completely off the highway to the right to wait for all traffic to clear the roadway. Mann v. Bowman Transp., Inc. (C.A.4 (S.C.) 1962) 300 F.2d 505.

5. Duty of driver who stops vehicle

When it is necessary for a motorist to stop his vehicle along the road he has the duty, where it is reasonably possible, to drive until he finds a space to stop off the traveled portion of the road. Suber v Smith (1964) 243 SC 458, 134 SE2d 404. Gray v Barnes (1964) 244 SC 454, 137 SE2d 594.

The fact that defendant’s truck was brought to a stop on the traveled portion of the highway without prior warning or signal of such intention was a violation of this section [formerly Code 1962 Section 46‑481], and as such was not only negligence per se, but was evidence of recklessness and wilfulness. Oliver v. Blakeney (S.C. 1964) 244 S.C. 565, 137 S.E.2d 772.

Where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them, it being sufficient that his negligence in stopping in his traffic lane is an efficient cause, without which the injury would not have resulted, to as great an extent, and that such other cause is not attributable to the person injured. Gray v. Barnes (S.C. 1964) 244 S.C. 454, 137 S.E.2d 594. Negligence 423

Since the plaintiff’s automobile was not disabled, it was the duty of the driver thereof to keep moving until he came to a place to park outside of the traveled portion of the highway. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

It is no excuse for the violation of this section [formerly Code 1962 Section 46‑481] that the driver was in the vehicle and at the wheel at the time it was left standing on the highway. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

6. Duty of driver of following vehicle

Defendant was not required to foresee or anticipate that plaintiff’s automobile would be stopped and left standing on the traveled portion of the highway ahead of him, partially blocking it, but this did not relieve him of the duty of exercising reasonable care, of keeping a proper lookout, and of proceeding as a reasonable and prudent person would under the circumstances, to avoid collision with the rear end of a motor vehicle stopped or standing on the highway ahead. He had a right to assume that other vehicles would not obstruct the highway unlawfully. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404. Automobiles 173(6)

7. Vehicles to which statute is inapplicable

This section [formerly Code 1962 Section 46‑481] does not apply to the driver of any vehicle which is disabled while on the paved or main‑traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

This section [formerly Code 1962 Section 46‑481] exempts the driver of a disabled vehicle from the prohibition against stopping on the main traveled portion of the highway only when the vehicle is disabled in such manner and to such extent that it is impossible to avoid making such stop. Dudley Trucking Co. v. Hollingsworth (S.C. 1964) 243 S.C. 439, 134 S.E.2d 399. Automobiles 173(7)

Motor vehicles and other equipment while actually engaged in work upon surface of a highway exempted from requirements of this section [formerly Code 1962 Section 46‑481], pursuant to former Code 1962 Section 46‑290 [see now Section 56‑5‑760]. Taylor v. South Carolina State Highway Dept. (S.C. 1963) 242 S.C. 171, 130 S.E.2d 418. Automobiles 173(4)

8. Contributory negligence

Where plaintiff parked his truck on the side of the road in violation of this section [formerly Code 1962 Section 46‑481], there was no error in the conclusion of the district judge that the plaintiff was guilty of contributory negligence, as a matter of law, as to bar his recovery. Collins v. Risner (C.A.4 (S.C.) 1959) 269 F.2d 654, certiorari denied 80 S.Ct. 293, 361 U.S. 924, 4 L.Ed.2d 240.

Since there was evidence which would have warranted a finding that the driver of the defendant’s truck was guilty of recklessness, in stopping on the traveled portion of the highway without giving any signals, and as there was no special finding by the jury on that issue, in order to sustain the contention of the defendant that plaintiff was guilty of contributory negligence, it must appear that the plaintiff was guilty of contributory recklessness as a matter of law, since simple contributory negligence would not constitute a defense to reckless or wilful conduct. Oliver v. Blakeney (S.C. 1964) 244 S.C. 565, 137 S.E.2d 772. Automobiles 226(1)

The violation of this section [formerly Code 1962 Section 46‑481] is negligence per se, and whether or not such breach contributed as a proximate cause of plaintiff’s injury is ordinarily a question for the jury; but, if the only reasonable inference to be drawn from the testimony is that the negligence of the complainant is a direct and proximate cause of his injury and damage or that the negligence of the complainant contributed as a direct and proximate cause, then it would be the duty of the trial judge to order a nonsuit or direct a verdict against such plaintiff. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

Plaintiff’s proximity to vehicle and failure to reduce speed barred recovery, even though defendant’s truck stopped in violation of this section [formerly Code 1962 Section 46‑481]. Thompson v. Brewer (S.C. 1954) 225 S.C. 460, 82 S.E.2d 685.

9. Presumptions and burden of proof

The burden of proving necessity or excuse for stopping on the main traveled portion of the highway or the practicability of moving off such portion of the highway, within the meaning of this section [formerly Code 1962 Section 46‑481], is upon him who makes such stop. Ayers v Atlantic Greyhound Corp. (1946) 208 SC 267, 37 SE2d 737. Howey v Jordan’s Inc. (1953) 223 SC 71, 74 SE2d 216. Griffing v Atlas Van Lines, Inc. (1957, DC SC) 153 F Supp 10. Suber v Smith (1964) 243 SC 458, 134 SE2d 404.

The burden of proving the necessity for stopping a vehicle on the main traveled portion of a highway is on the person who makes such a stop. Aakjer v. Spagnoli (S.C.App. 1987) 291 S.C. 165, 352 S.E.2d 503. Automobiles 242(1)

The burden of proving the necessity for stopping a vehicle on the main‑traveled portion of the highway, within the meaning of this section [formerly Code 1962 Section 46‑481], is on the person who makes such stop. Gray v. Barnes (S.C. 1964) 244 S.C. 454, 137 S.E.2d 594. Automobiles 242(1)

The only reasonable inference from the testimony was that the plaintiff failed to show the necessity for stopping and parking of his automobile partially on the paved portion of the highway when it was practicable to park such motor vehicle off of such paved highway. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

10. Questions for jury

In an action for damages arising out of an accident in which the plaintiff’s car struck the defendant’s car which had stalled on the side of a road, the trial court erred in dismissing the defendant’s counterclaim by directing a verdict in favor of the plaintiff where there was conflicting evidence which presented a question of fact for the jury as to whether the defendant had removed his disabled vehicle as far as possible from the highway. Dorsey v. Brockington (S.C. 1982) 277 S.C. 438, 289 S.E.2d 161.

Question whether driver of pickup truck, who ran into rear of first automobile, which was stopped in street without lights though it was dark, when he was blinded by lights of oncoming automobiles, and whose pickup truck was almost immediately struck in rear by second automobile, was contributorily negligent in driving pickup truck at such rate of speed that it could not be stopped within range of his vision was for jury. Code 1962, Section 46‑481. Brave v. Blakely (S.C. 1967) 250 S.C. 353, 157 S.E.2d 726.

Where first automobile was stopped in street without lights though it was dark, and driver of pickup truck, when blinded by lights of oncoming automobiles, ran into rear of first automobile, and almost immediately driver of second automobile ran into rear of pickup truck, questions whether driver of second automobile was negligent in following pickup truck more closely than was reasonable and prudent and whether there was causal connection between alleged negligence of driver of second automobile and collision were for jury. Code 1962, Sections 46‑393, 46‑481. Brave v. Blakely (S.C. 1967) 250 S.C. 353, 157 S.E.2d 726.

Whether or not a violation of this section [formerly Code 1962 Section 46‑481] contributed as a proximate cause to plaintiff’s injury is ordinarily a question for the jury. Gray v. Barnes (S.C. 1964) 244 S.C. 454, 137 S.E.2d 594. Negligence 259; Negligence 1713

In action for injuries sustained by 13 year old girl when an automobile, in which she was riding with her father driving it, was struck from rear by automobile driven by defendant, evidence was insufficient to take to jury question of plaintiff’s contributory negligence in failing to remonstrate or protest against father’s failure to keep lookout ahead before starting automobile after stopping at street intersection, thus necessitating sudden stop when traffic stopped in front of him. Bolt v. Gibson (S.C. 1954) 225 S.C. 538, 83 S.E.2d 191. Automobiles 245(88)

Ordinarily it is a question for the jury whether it was reasonably possible or practicable, within the meaning of statutory provisions or rules of law, for one temporarily stopping a car (or truck) along the improved or main traveled portion of the highway for necessary purpose, to have removed it therefrom as required by the statute. Howey v. Jordan’s, Inc. (S.C. 1953) 223 S.C. 71, 74 S.E.2d 216. Automobiles 245(17)

11. Punitive damages

Violation of this section [formerly Code 1962 Section 46‑481] held sufficient to carry issue of punitive damages to jury, since it was a violation reasonably calculated to create a dangerous hazard upon the highway. Jeffers v. Hardeman (S.C. 1957) 231 S.C. 578, 99 S.E.2d 402.

12. Instructions

Section properly charged. Dudley Trucking Co. v. Hollingsworth (S.C. 1964) 243 S.C. 439, 134 S.E.2d 399.

**SECTION 56‑5‑2520.** Officers authorized to remove vehicles.

(a) Whenever any police officer finds a vehicle in violation of any of the provisions of Section 56‑5‑2510 he may move the vehicle or require the driver or other person in charge of the vehicle to move it to a position off the roadway.

(b) Any police officer may remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway, bridge, causeway or in any tunnel in such position or under such circumstances as to obstruct the normal movement of traffic.

(c) Any police officer may remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(1) A report has been made that the vehicle has been stolen or taken without the consent of its owner.

(2) The person in charge of the vehicle is unable to provide for its custody or removal.

(3) The person driving or in control of the vehicle is arrested for an alleged offense for which the officer is required by law to take such person before a magistrate or other judicial official without unnecessary delay.

HISTORY: 1962 Code Section 46‑482; 1952 Code Section 46‑482; 1949 (46) 466; 1979 Act No. 105 Section 2.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 159, Removal of Noncomplying Vehicles.

**SECTION 56‑5‑2525.** Notice to authorities of towing and storing of motor vehicle without person’s knowledge; exceptions; return of vehicle.

(A) For purposes of this section, “ vehicle” means a motor vehicle, trailer, mobile home, watercraft, or any other item that is subject to towing and storage, and applies to any vehicle in custody at the time of the enactment of this section. “Vehicle” includes:

(1) items that are towed and left in the possession of a towing, storage, garage, or repair facility;

(2) contents contained in the vehicle; and

(3) personal property affixed to the vehicle.

(B) A towing company which tows and stores a person’s vehicle without the person’s knowledge must immediately notify the police department of the municipality where the vehicle was parked, or the sheriff of the county, if the vehicle was parked outside the limits of a municipality, of the location from which the vehicle was towed, the name of the company which towed the vehicle and the place where the vehicle is stored.

(C) A towing company failing to give this notice within one hour of the time the vehicle was towed is not entitled to any compensation for the towing and storing operations. The provisions of this section must be posted in a conspicuous place in all public areas on the premises of the towing company. The law enforcement agency that receives this notice must draft a towing report and furnish the towing company with the report’s document number within a reasonable time. Notification to the law enforcement agency is not required when the towing is performed at the direction of a law enforcement officer.

(D) A towing company that tows away a person’s vehicle without his knowledge and stores it is not required to return the vehicle to the person after the company’s normal business hours.

HISTORY: 1981 Act No. 73, Section 1; 2004 Act No. 269, Section 2.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

**SECTION 56‑5‑2530.** Stopping, standing, or parking prohibited in specified places; exceptions.

(A) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic‑control device, no person shall:

(1) Stop, stand or park a vehicle:

(a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

(b) On a sidewalk.

(c) Within an intersection.

(d) On a crosswalk.

(e) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings.

(f) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.

(g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.

(h) On any railroad tracks.

(i) On any controlled‑access highway.

(j) In the area between roadways of a divided highway, including crossovers.

(k) At any place where official traffic‑control devices prohibit stopping.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge passengers:

(a) In front of a public or private driveway.

(b) Within fifteen feet of a fire hydrant.

(c) Within twenty feet of a crosswalk at an intersection.

(d) Within thirty feet upon the approach to any flashing signal, stop sign, yield sign or traffic‑control signal located at the side of a roadway.

(e) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite to any fire station within seventy‑five feet of the entrance when properly signposted.

(f) At any place where official traffic‑control devices prohibit standing.

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(a) Within fifty feet of the nearest rail of a railroad crossing.

(b) At any place where official traffic‑control devices prohibit parking.

(B) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

(C) This section does not prohibit a federal postal service carrier from stopping, standing, or parking along a rural roadway for frequent short intervals during delivery of mail, parcels, or packages. As used in this section, “rural” means an area outside the incorporated areas of the county.

HISTORY: 1962 Code Section 46‑483; 1952 Code Section 46‑483; 1949 (46) 466; 1979 Act No. 105 Section 3; 1994 Act No. 511, Section 1.

CROSS REFERENCES

General duties and powers of Department of Highways and Public Transportation, see Sections 57‑3‑600 et seq.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 157, General Restrictions.

S.C. Jur. Automobiles and Other Motor Vehicles Section 158, Specific Place Restrictions.

NOTES OF DECISIONS

In general 1

1. In general

Provisions of Pollution Control Act, former Code 1962 Section 63‑195.8(24) [see now Code 1976 Section 48‑1‑50(24)], which enable testers employed by the Pollution Control Authority to sample and test waters, do not justify the employee’s parking his testing van on a bridge near the sample site, in violation of former Code 1962 Section 46‑483 [see now Code 1976 Section 56‑5‑2530]. Helfrich v. Brasington Sand & Gravel Co. (S.C. 1977) 268 S.C. 236, 233 S.E.2d 291.

In a personal injury action brought by an employee of the Pollution Control Authority, who parked his testing van on a bridge in violation of former Code 1962 Section 46‑482 [see now Code 1976 Section 56‑5‑2530], alighted, and was struck by a passing truck, plaintiff was guilty of contributory negligence justifying a verdict for defendant. Helfrich v. Brasington Sand & Gravel Co. (S.C. 1977) 268 S.C. 236, 233 S.E.2d 291.

There is no conflict between the Pollution Control Act and the Uniform Act Regulating Traffic such as to imply that the Pollution Control Act repealed the “no parking” provisions of the Uniform Act Regulating Traffic. Helfrich v. Brasington Sand & Gravel Co. (S.C. 1977) 268 S.C. 236, 233 S.E.2d 291.

**SECTION 56‑5‑2540.** Stopping, standing, or parking may be prohibited on state highways.

The Department of Transportation with respect to state highways may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where, in its judgment, such stopping, standing or parking is deemed by the Department of Transportation to be hazardous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

HISTORY: 1962 Code Section 46‑486; 1952 Code Section 46‑486; 1949 (46) 466; 1993 Act No. 181, Section 1414.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 157, General Restrictions.

S.C. Jur. Automobiles and Other Motor Vehicles Section 160, Requirements When Parking.

Attorney General’s Opinions

Property owners around the Union County Fair Grounds can not place objects, such as cement blocks, flagging, or signs on the state highway right of way. S.C. Op.Atty.Gen. (October 12, 2015) 2015 WL 6406147.

NOTES OF DECISIONS

In general 1

1. In general

Although there was evidence that defendant violated Section 56‑5‑2540, the injury of plaintiff, who was struck by another automobile while standing on the highway next to defendant’s vehicle, was not the injury intended to be prevented by that section, and, thus, the trial court properly granted defendant’s motion for an involuntary nonsuit. Gibson v. Gross (S.C.App. 1983) 280 S.C. 194, 311 S.E.2d 736. Automobiles 173(2)

**SECTION 56‑5‑2550.** Left curb and angle parking may be permitted.

The Department of Transportation with respect to state highways and local authorities with respect to highways under their jurisdiction may permit parking of vehicles with the left‑hand wheels adjacent to and within eighteen inches of the left‑hand curb on one‑way roadways and may permit angle parking on any roadway of sufficient width to permit angle parking without interfering with the free movement of traffic. But local authorities shall not permit such left‑hand parking on one‑way roadways nor angle parking on state highways except upon written approval of the Department of Transportation.

HISTORY: 1962 Code Section 46‑485; 1952 Code Section 46‑485; 1949 (46) 466; 1993 Act No. 181, Section 1415.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 160, Requirements When Parking.

**SECTION 56‑5‑2560.** Parking at right‑hand curb not more than 18 inches from curb.

Except as otherwise provided in Sections 56‑5‑2540 and 56‑5‑2550, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right‑hand wheels of such vehicle parallel to and within eighteen inches of the right‑hand curb.

HISTORY: 1962 Code Section 46‑484; 1952 Code Section 46‑484; 1949 (46) 466.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 157, General Restrictions.

S.C. Jur. Automobiles and Other Motor Vehicles Section 160, Requirements When Parking.

NOTES OF DECISIONS

In general 1

1. In general

As to object and scope of similar former statute in the 1942 Code, see Hall v. Burg (S.C. 1945) 206 S.C. 173, 33 S.E.2d 401.

**SECTION 56‑5‑2570.** Parking of unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

HISTORY: 1962 Code Section 46‑491; 1952 Code Section 46‑491; 1949 (46) 466.

Library References

Automobiles 12, 333.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1749, 1753 to 1754.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 160, Requirements When Parking.

NOTES OF DECISIONS

In general 1

Instructions 3

Questions for jury 2

1. In general

This section [formerly Code 1962 Section 46‑491] does not apply where an automobile is parked on private property with the keys in the ignition. Stone v. Bethea (S.C. 1968) 251 S.C. 157, 161 S.E.2d 171.

Violation of section as proximate cause of injuries following theft of vehicle. Stone v. Bethea (S.C. 1968) 251 S.C. 157, 161 S.E.2d 171.

This section [formerly Code 1962 Section 46‑491] was intended to apply only to vehicles on highways as defined by this chapter. A specific limitation to this effect in the language of the section would be superfluous in the light of former Code 1962 Section 46‑288 [see now Section 56‑5‑20], which limits the application of all appropriate provisions of chapter 7 to the operation of vehicles upon highways except where otherwise specified in a particular section. Roberts v. Campbell (S.C. 1967) 250 S.C. 349, 157 S.E.2d 867.

In action for injuries incurred when plaintiff’s automobile collided on farm‑to‑market unlighted road with defendants’ runaway automobile which had been parked at head of driveway adjacent to home, wherein defendant who had parked automobile had testified that she had properly adjusted the gears and the brakes at top of incline, the condition of runaway automobile immediately after collision when it was found that gearshift was in “neutral”, that brakes which were in good condition were not applied, and that left front window was open was strong circumstantial evidence that such defendant was mistaken in her testimony and that her negligent act was the proximate cause of the injuries. Shepherd v. U. S. Fidelity & Guaranty Co. (S.C. 1958) 233 S.C. 536, 106 S.E.2d 381. Automobiles 244(14); Automobiles 244(36.1)

2. Questions for jury

In action for injuries incurred when plaintiff’s automobile collided on farm‑to‑market unlighted road with defendants’ runaway automobile which had been parked at 9:00 P.M. at head of driveway adjacent to home and which about an hour later ran down to street, evidence that automatic gearshift was in “neutral”, that brakes which were in good condition were not applied and that left front window was down, was sufficient for jury on issue of defendants’ negligence notwithstanding testimony of defendant who parked the automobile that she had properly adjusted the gears and the brakes when she parked the automobile at the top of the incline. Shepherd v. U. S. Fidelity & Guaranty Co. (S.C. 1958) 233 S.C. 536, 106 S.E.2d 381. Automobiles 245(17)

3. Instructions

In action for injuries sustained when plaintiff’s automobile collided at night on street with defendants’ runaway automobile which had been parked on driveway adjacent to defendants’ home, instruction that under statutory law it is duty of motorist to have automobile equipped with good brakes and when automobile is parked in a place where it may be of danger to another person brakes should be sufficient to hold it when applied, and that brakes should be applied when so parked, was not erroneous on ground that statute allegedly only applied to vehicles parked on street, since instruction was proper regardless of where automobile may be parked, and irrespective of statute, duty exists and violation of it is negligence as a matter of law. Shepherd v. U. S. Fidelity & Guaranty Co. (S.C. 1958) 233 S.C. 536, 106 S.E.2d 381. Automobiles 246(13)

**SECTION 56‑5‑2580.** Certain jurors exempt from municipal parking meters and time regulations; exceptions.

Jurors subpoenaed and in attendance at federal court or subpoenaed and in attendance at circuit or county court in this State in a municipality which has parking meters or parking regulations from the standpoint of continuous time of parking are allowed to use parking spaces without depositing coins in the meters and are not subject to these parking regulations; however, if parking is provided otherwise for jurors, this exemption does not apply.

In order to avail himself of the privilege conferred by this section, the juror shall place in or about his vehicle, so that it can be easily seen and read, the subpoena requiring his attendance or some statement in writing signed by the officer issuing it, or some agent of his thereunto authorized, to the effect that the juror has been subpoenaed and is attendant upon such court.

The privilege granted shall be effective only during the particular week in which the court is being held, unless for some reason the attendance of the juror under special circumstances is continued into the succeeding week, and only during the days on which the court is in session and at which the attendance of the juror is required. In determining the duration of the privilege conferred by this section, a part of a day shall be construed as a whole day.

HISTORY: 1962 Code Section 46‑487; 1956 (49) 1812; 1992 Act No. 341, Section 1.

CROSS REFERENCES

Free parking for handicapped persons, see Section 56‑3‑1960.

Service as jurors and compensation therefor, see Sections 14‑7‑1310 et seq.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑2585.** Disabled veterans and Purple Heart recipients exempt from parking meter fees.

Disabled veterans and recipients of the Purple Heart are exempt from the payment of municipal parking meter fees when their vehicles bear a disabled veteran’s or Purple Heart license plate issued by the Department of Motor Vehicles.

HISTORY: 1976 Act No. 564; 1993 Act No. 181, Section 1416; 1996 Act No. 459, Section 184; 2000 Act No. 242, Section 1.

CROSS REFERENCES

Issuance of special license tag to disabled veterans, see Section 56‑3‑1120.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑2590.** Unlawful for certain cities to place meters or time limit on streets abutting county property.

It shall be unlawful for any municipality of this State, having a population of between six thousand three hundred and fifty and six thousand eight hundred inhabitants according to the last official United States census, to require any person to pay a fee of any kind for parking an automobile or other vehicle on the abutting side of any street abutting and adjacent to property owned by the county in which such municipality is situate or located and used in connection with the county courthouse or county office building or on the abutting side of any street abutting or adjacent to any sidewalk which is adjacent to or abutting on such property owned by such county by the use of any device known as a parking meter or otherwise or to place a time limit on parking in such areas except such as may be authorized by the governing body of the county.

HISTORY: 1962 Code Section 46‑488; 1955 (49) 598.

CROSS REFERENCES

Buildings or parking facilities projecting over sidewalks in municipalities, see Sections 5‑27‑510, 5‑27‑520.

Free parking for handicapped persons, see Section 56‑3‑1960.

Off‑street parking facilities in municipalities, see Section 5‑29‑10 et seq.

Provisions pertaining to streets and sidewalks affecting certain cities and towns, see Sections 5‑27‑110 et seq.

Library References

Automobiles 5(3).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 57 to 68.

**SECTION 56‑5‑2600.** Parking violations; grace period.

A local governing authority that has issued a citation to a person who violates a provision that regulates the parking of vehicles shall allow the person thirty days to pay the original fine assessed before the local governing authority may increase the fine by any amount.

HISTORY: 2008 Act No. 283, Section 4, eff June 11, 2008.

Library References

Automobiles 12, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1529, 1545, 1572, 1656, 1707, 1714, 1743.

ARTICLE 21

Required Stops

**SECTION 56‑5‑2710.** Obedience to signal indicating approach of train.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section the driver of the vehicle shall stop within fifty feet, but not less than fifteen feet, from the nearest rail of the railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.

(2) A crossing gate is lowered or when a flagman gives or continues to give a signal of the approach or passage of a railroad train.

(3) A railroad train approaching within approximately one thousand, five hundred feet of the highway crossing emits a signal audible from such distance and the train, by reason of its speed or nearness to the crossing, is an immediate hazard.

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

HISTORY: 1962 Code Section 46‑471; 1952 Code Section 46‑471; 1949 (46) 466; 1976 Act No. 579; 1979 Act No. 105 Section 4.

CROSS REFERENCES

General duties and powers of Department of Highways and Public Transportation, see Sections 57‑3‑600 et seq.

Library References

Automobiles 335.

Railroads 327.

Westlaw Topic Nos. 48A, 320.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

C.J.S. Railroads Sections 1016 to 1036, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 127, Meaning of Signals.

S.C. Jur. Automobiles and Other Motor Vehicles Section 163, Railroad Grade Crossings.

Attorney General’s Opinions

Whether a motorist and a train are within “hazardous proximity” is based on a prudent man standard and is fact specific. S.C. Op.Atty.Gen. (June 11, 1996) 1996 WL 452702.

**SECTION 56‑5‑2715.** Stop required at designated railroad grade crossings.

The Department of Transportation, and local authorities with the approval of the Department of Transportation, may designate particularly dangerous highway grade crossings of railroads and erect stop signs thereat. When such signs are erected, the driver of any vehicle shall stop within fifty feet, but not less than fifteen feet, from the nearest rail of the railroad and shall proceed only upon exercising due care.

HISTORY: 1979 Act No. 105 Section 5; 1993 Act No. 181, Section 1417.

Library References

Automobiles 335.

Railroads 327.

Westlaw Topic Nos. 48A, 320.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

C.J.S. Railroads Sections 1016 to 1036, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 163, Railroad Grade Crossings.

S.C. Jur. Automobiles and Other Motor Vehicles Section 225, Negligence.

NOTES OF DECISIONS

Instructions 1

1. Instructions

Trial court should not have charged jury on statutes concerning a driver’s duties at stop signs on intersecting highways, in negligence action against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; statutes were irrelevant, as they did not govern a driver’s duty to stop at a railroad crossing, and statutes conflicted with statute specifically addressing driver’s duty to stop at crossing that Department had deemed dangerous. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(4); Railroads 351(16)

Trial court’s error in charging statutes concerning a driver’s duties at stop signs on intersecting highways prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; jury could have been confused as to which statutory provisions governed duty of motorist, who was minor’s mother, to stop at railroad crossing, might have applied incorrect statutes to conclude that motorist was negligent for violating statute addressing driver’s duty to stop at railroad crossing that Department had deemed dangerous, and, in turn, may have concluded that her negligence superseded any admitted or proven negligence of railroad or Department. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1066(8)

Trial court’s omission from instruction regarding motorist’s duty to stop at railroad crossing statute’s reference to Department of Transportation’s designation of “particularly dangerous highway grade crossings of railroads” was not abuse of discretion, in wrongful death and survival action against railroad, where it appeared that trial court was merely searching for statute that outlined motorist’s duty to stop at railway crossings, and reference to “particularly dangerous railway crossing” may have unnecessarily misled jury into believing crossing at issue had been affirmatively designated “particularly dangerous crossing,” which was irrelevant to issue of railroad’s negligence. Carson v. CSX Transp., Inc. (S.C. 2012) 400 S.C. 221, 734 S.E.2d 148. Trial 241; Trial 242

**SECTION 56‑5‑2720.** Certain vehicles shall stop at all railroad grade crossings; gears shall not be changed while crossing grade.

(A) Except as provided in subsection (B), the driver of a school bus or a motor vehicle with a capacity of sixteen or more persons, a vehicle permitted by the Department of Health and Environmental Control to carry hazardous waste and a vehicle described in regulations issued pursuant to subsection (C), before crossing at grade any tracks of a railroad, shall stop the vehicle within fifty feet, but not less than fifteen feet, from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train and shall not proceed until he can do so safely. After stopping and upon proceeding when it is safe to do so, the driver of the vehicle shall cross only in the gear of the vehicle that there is no necessity for manually changing gears while traversing the crossing and the driver shall not manually shift gears while crossing the tracks.

(B) Except for school buses, the provisions of this section do not apply at:

(1) a railroad grade crossing where traffic is controlled by a police officer or human flagman;

(2) a railroad grade crossing where traffic is regulated by a traffic‑control signal;

(3) a railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train when the gate or flashing signal does not indicate the approach of a train;

(4) a railroad grade crossing where an official traffic‑control device gives notice that the stopping requirement imposed by this section does not apply.

HISTORY: 1962 Code Section 46‑472; 1952 Code Section 46‑472; 1949 (46) 466; 1979 Act No. 105 Section 6; 1981 Act No. 183; 1992 Act No. 399, Section 2.

CROSS REFERENCES

Department of Public Safety, Division of Motor Vehicles regulations, vehicles required to stop at railroad crossings, see S.C. Code of Regulations R. 38‑240.

Penalties for violation of section, see Section 56‑5‑3210.

Library References

Automobiles 335.

Railroads 327.

Westlaw Topic Nos. 48A, 320.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

C.J.S. Railroads Sections 1016 to 1036, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 163, Railroad Grade Crossings.

**SECTION 56‑5‑2725.** Moving heavy equipment at railroad grade crossings.

(a) No person shall operate or move any crawler‑type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one‑half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of such intended crossing shall be given to a station agent of the railroad and a reasonable time shall be given to the railroad to provide proper protection at the crossing.

(c) Before making any such crossing, the person operating or moving the vehicle or equipment shall first stop not less than fifteen feet nor more than fifty feet from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

HISTORY: 1979 Act No. 105 Section 7.

Library References

Automobiles 335.

Railroads 327.

Westlaw Topic Nos. 48A, 320.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

C.J.S. Railroads Sections 1016 to 1036, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 163, Railroad Grade Crossings.

**SECTION 56‑5‑2730.** Through highways; stop signs at entrances and at intersections.

The Department of Transportation with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection. Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

HISTORY: 1962 Code Section 46‑473; 1952 Code Section 46‑473; 1949 (46) 466; 1993 Act No. 181, Section 1418.

Library References

Automobiles 5(5).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 53 to 54, 56.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Construing this section [formerly Code 1962 Section 46‑473] with former Code 1962 Section 46‑252 [see now Section 56‑5‑440], erection of one or more signs at single intersection only has effect of making intersection a “stop intersection” as opposed to making dominant highway at that intersection a “through highway”. Allen v. Hatchell (S.C. 1963) 242 S.C. 458, 131 S.E.2d 516. Automobiles 171(5)

2. Instructions

On evidence that road from which defendant driver was making left‑hand turn onto road used by plaintiff driver resulting in collision was a through street and other evidence that it was not such a through street but instead a stop intersection, trial court’s charging jury with respect to vehicles entering either through highway or stop intersection and rights and duties of respective drivers was proper. Code 1962, Sections 46‑421, 46‑423, 46‑473. Terrell v. James (S.C. 1968) 250 S.C. 506, 159 S.E.2d 240.

**SECTION 56‑5‑2735.** Obstructing intersection or grade crossing; passing near grade crossing; traffic lines when stopped at railroad crossing; vehicles in tow.

(A) Notwithstanding the indication of a traffic signal to proceed, no driver shall enter an intersection or a marked crosswalk or drive onto a railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains.

(B) No vehicle shall be driven on the left side of the roadway while attempting to pass another vehicle within one hundred feet of a railroad grade crossing.

(C) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for two or more lanes of traffic on the driver’s side of the center line of the highway.

(D) A vehicle may not be driven or towed through or over a railroad grade crossing until its driver has determined that the vehicle has sufficient under carriage clearance to negotiate the railroad grade crossing.

HISTORY: 1992 Act No. 399, Section 1; 2005 Act No. 42, Section 10, eff May 3, 2005.

CROSS REFERENCES

Violation of this section a misdemeanor and penalties therefor, see Section 56‑5‑2775.

Library References

Automobiles 171, 335.

Railroads 327.

Westlaw Topic Nos. 48A, 320.

C.J.S. Motor Vehicles Sections 703, 819 to 829, 835 to 869, 1748, 1750, 1752, 1755 to 1756.

C.J.S. Railroads Sections 1016 to 1036, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 141, No Passing Zones.

Treatises and Practice Aids

60 Causes of Action 2d 1, Cause of Action for Accident at Railroad Tracks or Crossing.

**SECTION 56‑5‑2740.** Place where drivers shall stop for stop signs.

Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line but, if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection except when directed to proceed by a police officer or traffic‑control signal.

HISTORY: 1962 Code Section 43‑474; 1952 Code Section 46‑474; 1949 (46) 466.

Library References

Automobiles 171, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 703, 819 to 829, 835 to 869, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 162, Stop Signs.

S.C. Jur. Automobiles and Other Motor Vehicles Section 225, Negligence.

NOTES OF DECISIONS

In general 1

Instructions 2

Review 3

1. In general

In prosecution for failing to stop at a stop sign before entering an intersection, evidence was insufficient to support conviction. Code 1952, Section 46‑474. City of Spartanburg v. Winters (S.C. 1958) 233 S.C. 526, 105 S.E.2d 703. Automobiles 355(1)

2. Instructions

Trial court should not have charged jury on statutes concerning a driver’s duties at stop signs on intersecting highways, in negligence action against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; statutes were irrelevant, as they did not govern a driver’s duty to stop at a railroad crossing, and statutes conflicted with statute specifically addressing driver’s duty to stop at crossing that Department had deemed dangerous. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(4); Railroads 351(16)

Trial court’s error in charging statutes concerning a driver’s duties at stop signs on intersecting highways prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; jury could have been confused as to which statutory provisions governed duty of motorist, who was minor’s mother, to stop at railroad crossing, might have applied incorrect statutes to conclude that motorist was negligent for violating statute addressing driver’s duty to stop at railroad crossing that Department had deemed dangerous, and, in turn, may have concluded that her negligence superseded any admitted or proven negligence of railroad or Department. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1066(8)

3. Review

Finding of a judge of county court on appeal from a conviction in municipal court for failing to stop at a stop sign before entering intersection, that defendant was not guilty, was an acquittal on such charge and an appeal from such judgment by city did not lie. Code 1952, Section 46‑474. City of Spartanburg v. Winters (S.C. 1958) 233 S.C. 526, 105 S.E.2d 703. Criminal Law 1024(5)

**SECTION 56‑5‑2745.** Emerging from alley, driveway, or building.

The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway or, in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic.

HISTORY: 1979 Act No. 105 Section 8.

Library References

Automobiles 171, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 703, 819 to 829, 835 to 869, 1748, 1750, 1752, 1755 to 1756.

**SECTION 56‑5‑2760.** Stops at drawbridges.

The driver of a vehicle approaching the draw or swing span of a bridge opening for water navigation shall stop as indicated by gates, barriers, semaphores, lights or bell and shall not proceed beyond the stop limit or gates, barriers or semaphores until the indication or signal to proceed is exhibited.

HISTORY: 1962 Code Section 46‑476; 1952 Code Section 46‑476; 1949 (46) 466.

Library References

Automobiles 171, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 703, 819 to 829, 835 to 869, 1748, 1750, 1752, 1755 to 1756.

**SECTION 56‑5‑2770.** Signals and markings on school buses; meeting, overtaking and passing school bus; loading passengers along multi‑lane highways.

(A) The driver of a vehicle meeting or overtaking from either direction a school bus stopped on a highway or private road must stop before reaching the bus where there are in operation on the bus flashing red lights specified in State Department of Education Regulations and Specifications Pertaining to School Buses, and the driver must not proceed until the bus resumes motion or the flashing red lights are no longer actuated.

(B) The driver of a vehicle need not stop upon meeting a stopped school bus when traveling in the opposite direction on a multi‑lane highway or multi‑lane private road.

(C) The driver of a vehicle must not overtake a school bus which has amber visual signals actuated.

(D)(1) A school bus must be equipped with red and amber visual signals meeting the requirements of State Department of Education Regulations and Specifications Pertaining to School Buses, which must be actuated by the driver whenever the bus is stopped or preparing to stop on the highway for the purpose of receiving or discharging school children. A driver must not actuate the special visual signals when the bus is in designated school bus loading or off‑loading areas if the bus is off the roadway entirely.

(2) A school bus may be equipped with a digital video recording device mounted on the school bus with a clear view of vehicles passing the bus on either side and showing the date and time the recording was made and an electronic symbol showing the activation of amber lights, flashing red lights, stop arms, and brakes. Digital video recording devices mounted on school buses must be procured in compliance with Chapter 11, Title 35 or a procurement code adopted by the political subdivision procuring the digital video recording device in compliance with Section 11‑35‑50.

(E) A school bus must bear upon its front and rear plainly visible signs containing the words “SCHOOL BUS” in black letters not less than eight inches in height.

(F) A school bus route that requires passengers to be loaded or off‑loaded along a multi‑lane highway or multi‑lane private road must be designed to ensure that a student is not required to cross a multi‑lane highway or multi‑lane private road.

(G) For the purposes of this section a multi‑lane highway or multi‑lane private road is a highway or private road that consists of four or more traffic lanes, having at least two traffic lanes traveling in each direction.

HISTORY: 1962 Code Section 46‑477; 1952 Code Section 46‑477; 1949 (46) 466; 1950 (46) 2379; 1978 Act No. 422 Section 2; 2003 Act No. 62, Section 1; 2014 Act No. 274 (H.5014), Section 2, eff June 9, 2014.

CROSS REFERENCES

School bus passing another school bus, see Section 59‑67‑210.

Uniform traffic ticket for speeding or disregarding traffic control device, incident to and contemporaneous with traffic stop, delivery, use of photographic evidence, exception for toll collection violation, see Section 56‑7‑35.

Use of signal equipment imposing duty to yield right‑of‑way and stop as prescribed in this section, see Section 56‑5‑4700.

Use of uniform traffic ticket for offense committed in officer’s presence, domestic violence arrests and incident report, exception, see Section 56‑7‑15.

Violation of Section 56‑5‑2770 as a misdemeanor and penalties therefor, see Section 56‑5‑2775.

Violation of Section 56‑5‑2770, digital images admissible in evidence, see Section 56‑5‑2773.

Library References

Automobiles 115, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 164, Approaching Stopped School Bus.

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

Attorney General’s Opinions

All traffic must stop when meeting or passing stopped school bus on 4‑lane or multi‑lane highway with center designated by solid yellow lines approximately 15 feet apart. 1990 Op.Atty.Gen. No. 90‑55 (September 17, 1990) 1990 WL 482442.

A vehicle is not necessarily required to stop when meeting or overtaking church buses operating for other than school purposes which are stationary and loading or unloading passengers; however, upon observing such a stopped bus, all approaching motorists must exercise reasonable care to avoid injuring any boarding or disembarking passengers. 1976‑77 Op.Atty.Gen. No. 77‑270, p. 207 (August 26, 1977) 1977 WL 24610.

The term “separate roadways,” as used in this section [Code 1962 Section 46‑477], means roadways which are separated by some physical barrier from other portions of the highway. 1971‑72 Op.Atty.Gen. No. 3300, p. 115 (April 17, 1972) 1972 WL 20441.

NOTES OF DECISIONS

In general 1

Overtaking a bus 2

1. In general

All motor vehicles, without regard to the direction in which they are traveling, must remain stopped until the children are taken on or discharged, and until such school bus has moved on. Hunter v. Boyd (S.C. 1943) 203 S.C. 518, 28 S.E.2d 412.

All motor vehicles must stop and remain stopped before passing any school bus at rest on the highway as provided by this section [formerly Code 1962 Section 46‑477]. Fisher v. J. H. Sheridan Co. (S.C. 1936) 182 S.C. 316, 189 S.E. 356, 108 A.L.R. 981.

2. Overtaking a bus

Motorist did not overtake stopped school bus that was flashing its red lights when she turned left from behind stopped bus, and thus the left‑turning motorist could not be found negligent as a matter of law in causing automobile accident with defendant driver based on a violation of statute directing a driver of a vehicle meeting or overtaking a stopped school bus to stop before reaching the bus; motorist did not overtake bus as she did not catch up to bus and pass by bus. Singleton v. Cuthbert (S.C.App. 2016) 417 S.C. 555, 790 S.E.2d 213. Automobiles 209; Automobiles 245(68); Automobiles 245(81)

**SECTION 56‑5‑2773.** Violation of Section 56‑5‑2770; digital images admissible in evidence.

(A) A uniform traffic citation alleging the violation of Section 56‑5‑2770 may be issued based in whole or in part upon images obtained from a digital video recording device mounted on a school bus. A copy of the citation must be given directly to the alleged offender by the law enforcement officer issuing the citation.

(B) Digital images obtained from a digital video recording device mounted on a school bus pursuant to Section 56‑5‑2770(D) may be used as evidence at any hearing related to a violation of Section 56‑5‑2770 to corroborate testimony by the school bus driver or any other person who witnessed the offense.

HISTORY: 2014 Act No. 274 (H.5014), Section 3, eff June 9, 2014.

Library References

Automobiles 351.1.

Criminal Law 438(8).

Westlaw Topic Nos. 48A, 110.

C.J.S. Criminal Procedure and Rights of the Accused Sections 1469 to 1474.

C.J.S. Motor Vehicles Sections 1506, 1537, 1558 to 1563, 1602 to 1605, 1649, 1677, 1690 to 1691, 1700, 1712, 1722, 1730, 1736, 1745 to 1747, 1750 to 1751, 1754.

**SECTION 56‑5‑2775.** Violation of Section 56‑5‑2735 as misdemeanor; penalty.

The driver of a vehicle violating the provisions of Section 56‑5‑2735 is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars or more than two hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1988 Act No. 532, Section 25; 1992 Act No. 399, Section 4; 1995 Act No. 138, Section 7.

Library References

Automobiles 335, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1656, 1707, 1714, 1743, 1748, 1750, 1752, 1755 to 1756.

**SECTION 56‑5‑2780.** Penalties for unlawfully passing a stopped school bus.

(A) A driver of a vehicle violating Section 56‑5‑2770 (A) or (C) is guilty of a misdemeanor and, upon conviction, entry of a plea of guilty or nolo contendere, or forfeiture of bail for a first offense must be fined not less than five hundred dollars or imprisoned not more than thirty days. In lieu of imprisonment, the court may require that the individual complete an appropriate term of community service of not fewer than ten days upon terms and conditions the court considers proper. Notwithstanding any other provision of law, a first offense for a violation of Section 56‑5‑2770 (A) or (C) may be tried in magistrate’s court. Upon conviction, entry of a plea of guilty or nolo contendere, or forfeiture of bail for a second or subsequent violation of Section 56‑5‑2770 (A) or (C), a person is guilty of a misdemeanor and must be fined not less than two thousand dollars or more than five thousand dollars or imprisoned for not fewer than thirty days and not more than sixty days.

(B) If a driver of a vehicle violates Section 56‑5‑2770 (A) or (C), and the violation proximately causes great bodily injury or death to a pedestrian, the person is guilty of a felony and, upon conviction, entry of a plea of guilty or nolo contendere, or forfeiture of bond, the person must be:

(1) fined not less than five thousand dollars or more than ten thousand dollars and imprisoned for not less than sixty days or more than one year when great bodily injury results;

(2) fined not less than ten thousand dollars or more than twenty‑five thousand dollars and imprisoned for not less than one year or more than five years when death results.

As used in this subsection, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

The Department of Motor Vehicles shall suspend the driver’s license of a person who is convicted or who receives a sentence upon a plea of guilty or nolo contendere pursuant to this subsection for the term of imprisonment plus one year.

HISTORY: 1995 Act No. 138, Section 6; 2002 Act No. 296, Section 4; 2002 Act No. 348, Section 12; 2003 Act No. 62, Section 2.

Library References

Automobiles 324, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1529, 1545, 1572, 1656, 1659, 1707, 1714, 1728 to 1731, 1743, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Automobiles and Other Motor Vehicles Section 164, Approaching Stopped School Bus.

S.C. Jur. Burglary Section 17, of Another.

S.C. Jur. Homicide Section 14, Definition of Murder.

Attorney General’s Opinions

A magistrate has jurisdiction over violations involving the unlawful passing of a stopped school bus. S.C. Op.Atty.Gen. (September 21, 2000) 2000 WL 1478798.

ARTICLE 23

Reckless Homicide; Reckless Driving; Driving While Under the Influence of Intoxicating Liquor, Drugs or Narcotics

**SECTION 56‑5‑2910.** Reckless vehicular homicide; penalties; revocation of driver’s license; reinstatement of license; conditions; consequences for subsequent violations.

(A) When the death of a person ensues within three years as a proximate result of injury received by the driving of a vehicle in reckless disregard of the safety of others, the person operating the vehicle is guilty of reckless vehicular homicide. A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless vehicular homicide is guilty of a felony, and must be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned not more than ten years, or both. The Department of Motor Vehicles shall revoke for five years the driver’s license of a person convicted of reckless vehicular homicide.

(B) After one year from the date of revocation, the person may petition the circuit court in the county of the person’s residence for reinstatement of the person’s driver’s license. The person shall serve a copy of the petition upon the solicitor of the county. The solicitor shall notify the representative of the victim of the reckless vehicular homicide of the person’s intent to seek reinstatement of the person’s driver’s license. The solicitor or his designee within thirty days may respond to the petition and demand a hearing on the merits of the petition. If the solicitor or his designee does not demand a hearing, the circuit court shall consider any affidavit submitted by the petitioner and the solicitor or his designee when determining whether the conditions required for driving privilege reinstatement have been met by the petitioner. The court may order the reinstatement of the person’s driver’s license upon the following conditions:

(1) intoxicating alcohol, beer, wine, drugs, or narcotics were not involved in the vehicular accident which resulted in the reckless homicide conviction or plea;

(2) the petitioner has served the term of imprisonment or paid the fine, assessment, and restitution in full, or both; and

(3) the person’s overall driving record, attitude, habits, character, and driving ability would make it safe to reinstate the privilege of operating a motor vehicle.

The circuit court may order the reinstatement of the driver’s license before the completion of the full five‑year revocation period, or the judge may order the granting of a route restricted license for the remainder of the five‑year period to allow the person to drive to and from employment or school, or the judge may place other restrictions on the driver’s license reinstatement. The order of the judge must be transmitted to the Department of Motor Vehicles within ten days.

(C) If the person’s privilege to operate a motor vehicle is reinstated, a subsequent violation of the motor vehicle laws for any moving violation requires the automatic cancellation of the person’s driver’s license and imposition of the full period of revocation for the reckless vehicular homicide violation.

HISTORY: 1962 Code Section 46‑341; 1952 Code Section 46‑341; 1949 (46) 466; 1994 Act No. 509, Section 1; 1998 Act No. 379, Section 2; 2001 Act No. 97, Section 3; 2012 Act No. 226, Section 1, eff December 18, 2012.

CROSS REFERENCES

Homicide by operation of boat, see Section 50‑21‑115.

Mandatory suspension or revocation of driver’s license, see Section 56‑1‑280.

Manslaughter, generally, see Section 16‑3‑50.

Right of a person to file a claim on the basis of being a victim of a crime, see Section 16‑3‑1110 et seq.

Section’s effect on status of motor vehicle license, as authorized by Driver License Compact where offense resulting in conviction occurred out of state, see Section 56‑1‑650.

Suspension or revocation of driver’s license without preliminary hearing, see Section 56‑1‑300.

Library References

Automobiles 144.1(2), 144.7, 342, 359.2.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 465 to 471, 1660 to 1680, 1682 to 1689.

RESEARCH REFERENCES

Encyclopedias

51 Am. Jur. Trials 337, Civil Consequences of Criminal Conduct.

S.C. Jur. Assault and Battery Section 5, Intent is a Necessary Element.

S.C. Jur. Automobiles and Other Motor Vehicles Section 26, Term of Suspension or Revocation of License.

S.C. Jur. Automobiles and Other Motor Vehicles Section 29, Return and Reinstatement of License.

S.C. Jur. Automobiles and Other Motor Vehicles Section 117, Generally; Local Regulations.

S.C. Jur. Automobiles and Other Motor Vehicles Section 151, Reckless Homicide.

S.C. Jur. Homicide Section 10, Time of Victim’s Death.

LAW REVIEW AND JOURNAL COMMENTARIES

Admissibility of Blood Analysis Data on Question of Intoxication. 14 SC LQ 395.

The South Carolina Implied Consent Law: The “Breathalyzer” and the Bar. 22 S.C. L. Rev. 195.

Attorney General’s Opinions

Victims involved in accidents with drunk drivers are eligible for Victims Compensation provided that all other eligibility requirements are met. 1984 Op.Atty.Gen. No. 84‑50, p. 122 (May 2, 1984) 1984 WL 159857.

A magistrate may admit to bail one charged with reckless homicide. 1965‑66 Op.Atty.Gen. No. 2196, p. 339 (November 23, 1966) 1966 WL 8638.

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1. In general

Vehicular crimes are unique in that there can ordinarily be only one “driver” of vehicle at time offense is committed, such that guilt of other participants, if any, can only be based on theory of accomplice liability; when 2 or more defendants are charged as principles in vehicular crime, jury must be instructed to first determine which defendant was driver of vehicle at time of offense, and instructions should then set forth elements of primary offense and should specify applicability only as to driver. State v. Leonard (S.C. 1987) 292 S.C. 133, 355 S.E.2d 270.

There was no error in denying the request of two defendants, jointly indicted for reckless homicide under Section 56‑5‑2910, to submit special interrogatories to the jury because the decision to use special interrogatories lies within the trial judge’s discretion. State v. Leonard (S.C.App. 1986) 287 S.C. 462, 339 S.E.2d 159, certiorari granted 290 S.C. 46, 348 S.E.2d 176, reversed 292 S.C. 133, 355 S.E.2d 270.

2. Constitutional issues

A defendant’s multiple convictions for driving under the influence causing death, reckless homicide, felony driving under the influence causing great bodily injury, and assault and battery of a high and aggravated nature did not violate the Double Jeopardy Clause; although the convictions all arose from a single incident, they were separate offenses. State v. Easler (S.C.App. 1996) 322 S.C. 333, 471 S.E.2d 745, rehearing denied, certiorari granted, affirmed as modified 327 S.C. 121, 489 S.E.2d 617.

Fact that the municipal court in which defendant was tried and convicted for driving under the influence does not have jurisdiction over a prosecution for reckless homicide does not, by itself, militate defendant’s substantial claim of double jeopardy. State v. Carter (S.C. 1987) 291 S.C. 385, 353 S.E.2d 875. Double Jeopardy 52

Defendant’s substantial claim of double jeopardy prohibited his prosecution for reckless homicide after his conviction for driving under the influence, both prosecutions arising out of the same happening, where the state relied on and proved the same facts of the adjudicated driving under the influence offense to establish the reckless act necessary to prove reckless homicide. State v. Carter (S.C. 1987) 291 S.C. 385, 353 S.E.2d 875. Double Jeopardy 150(1)

Assuming that the sentence of life imprisonment in cases involving a wrongful killing with a motor vehicle is rare, this does not render the application of the sentencing statute, in an automobile killing case, as cruel and unusual punishment in violation of the Eighth Amendment. Simmons v. State (S.C. 1975) 264 S.C. 417, 215 S.E.2d 883.

3. Involuntary manslaughter and reckless homicide

Common‑law involuntary manslaughter and reckless homicide (denounced in Section 56‑5‑2910) or lesser included offenses of felony driving under the influence (denounced by Section 56‑5‑2945) in a case where death occurs. State v. King (S.C. 1986) 289 S.C. 371, 346 S.E.2d 323. Indictment And Information 191(1)

The State cannot be required to elect between counts in an indictment which charge involuntary manslaughter and reckless homicide. State v. Cavers (S.C. 1960) 236 S.C. 305, 114 S.E.2d 401, certiorari denied 81 S.Ct. 176, 364 U.S. 886, 5 L.Ed.2d 106.

An individual may be guilty of involuntary manslaughter when death arises out of the negligent operation of a motor vehicle, such motor vehicle being considered a dangerous instrumentality. This doctrine was derived from an analogy between the negligent use of a motor vehicle and the negligent handling of a deadly weapon. State v. Phillips (S.C. 1954) 226 S.C. 297, 84 S.E.2d 855. Automobiles 344

In automobile homicide cases, not involving the elements of murder, the solicitor may prosecute the accused for reckless homicide under this section [formerly Code 1962 Section 46‑341], in which event the State must show recklessness, or he may seek a conviction for involuntary manslaughter, in which event the State is only required to show simple negligence. State v. Barnett (S.C. 1951) 218 S.C. 415, 63 S.E.2d 57.

This section [formerly Code 1962 Section 46‑341] was not designed as a substitute for, and has not the effect of, superseding the common‑law offense of involuntary manslaughter in cases of death resulting from the operation of a motor vehicle. State v. Barnett (S.C. 1951) 218 S.C. 415, 63 S.E.2d 57.

4. Elements of offense

Reckless homicide requires proof that the defendant (1) operated an automobile (2) in reckless disregard for the safety of others; (3) the defendant’s conduct proximately caused injury to the victim, and (4) within one year, the victim died as a result of these injuries. State v. Watson (S.C. 2002) 349 S.C. 372, 563 S.E.2d 336. Automobiles 342.1

Reckless disregard for safety of others, as must be shown for conviction of reckless homicide, signifies an indifference to the consequences of one’s acts; it denotes conscious failure to exercise due care or ordinary care or conscious indifference to rights and safety of others. State v. Rowell (S.C. 1997) 326 S.C. 313, 487 S.E.2d 185, rehearing denied, certiorari denied 118 S.Ct. 319, 522 U.S. 923, 139 L.Ed.2d 246. Automobiles 342.1

The fact that a fatal accident occurred because of defendant’s negligence does not establish conscious disregard for the safety of others so as to give rise to a conviction for reckless homicide under Section 56‑5‑2910. State v. Rowell (S.C.App. 1995) 321 S.C. 114, 467 S.E.2d 247, rehearing denied, certiorari granted, reversed 326 S.C. 313, 487 S.E.2d 185, certiorari denied 118 S.Ct. 319, 522 U.S. 923, 139 L.Ed.2d 246.

In the prosecution of an action for reckless homicide pursuant to Section 56‑5‑2910, evidence of statutory violation alone is not sufficient evidence of recklessness to withstand a directed verdict motion by the defendant. State v. Rowell (S.C.App. 1995) 321 S.C. 114, 467 S.E.2d 247, rehearing denied, certiorari granted, reversed 326 S.C. 313, 487 S.E.2d 185, certiorari denied 118 S.Ct. 319, 522 U.S. 923, 139 L.Ed.2d 246. Criminal Law 738

Driving under the influence of intoxicants is evidence of driving in reckless disregard of the safety of others, which is an element of reckless homicide. State v. Carrigan (S.C.App. 1985) 284 S.C. 610, 328 S.E.2d 119. Automobiles 355(13)

Heedlessness or willfulness is an essential element of the offense. State v. Jenkins (S.C. 1967) 249 S.C. 570, 155 S.E.2d 624. Automobiles 342.1

In cases where recklessness, wantonness, or willfulness is in issue it is frequently necessary, or desirable in order to establish a strong case, to show not only an indifference to consequences at the instant the accident occurred, but also a state of mind, such as heedlessness or willfulness, that persisted at least several minutes prior to the accident. Where such a mental attitude is important in a case, the court may well admit testimony concerning the manner of driving a substantial time before or distance from the accident. State v. Jenkins (S.C. 1967) 249 S.C. 570, 155 S.E.2d 624.

In order to sustain a conviction of involuntary manslaughter, the State need show only simple negligence, but something more than the mere failure to exercise due care is required to sustain a charge of reckless homicide. State v. Phillips (S.C. 1954) 226 S.C. 297, 84 S.E.2d 855.

This section [formerly Code 1962 Section 46‑341] means something more than the mere failure to exercise due care, and the offense denotes operation of a vehicle under such circumstances, and in such manner, as to show a willful or reckless disregard of consequences. This is a greater degree of negligence than is necessary to support the common‑law offense of involuntary manslaughter where a dangerous instrumentality is involved. State v. Barnett (S.C. 1951) 218 S.C. 415, 63 S.E.2d 57.

5. Defenses

Contributory negligence is not a defense in a prosecution under this section [formerly Code 1962 Section 46‑341], and it is sufficient to convict if defendant’s recklessness is a contributing proximate cause. State v. Cavers (S.C. 1960) 236 S.C. 305, 114 S.E.2d 401, certiorari denied 81 S.Ct. 176, 364 U.S. 886, 5 L.Ed.2d 106. Automobiles 342.1

6. License revocation

Former Code 1962 Section 46‑185 [see now Code 1976 Section 56‑1‑380] does not require State Highway Department to accept application for reissuance of revoked driver’s license at any time after expiration of 1 year from date of revocation, where license has been revoked for period of 5 years pursuant to former Code 1962 Section 46‑341 [Code 1976 Section 56‑5‑2910]. Gerald v. Pearman (S.C. 1976) 267 S.C. 631, 230 S.E.2d 709.

Motorist’s application for reissuance of driver’s license upon receiving pardon for reckless homicide and leaving scene of accident convictions was properly denied because license suspension is civil in nature and is not part of punishment or sentence for crime. Bay v. South Carolina Highway Dept. (S.C. 1975) 266 S.C. 9, 221 S.E.2d 106.

Periods of driver’s license suspension, resulting from convictions for reckless homicide and leaving scene of accident, may run consecutively and need not run concurrently, even though court imposed concurrent sentences for same driving offenses. Bay v. South Carolina Highway Dept. (S.C. 1975) 266 S.C. 9, 221 S.E.2d 106. Automobiles 144.5

7. Wrongful death actions

Second summary judgment affidavit in which defendant in wrongful death action arising out of automobile accident, for which defendant had pled guilty to reckless homicide, stated that he was not drunk at time of accident, although he had been consuming alcohol, and that cause of accident was his inability to determine position of decedent’s vehicle, was not a “sham” affidavit, and thus trial court should have considered it on plaintiff’s motion for summary judgment on issue of liability, where defendant did not intend to create a sham issue; he had consistently asserted throughout criminal and civil proceedings that he was blinded by headlights of decedent’s vehicle. Cothran v. Brown (S.C. 2004) 357 S.C. 210, 592 S.E.2d 629. Judgment 185.2(8)

Defendant in wrongful death action, who had pled guilty to reckless homicide after he struck and killed plaintiff’s decedent, who was standing on side of road, was not estopped from denying civil liability for decedent’s death, where defendant consistently maintained, at accident scene, guilty plea hearing, and summary judgment hearing, that decedent’s vehicle as parked in such a way that vehicle’s headlights blinded and confused him; defendant’s counsel’s statements at plea hearing that defendant was not trying to shift blame for accident to decedent was intended to reinforce his client’s acceptance of fault for criminal charge, and did not prevent defendant from asserting decedent’s comparative negligence. Cothran v. Brown (S.C. 2004) 357 S.C. 210, 592 S.E.2d 629. Estoppel 68(2)

8. Lesser included offense

Reckless homicide was not a lesser included offense of murder, because elements of murder did not include all elements of reckless homicide, as murder did not require the operation of an automobile, nor was reckless homicide an offense that had traditionally been considered a lesser included offense of murder; overruling, State v. Reid, 324 S.C. 74, 476 S.E.2d 695. State v. Watson (S.C. 2002) 349 S.C. 372, 563 S.E.2d 336. Indictment And Information 191(4)

The determination of whether a particular offense is a lesser included offense of the offense charged does not end with an application of the elements test; where an offense has traditionally been considered a lesser included offense of the greater offense charged, court will continue to construe it as a lesser included offense, despite failure to strictly satisfy the elements test. State v. Watson (S.C. 2002) 349 S.C. 372, 563 S.E.2d 336. Indictment And Information 189(1); Indictment And Information 191(.5)

Reckless homicide and involuntary manslaughter are not lesser included offenses of felony driving under the influence (DUI) since recklessness is not required to support a conviction for felony DUI, thus overruling prior case law to the contrary. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306. Indictment And Information 191(.5)

9. Admissibility of evidence

Police officer’s testimony that defendant sat in the officer’s car and was unemotional after his vehicle struck and killed victim was admissible, during prosecution for reckless homicide, and did not constitute a comment on defendant’s post‑arrest silence or a comment on defendant’s lack of remorse; the testimony illustrated defendant’s actions after the accident and showed how defendant’s unemotional responses led officer to believe that defendant was under the influence. State v. Horton (S.C.App. 2004) 359 S.C. 555, 598 S.E.2d 279, rehearing denied, certiorari denied. Criminal Law 410.36; Homicide 1015

The probative value of the results of defendant’s urine test outweighed any prejudice, and thus the results were admissible during prosecution for reckless homicide; toxicologist report identified the presence of alcohol, opiate derivatives, and cocaine metabolite in defendant’s urine, and the test results corroborate police officer’s suspicion that defendant was under the influence, even though he registered a legal alcohol level. State v. Horton (S.C.App. 2004) 359 S.C. 555, 598 S.E.2d 279, rehearing denied, certiorari denied. Criminal Law 338(7)

Where it is charged that one of the parties was drunk or was under the influence of intoxicating liquor at the time an accident occurred, the court may admit testimony as to the manner in which such party was driving his vehicle a substantial distance from the place of the accident, for the purpose of substantiating the charge. State v. Jenkins (S.C. 1967) 249 S.C. 570, 155 S.E.2d 624.

10. Questions for jury

The State presented sufficient evidence to submit reckless homicide charge to the jury, and thus defendant was not entitled to a directed verdict; victim’s mother and brother testified that the victim looked both ways before crossing road and that they did not see defendant’s vehicle until it struck and killed victim, police officer testified that there were no skid marks at the crime scene, that he detected an “odor of alcohol” on defendant, and that he believed that defendant was under the influence, and forensic toxicologist testified that at the time of the accident defendant had alcohol, opiate derivatives, and cocaine metabolite in his system. State v. Horton (S.C.App. 2004) 359 S.C. 555, 598 S.E.2d 279, rehearing denied, certiorari denied. Automobiles 356(13)

Evidence is too speculative to submit reckless homicide issue to jury, where sole evidence from which recklessness of defendant could be inferred is uncontradicted testimony that defendant drank beer during hours preceding accident and while driving vehicle, and where State introduced no evidence that appellant drove with excessive speed prior to or at time of accident, or that he failed to maintain proper lookout. Even if finding of recklessness were warranted by evidence of defendant’s intoxication, State must meet circumstantial evidence test by showing that this recklessness was proximate cause of accident. State v. Dobson (S.C. 1984) 281 S.C. 36, 314 S.E.2d 310.

11. Instructions

In a trial for reckless homicide and involuntary manslaughter, the trial court did not commit error in refusing to give jury charges requested by the defendant which correctly stated the law defining recklessness where the judge in his charge (1) used language referring to an “ordinary, reasonable, prudent person” only in reference to whether such a person would know he was engaged in wrongdoing, (2) never instructed the jury to judge the defendant’s action by a standard of ordinary care, and (3) gave a supplemental charge specifically distinguishing negligence and recklessness. Matter of Alexander (S.C. 1991) 305 S.C. 187, 407 S.E.2d 907.

In the prosecution of two men for reckless homicide under Section 56‑5‑2910, it was error to instruct the jury on aiding and abetting under Section 56‑5‑6110, and on offenses by persons owning or controlling vehicles under Section 56‑5‑6120, where the two defendants were jointly indicted, one was tried and convicted as a principal, and there was much evidence of the complicity of the other defendant, because charge would likely confuse jury. State v. Leonard (S.C. 1987) 292 S.C. 133, 355 S.E.2d 270.

12. Sufficiency of evidence

Evidence was sufficient to show defendant had acted in reckless disregard of safety of others in reckless homicide prosecution arising from accident in which defendant’s car struck and killed two pedestrians walking beside two‑lane road; evidence showed that car crossed center line and then accelerated, that victims observed those events and moved further away from roadway, that defendant never applied brakes or corrected car’s path, and that victims were four feet away from roadway when struck. State v. Rowell (S.C. 1997) 326 S.C. 313, 487 S.E.2d 185, rehearing denied, certiorari denied 118 S.Ct. 319, 522 U.S. 923, 139 L.Ed.2d 246. Automobiles 355(13)

Sufficient evidence supported the jury’s finding of recklessness in a trial for reckless homicide where the defendant had been drinking the night he fatally struck the victim, the victim was walking off the roadway, the night was clear, the road was straight and dry, the victim was visible to other passing motorists, the defendant never saw the victim, all the debris from the accident was found at least 4 feet off the roadway, and the defendant (1) never attempted to apply his brakes, (2) did not stop at the scene after hearing a “boom,” (3) did not see the victim’s body when he did return to the scene, and (4) did not report the incident to the authorities. Matter of Alexander (S.C. 1991) 305 S.C. 187, 407 S.E.2d 907.

The evidence was insufficient to support a conviction for reckless homicide, which arose from an automobile accident, where the defendant could not remember what had occurred after he stopped for gasoline 2 miles from the scene of the accident, and the only evidence was the physical fact of the collision between the car driven by the defendant and the car driven by the victim, with the cars coming to rest on the victim’s side of the road. In Interest of Stacy Ray A. (S.C. 1991) 303 S.C. 291, 400 S.E.2d 141.

Operator of automobile which forced another passing automobile into an oncoming motor bike, thereby killing both driver and rider of the bike, was held guilty under this section [former Code 1962 Section 46‑341]. State v. McCracken (S.C. 1947) 211 S.C. 52, 43 S.E.2d 607.

**SECTION 56‑5‑2920.** Reckless driving; penalties; suspension of driver’s license for second or subsequent offense.

Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving. The Department of Motor Vehicles, upon receiving satisfactory evidence of the conviction, of the entry of a plea of guilty or the forfeiture of bail of any person charged with a second and subsequent offense for the violation of this section shall forthwith suspend the driver’s license of any such person for a period of three months. Only those offenses which occurred within a period of five years including and immediately preceding the date of the last offense shall constitute prior offenses within the meaning of this section. Any person violating the provisions of this section shall, upon conviction, entry of a plea of guilty or forfeiture of bail, be punished by a fine of not less than twenty‑five dollars nor more than two hundred dollars or by imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 46‑342; 1952 Code Section 46‑342; 1949 (46) 466; 1958 (50) 1686; 1981 Act No. 76, Section 9.

CROSS REFERENCES

Habitual offenders, see Section 56‑1‑1010 et seq.

Right of a person to file a claim on the basis of being a victim of a crime, see Section 16‑3‑1110 et seq.

Violations once considered in a suspension being disregarded as far as subsequent suspension is concerned, see Section 56‑1‑760.

Library References

Automobiles 144.1(2), 144.1(3), 330, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 363, 374 to 378, 1529, 1545, 1547 to 1555, 1572, 1656, 1707, 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 43, Computation of Points.

Attorney General’s Opinions

Victims involved in accidents with drunk drivers are eligible for Victims Compensation provided that all other eligibility requirements are met. 1984 Op.Atty.Gen. No. 84‑50, p. 122 (May 2, 1984) 1984 WL 159857.

Arrest by highway patrolman on private property. Under authority of this section [Code 1962 Section 46‑342], if a person has committed a violation of the laws of this State, a State highway patrolman may enter private property fully within the scope of his authority to arrest the violator without being liable for trespassing. 1970‑71 Op.Atty.Gen. No. 3152, p. 113 (July 23, 1971) 1971 WL 17526.

One may commit a traffic offense on private property unless one’s presence on a public highway is made an element of the offense by the statute which creates it. 1968‑69 Op.Atty.Gen. No. 2634, p. 39 (February 13, 1969) 1969 WL 10637.

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1. In general

The legislature intended that a violation of the “point system” once considered in a suspension of a driver’s license must be disregarded as far as any subsequent suspensions are concerned, either under the provision of Code 1962 Section 46‑196.4 or this section [Code 1962 Section 46‑342]. Jones v. South Carolina State Highway Dept. (S.C. 1966) 247 S.C. 132, 146 S.E.2d 166. Automobiles 144.1(3)

Third conviction treated as subsequent offense where prior violations not considered. Since neither of the plaintiff’s reckless driving convictions had been considered in a suspension under the “point system,” former Code 1962 Section 46‑196.4 [see now Section 56‑1‑760] did not prevent the Department from treating his third conviction of reckless driving as a subsequent offense under this section [formerly Code 1962 Section 46‑342]. Jones v. South Carolina State Highway Dept. (S.C. 1966) 247 S.C. 132, 146 S.E.2d 166. Automobiles 144.1(3)

2. Wrongful death actions

In action for death of decedent struck by one of two trucks approaching from opposite directions as decedent, standing by his vehicle which was parked on highway, attempted to stop trucks, evidence established that driver of truck which struck decedent, was grossly negligent in respect to speed, lookout, and due care, and in failing to warn, to apply brakes, or to take any action to avert injury, and that driver of other truck was grossly negligent in respect to speed, lookout, control and due care, and in driving without proper brakes, and that the gross negligence of each combined to cause decedent’s death. Code 1952 S.Car. Sections 10‑1951 to 10‑1954, 46‑243, 46‑342, 46‑361, 46‑363, 46‑442, 46‑582 Greene v. Miller, 1953, 114 F.Supp. 150.

3. Anticipation of driver’s negligence by occupant

In the absence of any fact or circumstance indicating that the driver is incompetent or careless, an occupant of a vehicle is not required to anticipate negligence on the part of the driver. Stewart v. Combs, 1962, 206 F.Supp. 19. Automobiles 224(3)

In the absence of any fact or circumstance indicating the contrary, a passenger need not anticipate that the driver, who has exclusive control and management of the vehicle, will enter a sphere of danger, omit to exercise proper care, to observe warning signals, or fail to keep the speed of the vehicle within proper limits, or otherwise improperly increase the common risks of travel. Stewart v. Combs, 1962, 206 F.Supp. 19.

4. Insurance

Knowledge of insurer’s agent that applicant for automobile liability coverage had been convicted of reckless driving for which his driver’s license had been revoked for four months could charge agent with notice only of convictions prior to conviction for which license was suspended and fact that statute provided for revocation or suspension of driver’s license only for second offense and then for three months could not properly be applied to charge agent with notice of any conviction occurring subsequent to suspension. Code 1962, Section 46‑342. Southern Farm Bureau Cas. Ins. Co. v. Ausborn (S.C. 1967) 249 S.C. 627, 155 S.E.2d 902.

5. Punitive damages

Trial judge erred in holding there was no evidence of recklessness to sustain award for punitive damages where plaintiff and witness gave evidence from which jury could have reasonably inferred defendant was following too closely in violation of Section 56‑5‑1930, which is negligence per se and evidence of recklessness and willfulness. Daniels v. Bernard (S.C. 1978) 270 S.C. 51, 240 S.E.2d 518.

6. Lesser included offense

Reckless driving is not a lesser included offense of felony driving under the influence (DUI), since recklessness is not required to support a conviction for felony DUI. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306. Indictment And Information 191(.5)

The statutory offense of reckless driving is not a lesser offense included within the statutory offense of driving under the influence of intoxicating liquors, but the two are separate and distinct offenses, each involving necessary elements of proof not included in the other. State v. Fennell (S.C. 1974) 263 S.C. 216, 209 S.E.2d 433.

7. Presumptions and burden of proof

The burden of proof as to the violation of this section [formerly Code 1962 Section 46‑342] is upon the plaintiff. Suber v. Smith (S.C. 1964) 243 S.C. 458, 134 S.E.2d 404.

8. Instructions

Refusal of plaintiff’s request that jury be charged in accordance with reckless driving statute was not error where portions of the statute were inapplicable to any facts appearing in the record. Code 1962, Section 46‑342. Edens v. Cole (S.C. 1973) 261 S.C. 556, 201 S.E.2d 382.

9. Sufficiency of evidence

The greater weight of the evidence was such as to establish heedlessness and recklessness of the defendant in the operation of his automobile. Stewart v. Combs, 1962, 206 F.Supp. 19.

The defendant was heedless and reckless in failing to maintain a proper lookout and in failing to have his car under proper control so as to be able to avoid leaving the road and turning over, and in continuing to drive after having previously dozed off and in disregard of other premonitions, warnings, and other manifestations of approaching sleep. Stewart v. Combs, 1962, 206 F.Supp. 19. Automobiles 244(20)

Evidence indicating violation of section. Fuller v. Bailey (S.C. 1961) 237 S.C. 573, 118 S.E.2d 340.

**SECTION 56‑5‑2930.** Operating motor vehicle while under influence of alcohol or drugs; penalties; enrollment in Alcohol and Drug Safety Action Program; prosecution.

(A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person’s faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person’s faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person’s faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:

(1) for a first offense, by a fine of four hundred dollars or imprisonment for not less than forty‑eight hours nor more than thirty days. However, in lieu of the forty‑eight hour minimum imprisonment, the court may provide for forty‑eight hours of public service employment. The minimum forty‑eight hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum forty‑eight hour sentence. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by a fine of five hundred dollars or imprisonment for not less than seventy‑two hours nor more than thirty days. However, in lieu of the seventy‑two hour minimum imprisonment, the court may provide for seventy‑two hours of public service employment. The minimum seventy‑two hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum sentence. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by a fine of one thousand dollars or imprisonment for not less than thirty days nor more than ninety days. However, in lieu of the thirty‑day minimum imprisonment, the court may provide for thirty days of public service employment. The minimum thirty days imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment instead of the thirty‑day minimum sentence. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, a first offense charged for this item may be tried in magistrates court;

(2) for a second offense, by a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by a fine of not less than two thousand five hundred dollars nor more than five thousand five hundred dollars and imprisonment for not less than thirty days nor more than two years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by a fine of not less than three thousand five hundred dollars nor more than six thousand five hundred dollars and imprisonment for not less than ninety days nor more than three years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars;

(3) for a third offense, by a fine of not less than three thousand eight hundred dollars nor more than six thousand three hundred dollars, and imprisonment for not less than sixty days nor more than three years. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by a fine of not less than five thousand dollars nor more than seven thousand five hundred dollars and imprisonment for not less than ninety days nor more than four years. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by a fine of not less than seven thousand five hundred dollars nor more than ten thousand dollars and imprisonment for not less than six months nor more than five years; or

(4) for a fourth or subsequent offense, by imprisonment for not less than one year nor more than five years. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by imprisonment for not less than two years nor more than six years. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by imprisonment for not less than three years nor more than seven years.

(B) No part of the minimum sentences provided in this section may be suspended. Instead of public service employment the court may invoke another sentence provided in this section. For a second or subsequent offense of this section, the service of the minimum sentence is mandatory. However, the judge may provide for the sentence to be served upon terms and conditions as he considers proper including, but not limited to, weekend service or nighttime service in any fashion he considers necessary.

(C) The fine for a first offense must not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

(D) For the purposes of this section, a conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of a law or ordinance of this or another state or a municipality of this or another state that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including, but not limited to, this section, or prohibits a person from driving a motor vehicle with an unlawful alcohol concentration, including, but not limited to, Section 56‑5‑2933, constitutes a prior offense of this section. Only those violations which occurred within a period of ten years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

(E) Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside.

(F) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

(G) Two hundred dollars of the fine imposed pursuant to subsection (A)(3) 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 breath testing devices, breath testing site video program, and toxicology laboratory.

(H) A person convicted of violating this section, whether for a first offense or subsequent offense, must enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. An assessment of the extent and nature of the alcohol and drug abuse problem of the applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. The Alcohol and Drug Safety Action Program shall determine if the applicant successfully has completed the services. The applicant must attend the first Alcohol and Drug Safety Action Program available after the date of enrollment. The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each applicant shall bear the cost of services recommended in the applicant’s plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. An applicant may not be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the applicant has successfully completed services. An applicant who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the applicant successfully has completed services. The court must be notified whether an offender failed to enroll in a certified program within thirty days or failed to participate in the plan of education or treatment. The court may hold the individual in contempt of court if the individual cannot show cause as to why no enrollment occurred within the mandated thirty days or why no progress has been made on the plan of education or treatment.

(I) A person charged for a violation of this section may be prosecuted pursuant to Section 56‑5‑2933 if the original testing of the person’s breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. A person may not be prosecuted for both a violation of this section and a violation of Section 56‑5‑2933 for the same incident. A person who violates the provisions of this section is entitled to a jury trial and is afforded the right to challenge certain factors including the following:

(1) whether or not the person was lawfully arrested or detained;

(2) the period of time between arrest and testing;

(3) whether or not the person was given a written copy of and verbally informed of the rights enumerated in Section 56‑5‑2950;

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

(a) reported alcohol concentration at the time of testing was eight 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 regulations adopted pursuant to Section 56‑5‑2951(O) and Section 56‑5‑2953(F); and

(d) machine was working properly.

(J) Nothing contained in this section prohibits the introduction of:

(1) the results of any additional tests of the person’s breath or other bodily fluids;

(2) any evidence that may corroborate or question the validity of the breath or bodily fluid test result including, but not limited to:

(a) evidence of field sobriety tests;

(b) evidence of the amount of alcohol consumed by the person; and

(c) evidence of the person’s driving;

(3) a video recording of the person’s conduct at the incident site and breath testing site taken pursuant to Section 56‑5‑2953 which is subject to redaction under the South Carolina Rules of Evidence; or

(4) any other evidence of the state of a person’s faculties to drive a motor vehicle which would call into question the results of a breath or bodily fluid test.

At trial, a person charged with a violation of this section is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date.

(K) For the purpose of this section, any offense carrying a penalty of imprisonment of ninety days or less may be tried in magistrates court.

(L) In cases in which enhanced penalties for higher levels of alcohol concentration may be applicable, upon the determination of guilt, the finder of fact shall determine the alcohol concentration and the judge shall apply the appropriate penalty. In cases involving jury trials, upon the return of a guilty verdict by the jury, the judge shall instruct the jury to make a finding of fact as to the following: “We the jury find the alcohol concentration of the defendant to be (1) at least eight one‑hundredths of one percent but less than ten one‑hundredths of one percent; (2) at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent; or (3) sixteen one hundredths of one percent or more.” Based on the jury’s finding of fact, the judge shall apply the appropriate penalty. If the jury cannot reach a unanimous verdict as to the finding of fact, then the judge shall sentence the defendant based on the nonenhanced penalties.

HISTORY: 1962 Code Section 46‑343; 1952 Code Section 46‑343; 1949 (46) 466; 1954 (48) 1782; 1987 Act No. 179 Section 1; 1998 Act No. 434, Section 4; 2000 Act No. 390, Section 7; 2008 Act No. 201, Section 4, eff February 10, 2009.

CROSS REFERENCES

Additional assessments for convictions under this section, see Section 56‑5‑2995.

Denial of driver’s license to habitual drunkard or user of drugs, see Section 56‑1‑40.

Ignition interlock device, see Section 56‑5‑2941.

Open containers of beer or wine in vehicles, see Section 61‑4‑110.

Qualifications of sheriffs, see Section 23‑11‑110.

Right of a person to file a claim on the basis of being a victim of a crime, see Section 16‑3‑1110 et seq.

Section’s effect on status of motor vehicle license, as authorized by Driver License Compact where offense resulting in conviction occurred out of state, see Section 56‑1‑650.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑5‑2990.

Suspension of driver’s license for conviction or sentencing upon plea of guilty or nolo contendere for violation of this section, see Section 56‑5‑2990.

Suspension of license for refusal to submit to testing or for certain level of alcohol concentration, temporary alcohol license, contested case hearing, restricted driver’s license, penalties, see Section 56‑5‑2951.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

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C.J.S. Criminal Procedure and Rights of the Accused Sections 1064 to 1065, 1068 to 1069.

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87 ALR 2nd 1019 , Validity, Construction, and Application of Provision for Revocation or Suspension of Driver’s License Because of Conviction of Traffic Violation in Another State.

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 52, Revocation for Subsequent Violations.

S.C. Jur. Automobiles and Other Motor Vehicles Section 167, Child Endangerment by Driving Under the Influence.

S.C. Jur. Automobiles and Other Motor Vehicles Section 168, Penalties.

S.C. Jur. Automobiles and Other Motor Vehicles Section 172, Videotape Evidence.

S.C. Jur. Automobiles and Other Motor Vehicles Section 176, Presumptions Based on Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 181, Effect of Refusal or Certain Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 204, Vehicles Seized for Certain Convictions.

LAW REVIEW AND JOURNAL COMMENTARIES

Admissibility of Blood Analysis Data on Question of Intoxication. 14 SC LQ 395.

Is felony murder the new depraved heart murder? Considering the appropriate punishment for drunken drivers who kill. Dora W. Klein, 67 S.C. L. Rev. 1 (Autumn, 2015).

The South Carolina Implied Consent Law: The “Breathalyzer” and the Bar. 22 S.C. L. Rev. 195.

United States Supreme Court Annotations

Searches and seizures, Natural metabolization of alcohol is not per se exigency supporting warrantless blood draws from suspected drunk drivers, see Missouri v. McNeely, U.S.Mo.2013, 133 S.Ct. 1552, 569 U.S. 141, 185 L.Ed.2d 696. Automobiles 414

Attorney General’s Opinions

Non‑discretionary license and registration checks are constitutionally valid and proof of insurance and registration must be displayed upon demand of a police officer. S.C. Op.Atty.Gen. (March 6, 2008) 2008 WL 903978.

A reading of .10% blood alcohol level grants the inference that the driver is under the influence, even if he exhibits no other signs of impairment. S.C. Op.Atty.Gen. (November 6, 1995) 1995 WL 805857.

Neither section 23‑3‑740 nor potential double jeopardy claims would prohibit prosecutions for driving with defective tail lights or an expired inspection sticker and driving under the influence arising out of the same accident. S.C. Op.Atty.Gen. (May 3, 1988) 1988 WL 383522.

Under the provisions of Section 56‑5‑2950, the fifty dollar fee for administering chemical tests of the breath, blood, or urine of individuals arrested for driving under the influence should be assessed in all instances in which a test was administered where there is a conviction, a plea of guilty or nolo contendre, or forfeiture of a bond for a violation of Section 56‑5‑2930 or 59‑5‑2945. S.C. Op.Atty.Gen. (August 27, 1987) 1987 WL 245486.

A moped may be considered a “vehicle” as used in Section 56‑5‑2930, particularly if the moped which an individual was observed driving while under the influence was not being propelled by human power, but instead was being propelled by its own motor. S.C. Op.Atty.Gen. (January 10, 1986) 1986 WL 191967.

Convictions for third offense DUI or driving under suspension after having been adjudicated as habitual offender do not constitute crimes of moral turpitude. S.C. Op.Atty.Gen. (August 13, 1984) 1984 WL 159906.

Victims involved in accidents with drunk drivers are eligible for Victims Compensation provided that all other eligibility requirements are met. S.C. Op.Atty.Gen. (May 2, 1984) 1984 WL 159857.

Persons charged with DUI, a traffic offense, are not eligible for the Pretrial Intervention Program since traffic offenses are excluded from the Program. S.C. Op.Atty.Gen. (March 18, 1981) 1981 WL 96549.

**SECTION 56‑5‑2930 and Section 56‑5‑2940 of the Uniform Act Regulating Traffic on Highways is applicable only to those offenses of driving while under the influence of alcoholic beverages which occur within the boundaries of the State of South Carolina, or within the political subdivisions and municipalities herein.** S.C. Op.Atty.Gen. (April 30, 1980) 1980 WL 81929.

It is the duty of the arresting officer or the person conducting a chemical test of a person arrested for driving under the influence to assist that person in contacting a qualified person to conduct a blood test. S.C. Op.Atty.Gen. (October 20, 1978) 1978 WL 22642.

A person may be arrested for DUI while steering a towed motor vehicle. S.C. Op.Atty.Gen. (April 19, 1976) 1976 WL 22949.

Municipal courts have jurisdictions of first offense drunk driving violations under State law. S.C. Op.Atty.Gen. (February 17, 1972) 1972 WL 20409.

A person arrested for driving under the influence of intoxicants may be compelled to submit to a blood test, and the results are admissible. S.C. Op.Atty.Gen. (November 2, 1970) 1970 WL 12290.

A blood test may be required without search warrant after the arrest of a person for driving under the influence, and the results are admissible. S.C. Op.Atty.Gen. (November 2, 1970) 1970 WL 12290.

Jurisdiction for second offense charges under this section [Code 1962 Section 46‑343]. ‑ The penalty for a second offense for violation of this section [Code 1962 Section 46‑343], which prohibits any person from driving under the influence of liquor or drugs, is beyond jurisdiction of the Town of Bonneau to try in its city court. Second offense charges brought before the city court should be bound over to court of general sessions. S.C. Op.Atty.Gen. (December 29, 1969) 1969 WL 10783.

Suspension of driver’s license. Code 1962 section 46‑348, requiring the suspension of the driver’s license of persons convicted under this section [Code 1962 Section 46‑343], relates the length of the suspension to the number of convictions and not to the punishment imposed therefor. S.C. Op.Atty.Gen. (November 21, 1966) 1966 WL 8634.

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1. In general

Police officer was qualified to prosecute defendant’s driving under the influence (DUI) case in the magistrate court after the officer transferred to another law enforcement agency; officer was the arresting officer and the person able to testify regarding the events surrounding the arrest. State v. Rainwater (S.C. 2008) 376 S.C. 256, 657 S.E.2d 449. Criminal Law 255.1

Legislature intended to make material and appreciable impairment an element of substantive offense of operating a motor vehicle under the influence, rather than an element of proof to be adduced at trial. State v. Knuckles (S.C.App. 2002) 348 S.C. 593, 560 S.E.2d 426, rehearing denied, certiorari granted, reversed 354 S.C. 626, 583 S.E.2d 51. Automobiles 332

Trial officer was not required to read to defendant sections of the Code applicable to charge against him of driving motor vehicle while under influence of drugs. Code 1962, Section 46‑343. State v. Allen (S.C. 1973) 261 S.C. 448, 200 S.E.2d 684.

Trial of motorist, without notice to him or his attorney and in absentia, on charge of operating motor vehicle while under the influence of intoxicating liquor after case had been continued following grant of request by motorist’s attorney for jury trial was improper and conviction in absentia could not stand. Code 1962, Section 46‑343. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

2. Constitutional issues

Defendant was subject to custodial interrogation at the time he made the initial incriminating statement regarding his alcohol consumption, and because defendant was subject to custodial interrogation at this point of the encounter with police, Miranda warnings were required; although defendant was in his parents’ front yard, officer had him handcuffed and pinned to the ground while asking the question that elicited the objectionable response, and given that the most important factual question in any driving under the influence (DUI) case was how much alcohol the suspect consumed prior to getting behind wheel, officer should have known his question was reasonably likely to elicit an incriminating response from defendant. State v. Medley (S.C.App. 2016) 417 S.C. 18, 787 S.E.2d 847. Criminal Law 411.24; Criminal Law 411.39

In driving under the influence (DUI) case, officer’s asking defendant how much he had to drink was irrelevant to the public’s safety, and thus, officer’s question did not fall within the public safety exception to Miranda; only purpose for asking such a question was to obtain evidence for DUI case. State v. Medley (S.C.App. 2016) 417 S.C. 18, 787 S.E.2d 847. Criminal Law 411.41

In driving under the influence (DUI) case, defendant’s incriminating statements, that he made in patrol car on way to detention center, were not a direct product of the impermissible tactic of “question first, give Miranda rights later;” officer asked only one objectionable question prior to reading defendant his Miranda rights—i.e., how much defendant had to drink and defendant offered a two‑word response, “too much,” officer asked this question in defendant’s parents’ front yard, defendant received Miranda warnings twice before entering the patrol car, and nearly 22 minutes transpired between defendant’s statement during his initial detention on his parents’ yard and those made while he was in the patrol car. State v. Medley (S.C.App. 2016) 417 S.C. 18, 787 S.E.2d 847. Criminal Law 413.5

Trial court’s error in admitting defendant’s custodial statements regarding his alcohol consumption, which were made prior to receiving Miranda warnings, was harmless in driving under the influence (DUI) case, given overwhelming evidence of defendant’s guilt; saddlebags on defendant’s motorcycle contained approximately 18 unopened beer cans, and another beer can flew off the back of his motorcycle during the pursuit, videotape of 20 minute waiting period prior to def‑’s refusal to submit to a breath test showed defendant sitting with his head slumped over the entire time, and defendant appeared intoxicated based upon his slurred speech, glassy eyes, and overall demeanor. State v. Medley (S.C.App. 2016) 417 S.C. 18, 787 S.E.2d 847. Criminal Law 1169.12

Even if suspension of defendant’s driver’s license under statute allowing for suspension of driver’s license of a person under the age of 21 who drives vehicle and has a blood alcohol concentration of two one‑hundredths of one percent or more was a criminal penalty for double jeopardy purposes, pursuant to the Blockburger “same elements” test, subsequent prosecution of defendant for driving under influence (DUI) did not violate defendant’s double jeopardy protections; the two provisions did not necessitate proof of identical elements since one needed an age under twenty‑one with blood alcohol of above .02%, while the other was for any age driver whose faculties to drive were materially and appreciably impaired. State v. Cuccia (S.C.App. 2003) 353 S.C. 430, 578 S.E.2d 45. Double Jeopardy 24; Double Jeopardy 142

Suspension of defendant’s driver’s license under implied consent statute was for different offense than gave rise to his conviction for driving under influence (DUI), and thus, his double jeopardy rights were not violated; criminal prosecution was pursued based on act of driving under influence, while suspension of defendant’s driver’s license resulted solely from his failure to submit to breathalyzer test, and suspension was mandatory and not dependent on outcome of criminal prosecution. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Double Jeopardy 24

Defendant’s admission to law enforcement officer that defendant had been drinking was voluntary, for purposes of prosecution for driving under influence (DUI); at hearing to determine admissibility of statement, officer stated that he had not taken defendant into custody, that he did not force or coerce statements from defendant, and that statements were voluntarily made, and, although defendant testified that he felt he was under trooper’s authority as soon as he came in contact with him, and that he was not free to leave, defendant did not state that he was forced or coerced in any way. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Criminal Law 413.51

A driver arrested for driving under the influence (DUI) was not entitled to consult her attorney prior to deciding whether to take a breathalyzer test since the administration of the test is not a critical stage of the DUI proceeding and, since a defendant has no constitutional right to refuse to submit to chemical analysis, under the implied consent law she had consented to the test. State v. Degnan (S.C. 1991) 305 S.C. 369, 409 S.E.2d 346.

A person subjected to custodial interrogation must be afforded the benefit of the Miranda safeguards irrespective of the nature or severity of the offense of which the person has been arrested or of which the person is suspected of having committed. Thus, in a prosecution for driving under the influence, the trial judge erred in refusing to suppress statements made by the defendant when she had not been given the Miranda warnings, based on his view that the Miranda warnings were not required in traffic cases. However, the admission of this testimony was harmless beyond a reasonable doubt where the record contained overwhelming evidence of the defendant’s guilt independent of her statements to the arresting officer. State v. Newell (S.C.App. 1991) 303 S.C. 471, 401 S.E.2d 420, certiorari denied.

A defendant who was convicted in municipal court of driving under the influence in violation of Section 56‑5‑2930 was not denied his equal protection rights on the ground that the prosecution alone had the option to determine whether his case would be tried in municipal court or magistrate’s court where the defendant made no showing that his case was prosecuted differently from others similarly situated. City of Pickens v. Schmitz (S.C. 1989) 297 S.C. 253, 376 S.E.2d 271.

Defendant’s substantial claim of double jeopardy prohibited his prosecution for reckless homicide after his conviction for driving under the influence, both prosecutions arising out of the same happening, where the state relied on and proved the same facts of the adjudicated driving under the influence offense to establish the reckless act necessary to prove reckless homicide. State v. Carter (S.C. 1987) 291 S.C. 385, 353 S.E.2d 875. Double Jeopardy 150(1)

3. Search and seizure

In those drunk‑driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so. Missouri v. McNeely, U.S.Mo.2013, 133 S.Ct. 1552, 569 U.S. 141, 185 L.Ed.2d 696. Automobiles 414

The natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the Fourth Amendment’s search warrant requirement for nonconsensual blood testing in all drunk‑driving cases, and instead, exigency in this context must be determined case by case based on the totality of the circumstances; abrogating State v. Shriner, 751 N.W.2d 538, State v. Bohling, 173 Wis.2d 529, 494 N.W.2d 399, and State v. Woolery, 116 Idaho 368, 775 P.2d 1210. Missouri v. McNeely, U.S.Mo.2013, 133 S.Ct. 1552, 569 U.S. 141, 185 L.Ed.2d 696. Automobiles 414; Automobiles 419

Factors present in an ordinary traffic stop of a suspected drunk driver, such as the procedures in place for obtaining a search warrant or the availability of a magistrate judge, may affect whether the police can obtain a search warrant in an expeditious way and therefore may establish an exigency that permits a warrantless blood draw. Missouri v. McNeely, U.S.Mo.2013, 133 S.Ct. 1552, 569 U.S. 141, 185 L.Ed.2d 696. Automobiles 414; Automobiles 419

The metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a search warrant is required, for a blood draw from a motorist suspected of driving while intoxicated (DWI). Missouri v. McNeely, U.S.Mo.2013, 133 S.Ct. 1552, 569 U.S. 141, 185 L.Ed.2d 696. Automobiles 414

Because illegal citizen’s arrest did not involve state action, exclusionary rule was inapplicable, and evidence obtained as result of such arrest was admissible at trial. Town of Mount Pleasant v. Jones (S.C.App. 1999) 335 S.C. 295, 516 S.E.2d 468. Criminal Law 392.13(2)

A blood sample taken from a DUI (driving under the influence) defendant shortly after an automobile accident was not inadmissible on the ground that the defendant had not been formally arrested prior to the withdrawal of his blood since formal arrest is not a prerequisite to a warrantless seizure of a blood sample in a DUI situation, but instead the focus is on whether probable cause to withdraw the blood existed. State v. Tanner (S.C. 1989) 299 S.C. 459, 385 S.E.2d 832.

Failure to drive on right side of roadway as probable cause for arrest. In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the fact that the arresting officer personally observed defendant driving across the middle of a two‑land road was itself sufficient to justify stopping and arresting him. State v. Parker (S.C. 1978) 271 S.C. 159, 245 S.E.2d 904.

Where a blood sample was withdrawn by a doctor at the hospital with the consent of a defendant not then under arrest, admission of the results of an alcohol level test in a prosecution for DWI violated none of the defendant’s constitutional rights. State v. Sarvis (S.C. 1975) 265 S.C. 144, 217 S.E.2d 38.

Mere fact that arrest of defendant, charged with driving motor vehicle while under influence of intoxicants, was unlawful did not preclude his subsequent conviction of offense with which he was charged. Code 1962, Sections 43‑111, 46‑343. State v. Holliday (S.C. 1970) 255 S.C. 142, 177 S.E.2d 541.

4. Elements of offense

The corpus delicti of driving under the influence (DUI) is defined as (1) driving a vehicle, (2) within this state, (3) while under the influence of intoxicating liquors or drugs. State v. Knuckles (S.C. 2003) 354 S.C. 626, 583 S.E.2d 51. Automobiles 332

The corpus delicti of driving under the influence (DUI) based upon alcohol is: (1) driving a motor vehicle; (2) within this state; (3) while under the influence of alcohol to the extent that the person’s faculties to drive are materially and appreciably impaired. State v. Russell (S.C.App. 2001) 345 S.C. 128, 546 S.E.2d 202. Automobiles 332

In a trial for driving under the influence (DUI), the state has to prove: (1) defendant’s ability to drive was materially and appreciably impaired; and (2) this impairment was caused by the use of drugs or alcohol. State v. Salisbury (S.C. 2001) 343 S.C. 520, 541 S.E.2d 247. Automobiles 332

The corpus delicti of driving under the influence (DUI) must be established by proof that a person’s ability to drive has been materially and appreciably impaired by the use of alcohol and/or drugs. State v. Salisbury (S.C. 2001) 343 S.C. 520, 541 S.E.2d 247. Automobiles 332

Corpus delicti of the offense of driving under the influence (DUI) is: (1) driving a vehicle; (2) within the state; (3) while under the influence of intoxicating liquors or drugs. State v. McCombs (S.C.App. 1999) 335 S.C. 123, 515 S.E.2d 547. Automobiles 332

To establish corpus delicti of offense of driving under the influence (DUI), state must present evidence establishing (1) driving of a vehicle; (2) within State; (3) while under the influence of intoxicating liquors or drugs. State v. Smith (S.C.App. 1997) 328 S.C. 622, 493 S.E.2d 506. Automobiles 332

The corpus delicti of a charge of driving under the influence is (1) driving a vehicle, (2) within the state of South Carolina, (3) while under the influence of intoxicating liquors, drugs, or any other substance of like character. State v. Townsend (S.C.App. 1996) 321 S.C. 55, 467 S.E.2d 138, rehearing denied. Automobiles 332

Only one crime is proscribed by this section [formerly Code 1962 Section 46‑343], i.e., operating a motor vehicle while under the influence of substances which impair the mental and physical faculties of the operator, an impairment produced by means of the ingestion of one or two or all of the substances mentioned. State v. Sheppard (S.C. 1966) 248 S.C. 464, 150 S.E.2d 916.

The proscribed conduct is the operation of a motor vehicle by one who is under the influence of intoxicating liquor or drugs. State v. Sheppard (S.C. 1966) 248 S.C. 464, 150 S.E.2d 916.

5. Driving

Term “driving” is given stricter construction than term “operating”; to be guilty of driving vehicle while intoxicated defendant must have had vehicle in motion at time in question, while operating has been more liberally construed to include starting engine or manipulating mechanical or electrical agencies of vehicle. State v. Graves (S.C. 1977) 269 S.C. 356, 237 S.E.2d 584.

Respondent was not driving vehicle within meaning of Section 56‑5‑2930 where found by highway patrol officer in automobile with engine running and transmission in gear, since there was no showing by direct or circumstantial evidence that respondent had placed vehicle in motion while under influence of intoxicants. State v. Graves (S.C. 1977) 269 S.C. 356, 237 S.E.2d 584.

Word “drive” under Section 56‑5‑2930 requires vehicle be in motion to constitute offense, as shown by either direct or circumstantial evidence. State v. Graves (S.C. 1977) 269 S.C. 356, 237 S.E.2d 584. Automobiles 355(6)

6. Under the influence

A driver is “under the influence,” for purposes of statute stating that it is unlawful to drive while under the influence of alcohol or drugs, when ingestion of drugs or alcohol results in the impairment of the driver’s faculties, impairs the driver’s ability to operate the vehicle with reasonable care, or impairs the driver’s ability to drive as a prudent driver would operate the vehicle. Kennedy v. Griffin (S.C.App. 2004) 358 S.C. 122, 595 S.E.2d 248, certiorari granted, certiorari dismissed as improvidently granted 366 S.C. 510, 623 S.E.2d 94. Automobiles 332

Motorist is “under the influence” when ingestion of one or more of substances listed in relevant statute has resulted in impairment of his faculties. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Automobiles 332

One may be “under the influence” as contemplated by traffic laws without being drunk or passed out, or even intoxicated. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Automobiles 332

One violates driving under influence statute if he partakes of alcohol to extent that he cannot drive motor vehicle with reasonable care, or if he cannot drive as prudent driver would operate vehicle. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Automobiles 332

“Under the influence” means sufficiently under influence as to impair ability of such driver to operate vehicle with reasonable care. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Automobiles 332

The offense is exactly the same whether the driver’s condition resulted from the ingestion of alcohol or of narcotic drugs, or of both of them. State v. Sheppard (S.C. 1966) 248 S.C. 464, 150 S.E.2d 916.

The offense is not multiplied because the condition of impairment was produced by the ingestion of more than one of the substances listed in this section [formerly Code 1962 Section 46‑343]. State v. Sheppard (S.C. 1966) 248 S.C. 464, 150 S.E.2d 916.

7. Private property

Section 56‑5‑2930, prohibiting driving under the influence, applied to defendant who operated vehicle on private property since the DUI statute is not limited to public highways but applies to property anywhere within state boundaries. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

The Uniform Act Regulating Traffic, Sections 56‑5‑10 et seq., of which Section 56‑5‑2930 is a part, is automatically applicable to private roads even where there is no written consent to such application from the owner of the road. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

8. Mopeds

Although mopeds are exempted from registration, licensing, and insurance requirements as vehicles, the General Assembly intended that the Driving Under the Influence (DUI) statute, Section 56‑5‑2930, embrace the driving of a moped, and thus the trial judge did not err in charging the jury that a moped is a vehicle as contemplated by the DUI statute. State v. Singleton (S.C. 1995) 319 S.C. 312, 460 S.E.2d 573.

9. Mandamus

City failed to establish the elements required for issuance of a writ of mandamus in prosecution for driving under the influence (DWI) to direct the municipal court judge to apply most recent legislation concerning correct alcohol concentration to be applied in a simulator test, rather than original version of the statute, and failed to serve the judge with its petition, warranting denial of its petition for a writ of mandamus pending judge’s ruling of its motion in limine; it was debatable which of the two versions of the statute was the correct law of the State, and thus, the judge was not being asked to perform a ministerial duty so as to be compelled to rule in a particular way, and city had adequate remedies at law to either await judge’s ruling on the pending motion in limine, or seek appeal if its ability to prosecute the defendant was significantly disadvantaged by the judge’s ultimate in limine ruling. City of Rock Hill v. Thompson (S.C. 2002) 349 S.C. 197, 563 S.E.2d 101. Mandamus 3(3); Mandamus 4(1); Mandamus 40

10. Jurisdiction

Section 56‑5‑6170 does not expressly or by implication create private cause of action against law enforcement officer or his jurisdiction for failure to arrest person for driving under influence. Patel by Patel v. McIntyre, 1987, 667 F.Supp. 1131, affirmed 848 F.2d 185.

Statutory amendment, to include level or standard of proof required for driving under the influence (DUI), did not change crime’s corpus delicti, and thus indictment, stating that defendant drove under influence of intoxicating liquors and/or narcotic drugs, was sufficient to confer jurisdiction on Circuit Court. State v. Knuckles (S.C. 2003) 354 S.C. 626, 583 S.E.2d 51. Automobiles 332; Automobiles 351.1

Driving under the influence (DUI) was “traffic violation” within meaning of statute providing that magistrate courts and municipal courts had concurrent jurisdiction with family courts for trial of persons under seventeen years of age charged with traffic violations, and thus, municipal court had subject matter jurisdiction to hear DUI charge against juvenile. Matter of Floyd (S.C. 1997) 326 S.C. 270, 486 S.E.2d 492.

Richland County Court, a court of limited jurisdiction established by statute in and for Richland County only, has no authority to permanently enjoin state agencies and officers from conducting an administrative hearing and changing driver’s driving status pursuant to former 1962 Code Section 46‑344 [see now 1976 Code Section 56‑5‑2930]. Harden v. South Carolina State Highway Dept. (S.C. 1976) 266 S.C. 119, 221 S.E.2d 851.

Under this section, former Sections 46‑345 and 46‑348 [1976 Code Sections 56‑5‑2930, 56‑5‑2940, 56‑5‑2990], first offense charge of driving under the influence is tried in Magistrate’s Court where the punishment cannot exceed 30 days or a fine of $100, with suspension of the driver’s license for 6 months; while second offense charge for such offense is beyond the jurisdiction of the Magistrate’s Court and must be disposed of in the Court of General Sessions where the punishment is much greater and suspension of the license for a longer period of time. Ex parte Sarvis (S.C. 1975) 266 S.C. 15, 221 S.E.2d 108.

Allegation of indictment that drunken driving was a second or subsequent offense was necessary to show jurisdiction of court of general sessions. Code 1962, Sections 46‑343, 46‑345. Tyler v. State (S.C. 1965) 247 S.C. 34, 145 S.E.2d 434. Automobiles 359.6

Under statute prescribing penalties for successive offenses of driving motor vehicle while under the influence of intoxicating liquor, and declaring that forfeiture of bail shall constitute an offense, a defendant who was lawfully arrested without warrant for driving while intoxicated, and who was orally informed of charge docketed against him, and who procured posting of bond which was forfeited, had waived his right to question jurisdiction of his person and to urge invalidity of forfeiture on ground that no warrant of arrest had been issued, and such forfeiture could be considered as an offense for purpose of determining punishment to be meted out for subsequent offense. Act May 7, 1947, 45 Stat. at Large, p. 216; Act June 7, 1949, 46 Stat. at Large, p. 466, Section 57(g); Code 1942, Sections 940, 952. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854. Automobiles 359.6; Bail 77(1)

Under statute prescribing fine of $50 to $100 or imprisonment of 10 to 30 days for first offense and fine not less than $1,000 or imprisonment for one year or both for second offense, court of general sessions was without jurisdiction of prosecution for first violation, because of punishment prescribed, and hence allegation of indictment that fine charged was a second offense was necessary to show jurisdiction in the court of general sessions. Act June 7, 1949, Section 57 and subd. (g), 46 St. at Large, pp. 483, 485. State v. Mitchell (S.C. 1951) 220 S.C. 433, 68 S.E.2d 350. Sentencing And Punishment 1367

Where defendant was tried and convicted in city recorder’s court for drunken driving and thereafter defendant was convicted in magistrate’s court for similar offense, defendant who was convicted as a third offender in subsequent county court prosecution for driving under influence of liquor or some narcotic drug could not complain that the proceedings in magistrate’s court were null and void in that magistrate’s court lacked jurisdiction to try defendant as a second offender in absence of anything in record to show that magistrate undertook to try defendant as a second offender. Act June 7, 1949, Section 57(g), 46 St. at Large, p. 485. State v. McAbee (S.C. 1951) 220 S.C. 272, 67 S.E.2d 417. Automobiles 359.6

Where indictment charged that defendant drove a motor vehicle on public highway while under influence of intoxicating liquor or some narcotic drug and defendant was tried in county court and was found guilty and was sentenced as a third offender, objection raised after conviction that indictment implied only a first offense not within county court’s jurisdiction was made too late. Act June 7, 1949, Section 57(g), 46 St. at Large, p. 485. State v. McAbee (S.C. 1951) 220 S.C. 272, 67 S.E.2d 417. Indictment And Information 196(1)

11. Indictment

Fact that the indictments presented to the grand jury charged defendant as a principal for felony driving under the influence (DUI) did not prove the State misinformed the grand jury that defendant was the driver at the time of the wreck; an accomplice could be indicted as a princid there was no evidence the grand jury process was compromised in any way. State v. Batchelor (S.C. 2008) 377 S.C. 341, 661 S.E.2d 58, habeas corpus denied 2013 WL 164187, appeal dismissed 520 Fed.Appx. 194, 2013 WL 1800940, certiorari denied 134 S.Ct. 328, 187 L.Ed.2d 230. Indictment And Information 144.1(2)

Statutory amendment, to include level or standard of proof required for driving under the influence (DUI), did not change crime’s corpus delicti, and thus indictment, stating that defendant drove under influence of intoxicating liquors and/or narcotic drugs, was sufficient to confer jurisdiction on Circuit Court. State v. Knuckles (S.C. 2003) 354 S.C. 626, 583 S.E.2d 51. Automobiles 332; Automobiles 351.1

Indictment was insufficient to charge defendant with driving under the influence, where indictment did not include the element of material and appreciable impairment. State v. Knuckles (S.C.App. 2002) 348 S.C. 593, 560 S.E.2d 426, rehearing denied, certiorari granted, reversed 354 S.C. 626, 583 S.E.2d 51. Automobiles 351.1

A defendant was adequately informed of the charge against him, as required by the United States and South Carolina Constitutions, where he was issued a Uniform Traffic Ticket which informed him that he was charged with driving under the influence in violation of Section 56‑5‑2930, and also informed him of the time, date and place the offense allegedly occurred. City of Goose Creek v. Brady (S.C. 1986) 288 S.C. 20, 339 S.E.2d 509.

An indictment is not duplicitous for charging the accused in conjunctive terms with having committed the offense by more than one of the means specified by this section [formerly Code 1962 Section 46‑343]. State v. Sheppard (S.C. 1966) 248 S.C. 464, 150 S.E.2d 916. Indictment And Information 125(20)

Indictment for operating automobile while under influence of intoxicating liquor and narcotic drugs was not subject to motion to quash upon ground that allegation therein of prior offense was prejudicial for putting defendant’s character in issue. Act June 7, 1949, Section 57, 46 St. at Large, p. 483. State v. Ramey (S.C. 1952) 221 S.C. 10, 68 S.E.2d 634. Indictment And Information 137(1)

Indictment for driving motor vehicle while under influence of intoxicating liquor was not subject to motion to quash upon ground that allegation therein of prior offense was prejudicial for putting defendant’s character in issue. Act June 7, 1949, Section 57 and subd. (g), 46 St. at Large, pp. 483, 485. State v. Mitchell (S.C. 1951) 220 S.C. 433, 68 S.E.2d 350. Indictment And Information 137(1)

12. Pleas

Evidence presented upon hearing of motion to vacate sentence imposed upon conviction of driving motor vehicle while under influence of drugs supported finding that guilty plea entered by defendant, who was advised by magistrate that he had a right to an attorney and a right to trial before magistrate or jury, who stated that he did not want an attorney, who was advised that if he entered plea of guilty or was found guilty sentence would be a fine of $100 or 30 days in jail and would in addition lose his driver’s license for period of six months and who answered affirmatively that he wanted to plead guilty and that he was pleading guilty freely, was voluntarily, intelligently and understandingly entered. Code 1962, Section 46‑343. State v. Allen (S.C. 1973) 261 S.C. 448, 200 S.E.2d 684.

13. Presumptions and burden of proof

State was not required to prove corpus delicti of offense of driving under the influence (DUI) before admitting defendant’s extra‑judicial statement that he had been driving and had been drinking, but that mechanical failure caused accident. State v. McCombs (S.C.App. 1999) 335 S.C. 123, 515 S.E.2d 547. Criminal Law 413.81(18)

Proof of corpus delicti is not a prerequisite to the admission of an extra‑judicial confession of a defendant; rather, if the state fails to prove the corpus delicti and the sole evidence of guilt is the defendant’s confession, then a directed verdict in favor of the defendant is required. State v. McCombs (S.C.App. 1999) 335 S.C. 123, 515 S.E.2d 547. Criminal Law 413.75; Criminal Law 413.93; Criminal Law 753.2(3.1)

Question in prosecution for driving under influence is not whether defendant is drunk or intoxicated, but whether his condition is such that he could drive with due regard for others and himself; driving under influence is therefore established by proof that defendant’s ability to drive was materially and appreciably impaired. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Automobiles 332

14. Admissibility of evidence—In general

Jury in prosecution for driving under influence (DUI) could consider fact that defendant refused breathalyzer test as prosecutorial evidence against him. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Automobiles 413

In a prosecution for driving under the influence, results of a breathalyzer test given to the defendant were properly admitted, since, even though the defendant was not seen operating his vehicle by the arresting officer, he admitted to the officer that he had been driving and his admission constituted part of the officer’s sensory awareness of the commission of the offense, which satisfied the presence requirement of Section 56‑6‑2950. State v. Sawyer (S.C. 1984) 283 S.C. 127, 322 S.E.2d 449.

Where the basic issue in prosecution for driving under the influence was who was driving, and the distance between the officer’s and defendant’s cars was important in determining the officer’s ability to observe an alleged switch of drivers, the trial judge’s response to an inquiry from the jury after it commenced deliberation that he did not think there was any testimony of distance “in inches and feet” constituted impermissible comment on the testimony, where the officer had in fact agreed with the defense counsel that the distance was approximately 300 feet. State v. Dawkins (S.C. 1977) 268 S.C. 110, 232 S.E.2d 228.

A lay witness may testify whether or not in his opinion a person was drunk or sober on a given occasion on which witness observed such person. State v. Ramey (S.C. 1952) 221 S.C. 10, 68 S.E.2d 634. Criminal Law 457

15. —— Test results, admissibility of evidence

State failed to establish sufficient foundation to admit results of defendant’s blood‑alcohol analysis in prosecution for driving under the influence (DUI), where State did not present proof that defendant’s blood sample taken for blood‑alcohol analysis was obtained by qualified medical personnel, as required under Implied Consent Statute. State v. Frey (S.C.App. 2005) 362 S.C. 511, 608 S.E.2d 874. Automobiles 423

In prosecutions for driving under the influence (DUI), when moving to admit blood alcohol test results, the State must prove a chain of custody of the blood sample from the time it is drawn until it is tested. Ex parte Department of Health and Environmental Control (S.C. 2002) 350 S.C. 243, 565 S.E.2d 293. Automobiles 425

Trial court’s error in allowing state to circumvent defendant’s offer to stipulate that blood‑alcohol test he took was done pursuant to law enforcement procedures and that he was advised of his statutory rights, so that defendant could avoid having jury hear inadmissible evidence that defendant had failed to request additional tests, was not harmless in prosecution for driving under the influence (DUI), where state presented less than overwhelming evidence of defendant’s guilt. State v. Henderson (S.C.App. 2001) 347 S.C. 455, 556 S.E.2d 691, certiorari denied. Criminal Law 1169.1(2.1)

State’s alleged failure in driving under influence (DUI) prosecution to comply with defendant’s request to obtain repair and maintenance records and stock and simulator solution records for breath test equipment did not require suppression of breath test results, as such evidence was not material; trial court allowed defense counsel to extensively cross‑examine police officer who administered test, and, although trial court stated that defendant could call other witnesses, which presumably could have included custodian of breath test machine, defense counsel did not request continuance or recess to call custodian as witness. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Criminal Law 627.8(6)

Prior to admitting results of breath test in driving under influence (DUI) prosecution, State may be required to prove: (1) machine was in proper working order at time of test; (2) correct chemicals had been used; (3) accused was not allowed to put anything in his mouth for 20 minutes prior to test; and (4) test was administered by qualified person in proper manner. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Automobiles 422.1

State established sufficient foundation for admission of breath test results in driving under influence (DUI) prosecution, even though officer who administered test was not certain that solution he used to perform simulator test before he performed actual test had been changed every 30 days; same officer testified solution had been properly changed because simulator stock solution produced accurate reading, and that, based on his knowledge and experience, he believed machine was in proper working order. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Automobiles 424

Results of a breathalyzer test were admissible against the defendant even though the South Carolina Law Enforcement Division (SLED) did not specifically approve, by regulation, the model of machine used for the test since, under Section 56‑5‑2950, regulations are not the only means by which SLED can approve a specific breathalyzer machine model. State v. Franklin (S.C. 1994) 312 S.C. 208, 443 S.E.2d 386. Automobiles 411

In a prosecution for driving under the influence, the trial court properly refused to allow the defendant to cross‑examine the officer who offered him a breathalyzer test regarding what affirmative assistance the officer could have rendered to enable the defendant to obtain an independent blood test since, having refused to take the breathalyzer test, the defendant was only entitled to a reasonable opportunity to obtain such a test. State v. Harris (S.C.App. 1993) 311 S.C. 162, 427 S.E.2d 909.

A motorist, convicted of driving under the influence, preserved the issue of the admissibility of the results of his horizontal gaze nystagmus test where he objected to the introduction of such evidence at his trial in the magistrate’s court. State v. Sullivan (S.C. 1993) 310 S.C. 311, 426 S.E.2d 766.

Evidence resulting from horizontal gaze nystagmus tests, as from other field sobriety tests, is admissible in prosecutions for driving under the influence (DUI) when the test is used to elicit objective manifestations of soberness or insobriety; however such evidence is not conclusive proof of DUI. State v. Sullivan (S.C. 1993) 310 S.C. 311, 426 S.E.2d 766. Automobiles 355(6); Automobiles 411

Infrared spectroscopy constitutes a “chemical test” as contemplated by the implied consent statute, Section 56‑5‑2950, even though no chemicals are used to analyze the breath, since a more restrictive reading would undermine the important public purpose underlying the statute. State v. Squires (S.C. 1992) 311 S.C. 11, 426 S.E.2d 738.

The trial court abused its discretion in admitting in evidence the blood alcohol test of a motorist whose blood had been drawn at the hospital for purposes of diagnosing his condition where neither the motorist’s medical records, the label on the blood sample, nor the attending nurses could identify who had drawn the sample and transported it to the lab. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306.

A driver arrested for driving under the influence (DUI) was not entitled to suppression at trial of her refusal to take a breathalyzer test where she contended that the arresting officer effectively prevented her from obtaining an independent test by advising her that she must have the test before an alternate test would be made available, but there was no evidence that she ever requested an independent test or inquired whether one was available, and she was permitted to use the phone after refusing the test; affirmative assistance in obtaining an independent blood test is not required by officers when the defendant has refused to take the breathalyzer test. State v. Degnan (S.C. 1991) 305 S.C. 369, 409 S.E.2d 346.

Due process was not violated by the loss from evidence of the original and carbon copy of the breathalyzer operator’s test report in a trial for driving under the influence where the defendant was able to prove by oral evidence that the date on the original test report retained by the state varied from the date on the carbon copy given to him, and thus the defendant suffered no prejudice from the loss of the physical evidence. State v. Adams (S.C.App. 1991) 304 S.C. 302, 403 S.E.2d 678.

Breathalyzer test results are admissible in criminal prosecution for driving while under influence of intoxicants, even though test is conducted with machine which is not manufactured by manufacturer approved by South Carolina Law Enforcement Division under Code Section 56‑5‑2950(a), where approved manufacturer has been acquired by another manufacturer and machine used is same machine previously approved under different name. City of Cayce v. Graves (S.C. 1983) 279 S.C. 54, 301 S.E.2d 755. Automobiles 424

In order to warrant the introduction of the results of a breathalyzer test into evidence, the state must produce prima facie evidence (1) that the machine was in proper working order at the time of the test; (2) that the correct chemicals were used; (3) that the accused was not allowed to put anything in his mouth for 20 minutes prior to the test; and (4) that the test was administered by a qualified person in the proper manner. State v. Parker (S.C. 1978) 271 S.C. 159, 245 S.E.2d 904. Automobiles 422.1

16. —— Accuracy of test equipment, admissibility of evidence

Prior to admitting results of breath test in driving under influence (DUI) prosecution, State may be required to prove: (1) machine was in proper working order at time of test; (2) correct chemicals had been used; (3) accused was not allowed to put anything in his mouth for 20 minutes prior to test; and (4) test was administered by qualified person in proper manner. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Automobiles 422.1

Testimony of breath test machine operator that he or she had run simulator test immediately before actual test, and that machine gave reading equal to percent of alcohol in simulator solution, is sufficient in driving under influence (DUI) prosecution to establish, prima facie, that machine was working properly and that correct chemicals were used. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Automobiles 424

If there is evidence challenging state’s prima facie showing in driving under influence (DUI) prosecution that breath test machine was working properly and that correct chemicals were used, judge must rule upon admissibility in light of entire evidence. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Automobiles 426

17. —— Extra‑judicial statements, admissibility of evidence

In prosecution for driving under the influence of alcohol (DUI), defendant’s extra‑judicial statements to police that he was driving were admissible to establish corpus delicti, as they were sufficiently corroborated by independent facts that he owned the car, that he was the only one present when police arrived, that the ignition key was in his pocket, and that the hood of the car was still warm. State v. Russell (S.C.App. 2001) 345 S.C. 128, 546 S.E.2d 202. Criminal Law 413.81(18)

Statements that drunk driving defendant made before his arrest did not amount to confession, but rather, were in nature of admissions; although he told police that his car was stolen, that he wrecked his car (retracting stolen car claim), and that he did not have anything to drink after wreck, such statements did not constitute acknowledgment of guilt of DUI, as they did not even acknowledge that defendant ever drank at all, much less that he was under influence of alcohol. State v. Osborne (S.C. 1999) 335 S.C. 172, 516 S.E.2d 201. Criminal Law 410.2; Criminal Law 410.3

The corroboration rule is satisfied if the state provides sufficient independent evidence which serves to corroborate the defendant’s extra‑judicial statements and, together with such statements, permits a reasonable belief that the crime occurred. State v. Osborne (S.C. 1999) 335 S.C. 172, 516 S.E.2d 201. Criminal Law 413.78

State provided sufficient corroborating evidence in prosecution for driving under influence (DUI) to support trustworthiness of defendant’s pre‑arrest statements to police that his car was stolen, that he wrecked his car (retracting stolen car claim), and that he did not have anything to drink after wreck; car hood was warm to touch when officer came upon accident scene, officer believed that defendant was very intoxicated when officer encountered him in store two hours later, defendant had car keys in his pocket, and defendant registered .14% on breath test administered over three hours after accident. State v. Osborne (S.C. 1999) 335 S.C. 172, 516 S.E.2d 201. Criminal Law 413.81(18)

Record showed that pre‑arrest roadside statements defendant made to police officer who stopped him for suspicion of driving under influence (DUI) were voluntary, and thus, failure to conduct Jackson v. Denno hearing on voluntariness issue was harmless error; defendant did not assert any facts which would render his statements involuntary other than fact he was questioned by officer and required to perform field sobriety tests, but case involved only routine traffic stop and investigation of possible DUI. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Criminal Law 410.78; Criminal Law 1169.2(6)

18. —— Reports, admissibility of evidence

In prosecution as second offender for driving motor vehicle while under influence of intoxicating liquor, where case was tried long before passage of act making certified copies of reports filed with Highway Department admissible as prima facie evidence in cases involving prosecutions for operation of motor vehicles in reckless manner, or while under influence of intoxicants, drugs or narcotics, case was not affected by such statute. Code 1952, Sections 46‑343, 46‑345, 46‑347, 46‑350; Act April 17, 1953, 48 Stat. at Large, p. 222. State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151. Criminal Law 430

In prosecution as second offender for operating a motor vehicle while under influence of intoxicating liquor, magistrate’s report made pursuant to statute requiring magistrates to make reports to Highway Department with respect to violations of ordinances or statute prohibiting person from operating automobile while under influence of intoxicating liquor, would be admissible as against contention that it violated constitutional guarantee to accused of being confronted with witnesses against him. Code 1952, Sections 46‑343, 46‑345, 46‑347, 46‑350; Const. art. 1, Section 18. State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151. Criminal Law 662.40

In prosecution as second offender for operating a motor vehicle while under influence of intoxicating liquor, report made by magistrate to the highway department pursuant to statute requiring magistrates to make reports concerning violations of statute or ordinances prohibiting the driving of an automobile while under influence of intoxicating liquor, was admissible as a public document or official statement. Code 1952, Sections 46‑343, 46‑345, 46‑347, 46‑350. State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151. Criminal Law 429(1)

19. —— Video, admissibility of evidence

Lack of audio on video recording from breath test site warranted suppression of the silent video recording of breath test, breath test results, and related testimony and evidence in prosecution of defendant for driving under the influence (DUI); recording did not strictly comply with statutory requirements that video recording at the site of the breath test of a person charged with DUI include “the reading of Miranda rights” and “the person being informed that he is being videotaped, and that he has the right to refuse the test,” and State did not show that any statutory exception applied to allow admission of recording, results, and related evidence despite recording’s noncompliance. State v. Sawyer (S.C. 2014) 409 S.C. 475, 763 S.E.2d 183, rehearing denied. Automobiles 421; Automobiles 422.1

A silent video recording cannot meet the statutory requirements that video recording at the site of the breath test of a person charged with driving under the influence (DUI) “must include the reading of Miranda rights” and “the person being informed that he is being videotaped, and that he has the right to refuse the test.” State v. Sawyer (S.C. 2014) 409 S.C. 475, 763 S.E.2d 183, rehearing denied. Automobiles 421

Dismissal of a charge for driving under the influence (DUI) is an appropriate remedy when a violation of the statute requiring a video recording of any field sobriety tests at the incident site is not mitigated by statutory exceptions. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 426

Statute requiring video recording of arrest for driving under the influence (DUI), including any field sobriety tests administered at arrest site, required that defendant’s head be visible in recording during administration of horizontal gaze nystagmus (HGN) test. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1

Police department’s noncompliance with statute requiring video recording of traffic stop and arrest was excused as to defendant who was arrested for driving under influence (DUI) by police officer whose cruiser had not been equipped with recording device, and thus, officer’s failure to provide recording of arrest did not mandate dismissal of charge; police department undertook extensive efforts to obtain recording devices from Department of Public Safety (DPS), department had expended its own funds to purchase additional camera systems after DPS provided department with limited number of camera systems and informed department that it could not receive requested number of camera systems at one time, as of date of defendant’s trial, department had spent $463,463.99 to purchase 89 digital‑based camera systems, statute was enacted so that law enforcement agencies would not have to spend their own money on camera systems, and DPS employee testified that it would take 15 years to fulfill number of camera systems requested statewide in single year. State v. Johnson (S.C.App. 2014) 408 S.C. 544, 758 S.E.2d 911, rehearing denied. Automobiles 349(14.1)

20. Questions for jury

State provided sufficient independent evidence to support the trustworthiness of defendant’s statements to the police, and this independent evidence, taken together with the statements, allowed a reasonable inference that the crime of driving under the influence (DUI) was committed, and thus, evidence warranted submission of DUI charge to jury; defendant was found at the accident scene of a wrecked vehicle in the presence of emergency personnel, he smelled of alcohol, failed field sobriety tests, and appeared to be intoxicated, breath test showed his blood alcohol level to be .22 percent, trooper noted the wrecked vehicle had front‑end damage consistent with running into a tree, and defendant admitted to driving the wrecked vehicle. State v. Abraham (S.C.App. 2014) 408 S.C. 589, 759 S.E.2d 440. Criminal Law 413.94(18)

Whether defendant was guilty of driving under the influence of alcohol (DUI) was a question of fact for the jury, as corpus delicti of crime was established by circumstantial evidence that the car was operated in the state, by defendant’s admission that he was highly intoxicated, and by his extra‑judicial statements to police that he was driving, which were sufficiently corroborated by independent facts. State v. Russell (S.C.App. 2001) 345 S.C. 128, 546 S.E.2d 202. Automobiles 356(6)

State presented sufficient evidence, other than defendant’s own statements, establishing corpus delicti of driving under the influence (DUI); ample evidence, including results of field sobriety and breath tests, established that defendant was intoxicated, and police trooper testified that, outside presence of defendant, two eyewitnesses identified defendant as driver at time automobile accident occurred. State v. Smith (S.C.App. 1997) 328 S.C. 622, 493 S.E.2d 506. Automobiles 356(6)

In the prosecution of a charge of driving under the influence, the State failed to present proof aliunde of the corpus delicti where the State relied solely on the defendant’s extra‑judicial confessions to prove the crime; a conviction cannot be had on a confession unless corroborated by extrinsic evidence of the corpus delicti. State v. Osborne (S.C.App. 1996) 321 S.C. 196, 467 S.E.2d 454, rehearing denied, certiorari granted, reversed 335 S.C. 172, 516 S.E.2d 201.

In an action arising out of a charge of driving under the influence, the State provided enough evidence for the case to be submitted to the jury where the state showed (1) that the defendant was at the scene where his car had been involved in a wreck, (2) the defendant smelled of alcohol, (3) he failed sobriety tests, and (4) a breathalyzer test show his blood alcohol level to be .21. State v. Townsend (S.C.App. 1996) 321 S.C. 55, 467 S.E.2d 138, rehearing denied. Automobiles 355(6)

In a trial for driving under the influence of alcohol, sufficient evidence existed to withstand a motion for a directed verdict where the arresting officer testified that he (1) observed the defendant driving erratically, (2) stopped the defendant and noticed a strong smell of alcohol, and (3) administered several field sobriety tests, all of which indicated that the defendant was under the influence of alcohol. State v. Breech (S.C. 1992) 308 S.C. 356, 417 S.E.2d 873.

Evidence was sufficient to support submission of case to jury where (1) defendant, charged with driving under influence, was discovered alone on passenger side of wrecked automobile, (2) tow truck operator testified defendant appeared to be under influence, (3) defendant admitted driving automobile when interviewed at hospital, and (4) open bottle of alcoholic beverage was found in automobile. State v. Gilliam (S.C. 1978) 270 S.C. 345, 242 S.E.2d 410.

Credibility of witnesses, including defendant himself, was for jury in prosecution for driving motor vehicle while under influence of intoxicating alcohol. Code 1962, Section 46‑343. State v. Marshall (S.C. 1968) 250 S.C. 448, 158 S.E.2d 650.

Refusal to direct verdict of not guilty, in prosecution for driving motor vehicle while under influence of intoxicating alcohol, was not error in view of fact that determination of defendant’s guilt was dependent on credibility of witnesses, including defendant himself. Code 1962, Section 46‑343. State v. Marshall (S.C. 1968) 250 S.C. 448, 158 S.E.2d 650.

The testimony of the arresting officer that he observed the defendant operating his automobile from one side of the road to the other; that at the time of arrest the defendant had a strong odor of alcohol about him and could not stand or walk without assistance; and that his speech, both as to clarity and coherence, was affected, was sufficient to justify the refusal of the trial court to direct a verdict of not guilty. State v. Douglas (S.C. 1964) 245 S.C. 83, 138 S.E.2d 845. Automobiles 356(6)

21. Instructions

Minor’s guardian ad litem (GAL) was entitled to have jury instructed that motorist, who was minor’s mother, was not presumptively impaired by alcohol, in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; trial court charged jury under criminal statute involving charge of driving under the influence (DUI), but motorist’s blood alcohol content was only 0.018. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(4); Railroads 351(14)

Trial court’s error in refusing to charge jury that motorist, who was minor’s mother, was not presumptively impaired by alcohol, prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; court charged jury on criminal statute involving charge of driving under the influence (DUI), and, thus, jury could have found motorist was impaired while driving and that this criminal act negated any negligence on part of railroad and Department. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1067

No circumstantial evidence instruction was required in prosecution for driving under influence (DUI), as there was direct proof of guilt; officers saw defendant driving vehicle erratically, crossing centerline three times, one officer perceived that defendant smelled like alcohol, walked unsteadily on his feet, had bloodshot eyes and slurred speech, and had to lean against his truck for support, defendant admitted he was too drunk to perform “one leg stand” test, he failed other field sobriety tests, and he admitted he had drunk at least six beers. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Criminal Law 814(17)

Trial court may have confused jury in prosecution for driving under influence (DUI), where court stated that defendant would be under influence if he was unable to operate vehicle in same manner that person who had not consumed any intoxicating beverage could, as correct standard pertains to ability to drive with reasonable care, or as prudent driver would drive; however, there was no error, as trial judge properly charged jury on various standards to be used in determining whether defendant was under influence, and there was overwhelming evidence of defendant’s impairment. State v. Kerr (S.C.App. 1998) 330 S.C. 132, 498 S.E.2d 212, rehearing denied, certiorari denied. Criminal Law 809; Criminal Law 822(6)

A trial judge’s refusal to charge the jury that the City was required to prove both a mental and physical impairment in order to establish DUI was not error; the trial judge adequately charged the jury that DUI is established by proof that the defendant’s ability to drive was materially and appreciably impaired. City of Orangeburg v. Carter (S.C. 1991) 303 S.C. 290, 400 S.E.2d 140. Automobiles 357(6)

22. Sufficiency of evidence

Sufficient evidence supported the conviction of a driver arrested for driving under the influence (DUI), even though she contended that she was denied an independent blood test and was entitled to suppression of her refusal to take a breathalyzer test, where at the time of her arrest she admitted drinking 5 or 6 beers, was unable to complete the alphabet, was dazed, had trouble walking and had to lean on her car to support herself. State v. Degnan (S.C. 1991) 305 S.C. 369, 409 S.E.2d 346.

Conviction for operating automobile while under influence of intoxicating liquor and narcotic drugs was sustained by evidence. Act June 7, 1949, Section 57, 46 St. at Large, p. 483. State v. Ramey (S.C. 1952) 221 S.C. 10, 68 S.E.2d 634. Automobiles 355(1); Automobiles 355(6)

23. Sentence and punishment

Magistrate judge committed plain error in failing to impose any fine upon defendant convicted of second‑offense driving under the influence (DUI) under Section 56‑5‑2930, assimilated by the Assimilative Crimes Act, since the penalty required for such offense under Section 56‑5‑2940(2) includes at least $1,000 fine on defendant; nonetheless, sentence imposed was affirmed where government did not timely object to sentence, the terms of which did not result in denial of fundamental justice since defendant did not escape punishment and magistrate’s decision not to impose fine was based on legitimate conclusion that defendant had no means to pay fine. U.S. v. Jacobs, 1993, 815 F.Supp. 898. Criminal Law 1042.3(1); Criminal Law 1182

Defendant was properly sentenced for driving under influence (DUI), second offense, despite his claim that jury convicted him of driving under influence, and that state failed to prove there was prior conviction to warrant enhanced sentence; defendant was indicted for driving under influence, second offense, it appeared from record that trial judge was aware of defendant’s prior conviction, and sentence imposed was within statutory limits for this offense. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Automobiles 359.6

The trial court properly suspended the defendant’s drivers license where the defendant was convicted of driving while his ability was impaired (DWAI) in the State of New York, since the offense of DWAI in the State of New York is of a substantially similar nature to the South Carolina offense of DUI. Przybyla v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 313 S.C. 116, 437 S.E.2d 70.

Where highway department suspended defendant’s driver’s license for refusal to take breathalyzer test and for conviction of driving while under the influence of intoxicating liquor as soon as it was made aware of the refusal and the conviction, State was not estopped from suspending license by virtue of one‑year delay between conviction and suspension and one‑year delay did not deny due process. Code 1962, Sections 46‑343, 46‑344(d). State v. Chavis (S.C. 1973) 261 S.C. 408, 200 S.E.2d 390.

A defendant who had been twice convicted for drunken driving could be sentenced as a third offender on his subsequent conviction for same offense, notwithstanding that in the second prosecution the defendant was convicted and sentenced only as a first offender. Act June 7, 1949, Section 57(g), 46 St. at Large, p. 485. State v. McAbee (S.C. 1951) 220 S.C. 272, 67 S.E.2d 417. Automobiles 359.6

24. New trial

Motorist’s motion for new trial following conviction in absentia of operating motor vehicle while under influence of intoxicating liquor was timely where filed on day after he received notification that his driver’s license had been suspended following his conviction, even though notice had been filed more than five days after the conviction. Code 1962, Sections 43‑142, 43‑143, 46‑343, 46‑347, 46‑348. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

25. Habeas corpus

One who was charged with thirteenth offense of drunken driving had statutory remedy to eliminate from the indictment the allegations as to his twelve previous convictions, and his failure to use this remedy barred his resort to habeas corpus. Code 1962, Sections 46‑343, 46‑345. Tyler v. State (S.C. 1965) 247 S.C. 34, 145 S.E.2d 434. Habeas Corpus 275.1

26. Review

Defendant was not “aggrieved” by circuit court’s order reversing magistrate’s dismissal of driving under the influence (DUI) charge, and therefore order was not appealable; order was analogous to an order denying a motion to suppress evidence, which was an interlocutory order that was not immediately appealable. State v. Looper (S.C.App. 2015) 412 S.C. 363, 772 S.E.2d 516, rehearing denied, certiorari granted. Criminal Law 1023(3)

On the State’s appeal from circuit court’s reversal of driving under the influence (DUI) conviction entered in the magistrate court, record was not sufficient to allow the Court of Appeals to consider State’s argument that circuit court did not review video recording of field sobriety tests at arrest site, where State did not put on the record the fact that the circuit court allegedly did not view the recording and did not raise any objection to the court allegedly not reviewing the recording. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Criminal Law 1119(2)

Circuit court engaged in impermissible fact‑finding on defendant’s appeal from conviction in magistrate court for driving under the influence (DUI) when it found that defendant’s head was not visible in video recording of horizontal gaze nystagmus (HGN) test, in violation of statutory requirement for video recording of “any field sobriety test” administered at arrest site. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Criminal Law 260.11(3.1)

In prosecution for driving under the influence of alcohol (DUI), defendant preserved for appellate review contention that he was entitled to a directed verdict because the state failed to establish the corpus delicti of DUI independent of his statements to police; defendant did not use the term “corpus delicti,” but it was clear that the motion was made on that ground, as the state used the term and cited relevant case law when opposing the motion. State v. Russell (S.C.App. 2001) 345 S.C. 128, 546 S.E.2d 202. Criminal Law 1044.2(1)

In prosecution for driving under the influence of alcohol (DUI), defendant failed to preserve for appellate review contention that his extra‑judicial statements that he was driving were not sufficiently trustworthy to be admissible to prove corpus delicti, where defendant did not raise issue in trial court and it was not ruled upon by the judge. State v. Russell (S.C.App. 2001) 345 S.C. 128, 546 S.E.2d 202. Criminal Law 1036.1(5); Criminal Law 1045

Defendant who was sentenced for driving under influence (DUI), second offense, waived appellate review of his claim that trial court had jurisdiction to impose sentence only for driving under influence, first offense; defense counsel failed to object to sentence when it was imposed. State v. Salisbury (S.C.App. 1998) 330 S.C. 250, 498 S.E.2d 655, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 520, 541 S.E.2d 247. Criminal Law 1042.5

To sustain driving under the influence (DUI) conviction, there must be evidence, other than defendant’s extra‑judicial statements, that someone, but not necessarily defendant, was driving while impaired. State v. Smith (S.C.App. 1997) 328 S.C. 622, 493 S.E.2d 506. Automobiles 332

In an action by a motorist arising from a head‑on automobile collision between the motorist and the defendant’s daughter, a charge of Section 56‑5‑2930 would have been appropriate had the matter been properly before the appellate court, since the investigating officer testified that there was a strong odor of alcohol about the daughter’s vehicle and the parties stipulated that some quantity of alcohol was present in the blood of the daughter. Sweatt v. Norman (S.C.App. 1984) 283 S.C. 443, 322 S.E.2d 478.

Where motorist’s conviction, in absentia, of operating motor vehicle while under influence of intoxicating liquor had been set aside and new trial granted, there was no basis for suspension of his driver’s license and motorist was entitled to have suspension of his license restrained pending outcome of the new trial. Code 1962, Sections 43‑142, 43‑143, 46‑343, 46‑347, 46‑348. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

Defendant who was convicted in magistrate’s court for driving motor vehicle while under influence of intoxicants but whose conviction was reversed in circuit court on ground that unlawful arrest vitiated conviction could not raise objection, for first time on appeal to Supreme Court, that question presented included admissibility at trial of evidence obtained during period of unlawful arrest. State v. Holliday (S.C. 1970) 255 S.C. 142, 177 S.E.2d 541.

Voluntary compliance with the sentence imposed under this section [formerly Code 1962 Section 46‑343] ends the action and precludes a review of the judgment of conviction. State v. Morris (S.C. 1967) 249 S.C. 589, 155 S.E.2d 623.

**SECTION 56‑5‑2933.** Driving with an unlawful alcohol concentration; penalties; enrollment in Alcohol and Drug Safety Action Program; prosecution.

(A) It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one‑hundredths of one percent or more. A person who violates the provisions of this section is guilty of the offense of driving with an unlawful alcohol concentration and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:

(1) for a first offense, by a fine of four hundred dollars or imprisonment for not less than forty‑eight hours nor more than thirty days. However, in lieu of the forty‑eight hour minimum imprisonment, the court may provide for forty‑eight hours of public service employment. The minimum forty‑eight hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum forty‑eight hour sentence. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by a fine of five hundred dollars or imprisonment for not less than seventy‑two hours nor more than thirty days. However, in lieu of the seventy‑two hour minimum imprisonment, the court may provide for seventy‑two hours of public service employment. The minimum seventy‑two hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum sentence. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by a fine of one thousand dollars or imprisonment for not less than thirty days nor more than ninety days. However, in lieu of the thirty‑day minimum imprisonment, the court may provide for thirty days of public service employment. The minimum thirty days imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment instead of the thirty‑day minimum sentence. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, a first offense charged for this item may be tried in magistrates court;

(2) for a second offense, by a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by a fine of not less than two thousand five hundred dollars nor more than five thousand five hundred dollars and imprisonment for not less than thirty days nor more than two years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by a fine of not less than three thousand five hundred dollars nor more than six thousand five hundred dollars and imprisonment for not less than ninety days nor more than three years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars;

(3) for a third offense, by a fine of not less than three thousand eight hundred dollars nor more than six thousand three hundred dollars, and imprisonment for not less than sixty days nor more than three years. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by a fine of not less than five thousand dollars nor more than seven thousand five hundred dollars and imprisonment for not less than ninety days nor more than four years. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by a fine of not less than seven thousand five hundred dollars nor more than ten thousand dollars and imprisonment for not less than six months nor more than five years; or

(4) for a fourth or subsequent offense, by imprisonment for not less than one year nor more than five years. If the person’s alcohol concentration is at least ten one‑hundredths of one percent but less than sixteen one‑hundredths of one percent, then the person must be punished by imprisonment for not less than two years nor more than six years. If the person’s alcohol concentration is sixteen one‑hundredths of one percent or more, then the person must be punished by imprisonment for not less than three years nor more than seven years.

(B) No part of the minimum sentences provided in this section may be suspended. Instead of public service employment the court may invoke another sentence provided in this section. For a second or subsequent offense of this section, the service of the minimum sentence is mandatory. However, the judge may provide for the sentence to be served upon terms and conditions as he considers proper including, but not limited to, weekend service or nighttime service in any fashion he considers necessary.

(C) The fine for a first offense must not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

(D) For the purposes of this chapter a conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of a law or ordinance of this or another state or a municipality of this or another state that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including, but not limited to, Section 56‑5‑2930, or prohibits a person from driving a motor vehicle with an unlawful alcohol concentration, including, but not limited to, this section, constitutes a prior offense of this section. Only those violations which occurred within a period of ten years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

(E) Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside.

(F) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

(G) Two hundred dollars of the fine imposed pursuant to subsections (A)(3) 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 breath testing devices, breath testing site video program, and toxicology laboratory.

(H) A person convicted of violating this section, whether for a first offense or subsequent offense, must enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. An assessment of the extent and nature of the alcohol and drug abuse problem of the applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. The Alcohol and Drug Safety Action Program shall determine if the applicant successfully has completed the services. The applicant must attend the first Alcohol and Drug Safety Action Program available after the date of enrollment. The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each applicant shall bear the cost of services recommended in the applicant’s plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. An applicant may not be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the applicant successfully has completed services. An applicant who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the applicant successfully has completed services. The court must be notified whether an offender failed to enroll in a certified program within thirty days or failed to participate in the plan of education or treatment. The court may hold the individual in contempt of court if the individual cannot show cause as to why no enrollment occurred within the mandated thirty days or why no progress has been made on the plan of education or treatment.

(I) A person charged for a violation of Section 56‑5‑2930 may be prosecuted pursuant to this section if the original testing of the person’s breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. A person may not be prosecuted for both a violation of Section 56‑5‑2930 and a violation of this section for the same incident. A person who violates the provisions of this section is entitled to a jury trial and is afforded the right to challenge certain factors including the following:

(1) whether or not the person was lawfully arrested or detained;

(2) the period of time between arrest and testing;

(3) whether or not the person was given a written copy of and verbally informed of the rights enumerated in Section 56‑5‑2950;

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

(a) reported alcohol concentration at the time of testing was eight 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 regulations adopted pursuant to Section 56‑5‑2951(O) and Section 56‑5‑2953(F); and

(d) machine was working properly.

(J) Nothing contained in this section prohibits the introduction of:

(1) the results of any additional tests of the person’s breath or other bodily fluids;

(2) any evidence that may corroborate or question the validity of the breath or bodily fluid test result including, but not limited to:

(a) evidence of field sobriety tests;

(b) evidence of the amount of alcohol consumed by the person; and

(c) evidence of the person’s driving;

(3) a video recording of the person’s conduct at the incident site and breath testing site taken pursuant to Section 56‑5‑2953 which is subject to redaction under the South Carolina Rules of Evidence; or

(4) any other evidence of the state of a person’s faculties to drive which would call into question the results of a breath or bodily fluid test.

At trial, a person charged with a violation of this section is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date.

(K) For the purpose of this section, any offense carrying a penalty of imprisonment of ninety days or less may be tried in magistrates court.

(L) In cases in which enhanced penalties for higher levels of alcohol concentration may be applicable, upon the determination of guilt, the finder of fact shall determine the alcohol concentration and the judge shall apply the appropriate penalty.

HISTORY: 2000 Act No. 390; 2003 Act No. 61, Section 5; 2008 Act No. 201, Section 5, eff February 10, 2009.

CROSS REFERENCES

Ignition interlock device, see Section 56‑5‑2941.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑5‑2990.

Suspension of license for refusal to submit to testing or for certain level of alcohol concentration, temporary alcohol license, contested case hearing, restricted driver’s license, penalties, see Section 56‑5‑2951.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Library References

Automobiles 332, 359.3.

Sentencing and Punishment 2049.

Westlaw Topic Nos. 48A, 350H.

C.J.S. Motor Vehicles Sections 1574 to 1598, 1623 to 1626.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 50, Operation of Motor Vehicle as Habitual Offender.

S.C. Jur. Automobiles and Other Motor Vehicles Section 172, Videotape Evidence.

Attorney General’s Opinions

Discussion of whether a license suspension for driving with an unlawful alcohol concentration is equivalent to a suspension for driving while impaired for purposes of eligibility of candidates for certification as law enforcement officers. S.C. Op.Atty.Gen. (July 12, 2017) 2017 WL 3209043.

Convictions for violating Section 56‑5‑2933, as well as out of state convictions, for violation of laws prohibiting a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics both count toward the number of offenses that trigger this section’s confiscation and forfeiture provisions. S.C. Op.Atty.Gen. (December 1, 2015) 2015 WL 9243425.

Non‑discretionary license and registration checks are constitutionally valid and proof of insurance and registration must be displayed upon demand of a police officer. S.C. Op.Atty.Gen. (March 6, 2008) 2008 WL 903978.

NOTES OF DECISIONS

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1. In general

Offense of driving with an unlawful alcohol concentration (DUAC), though not requiring a showing of driving “under the influence,” required an alcohol concentration of at least .08 percent, which was comparable to operating a motor vehicle while intoxicated (OWI), and thus, offense of DUAC was a major violation under the habitual traffic offender statute, which, due to his conviction, qualified motorist as an habitual traffic offender whose driver’s license was subject to five‑year suspension; DUAC carried a permissible inference of being under the influence. Code 1976, Section 56‑1‑1020(a)(2), 56‑5‑2933. South Carolina Department of Motor Vehicles v. Blackwell (S.C. 2010) 389 S.C. 293, 698 S.E.2d 770. Automobiles 144.1(3); Automobiles 144.5

2. Video recording

Dismissal of charge for driving under the influence (DUI) on the basis that statutorily‑required video recording of incident site briefly omitted defendant from view was erroneous, where video began recording upon activation of blue lights, continuously recorded the entire time, and captured all field sobriety tests administered, defendant’s arrest, and officer advising defendant of her Miranda rights, and omission did not occur during any events that either created direct evidence of a DUI or served defendant’s important rights. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Automobiles 349(14.1); Automobiles 422.1

Dismissal of charge of driving under the influence (DUI) charge is an appropriate remedy for arresting officer’s failure to provide complete videotape from incident site, as required by statute, where a violation of statute is not mitigated by any of the statutory exceptions that excuse compliance. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Criminal Law 2012

State was not required to submit an affidavit explaining defendant’s brief omission from view during statutorily‑required video recording of incident site in prosecution for driving under the influence (DUI); statute was not violated, affidavits were required only when video camera was inoperable or it was physically impossible to record because defendant required emergency medical treatment or exigent circumstances existed, and record contained no evidence that those situations were present. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Automobiles 349(14.1); Automobiles 422.1

3. Admissibility of evidence

In prosecutions for driving under the influence (DUI), when moving to admit blood alcohol test results, the State must prove a chain of custody of the blood sample from the time it is drawn until it is tested. Ex parte Department of Health and Environmental Control (S.C. 2002) 350 S.C. 243, 565 S.E.2d 293. Automobiles 425

**SECTION 56‑5‑2934.** Compulsory process to obtain witnesses and documents; breath testing software.

Notwithstanding any other provision of law, a person charged with a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 who is being tried in any court of competent jurisdiction in this State has the right to compulsory process for obtaining witnesses, documents, or both, including, but not limited to, state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this article. This process may be issued under the official signature of the magistrate, judge, clerk, or other officer of the court of competent jurisdiction. The term “documents” includes, but is not limited to, a copy of the computer software program of breath testing devices. SLED must produce all breath testing software in a manner that complies with any and all licensing agreements. This section does not limit a person’s ability to obtain breath testing software directly from the manufacturer or distributor.

HISTORY: 2000 Act No. 390, Section 9; 2003 Act No. 61, Section 15; 2008 Act No. 201, Section 6, eff February 10, 2009.

Library References

Witnesses 2(1).

Westlaw Topic No. 410.

C.J.S. Criminal Procedure and Rights of the Accused Sections 774 to 776, 778, 780 to 792.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 179.5, Person’s Right to Written Information Prior to and After Taking Test or Giving Samples.

NOTES OF DECISIONS

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1. In general

Purpose of the warnings under statute governing right to compulsory process are to advise the defendant of the consequences of refusing or failing the breathalyzer, that is, license suspension, and to advise the defendant of the right to a hearing concerning a suspension and provide the necessary forms to request such a hearing. State v. Haase (S.C. 2006) 367 S.C. 264, 625 S.E.2d 634. Automobiles 421

Police sufficiently complied with requirements of statute governing right to compulsory process when police gave motorist, who was suspected of driving under the influence (DUI), warnings prior to her refusal to take Data Master test, although warnings were not given at arrest site. State v. Haase (S.C. 2006) 367 S.C. 264, 625 S.E.2d 634. Automobiles 421

**SECTION 56‑5‑2935.** Right to jury trial.

Notwithstanding any other provision of law, a person charged with a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 who is being tried in any court of competent jurisdiction in this State must have the right of trial by jury. A person charged with one or more of these offenses shall enjoy the right to a speedy and public trial by an impartial jury, to be fully informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses, documents, or both, and the right to be fully heard in his defense by himself or by his counsel or, by both.

HISTORY: 2000 Act No. 390, Section 10.

Library References

Jury 22(2).

Westlaw Topic No. 230.

C.J.S. Juries Sections 4, 127 to 128, 130 to 133, 135 to 137.

**SECTION 56‑5‑2936.** Implementation of compulsory testimony requirement postponed; training of employees.

Notwithstanding any other provision of law, the State Law Enforcement Division is not required to implement the provisions of Section 56‑5‑2934 as contained in Section 9 of Act 390 of 2000 pertaining to the compulsory process for obtaining witnesses including, but not limited to, state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to Chapter 5 of Title 56 of the 1976 Code, until the time the General Assembly is adequately able to fund the program or by December 31, 2002, whichever first occurs. Provided, however, by December 31, 2002, the State Law Enforcement Division must have at least three state employees trained and prepared for the purpose of appearing in court and testifying on the maintenance of breath testing devices and the administration of breath testing pursuant to Chapter 5, Title 56 of the 1976 Code.

HISTORY: 2002 Act No. 165, Section 1.

Library References

Automobiles 423.

Witnesses 4.

Westlaw Topic Nos. 48A, 410.

C.J.S. Federal Civil Procedure Sections 557 to 560.

C.J.S. Witnesses Sections 2, 7, 9 to 13.

**SECTION 56‑5‑2941.** Ignition interlock device.

Text of (A) effective until November 19, 2018.

(A) The Department of Motor Vehicles shall require a person who is a resident of this State and who is convicted of violating the provisions of Section 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, 56‑5‑2947 except if the conviction was for Section 56‑5‑750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offense violation of Section 56‑5‑2930 or 56‑5‑2933, unless the person submitted to a breath test pursuant to Section 56‑5‑2950 and had an alcohol concentration of fifteen one‑hundredths of one percent or more. The department may waive the requirements of this section if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person’s driver’s license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person’s medical condition has improved to the extent that the person has become capable of properly operating an installed device. The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver’s license suspension or denial of the issuance of a driver’s license or permit to have an ignition interlock device installed on any motor vehicle the person drives.

The length of time that a device is required to be affixed to a motor vehicle as set forth in Sections 56‑1‑286, 56‑5‑2945, 56‑5‑2947 except if the conviction was for Sections 56‑5‑750, 56‑5‑2951, and 56‑5‑2990.

Text of (A) effective November 19, 2018.

(A) The Department of Motor Vehicles shall require a person who is a resident of this State and who is convicted of violating the provisions of Sections 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, 56‑5‑2947 except if the conviction was for Section 56‑5‑750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives, except a moped, an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offense violation of Section 56‑5‑2930 or 56‑5‑2933, unless the person submitted to a breath test pursuant to Section 56‑5‑2950 and had an alcohol concentration of fifteen one‑hundredths of one percent or more. The department may waive the requirements of this section if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person’s driver’s license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person’s medical condition has improved to the extent that the person has become capable of properly operating an installed device. The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver’s license suspension or denial of the issuance of a driver’s license or permit to have an ignition interlock device installed on any motor vehicle the person drives, except a moped.

The length of time that a device is required to be affixed to a motor vehicle as set forth in Sections 56‑1‑286, 56‑5‑2945, 56‑5‑2947 except if the conviction was for Sections 56‑5‑750, 56‑5‑2951, and 56‑5‑2990.

(B) Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that a device is required to be affixed to a motor vehicle is based on the Department of Motor Vehicle’s records for offenses pursuant to Section 56‑1‑286, 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, 56‑5‑2947 except if the conviction was for Section 56‑5‑750, 56‑5‑2950, or 56‑5‑2951.

(C) If a resident of this State is convicted of violating a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, and, as a result of the conviction, the person is subject to an ignition interlock device requirement in the other state, the person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

(D) If a person from another state becomes a resident of South Carolina while subject to an ignition interlock device requirement in another state, the person only may obtain a South Carolina driver’s license if the person enrolls in the South Carolina Ignition Interlock Device Program pursuant to this section. The person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

(E) The person must be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services. A person accumulating a total of:

(1) two points or more, but less than three points, must have the length of time that the device is required extended by two months;

(2) three points or more, but less than four points, must have the length of time that the device is required extended by four months, shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and shall successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the person not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles shall suspend the person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan;

(3) four points or more must have the person’s ignition interlock restricted license suspended for a period of six months, shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and successfully shall complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the person not complete the recommended plan or not make progress toward completing the plan, the Department of Motor Vehicles shall leave the person’s ignition interlock restricted license in suspended status, or, if the license has already been reinstated following the six‑month suspension, shall resuspend the person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan. The Department of Alcohol and Other Drug Abuse Services is responsible for notifying the Department of Motor Vehicles of a person’s completion and compliance with education and treatment programs. Upon reinstatement of driving privileges following the six‑month suspension, the Department of Probation, Parole and Pardon Services shall reset the person’s point total to zero points, and the person shall complete the remaining period of time on the ignition interlock device.

(F) The cost of the device must be borne by the person. However, if the person is indigent and cannot afford the cost of the device, the person may submit an affidavit of indigency to the Department of Probation, Parole and Pardon Services for a determination of indigency as it pertains to the cost of the device. The affidavit of indigency form must be made publicly accessible on the Department of Probation, Parole and Pardon Services’ Internet website. If the Department of Probation, Parole and Pardon Services determines that the person is indigent as it pertains to the device, the Department of Probation, Parole and Pardon Services may authorize a device to be affixed to the motor vehicle and the cost of the initial installation and standard use of the device to be paid for by the Ignition Interlock Device Fund managed by the Department of Probation, Parole and Pardon Services. Funds remitted to the Department of Probation, Parole and Pardon Services for the Ignition Interlock Device Fund also may be used by the Department of Probation, Parole and Pardon Services to support the Ignition Interlock Device Program. For purposes of this section, a person is indigent if the person is financially unable to afford the cost of the ignition interlock device. In making a determination whether a person is indigent, all factors concerning the person’s financial conditions should be considered including, but not limited to, income, debts, assets, number of dependents claimed for tax purposes, living expenses, and family situation. A presumption that the person is indigent is created if the person’s net family income is less than or equal to the poverty guidelines established and revised annually by the United States Department of Health and Human Services published in the Federal Register. “Net income” means gross income minus deductions required by law. The determination of indigency is subject to periodic review at the discretion of the Department of Probation, Parole and Pardon Services.

(G) The ignition interlock service provider shall collect and remit monthly to the Ignition Interlock Device Fund a fee as determined by the Department of Probation, Parole and Pardon Services not to exceed thirty dollars per month for each month the person is required to drive a vehicle with a device. A service provider who fails to properly remit funds to the Ignition Interlock Device Fund may be decertified as a service provider by the Department of Probation, Parole and Pardon Services. If a service provider is decertified for failing to remit funds to the Ignition Interlock Device Fund, the cost for removal and replacement of a device must be borne by the service provider.

(H)(1) The person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the person’s alcohol content at each attempt to start and running retest during each sixty‑day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

(2) Only a service provider authorized by the Department of Probation, Parole and Pardon Services to perform inspections on ignition interlock devices may conduct inspections. The service provider immediately shall report devices that fail inspection to the Department of Probation, Parole and Pardon Services. The report must contain the person’s name, identify the vehicle upon which the failed device is installed, and the reason for the failed inspection.

(3) If the inspection report reflects that the person has failed to complete a running retest, the person must be assessed one ignition interlock device point.

(4) If any inspection report or any photographic images collected by the device shows that the person has violated subsection (M), (O), or (P), the person must be assessed one and one‑half ignition interlock device points.

(5) The inspection report must indicate the person’s alcohol content at each attempt to start and running retest during each sixty‑day period. If the report reflects that the person violated a running retest by having an alcohol concentration of:

(a) two one‑hundredths of one percent or more but less than four one‑hundredths of one percent, the person must be assessed one‑half ignition interlock device point;

(b) four one‑hundredths of one percent or more but less than fifteen one‑hundredths of one percent, the person must be assessed one ignition interlock device point; or

(c) fifteen one‑hundredths of one percent or more, the person must be assessed two ignition interlock device points.

(6) A person may appeal less than four ignition interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer’s decision on appeal is final and no appeal from such decision is allowed.

(I)(1) If a person’s license is suspended due to the accumulation of four or more ignition interlock device points, the Department of Probation, Parole and Pardon Services must provide a notice of assessment of ignition interlock points which must advise the person of his right to request a contested case hearing before the Office of Motor Vehicle Hearings. The notice of assessment of ignition interlock points also must advise the person that, if he does not request a contested case hearing within thirty days of the issuance of the notice of assessment of ignition interlock points, he waives his right to the administrative hearing and the person’s driver’s license is suspended pursuant to subsection (E).

(2) The person may seek relief from the Department of Probation, Parole and Pardon Services’ determination that a person’s license is suspended due to the accumulation of four or more ignition interlock device points by filing a request for a contested case hearing with the Office of Motor Vehicle Hearings pursuant to the Administrative Procedures Act. The filing of the request for a contested case hearing will stay the driver’s license suspension pending the outcome of the hearing. However, the filing of the request for a contested case hearing will not stay the requirements of the person having the ignition interlock device.

(3) At the contested case hearing:

(a) the assessment of driver’s license suspension can be upheld;

(b) the driver’s license suspension can be overturned, or any or all of the contested ignition interlock points included in the device inspection report that results in the contested suspension can be overturned, and the penalties as specified pursuant to subsection (E) will then be imposed accordingly.

(4) A contested case hearing must be held after the request for the hearing is received by the Office of Motor Vehicle Hearings. Nothing in this section prohibits the introduction of evidence at the contested case hearing on the issue of the accuracy of the ignition interlock device. However, if the ignition interlock device is found to not be in working order due to failure of regular maintenance and upkeep by the person challenging the accumulation of ignition interlock points pursuant to the requirement of the ignition interlock program, such allegation cannot serve as a basis to overturn point accumulations.

(5) A written order must be issued by the Office of Motor Vehicle Hearings to all parties either reversing or upholding the assessment of ignition interlock points.

(6) A contested case hearing is 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 does not stay the ignition interlock requirement.

(J) Five years from the date of the person’s driver’s license reinstatement and every five years thereafter, a fourth or subsequent offender whose license has been reinstated pursuant to Section 56‑1‑385 may apply to the Department of Probation, Parole and Pardon Services for removal of the ignition interlock device and the removal of the restriction from the person’s driver’s license. The Department of Probation, Parole and Pardon Services may, for good cause shown, notify the Department of Motor Vehicles that the person is eligible to have the restriction removed from the person’s license.

(K)(1) Except as otherwise provided in this section, it is unlawful for a person who is subject to the provisions of this section to drive a motor vehicle that is not equipped with a properly operating, certified ignition interlock device. A person who violates this subsection:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than one year. The person must have the length of time that the ignition interlock device is required extended by six months;

(b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than five thousand dollars or imprisoned not more than three years. The person must have the length of time that the ignition interlock device is required extended by one year; and

(c) for a third or subsequent offense, is guilty of a felony, and, upon conviction, must be fined not less than ten thousand dollars or imprisoned not more than ten years. The person must have the length of time that the ignition interlock device is required extended by three years.

(2) No portion of the minimum sentence imposed pursuant to this subsection may be suspended.

(3) Notwithstanding any other provision of law, a first or second offense punishable pursuant to this subsection may be tried in summary court.

(L)(1) A person who is required in the course and scope of the person’s employment to drive a motor vehicle owned by the person’s employer may drive the employer’s motor vehicle without installation of an ignition interlock device, provided that the person’s use of the employer’s motor vehicle is solely for the employer’s business purposes.

(2) This subsection does not apply to:

(a) a person convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, 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, unless the person’s driving privileges have been suspended for not less than one year or the person has had an ignition interlock device installed for not less than one year on each of the motor vehicles owned or operated, or both, by the person.

(b) a person who is self employed or to a person who is employed by a business owned in whole or in part by the person or a member of the person’s household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle’s ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section.

(3) Whenever the person operates the employer’s vehicle pursuant to this subsection, the person shall have with the person a copy of the Department of Motor Vehicles’ form specified by Section 56‑1‑400(B).

(4) This subsection will be construed in parallel with the requirements of Section 56‑1‑400(B). A waiver issued pursuant to this subsection will be subject to the same review and revocation as described in Section 56‑1‑400(B).

(M) It is unlawful for a person to tamper with or disable, or attempt to tamper with or disable, an ignition interlock device installed on a motor vehicle pursuant to this section. Obstructing or obscuring the camera lens of an ignition interlock device constitutes tampering. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(N) It is unlawful for a person to knowingly rent, lease, or otherwise provide a person who is subject to this section with a motor vehicle without a properly operating, certified ignition interlock device. This subsection does not apply if the person began the lease contract period for the motor vehicle prior to the person’s arrest for a first offense violation of Section 56‑5‑2930 or 56‑5‑2933. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(O) It is unlawful for a person who is subject to the provisions of this section to solicit or request another person, or for a person to solicit or request another person on behalf of a person who is subject to the provisions of this section, to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section or to conduct a running retest while the vehicle is in operation. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(P) It is unlawful for another person on behalf of a person subject to the provisions of this section to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section or to conduct a running retest while that vehicle is in operation. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(Q) Only ignition interlock devices certified by the Department of Probation, Parole and Pardon Services may be used to fulfill the requirements of this section.

(1) The Department of Probation, Parole and Pardon Services shall certify whether a device meets the accuracy requirements and specifications provided in guidelines or regulations adopted by the National Highway Traffic Safety Administration, as amended from time to time. All devices certified to be used in South Carolina must be set to prohibit the starting of a motor vehicle when an alcohol concentration of two one‑hundredths of one percent or more is measured and all running retests must record violations of an alcohol concentration of two one‑hundredths of one percent or more, and must capture a photographic image of the driver as the driver is operating the ignition interlock device. The photographic images recorded by the ignition interlock device may be used by the Department of Probation, Parole and Pardon Services to aid in the Department of Probation, Parole and Pardon Services’ management of the Ignition Interlock Device Program; however, neither the Department of Probation, Parole and Pardon Services, the Department of Probation, Parole and Pardon Services’ employees, nor any other political subdivision of this State may be held liable for any injury caused by a driver or other person who operates a motor vehicle after the use or attempted use of an ignition interlock device.

(2) The Department of Probation, Parole and Pardon Services shall maintain a current list of certified ignition interlock devices and manufacturers. The list must be updated at least quarterly. If a particular certified device fails to continue to meet federal requirements, the device must be decertified, may not be used until it is compliant with federal requirements, and must be replaced with a device that meets federal requirements. The cost for removal and replacement must be borne by the manufacturer of the noncertified device.

(3) Only ignition interlock installers certified by the Department of Probation, Parole and Pardon Services may install and service ignition interlock devices required pursuant to this section. The Department of Probation, Parole and Pardon Services shall maintain a current list of vendors that are certified to install the devices.

(R) In addition to availability under the Freedom of Information Act, any Department of Probation, Parole and Pardon Services policy concerning ignition interlock devices must be made publicly accessible on the Department of Probation, Parole and Pardon Services’ Internet website. Information obtained by the Department of Probation, Parole and Pardon Services and ignition interlock service providers regarding a person’s participation in the Ignition Interlock Device Program is to be used for internal purposes only and is not subject to the Freedom of Information Act. A person participating in the Ignition Interlock Device Program or the person’s family member may request that the Department of Probation, Parole and Pardon Services provide the person or family member with information obtained by the department and ignition interlock service providers. The Department of Probation, Parole and Pardon Services may release the information to the person or family member at the department’s discretion. The Department of Probation, Parole and Pardon Services and ignition interlock service providers must purge all photographic images collected by the device no later than twelve months from the date of the person’s completion of the Ignition Interlock Device Program. The Department of Probation, Parole and Pardon Services may retain the images past twelve months if there are any pending appeals or contested case hearings involved with that person, and at their conclusion must purge the images. The Department of Probation, Parole and Pardon Services and ignition interlock service providers must purge all personal information regarding a person’s participation in the Ignition Interlock Device Program no later than twelve months from the date of the person’s completion of the Ignition Interlock Device Program except for that information which is relevant for pending legal matters.

(S) The Department of Probation, Parole and Pardon Services shall develop policies including, but not limited to, the certification, use, maintenance, and operation of ignition interlock devices and the Ignition Interlock Device Fund.

(T) This section shall apply retroactively to any person currently serving a suspension or denial of the issuance of a license or permit due to a suspension listed in subsection (A).

HISTORY: 2000 Act No. 390, Section 12; 2007 Act No. 103, Section 23.A, eff January 1, 2008; 2008 Act No. 285, Section 1, eff January 1, 2009; 2014 Act No. 158 (S.137), Section 9, eff October 1, 2014; 2015 Act No. 34 (S.590), Section 3, eff June 1, 2015; 2017 Act No. 89 (H.3247), Section 34, eff November 19, 2018.

Effect of Amendment

2017 Act No. 89, Section 34, in (A), inserted “, except a moped” twice, and made a nonsubstantive change.

CROSS REFERENCES

Child endangerment, definition, penalties, jurisdiction, evidence for taking child into protective custody, see Section 56‑5‑2947.

Suspension of convicted person’s driver’s license, period of suspension, see Section 56‑5‑2990.

Suspension of license for refusal to submit to testing or for certain level of alcohol concentration, temporary alcohol license, administrative hearing, restricted driver’s license, penalties, see Section 56‑5‑2951.

Library References

Automobiles 144.5.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 424 to 429, 456, 459.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 29, Return and Reinstatement of License.

**SECTION 56‑5‑2942.** Vehicle immobilization after conviction for subsequent violation of Sections 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945; immobilized defined; identity of immobilized vehicle; surrendering of license plates and registration; release of vehicle; hearing; penalties; fees.

(A) A person who is convicted of or pleads guilty or nolo contendere to a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 must have all motor vehicles owned by or registered to the person immobilized if the person is a resident of this State, unless the vehicle has been confiscated pursuant to Section 56‑5‑6240 or the person is a holder of a valid ignition interlock restricted license.

(B) For purposes of this section, “immobilized” and “immobilization” mean suspension and surrender of the registration and motor vehicle license plate.

(C) Upon receipt of a conviction by the department from the court for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, the department shall determine all vehicles registered to the person, both solely and jointly, and suspend all vehicles registered to the person, unless the person is a holder of a valid ignition interlock restricted license.

(D) Upon notification by a court in this State or another state of a conviction for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, the department shall require the person, unless the person is a holder of a valid ignition interlock restricted license, to surrender all license plates and vehicle registrations subject to immobilization pursuant to this section. The immobilization is for a period of thirty days to take place during the driver’s license suspension pursuant to a conviction for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. The department shall maintain a record of all vehicles immobilized pursuant to this section.

(E) An immobilized motor vehicle must be released to the holder of a bona fide lien on the motor vehicle when possession of the motor vehicle is requested, as provided by law, by the lienholder for the purpose of foreclosing on and satisfying the lien.

(F) An immobilized motor vehicle may be released by the department without legal or physical restraints to a person who has not been convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, if that person is a registered owner of the motor vehicle or a member of the household of a registered owner. The vehicle must be released if an affidavit is submitted by that person to the department stating that:

(1) the person regularly drives the motor vehicle subject to immobilization;

(2) the immobilized motor vehicle is necessary to the person’s employment, transportation to an educational facility, or for the performance of essential household duties;

(3) no other motor vehicle is available for the person’s use;

(4) the person will not authorize the use of the motor vehicle by any other person known by the person to have been convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945; or

(5) the person will report immediately to a local law enforcement agency any unauthorized use of the motor vehicle by a person known by the person to have been convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945.

(G) The department may issue a determination permitting or denying the release of the vehicle based on the affidavit submitted pursuant to subsection (F). A person may seek relief from a department determination immobilizing a motor vehicle or denying the release of the motor 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.

(H) A person who drives an immobilized motor vehicle except as provided in subsections (E) and (F) is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(I) A person who fails to surrender registrations and license plates pursuant to this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(J) A fee of fifty dollars must be paid to the department for each motor vehicle that was suspended before any of the suspended registrations and license plates may be registered or before the motor vehicle may be released pursuant to subsection (F). This fee 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.

(K) For purposes of this article, a conviction of or plea of nolo contendere to Section 56‑5‑2933 is considered a prior offense of Section 56‑5‑2930.

HISTORY: 2003 Act No. 61, Section 13; 2008 Act No. 201, Section 7, eff February 10, 2009; 2012 Act No. 212, Section 3, eff June 7, 2012; 2014 Act No. 158 (S.137), Section 10, eff October 1, 2014; 2016 Act No. 275 (S.1258), Section 74, eff July 1, 2016.

CROSS REFERENCES

Fees and fines credited to the State Highway Fund, see Section 11‑43‑167.

Library References

Automobiles 55, 144.5, 359.6.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 299 to 302, 424 to 429, 456, 459.

**SECTION 56‑5‑2945.** Offense of felony driving under the influence; penalties; “great bodily injury” defined.

(A) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to another person, is guilty of the offense of felony driving under the influence, and, upon conviction, must be punished:

(1) by a mandatory fine of not less than five thousand one hundred dollars nor more than ten thousand one hundred dollars and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results;

(2) by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty‑five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty‑five years when death results.

A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation must not be granted for any portion.

(B) As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(C)(1) The Department of Motor Vehicles shall suspend the driver’s license of a person who is convicted pursuant to this section. For suspension purposes of this section, convictions arising out of a single incident must run concurrently.

(2) After the person is released from prison, the person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for three years when great bodily injury results and five years when a death occurs.

(D) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

HISTORY: 1983 Act No. 114 Section 4; 1987 Act No. 58 Section 1; 1987 Act No. 82 Section 1; 1993 Act No. 181, Section 1419; 1993 Act No. 184 Section 252; 2003 Act No. 61, Section 17; 2008 Act No. 201, Section 8, eff February 10, 2009; 2014 Act No. 158 (S.137), Section 11, eff October 1, 2014.

CROSS REFERENCES

Additional assessments for convictions under this section, see Section 56‑5‑2995.

Driver’s license suspension amnesty period, see Section 56‑1‑396.

Ignition interlock device, see Section 56‑5‑2941.

Penalties for driving while license cancelled, suspended or revoked, route restricted license, see Section 56‑1‑460.

Post‑conviction DNA procedures, see Sections 17‑28‑10 et seq.

Preservation of DNA evidence, see Sections 17‑28‑310 et seq.

Submission to testing for alcohol or drugs, see Section 56‑5‑2946.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑1‑400.

Suspension of convicted person’s driver’s license, period of suspension, see Section 56‑5‑2990.

Suspension of license for refusal to submit to testing or for certain level of alcohol concentration, temporary alcohol license, contested case hearing, restricted driver’s license, penalties, see Section 56‑5‑2951.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Violent crimes defined, see Section 16‑1‑60.

Library References

Automobiles 332, 359.3.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1574 to 1598, 1623 to 1626.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 5, Intent is a Necessary Element.

S.C. Jur. Automobiles and Other Motor Vehicles Section 166, Driving Under the Influence Causing Great Bodily Injury or Death.

S.C. Jur. Automobiles and Other Motor Vehicles Section 167, Child Endangerment by Driving Under the Influence.

S.C. Jur. Automobiles and Other Motor Vehicles Section 168, Penalties.

S.C. Jur. Automobiles and Other Motor Vehicles Section 172, Videotape Evidence.

S.C. Jur. Automobiles and Other Motor Vehicles Section 176, Presumptions Based on Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 178, Administration of Breath Tests.

S.C. Jur. Automobiles and Other Motor Vehicles Section 181, Effect of Refusal or Certain Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 185, Administrative Hearing‑Special Restricted Driver’s License Issued Upon Continued Suspension.

S.C. Jur. Automobiles and Other Motor Vehicles Section 179.5, Person’s Right to Written Information Prior to and After Taking Test or Giving Samples.

S.C. Jur. Magistrates and Municipal Judges Section 24, Revocation or Suspension of Driver’s License.

LAW REVIEW AND JOURNAL COMMENTARIES

Corpus delicti in DUI Cases. 49 S.C. L. Rev. 1115 (Summer 1998).

Test expanded for when previous trial for lesser offense invokes double jeopardy bar to later prosecution. 39 S.C. L. Rev. 27 (Autumn 1987).

Attorney General’s Opinions

Sentencing judge lacks authority to suspend all or part of monetary fine imposed upon a person convicted of felony DUI. Language contained in Section 56‑5‑2945, that no part of mandatory “sentences” may be suspended, includes fines imposed as well as imprisonment set forth. 1993 Op.Atty.Gen. No. 93‑22 (April 6, 1993) 1993 WL 720097.

State case law has construed the term “imprisonment” as used in Section 56‑5‑2945 to include time served as part of a suspended sentence or on parole or probation as well as time spent in physical incarceration. However, such construction is not free from doubt and, therefore, legislative clarification would be advantageous to resolve any ambiguities. 1992 Op.Atty.Gen. No. 92‑56 (October 6, 1992) 1992 WL 575662.

Under the provisions of Section 56‑5‑2950, the fifty dollar fee for administering chemical tests of the breath, blood, or urine of individuals arrested for driving under the influence should be assessed in all instances in which a test was administered where there is a conviction, a plea of guilty or nolo contendre, or forfeiture of a bond for a violation of Section 56‑5‑2930 or 59‑5‑2945. 1987 Op.Atty.Gen. No. 87‑78, p. 201 (August 27, 1987) 1987 WL 245486.

NOTES OF DECISIONS

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1. In general

Law enforcement officer can order a person suspected of felony driving under the influence (DUI) to submit to any chemical test without first offering a breath test. State v. Long (S.C. 2005) 363 S.C. 360, 610 S.E.2d 809. Automobiles 415

2. Constitutional issues

A defendant’s multiple convictions for driving under the influence causing death, reckless homicide, felony driving under the influence causing great bodily injury along, and assault and battery of a high and aggravated nature did not violate the Double Jeopardy Clause; although the convictions all arose from a single incident, they were separate offenses. State v. Easler (S.C.App. 1996) 322 S.C. 333, 471 S.E.2d 745, rehearing denied, certiorari granted, affirmed as modified 327 S.C. 121, 489 S.E.2d 617.

Double jeopardy will bar conviction where the state attempts to prove felony driving under the influence with proof of a violation of the same law under which the defendant has already been convicted in magistrate’s court. State v. Grampus (S.C. 1986) 288 S.C. 395, 343 S.E.2d 26. Double Jeopardy 142

Felony driving under the influence prosecution violated defendants constitutional protection against double jeopardy where the lane change violation, which was critical to the felony prosecution, was the same offense for which defendant had previously been convicted in magistrate’s court. State v. Grampus (S.C. 1986) 288 S.C. 395, 343 S.E.2d 26.

3. Construction with other laws

The enactment of Section 56‑5‑2945, creating the offense of felony driving under the influence (DUI), did not repeal by implication the offense of murder caused by the operation of a motor vehicle. Felony DUI requires proof that the vehicle was operated by a person who was under the influence; malice is not an element of felony DUI. Murder, on the other hand, requires a showing of malice. While evidence of intoxication may be used to establish malice, murder arising out of the operation of a motor vehicle does not require proof that the driver was under the influence. Since these offenses require different elements, they are distinct offenses and, therefore, felony DUI does not supplant the offense of murder caused by the use of a motor vehicle. State v. Webb (S.C. 1990) 301 S.C. 66, 389 S.E.2d 664. Automobiles 316

The legislature did not intend that felony driving under the influence (denounced in Section 29‑5‑2945) to supplant the common‑law offense of involuntary manslaughter and the statutory offense of reckless homicide (denounced by Section 56‑5‑2910), but instead intended to supplement those offenses. State v. King (S.C. 1986) 289 S.C. 371, 346 S.E.2d 323. Automobiles 316

**SECTION 56‑5‑2945 does not expressly repeal the existing offenses of involuntary manslaughter and reckless homicide, and construction of the statute indicates that repeal by implication is not intended.** State v. Bodiford (S.C. 1984) 282 S.C. 378, 318 S.E.2d 567.

4. Elements of offense

A felony driving under the influence charge requires proof of three elements: (1) the actor drives a vehicle while under the influence of alcohol or drugs; (2) the actor does an act forbidden by law or neglects a duty imposed by law; and (3) the act or neglect proximately causes great bodily harm or death to another person. State v. Dantonio (S.C.App. 2008) 376 S.C. 594, 658 S.E.2d 337, rehearing denied. Automobiles 332; Automobiles 342.1

Recklessness is not an element of felony driving under the influence. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597. Automobiles 332

Felony driving under the influence charge requires proof of 3 elements: (1) the actor drives a vehicle while under the influence of alcohol or drugs; (2) the actor does an act forbidden by law or neglects a duty imposed by law; and (3) the act or neglect proximately causes great bodily harm or death to another person. State v. Grampus (S.C. 1986) 288 S.C. 395, 343 S.E.2d 26.

5. Proximate cause

The victim’s decision to forgo further use of an artificial respirator did not constitute an intervening cause of death sufficient to relieve defendant of criminal liability for felony driving under the influence (DUI) resulting in death; defendant drove the vehicle that collided with a vehicle in which victim was a passenger, as a result of the accident the victim had multiple broken ribs, her back was fractured in three places, she had internal injuries, and she was unable to breathe without the use of an artificial respirator, and physician explained that even though the victim’s cause of death was listed as respiratory failure, the initial injuries the victim suffered, followed by the complications that occurred during her treatment, combined to cause her death. State v. Martin (S.C.App. 2011) 391 S.C. 508, 706 S.E.2d 40. Automobiles 332

A defendant’s act need not be the sole cause of the victim’s death to sustain a conviction for felony driving under the influence, provided it is a proximate cause actually contributing to the death. State v. Dantonio (S.C.App. 2008) 376 S.C. 594, 658 S.E.2d 337, rehearing denied. Automobiles 342.1

A defendant’s act may be regarded as the proximate cause of the victim’s death, and thus sustain a conviction for felony driving under the influence, if it is a contributing cause of the death. State v. Dantonio (S.C.App. 2008) 376 S.C. 594, 658 S.E.2d 337, rehearing denied. Automobiles 342.1

6. Arrest

Officer who met defendant at hospital after defendant was transported from scene of single‑car accident had probable cause to arrest defendant for felony driving under the influence (DUI), based on statement made to him by Highway Patrol officer indicating defendant was driver, his observations at hospital that defendant smelled of alcohol, and his observations that defendant sustained trauma consistent with having been in an accident. State v. Manning (S.C.App. 2012) 400 S.C. 257, 734 S.E.2d 314, rehearing denied, certiorari denied. Automobiles 349(6)

Officer who responded to scene after single‑car accident had probable cause to arrest defendant for felony driving under the influence (DUI); accident occurred at 5 o’clock in the morning and was so violent that car drifted off road over 500 feet, officer smelled alcohol in and around vehicle and saw beer bottle in accident debris, officer knew that address on vehicle’s registration matched defendant’s Department of Motor Vehicle (DMV) record, officer testified that another officer called him from hospital to which defendant was taken and told him defendant stated he was driver, and officer arrested defendant after speaking with emergency personnel who were present with defendant shortly after accident. State v. Manning (S.C.App. 2012) 400 S.C. 257, 734 S.E.2d 314, rehearing denied, certiorari denied. Automobiles 349(6)

7. Lesser included offenses

Reckless driving is not a lesser included offense of felony driving under the influence (DUI), since recklessness is not required to support a conviction for felony DUI. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306. Indictment And Information 191(.5)

Reckless homicide and involuntary manslaughter are not lesser included offenses of felony driving under the influence (DUI) since recklessness is not required to support a conviction for felony DUI, thus overruling prior case law to the contrary. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306. Indictment And Information 191(.5)

Common‑law involuntary manslaughter and reckless homicide (denounced in Section 56‑5‑2910) or lesser included offenses of felony driving under the influence (denounced by Section 56‑5‑2945) in a case where death occurs. State v. King (S.C. 1986) 289 S.C. 371, 346 S.E.2d 323. Indictment And Information 191(1)

8. Indictment

Indictment charging defendant with felony driving under the influence (DUI) resulting in death was sufficient to confer subject matter jurisdiction on the circuit court; indictment contained virtually identical language to that contained in the statute defining the offense, thorough review of the record disclosed no indications of uncertainty in regard to the crime with which defendant was charged, and because she pled guilty, it was clear she was aware of the nature of the charge against her. State v. Campbell (S.C.App. 2004) 361 S.C. 529, 605 S.E.2d 576. Indictment And Information 110(47)

The indictment must state with particularity the act forbidden by law or duty imposed by law which will be relied on by the state to support the felony driving under the influence charge. State v. Grampus (S.C. 1986) 288 S.C. 395, 343 S.E.2d 26.

9. Pleas

Defendant’s plea of guilty to felony driving under the influence (DUI) resulting in death and related offenses was knowing and voluntary; defendant was aware of constitutional rights she was waiving. Beatty v. Rawski, 2015, 97 F.Supp.3d 768, motion denied, motion to amend denied, appeal dismissed 633 Fed.Appx. 832, 2016 WL 769976. Habeas Corpus 486(3); Habeas Corpus 486(5)

10. Admissibility of evidence

State’s forensic toxicologist was sufficiently qualified to testify regarding general toxicology as a person or scientist who analyzed biological specimens for the presence or absence of alcohol, drugs, or other poisons that may have been present, during prosecution for one count of felony driving under the influence (DUI) causing death and one count of felony DUI causing great bodily injury. Kranchick v. State (S.C.App. 2016) 418 S.C. 435, 793 S.E.2d 314, rehearing denied. Criminal Law 479

Forensic toxicologist was properly qualified to testify regarding the effects of drugs and alcohol, during prosecution for felony driving under the influence (DUI) resulting in death; toxicologist explained that a forensic toxicologist tests samples looking for the presence of alcohol, drugs, and poisons and then interprets those tests to determine an individual’s level of impairment, and he explained that he completed several training and educational experiences that examined the effects of alcohol. State v. Martin (S.C.App. 2011) 391 S.C. 508, 706 S.E.2d 40. Criminal Law 479

In prosecutions for driving under the influence (DUI), when moving to admit blood alcohol test results, the State must prove a chain of custody of the blood sample from the time it is drawn until it is tested. Ex parte Department of Health and Environmental Control (S.C. 2002) 350 S.C. 243, 565 S.E.2d 293. Automobiles 425

In a prosecution for felony driving under the influence, the trial court properly allowed the state’s forensic toxicologist, who qualified as an expert witness, to testify concerning the elimination rate of alcohol and the effects of benzodiazepine when used in combination with alcohol after admitting that different “benzos” have difference effects and he did not know which benzodiazepine the defendant had taken, since such factors went to the weight of the testimony, and not its admissibility. State v. White (S.C.App. 1993) 311 S.C. 289, 428 S.E.2d 740, rehearing denied. Criminal Law 486(7)

The trial court did not abuse its discretion in qualifying as an expert a police officer who testified, in a trial for felony driving under the influence, that he observed a “gouge mark” in the victim’s lane “indicating to [him] that the collision had taken place in [the victim’s] lane” where the officer testified that (1) he had received 12 weeks training in the state Highway Department Academy which included specific training on determining the point of impact in an accident investigation, (2) he spent one week in on‑the‑road training with a municipal police force, and (3) he had been a state trooper with 4‑5 months’ experience at the time of the crime. State v. Goode (S.C.App. 1991) 305 S.C. 176, 406 S.E.2d 391.

The trial court did not abuse its discretion in qualifying as an expert a police officer who testified, in a trial for felony driving under the influence, as to the defendant’s post impact speed where the officer was a 16‑year veteran with the Highway Patrol, had received advanced accident investigation and reconstruction training, and had investigated approximately 1600 accidents. State v. Goode (S.C.App. 1991) 305 S.C. 176, 406 S.E.2d 391.

In a prosecution for felony driving under the influence, the State sufficiently established the chain of custody of the defendant’s blood sample where each person who handled the blood sample testified at trial, and a lab technologist testified that the samples she picked up from the nurses’ desk at the hospital were identified by the receiving nurse as the defendant’s and were clearly labeled with his name. State v. Priester (S.C. 1990) 301 S.C. 165, 391 S.E.2d 227. Automobiles 425

A lab technologist was not qualified as an expert to testify that a person with a blood alcohol reading in excess of .100 milligrams per deciliter is considered intoxicated. Although competent to conduct tests determining blood alcohol content, the technologist admitted that he had no training whatsoever in determining the effect of alcohol upon the human system and, therefore, his testimony on the issue of intoxication was inadmissible. State v. Priester (S.C. 1990) 301 S.C. 165, 391 S.E.2d 227.

11. Questions for jury

In a prosecution for felony driving under the influence, the defendant was not entitled to a directed verdict where, in addition to his inculpatory statements regarding his condition and the speed of his vehicle, he had a blood alcohol of .079, and evidence showed that his vehicle had gone off the road, entered the median, slid sideways across the road, and had gone back to the right side before heading down an embankment and striking a tree, whereupon his passenger was killed. State v. White (S.C.App. 1993) 311 S.C. 289, 428 S.E.2d 740, rehearing denied.

12. Sufficiency of evidence

Evidence was sufficient to support finding that defendant’s speed was a proximate cause of vehicle collision and its resulting fatalities, and thus evidence was sufficient to support conviction for felony driving under the influence; collision reconstruction experts opined defendant drove in excess of eighty miles per hour in a fifty‑five mile per hour speed zone, and experts opined that if defendant had driven at fifty‑five miles per hour, he would not have collided with other vehicle. State v. Dantonio (S.C.App. 2008) 376 S.C. 594, 658 S.E.2d 337, rehearing denied. Automobiles 355(13)

Sufficient evidence showed that the defendant was under the influence of alcohol when he drove into oncoming traffic where (1) the road on which the accident occurred was straight with clear visibility, (2) the officers who assisted the seriously injured and semiconscious defendant after the accident smelled a strong scent of alcohol coming from him, (3) a blood test taken at the hospital revealed alcohol in his blood, (4) 2 eyewitnesses testified that the defendant was driving erratically at a high rate of speed moments before the collision, and (5) experts testified that the accident occurred while the defendant was in oncoming traffic, he was speeding, he did not brake before impact, and the impact was severe. State v. Goode (S.C.App. 1991) 305 S.C. 176, 406 S.E.2d 391.

13. Sentence and punishment

Probation, a suspension of the period of incarceration, is part of a criminal defendant’s “term of imprisonment,” as is actual incarceration, parole, the suspended portion of a sentence, and supervised furlough. Thompson v. South Carolina Dept. of Public Safety (S.C. 1999) 335 S.C. 52, 515 S.E.2d 761, rehearing denied. Sentencing And Punishment 1165; Sentencing And Punishment 1167; Sentencing And Punishment 1168

“Term of imprisonment,” as used in portion of felony driving under influence (DUI) statute which provides that driver’s license of any person convicted thereunder shall be suspended for period to include any term of imprisonment plus three years, means non‑fine part of criminal sentence, and includes suspended portions, probation or parole periods, and supervised furlough; it is not limited to period of actual incarceration; overruling Davis v. South Carolina Dep’t of Public Safety, 328 S.C. 578, 493 S.E.2d 871. Thompson v. South Carolina Dept. of Public Safety (S.C. 1999) 335 S.C. 52, 515 S.E.2d 761, rehearing denied. Automobiles 144.5

Three convictions for felony driving under influence (DUI) arising out of single accident subjected motorist to three separate and consecutive three‑year driver’s license suspensions, rather than one three‑year suspension. Thompson v. South Carolina Dept. of Public Safety (S.C. 1999) 335 S.C. 52, 515 S.E.2d 761, rehearing denied. Automobiles 144.5

14. Effective assistance of counsel

Plea counsel’s alleged deficiency in failing to review discovery material allegedly demonstrating that victim was contributor to motor vehicle accident and toxicology report that showed he had .028 blood alcohol level did not prejudice defendant, in prosecution for felony driving under the influence (DUI) resulting in death; even if counsel failed to review victim’s toxicology report with defendant, such report did not exonerate defendant from crime. Beatty v. Rawski, 2015, 97 F.Supp.3d 768, motion denied, motion to amend denied, appeal dismissed 633 Fed.Appx. 832, 2016 WL 769976. Criminal Law 273.1(1)

Plea counsel was not deficient, as element of claim for ineffective assistance, in failing to review discovery material, in prosecution for felony driving under the influence (DUI) resulting in death, allegedly demonstrating that victim was contributor to motor vehicle accident and toxicology report that showed he had .028 blood alcohol level; counsel testified that he met with defendant prior to her plea hearing and discussed with her the discovery, including highway patrol incident reports, forensic reports, lab results, and lay witness statements. Beatty v. Rawski, 2015, 97 F.Supp.3d 768, motion denied, motion to amend denied, appeal dismissed 633 Fed.Appx. 832, 2016 WL 769976. Habeas Corpus 486(3)

Petitioner’s ineffective assistance of counsel claims were adjudicated on the merits by state court, and thus federal habeas court’s review was limited by deferential standard set forth in Antiterrorism and Effective Death Penalty Act (AEDPA). Beatty v. Rawski, 2015, 97 F.Supp.3d 768, motion denied, motion to amend denied, appeal dismissed 633 Fed.Appx. 832, 2016 WL 769976. Criminal Law 1920

State court’s rejection of petitioner’s claim that her plea counsel was ineffective by misinforming her of potential sentences she would receive if she pled guilty to felony driving under the influence (DUI) resulting in death and related offenses was not unreasonable application of clearly established federal law, or unreasonable factual determination of issue given evidence and record before court, thus precluding grant of federal habeas relief. Beatty v. Rawski, 2015, 97 F.Supp.3d 768, motion denied, motion to amend denied, appeal dismissed 633 Fed.Appx. 832, 2016 WL 769976. Criminal Law 273.1(5)

State court’s rejection of petitioner’s claim that her plea counsel was ineffective in failing to obtain her mental health records, both before and after her arrest, in prosecution for felony driving under the influence (DUI) resulting in death, was not unreasonable application of clearly established federal law, or unreasonable factual determination of issue given evidence and record before court, thus precluding grant of federal habeas review. Beatty v. Rawski, 2015, 97 F.Supp.3d 768, motion denied, motion to amend denied, appeal dismissed 633 Fed.Appx. 832, 2016 WL 769976. Criminal Law 273.1(5); Criminal Law 1655(3)

Trial counsel’s failure to object to State’s forensic toxicologist’s testimony exceeding his presented qualifications amounted to deficient performance, as an element of ineffective assistance claim; toxicologist did not testify as to his education, experience, or knowledge relating to the physical or mental effects of drugs on the human body, and trial counsel did not object when he subsequently testified as to the effects of the significant amount of marijuana metabolite and very significant amounts of cough suppressant and antihistamine found in defendant’s blood following accident. Kranchick v. State (S.C.App. 2016) 418 S.C. 435, 793 S.E.2d 314, rehearing denied. Criminal Law 1931

Due to overwhelming evidence that defendant was impaired at the time of motor vehicle accident, trial counsel’s deficient performance in failing to object to State’s forensic toxicologist’s testimony exceeding his presented qualifications did not prejudice defendant, and thus, did not amount to ineffective assistance; highway patrolman testified that, following accident, defendant was confused about the direction in which she was traveling, appeared mellowed and disoriented, smelled of marijuana, swayed and was unsteady on her feet, failed several field sobriety tests, and her eyes were glassy and bloodshot. Kranchick v. State (S.C.App. 2016) 418 S.C. 435, 793 S.E.2d 314, rehearing denied. Criminal Law 1931

**SECTION 56‑5‑2946.** Submission to testing for alcohol or drugs.

(A) Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, 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.

(B) The tests must be administered at the direction of a law enforcement officer. 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 or urine tests is not admissible against the person in the criminal trial.

(C) 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.

HISTORY: 1998 Act No. 434, Section 6; 2012 Act No. 226, Section 2, eff December 18, 2012.

Library References

Automobiles 411 to 426.

Westlaw Topic No. 48A.

C.J.S. Criminal Procedure and Rights of the Accused Sections 1063 to 1072.

C.J.S. Motor Vehicles Sections 1599 to 1627.

C.J.S. Searches and Seizures Section 138.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 177, Implied Consent to Chemical Test.

S.C. Jur. Automobiles and Other Motor Vehicles Section 178, Administration of Breath Tests.

S.C. Jur. Automobiles and Other Motor Vehicles Section 179.5, Person’s Right to Written Information Prior to and After Taking Test or Giving Samples.

United States Supreme Court Annotations

Driving while intoxicated, Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving, but not warrantless blood tests, see Birchfield v. North Dakota, 2016, 136 S.Ct. 2160, 195 L.Ed.2d 560, on remand 885 N.W.2d 62. Automobiles 414, 419

NOTES OF DECISIONS

In general 1

1. In general

Pursuant to plain language of statute providing that person suspected of felony driving under influence (DUI) must submit to either one or combination of chemical tests of his breath, blood, or urine, arresting officer may require suspect to submit to all three tests without affording suspect right to refuse any of tests. State v. Cuevas (S.C.App. 2005) 365 S.C. 198, 616 S.E.2d 718. Automobiles 414

Defendant charged with felony driving under influence (DUI) did not have right to refuse breath test. State v. Cuevas (S.C.App. 2005) 365 S.C. 198, 616 S.E.2d 718. Automobiles 414

Incorporation, into statute on chemical testing of person suspected of felony driving under influence (DUI), of technical provisions of statute on videotaping conduct of person at breath test site after person has been suspected of driving under influence (DUI), including being informed of right to refuse test, did not afford person suspected of felony DUI right to refuse breath test; right to refuse test is not afforded under statute on testing of person suspected of felony DUI. State v. Cuevas (S.C.App. 2005) 365 S.C. 198, 616 S.E.2d 718. Automobiles 414

Law enforcement officer can order a person suspected of felony driving under the influence (DUI) to submit to any chemical test without first offering a breath test. State v. Long (S.C. 2005) 363 S.C. 360, 610 S.E.2d 809. Automobiles 415

**SECTION 56‑5‑2947.** Child endangerment; definition; penalties; jurisdiction; evidence for taking child into protective custody.

(A) A person eighteen years of age or older is guilty of child endangerment when:

(1) the person violates:

(a) Section 56‑5‑750;

(b) Section 56‑5‑2930;

(c) Section 56‑5‑2933; or

(d) Section 56‑5‑2945; and

(2) the person has one or more passengers younger than sixteen years of age in the motor vehicle when the violation occurs.

If more than one passenger younger than sixteen years of age is in the vehicle when a violation occurs, the person may be charged with only one violation of this section.

(B) Upon conviction, the person must be:

(1) fined not more than one‑half of the maximum fine allowed for committing the violation in subsection (A)(1), when the person is fined for that offense;

(2) imprisoned not more than one‑half of the maximum term of imprisonment allowed for committing the violation listed in subsection (A)(1), when the person is imprisoned for the offense; or

(3) fined and imprisoned as prescribed in items (1) and (2) when the person is fined and imprisoned for the offense.

(C) No portion of the penalty assessed pursuant to subsection (B) may be suspended or revoked and probation may not be awarded.

(D)(1) In addition to imposing the penalties for offenses listed in subsection (A)(1) and the penalties contained in subsection (B), the Department of Motor Vehicles shall suspend the person’s driver’s license for sixty days upon conviction under subsection (A)(1)(a). Upon conviction under subsection (A)(1)(b) through (d), the Department of Motor Vehicles shall suspend the person’s driver’s license.

(2) Upon conviction under subsection (A)(1)(b) through (d), the person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for three months.

(3) Sections 56‑1‑1320 and 56‑5‑2990 as they relate to enrollment in an alcohol and drug safety action program and to the issuance of a provisional driver’s license will not be effective until the ignition interlock restricted license period is completed.

(E) A person may be convicted pursuant to this section for child endangerment in addition to being convicted for an offense listed in subsection (A)(1).

(F) The court that has jurisdiction over an offense listed in subsection (A)(1) has jurisdiction over the offense of child endangerment.

(G) A first offense charge for a violation of this section may not be used as the only evidence for taking a child into protective custody pursuant to Sections 63‑7‑620(A) and 63‑7‑660.

HISTORY: 1995 Act No. 81, Section 1; 1997 Act No. 14, Section 1; 2008 Act No. 201, Section 20, eff February 10, 2009; 2014 Act No. 158 (S.137), Section 12, eff October 1, 2014.

CROSS REFERENCES

Ignition interlock device, see Section 56‑5‑2941.

Restrictions on foster care or adoption placements, see Section 63‑7‑2350.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑1‑400.

Library References

Automobiles 144.1(1).

Infants 1557, 1637.

Westlaw Topic Nos. 48A, 211.

C.J.S. Constitutional Law Section 2353.

C.J.S. Motor Vehicles Sections 353 to 356, 359 to 362, 364 to 369, 371 to 373, 387 to 390.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 167, Child Endangerment by Driving Under the Influence.

**SECTION 56‑5‑2948.** Field sobriety tests.

When a person is suspected of causing a motor vehicle incident resulting in the death of another person by the investigating law enforcement officer on the scene of the incident, the driver must submit to field sobriety tests if he is physically able to do so.

HISTORY: 2012 Act No. 226, Section 3, eff December 18, 2012.

Library References

Automobiles 419.

Westlaw Topic No. 48A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 171, Field Sobriety Tests.

**SECTION 56‑5‑2949.** Policies, procedures and regulations on the SLED internet website.

In addition to availability under the Freedom of Information Act, any South Carolina Law Enforcement Division policy, procedure, or regulation concerning breath alcohol testing or breath site video recording which is in effect on or after July 1, 2000, must be made publicly accessible on the SLED Internet web site. A policy, procedure, or regulation may be removed from the SLED web site only after five years from the effective date of the subsequent revision.

HISTORY: 2000 Act No. 390, Section 13; 2007 Act No. 103, Section 23.C, eff January 1, 2008; 2008 Act No. 201, Section 16, eff February 10, 2009.

Library References

Records 30.

Westlaw Topic No. 326.

C.J.S. Records Sections 74, 76, 78, 80, 112.

**SECTION 56‑5‑2950.** Implied consent to testing for alcohol or drugs; procedures; inference of DUI.

(A) 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 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 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 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. 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 and urine samples must be obtained and handled in accordance with procedures approved by SLED.

(B) No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) the person does not have to take the test or give the samples, but that the person’s privilege to drive must be suspended or denied for at least six months with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if the person refuses to submit to the test, and that the person’s refusal may be used against the person in court;

(2) the person’s privilege to drive must be suspended for at least one month with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if the person takes the test or gives the samples and has an alcohol concentration of fifteen one‑hundredths of one percent or more;

(3) the person has the right to have a qualified person of the person’s own choosing conduct additional independent tests at the person’s expense;

(4) the person has the right to request a contested case hearing within thirty days of the issuance of the notice of suspension; and

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

(C) A hospital, physician, qualified technician, chemist, or registered nurse 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.

(D) The person tested or giving samples for testing may have a qualified person of the person’s own choosing conduct additional tests at the person’s expense and must be notified in writing of that right. A person’s request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples obtained at the direction of the law enforcement officer.

(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 breath testing devices, breath testing site video program, and 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 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.

(G) In the criminal prosecution for a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person’s breath or other body fluids, gives rise to the following:

(1) if the alcohol concentration was at that time five one‑hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol;

(2) if the alcohol concentration was at that time in excess of five one‑hundredths of one percent but less than eight one‑hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person; or

(3) if the alcohol concentration was at that time eight one‑hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

The provisions of this section must not be construed as limiting the introduction of any other evidence bearing upon the question of whether or not the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(H) A person who is unconscious or otherwise in a condition rendering the person incapable of refusal is considered to be informed and not to have withdrawn the consent provided by subsection (A) of this section.

(I) A person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of such tests to the officer before a trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(J) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence of any test results, if the trial judge or hearing officer finds that this failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure and the court trial judge or hearing officer rules specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure.

(K) If a state employee charged with the maintenance of breath testing devices in this State and the administration of breath testing policy is required to testify at a contested case hearing or court proceeding, the entity employing the witness may charge a reasonable fee to the defendant for such services.

HISTORY: 1962 Code Section 46‑344; 1952 Code Section 46‑344; 1949 (46) 466; 1969 (56) 395; 1987 Act No. 95 Section 9; 1987 Act No. 179 Section 2; 1988 Act No. 348; 1988 Act No. 616; 1993 Act No. 181, Section 1420; 1994 Act No. 497, Part II, Section 36T; 1998 Act No. 434, Section 7; 2000 Act No. 390, Section 14; 2003 Act No. 61, Section 6; 2008 Act No. 201, Section 9, eff February 10, 2009; 2014 Act No. 158 (S.137), Section 13, eff October 1, 2014.

CROSS REFERENCES

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

Ignition interlock device, see Section 56‑5‑2941.

Presumption of consent to test for alcohol by one who drives a commercial motor vehicle, see Section 56‑1‑2130.

Implied consent test, suggested procedures for obtaining and handling blood and urine samples, see S.C. Code of Regulations R. 73‑2.1.

Submission to testing for alcohol or drugs, see Section 56‑5‑2946.

Suspension of convicted person’s driver’s license, period of suspension, see Section 56‑5‑2990.

Suspension of license for refusal to submit to testing or for certain level of alcohol concentration, temporary alcohol license, contested case hearing, restricted driver’s license, penalties, see Section 56‑5‑2951.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Library References

Automobiles 411 to 426.

Westlaw Topic No. 48A.

C.J.S. Criminal Procedure and Rights of the Accused Sections 1063 to 1072.

C.J.S. Motor Vehicles Sections 1599 to 1627.

C.J.S. Searches and Seizures Section 138.

RESEARCH REFERENCES

ALR Library

28 ALR 5th 459 , Driving While Intoxicated: Subsequent Consent to Sobriety Test as Affecting Initial Refusal.

Encyclopedias

9 Am. Jur. Proof of Facts 3d 459, Proof and Disproof of Alcohol‑Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing.

S.C. Jur. Automobiles and Other Motor Vehicles Section 174, Establishing a Proper Foundation for the Introduction of Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 176, Presumptions Based on Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 177, Implied Consent to Chemical Test.

S.C. Jur. Automobiles and Other Motor Vehicles Section 178, Administration of Breath Tests.

S.C. Jur. Automobiles and Other Motor Vehicles Section 179, Administration of Other Tests.

S.C. Jur. Automobiles and Other Motor Vehicles Section 180, Additional Tests Upon Request.

S.C. Jur. Automobiles and Other Motor Vehicles Section 181, Effect of Refusal or Certain Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 184, Administrative Hearing.

S.C. Jur. Automobiles and Other Motor Vehicles Section 179.5, Person’s Right to Written Information Prior to and After Taking Test or Giving Samples.

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

S.C. Jur. Evidence Section 133, Specimens; Chain of Evidence Requirement.

LAW REVIEW AND JOURNAL COMMENTARIES

Admissibility of Blood Analysis Data on Question of Intoxication. 14 SC LQ 395.

Annual Survey of South Carolina Law: Criminal Law. 38 S.C. L. Rev. 68 (Autumn 1986).

The South Carolina Implied Consent Law: The “Breathalyzer” and the Bar. 22 S.C. L. Rev. 195.

Attorney General’s Opinions

1. In general

Discussion of whether a license suspension for withdrawing consent is equivalent to a suspension for driving while impaired for purposes of eligibility of candidates for certification as law enforcement officers. S.C. Op.Atty.Gen. (July 12, 2017) 2017 WL 3209043.

If the facts surrounding a case conclusively show an arrestee’s innocence, it would be appropriate for the arresting officer to exercise his/her authority to nolle pros the charge for driving under the influence and issue a separate charge for an alternative offense that is supported by probable cause. S.C. Op.Atty.Gen. (July 14, 2014) 2014 WL 3752137.

The decision on whether to proceed on a particular charge is within the prosecutor’s discretion, and once a ticket for DUI is issued, the charge can only be changed through nol pros of the original ticket and issuing a new one on the alternative charge. S.C. Op.Atty.Gen. (November 7, 1996) 1996 WL 755775.

No particular verbiage is required in the breathalyzer advisory notice, so long as the driver is notified of the serious consequences of refusing to consent to the test. S.C. Op.Atty.Gen. (November 6, 1995) 1995 WL 805857.

Trained medical personnel can take blood samples at the scene of an accident in order to determine blood alcohol level. S.C. Op.Atty.Gen. (June 28, 1995) 1995 WL 803702.

Under the provisions of Section 56‑5‑2950, the fifty dollar fee for administering chemical tests of the breath, blood, or urine of individuals arrested for driving under the influence should be assessed in all instances in which a test was administered where there is a conviction, a plea of guilty or nolo contendre, or forfeiture of a bond for a violation of Section 56‑5‑2930 or 59‑5‑2945. Where there is an inability on the part of the defendant to make immediate payment, a schedule for the payment of the fee could be established. S.C. Op.Atty.Gen. (August 27, 1987) 1987 WL 245486.

Breathalyzer test may be administered pursuant to Section 56‑5‑2950 to individual arrested for driving under influence while driving in parking lot which is posted as permitted by Section 23‑1‑15. S.C. Op.Atty.Gen. (April 22, 1985) 1985 WL 166015.

This section does not mandate that breathalyzer test necessarily be given to individual arrested for driving under influence; trial officer would not be obligated to render directed verdict of acquittal where breathalyzer test is neither given to nor requested by individual arrested for driving under influence. S.C. Op.Atty.Gen. (January 28, 1985) 1985 WL 165979.

A blood test requested by a defendant following a breathalyzer test does not constitute a second test in derogation of this section [Code 1962 Section 46‑344]. S.C. Op.Atty.Gen. (March 1, 1972) 1972 WL 20414.

The one test provision as set forth in this section [Code 1962 Section 46‑344] refers to one complete test which is sufficient to allow an analysis to be made of the subject’s breath for the purpose of determining the alcohol content of his blood. S.C. Op.Atty.Gen. (January 12, 1972) 1972 WL 20392.

The enactment of this section [Code 1962 Section 46‑344] was a valid exercise of the police powers of the State. S.C. Op.Atty.Gen. (January 3, 1971) 1971 WL 17442.

Intentional failure to give enough air to be sampled constitutes a refusal. S.C. Op.Atty.Gen. (November 6, 1970) 1970 WL 12293.

Arresting officer may witness the breathalyzer test. S.C. Op.Atty.Gen. (November 6, 1970) 1970 WL 12293.

The act of blowing into a breathalyzer does not constitute a “test” within the meaning of this section [Code 1962 Section 46‑344]. S.C. Op.Atty.Gen. (August 12, 1970) 1970 WL 12922.

Failure to establish that defendant had had nothing to eat or drink for fifteen minutes prior to test may render breathalyzer results inadmissible. S.C. Op.Atty.Gen. (August 12, 1970) 1970 WL 12227.

Fact that test results have been ruled inadmissible does not necessarily mean that the case should be dismissed. S.C. Op.Atty.Gen. (August 12, 1970) 1970 WL 12227.

A physician cannot be held civilly liable for furnishing the results of a blood test to law‑enforcement officers pursuant to subsection (g) of this section [Code 1962 Section 46‑344]. S.C. Op.Atty.Gen. (June 1, 1970) 1970 WL 12191.

Question of lawful arrest. In a hearing pursuant to refusal to submit to the breathalyzer test, the question of lawful arrest is an appropriate issue. S.C. Op.Atty.Gen. (May 7, 1970) 1970 WL 12180.

The implied consent law applies only to operators of motor vehicles on public land highways. S.C. Op.Atty.Gen. (March 6, 1970) 1970 WL 12140.

2. Effect of refusal to take test

Effect of acquittal of criminal charge on suspension of license. The acquittal of a defendant of criminal charge of driving under the influence has no effect upon suspension of his driver’s license for refusal to submit to the breathalyzer test under the implied consent law. S.C. Op.Atty.Gen. (September 7, 1971) 1971 WL 17547.

Refusal to submit to test warrants suspension of license regardless of the outcome of the criminal prosecution. S.C. Op.Atty.Gen. (November 2, 1970) 1970 WL 12928.

Law‑enforcement officers may not confiscate the driver’s license of a person refusing to submit to the breathalyzer test. S.C. Op.Atty.Gen. (September 14, 1970) 1970 WL 12253.

3. Duty to assist defendant to get independent test

Attorney General’s office cannot categorically define what is meant by “reasonable assistance” or state exactly what is required of law enforcement where defendant has requested additional test in DUI case. Each situation must be examined on case‑by‑case basis. S.C. Op.Atty.Gen. (March 1, 1991) 1991 WL 474746.

There appears to be no basis for concluding that law enforcement agency is absolutely entitled to blood sample as second test in circumstances where a defendant requests independent test. S.C. Op.Atty.Gen. (March 1, 1991) 1991 WL 474746.

It is the duty of the arresting officer or the person conducting a chemical test of a person arrested for driving under the influence to assist that person in contacting a qualified person to conduct a blood test. S.C. Op.Atty.Gen. (October 20, 1978) 1978 WL 22642.

Duty to assist defendant. Law‑enforcement officers must assist defendant in contacting a qualified person to render an additional chemical test. S.C. Op.Atty.Gen. (February 21, 1970) 1970 WL 12131.

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1. In general

Individuals operating motor vehicles implicitly consent to chemical tests of their breath, blood, or urine to determine whether they are under the influence of drugs or alcohol. Peake v. South Carolina Dept. of Motor Vehicles (S.C.App. 2007) 375 S.C. 589, 654 S.E.2d 284. Automobiles 144.1(1.11); Automobiles 418

Implied consent laws attempt to balance the interest of the State in maintaining safe highways with the interest of the individual in maintaining personal autonomy free from arbitrary or overbearing state action. Taylor v. South Carolina Dept. of Motor Vehicles (S.C.App. 2006) 368 S.C. 33, 627 S.E.2d 751, certiorari granted, affirmed 382 S.C. 567, 677 S.E.2d 588, rehearing denied. Automobiles 144.1(1.11)

Code Commissioner’s amendments to 1998 legislative act (subsequently revised by 2000 legislation, which incorporated Code Commissioner’s amendments to 1998 legislation) relating to driving under the influence (DUI), to change breath‑test simulator solution test level and its corresponding range of accuracy, to increase the alcohol inference level, to increase the alcoholic concentration level at which a person must enroll in a safety program, and to increase the level of alcohol concentration at which an insurance penalty may be imposed, were substantive changes that went beyond Code Commissioner’s authority to correct typographical and clerical errors in public statutes. State v. Huntley (S.C. 2002) 349 S.C. 1, 562 S.E.2d 472, rehearing denied. Automobiles 412; Statutes 1475

The privilege of operating a motor vehicle upon the public highways is always subject to revocation or suspension for any cause relating to public safety; however, the privilege cannot be revoked arbitrarily or capriciously. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Automobiles 144.1(1)

Defendant is lawfully arrested and impliedly gives consent to breathalyzer test where officer arriving at scene of accident finds two cars, each damaged by other, and defendant, admitted driver of one car, is highly intoxicated. State v. Martin (S.C. 1980) 275 S.C. 141, 268 S.E.2d 105.

2. Construction and application

Presumptions found under provisions of South Carolina Code Section 56‑5‑2950 have no applicability to matters pertaining to operation of boats, motorboats or vessels in determining whether an operator is under influence of alcohol; this being the case, determination of intoxication must be based on testimony relating to person’s mannerisms and characteristics that would lead one to conclude that he is under influence of alcohol, or it must be based on expert testimony relating to such matters. Faust v. South Carolina State Highway Dept. (D.C.S.C. 1981) 527 F.Supp. 1021, reversed 721 F.2d 934, certiorari denied 104 S.Ct. 2678, 467 U.S. 1226, 81 L.Ed.2d 874. Shipping 81(1); Shipping 86(2.5)

Statutory amendment that required all breath test samples to be collected within two hours of arrest did not apply retroactively; the statute did not exhibit a clear legislative intent to be applied retroactively, and the amendment provided that it did not apply to pending actions. State v. Hilton (S.C.App. 2013) 406 S.C. 580, 752 S.E.2d 549, rehearing denied. Automobiles 412

The State adequately preserved for appellate review its claim that the savings clause precluded retroactive application of statutory amendment, which required an alcohol breath test to be performed within two hours after an arrest; following the hearing on defendant’s motion to exclude evidence, the circuit court permitted the parties to submit memoranda, and the State’s memoranda argued that the savings clause prevented retroactive application of the amendment. State v. Hilton (S.C.App. 2013) 406 S.C. 580, 752 S.E.2d 549, rehearing denied. Criminal Law 1036.1(3.1)

If someone’s blood alcohol content (BAC) was obtained in violation of the implied consent statute, it only affects admissibility in a criminal proceeding. Hartfield v. Getaway Lounge & Grill, Inc. (S.C. 2010) 388 S.C. 407, 697 S.E.2d 558, rehearing denied. Automobiles 411; Evidence 150

Statute providing for exclusion of evidence in criminal cases of motorist’s blood alcohol content (BAC) as sanction for violation of implied consent statute did not apply in civil action brought against bar for serving alcohol to intoxicated bar patron by injured passenger of vehicle that was struck by patron. Hartfield v. Getaway Lounge & Grill, Inc. (S.C. 2010) 388 S.C. 407, 697 S.E.2d 558, rehearing denied. Intoxicating Liquors 309

Revision to Implied Consent Statute, adding provision stating that the failure to follow any of the requirements of the Statute would result in exclusion of test results if trial judge found that such failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure, was remedial in nature and, therefore, applied retroactively to driving under the influence (DUI) case in which the trial occurred shortly before effective date of the revision; new provision addressed procedural, rather than substantive, rights. State v. Frey (S.C.App. 2005) 362 S.C. 511, 608 S.E.2d 874. Automobiles 412

3. Constitutional issues

Administrative suspension of a driver’s license for refusal to submit to a breath alcohol content test was not so punitive in purpose or effect as to constitute a criminal penalty for purposes of double jeopardy. State v. Price (S.C. 1998) 333 S.C. 267, 510 S.E.2d 215. Double Jeopardy 24

That the state affords procedural due process prior to suspending a driver’s license simply does not transform the suspension from a remedial sanction into a punitive one for double jeopardy purposes. State v. Price (S.C. 1998) 333 S.C. 267, 510 S.E.2d 215. Double Jeopardy 24

Administrative license revocation proceeding does not collaterally estop state from litigating same issues in ensuing criminal prosecution for driving under influence (DUI). State v. Bacote (S.C. 1998) 331 S.C. 328, 503 S.E.2d 161, certiorari denied 119 S.Ct. 1757, 523 U.S. 1112, 143 L.Ed.2d 789. Administrative Law And Procedure 501; Automobiles 144.2(1)

Section of driving under the influence statute permitting person arrested for first offense to avoid 90‑day suspension if he or she pleads guilty or nolo contendere, or forfeits bond, within 30 days of arrest impermissibly chilled exercise of accused’s Fifth Amendment right not to plead guilty and Sixth Amendment right to jury trial. Shumpert v. South Carolina Dept. of Highways and Public Transp. (S.C. 1991) 306 S.C. 64, 409 S.E.2d 771. Automobiles 144.1(1.5); Criminal Law 393(1); Jury 31.1

Unconstitutional provision of driving under the influence statute, permitting person arrested for first offense to avoid 90‑day suspension if he or she pleads guilty or nolo contendere, or forfeits bond, within 30 days of arrest, was severable from remainder of statute. Shumpert v. South Carolina Dept. of Highways and Public Transp. (S.C. 1991) 306 S.C. 64, 409 S.E.2d 771. Statutes 1535(25)

The provision of Section 56‑5‑2950 that a driver who refuses to submit to urine testing may have his privilege to drive suspended, was unconstitutionally applied where a defendant was stopped and arrested for driving under the influence, he took and passed a breathalyzer test, the officers suspected the influence of some other drug and requested a urine sample, but the defendant refused to provide one, and based thereon his driving privileges were suspended. Shumpert v. South Carolina Dept. of Highways and Public Transp. (S.C. 1991) 306 S.C. 64, 409 S.E.2d 771.

A blood sample taken from a DUI (driving under the influence) defendant shortly after an automobile accident was not inadmissible on the ground that the defendant had not been formally arrested prior to the withdrawal of his blood since formal arrest is not a prerequisite to a warrantless seizure of a blood sample in a DUI situation, but instead the focus is on whether probable cause to withdraw the blood existed. State v. Tanner (S.C. 1989) 299 S.C. 459, 385 S.E.2d 832.

4. Arrest

Officer had probable cause to arrest motorist for driving under the influence based on presence of facts and circumstances that led her to believe that crime had been freshly committed; even though officer did not actually see motorist driving the vehicle, witness told her that he saw motorist drive into the ditch, officer found tire tracks where car left the road and fresh tire tracks surrounding the car in the ditch, officer found motorist passed out in the driver’s seat of car with keys in the ignition, motorist was unable to get out of the car without assistance, he was unsteady on his feet and stumbled, he smelled of alcohol, his eyes were extremely red, and he could not keep his balance and was unable to focus during questioning by officer. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Automobiles 349(6)

In a prosecution for driving under the influence, results of a breathalyzer test given to the defendant were properly admitted, since, even though the defendant was not seen operating his vehicle by the arresting officer, he admitted to the officer that he had been driving and his admission constituted part of the officer’s sensory awareness of the commission of the offense, which satisfied the presence requirement of Section 56‑6‑2950. State v. Sawyer (S.C. 1984) 283 S.C. 127, 322 S.E.2d 449.

5. Advisory

Licensee was not prejudiced by trooper’s failure to advise him of his implied consent rights in writing pursuant to statute prior to administration of blood alcohol concentration (BAC) test, and therefore driver’s license could be suspended for licensee’s registering an alcohol concentration of .15% or greater, despite claim that licensee likely would have refused the BAC test had he received his implied consent rights in writing, where trooper verbally informed licensee of his implied consent rights, licensee understood his rights prior to testing, and licensee signed a copy of the implied consent advisement of rights form. Carroll v. South Carolina Dept. of Public Safety (S.C.App. 2010) 388 S.C. 39, 693 S.E.2d 430. Automobiles 144.1(1.11); Automobiles 421

Failure by arresting officer to provide motorist with written copy of implied consent notice did not invalidate suspension of driver’s license due to motorist’s refusal to provide blood sample upon arrest for driving under influence (DUI); nothing in statute required reinstatement of license for failure to provide written notice, and motorist was not prejudiced by such failure because officer had read notice aloud to him. Taylor v. South Carolina Dept. of Motor Vehicles (S.C. 2009) 382 S.C. 567, 677 S.E.2d 588, rehearing denied. Automobiles 144.1(1.20)

Failure to comply with South Carolina Law Enforcement Division (SLED) procedures by circling word “breath” on driving under the influence (DUI) implied consent form did not constitute incomplete advisement of defendant’s implied consent rights; neglecting to circle word “breath” had no bearing on accuracy or reliability of breath test results, failure to do so did not in any way impact upon fairness of testing procedure, and purpose of form was not to serve as exclusive source of information regarding arrest and testing procedures provided to defendant suspected of driving under influence, but to advise defendant of his rights. City of Florence v. Jordan (S.C.App. 2004) 362 S.C. 227, 607 S.E.2d 86. Automobiles 421

Motorist lawfully arrested for driving under the influence was advised by officer of his right to refuse breath alcohol test and that his driving privileges would be suspended upon refusal to submit to test, as required to sustain the Department of Public Safety’s suspension of motorist’s driver’s license based on his refusal to submit to breath alcohol test. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Automobiles 144.1(1.20)

Form pertaining to defendant’s alcohol breath test that contained language advising defendant of his right to additional independent tests was admissible to allow state to lay proper foundation for admission of breath test results, despite contention that admission of form violated statute prohibiting admission of defendant’s failure to request additional blood or urine tests. City of Columbia v. Wilson (S.C.App. 1996) 324 S.C. 459, 478 S.E.2d 88, rehearing denied. Automobiles 426

An Ohio motorist was given sufficient warnings while under arrest for driving under the influence where the officer advised him that his privilege to drive in South Carolina would be suspended for 90 days if he refused the breathalyzer test and that his refusal would be reported to the relevant Ohio authorities; the officer was not required to inform the motorist of the consequences of his refusal to take a breathalyzer test in Ohio. Percy v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 315 S.C. 383, 434 S.E.2d 264.

The implied consent advisory required by Section 56‑5‑2950 to be given to persons arrested for driving under the influence is sufficient if the defendant is reasonably informed of his rights and is neither tricked nor misled into thinking he has no right to refuse the test. Percy v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 315 S.C. 383, 434 S.E.2d 264.

A breathalyzer advisory was sufficient to place the defendant on notice that he was not required to take the breathalyzer test where a common sense reading of the advisory made clear the consequences of both taking the test and refusing to take the test. Town of Mount Pleasant v. Shaw (S.C. 1993) 315 S.C. 111, 432 S.E.2d 450. Automobiles 421

The legislature, in passing Section 56‑5‑2950(a), did not intend any particular verbiage in a breathalyzer advisory; the purpose of the advisory is not to persuade a driver to refuse testing, but to let a driver know the serious consequences of refusal. Town of Mount Pleasant v. Shaw (S.C. 1993) 315 S.C. 111, 432 S.E.2d 450.

A breathalyzer advisory is sufficient if, considered as a whole, it provides the driver adequate notice that he may, if he so elects, to refuse the test. Town of Mount Pleasant v. Shaw (S.C. 1993) 315 S.C. 111, 432 S.E.2d 450.

A driver arrested for driving under the influence (DUI) was not entitled to suppression at trial of her refusal to take a breathalyzer test where she contended that the arresting officer effectively prevented her from obtaining an independent test by advising her that she must have the test before an alternate test would be made available, but there was no evidence that she ever requested an independent test or inquired whether one was available, and she was permitted to use the phone after refusing the test; affirmative assistance in obtaining an independent blood test is not required by officers when the defendant has refused to take the breathalyzer test. State v. Degnan (S.C. 1991) 305 S.C. 369, 409 S.E.2d 346.

6. Affirmative assistance to obtain additional tests

Defendant who submitted to breath alcohol test was given reasonable assistance by officers in obtaining an independent blood test, and thus the results of breath alcohol test were admissible in prosecution for driving under the influence (DUI), second offense, even though defendant did not have a blood test, where defendant was afforded opportunity to call his attorney and local hospital and, upon learning of hospital’s requirement of family doctor authorization and $52 fee for test, defendant abandoned his request for independent test. State v. Knighton (S.C.App. 1999) 334 S.C. 125, 512 S.E.2d 117, rehearing denied, certiorari denied. Automobiles 415

Under Section 56‑2‑2950, a defendant charged with driving under the influence is not entitled to reasonable assistance in obtaining his own blood sample where he refused to submit to a breathalyzer test; rather, law enforcement is required to provide the defendant with a reasonable opportunity to obtain a blood test without affirmative assistance. Matter of Bennett (S.C. 1996) 467 S.E.2d 110.

In a prosecution for driving under the influence, the trial court properly refused to allow the defendant to cross‑examine the officer who offered him a breathalyzer test regarding what affirmative assistance the officer could have rendered to enable the defendant to obtain an independent blood test since, having refused to take the breathalyzer test, the defendant was only entitled to a reasonable opportunity to obtain such a test. State v. Harris (S.C.App. 1993) 311 S.C. 162, 427 S.E.2d 909.

The defendant received aid in obtaining an independent blood test sufficient to constitute reasonable assistance under Section 56‑5‑2950(a), even though the blood sample he had been given could not be located after he was booked into the jail; the issue of whether the assistance was subsequently negated by the acts of the law enforcement personnel merely presented an issue of fact for determination by the jury. State v. Wickenhauser (S.C. 1992) 309 S.C. 377, 423 S.E.2d 344, rehearing denied.

Assistance in contacting qualified person to conduct additional tests is required to be given only to person whose breath was previously tested by law enforcement officer. State v. Lewis (S.C. 1976) 266 S.C. 45, 221 S.E.2d 524.

7. Independent blood test

Allowing blood‑alcohol test operator to read to jury implied consent warning which included advice that additional tests were available to defendant improperly permitted state to circumvent defendant’s offer, which state refused, to stipulate that test he took was done pursuant to law enforcement procedures and that he was advised of his statutory rights, where, by statute, person’s failure to request additional tests was not admissible, state was not required to lay a foundation for blood‑alcohol test results, and state, in fact, consented to redacting the language from the test report that was admitted into evidence. State v. Henderson (S.C.App. 2001) 347 S.C. 455, 556 S.E.2d 691. Criminal Law 661

Trial court’s error in allowing state to circumvent defendant’s offer to stipulate that blood‑alcohol test he took was done pursuant to law enforcement procedures and that he was advised of his statutory rights, so that defendant could avoid having jury hear inadmissible evidence that defendant had failed to request additional tests, was not harmless in prosecution for driving under the influence (DUI), where state presented less than overwhelming evidence of defendant’s guilt. State v. Henderson (S.C.App. 2001) 347 S.C. 455, 556 S.E.2d 691, certiorari denied. Criminal Law 1169.1(2.1)

Police officer provided defendant, who had refused to take breath test to measure level of alcohol in his blood, with reasonable opportunity to obtain independent blood test by transporting defendant to hospital for test, and, officer was not required to either request blood test for defendant at hospital or transport defendant to second hospital after first hospital refused to administer test. City of Columbia v. Ervin (S.C. 1998) 330 S.C. 516, 500 S.E.2d 483. Automobiles 415

Arresting officer does not have duty to affirmatively assist defendant who refuses to take breath test to measure level of alcohol in blood with obtaining independent tests; instead, defendant who refuses to take breath test is only entitled to reasonable opportunity to obtain independent blood test. City of Columbia v. Ervin (S.C. 1998) 330 S.C. 516, 500 S.E.2d 483. Automobiles 415

Defendant had reasonable opportunity to obtain independent blood test following his refusal to take breathalyzer test after arrest for driving under the influence (DUI), and thus requirements of implied consent statute were met, where arresting officer complied with defendant’s request to be taken to hospital for blood test, notwithstanding fact that hospital would not perform test unless authorized by officer and officer refused to request test. City of Columbia v. Ervin (S.C.App. 1997) 325 S.C. 644, 482 S.E.2d 781, rehearing denied, certiorari granted, affirmed as modified 330 S.C. 516, 500 S.E.2d 483. Automobiles 415

In a prosecution for driving under the influence, an otherwise correct instruction on implied consent was not incomplete because the court did not charge the jury that a person who refuses the breathalyzer test is nevertheless entitled to a reasonable opportunity to take an independent test where the defendant made no request to charge the law of reasonable opportunity. State v. Harris (S.C.App. 1993) 311 S.C. 162, 427 S.E.2d 909. Automobiles 426

A driver arrested for driving under the influence (DUI) was not entitled to suppression at trial of her refusal to take a breathalyzer test where she contended that the arresting officer effectively prevented her from obtaining an independent test by advising her that she must have the test before an alternate test would be made available, but there was no evidence that she ever requested an independent test or inquired whether one was available, and she was permitted to use the phone after refusing the test; affirmative assistance in obtaining an independent blood test is not required by officers when the defendant has refused to take the breathalyzer test. State v. Degnan (S.C. 1991) 305 S.C. 369, 409 S.E.2d 346.

A defendant was not denied his statutory right to a reasonable opportunity to have his blood tested by an independent, qualified person where the defendant took a vial of blood to 2 different hospitals which informed the defendant that they did not analyze blood alcohol content, but the defendant made no further attempts to have the blood analyzed. State v. Wilson (S.C. 1988) 296 S.C. 73, 370 S.E.2d 715.

Violations of statute mandated suppression of both breathalyzer and blood test results where defendant, after requesting independent tests, was taken to local hospital where vial of blood was drawn, arresting officer took possession of vial advising defendant that it would be transmitted to SLED for analysis, and second vial would be required if defendant desired backup test. Statute was violated in two respects: (1) seizure and analysis of vial of blood constituted impermissible second examination by state of defendant’s blood alcohol content because statute permits only one such examination, that being breathalyzer test; and (2) defendant’s right to independent test was compromised when officer appropriated vial, because defendant could only avail himself of independent test by having second sample of blood withdrawn. State v. Pipkin (S.C. 1988) 294 S.C. 336, 364 S.E.2d 464.

Where one accused of driving a motor vehicle under the influence of intoxicating liquors was denied the right to have an analysis made by a qualified person of his own choosing as required by Section 56‑5‑2950, the state should not have been permitted to introduce the results of either a breathalyzer test or a blood‑sample examination made by the South Carolina Law Enforcement Division. Where the trial court erroneously admitted such evidence, and the error could not be corrected at a new trial, the Supreme Court would direct that the charge be dismissed. Town of Fairfax v. Smith (S.C. 1985) 285 S.C. 458, 330 S.E.2d 290.

Although former Code 1962 Section 46‑344 [see now Code 1976 Section 56‑5‑2950] does not expressly give person reasonable opportunity to obtain blood test after refusing to take breathalyzer test, statute cannot be construed as depriving person arrested for driving under influence, who refuses to take breathalyzer test, of reasonable opportunity to obtain blood test. State v. Lewis (S.C. 1976) 266 S.C. 45, 221 S.E.2d 524.

Person arrested for driving under influence of intoxicating liquors who refused to take breathalyzer test was not denied reasonable opportunity to obtain blood test even though police officer refused affirmatively to assist him, where he was given opportunity to use telephone before and after he refused the breathalyzer test and he was able, in opinion of arresting officer, to locate the name of a doctor in the telephone book. State v. Lewis (S.C. 1976) 266 S.C. 45, 221 S.E.2d 524.

8. Refusal to take test

Evidence was insufficient to support finding that licensee refused to take an alcohol breath test, in proceeding challenging the suspension of licensee’s driver’s license based on her alleged refusal to take a breath test; licensee agreed to the breath test, she blew into the machine, the instrument produced a steady tone for an extended period of time, even though the machine ultimately did not register licensee’s breath sample, it never indicated that she was not blowing an adequate sample, and licensee asked to take a second test. Chisolm v. South Carolina Dept. of Motor Vehicles (S.C.App. 2013) 402 S.C. 593, 741 S.E.2d 42. Automobiles 144.2(10.3)

Motorist did not demonstrate how he was prejudiced by the fact that he did not receive a copy of the implied consent form from officer or by fact that officer read the implied consent rights out loud, and because motorist was not prejudiced, administrative hearing officer’s order sustaining the suspension of motorist’s driver’s license would not be overturned; motorist did not argue that he did not receive the implied consent rights, nor that he would have provided a blood test if he had received the implied consent rights in writing. Taylor v. South Carolina Dept. of Motor Vehicles (S.C.App. 2006) 368 S.C. 33, 627 S.E.2d 751, certiorari granted, affirmed 382 S.C. 567, 677 S.E.2d 588, rehearing denied. Automobiles 144.2(2.1)

Defendant failed to show prejudice from allegedly improper admission of his refusal to take breathalyzer test in prosecution for driving under the influence (DUI), as evidence of his intoxication was overwhelming. City of Columbia v. Ervin (S.C.App. 1997) 325 S.C. 644, 482 S.E.2d 781, rehearing denied, certiorari granted, affirmed as modified 330 S.C. 516, 500 S.E.2d 483. Criminal Law 1169.1(2.1)

It is not error to admit into evidence a defendant’s refusal to submit to breathalyzer test. City of Columbia v. Ervin (S.C.App. 1997) 325 S.C. 644, 482 S.E.2d 781, rehearing denied, certiorari granted, affirmed as modified 330 S.C. 516, 500 S.E.2d 483. Automobiles 413

A driver’s initial refusal to submit to breathalyzer testing, resulting in the suspension of his driver’s license could not be cured or nullified by his subsequent agreement to be tested; law enforcement officers may be flexible and disregard a refusal to take a breathalyzer test if the refusal is properly withdrawn, but such flexibility is not required. Leviner v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 313 S.C. 409, 438 S.E.2d 246, 28 A.L.R.5th 840, rehearing denied. Automobiles 144.1(1.20)

Evidence of a defendant’s refusal to submit to a breathalyzer test was not required to be suppressed where the defendant was arrested, was charged with driving under the influence, and refused to take the test, even though the state did not lay the foundation at trial for the admittance of breathalyzer test results by showing that the precautions necessary to insure the accuracy and reliability of the results were taken; these precautions do not apply where no test was taken or where results are not offered at trial. State v. Jansen (S.C. 1991) 305 S.C. 320, 408 S.E.2d 235.

In a prosecution for driving under the influence, testimony commenting on the defendant’s refusal to submit to a urine test was not improperly admitted on the ground that the defendant did not knowingly waive his rights under the implied consent statute because he was not informed that the refusal would be used against him, where the arresting officers complied with the provisions of the statute by informing the defendant of the license suspension penalty for refusal to take the test; the statute required no additional warnings and the defendant’s only statutory right was adequately protected by the officers’ warning. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

The Department of Highways and Public Transportation may suspend the driver’s license of a person arrested for driving under the influence who refused a request to submit to a breath test, regardless of whether the requirements for admission of test results were observed. The validity of the suspension of a driver’s license for refusing to submit to a breath test does not depend upon whether the foundation for the introduction of the results of a breath test was properly laid; the question of the validity of test methods employed by a breath test operator does not arise until a test is given and its results are offered as evidence. Ex parte Horne (S.C.App. 1990) 303 S.C. 30, 397 S.E.2d 788.

Evidence that the defendant refused to take a breathalyzer test is not inadmissible under this section, which simply opts against forcible testing. State v. Miller (S.C. 1971) 257 S.C. 213, 185 S.E.2d 359.

The admission of testimony that a defendant, when charged with driving under the influence, refused to submit to a blood test, and the allowance of comment thereon before the jury, does not violate the defendant’s privilege against self‑incrimination. State v. Miller (S.C. 1971) 257 S.C. 213, 185 S.E.2d 359. Criminal Law 393(1)

The prosecutor’s statement to the jury during his summation argument that only a drunk man would have refused to submit to the breathalyzer test, and that had the defendant been sober he would not have so refused, did not exceed fair comment. State v. Miller (S.C. 1971) 257 S.C. 213, 185 S.E.2d 359. Criminal Law 2122

9. Breath tests

Even if the breath‑test machine operator did not use the correct alcohol concentration in simulator test solution, motorist was not prejudiced; alcohol concentration in simulator test neither calibrated the machine nor affected the capability of the machine to properly measure motorist’s blood‑alcohol level. State v. Huntley (S.C. 2002) 349 S.C. 1, 562 S.E.2d 472, rehearing denied. Automobiles 424

Implied consent statute does not require that tests be offered or administered within jurisdiction of where arrest took place, and does not require that arresting officer actually offer or administer the test but, rather, states only that tests should be offered and administered at the arresting officer’s direction. Matter of Thompson (S.C. 1996) 323 S.C. 333, 474 S.E.2d 443.

Police officers do not have an affirmative duty under the implied consent statute, Section 56‑5‑2950(a), to offer breath tests to all persons physically capable of providing a breath sample, and thus the state would not be precluded from prosecuting an “under the influence” case because the officers failed to offer the defendant a breath test at the time of his arrest. State v. Baker (S.C. 1993) 310 S.C. 510, 427 S.E.2d 670, rehearing denied.

Infrared spectroscopy constitutes a “chemical test” as contemplated by the implied consent statute, Section 56‑5‑2950, even though no chemicals are used to analyze the breath, since a more restrictive reading would undermine the important public purpose underlying the statute. State v. Squires (S.C. 1992) 311 S.C. 11, 426 S.E.2d 738.

A defendant charged with driving under the influence was entitled to dismissal of the charges where, after 2 attempts to take a breathalyzer test failed due to malfunctioning machines, the defendant requested a blood test, but en route to the hospital the officer who was transporting him was directed to return him to the station and the blood test was never obtained. State v. Masters (S.C. 1992) 308 S.C. 433, 418 S.E.2d 552, rehearing denied.

Where there was nothing other than an unexplained delay on the part of the reporting officials, unaccompanied by any showing of real prejudice to the driver, the driver was not entitled to any relief because of delay in imposing the suspension of his license for failure to submit to a breathalyzer test. State v. Chavis (S.C. 1973) 261 S.C. 408, 200 S.E.2d 390.

10. Inability to give breath sample

Department of Motor Vehicles, seeking to suspend driver’s license for refusal to consent to blood alcohol test, was required under implied consent statute to show that motorist was physically unable to give acceptable breath sample for reason found acceptable by licensed medical personnel, where Department did not assert that motorist had injured mouth or was unconscious. Peake v. South Carolina Dept. of Motor Vehicles (S.C.App. 2007) 375 S.C. 589, 654 S.E.2d 284. Automobiles 144.1(1.20)

Under implied consent statute, where evidence shows person is dead, unconscious or physically unable to provide acceptable breath sample as determined by authorized medical personnel, no breath test need first be offered, and blood test results are admissible. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Under implied consent statute, determination that accused is physically unable to provide acceptable breath sample due to any reason other than unconsciousness, death or injury to mouth requires determination of licensed medical personnel. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Under implied consent statute, where evidence establishes accused has obvious injury to mouth that arresting officer reasonably believes will interfere with providing acceptable breath sample, officer may order blood test to be taken; whether or not officer’s belief is reasonable will depend upon circumstances of each case. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Even where there is indication of injury to accused’s mouth, implied consent statute requires determination that accused is physically unable to provide acceptable breath sample before blood sample may be taken. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Implied consent statute requires arresting officer to offer breath test to defendant, absent valid determination that defendant is physically unable to give acceptable breath sample. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Trooper’s observation, as defendant left hospital, that defendant had some blood on her teeth was insufficient, under implied consent statute, to support reasonable belief that defendant was physically unable to provide acceptable breath sample, and therefore trooper acted improperly in asking defendant to submit to blood test rather than offering her breath test; trooper never asked defendant about condition of her mouth, he did not attempt to look into defendant’s mouth or at inside of her lip, and there was no evidence that defendant had received any medical attention to her mouth. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Section 56‑5‑2950(a), concerning the determination of the alcohol concentration in a motorist’s blood, requires a licensed physician, licensed registered nurse, or other medical personnel trained to take blood samples, who is directed by an officer to take a blood sample, to determine whether an acceptable reason exists for finding that a person is unable to provide an acceptable breath sample. State v. Stacy (S.C.App. 1993) 315 S.C. 105, 431 S.E.2d 640. Automobiles 414

Section 56‑5‑2950(a) permitted a police officer to have a blood sample taken of a motorist injured in a high speed car chase where the motorist was unable to give an acceptable breath sample at the law enforcement center because the motorist had not been treated for his injuries by an emergency room physician. State v. Stacy (S.C.App. 1993) 315 S.C. 105, 431 S.E.2d 640.

In a prosecution for driving while under the influence, in which an administrative hearing officer of the Department of Highways and Public Transportation suspended defendant’s driving license for refusal to submit to a breathalyzer test, the court improperly reversed the hearing officer’s decision by concluding that defendant did not refuse to take the test but was physically incapable of participating in the test by reason of emphysema, since under Section 1‑23‑380 which provides for judicial review upon exhaustion of administrative remedies, the court improperly substituted its judgment for that of the hearing officer in that the record contained conflicting evidence as to whether or not the defendant had problems with his breathing and the hearing officer did not act in an arbitrary or capricious manner in weighing such evidence. White v. South Carolina Dept. of Highways and Public Transp. (S.C. 1983) 278 S.C. 603, 299 S.E.2d 852.

11. Blood or urine tests

Law enforcement officer can order a person suspected of felony driving under the influence (DUI) to submit to any chemical test without first offering a breath test. State v. Long (S.C. 2005) 363 S.C. 360, 610 S.E.2d 809. Automobiles 415

Hospital worker’s signature on blood collection form in the space labeled “licensed or trained collector” did not establish that hospital worker possessed the requisite medical training and qualifications to take a blood sample for defendant’s blood‑alcohol test, as required by Implied Consent Statute. State v. Frey (S.C.App. 2005) 362 S.C. 511, 608 S.E.2d 874. Automobiles 423

State failed to establish sufficient foundation to admit results of defendant’s blood‑alcohol analysis in prosecution for driving under the influence (DUI), where State did not present proof that defendant’s blood sample taken for blood‑alcohol analysis was obtained by qualified medical personnel, as required under Implied Consent Statute. State v. Frey (S.C.App. 2005) 362 S.C. 511, 608 S.E.2d 874. Automobiles 423

On remand to determine whether defendant who was convicted of driving under the influence (DUI) was prejudiced by the State’s failure to show that defendant’s blood sample for blood‑alcohol test was obtained by qualified medical personnel, as required by Implied Consent Statute, trial court was limited to the existing record, such that the State could not make second attempt to establish qualifications of hospital worker who obtained the blood sample. State v. Frey (S.C.App. 2005) 362 S.C. 511, 608 S.E.2d 874. Criminal Law 1192

State’s failure to establish, in prosecution for driving under the influence (DUI), that hospital worker who took blood sample from defendant for blood‑alcohol test was qualified to do so, as required by Implied Consent Statute, necessitated remand for trial court to determine, on the existing record, whether State’s failure to comply with the Implied Consent Statute materially affected the accuracy or reliability of the test results or the fairness of the testing procedure; it was appropriate for trial court to address the issue of prejudice in the first instance. State v. Frey (S.C.App. 2005) 362 S.C. 511, 608 S.E.2d 874. Criminal Law 1181.5(7)

Under implied consent statute, once automobile driver refused blood test, no chemical tests could be performed, and results of blood test conducted without driver’s consent were inadmissible at trial for driving under the influence (DUI). State v. Mullins (S.C. 1997) 331 S.C. 501, 489 S.E.2d 923. Automobiles 418

Under implied consent statute, where evidence establishes that accused is offered breath test, but agrees to officer’s request for blood test in lieu thereof, result of blood test is admissible. State v. Kimbrell (S.C.App. 1997) 326 S.C. 344, 481 S.E.2d 456. Automobiles 415

Need to administer chemical testing to motorist in timely manner constituted exigent circumstances warranting administration of blood alcohol test in another locality when it was determined that there was no working breath testing device in the city where the arrest occurred. Matter of Thompson (S.C. 1996) 323 S.C. 333, 474 S.E.2d 443.

12. Blood tests for medical treatment

The implied consent statute, Section 56‑5‑2950, was inapplicable to a hospital patient whose blood sample (which was used for a blood alcohol test) was drawn for use in diagnosing the patient’s medical condition before he was arrested, since Section 56‑5‑2950 only applies to testing for evidence of driving under the influence after the arrest has been effected. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306. Automobiles 419

The trial court abused its discretion in admitting in evidence the blood alcohol test of a motorist whose blood had been drawn at the hospital for purposes of diagnosing his condition where neither the motorist’s medical records, the label on the blood sample, nor the attending nurses could identify who had drawn the sample and transported it to the lab. State v. Cribb (S.C. 1992) 310 S.C. 518, 426 S.E.2d 306.

The results of blood tests for alcohol content were properly admitted in evidence in a prosecution for driving under the influence, even though the defendant was not afforded the procedural safeguards contained in Section 56‑5‑2950, where the defendant was injured in an automobile accident and was taken to a hospital, his blood was drawn as part of his medical treatment, and the analysis for alcohol content was ordered by the treating physician for purposes of treatment; thus, the test at issue was not based on implied consent. State v. Hunter (S.C. 1991) 305 S.C. 560, 410 S.E.2d 242. Automobiles 411

13. Machines used for testing

Results of a breathalyzer test were admissible against the defendant even though the South Carolina Law Enforcement Division (SLED) did not specifically approve, by regulation, the model of machine used for the test since, under Section 56‑5‑2950, regulations are not the only means by which SLED can approve a specific breathalyzer machine model. State v. Franklin (S.C. 1994) 312 S.C. 208, 443 S.E.2d 386. Automobiles 411

14. Alcohol concentrations

The evidence supported a conviction for driving under the influence, whether or not the jury charge created a burden‑shifting presumption regarding the defendant’s breathalyzer test results, where he failed the field sobriety test, had to be supported by 2 officers to keep him steady, had a strong odor of alcohol about him, and tested at .14 percent blood alcohol content one hour after being arrested. State v. Strange (S.C.App. 1992) 308 S.C. 256, 417 S.E.2d 609.

In a prosecution for driving under the influence, the trial court’s jury charge on the inferences to be drawn from breathalyzer results was not so unclear or ambiguous as to mislead the jury where the instructions allowed the jury to find that the defendant was not under the influence, or that he was under the influence of narcotics, or that he was under the influence of a combination of narcotics and alcohol. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

In a prosecution for driving under the influence, the trial court properly denied the defendant’s motion to strike from the indictment any reference to the use of alcohol, even though the defendant’s breathalyzer reading of .04 percent created a presumption that the defendant was not under the influence of alcohol, since the breathalyzer reading did not preclude the jury from finding that he was under the influence of a combination of alcohol and some other drug. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

The presumptions provided in Section 56‑5‑2950(b) are limited to situations where the amount of alcohol in a defendant’s blood is determined by a test of his breath, not by a test of the blood itself. A conviction for driving under the influence of intoxicants and for reckless homicide would be reversed where evidence of the amount of alcohol in the defendant’s blood was not based on a chemical analysis of his breath, where it did not appear that the test administered to the defendant was at the direction of the law enforcement officer who arrested him, as required by subsection (a), and where it did not appear that the test was administered by a person trained and certified by the South Carolina Law Enforcement Division, using methods approved by that agency, as also required by subsection (a). (Superseded by statute as stated in State v Priester (SC) 391 SE2d 227). State v. Carrigan (S.C.App. 1985) 284 S.C. 610, 328 S.E.2d 119.

15. Test report

The State complied with the notice provision of statute governing testing for alcohol and drugs, even though the written report the State provided during discovery failed to disclose the time defendant’s blood sample was actually tested; the purpose of the statute was to provide for reciprocal discovery between the State and defendant as to the time and results of alcohol and drug tests, the time the statute was concerned with was the time of the administration of the test to defendant rather than the time the sample was tested in the lab, and the report provided to defendant stated the time the test was administered to defendant. State v. Bull (S.C.App. 2002) 350 S.C. 58, 564 S.E.2d 351, rehearing denied, certiorari denied. Criminal Law 629(1)

16. Suspension of license

Trial court abused its discretion in issuing ex parte restraining order to State Highway Department restraining it from suspending driving license until disposition of another case involving a different defendant. State v. Hill (S.C. 1976) 266 S.C. 49, 221 S.E.2d 398. Injunction 1413

Suspension of driver’s license for refusal to take breathalyzer test, under former 1962 Code Section 46‑344 [1976 Code Section 56‑5‑2950] is sound rule, despite hardship thus imposed. State v. Hill (S.C. 1976) 266 S.C. 49, 221 S.E.2d 398.

17. Administrative hearing

Breath‑test results cannot be excluded from administrative hearing on suspension of driver’s license following an arrest for driving under the influence of alcohol (DUI) from simply because an arresting officer failed to testify that a specific provision in statute governing administration of breath tests and obtaining of breath samples was followed, unless the motorist makes a motion during hearing requesting hearing officer to review such provision and hearing officer determines that law enforcement’s failure to comply with provision materially affected accuracy or reliability of test results or the fairness of testing procedure. South Carolina Dept. of Motor Vehicles v. Brown (S.C. 2014) 406 S.C. 626, 753 S.E.2d 524, rehearing denied. Automobiles 422.1

Motorist waived opportunity to challenge, at administrative hearing concerning the suspension of his driver’s license following arrest for driving under the influence of alcohol (DUI), whether breath test was administered in accordance with statutory provision requiring that a simulator test be performed prior to the actual test to ensure the machine is functioning properly, where motorist first raised that challenge during closing argument rather than raising an objection when arresting officer testified that machine was “functioning properly at the time” of arrest. South Carolina Dept. of Motor Vehicles v. Brown (S.C. 2014) 406 S.C. 626, 753 S.E.2d 524, rehearing denied. Automobiles 424

Department of Public Safety was not required to prove, on administrative review of suspension of motorist’s driving privileges based on his refusal to submit to breath alcohol test, that motorist was guilty of driving under the influence or was driving a motor vehicle in this state. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Automobiles 144.1(1.20)

The determination of whether a person was “lawfully arrested” for driving under the influence is one of the pertinent issues to be decided in an administrative appeal from the Department of Public Safety’s suspension of a person’s driving privileges. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Automobiles 144.2(3)

The South Carolina Department of Highways and Public Transportation was without jurisdiction to hold an implied consent law hearing 58 days after the licensee had requested such hearing; the word “shall” in Section 56‑1‑370 is mandatory. South Carolina Dept. of Highways and Public Transp. v. Dickinson (S.C. 1986) 288 S.C. 189, 341 S.E.2d 134.

18. Admissibility of evidence

Hearsay testimony of witness that motorist drove his automobile into the ditch was admissible for purposes of establishing probable cause for arrest for driving under the influence, on administrative review of Department of Public Safety’s suspension of motorist’s driving privileges for refusal to submit to breath alcohol test. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Automobiles 144.2(9.7)

In an action arising from allegations of driving while under the influence, the trial court did not err in admitting into evidence the breath and blood tests prepared by the State even though law enforcement officials failed to return to the defendant the vial of blood which he intended to use to obtain an independent blood test; whether assistance given by the arresting officers in obtaining the blood sample was subsequently negated by the acts of law enforcement personnel is an issue of fact for the determination of the jury. Matter of Bennett (S.C. 1996) 467 S.E.2d 110.

In order to warrant the introduction of the results of a breathalyzer test into evidence, the state must produce prima facie evidence (1) that the machine was in proper working order at the time of the test; (2) that the correct chemicals were used; (3) that the accused was not allowed to put anything in his mouth for 20 minutes prior to the test; and (4) that the test was administered by a qualified person in the proper manner. State v. Parker (S.C. 1978) 271 S.C. 159, 245 S.E.2d 904. Automobiles 422.1

19. Instructions

Minor’s guardian ad litem (GAL) was entitled to have jury instructed that motorist, who was minor’s mother, was not presumptively impaired by alcohol, in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; trial court charged jury under criminal statute involving charge of driving under the influence (DUI), but motorist’s blood alcohol content was only 0.018. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(4); Railroads 351(14)

Trial court’s error in refusing to charge jury that motorist, who was minor’s mother, was not presumptively impaired by alcohol, prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; court charged jury on criminal statute involving charge of driving under the influence (DUI), and, thus, jury could have found motorist was impaired while driving and that this criminal act negated any negligence on part of railroad and Department. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1067

Trial court’s jury charge on presumed consent to testing, in prosecution for felony driving under the influence (DUI), employing statutory language which included phrase “a person who drives,” was not abuse of discretion, where prior to instructing jury, trial court made clear it was not making any statements related to facts, but rather that jury in its absolute discretion was required to decide beyond reasonable doubt if defendant was driver of vehicle, and it was unlikely that reasonable juror would have singled out phrase “a person who drives” and interpreted it as trial court’s opinion on facts of case. State v. Manning (S.C.App. 2012) 400 S.C. 257, 734 S.E.2d 314, rehearing denied, certiorari denied. Automobiles 357(6)

In a prosecution for felony driving under the influence, the trial court erred in instructing the jury pursuant to Section 56‑5‑2950(b) where the defendant’s blood alcohol level was not tested by a breathalyzer. However, such error was harmless beyond a reasonable doubt where the record evinced overwhelming evidence which supported the defendant’s conviction, and the trial judge modified his charge to indicate that the contested portion of Section 56‑5‑2950 would not rise to the level of a presumption. State v. Kinner (S.C. 1990) 301 S.C. 209, 391 S.E.2d 251.

**SECTION 56‑5‑2951.** Suspension of license for refusal to submit to testing or for certain level of alcohol concentration; temporary alcohol license; administrative hearing; restricted driver’s license; penalties.

(A) The Department of Motor Vehicles shall 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 shall 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 from the Department of Motor Vehicles. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. 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. 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) 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 that the person is eligible to receive a restricted license pursuant to subsection (H); and

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

At the 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 shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990;

(b) the suspension is overturned, the person must have the person’s 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 a contested case hearing.

(D) If a person does not request a contested case hearing, 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) the notice of suspension also must advise the person that, if the person does not request a contested case hearing within thirty days of the issuance of the notice of suspension, 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) the notice of suspension also must advise the person that, if the suspension is upheld at the contested case hearing or the person does not request a contested case hearing, the person shall enroll in an Alcohol and Drug Safety Action Program.

(F) 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:

(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 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 the person’s license was suspended before the person received a temporary alcohol license and requested the contested case hearing.

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, 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.

(G) A contested case hearing is 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 the Administrative Law Court’s appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(H)(1) If the person did not request a contested case hearing or the suspension is upheld at the contested case hearing, the person shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990, and may apply for a restricted license if the person is employed or enrolled in a college or university. The restricted license permits the person to drive only to and from work and the person’s place of education and in the course of the person’s employment or education during the period of suspension. The restricted license also permits the person 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 person that the person is employed or enrolled in a college or university, that the person lives further than one mile from the person’s place of employment, place of education, or location of the person’s Alcohol and Drug Safety Action Program classes, or the location of the person’s court‑ordered drug program, and that there is no adequate public transportation between the person’s residence and the person’s place of employment, the person’s place of education, the location of the person’s Alcohol and Drug Safety Action Program classes, or the location of the person’s court‑ordered drug program.

(2) If the department issues a restricted license pursuant to this subsection, the department shall designate reasonable restrictions on the times during which and routes on which the person 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 the person’s court‑ordered drug program, or residence must be reported immediately to the department by the person.

(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’s general fund, and eighty 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.

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

(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.

(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 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 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 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) 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. 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.

(J) A person’s driver’s license, permit, or nonresident operating privilege must be restored when the person’s period of suspension or ignition interlock restricted license requirement pursuant to subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program. After the person’s driving privilege is restored, the person shall continue the services of the Alcohol and Drug Safety Action Program. 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 shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before the person’s driving privilege can be restored at the conclusion of the suspension period or ignition interlock restricted license requirement.

(K) When a nonresident’s privilege to drive a motor vehicle in this State has been suspended pursuant to the provisions of this section, the department shall 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 the person has a license or permit.

(L) The department shall 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 pursuant to 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 shall 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, 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 based solely on the violation unless the person is convicted of the violation.

(O) The department shall administer the provisions of this section.

(P) If a person does not request 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 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.

HISTORY: 1998 Act No. 434, Section 8; 1999 Act No. 115, Sections 7, 8, 13; 1999 Act No. 100, Part II, Section 11; 1999 Act No. 115, Section 15; 2000 Act No. 390, Sections 15 to 22; 2001 Act No. 79, Sections 2.I.1. and 2.I.2.; 2002 Act No. 296, Sections 2, 3; 2002 Act No. 348, Sections 10 and 11; 2002 Act No. 354, Sections 4 and 5; 2003 Act No. 61, Section 7; 2006 Act No. 381, Section 7, eff June 13, 2006; 2008 Act No. 201, Section 10, eff February 10, 2009; 2012 Act No. 212, Section 4, eff June 7, 2012; 2012 Act No. 264, Section 5, eff June 18, 2012; 2014 Act No. 158 (S.137), Section 14, eff October 1, 2014; 2016 Act No. 275 (S.1258), Sections 75, 76, eff July 1, 2016.

CROSS REFERENCES

Fees and fines credited to the State Highway Fund, see Section 11‑43‑167.

Ignition interlock device, see Section 56‑5‑2941.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑1‑400.

Suspension of convicted person’s driver’s license, period of suspension, see Section 56‑5‑2990.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Library References

Automobiles 144.1(1.10), 144.2(1), 144.5.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 357 to 359, 391 to 399, 413, 416 to 418, 424 to 433, 456, 459.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 181, Effect of Refusal or Certain Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 182, Additional Requirements for Specified Test Results.

S.C. Jur. Automobiles and Other Motor Vehicles Section 183, Obtaining a Temporary Alcohol Restricted License.

S.C. Jur. Automobiles and Other Motor Vehicles Section 184, Administrative Hearing.

S.C. Jur. Automobiles and Other Motor Vehicles Section 185, Administrative Hearing‑Special Restricted Driver’s License Issued Upon Continued Suspension.

S.C. Jur. Automobiles and Other Motor Vehicles Section 186, Period of Suspension of License, Permit or Operating Privilege.

S.C. Jur. Automobiles and Other Motor Vehicles Section 179.5, Person’s Right to Written Information Prior to and After Taking Test or Giving Samples.

Attorney General’s Opinions

Requirement to enroll in an Alcohol and Drug Safety Action Program is rationally related to the goal of protecting public safety and reducing drunken driving offenses in this State, and such a requirement is constitutional. S.C. Op.Atty.Gen. (April 6, 2010) 2010 WL 1808720.

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1. In general

The requirements for license suspension for refusal to consent to a breath test are: (1) a person (2) operating a motor vehicle (3) in South Carolina (4) be arrested for an offense arising out of acts alleged to have been committed while the person was driving under the influence of alcohol, drugs, or both, and (5) refuse to submit to alcohol and drug testing. Chisolm v. South Carolina Dept. of Motor Vehicles (S.C.App. 2013) 402 S.C. 593, 741 S.E.2d 42. Automobiles 144.1(1.20)

Failure by arresting officer to provide motorist with written copy of implied consent notice did not invalidate suspension of driver’s license due to motorist’s refusal to provide blood sample upon arrest for driving under influence (DUI); nothing in statute required reinstatement of license for failure to provide written notice, and motorist was not prejudiced by such failure because officer had read notice aloud to him. Taylor v. South Carolina Dept. of Motor Vehicles (S.C. 2009) 382 S.C. 567, 677 S.E.2d 588, rehearing denied. Automobiles 144.1(1.20)

Department of Motor Vehicles, seeking to suspend driver’s license for refusal to consent to blood alcohol test, was required under implied consent statute to show that motorist was physically unable to give acceptable breath sample for reason found acceptable by licensed medical personnel, where Department did not assert that motorist had injured mouth or was unconscious. Peake v. South Carolina Dept. of Motor Vehicles (S.C.App. 2007) 375 S.C. 589, 654 S.E.2d 284. Automobiles 144.1(1.20)

2. Administrative hearing

Admitted failure by the Department of Public Safety to hold an administrative hearing within ten days of its receipt of motorist’s request for such hearing, following suspension of motorist’s driver’s license for driving while intoxicated (DWI), divested the Department of subject matter jurisdiction to hold the hearing, warranting reinstatement of motorist’s license. Starnes v. South Carolina Dept. of Public Safety (S.C.App. 2000) 342 S.C. 216, 535 S.E.2d 665. Automobiles 144.2(1); Automobiles 144.7

Statutory requirement that Department of Public Safety hold an administrative hearing within ten days of the Department’s receipt of a party’s request was clear and unambiguous, and thus, the Court of Appeals would not look behind the statute’s terms in an attempt to ascertain a contrary legislative intent, on appeal from a circuit court decision reversing administrative suspension of motorist’s driver’s license for driving while intoxicated (DWI). Starnes v. South Carolina Dept. of Public Safety (S.C.App. 2000) 342 S.C. 216, 535 S.E.2d 665. Automobiles 144.2(1)

Admitted failure by the Department of Public Safety to provide motorist with a written order notifying him of the hearing officer’s decision, upholding suspension of motorist’s driver’s license for driving while intoxicated (DWI), within thirty days of the administrative hearing warranted reinstatement of motorist’s license. Starnes v. South Carolina Dept. of Public Safety (S.C.App. 2000) 342 S.C. 216, 535 S.E.2d 665. Automobiles 144.2(1); Automobiles 144.7

3. Admissibility of evidence

Police sergeant’s observations of licensee’s erratic driving were not admissible through police officer’s incident report and testimony to establish probable cause for licensee’s driving under the influence (DUI) arrest, in action challenging the suspension of licensee’s driver’s license; the report was hearsay, no hearsay exceptions applied to allow admission of the report, and the without the report the Department of Motor Vehicles failed to establish probable cause for licensee’s arrest, as officer did not personally observe licensee’s erratic driving. South Carolina Dept. of Motor Vehicles v. McCarson (S.C. 2011) 391 S.C. 136, 705 S.E.2d 425, rehearing denied. Automobiles 144.2(9.7)

4. Sufficiency of evidence

Evidence was insufficient to support finding that licensee refused to take an alcohol breath test, in proceeding challenging the suspension of licensee’s driver’s license based on her alleged refusal to take a breath test; licensee agreed to the breath test, she blew into the machine, the instrument produced a steady tone for an extended period of time, even though the machine ultimately did not register licensee’s breath sample, it never indicated that she was not blowing an adequate sample, and licensee asked to take a second test. Chisolm v. South Carolina Dept. of Motor Vehicles (S.C.App. 2013) 402 S.C. 593, 741 S.E.2d 42. Automobiles 144.2(10.3)

**SECTION 56‑5‑2952.** Filing fee to request contested case hearing.

The filing fee to request a contested case hearing before the Office of Motor Vehicle Hearings of the Administrative Law Court is two hundred dollars, or as otherwise prescribed by the rules of procedure for the Office of Motor Vehicle Hearings. Funds generated from the collection of this fee must be retained by the Administrative Law Court, provided, however, that these funds first must be used to meet the expenses of the Office of Motor Vehicle Hearings, including the salaries of its employees, as directed by the chief judge of the Administrative Law Court.

HISTORY: 2002 Act No. 235, Section 1; 2003 Act No. 61, Section 18; 2005 Act No. 128, Section 23, eff July 1, 2005; repealed by 2006 Act No. 381, Section 11, eff June 13, 2006; 2006 Act No. 387, Section 37, eff July 1, 2006; 2008 Act No. 279, Section 7, eff October 1, 2008; 2012 Act No. 212, Section 5, eff June 7, 2012.

Editor’s Note

2005 Act No. 128, Section 27, provides as follows:

“This act takes effect on July 1, 2005, and applies to all licensing and administrative hearings involving the South Carolina Department of Consumer Affairs.”

Library References

Automobiles 144.2(1).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 357 to 359, 399, 413, 416 to 418, 430 to 433.

**SECTION 56‑5‑2953.** Incident site and breath test site video recording.

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

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

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

(ii) include any field sobriety tests administered; and

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

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

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

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

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

(c) also include the person’s conduct during the required twenty‑minute 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.

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

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

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

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

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

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

HISTORY: 1998 Act No. 434, Section 9; 2000 Act No. 390, Section 23; 2003 Act No. 61, Section 8; 2008 Act No. 201, Section 11, eff February 10, 2009.

Cross references—

Videotaping of breath test being given to person under age of twenty‑one who is arrested for traffic offense and suspected of consuming alcoholic beverages, see Section 56‑1‑286.

Library References

Automobiles 349(14.1), 422.1.

Westlaw Topic No. 48A.

C.J.S. Criminal Procedure and Rights of the Accused Sections 1064 to 1065, 1068 to 1069.

C.J.S. Motor Vehicles Sections 1515 to 1517, 1519 to 1521, 1523 to 1524, 1612.

RESEARCH REFERENCES

Encyclopedias

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

S.C. Jur. Automobiles and Other Motor Vehicles Section 172, Videotape Evidence.

S.C. Jur. Automobiles and Other Motor Vehicles Section 178, Administration of Breath Tests.

S.C. Jur. Automobiles and Other Motor Vehicles Section 181, Effect of Refusal or Certain Test Results.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 1.6(I), The Mixed Developments of the Twenty‑First Century.

Attorney General’s Opinions

The requirements of this section do not apply to a law enforcement vehicle which has never been equipped with a video camera. S.C. Op.Atty.Gen. (May 19, 2003) 2003 WL 21212004.

Discussion of videotaping DUI arrests and the production of the tape into evidence. S.C. Op.Atty.Gen. (August 18, 1999) 1999 WL 986757.

The provisions of this section are not applicable to non‑SLED provided breath site videotaping devices. S.C. Op.Atty.Gen. (June 2, 1999) 1999 WL 986760.

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1. In general

The purpose of the statute requiring a video recording of any field sobriety tests at the incident site is to create direct evidence of an arrest for driving under the influence (DUI). State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1

Dismissal of a charge for driving under the influence (DUI) is an appropriate remedy when a violation of the statute requiring a video recording of any field sobriety tests at the incident site is not mitigated by statutory exceptions. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 426

The failure to comply with the video recording requirements for traffic stops merits a per se dismissal of a charge for driving under influence (DUI). State v. Johnson (S.C.App. 2014) 408 S.C. 544, 758 S.E.2d 911, rehearing denied. Automobiles 349(14.1)

State trooper was arresting officer, not state transport officer, and thus, it was state trooper who had to meet statutory requirement that incident be videotaped at incident site, where trooper personally observed defendant’s driving prior to traffic stop, he arrived at scene simultaneously with state transport officer, trooper pulled in directly behind transport officer and approached just after defendant had been removed from his vehicle, and trooper conducted field sobriety test, determined defendant was impaired, and placed him under arrest for driving under the influence (DUI). State v. Landis (S.C.App. 2004) 362 S.C. 97, 606 S.E.2d 503. Automobiles 349(14.1)

2. Video recording

Video recording of police officer’s administration of horizontal gaze nystagmus test complied with statutory requirement that video recording include any field sobriety tests administered, even if defendant’s face was facing away from officer’s dash camera; statute did not require that every aspect of test be seen in order to judge defendant’s performance or officer’s administration of test, and defendant’s head was visible during entire recording. State v. Walters (S.C.App. 2016) 418 S.C. 303, 792 S.E.2d 251, rehearing denied. Automobiles 422.1

In driving under the influence (DUI) case, magistrate erred, as a matter of law, in finding that the officer’s recording of Horizontal Gaze Nystagmus (HGN) field sobriety test was only required to show defendant’s conduct generally, given that statute required a video recording of any field sobriety tests at the incident site. State v. Gordon (S.C. 2015) 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1

Statute, requiring a video recording of any field sobriety tests at the incident site, requires that the motorist’s head be recorded in the video in driving under the influence (DUI) case; considering the fact that the Horizontal Gaze Nystagmus (HGN) field sobriety test focuses on eye movement, common sense dictates that defendant’s head must be visible on the video. State v. Gordon (S.C. 2015) 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1

In driving under the influence (DUI) case, statutory requirement that defendant’s head be visible on the video recording of Horizontal Gaze Nystagmus (HGN) field sobriety test was met, and the statutory requirement that the administration of the HGN field sobriety test be video recorded was satisfied; officer’s administration of the HGN test was visible on the video recording, defendant’s face was depicted in the video, defendant’s face was a part of his head, and officer’s flashlight and arm were visible as he administered the test, and officer’s instructions were audible. State v. Gordon (S.C. 2015) 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1

Compliance with statute requiring videotaping at incident site during an arrest for driving under the influence of alcohol (DUI) must begin at the time videotaping becomes practicable and continue until the arrest is complete. State v. Henkel (S.C. 2015) 413 S.C. 9, 774 S.E.2d 458, rehearing denied. Automobiles 349(14.1)

Officer’s failure to videotape administration of Miranda warnings to defendant at scene of arrest for driving under the influence of alcohol (DUI) did not require dismissal of DUI indictment, where defendant was given Miranda warnings prior to the time videotaping became practicable. State v. Henkel (S.C. 2015) 413 S.C. 9, 774 S.E.2d 458, rehearing denied. Automobiles 349(14.1)

Dismissal of charge for driving under the influence (DUI) on the basis that statutorily‑required video recording of incident site briefly omitted defendant from view was erroneous, where video began recording upon activation of blue lights, continuously recorded the entire time, and captured all field sobriety tests administered, defendant’s arrest, and officer advising defendant of her Miranda rights, and omission did not occur during any events that either created direct evidence of a DUI or served defendant’s important rights. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Automobiles 349(14.1); Automobiles 422.1

Dismissal of charge of driving under the influence (DUI) charge is an appropriate remedy for arresting officer’s failure to provide complete videotape from incident site, as required by statute, where a violation of statute is not mitigated by any of the statutory exceptions that excuse compliance. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Criminal Law 2012

State was not required to submit an affidavit explaining defendant’s brief omission from view during statutorily‑required video recording of incident site in prosecution for driving under the influence (DUI); statute was not violated, affidavits were required only when video camera was inoperable or it was physically impossible to record because defendant required emergency medical treatment or exigent circumstances existed, and record contained no evidence that those situations were present. State v. Taylor (S.C.App. 2014) 411 S.C. 294, 768 S.E.2d 71. Automobiles 349(14.1); Automobiles 422.1

Lack of audio on video recording from breath test site warranted suppression of the silent video recording of breath test, breath test results, and related testimony and evidence in prosecution of defendant for driving under the influence (DUI); recording did not strictly comply with statutory requirements that video recording at the site of the breath test of a person charged with DUI include “the reading of Miranda rights” and “the person being informed that he is being videotaped, and that he has the right to refuse the test,” and State did not show that any statutory exception applied to allow admission of recording, results, and related evidence despite recording’s noncompliance. State v. Sawyer (S.C. 2014) 409 S.C. 475, 763 S.E.2d 183, rehearing denied. Automobiles 421; Automobiles 422.1

A silent video recording cannot meet the statutory requirements that video recording at the site of the breath test of a person charged with driving under the influence (DUI) “must include the reading of Miranda rights” and “the person being informed that he is being videotaped, and that he has the right to refuse the test.” State v. Sawyer (S.C. 2014) 409 S.C. 475, 763 S.E.2d 183, rehearing denied. Automobiles 421

Circuit court engaged in impermissible fact‑finding on defendant’s appeal from conviction in magistrate court for driving under the influence (DUI) when it found that defendant’s head was not visible in video recording of horizontal gaze nystagmus (HGN) test, in violation of statutory requirement for video recording of “any field sobriety test” administered at arrest site. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Criminal Law 260.11(3.1)

Statute requiring video recording of arrest for driving under the influence (DUI), including any field sobriety tests administered at arrest site, required that defendant’s head be visible in recording during administration of horizontal gaze nystagmus (HGN) test. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1

Trooper’s failure to videotape administration of Miranda warnings to stopped driver, as required by statute, required dismissal of charge of driving under the influence (DUI). State v. Henkel (S.C.App. 2013) 404 S.C. 626, 746 S.E.2d 347, reversed 413 S.C. 9, 774 S.E.2d 458, rehearing denied. Automobiles 349(14.1)

Trooper’s failure to videotape Miranda warnings given to driver during traffic stop did not violate statute requiring videotaping of conduct at incident site during an arrest for driving under the influence (DUI), where trooper did not activate his front blue lights prior to stopping driver’s vehicle, but rather effected stop with his rear lights. State v. Henkel (S.C.App. 2013) 404 S.C. 626, 746 S.E.2d 347, reversed 413 S.C. 9, 774 S.E.2d 458, rehearing denied. Automobiles 349(14.1)

Movement of driving under the influence (DUI) defendant to a different breath test machine for administration of breath test, such that defendant could not be seen on videotape, violated statute requiring the administration of breath tests to be videotaped. State v. Johnson (S.C.App. 2011) 396 S.C. 182, 720 S.E.2d 516. Automobiles 422.1

State did not have valid reason for failing to comply with statutory requirement that the administration of a breath test, for purposes of a driving under the influence (DUI) prosecution, be videotaped, where officer did not submit sworn affidavit that breath test machine was inoperable, there was no emergency circumstance that prevented officer from complying with statute, and officer simply failed to turn on recorder for second machine after moving defendant from first machine. State v. Johnson (S.C.App. 2011) 396 S.C. 182, 720 S.E.2d 516. Automobiles 422.1

Statute that required incident site and alcohol breath test site video recording did not require police officer to stop the videotape after defendant was arrested for driving under the influence (DUI) and placed in police cruiser; the statute required the videotaping to conclude “after the arrest of the person,” and caselaw established that an arrest did not conclude until the defendant was locked in his jail cell. Murphy v. State (S.C.App. 2011) 392 S.C. 626, 709 S.E.2d 685. Automobiles 422.1

Police officer’s dashboard videotape of defendant’s field sobriety tests did not violate statute that required incident site and alcohol breath test site video recording, even though the videotape did not record most of the field sobriety tests; nothing in the plain language of the statute required an accused to remain in full view of the camera for the duration of the encounter. Murphy v. State (S.C.App. 2011) 392 S.C. 626, 709 S.E.2d 685. Automobiles 422.1

3. Refusal of test

Requirement in prior version of statute that state videotape at the incident site and the breath test site any person arrested for driving under the influence (DUI), which also had to include the person’s conduct during the required 20‑minute pre‑test waiting period, plainly required that a breath test be administered for the video requirement to apply, and if there was no test, the statute did not require a videotape, and, thus, once defendant refused the test, officer was no longer required to continue to videotape the 20‑minute pre‑test waiting period; to require otherwise, would have resulted in the officer having to undergo a useless and absurd act. State v. Elwell (S.C. 2013) 403 S.C. 606, 743 S.E.2d 802. Automobiles 422.1

Requirement in prior version of statute that state videotape at the incident site and the breath test site any person arrested for driving under the influence (DUI), which also had to include the person’s conduct during the required 20‑minute pre‑test waiting period, plainly required that a breath test be administered for the video requirement to apply, and if there was no test, the statute did not require a videotape, and, thus, once defendant refused the test, officer was no longer required to continue to videotape the 20‑minute pre‑test waiting period; since no test was administered, then the waiting period was rendered unnecessary, and so was the videotape recording of that waiting period. State v. Hercheck (S.C. 2013) 403 S.C. 597, 743 S.E.2d 798. Automobiles 422.1

Under statute requiring that a person arrested for driving under the influence of alcohol (DUI) have his conduct at the breath test site videotaped, including the person’s conduct during the required 20‑minute pre‑test waiting period, when the person refuses the breath test, the 20‑minute waiting period is not required, and, thus, need not be videotaped. State v. Elwell (S.C.App. 2011) 396 S.C. 330, 721 S.E.2d 451, rehearing denied, certiorari granted, affirmed 403 S.C. 606, 743 S.E.2d 802. Automobiles 422.1

Dismissal of charge against defendant for driving under the influence of alcohol (DUI), second offense, was not warranted on basis that police officer turned off breath test video recorder after defendant refused to take a breath test and before expiration of the statutory 20‑minute pre‑test waiting period, as defendant’s refusal to take a breath test rendered the 20‑minute waiting period inapplicable, such that it did not need to be videotaped. State v. Elwell (S.C.App. 2011) 396 S.C. 330, 721 S.E.2d 451, rehearing denied, certiorari granted, affirmed 403 S.C. 606, 743 S.E.2d 802. Automobiles 422.1

Incorporation, into statute on chemical testing of person suspected of felony driving under influence (DUI), of technical provisions of statute on videotaping conduct of person at breath test site after person has been suspected of driving under influence (DUI), including being informed of right to refuse test, did not afford person suspected of felony DUI right to refuse breath test; right to refuse test is not afforded under statute on testing of person suspected of felony DUI. State v. Cuevas (S.C.App. 2005) 365 S.C. 198, 616 S.E.2d 718. Automobiles 414

4. Exceptions for noncompliance

A sworn affidavit from the arresting officer is not required to qualify for all exceptions excusing noncompliance with the mandatory video‑recording requirements for driving under the influence (DUI) arrests. Teamer v. State (S.C. 2016) 416 S.C. 171, 786 S.E.2d 109, rehearing denied. Automobiles 349(14.1)

Officer’s failure to comply with video‑recording requirements for driving under the influence of alcohol (DUI) arrests was reasonable and excusable, and would not require dismissal of DUI charge against defendant; defendant’s vehicle’s headlights were off when he fled from an attempted nighttime traffic stop, such that officer lost sight of defendant’s vehicle until it collided with another vehicle, urgency of situation involving serious injuries became officer’s primary concern following collision, defendant was not suspected of DUI until officers spoke with him at hospital, and no field sobriety tests were administered or could have been captured on video. Teamer v. State (S.C. 2016) 416 S.C. 171, 786 S.E.2d 109, rehearing denied. Automobiles 349(14.1)

Police department’s noncompliance with statute requiring video recording of traffic stop and arrest was excused as to defendant who was arrested for driving under influence (DUI) by police officer whose cruiser had not been equipped with recording device, and thus, officer’s failure to provide recording of arrest did not mandate dismissal of charge; police department undertook extensive efforts to obtain recording devices from Department of Public Safety (DPS), department had expended its own funds to purchase additional camera systems after DPS provided department with limited number of camera systems and informed department that it could not receive requested number of camera systems at one time, as of date of defendant’s trial, department had spent $463,463.99 to purchase 89 digital‑based camera systems, statute was enacted so that law enforcement agencies would not have to spend their own money on camera systems, and DPS employee testified that it would take 15 years to fulfill number of camera systems requested statewide in single year. State v. Johnson (S.C.App. 2014) 408 S.C. 544, 758 S.E.2d 911, rehearing denied. Automobiles 349(14.1)

Law enforcement agency’s unexcused failure to comply with statutory provisions requiring videotaping of a driver’s conduct at the incident site and at the breath test site is fatal to the prosecution of a driving under the influence (DUI) case. State v. Henkel (S.C.App. 2013) 404 S.C. 626, 746 S.E.2d 347, reversed 413 S.C. 9, 774 S.E.2d 458, rehearing denied. Automobiles 349(14.1); Automobiles 422.1

City’s failure to make reasonable efforts to maintain its video recording equipment in an operable condition, as required by the “incident site and breath testing video recording” statute, mandated dismissal of driving while intoxicated (DWI) charges against defendant; city’s maintenance log showed that police officer knew the video recording equipment in his car was having problems for at least a year, that ten days before defendant was pulled over, the video recording equipment in officer’s car was reported as malfunctioning to the manufacturer, and that the city elected not to pursue repairs when advised it would be charged for an on‑site visit by the manufacturer. City of Greer v. Humble (S.C.App. 2013) 402 S.C. 609, 742 S.E.2d 15. Automobiles 422.1

Affidavit of police officer, required by the “incident site and breath testing video recording” statute because the video recording equipment in police officer’s car was inoperable at the time of defendant’s arrest for driving while intoxicated (DWI), was deficient on its face, where it failed to state which reasonable efforts had been made by city to maintain the video equipment in an operable condition. City of Greer v. Humble (S.C.App. 2013) 402 S.C. 609, 742 S.E.2d 15. Automobiles 422.1

Impossibility exception to statutory requirement for video recording of defendant’s conduct at incident scene was satisfied, in prosecution for felony driving under the influence (DUI), where defendant had been transported from incident scene for medical treatment prior to officer’s arrival, officer was conducting investigation of traffic accident and defendant was arrested at hospital, and officer and defendant were never at incident site at the same time. State v. Manning (S.C.App. 2012) 400 S.C. 257, 734 S.E.2d 314, rehearing denied, certiorari denied. Automobiles 422.1

Officer’s unexcused failure to comply with statutory requirement that administration of breath tests be videotaped for purposes of driving under the influence (DUI) prosecutions warranted dismissal of DUI charges, rather than suppression; legislature explicitly designated dismissal an a sanction for an agency’s failure to adhere to the statutory requirements, and legislature had not mandated such videotaping in other criminal contexts, evidencing legislature’s intent for strict compliance with the statutory requirement. State v. Johnson (S.C.App. 2011) 396 S.C. 182, 720 S.E.2d 516. Automobiles 426

Unexcused failure to video record defendant’s conduct in a traffic stop underlying a prosecution for driving under the influence (DUI), which resulted from a town’s failure to request additional video cameras from the Department of Public Safety (DPS) for installation in its patrol cars and consequent violation of mandatory video‑recording requirements set forth by statute, warranted dismissal of the case; legislature clearly intended for a dismissal of a DUI case unless the law enforcement agency could justify its failure to produce a video recording of a DUI arrest. Town of Mt. Pleasant v. Roberts (S.C. 2011) 393 S.C. 332, 713 S.E.2d 278. Criminal Law 2008

Town’s prolonged failure to request additional video cameras from the Department of Public Safety (DPS) for installation in its patrol cars was not a valid reason for a failure to produce, at a trial for driving under the influence (DUI), a video recording of defendant’s conduct during the underlying traffic stop, and thus the town was not excused from noncompliance with mandatory video‑recording requirements set forth by statute, given that other statutory exceptions to the requirements did not apply; the town had a significantly higher number of DUI arrests as compared to smaller municipalities, and the town could not evade the requirements by continuing to not equip its patrol cars with cameras. Town of Mt. Pleasant v. Roberts (S.C. 2011) 393 S.C. 332, 713 S.E.2d 278. Automobiles 349(14.1); Criminal Law 2000

Dismissal of charge of driving with an unlawful alcohol concentration (DUAC) was appropriate remedy for arresting officer’s failure to provide complete videotape from incident site, as required by statute, as violation of statute was not mitigated by any of the exceptions that excused compliance contained in statute. City of Rock Hill v. Suchenski (S.C. 2007) 374 S.C. 12, 646 S.E.2d 879, rehearing denied. Criminal Law 2012

5. Production of breath test site video

State met any statutory obligation to “produce” breath test site video in prosecution for driving under the influence (DUI), even assuming that word “produce” meant to hand over or turn over, where state made the breath test site video available online and accessible to the defendant. State v. Branham (S.C.App. 2011) 392 S.C. 225, 708 S.E.2d 806. Criminal Law 2000

State’s obligation in prosecution for driving under the influence of alcohol (DUI) to “produce” a breath test site video means to create a video of the breath test site, as opposed to physically handing over or turning over the videotape. State v. Branham (S.C.App. 2011) 392 S.C. 225, 708 S.E.2d 806. Automobiles 422.1; Criminal Law 2000

6. Admissibility of evidence

Even if video of Horizontal Gaze Nystagmus (HGN) field sobriety test was of such poor quality that its admission was more prejudicial than probative, the remedy was to redact the field sobriety test from the video and exclude testimony about the test, and having done that, there was still sufficient evidence to present driving under the influence (DUI) case to jury for resolution; evidence included the breath alcohol analysis report, video of other field sobriety tests, and defendant’s statement that he had consumed four beers, and viewing of a video of an HGN field sobriety test had very little probative value to a jury because the eyes of the motorist were rarely, if ever, seen. State v. Gordon (S.C. 2015) 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 355(6); Automobiles 422.1

Even if video of a field sobriety test is of such poor quality that its admission is more prejudicial than probative, the remedy is not be to dismiss the driving under the influence (DUI) charge, and instead, the remedy is to redact the field sobriety test from the video and exclude testimony about the test. State v. Gordon (S.C. 2015) 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Automobiles 422.1; Automobiles 426

7. Review

On the State’s appeal from circuit court’s reversal of driving under the influence (DUI) conviction entered in the magistrate court, record was not sufficient to allow the Court of Appeals to consider State’s argument that circuit court did not review video recording of field sobriety tests at arrest site, where State did not put on the record the fact that the circuit court allegedly did not view the recording and did not raise any objection to the court allegedly not reviewing the recording. State v. Gordon (S.C.App. 2014) 408 S.C. 536, 759 S.E.2d 755, certiorari granted, affirmed in part, amended in part, vacated in part 414 S.C. 94, 777 S.E.2d 376, rehearing denied. Criminal Law 1119(2)

State failed to preserve on appeal of dismissal of charge against defendant for driving under the influence of alcohol (DUI) the issue of whether the videotape of defendant at breath‑test site in fact depicted the entire 20‑minute statutory waiting period, as the state did not contest that issue before the trial court, and its oral argument before the appellate court was the first time the issue was raised. State v. Elwell (S.C.App. 2011) 396 S.C. 330, 721 S.E.2d 451, rehearing denied, certiorari granted, affirmed 403 S.C. 606, 743 S.E.2d 802. Criminal Law 1036.1(6)

State failed to preserve for appellate review assertion that officer believed camera was activated prior to administration of breath test on driving under the influence (DUI) defendant, where State failed to present argument to trial court. State v. Johnson (S.C.App. 2011) 396 S.C. 182, 720 S.E.2d 516. Criminal Law 1036.1(9)

City failed to preserve for appellate review issue of whether trial court erred in determining city violated statute commanding arresting officer to videotape suspect during an arrest for driving under the influence (DUI); city, on appeal to circuit court from municipal court judgment convicting defendant of driving with an unlawful alcohol concentration (DUAC), reiterated its position that noncompliance with statute was excused by statutory exceptions, but circuit court, in affirming municipal court, omitted any mention of statutory exceptions, and city did not seek post‑judgment ruling from circuit court on potential applicability of statutory exceptions. City of Rock Hill v. Suchenski (S.C. 2007) 374 S.C. 12, 646 S.E.2d 879, rehearing denied. Criminal Law 1045

**SECTION 56‑5‑2954.** Breath testing sites; records of problems with devices.

The State Law Enforcement Division and each law enforcement agency with a breath testing site is required to maintain a detailed record of malfunctions, repairs, complaints, or other problems regarding breath testing devices at each site. These records must be electronically recorded. These records, including any and all remarks, must be entered into a breath testing device and subsequently made available on the State Law Enforcement Division web site. The records required by this section are subject to compulsory process issued by any court of competent jurisdiction in this State and are public records under the Freedom of Information Act.

HISTORY: 2000 Act No. 390, Section 24; 2008 Act No. 201, Section 12, eff February 10, 2009.

Library References

Records 60.

Westlaw Topic No. 326.

C.J.S. Records Sections 126, 139 to 142.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 174, Establishing a Proper Foundation for the Introduction of Test Results.

NOTES OF DECISIONS

In general 1

Grounds for suppression 2

1. In general

Under the statute providing that the State Law Enforcement Division (SLED) andeach law enforcement agency with a breath‑testing site is required to maintain a detailed recordof malfunctions, repairs, complaints, or other problems regarding breath‑testing devices at each site, a record must be kept by both SLED and the individual agency. State v. Landon (S.C. 2006) 370 S.C. 103, 634 S.E.2d 660. Records 3; Records 13

Record kept by State Law Enforcement Division (SLED) on breath‑testing machine used by defendant at detention center violated provision of recordkeeping statute requiring maintenance of “a detailed recordof malfunctions, repairs, complaints, or other problems” regarding breath‑testing machine, where information available on SLED’s website, which could be accessed at detention center, provided no particulars regarding problems reported by individual testing sites. State v. Landon (S.C. 2006) 370 S.C. 103, 634 S.E.2d 660. Records 3; Records 13

Record kept on breath‑testing machine used by defendant at detention center did not violate provision of recordkeeping statute requiring records to be kept by both State Law Enforcement Division (SLED) and any law enforcement agency with a breath‑testing site, even though detention center did not keep separate record on site, where SLED’s record could be accessed at detention center via Internet. State v. Landon (S.C. 2006) 370 S.C. 103, 634 S.E.2d 660. Records 3; Records 13

2. Grounds for suppression

Defendant was not entitled to suppression of her alcohol breath test results based on the State Law Enforcement Division’s failure to maintain any local records of test machine malfunctions, repairs, or complaints, in violation of statute; internet records were available. Murphy v. State (S.C.App. 2011) 392 S.C. 626, 709 S.E.2d 685. Automobiles 424

**SECTION 56‑5‑2955.** Admissibility of evidence obtained under Section 56‑5‑2950.

Any evidence obtained under the provisions of Section 56‑5‑2950 shall not be admissible as evidence to prove a criminal offense other than those offenses delineated in Title 56.

HISTORY: 1987 Act No. 179 Section 3.

Library References

Automobiles 411.

Westlaw Topic No. 48A.

C.J.S. Criminal Procedure and Rights of the Accused Sections 1063 to 1064, 1068 to 1069.

C.J.S. Motor Vehicles Sections 1602 to 1620.

C.J.S. Searches and Seizures Section 138.

**SECTION 56‑5‑2970.** Reports to Department of Motor Vehicle of convictions, certain pleas and bail forfeitures.

All clerks of court, magistrates, city recorders, and other public officers in this State having charge or responsibility with respect to convictions or of the entry of pleas of guilty or of nolo contendere or of the forfeitures of bail posted for violation of Section 56‑5‑2930, 56‑5‑2933, or for convictions or of the entry of pleas of guilty or of nolo contendere or of the forfeitures of bail posted for violations of any other laws or ordinances of this State that prohibit any person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics are required to report to the Department of Motor Vehicles every such conviction, plea of guilty or of nolo contendere or bail forfeiture within ten days after such conviction, entry of a plea of guilty or of nolo contendere or forfeiture or after the receipt of such report, as the case may be. Such reports shall be made upon forms to be provided by the department, arranged in duplicate, and the director of the Department of Motor Vehicles shall acknowledge the filing of each such report by signing the duplicate of such report and returning it to the officer making it, to be kept by such officer as evidence of his compliance with the requirement that he make such report.

Any person violating the provisions of this section shall be subject to a penalty of twenty‑five dollars for each such failure, to be collected by the Attorney General or the solicitors of the State under the direction of the Attorney General and paid into the general fund of the State.

HISTORY: 1962 Code Section 46‑347; 1952 Code Section 46‑347; 1949 (46) 466; 1956 (49) 1688; 2000 Act No. 390, Section 25.

CROSS REFERENCES

Reports by courts of convictions for motor vehicle law violations, see Section 56‑1‑330.

Reports of convictions in connection with point system, see Section 56‑1‑780.

Library References

Automobiles 332.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1574 to 1598.

NOTES OF DECISIONS

In general 1

1. In general

Defendant’s South Carolina driving record was admissible in prosecution for driving under the influence (DUI) for purposes of showing prior DUI conviction. State v. Clute (S.C.App. 1996) 324 S.C. 584, 480 S.E.2d 85, rehearing denied, certiorari denied, certiorari denied 118 S.Ct. 442, 522 U.S. 982, 139 L.Ed.2d 379. Automobiles 359.6

Although statutes establish that dispositional records establish prima facie case of a prior conviction for driving under the influence (DUI), there is nothing in the statutes to prevent state from introducing other evidence to prove prior conviction. State v. Clute (S.C.App. 1996) 324 S.C. 584, 480 S.E.2d 85, rehearing denied, certiorari denied, certiorari denied 118 S.Ct. 442, 522 U.S. 982, 139 L.Ed.2d 379. Automobiles 359.6

Under statute requiring Highway Department to suspend operator’s license of any person convicted of offense of operating motor vehicle while under influence of intoxicating liquor, upon receipt of report of conviction, it is mandatory upon Department to suspend license of person so convicted, and action of Department is purely ministerial with no discretion allowed. Code 1952, Sections 46‑151 et seq., 46‑178, 46‑341 et seq., 46‑347, 46‑348. Herndon v. South Carolina State Highway Dept. (S.C. 1955) 226 S.C. 384, 85 S.E.2d 287. Automobiles 144.1(1.11)

It is manifest that the purpose of this section was to establish a central depository for the records of all persons convicted in this State for the violation of any statute or ordinance prohibiting the driving of any motor vehicle while under the influence of intoxicating liquor. State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151. Automobiles 332

On the trial of a person charged as a second offender for operating a motor vehicle while under the influence of intoxicating liquor, a report by a magistrate to the Highway Department made pursuant to this section and duly identified by the custodian of the records, is admissible in evidence for the purpose of showing a prior conviction. State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151. Criminal Law 429(1)

Not only is the original of a report made under this section admissible, but a certified copy or a certified photostatic copy of such report is also admissible under former Code 1962 Section 26‑101 [see now Section 19‑5‑10]. State v. Pearson (S.C. 1953) 223 S.C. 377, 76 S.E.2d 151.

**SECTION 56‑5‑2980.** Copies of reports as prima facie evidence of certain matters; effect of stipulating subsequent offense.

In all trials and proceedings in any court of this State in which the defendant is charged with a violation of Section 56‑5‑2920, 56‑5‑2930, or 56‑5‑2933, photostatic, optical disk, or other copies of the reports required to be filed with the Department of Motor Vehicles pursuant to Section 56‑5‑2970 shall be deemed prima facie evidence of the information contained on such reports for the purpose of showing any previous conviction of the defendant in any other court. Copies of the reports must be duly certified by the director of the department or his designee as true copies. If the defendant stipulates that the charge constitutes a second or subsequent offense, the indictment shall not contain allegations of prior offenses and evidence of such prior offenses must not be introduced.

HISTORY: 1962 Code Section 46‑349; 1953 (48) 222; 1996 Act No. 459, Section 185; 2000 Act No. 390, Section 26.

CROSS REFERENCES

Provision authorizing reports of convictions and records to be sent to other states, see Section 56‑1‑340.

Requirement that courts report certain convictions, see Section 56‑1‑330.

Library References

Criminal Law 429.

Westlaw Topic No. 110.

C.J.S. Criminal Procedure and Rights of the Accused Sections 1439 to 1444, 1446, 1448 to 1449, 1451.

NOTES OF DECISIONS

In general 1

Stipulations 2

1. In general

Defendant’s South Carolina driving record was admissible in prosecution for driving under the influence (DUI) for purposes of showing prior DUI conviction. State v. Clute (S.C.App. 1996) 324 S.C. 584, 480 S.E.2d 85, rehearing denied, certiorari denied, certiorari denied 118 S.Ct. 442, 522 U.S. 982, 139 L.Ed.2d 379. Automobiles 359.6

Although statutes establish that dispositional records establish prima facie case of a prior conviction for driving under the influence (DUI), there is nothing in the statutes to prevent state from introducing other evidence to prove prior conviction. State v. Clute (S.C.App. 1996) 324 S.C. 584, 480 S.E.2d 85, rehearing denied, certiorari denied, certiorari denied 118 S.Ct. 442, 522 U.S. 982, 139 L.Ed.2d 379. Automobiles 359.6

Failure to use this section to remove allegations of prior convictions from an indictment barred defendant from attacking their inclusion by use of habeas corpus. Tyler v. State (S.C. 1965) 247 S.C. 34, 145 S.E.2d 434.

2. Stipulations

Defendant convicted of driving under influence, second offense, could not raise for first time on appeal his claim that before jury was allowed to have indictment during deliberations, trial court should have redacted reference to prior offense, existence of which defendant and solicitor had stipulated; nothing within governing statute divested court of subject matter jurisdiction to determine issues involved in case if language pertaining to prior offense were not removed from indictment. State v. White (S.C.App. 1999) 338 S.C. 56, 525 S.E.2d 261. Criminal Law 1039

The plain meaning of Section 56‑5‑2980 suggests that the State must assent before a stipulation is effective; otherwise the legislature would not have included the words “with the solicitor” in the phrase, “the accused may stipulate with the solicitor that the charge constitutes a second offense.” State v. Anderson (S.C.App. 1995) 318 S.C. 395, 458 S.E.2d 56, rehearing denied.

**SECTION 56‑5‑2990.** Suspension of convicted person’s driver’s license; period of suspension.

(A)(1) The Department of Motor Vehicles shall suspend the driver’s license of a person who is convicted for a violation of Section 56‑5‑2930, 56‑5‑2933, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs.

(2) For a first offense:

(a) If a person is found to have refused to submit to a breath test pursuant to Section 56‑5‑2950 and is convicted of Section 56‑5‑2930 or 56‑5‑2933, the person’s driver’s license must be suspended six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person may enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.

(b) If a person submitted to a breath test pursuant to Section 56‑5‑2950 and is convicted of having an alcohol concentration of less than fifteen one‑hundredths of one percent, the person’s driver’s license must be suspended six months. The person is eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person may enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.

(c) If a person submitted to a breath test pursuant to Section 56‑5‑2950 and is convicted of having an alcohol concentration of fifteen one‑hundredths of one percent or more, the person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56.

(3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for two years.

(4) For a third offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for three years. If the third offense occurs within five years from the date of the first offense, the ignition interlock device is required to be affixed to the motor vehicle for four years.

(5) For a fourth or subsequent offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for life.

(6) Except as provided in subsection (A)(4), only those offenses which occurred within ten years, including and immediately preceding the date of the last offense, shall constitute prior offenses within the meaning of this section.

(B) A person whose license is suspended pursuant to this section, Section 56‑1‑286, 56‑5‑2945, or 56‑5‑2951 must be notified by the department of the suspension and of the requirement to enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. A person who must complete an Alcohol and Drug Safety Action Program as a condition of reinstatement of his driving privileges or a court‑ordered drug program may use the route restricted or special restricted driver’s license to attend the Alcohol and Drug Safety Action Program classes or court‑ordered drug program in addition to the other permitted uses of a route restricted driver’s license or a special restricted driver’s license. An assessment of the extent and nature of the alcohol and drug abuse problem, if any, of the person must be prepared and a plan of education or treatment, or both, must be developed for the person. Entry into the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the person is a mandatory requirement of the issuance of an ignition interlock restricted license to the person whose license is suspended pursuant to this section. Successful completion of the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the person is a mandatory requirement of the full restoration of driving privileges to the person whose license is suspended pursuant to this section. The Alcohol and Drug Safety Action Program shall determine if the person has successfully completed the services. Alcohol and Drug Safety Action Programs shall meet at least once a month. The person whose license is suspended shall attend the first Alcohol and Drug Safety Action Program available after the date of enrollment.

(C) The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each person shall bear the cost of services recommended in the person’s plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. No person may be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the person has successfully completed services. A person who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the person has successfully completed services. The Department of Alcohol and Other Drug Abuse Services shall report annually to the House Ways and Means Committee and Senate Finance Committee on the number of first and multiple offenders completing the Alcohol and Drug Safety Action Program, the amount of fees collected and expenses incurred by each Alcohol and Drug Safety Action Program, and the number of community service hours performed in lieu of payment.

(D) If the person has not successfully completed the services as directed by the Alcohol and Drug Safety Action Program within one year of enrollment, a hearing must be provided by the Alcohol and Drug Safety Action Program whose decision is appealable to the Department of Alcohol and Other Drug Abuse Services. If the person is unsuccessful in the Alcohol and Drug Safety Action Program, the Department of Motor Vehicles may waive the successful completion of the program as a mandatory requirement of the issuance of an ignition interlock restricted license upon the recommendation of the Medical Advisory Board as utilized by the Department of Motor Vehicles, if the Medical Advisory Board determines public safety and welfare of the person may not be endangered.

(E) The Department of Motor Vehicles and the Department of Alcohol and Other Drug Abuse Services shall develop procedures necessary for the communication of information pertaining to relicensing, or otherwise. These procedures must be consistent with the confidentiality laws of the State and the United States. If a person’s driver’s license is suspended pursuant to this section, an insurance company shall not refuse to issue insurance to cover the remaining members of the person’s family, but the insurance company is not liable for any actions of the person whose license has been suspended or who has voluntarily turned the person’s license in to the Department of Motor Vehicles.

(F) Except as provided for in Section 56‑1‑365(D) and (E), the driver’s license suspension periods under this section begin on the date the person is convicted, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for the a violation of Section 56‑5‑2930, 56‑5‑2933, or for the violation of any other a law of this State or ordinance of a county or municipality of this State that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, or narcotics; however, a person is not prohibited from filing a notice of appeal and receiving a certificate which entitles him to operate a motor vehicle for a period of sixty days after the conviction, plea of guilty or nolo contendere, or bail forfeiture pursuant to Section 56‑1‑365(F).

HISTORY: 1962 Code Section 46‑348; 1952 Code Section 46‑348; 1949 (46) 466; 1956 (49) 1688; 1958 (50) 1662; 1981 Act No. 167, Section 2; 1982 Act No. 355, Section 4; 1983 Act No. 114 Section 2; 1985 Act No. 201, Part II, Section 39B; 1988 Act No. 532, Section 28; 1988 Act No. 658, Part II, Section 38B; 1993 Act No. 181, Section 1421; 1996 Act No; 459, Section 186; 1998 Act No. 258, Section 13; 1998 Act No. 379, Section 1; 1998 Act No. 434, Section 10; 1999 Act No. 100, Part II, Section 11; 1999 Act No. 115, Section 14; 2000 Act No. 390, Sections 27, 28; 2002 Act No. 296, Section 1; 2002 Act No. 348, Section 9; 2002 Act No. 354, Section 3; 2014 Act No. 158 (S.137), Section 15, eff October 1, 2014; 2015 Act No. 34 (S.590), Section 2, eff June 1, 2015.

CROSS REFERENCES

Driver’s license suspension amnesty period, see Section 56‑1‑396.

Driving without a license after a conviction for which vehicle suspension of driver’s license is mandatory, see Section 56‑1‑450.

Endorsing suspension on license, see Section 56‑1‑400.

Ignition interlock device, see Section 56‑5‑2941.

Penalty for causing great bodily injury or death by operating vehicle while under the influence of drugs or alcohol, see Section 56‑5‑2945.

Penalty for driving motor vehicle while driver’s license is suspended pursuant to provisions of this section, see Section 56‑1‑460.

Surrender of license, issuance of new license, endorsing suspension and ignition interlock device on license, see Section 56‑1‑400.

Suspension of license for refusal to submit to testing or for certain level of alcohol concentration, temporary alcohol license, administrative hearing, restricted driver’s license, penalties, see Section 56‑5‑2951.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Suspension of professional driver’s license for failure to complete mandatory alcohol traffic safety school, see Section 56‑1‑1330.

Library References

Automobiles 144.1(1.10), 144.5, 144.7.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 391 to 398, 424 to 429, 456, 459, 465 to 471.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 169, Penalties‑Suspension of Driver’s License Upon Conviction, Plea or Bail Forfeiture.

S.C. Jur. Automobiles and Other Motor Vehicles Section 182, Additional Requirements for Specified Test Results.

S.C. Jur. Magistrates and Municipal Judges Section 24, Revocation or Suspension of Driver’s License.

Attorney General’s Opinions

The change in fee and the added community service alternative for the Alcohol and Drug Safety Awareness Program does not violate ex post facto laws. S.C. Op.Atty.Gen. (June 27, 2001) 2001 WL 957754.

Where an offense of driving under the influence occurred before January 1, 1989, any offense which occurred more than five years prior to that offense would not be considered as a prior offense for purposes of Sections 56‑5‑2940 or 56‑5‑2990. S.C. Op.Atty.Gen. (March 24, 1989) 1989 WL 406126.

Where an individual’s driver’s license was suspended following a driving under the influence conviction, the license would remain suspended until all statutory requirements to regain his license are met; until such requirements are met, the individual, if convicted for driving under suspension, would be sentenced pursuant to the harsher provisions of section 56‑1‑460 inasmuch as his license was originally suspended pursuant to section 56‑5‑2990. S.C. Op.Atty.Gen. (June 20, 1988) 1988 WL 383534.

Magistrates and municipal judges would have jurisdiction over the charge of first offense driving under suspension when the license was suspended pursuant to Section 56‑5‑2990 of the Code inasmuch as the sentence for such a charge is a term of imprisonment of not less than ten nor more than thirty days. While magistrates and municipal judges are not specifically limited to the amount of bond which may be set in a case where there is a charge of driving under suspension when the license was suspended pursuant to Section 56‑5‑2990 inasmuch as there is no monetary fine for such offense, the amount must be reasonable. The punishment provisions of Section 56‑1‑460 for driving under suspension where a driver’s license has been suspended pursuant to Section 56‑5‑2990 following a DUI conviction however are solely applicable to suspensions in this State and are not applicable to out‑of‑state DUI convictions. S.C. Op.Atty.Gen. (October 12, 1987) 1987 WL 245491.

When suspension of license for drunk driving begins. Suspension of driver’s license of a person convicted of drunk driving does not begin until affirmative action is taken by the Highway Department notifying such convicted person of the suspension. S.C. Op.Atty.Gen. (March 18, 1971) 1971 WL 17482.

An out‑of‑State driver convicted of drunk driving is in violation of State law if he continues to drive during the period for which his South Carolina license would have been suspended. S.C. Op.Atty.Gen. (September 15, 1970) 1970 WL 12254.

Confiscation of license. Law‑enforcement officers may not confiscate the driver’s license of a person refusing to submit to the breathalyzer test. S.C. Op.Atty.Gen. (September 14, 1970) 1970 WL 12253.

Length of suspension depends on number of previous convictions. This section [Code 1962 Section 46‑348], requiring the suspension of the driver’s license of persons convicted under Code 1962 Section 46‑343, relates the length of the suspension to the number of convictions and not to the punishment imposed therefor. S.C. Op.Atty.Gen. (November 21, 1966) 1966 WL 8634.

The fact that a person was sentenced upon his third conviction as a second offender is an act of grace to him which he cannot interpose to prevent the suspension of his driver’s license for the period required for a third conviction. S.C. Op.Atty.Gen. (November 21, 1966) 1966 WL 8634.

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1. In general

Upon receipt of the report required by former Code 1962 Section 46‑347 [see now Section 56‑5‑2970], it is mandatory upon the Department to suspend the license of the person so convicted. No discretion is allowed in the matter. Parker v State Highway Dept. (1953) 224 SC 263, 78 SE2d 382. Herndon v South Carolina State Highway Dept. (1955) 226 SC 384, 85 SE2d 287. Brewer v South Carolina State Highway Dept. (1973) 261 SC 52, 198 SE2d 256.

Where there was nothing other than an unexplained delay on the part of the reporting officials, unaccompanied by any showing of real prejudice to the driver, the driver was not entitled to any relief because of delay in imposing the suspension of his license for failure to submit to a breathalyzer test. State v. Chavis (S.C. 1973) 261 S.C. 408, 200 S.E.2d 390.

The suspension constitutes no part of the punishment fixed by the court, nor is it an added punishment for the offense committed. It is civil and not criminal in its nature. It is not to punish the offender but to remove from the highways an operator who is a potential danger to others thereon. Parker v State Highway Dept. (1953) 224 SC 263, 78 SE2d 382. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

Under statute providing for suspension of driver’s license for six months for first offense of driving while intoxicated and for suspension of 12 months for second offense but that only those violations which occurred within period of 10 years should constitute the prior violations, the date of violation and not the date of conviction is determining date, and hence motorist whose last violation occurred within 10 years after the first violation, but whose last conviction occurred more than 10 years after both the first violation and conviction was properly suspended for period of 12 months. Code 1962, Sections 46‑343, 46‑348. Rabon v. South Carolina State Highway Dept. (S.C. 1972) 258 S.C. 154, 187 S.E.2d 652.

The word “violation,” as used in this section, does not mean “conviction,” thereby rendering the date of conviction the date for determining whether prior offenses fall within the preceding ten‑year period. Rabon v. South Carolina State Highway Dept. (S.C. 1972) 258 S.C. 154, 187 S.E.2d 652.

Prior offenses must be determined under this section [formerly Code 1962 Section 46‑348] from the date of violation rather than from the date of conviction. Rabon v. South Carolina State Highway Dept. (S.C. 1972) 258 S.C. 154, 187 S.E.2d 652.

The Legislature under its police power has full authority, in the interest of public safety, to prescribe the conditions under which the privilege to operate a motor vehicle may be granted, and upon which such privilege will be revoked, and may make the violation of traffic regulations or other cause having to do with public safety, basis for their revocation or suspension of a driver’s license and may prescribe the relative weight to be given to the violation of any statute or ordinance regulating traffic. Code 1952, Sections 46‑172, 46‑348. Act April 4, 1930, 36 St. at Large p. 1057, Section 1 et seq. South Carolina State Highway Dept. v. Harbin (S.C. 1955) 226 S.C. 585, 86 S.E.2d 466. Automobiles 136; Automobiles 144.1(1)

The word “convicted” as used in this section contemplates only a verdict of guilty and sentence thereon, and is not intended to preclude the suspension of the license of the person so convicted until the determination of his appeal and an end of the prosecution. Parker v. State Highway Dept. (S.C. 1953) 224 S.C. 263, 78 S.E.2d 382.

2. Constitutional issues

The cruel and unusual punishment clause (US Const Amend VIII) was inapplicable to a determination of the appropriateness of the suspension of the respondent’s driver’s license for driving under the influence and driving under suspension, since suspension of the driver’s license of a person convicted of a traffic offense is not a part of the punishment for the underlying offense. Yeargin v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 313 S.C. 387, 438 S.E.2d 234.

3. Commencement of suspension

Absent a finding that licensee did not surrender his driver’s license immediately after his conviction upon his plea of guilty to driving with an unlawful alcohol concentration and absent a finding that the clerk of court wilfully failed to forward the license to the Department of Motor Vehicles, the driver’s license suspension period began on the date licensee received sentence upon a plea of guilty. Dismuke v. South Carolina Dept. of Motor Vehicles (S.C.App. 2006) 371 S.C. 418, 639 S.E.2d 151, rehearing denied, certiorari denied. Automobiles 144.5

4. Notice

There is no requirement that notice be given to the holder of the license. The suspension follows as a consequence and effect of committing the offense. It is a forfeiture of the privilege to drive, due to the failure of the licensee to observe certain conditions under which the license was issued. Parker v State Highway Dept. (1953) 224 SC 263, 78 SE2d 382. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

5. First conviction

Under former 1962 Code Sections 46‑343, 46‑345, and 46‑348 [see now 1976 Code Sections 56‑5‑2930, 56‑5‑2940, 56‑5‑2990], first offense charge of driving under the influence is tried in Magistrate’s Court where the punishment cannot exceed 30 days or a fine of $100, with suspension of the driver’s license for 6 months; while second offense charge for such offense is beyond the jurisdiction of the Magistrate’s Court and must be disposed of in the Court of General Sessions where the punishment is much greater and suspension of the license for a longer period of time. Ex parte Sarvis (S.C. 1975) 266 S.C. 15, 221 S.E.2d 108.

6. Second conviction

Hearings were not required under the Administrative Procedures Act prior to the suspension of the respondent’s driver’s license because of 2 convictions for driving under the influence and 5 convictions for driving under suspension, since such suspensions were not “contested cases” as defined in Section 1‑23‑310(2); the respondent’s rights were protected by due process of law provided to him for the underlying convictions on which the suspensions were based. Yeargin v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 313 S.C. 387, 438 S.E.2d 234. Administrative Law And Procedure 470; Automobiles 144.2(1); Constitutional Law 4358

Trial judge on second offense had no jurisdiction to review legality of or set aside defendant’s first conviction. DeWitt v. South Carolina Dept. of Highways and Public Transp. (S.C. 1980) 274 S.C. 184, 262 S.E.2d 28.

7. Third conviction or more

Department of Public Safety had duty to permanently revoke driver’s license of defendant who was convicted of his fifth driving under the influence (DUI) offense, even though defendant pled guilty to fourth‑offense DUI. McDaniel v. South Carolina Dept. of Public Safety (S.C.App. 1996) 325 S.C. 405, 481 S.E.2d 155, rehearing denied. Automobiles 144.1(3)

Advice of defendant’s probation officer that he should accept State’s offer to plead guilty to driving under the influence (DUI), fourth offense, because it would allow him to have his license reissued sometime in future, did not estop Department of Public Safety from permanently revoking defendant’s driver’s license because conviction was actually defendant’s fifth offense; probation officer’s statement could not bind Department, and there was no evidence that officer had actual or constructive notice that his advice was incorrect. McDaniel v. South Carolina Dept. of Public Safety (S.C.App. 1996) 325 S.C. 405, 481 S.E.2d 155, rehearing denied. Estoppel 62.2(2)

Assurances of both solicitor and judge who accepted defendant’s guilty plea to driving under the influence (DUI), fourth offense, that defendant would be sentenced as fourth offender did not estop Department of Public Safety from permanently revoking defendant’s driver’s license on grounds conviction was actually for his fifth DUI offense; solicitor and judge were involved only with criminal case against defendant and there was no evidence they represented that his license would not be permanently revoked. McDaniel v. South Carolina Dept. of Public Safety (S.C.App. 1996) 325 S.C. 405, 481 S.E.2d 155, rehearing denied. Estoppel 62.2(2)

Defendant who did not appeal from permanent revocation of his driver’s license based on his fifth driving under the influence (DUI) conviction did not prejudicially change his position in reliance on letter from Department of Public Safety, advising him that his license would be revoked for five years if he had additional major or minor offense, so as to estop Department from permanently revoking his license, where defendant had five DUI convictions in ten‑year period, so that any challenge to his permanent revocation would have been fruitless. McDaniel v. South Carolina Dept. of Public Safety (S.C.App. 1996) 325 S.C. 405, 481 S.E.2d 155, rehearing denied. Estoppel 62.2(2)

Reduction of 2‑year suspension by trial court to 1‑year suspension upon receipt of notice of driver’s third conviction, although conviction in question was labeled as second offense, was error, as the Highway Department was exercising its mandatory duty under this section and the trial court had no discretion in the matter. Cummings v. South Carolina State Highway Dept. (S.C. 1978) 271 S.C. 89, 245 S.E.2d 127.

8. Out‑of‑state‑convictions

The offense of driving while his ability was impaired in the State of New York is of a substantially similar nature to the South Carolina offense of DUI, and consequently forms a sufficient basis on which to adjudicate a license holder guilty of DUI in the State of South Carolina. Przybyla v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 313 S.C. 116, 437 S.E.2d 70.

9. Justiciability

Where, upon call of case in which respondent prayed that court issue order directing revocation of suspension of driver’s license, the court was advised that respondent would be entitled to return of his license as of a date that had passed, issues made by appeal were rendered moot and academic and appeal would be dismissed. Code 1962, Sections 46‑343, 46‑347, 46‑348. Mathis v. South Carolina State Highway Dept. (S.C. 1973) 260 S.C. 344, 195 S.E.2d 713.

10. New trial

Where defendant in DWI case failed to appear, and neither sworn statement was made, nor appearance entered for him, nor motion for continuance made, allegation that defendant had been in hospital on day of hearing was not sufficient to support motion for new trial. State v. Way (S.C. 1975) 264 S.C. 280, 214 S.E.2d 640.

Where the conviction for drunken driving of the defendant is set aside and a new trial granted, there is no basis upon which the suspension of his driver’s license can be sustained because the case against the defendant stands as if he had never been convicted. It follows that a trial judge is not in error in granting the restraining order restraining the State Highway Department from invoking this section [formerly Code 1962 Section 46‑348]. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

11. Review

Appeal from a conviction for violation of former Code 1962 Section 46‑343 [see now Section 56‑5‑2930] did not preclude the suspension of the license of the person so convicted until the determination of his appeal and an end of the prosecution. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

Since the suspension of the license constitutes no part of the punishment for the offense, it follows that former Code 1962 Section 7‑6 [see now Section 18‑1‑70], providing that notice of appeal in a criminal case “shall operate as a stay of the execution of the sentence until the appeal is finally disposed of,” has no application. Parker v. State Highway Dept. (S.C. 1953) 224 S.C. 263, 78 S.E.2d 382.

**SECTION 56‑5‑2995.** Additional assessment on persons convicted of driving under influence of intoxicating liquors or drugs.

(A) In addition to the penalties imposed for a first offense violation of Section 56‑5‑2930 or 56‑5‑2933 in magistrate’s or municipal court, an additional assessment of twelve dollars must be added to any punishment imposed which must be remitted to the State Treasurer who shall then distribute the twelve‑dollar assessments in the manner provided in Section 14‑1‑201.

(B) In addition to the penalties and assessments imposed for a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, or a violation of Section 56‑5‑2945 in general sessions court, an additional assessment of twelve dollars must be added to any punishment imposed which must be remitted to the State Treasurer who shall then distribute these twelve‑dollar assessments in the manner provided in Section 14‑1‑201.

HISTORY: 1997 Act No. 155, Part II, Section 37A; 2000 Act No. 390, Section 29.

Library References

Automobiles 359.6, 361.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1530.

ARTICLE 25

Pedestrians; Rights and Duties

**SECTION 56‑5‑3110.** Pedestrian obedience to traffic‑control devices and traffic regulations.

(a) A pedestrian shall obey the instructions of any official traffic‑control device specifically applicable to him unless otherwise directed by a police officer.

(b) Pedestrians shall be subject to traffic and pedestrian‑control signals as provided in Sections 56‑5‑970 and 56‑5‑990.

(c) At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

HISTORY: 1962 Code Section 46‑431; 1952 Code Section 46‑431; 1949 (46) 466; 1977 Act No. 145 Section 1.

CROSS REFERENCES

Pedestrian “walk” and “wait” signals, see Section 56‑5‑990.

Library References

Highways 173.

Municipal Corporations 707.

Westlaw Topic Nos. 200, 268.

C.J.S. Municipal Corporations Sections 1958 to 1960.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 471 , Introductory Comments.

Treatises and Practice Aids

47 Causes of Action 2d 601, Cause of Action Against Motorist for Injury to Pedestrian Using Roadway.

**SECTION 56‑5‑3120.** Local regulations.

Local authorities may by ordinance require that pedestrians shall strictly comply with the directions of any official traffic‑control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

HISTORY: 1962 Code Section 46‑432; 1952 Code Section 46‑432; 1949 (46) 466.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibilities of all municipalities, see Sections 5‑7‑10 et seq.

Library References

Highways 165.

Westlaw Topic No. 200.

C.J.S. Highways Sections 388 to 393.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑3130.** Pedestrians’ right‑of‑way in crosswalks.

(a) When traffic‑control signals are not in place or not in operation the driver of a vehicle shall yield the right‑of‑way, slowing down or stopping if need be to yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(c) Subsection (a) shall not apply under the conditions stated in subsection (b) of Section 56‑5‑3150.

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

HISTORY: 1962 Code Section 46‑433; 1952 Code Section 46‑433; 1949 (46) 466; 1977 Act No. 145 Section 2.

CROSS REFERENCES

Definition of crosswalk, see Section 56‑5‑500.

Pedestrian “walk” and “wait” signals, see Section 56‑5‑990.

Library References

Automobiles 160(4), 217.

Highways 173.

Westlaw Topic Nos. 48A, 200.

C.J.S. Motor Vehicles Sections 895 to 896, 1009 to 1010, 1015, 1017, 1027 to 1042, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 196, Right‑Of‑Way in Crosswalks.

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1. In general

Under South Carolina law, when crossing at any other than an intersection or at crosswalk, a pedestrian must yield right‑of‑way to vehicular traffic. Code S.C.1962, Section 46‑433. Thomas v. Bruton, 1967, 270 F.Supp. 33.

Where the plaintiff pedestrian was crossing the street at the time she was struck by the defendant’s automobile in the unmarked crosswalk area defined by former Code 1962 Section 46‑258 [see now Section 56‑5‑500], the respective rights and duties of the parties were determined in the light of the provisions of this section. Anders v. Nash (S.C. 1971) 256 S.C. 102, 180 S.E.2d 878.

At all crosswalks, the driver of a vehicle must, except when traffic‑control signals are in operation, yield the right‑of‑way to a pedestrian crossing the roadway within the crosswalk, marked or unmarked, when the pedestrian is upon the driver’s half of the roadway or approaching so closely from the opposite half of the roadway as to be in danger; and, to so yield, the driver must, if need be, slow down or stop. Anders v. Nash (S.C. 1971) 256 S.C. 102, 180 S.E.2d 878.

At all crosswalks the driver of a vehicle must, except when traffic control signals are in operation, yield the right of way to a pedestrian crossing the roadway within the crosswalk, marked or unmarked. Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254. Automobiles 160(4)

2. Questions for jury

In action for injuries sustained by pedestrian when struck by a tractor‑trailer when she attempted to cross a state highway, under South Carolina law the evidence presented questions for the jury as to pedestrian’s contributory negligence in attempting to walk across the highway in front of defendants’ approaching truck, and as to last clear chance on part of driver of the truck. Code S.C.1952, Sections 46‑258, 46‑433, 46‑436. Bruin v. Tribble (C.A.4 (S.C.) 1956) 238 F.2d 12.

3. Sufficiency of evidence

Evidence that pedestrian was engaged in horseplay with another, jerked free and was carried by his momentum onto highway and into path of truck established that pedestrian’s being struck and killed by truck occurred as direct and proximate result of sole negligence of pedestrian in entering path of truck which was so close that it was impossible for driver to yield. Code S.C.1962, Sections 46‑433, 46‑435. Thomas v. Bruton, 1967, 270 F.Supp. 33.

Where truck driver was maintaining proper lookout and control of vehicle and there was nothing under circumstances which would have alerted him to unknown danger and require driver to perform in any other manner, truck driver breached no duty owing to pedestrian when he struck and killed pedestrian who was carried into path of truck by momentum of pedestrian’s actions in engaging in horseplay. Code S.C.1962, Sections 46‑433, 46‑435. Thomas v. Bruton, 1967, 270 F.Supp. 33.

Evidence, in action for injuries sustained by pedestrian when she was struck at intersection by motorist, authorized findings that motorist was driving into intersection at an unlawful rate of speed, that he failed to keep a proper lookout, and that in violation of statute he failed to yield right of way to pedestrian who was at time approaching so closely to motorist’s line of travel as to be in danger. Code 1962, Section 46‑433. China v. Parrott (S.C. 1968) 251 S.C. 329, 162 S.E.2d 276.

**SECTION 56‑5‑3140.** Pedestrian shall use right half of crosswalk.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

HISTORY: 1962 Code Section 46‑434; 1952 Code Section 46‑434; 1949 (46) 466.

Library References

Highways 173.

Westlaw Topic No. 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 196, Right‑Of‑Way in Crosswalks.

**SECTION 56‑5‑3150.** Crossing at other than crosswalks.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right‑of‑way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right‑of‑way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic‑control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic‑control devices and when authorized to cross diagonally pedestrians shall cross only in accordance with the official traffic‑control devices pertaining to such crossing movements.

HISTORY: 1962 Code Section 46‑435; 1952 Code Section 46‑435; 1949 (46) 466; 1977 Act No. 145 Section 3.

Library References

Automobiles 160(4), 217.

Highways 173.

Westlaw Topic Nos. 48A, 200.

C.J.S. Motor Vehicles Sections 895 to 896, 1009 to 1010, 1015, 1017, 1027 to 1042, 1047.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 196, Right‑Of‑Way in Crosswalks.

S.C. Jur. Automobiles and Other Motor Vehicles Section 197, Other Crossings.

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1. In general

When crossing at any other than an intersection or a crosswalk the pedestrian must yield the right‑of‑way to vehicular traffic. Thomas v. Bruton (D.C.S.C. 1967) 270 F.Supp. 33, affirmed 390 F.2d 658. Automobiles 217(3)

Evidence showed that pedestrian was negligent, and that his negligence was more than 50%, in connection with injuries he suffered when vehicle struck him as he attempted to cross street, thus precluding his recovery in negligence action against motorist; evidence showed that it was dark and rainy out, that pedestrian, who was dressed in dark clothing, quickly entered street in middle of block from between two parked vehicles even though there were crosswalks and traffic signals at both corners, and that motorist was driving no more than 25 miles per hour (m.p.h.), was not driving recklessly, and had his lights and windshield wipers on. Bloom v. Ravoira (S.C. 2000) 339 S.C. 417, 529 S.E.2d 710. Automobiles 217(3); Automobiles 226(3)

In a negligence action for personal injuries resulting from a collision between a motorist and a pedestrian, the pedestrian’s presence in the roadway in violation of Sections 56‑5‑3150(a), 56‑5‑3160(b) or 56‑5‑3160(d) amounted to a lack of due care that combined with the motorist’s conduct to cause the pedestrian’s injuries. Thus, the pedestrian was chargeable with contributory negligence as a matter of law. Cooper by Cooper v. County of Florence (S.C.App. 1989) 299 S.C. 386, 385 S.E.2d 44. Automobiles 216; Automobiles 218

Compliance with this section does not require a pedestrian to either get in a ditch or climb an embankment adjacent to a highway in order to yield the right of way to an approaching vehicle. Johnson v. Finney (S.C. 1965) 246 S.C. 366, 143 S.E.2d 722.

Where both parties were in plain view of each other and pedestrian was at the edge of the roadway in a place of safety when the driver first saw her, the driver, under the circumstances, had the right to assume that the pedestrian would not leave a place of safety and undertake to cross the highway in front of an oncoming vehicle. Hopkins v. Reynolds (S.C. 1964) 243 S.C. 568, 135 S.E.2d 75.

The requirement of this section that a pedestrian yield the right of way does not mean that he must vacate the shoulder of a highway in order to escape collision with a vehicle which leaves the main traveled portion, or else be held to have been guilty of contributory negligence as a matter of law. Smith v. Canal Ins. Co. (S.C. 1955) 228 S.C. 45, 88 S.E.2d 780. Automobiles 217(3)

2. Vehicles traveling in wrong direction

Where plaintiff crossed highway at a place where there was no crosswalk, it was incumbent upon her to yield the right of way to vehicles traveling in the proper direction, but she was not required to anticipate the approach of a vehicle traveling in a northerly direction in the southbound lane of a divided highway, and driver of such vehicle forfeits his statutory preferential status. Myers v. Evans (S.C. 1954) 225 S.C. 80, 81 S.E.2d 32. Automobiles 206; Automobiles 217(3)

3. Crossing at junction of improved and unimproved roads

Where pedestrian crossed at the junction of an improved road and an unimproved road, where both roads were not publicly maintained, it was her duty to yield the right of way to vehicle, and the driver’s right to rely on posted speed limit was subject only to his duty to exercise due care to avoid colliding with her. Carma v. Swindler (S.C. 1956) 228 S.C. 550, 91 S.E.2d 254.

4. Crossing rural highways

Evidence showed that the deceased was walking fifteen or twenty feet off the road on the south shoulder of the eastbound lane of the highway. Both the testimony of an eyewitness and the physical facts indicated that the deceased was struck a few seconds later at or near the center line of the highway. The facts made it clear that the deceased got into the highway at a time when vehicles were approaching from both directions, their headlights clearly visible, and traveling at considerable speed. There was no obstruction to interfere with or obscure his vision. There was no intersecting road or driveway—simply wide‑open country. The law of this State gave the right of way to the vehicular traffic—not the pedestrian. To cross the highway under such circumstances was negligence as a matter of law. Dean v. Cole (C.A.4 (S.C.) 1964) 326 F.2d 907, certiorari denied 84 S.Ct. 1168, 377 U.S. 909, 12 L.Ed.2d 178, rehearing denied 84 S.Ct. 1911, 377 U.S. 1010, 12 L.Ed.2d 1059.

Where a pedestrian started across a paved highway in a rural section to go to her mailbox on the other side, it was her duty before attempting to cross the highway, to see that the way was clear, especially since she was about to cross at a point where vehicular traffic had the right of way; and her failure to look would have been contributory negligence. Had she looked, she could not have failed to see defendant’s automobile approaching. It is obvious therefore, that she either did not look or, if she looked, she did so in such careless fashion as not to see what was in plain view. In either case she was guilty of contributory negligence as a matter of law. Hopkins v. Reynolds (S.C. 1964) 243 S.C. 568, 135 S.E.2d 75.

5. Passenger alighting from bus

This section held inapplicable where a passenger who had alighted from a bus crossed a highway in front of the bus while bus was standing still. Flynn v. Carolina Scenic Stages (S.C. 1960) 237 S.C. 340, 117 S.E.2d 364.

6. Children

Where the driver of a vehicle knows, or should know, that children may reasonably be expected to be in, near, or adjacent to the street or highway, he is under a duty to anticipate the likelihood of their running into or across the roadway in obedience to childish impulses, and to exercise due care under the circumstances for their safety. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246. Automobiles 162(5)

Where the defendant was driving through an area where she was warned by a posted sign of the likelihood of the presence of children in or near the roadway, she was charged with the duty of reasonably anticipating the likelihood of children running into or across the highway. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246.

Where a motorist knew, or should have known, that the presence of children was likely, this section [formerly Code 1962 Section 46‑435] would be irrelevant, because, under such circumstances, he would be charged with the duty of reasonably anticipating that a child might, in obedience to childish impulses, cross the roadway without yielding. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246.

The fact that children of tender years might not yield the right of way in crossing the road, as required by this section [formerly Code 1962 Section 46‑435], and thereby suffer injury is the very circumstance which a posted sign is intended to guard against by giving notice to motorists of the likelihood of their presence. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246.

7. Questions for jury

If the circumstances are such that a motorist does not know, or have reason to anticipate, that children might be near the line of travel, he would have the right to reasonably assume that all pedestrians in attempting to cross between intersections would yield the right of way, and he would be, under such circumstances, entitled to have this section [formerly Code 1962 Section 46‑435] charged to the jury as affecting the lawfulness of the operation of his vehicle at the time. Herring v. Boyd (S.C. 1965) 245 S.C. 284, 140 S.E.2d 246. Automobiles 162(5); Automobiles 246(35)

In action for wrongful death which resulted when decedent was struck by passenger bus while crossing road, whether bus was operated negligently and in wilful disregard of safety of deceased, at excessive speed, without proper lookout and without use of horn or brakes, were questions for jury. Code 1942, Sections 411, 412; Act June 7, 1949, Section 60(a, b), 46 St. at Large, pp. 486, 487; Act June 7, 1949, Sections 92, 93, 46 St. at Large, p. 497.Dawson v. South Carolina Power Co. (S.C. 1951) 220 S.C. 26, 66 S.E.2d 322.

**SECTION 56‑5‑3160.** Pedestrians on highways.

(a) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where a sidewalk is not available any pedestrian walking along and upon a highway shall walk only on a shoulder as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway and, if on a two‑way roadway, shall walk only on the left side of the roadway.

(d) Except as otherwise provided in this chapter, any pedestrian upon a roadway shall yield the right‑of‑way to all vehicles upon the roadway.

HISTORY: 1962 Code Section 46‑436; 1952 Code Section 46‑436; 1949 (46) 466; 1965 (54) 692; 1971 (57) 296; 1977 Act No. 145 Section 4.

Library References

Automobiles 160(5), 218.

Highways 173.

Westlaw Topic Nos. 48A, 200.

C.J.S. Motor Vehicles Sections 894, 1009 to 1010, 1015, 1022 to 1026.

RESEARCH REFERENCES

ALR Library

1 ALR, Federal 519 , Police Action in Connection With Arrest as Violation of Civil Rights Act, 42 U.S.C.A. Section 1983.

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

NOTES OF DECISIONS

In general 1

Contributory negligence 4

Duty of motorist 3

Duty of pedestrian 2

Instructions 6

Questions for jury 5

1. In general

This section’s obvious purpose is to put pedestrians out of the way of traffic lawfully approaching on the right of the roadway from behind them. The requirement that a pedestrian walk on his left side has no tendency to protect him from oncoming traffic. Easterlin v. Green (S.C. 1966) 248 S.C. 389, 150 S.E.2d 473. Automobiles 218; Automobiles 226(2)

Although the tar and gravel strip adjacent to the concrete portion of U.S. Highway 123 is improved, it is not ordinarily used for vehicular travel and is, therefore, considered to be the shoulder or berm. King v. Mattox (S.C. 1965) 246 S.C. 1, 142 S.E.2d 209.

Police officer had probable cause to believe that arrestee violated a South Carolina statute prohibiting pedestrians from walking in a roadway where a sidewalk is provided, and was thus entitled to qualified immunity in the arrestee’s Sections 1983 claim for false arrest; officer observed the arrestee interacting with a motorcycle passenger, who was herself located in the roadway, and the arrestee conceded that he may have stepped down off of the sidewalk. Smith v. McCluskey (C.A.4 (S.C.) 2005) 126 Fed.Appx. 89, 2005 WL 567539, Unreported. Civil Rights 1376(6)

2. Duty of pedestrian

A pedestrian crossing or walking along a highway is required to exercise ordinary care for his own safety, that is such care as a reasonably prudent person would have exercised under the same or similar circumstances; and if he fails to exercise such care for his own safety then he is guilty of negligence which would bar recovery for any injuries and damages he may sustain when struck by a motorist if the pedestrian’s negligence proximately contributed to same. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101.

There is no requirement in this section that a pedestrian walking in accordance with the statute shall yield the right‑of‑way to all vehicles upon the roadway. Johnson v. Finney (S.C. 1965) 246 S.C. 366, 143 S.E.2d 722. Automobiles 218

3. Duty of motorist

Motorists using the highways have the duty of exercising ordinary or reasonable care to avoid injuring a pedestrian who is crossing or upon or along a highway, and the fact that a motorist may have the right‑of‑way over a pedestrian does not relieve him of the duty to use reasonable care for the safety of such pedestrian, even though a statute may require a pedestrian on the highway to yield the right‑of‑way to the motorist. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101.

4. Contributory negligence

One walking on the left side of the highway and thereby facing traffic as required by this section [formerly Code 1962 Section 46‑436] is not guilty of contributory negligence as a matter of law. It is dependent upon all of the existing circumstances. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101. Automobiles 245(72)

Whether a pedestrian is guilty of contributory negligence is generally a factual question to be determined by the trier of facts from all the facts and circumstances surrounding the accident, and the position of a pedestrian along or upon the highway at the time of the accident is significant and relevant to such determination. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101. Automobiles 245(72)

In a negligence action for personal injuries resulting from a collision between a motorist and a pedestrian, the pedestrian’s presence in the roadway in violation of Sections 56‑5‑3150(a), 56‑5‑3160(b) or 56‑5‑3160(d) amounted to a lack of due care that combined with the motorist’s conduct to cause the pedestrian’s injuries. Thus, the pedestrian was chargeable with contributory negligence as a matter of law. Cooper by Cooper v. County of Florence (S.C.App. 1989) 299 S.C. 386, 385 S.E.2d 44, reversed 306 S.C. 408, 412 S.E.2d 417.

One walking on the left side of a highway and thereby facing traffic, as required by this section [formerly Code 1962 Section 46‑436] is not guilty of contributory negligence as a matter of law; whether the circumstances render him contributorily negligent is a question for determination by the jury. Johnson v. Finney (S.C. 1965) 246 S.C. 366, 143 S.E.2d 722. Automobiles 245(72)

5. Questions for jury

In action for injuries sustained by pedestrian when struck by a tractor‑trailer when she attempted to cross a state highway, under South Carolina law the evidence presented questions for the jury as to pedestrian’s contributory negligence in attempting to walk across the highway in front of defendants’ approaching truck, and as to last clear chance on part of driver of the truck. Code S.C.1952, Sections 46‑258, 46‑433, 46‑436. Bruin v. Tribble (C.A.4 (S.C.) 1956) 238 F.2d 12.

In action for death of pedestrian struck by defendant’s taxicab while on shoulder of road, decedent’s contributory negligence in failing to get out of way of cab was question for jury. Code 1952, Sections 10‑1951, 46‑435, 46‑436. Smith v. Canal Ins. Co. (S.C. 1955) 228 S.C. 45, 88 S.E.2d 780. Automobiles 245(72)

6. Instructions

Charge to jury that pedestrians must walk as near as practicable to the left edge of the roadway was properly refused. Culbertson v. Johnson Motor Lines (S.C. 1954) 226 S.C. 13, 83 S.E.2d 338.

**SECTION 56‑5‑3170.** Pedestrians prohibited on freeways.

(A) No person as a pedestrian, unless otherwise directed by a law enforcement officer, shall occupy any space within the limits of the roadway and shoulder of the main facility of a freeway, except to perform public works or official duties, as a result of an emergency caused by an accident or breakdown of a motor vehicle, or to obtain assistance.

The prohibitions imposed by this subsection on the use of freeways do not apply to service roads alongside the highways.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

HISTORY: 1962 Code Section 46‑436.1; 1971 (57) 298; 1993 Act No. 98, Section 2.

CROSS REFERENCES

Freeway defined, see Section 56‑5‑615.

Prohibition of animals and certain vehicles on freeways, see Section 56‑5‑3860.

Library References

Highways 167.

Westlaw Topic No. 200.

C.J.S. Constitutional Law Section 759.

C.J.S. Highways Sections 394 to 396, 399 to 403.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑3180.** Pedestrians soliciting rides or business.

(a) No person shall stand in a roadway for the purpose of soliciting a ride.

(b) Except when authorized by the provisions of Section 5‑27‑910, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

(c) No person may stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

HISTORY: 1962 Code Section 46‑437; 1952 Code Section 46‑437; 1949 (46) 466; 1977 Act No. 145 Section 5; 1988 Act No. 373, Section 3.

Library References

Highways 153.

Westlaw Topic No. 200.

C.J.S. Gas Section 128.

C.J.S. Highways Sections 334 to 338.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

Attorney General’s Opinions

A court would likely conclude section 56‑5‑3180(b) is content‑neutral on its face and, therefore, constitutional. S.C. Op.Atty.Gen. (September 12, 2012) 2012 WL 4283913.

**SECTION 56‑5‑3190.** Only blind or incapacitated person may raise certain canes.

It is unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

HISTORY: 1962 Code Section 46‑438; 1952 Code Section 46‑438; 1949 (46) 170.

CROSS REFERENCES

Penalties for violation of section, see Section 56‑5‑3210.

Library References

Highways 173.

Westlaw Topic No. 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑3200.** Vehicle shall stop for pedestrian guided by dog or raising cane.

Whenever a pedestrian is crossing or attempting to cross a public street or highway, guided by a guide dog or carrying in a raised or extended position a cane or walking stick which is white in color or white tipped with red, the driver of every vehicle approaching the intersection or place where such pedestrian is attempting to cross shall bring his vehicle to a full stop before arriving at such intersection or place of crossing and before proceeding shall take such precautions as may be necessary to avoid injuring such pedestrian.

HISTORY: 1962 Code Section 46‑439; 1952 Code Section 46‑439; 1949 (46) 170.

CROSS REFERENCES

Penalties for violation of section, see Section 56‑5‑3210.

Library References

Automobiles 161.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 885 to 886.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 195, Drivers’ Duty to Pedestrians.

**SECTION 56‑5‑3210.** Penalties for violating Sections 56‑5‑2720, 56‑5‑3190, or 56‑5‑3200.

A person who violates any of the provisions of Sections 56‑5‑3190, 56‑5‑3200, or 56‑5‑2720 is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding twenty‑five dollars or imprisonment for not exceeding ten days.

HISTORY: 1962 Code Section 46‑440; 1952 Code Section 46‑440; 1949 (46) 170; 1992 Act No. 399, Section 5.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

**SECTION 56‑5‑3220.** Effect of failure of incapacitated person to carry walking stick or cane, or to be guided by dog.

Nothing contained in Sections 56‑5‑3190 and 56‑5‑3200 shall be construed to deprive any totally or partially blind or otherwise incapacitated person not carrying such a cane or walking stick or not being guided by a dog of the rights and privileges conferred by law upon pedestrians crossing streets or highways, nor shall the failure of such totally or partially blind or otherwise incapacitated person to carry a cane or walking stick or to be guided by a guide dog upon the streets, highways, or sidewalks of this State to be held to constitute or be evidence of contributory negligence.

HISTORY: 1962 Code Section 46‑441; 1952 Code Section 46‑441; 1949 (46) 170.

Library References

Automobiles 222.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1009 to 1010, 1015, 1053 to 1054.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑3230.** Drivers to exercise due care.

Notwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human‑powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.

HISTORY: 1962 Code Section 46‑442; 1952 Code Section 46‑442; 1949 (46) 466; 1977 Act No. 145 Section 6.

CROSS REFERENCES

Crossing at other than crosswalks, see Section 56‑5‑3150.

Library References

Automobiles 161.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 885 to 886.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 195, Drivers’ Duty to Pedestrians.

NOTES OF DECISIONS

In general 1

Instructions 3

Questions for jury 2

Sufficiency of evidence 4

1. In general

Motorists using the highways have the duty of exercising ordinary or reasonable care to avoid injuring a pedestrian who is crossing or upon or along a highway, and the fact that a motorist may have the right‑of‑way over a pedestrian does not relieve him of the duty to use reasonable care for the safety of such pedestrian, even though a statute may require a pedestrian on the highway to yield the right‑of‑way to the motorist. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101.

A pedestrian crossing or walking along a highway is required to exercise ordinary care for his own safety, that is such care as a reasonably prudent person would have exercised under the same or similar circumstances; and if he fails to exercise such care for his own safety then he is guilty of negligence which would bar recovery for any injuries and damages he may sustain when struck by a motorist if the pedestrian’s negligence proximately contributed to same. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101.

One walking on the left side of the highway and thereby facing traffic as required by former Code 1962 Section 46‑436 see now Section 56‑5‑3160] is not guilty of contributory negligence as a matter of law. It is dependent upon all of the existing circumstances. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101. Automobiles 245(72)

A violation of this section [formerly Code 1962 Section 46‑442] constitutes negligence per se. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

A violation of this section [formerly Code 1962 Section 46‑442] is evidence of recklessness, willfulness and wantonness. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

2. Questions for jury

Whether a pedestrian is guilty of contributory negligence is generally a factual question to be determined by the trier of facts from all the facts and circumstances surrounding the accident, and the position of a pedestrian along or upon the highway at the time of the accident is significant and relevant to such determination. Lester v. McFaddon (D.C.S.C. 1968) 288 F.Supp. 735, affirmed 415 F.2d 1101. Automobiles 245(72)

In wrongful death suit brought by father of deceased motorist, a jury question was presented as to whether state troopers and supervisors at the Department of Public Safety performed their respective duties during high‑speed pursuit that ended in a fatal accident, or whether there was an absence of care that was necessary under the circumstances. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Automobiles 245(19)

A jury question was presented, in wrongful death suit brought by father of deceased motorist, as to whether state trooper weighed competing concerns while conducting high‑speed pursuit of vehicle that collided with motorist, so that trooper’s acts were discretionary and Department of Public Safety enjoyed absolute immunity under the Tort Claims Act. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Automobiles 245(19)

In a negligence action brought by a pedestrian who had been struck by a car, the jury should have been allowed to determine whether the driver of the car violated motor vehicle statutes Sections 56‑5‑1860, 56‑5‑3230, and 56‑5‑4770 where the inferences deducible from controverted evidence in the record raised questions of fact as to whether the driver violated these statutes. Cooper by Cooper v. County of Florence (S.C. 1991) 306 S.C. 408, 412 S.E.2d 417.

Assuming that plaintiff was guilty of a technical violation of former Code 1962 Section 46‑436 [see now Section 56‑5‑3160], there was sufficient evidence to warrant the jury in concluding that defendant failed to exercise due care in violation of this section [formerly Code 1962 Section 46‑442]. King v. Mattox (S.C. 1965) 246 S.C. 1, 142 S.E.2d 209.

In action for death of pedestrian struck by defendant’s taxicab, evidence was sufficient to take to jury question of taxicab driver’s negligence, proximately causing accident, in failing to keep proper lookout ahead, whereby he failed to avert accident by signal, brakes, or slight change of course. Code 1952, Sections 10‑1951, 46‑442. Smith v. Canal Ins. Co. (S.C. 1955) 228 S.C. 45, 88 S.E.2d 780. Automobiles 245(39); Automobiles 245(53)

In action for wrongful death which resulted when decedent was struck by passenger bus while crossing road, whether bus was operated negligently and in wilful disregard of safety of deceased, at excessive speed, without proper lookout and without use of horn or brakes, were questions for jury. Code 1942, Sections 411, 412; Act June 7, 1949, Section 60(a, b), 46 St. at Large, pp. 486, 487; Act June 7, 1949, Sections 92, 93, 46 St. at Large, p. 497. Dawson v. South Carolina Power Co. (S.C. 1951) 220 S.C. 26, 66 S.E.2d 322. Automobiles 245(5); Automobiles 245(6); Automobiles 245(42)

3. Instructions

Instruction charging former 1962 Code Section 46‑442 [see now 1976 Code 56‑5‑3230], but additionally charging that “a driver must be on the alert for unpredictable acts of children” did not, without requested further charge that a motorist should know that these unpredictable characteristics are well known, and that a great or high degree of care or caution is required of the motorist when approaching children on or near the highway, fail to fully instruct the jury on the meaning of the statute and did not lessen the degree of care required by the statute. Priest v. Scott (S.C. 1976) 266 S.C. 321, 223 S.E.2d 36. Automobiles 246(5)

Instruction which, in addition to charging former 1962 Code Section 46‑442 [see now 1976 Code Section 56‑5‑3230] charged that “all motorists owe a duty to sound the horn so that the pedestrian unaware of vehicle’s approach may have timely warning and if pedestrian appears to be oblivious of vehicle’s nearness and speed, ordinary care requires a motorist to blow a horn, slow down and stop, if necessary, to avoid injuring the pedestrian; but the case must be considered according to all the facts and circumstances surrounding, judging the station of the, and the ability of the minor, of the child between the ages of 7 and 14,” was not erroneous, and in any event, was not prejudicial to the plaintiff, when charge is read in its entirety. Priest v. Scott (S.C. 1976) 266 S.C. 321, 223 S.E.2d 36.

4. Sufficiency of evidence

In action for death of decedent struck by one of two trucks approaching from opposite directions as decedent, standing by his vehicle which was parked on highway, attempted to stop trucks, evidence established that driver of truck which struck decedent, was grossly negligent in respect to speed, lookout, and due care, and in failing to warn, to apply brakes, or to take any action to avert injury, and that driver of other truck was grossly negligent in respect to speed, lookout, control and due care, and in driving without proper brakes, and that the gross negligence of each combined to cause decedent’s death. Code 1952 S.Car. Sections 10‑1951 to 10‑1954, 46‑243, 46‑342, 46‑361, 46‑363, 46‑442, 46‑582. Greene v. Miller, 1953, 114 F.Supp. 150.

Evidence showed that pedestrian was negligent, and that his negligence was more than 50%, in connection with injuries he suffered when vehicle struck him as he attempted to cross street, thus precluding his recovery in negligence action against motorist; evidence showed that it was dark and rainy out, that pedestrian, who was dressed in dark clothing, quickly entered street in middle of block from between two parked vehicles even though there were crosswalks and traffic signals at both corners, and that motorist was driving no more than 25 miles per hour (m.p.h.), was not driving recklessly, and had his lights and windshield wipers on. Bloom v. Ravoira (S.C. 2000) 339 S.C. 417, 529 S.E.2d 710. Automobiles 217(3); Automobiles 226(3)

In a negligence action for personal injuries resulting from a collision between a motorist and a pedestrian, possible violations of Sections 56‑5‑1860, 56‑5‑3230, and 56‑5‑4770 by the motorist did not amount to willful and wanton conduct, so as to remove the contributory negligence bar to the pedestrian’s recovery, where there was no evidence that the motorist had acted with indifference to the statutes or with a conscious disregard of the pedestrian’s safety. Cooper by Cooper v. County of Florence (S.C.App. 1989) 299 S.C. 386, 385 S.E.2d 44, reversed 306 S.C. 408, 412 S.E.2d 417.

**SECTION 56‑5‑3240.** Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone.

HISTORY: Former 56‑5‑3240 [1949 (46) 466; 1952 Code Section 46‑396; 1962 Code Section 46‑396] repealed by 1977 Act No. 145, Section 13; New 1962 Code Section 46‑443 enacted by 1977 Act No. 145, Section 7, and codified as Section 56‑5‑3240.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 195, Drivers’ Duty to Pedestrians.

**SECTION 56‑5‑3250.** Pedestrians’ right‑of‑way on sidewalks.

The driver of a vehicle crossing a sidewalk shall yield the right‑of‑way to any pedestrian and all other traffic on the sidewalk.

HISTORY: 1962 Code Section 46‑444; 1977 Act No. 145 Section 8.

Library References

Automobiles 160(6).

Westlaw Topic No. 48A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 195, Drivers’ Duty to Pedestrians.

NOTES OF DECISIONS

In general 1

1. In general

Although Section 56‑5‑3250 directs the driver of a vehicle crossing a sidewalk to “yield the right‑of‑way to any pedestrian and all other traffic on the sidewalk,” the statute cannot be fairly read to confer upon a bicyclist the right to use a sidewalk where its use is otherwise prohibited. It merely requires a driver of a vehicle crossing the sidewalk to yield the right‑of‑way to all traffic on the sidewalk, including bicycles, irrespective of whether the traffic is lawfully on the sidewalk or not. Burke v. Davidson (S.C.App. 1989) 298 S.C. 370, 380 S.E.2d 839.

**SECTION 56‑5‑3260.** Pedestrians yield to authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of Section 56‑5‑4970 and visual signals meeting the requirements of Section 56‑5‑4700, or of a police vehicle properly and lawfully making use of an audible signal only, every pedestrian shall yield the right‑of‑way to the authorized emergency vehicle.

(b) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

HISTORY: 1962 Code Section 46‑445; 1977 Act No. 145 Section 9.

Library References

Highways 173.

Westlaw Topic No. 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑3270.** Pedestrians under influence of alcohol or drugs.

A pedestrian who is under the influence of alcohol, or any drug, to a degree which renders himself a hazard shall not walk or be upon a highway except a sidewalk.

HISTORY: 1962 Code Section 46‑446; 1977 Act No. 145 Section 10.

Library References

Highways 173.

Westlaw Topic No. 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

**SECTION 56‑5‑3280.** Bridge and railroad signals.

(a) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate or barrier after a bridge operation signal indication has been given.

(b) No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

HISTORY: 1962 Code Section 46‑447; 1977 Act No. 145 Section 11.

Library References

Highways 173.

Westlaw Topic No. 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

ARTICLE 26

Electric Personal Assistive Mobility Devices

**SECTION 56‑5‑3310.** Electric Personal Assistive Mobility Devices.

(A) As used in this article, “Electric Personal Assistive Mobility Device” or “EPAMD” means a self‑balancing two nontandem wheeled device designed to transport one person, with an electric propulsion system with average power of seven hundred fifty watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by this propulsion system while ridden by an operator weighing one hundred seventy pounds, is less than twenty miles an hour.

(B) The operation of an EPAMD is governed by the provisions of this article. Notwithstanding another provision of law, an EPAMD is not considered a “vehicle” or “motor vehicle” within the meaning of the laws of this State and no provisions of law relating to vehicles or motor vehicles apply to an EPAMD unless specified in this article.

(C) A person may operate an EPAMD upon sidewalks, roadways, bicycle routes, paths, or trails as contained in this article.

(D) A person operating an EPAMD on a sidewalk, roadway, bicycle route, path, or trail shall exercise due care to avoid colliding with, and shall yield the right‑of‑way to, pedestrians and human powered devices. A person operating an EPAMD also shall give an audible signal before overtaking and passing a pedestrian or person operating a human powered device.

(E) An EPAMD must not be operated at a speed greater than fifteen miles an hour.

(F) A person operating an EPAMD shall obey the instructions of an official traffic control device specifically applicable to him unless otherwise directed by a police officer. A person operating an EPAMD is subject to traffic and pedestrian control signals as provided in Sections 56‑5‑970 and 56‑5‑990. At all other places a person operating an EPAMD must be accorded the privileges and is subject to the restrictions contained in this article.

(G) Local authorities by ordinance may require that a person operating an EPAMD strictly comply with the directions of an official traffic control signal and by ordinance may prohibit a person operating an EPAMD from crossing a roadway in a business district or a designated highway except in a crosswalk.

(H) When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right‑of‑way, slow down, or stop to yield to a person operating an EPAMD crossing a roadway within a crosswalk when the person operating the EPAMD is upon or approaching the portion of the roadway on which the vehicle is traveling. A person operating an EPAMD shall not leave a curb suddenly, or another place of safety, move into the path of a vehicle and create an immediate hazard. When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit an EPAMD to cross the roadway, the driver of another vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(I) A person operating an EPAMD shall move, whenever practicable, upon the right portion of a crosswalk.

(J) A person operating an EPAMD while crossing a roadway at a point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right‑of‑way to all vehicles upon the roadway. A person operating an EPAMD crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right‑of‑way to all vehicles upon the roadway. Between adjacent intersections at which traffic control signals are in operation a person operating an EPAMD shall cross only at an intersection marked crosswalk. A person operating an EPAMD shall not cross a roadway intersection diagonally unless authorized by official traffic control devices. When authorized to cross a roadway diagonally, a person operating an EPAMD shall cross only in accordance with the official traffic control devices pertaining to these crossing movements.

(K) Where a sidewalk is provided and its use is practicable, it is unlawful for a person to operate an EPAMD along and upon an adjacent roadway. Where a sidewalk is not available, a person operating an EPAMD along and upon a highway shall operate only on a shoulder as far as practicable from the edge of the roadway. Where neither a sidewalk nor a shoulder is available, a person operating an EPAMD along and upon a highway shall operate it as near as practicable to an outside edge of the roadway and, if on a two‑way roadway, shall operate only on the left side of the roadway. Except as otherwise provided in this chapter, a person operating an EPAMD upon a roadway shall yield the right‑of‑way to all vehicles upon the roadway.

(L) A person operating an EPAMD, unless otherwise directed by a law enforcement officer, shall not occupy a space within the limits of the roadway and shoulder of the main facility of a freeway, except to perform public works or official duties, resulting from an emergency caused by an accident or breakdown of a motor vehicle, or to obtain assistance. The prohibitions imposed by this subsection on the use of freeways do not apply to service roads alongside the highways. A person who violates the provisions contained in this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

(M) Notwithstanding a local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with a person operating an EPAMD and shall give an audible signal when necessary.

(N) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of Section 56‑5‑4970 and visual signals meeting the requirements of Section 56‑5‑4700, or of a police vehicle properly and lawfully making use of an audible signal only, a person operating an EPAMD shall yield the right‑of‑way to the authorized emergency vehicle. This subsection shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with a person operating an EPAMD.

(O) An EPAMD must not be used to carry more persons than it is designed and equipped to carry.

(P) A person operating an EPAMD shall not enter or remain upon a bridge or an approach to it beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given. A person operating an EPAMD shall not pass through, around, over, or under a crossing gate or a barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

(Q) An EPAMD must be equipped with a stopping mechanism which will enable the operator to bring the EPAMD to a controlled stop. A person shall not operate an EPAMD unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet. However, an EPAMD shall not be equipped with, nor shall a person use, a siren or whistle on an EPAMD, except as provided in subsection (R). An EPAMD when in use at nighttime must be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with front, rear, and side reflectors which must be visible from at least three hundred feet.

(R) An authorized police patrol EPAMD used as a part of a police EPAMD patrol may exercise the privileges of an emergency vehicle as provided in Section 56‑5‑760. An authorized police patrol EPAMD may be equipped with a siren. An officer utilizing a police patrol EPAMD may use his whistle or deploy the vehicle’s siren for law enforcement purposes. Notwithstanding the provisions of Section 56‑5‑760(C), an authorized police patrol EPAMD acting as an emergency vehicle is entitled to the exemptions of an authorized emergency vehicle if it makes use of an audible signal meeting the requirements of Section 56‑5‑4970 or visual signals meeting the requirements of Section 56‑5‑4700.

(S) An operator of an EPAMD who violates a provision contained in this article, unless specified in a subsection, is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five dollars.

HISTORY: 2002 Act No. 269, Section 1.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

ARTICLE 27

Bicyclists and Users of Play Vehicles; Rights and Duties

**SECTION 56‑5‑3410.** Applicability of article to bicycles.

The provisions of this article are applicable to bicycles whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles, subject to those exceptions stated in this article.

HISTORY: 1962 Code Section 46‑451; 1952 Code Section 46‑451; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 187, Generally; Equipment.

**SECTION 56‑5‑3420.** Rights and duties of bicyclists generally.

A person riding a bicycle upon a roadway must be granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special provisions in this article and except as to those provisions of this chapter which by their nature can have no application.

HISTORY: 1962 Code Section 46‑452; 1952 Code Section 46‑452; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 187, Generally; Equipment.

Attorney General’s Opinions

The Forestry Commission cannot limit the use of certain roads by bicyclists if automobiles and pedestrians are permitted. S.C. Op.Atty.Gen. (April 1, 2011) 2011 WL 1740750.

NOTES OF DECISIONS

In general 1

1. In general

Jury instructions in six‑year‑old bicyclist’s personal injury action against adult driver of automobile adequately distinguished between standard of care applicable to adults and standard of care applicable to children under age of fourteen; immediately after finishing his explanation of adult standards of care, trial judge expressly brought jury’s attention to different standard of care for children, and judge then instructed jury on this standard, using language suggested in prior caselaw. Jones ex rel. Castor v. Carter (S.C.App. 1999) 336 S.C. 110, 518 S.E.2d 619. Automobiles 246(35)

**SECTION 56‑5‑3425.** Bicycle lanes.

(A) For purposes of this section, “bicycle lane” means a portion of the roadway or a paved lane separated from the roadway that has been designated by striping, pavement markings, and signage for the preferential or exclusive use of bicyclists.

(B) Whenever a bicycle lane has been provided adjacent to a roadway, operators of:

(1) motor vehicles may not block the bicycle lane to oncoming bicycle traffic and shall yield to a bicyclist in the bicycle lane before entering or crossing the lane; and

(2) bicycles are required to ride in the bicycle lane except when necessary to pass another person riding a bicycle or to avoid an obstruction in the bicycle lane. However, bicyclists may ride on the roadway when there is only an adjacent recreational bicycle path available instead of a bicycle lane.

HISTORY: 2008 Act No. 317, Section 3, eff June 10, 2008.

**SECTION 56‑5‑3430.** Riding on roadways and bicycle paths.

(A) Except as provided in subsection (B), every bicyclist operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable. A bicyclist may, but is not required to, ride on the shoulder of the roadway in order to comply with the requirements of this subsection.

(B) A bicyclist may ride in a lane other than the right‑hand lane if only one lane is available that permits the bicyclist to continue on his intended route.

(C) When operating a bicycle upon a roadway, a bicyclist must exercise due care when passing a standing vehicle or one proceeding in the same direction.

(D) Bicyclists riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

HISTORY: 1962 Code Section 46‑453; 1952 Code Section 46‑453; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 11, 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 189, Manner of Operation.

NOTES OF DECISIONS

In general 1

Questions for jury 2

1. In general

The phrase “useable path for bicycles” used in Section 56‑5‑3430’s last paragraph refers only to a path provided “for the exclusive use of bicycles” and, therefore, does not include a “sidewalk,” which is intended for pedestrian use and not for the exclusive use of bicycles. Thus, a city’s bicycle ordinance, which prohibited any person from riding “a bicycle at any time on any of the sidewalks of the city” did not conflict with Section 56‑5‑3430, so as to render it void pursuant to Section 56‑5‑30. Burke v. Davidson (S.C.App. 1989) 298 S.C. 370, 380 S.E.2d 839.

2. Questions for jury

Evidence, in action for death of northbound minor bicyclist when, after traveling in southbound lane of highway, he suddenly undertook to make a right turn across southbound lane into northbound lane and collided with defendant’s northbound automobile, was for jury on issues of negligence and contributory negligence. Oliver v. Brazell (S.C. 1974) 264 S.C. 53, 212 S.E.2d 922.

**SECTION 56‑5‑3435.** Driver to maintain safe operating distance between motor vehicle and bicycle.

A driver of a motor vehicle must at all times maintain a safe operating distance between the motor vehicle and a bicycle.

HISTORY: 2008 Act No. 317, Section 3, eff June 10, 2008.

**SECTION 56‑5‑3440.** Manner of riding bicycles; number of persons which may be carried.

A bicyclist propelling a bicycle may not ride other than upon or astride a permanent and regular seat attached to the bicycle. No bicycle may be used to carry more persons at one time than the number for which it is designed and equipped.

HISTORY: 1962 Code Section 46‑454; 1952 Code Section 46‑454; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 189, Manner of Operation.

**SECTION 56‑5‑3445.** Harassing or throwing object at person riding bicycle; penalty.

It is unlawful to harass, taunt, or maliciously throw an object at or in the direction of any person riding a bicycle. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred fifty dollars or imprisoned not more than thirty days, or both.

HISTORY: 2008 Act No. 317, Section 3, eff June 10, 2008.

**SECTION 56‑5‑3450.** Clinging to vehicles prohibited.

A person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle may not attach it or them or himself to a vehicle upon a roadway.

HISTORY: 1962 Code Section 46‑455; 1952 Code Section 46‑455; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 189, Manner of Operation.

**SECTION 56‑5‑3460.** Carrying articles.

A bicyclist operating a bicycle may not carry any package, bundle, or article that prevents the rider from keeping at least one hand upon the handle bars.

HISTORY: 1962 Code Section 46‑456; 1952 Code Section 46‑456; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 189, Manner of Operation.

**SECTION 56‑5‑3470.** Lamps and reflectors on bicycle.

A bicycle when in use at nighttime must be equipped with a lamp on the front which must emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear that must be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of the lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

HISTORY: 1962 Code Section 46‑457; 1952 Code Section 46‑457; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 188, Required Equipment.

**SECTION 56‑5‑3480.** Signaling turns; penalty.

(A)(1) A bicyclist shall indicate a right turn by extending the left arm upward, by raising the left arm to the square, or by extending the right arm horizontally to the right.

(2) A bicyclist shall indicate a left turn by extending the left arm horizontally.

(3) A bicyclist shall indicate stopping or decreasing speed by extending the left arm or the right arm downward.

(B) A bicyclist is not required to give signals provided for in subsection (A) continuously if the hand or arm is needed to control the bicycle.

(C) A violation of this section is punishable by a fine of twenty‑five dollars.

HISTORY: 1962 Code Section 46‑458; 1952 Code Section 46‑458; 1949 (46) 466; 1997 Act No. 56, Section 2; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 188, Required Equipment.

**SECTION 56‑5‑3490.** Brake on bicycle; penalty.

A bicycle must be equipped with a brake that will enable the bicyclist to make the braked wheels skid on dry, level, clean pavement. A violation of this section is punishable by a fine of twenty‑five dollars.

HISTORY: 1962 Code Section 46‑459; 1952 Code Section 46‑459; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 188, Required Equipment.

**SECTION 56‑5‑3500.** Violations of article; penalties.

(A) Except as otherwise provided, in the absence of another violation being cited, a violation of this article by the driver of a motor vehicle is subject to a civil fine of up to one hundred dollars unless a bicyclist is injured as a result of the violation.

(B) In the absence of another violation being cited, a person driving a motor vehicle who violates a provision of this article and the violation is the proximate cause of a:

(1) minor injury to a bicyclist, must be assessed a civil fine of up to five hundred dollars; or

(2) great bodily injury, as defined in Section 56‑5‑2945, to a bicyclist, must be assessed a civil fine of not more than one thousand dollars.

HISTORY: 1962 Code Section 46‑460; 1952 Code Section 46‑460; 1949 (46) 466; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 187, Generally; Equipment.

**SECTION 56‑5‑3515.** Authorized police patrol bicycles; operating as emergency vehicles.

(A) An authorized police patrol bicycle used as a part of a police bicycle patrol may exercise the privileges of an emergency vehicle provided in Section 56‑5‑760.

(B) An authorized police patrol bicycle may be equipped with a siren or the officer may utilize a whistle in the performance of his duties, or both.

(C) Notwithstanding the provisions of Section 56‑5‑760(C), an authorized police patrol bicycle acting as an emergency vehicle is entitled to the exemptions of an authorized emergency vehicle if it makes use of an audible signal meeting the requirements of Section 56‑5‑4970 or visual signals meeting the requirements of Section 56‑5‑4700.

HISTORY: 1997 Act No. 56, Section 1; 2008 Act No. 317, Section 3, eff June 10, 2008.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 187, Generally; Equipment.

S.C. Jur. Automobiles and Other Motor Vehicles Section 188, Required Equipment.

ARTICLE 29

Motorcyclists; Rights and Duties Thereof

**SECTION 56‑5‑3610.** Rights and duties of operator of motorcycle generally.

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the drivers of motor vehicles, except as to special regulations or other provisions of law which by their nature would not apply.

HISTORY: 1962 Code Section 46‑498.4; 1969 (56) 317.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 190, Motorcycles, Generally; Equipment.

**SECTION 56‑5‑3630.** Manner in which motorcycles must be operated.

(A) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(B) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(C) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

(D) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(E) No person shall ride upon a motorcycle as a passenger unless, when sitting astride the seat, the person can reach the footrests with both feet. Provided, the provisions of this section shall not apply to persons riding in a motorcycle sidecar.

(F) No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on the roadway.

HISTORY: 1962 Code Section 46‑498; 1952 Code Section 46‑498; 1949 (46) 466; 1978 Act No. 451 Section 6; 2016 Act No. 267 (S.689), Section 2, eff June 7, 2016.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 191, Manner of Operation of Motorcycle.

**SECTION 56‑5‑3640.** Motorcycle entitled to full use of lane; riding two or more abreast; overtaking and passing; operation in other instances.

(a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This shall not apply to motorcycles operated two abreast in a single lane.

(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle between lanes of traffic, or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) Items (b) and (c) shall not apply to police officers in the performance of their official duties.

HISTORY: 1962 Code Section 46‑498.2; 1969 (56) 317.

CROSS REFERENCES

Driving on right side of roadway, overtaking, passing and following, see Sections 56‑5‑1810 et seq.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 191, Manner of Operation of Motorcycle.

**SECTION 56‑5‑3650.** Footrests; rear view mirror.

(A) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, must be equipped with footrests for its passenger.

(B) A person shall not operate any motorcycle unless it is equipped with a rear view mirror which will afford the operator ample vision to the rear at all times.

HISTORY: 1962 Code Section 46‑4983; 1969 (56) 317; 2006 Act No. 278, Section 1, eff May 23, 2006.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 190, Motorcycles, Generally; Equipment.

**SECTION 56‑5‑3660.** Helmets must be worn by operators and passengers under age twenty‑one; helmet design; list of approved helmets.

It shall be unlawful for any person under the age of twenty‑one to operate or ride upon a two‑wheeled motorized vehicle unless he wears a protective helmet of a type approved by the Department of Public Safety. Such a helmet must be equipped with either a neck or chin strap and be reflectorized on both sides thereof. The department is hereby authorized to adopt and amend regulations covering the types of helmets and the specifications therefor and to establish and maintain a list of approved helmets which meet the specifications as established hereunder.

HISTORY: 1962 Code Section 46‑631; 1967 (55) 199; 1980 Act No. 514, Section 1; 1993 Act No. 181, Section 1422.

CROSS REFERENCES

Moped operation, see Section 56‑2‑3070.

Provision that, with the exception of this section, inter alia, this chapter applies to the operation of mopeds on public roads, see Section 56‑5‑50.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 190, Motorcycles, Generally; Equipment.

S.C. Jur. Automobiles and Other Motor Vehicles Section 192, Helmets, Goggles, and Face Shields.

NOTES OF DECISIONS

In general 1

Preemption 2

1. In general

A plaintiff’s failure to wear a helmet did not constitute contributory negligence where the plaintiff was over 21 years of age at the time he was injured in a motorcycle accident. Mayes v. Paxton (S.C. 1993) 313 S.C. 109, 437 S.E.2d 66. Automobiles 213

2. Preemption

City’s helmet ordinance, which required that any person riding a motorcycle wear a protective helmet and eyewear, failed under the doctrine of implied field preemption due to the need for statewide uniformity; General Assembly addressed motorcycle helmet and eyewear requirements and required all riders under age 21 to wear a protective helmet and utilize protective goggles or face shield, and helmet ordinance, in contrast, required all riders, regardless of age, to wear a helmet and eyewear, and ordinance could not stand as the need for uniformity was plainly evident in the regulation of motorcycle helmets and eyewear. Aakjer v. City of Myrtle Beach (S.C. 2010) 388 S.C. 129, 694 S.E.2d 213. Automobiles 318

**SECTION 56‑5‑3670.** Goggles or face shields shall be worn by operators under age twenty‑one; list of approved goggles and face shields.

It shall be unlawful for any person under the age of twenty‑one to operate a two‑wheeled motorized vehicle unless he wears goggles or a face shield of a type approved by the Department of Public Safety. The department is hereby authorized to adopt and amend regulations covering types of goggles and face shields and the specifications therefor and to establish and maintain a list of approved goggles and face shields which meet the specifications as established hereunder.

HISTORY: 1962 Code Section 46‑632; 1967 (55) 199; 1980 Act No. 514, Section 2; 1993 Act No. 181, Section 1423.

CROSS REFERENCES

Provision that, with the exception of this section, inter alia, this chapter applies to the operation of mopeds on public roads, see Section 56‑5‑50.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 192, Helmets, Goggles, and Face Shields.

NOTES OF DECISIONS

Preemption 1

1. Preemption

City’s helmet ordinance, which required that any person riding a motorcycle wear a protective helmet and eyewear, failed under the doctrine of implied field preemption due to the need for statewide uniformity; General Assembly addressed motorcycle helmet and eyewear requirements and required all riders under age 21 to wear a protective helmet and utilize protective goggles or face shield, and helmet ordinance, in contrast, required all riders, regardless of age, to wear a helmet and eyewear, and ordinance could not stand as the need for uniformity was plainly evident in the regulation of motorcycle helmets and eyewear. Aakjer v. City of Myrtle Beach (S.C. 2010) 388 S.C. 129, 694 S.E.2d 213. Automobiles 318

**SECTION 56‑5‑3680.** Wind screens.

The provisions of Section 56‑5‑3670 with respect to goggles and face shields shall not apply to the operator of a two‑wheeled motorized vehicle equipped with a wind screen meeting specifications established by the Department of Public Safety. The department is hereby authorized to adopt and amend regulations covering types of wind screens and specifications therefor.

HISTORY: 1962 Code Section 46‑633; 1967 (55) 199; 1993 Act No. 181, Section 1424.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 192, Helmets, Goggles, and Face Shields.

**SECTION 56‑5‑3690.** Unlawful to sell or distribute helmets, goggles, or face shields not approved by Department of Public Safety.

It shall be unlawful to sell, offer for sale or distribute any protective helmets, goggles or face shields for use by the operators of two‑wheeled motorized vehicles, or protective helmets for the use of passengers thereon, unless they are of a type and specification approved by the Department of Public Safety and appear on the list of approved devices maintained by the department.

HISTORY: 1962 Code Section 46‑634; 1967 (55) 199; 1993 Act No. 181, Section 1425.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 190, Motorcycles, Generally; Equipment.

**SECTION 56‑5‑3700.** Penalty for violation of Sections 56‑5‑3660 to 56‑5‑3690.

Any person violating the provisions of Sections 56‑5‑3660 to 56‑5‑3690 shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 46‑635; 1967 (55) 199.

Library References

Automobiles 327, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1639, 1656, 1707, 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 190, Motorcycles, Generally; Equipment.

ARTICLE 30

Moped Regulation

ARTICLE 30, Chapter 5, Title 56 of the 1976 Code is repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

**SECTION 56‑5‑3710.** Limitations as to riding position and number of riders.

Repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

No person may ride upon a moped other than upon or astride a permanent and regular seat attached to the moped. No moped may be used to carry more persons at one time than the number for which it is designed and equipped.

HISTORY: 1986 Act No. 528, Section 11.

CROSS REFERENCES

Provisions relative to licensing of moped operators, see Section 56‑1‑1710 et seq.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

**SECTION 56‑5‑3720.** Required equipment.

Repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

It is unlawful for a person to sell a moped for use on the public highways and streets of this State or operate a moped upon the public highways and streets of this State without operable pedals if the moped is equipped with pedals, at least one rearview mirror, operable running lights, and brake lights which are operable when either brake is deployed. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1986 Act No. 528, Section 11; 1991 Act No. 94, Section 5.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

**SECTION 56‑5‑3730.** Use of operating lights.

Repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

The operator of a moped must have the operating lights turned on at all times while the moped is in operation on the public highways and streets of this State.

HISTORY: 1986 Act No. 528, Section 11.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

**SECTION 56‑5‑3740.** Modification of equipment to increase horsepower or speed.

Repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

It is unlawful for a person to modify or change the equipment of a moped so that the vehicle exceeds two brake horsepower and produces speeds in excess of thirty miles an hour on level ground. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1986 Act No. 528, Section 11; 1991 Act No. 94, Section 6.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

**SECTION 56‑5‑3750.** Labeling requirements; violations and penalties.

Repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

(A) A person who sells, solicits, or advertises the sale of mopeds clearly and conspicuously shall label each moped with its specifications including, but not limited to, the brake horsepower of the motor and the maximum speed of the vehicle on level ground. The seller also shall attach a metal identification plate to each moped without pedals identifying the vehicle as a moped. This plate must be designed by the Department of Motor Vehicles and must display information the department considers necessary for enforcement purposes. The plate must be displayed permanently on each moped without pedals and must not be removed. A seller of mopeds who fails to label a moped, fails to attach a metal identification plate to a moped without pedals, knowingly labels a motorcycle or motor‑driven cycle as a moped, or attaches a metal identification plate to a motorcycle or motor‑driven cycle identifying the vehicle as a moped is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

(B) It is unlawful for a person to operate a moped without pedals upon the public highways and streets of this State without displaying the metal identification plate which must be attached to the vehicle. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

(C) Each vehicle which is incorrectly labeled or plated and each moped which is not labeled or plated is a separate violation of this section.

HISTORY: 1986 Act No. 528, Section 11; 1991 Act No. 94, Section 7; 1993 Act No. 181, Section 1426; 1996 Act No. 459, Section 187.

Library References

Automobiles 10, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

**SECTION 56‑5‑3760.** Sign to be posted by persons selling mopeds.

Repealed by 2017 Act No. 89, Section 35, effective November 19, 2018.

The Department of Motor Vehicles shall design a sign which contains a brief explanation of the provisions of law governing the operation of mopeds. Persons selling mopeds shall post the sign in a conspicuous place in their place of business.

HISTORY: 1986 Act No. 528, Section 11.

Library References

Automobiles 10.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45.

ARTICLE 31

Miscellaneous Traffic Rules

**SECTION 56‑5‑3810.** Limitations on backing.

(a) No driver shall back a vehicle unless such movement can be made with safety and without interfering with other traffic.

(b) No driver shall back a vehicle upon any shoulder or roadway of any controlled‑access highway.

HISTORY: 1962 Code Section 46‑492; 1952 Code Section 46‑492; 1949 (46) 466; 1978 Act No. 451 Section 1.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

NOTES OF DECISIONS

In general 1

Questions for jury 2

Sufficiency of evidence 3

1. In general

Violation of this section constitutes negligence per se. Chesser v Taylor (1957) 232 SC 46, 100 SE2d 540. Green v Sparks (1958) 232 SC 414, 102 SE2d 435. Sodergren v Goodman (1965, DC SC) 242 F Supp 44.

It is duty of motorist, when backing out of private driveway into highway, to be vigilant and watchful and to anticipate and expect the presence of other vehicles upon the highway, and to ascertain whether the highway is clear, so that he may enter without interfering with the use thereof by approaching vehicles. Green v. Sparks (S.C. 1958) 232 S.C. 414, 102 S.E.2d 435. Automobiles 169

Backing of a motor vehicle is attendant with unusual danger to one who may be in its path, and requires commensurate care on the part of the operator of the vehicle. Chesser v. Taylor (S.C. 1957) 232 S.C. 46, 100 S.E.2d 540.

2. Questions for jury

It is a question for the jury to determine whether or not a violation of this section [formerly Code 1962 Section 46‑492] contributes as a proximate cause to plaintiff’s injury. Chesser v Taylor (1957) 232 SC 46, 100 SE2d 540. Green v Sparks (1958) 232 SC 414, 102 SE2d 435.

Violation of Section 56‑5‑3810 constitutes negligence per se, therefore court properly directed verdict against defendant as to liability, in action against truck owner to recover for injuries caused by truck backing into car, based on statutory violation. Scott v. Land Span Motor, Inc., 1991, 781 F.Supp. 1115.

Where jury could reasonably have inferred that the vehicle in question was driven backward without taking any due precaution for the safety of any person that might be affected by such operation, it is error for trial judge to direct verdict for defendant. Chesser v. Taylor (S.C. 1957) 232 S.C. 46, 100 S.E.2d 540.

3. Sufficiency of evidence

Defendant was guilty of actionable negligence by his failure to exercise due care in the operation of his vehicle as required by the common‑law rules of the road and the statutory laws of the State of South Carolina: (a) By backing a large and heavily loaded Mack tractor and trailer upon a busy four‑lane highway in violation of this section; (b) by failing to keep a proper lookout; (c) by failing to have his vehicle under proper control; and (d) by failing to give any warning or signal of his intention to back said truck upon the heavily traveled highway on said occasion. Sodergren v. Goodman, 1965, 242 F.Supp. 44. Automobiles 244(12); Automobiles 244(34); Automobiles 244(35)

**SECTION 56‑5‑3820.** Operation of vehicle when driver’s view or control over driving mechanism interfered with.

No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver’s control over the driving mechanism of the vehicle. No passenger in a vehicle shall ride in such position as to interfere with the driver’s view ahead or to the side or to interfere with his control over the driving mechanism of the vehicle.

HISTORY: 1962 Code Section 46‑493; 1952 Code Section 46‑493; 1949 (46) 466.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3822.** Opening vehicle doors.

No person shall open any door of a motor vehicle unless it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

HISTORY: 1978 Act No. 451 Section 2.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3826.** Riding in moving house trailers prohibited.

No person shall occupy a house trailer while it is being moved upon a public highway.

HISTORY: 1978 Act No. 451 Section 3.

CROSS REFERENCES

Manufactured housing, see Sections 40‑29‑10 et seq.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3830.** Driving through defiles or canyons or on mountain highways.

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold the vehicle under control and as near the right‑hand edge of the roadway as reasonably possible and, except when driving entirely to the right of the center of the roadway, shall give audible warning with the horn of the vehicle upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway.

HISTORY: 1962 Code Section 46‑494; 1952 Code Section 46‑494; 1949 (46) 466; 1978 Act No. 451 Section 4.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

**SECTION 56‑5‑3835.** Driving upon sidewalk.

No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

HISTORY: 1978 Act No. 451 Section 7.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3840.** Coasting prohibited.

The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of such vehicle in neutral. The driver of a commercial motor vehicle when traveling upon a downgrade shall not coast with the clutch disengaged.

HISTORY: 1962 Code Section 46‑495; 1952 Code Section 46‑495; 1949 (46) 466.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3850.** Crossing fire hose prohibited.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway to be used at any fire or alarm of fire, without the consent of the fire department official in command.

HISTORY: 1962 Code Section 46‑497; 1952 Code Section 46‑497; 1949 (46) 466.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3860.** Animals and certain vehicles prohibited on controlled‑access highways; exceptions; penalty.

(A)(1) No person, unless otherwise directed by a law enforcement officer, shall occupy any space within the limits of the roadway and shoulders of the main facility of a freeway with an animal‑drawn vehicle, a ridden or led animal, herded animals, a pushcart, a bicycle, a bicycle with motor attached, a motor‑driven cycle with a motor which produces not to exceed five brake horsepower, an agricultural tractor or other farm machinery, except in the performance of public works or official duties.

(2) The prohibitions imposed by this subsection on the use of freeways do not apply to service roads alongside the highways.

(B)(1) A local governing body may authorize a partial exemption from the provisions contained in subsection (A) that would allow bicyclists and pedestrians to use the roadway and shoulders of the main facility of a noninterstate freeway.

(2) The local governing body may authorize a partial exemption to subsection (A) for bicyclists and pedestrians if the local governing body:

(a) determines that bicyclists and pedestrians have no other reasonably safe or viable alternative route and the use of the freeway route is at least ten percent less than the shortest conventional alternate route;

(b) adopts an ordinance allowing bicycle and pedestrian traffic on the shoulder of a main facility of the noninterstate freeway and allowing bicycle and pedestrian traffic on the roadway when utilizing the shoulder is not practicable because of an obstruction or an unpaved shoulder, or when necessary to cross an access ramp in compliance with accepted bicycle safety standards and practices; and

(c) notifies the department that the ordinance has been adopted.

(3) Upon receiving notice pursuant to item (B)(2)(c), the department shall remove all signs prohibiting pedestrians and bicyclists along the roadway and shoulders of the main facility of the portion of the freeway to which the ordinance applies.

(4) The local governing body may request permission from the department to erect appropriate signs and markers along the roadway and shoulders of the main facility of the portion of the freeway to which the partial exemption applies.

(5) Two or more local governing bodies that have jurisdiction over portions of a section of a roadway to which a partial exemption from the provisions contained in subsection (A) is proposed may authorize an exemption for the entire section if the local governing bodies affected by the proposed exemption formally agree to granting the exemption and each local jurisdiction completes the exemption procedure contained in this section for the portion of the roadway section that passes through its jurisdiction.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

HISTORY: 1962 Code Section 46‑498.5; 1971 (57) 298; 1993 Act No. 98, Section 3; 2012 Act No. 252, Section 1, eff June 18, 2012.

CROSS REFERENCES

Freeway defined, see Section 56‑5‑615.

Livestock trespassing or running at large, see Sections 47‑7‑110 et seq.

Prohibition of pedestrians on freeways, see Section 56‑5‑3170.

Library References

Automobiles 335.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1748, 1750, 1752, 1755 to 1756.

**SECTION 56‑5‑3870.** Motor vehicle speed detection jamming devices.

(A) It is unlawful for a motor vehicle to be equipped with or for an operator of a motor vehicle to employ any device that is designed for jamming, scrambling, neutralizing, disabling, or interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of a motor vehicle.

(B) A person who violates a provision contained in this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars.

HISTORY: 2006 Act No. 279, Section 1, eff May 23, 2006.

Library References

Automobiles 327.

Obstructing Justice 118.

Westlaw Topic Nos. 48A, 282.

C.J.S. Motor Vehicles Section 1639.

C.J.S. Obstructing Justice or Governmental Administration Sections 13 to 19, 22 to 34, 36 to 51, 53 to 66, 73.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

**SECTION 56‑5‑3880.** Closure of state highways for running events.

The Department of Transportation may close state highways, roadways, or bridges to allow marathons or other running events when the race or event is open to all persons including the handicapped if in the opinion of the district engineer the race or event may be conducted in a safe manner. The Department of Transportation, city, county, organization, and sponsors of the race or event are immune from liability except for gross negligence from incidents arising from participation in or association with the race or event.

If the John P. Grace Memorial Bridge is not available for the annual Cooper River Bridge Run and Walk in Charleston County, the Silas N. Pearman Bridge must be made available for the event, if a contingency plan for vehicular traffic can be developed, provided, that if the Cooper River Bridge Run and Walk is not open to persons sixty‑five years of age or older, neither bridge may be used for this event.

HISTORY: 1985 Act No. 201, Part II, Section 20A; 1992 Act No. 304, Section 2; 1993 Act No. 181, Section 1427.

Library References

Highways 167.

Westlaw Topic No. 200.

C.J.S. Constitutional Law Section 759.

C.J.S. Highways Sections 394 to 396, 399 to 403.

**SECTION 56‑5‑3885.** Unlawful to display obscene bumper sticker.

(A) No person may operate a motor vehicle in this State which has affixed or attached to any part of the motor vehicle which is visible to members of the public not occupying the vehicle any sticker, decal, emblem, or other device containing obscene or indecent words, photographs, or depictions.

(B) Obscene words, photographs, or depictions must be defined and interpreted as provided in Section 16‑15‑305(B), (C), (D), and (E).

(C) A sticker, decal, emblem, or device is indecent when:

(1) taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body; and

(2) taken as a whole, it lacks serious literary, artistic, political, or scientific value.

(D) A person who violates the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding two hundred dollars.

HISTORY: 1990 Act No. 443, Section 1.

Library References

Obscenity 129.

Westlaw Topic No. 281.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

Attorney General’s Opinions

Act which makes it unlawful to display obscene or indecent bumper stickers or decals on motor vehicle in South Carolina would most probably pass constitutional muster. 1990 Op.Atty.Gen. No. 90‑36 (April 25, 1990) 1990 WL 482423.

**SECTION 56‑5‑3890.** Unlawful use of a wireless electronic communication device while operating a motor vehicle; penalties; limitation on law enforcement officers; department to maintain statistical information; preemption of local ordinances.

(A) For purposes of this section:

(1) “Hands‑free wireless electronic communication device” means an electronic device, including, but not limited to, a telephone, a personal digital assistant, a text‑messaging device, or a computer, which allows a person to wirelessly communicate with another person without holding the device in either hand by utilizing an internal feature or function of the device, an attachment, or an additional device. A hands‑free wireless electronic communication device may require the use of either hand to activate or deactivate an internal feature or function of the device.

(2) “Text‑based communication” means a communication using text‑based information, including, but not limited to, a text message, an SMS message, an instant message, or an electronic mail message.

(3) “Wireless electronic communication device” means an electronic device, including, but not limited to, a telephone, a personal digital assistant, a text‑messaging device, or a computer, which allows a person to wirelessly communicate with another person.

(B) It is unlawful for a person to use a wireless electronic communication device to compose, send, or read a text‑based communication while operating a motor vehicle on the public streets and highways of this State.

(C) This section does not apply to a person who is:

(1) lawfully parked or stopped;

(2) using a hands‑free wireless electronic communication device;

(3) summoning emergency assistance;

(4) transmitting or receiving data as part of a digital dispatch system;

(5) a public safety official while in the performance of the person’s official duties; or

(6) using a global positioning system device or an internal global positioning system feature or function of a wireless electronic communication device for the purpose of navigation or obtaining related traffic and road condition information.

(D)(1) A person who is adjudicated to be in violation of the provisions of this section must be fined not more than twenty‑five dollars, no part of which may be suspended. No court costs, assessments, or surcharges may be assessed against a person who violates a provision of this section. A person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this section. A custodial arrest for a violation of this section must not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. A violation of this section does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this section must not be:

(a) included in the offender’s motor vehicle records maintained by the Department of Motor Vehicles or in the criminal records maintained by SLED; or

(b) reported to the offender’s motor vehicle insurer.

(2) During the first one hundred eighty days after this section’s effective date, law enforcement officers shall issue only warnings for violations of this section.

(E) A law enforcement officer shall not:

(1) stop a person for a violation of this section except when the officer has probable cause that a violation has occurred based on the officer’s clear and unobstructed view of a person who is using a wireless electronic communication device to compose, send, or read a text‑based communication while operating a motor vehicle on the public streets and highways of this State;

(2) seize, search, view, or require the forfeiture of a wireless electronic communication device because of a violation of this section;

(3) search or request to search a motor vehicle, driver, or passenger in a motor vehicle, solely because of a violation of this section; or

(4) make a custodial arrest for a violation of this section, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine.

(F) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.

(G) This section preempts local ordinances, regulations, and resolutions adopted by municipalities, counties, and other local governmental entities regarding persons using wireless electronic communication devices while operating motor vehicles on the public streets and highways of this State.

HISTORY: 2014 Act No. 260 (S.459), Section 1, eff June 9, 2014.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 123, Miscellaneous Regulations.

Attorney General’s Opinions

Local regulation regarding the use of wireless electronic communications devices while driving is expressly preempted by this section. S.C. Op.Atty.Gen. (October 1, 2014) 2014 WL 5303044.

**SECTION 56‑5‑3900.** Transportation of minors in open vehicles.

(A) It is unlawful to transport a person under fifteen years of age in the open bed or open cargo area of a pickup truck or trailer. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(B) Subsection (A) does not apply when:

(1) an adult is present in the bed or cargo area of the vehicle and is supervising the child;

(2) the child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load of not less than five thousand pounds for each belt, and of a type approved by the Department of Public Safety;

(3) an emergency situation exists;

(4) the vehicle is being operated in an organized hayride or parade pursuant to a valid permit;

(5) the vehicle is being operated while hunting or in an agricultural enterprise;

(6) the vehicle is being operated in a county which has no incorporated area with a population greater than three thousand five hundred; or

(7) the vehicle has a closed metal tailgate and is being operated less than thirty‑six miles an hour.

(C) A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined twenty‑five dollars.

(D) No driver’s license points or insurance surcharge may be assessed for a violation of this section.

HISTORY: 2002 Act No. 181, Section 8.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seatbelt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

Discussion of when minors may ride in the bed of a pickup truck. S.C. Op.Atty.Gen. (September 15, 2003) 2003 WL 22172236.

ARTICLE 33

Size, Weight, and Load

**SECTION 56‑5‑4010.** Size and weight limits not to be exceeded; powers of local authorities.

(A) It is unlawful for a person to drive or move or for the owner to cause or knowingly to permit to be driven or moved on a highway a vehicle of a size or weight exceeding the limitations stated in this article or otherwise in violation of this article. The maximum size and weight of vehicles herein specified is lawful throughout the State, and local authorities shall have no power or authority to alter these limitations except as express authority may be granted in this article. Provided, that municipalities and their franchisees may operate combinations of vehicles of not more than four units and not more than sixty‑five feet in length on city streets within their corporate limits and the operation of these combinations of units is limited to speeds not in excess of twenty miles an hour, and these combination units must be equipped with brakes meeting braking requirements of Section 56‑5‑4860 and the rear vehicle must be equipped with at least one stoplight.

(B) The Transport Police Division of the Department of Public Safety has exclusive authority in this State for enforcement of the commercial motor vehicle carrier laws, which include Federal Motor Carrier Safety Regulations, Hazardous Material Regulations, and size and weight laws and regulations.

HISTORY: 1962 Code Section 46‑651; 1952 Code Section 46‑651; 1949 (46) 466; 1978 Act No. 411 Section 1; 2012 Act No. 180, Section 4, eff May 25, 2012.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Uniform Act Regulating Traffic on Highways, see Sections 56‑5‑10 et seq.

Violators of weight limits not being entitled to release on personal recognizance, see Section 56‑25‑40.

Library References

Automobiles 324, 337.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1709 to 1714, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 209, Size and Weight Limits, Generally.

Attorney General’s Opinions

City or county owned vehicles are subject to the general size and weight limitations of Sections 56‑5‑4010 et seq. and drivers of city and county owned vehicles must obtain a classified license prior to operating vehicles in excess of twenty four thousand pounds gross weight. 1979 Op.Atty.Gen. No. 79‑83, p. 115 (June 28, 1979) 1979 WL 29088.

NOTES OF DECISIONS

In general 1

1. In general

As to right of State to regulate carriers using highways, see South Carolina State Highway Department v. Barnwell Bros. (U.S.S.C. 1938) 58 S.Ct. 510, 303 U.S. 177, 82 L.Ed. 734.

**SECTION 56‑5‑4020.** Exemptions; annual permits for certain vehicles; maximum width for exempt vehicles.

(A) Except as provided in Section 56‑5‑4140(2), the provisions of this article governing size, weight, and load do not apply to fire apparatus, road machinery or implements, and products of husbandry including farm tractors, timber equipment, liquid fertilizer storage facilities, and vehicles or combinations of vehicles used to transport, store, or spread lime, nitrogen, or other soil improvement products for agricultural purposes moved upon the highways so as not to damage the highways nor unduly interfere with highway traffic, or to vehicles operated under terms of special permits issued pursuant to this chapter. The exemptions do not apply to Section 56‑5‑4230. With regard to vehicles or combinations of vehicles used to transport, store, or spread soil improvement products and to transport products of husbandry exempted pursuant to this section, the owners shall obtain an annual permit to operate the vehicle as provided in Section 57‑3‑130 which prescribes the specific conditions of the exemption.

(B) For purposes of this section, ‘timber equipment’ means implements of silviculture including, but not limited to, machinery used in establishing, tending, harvesting, and protecting forest crops such as tree shears, chippers, slashers, log loaders, skidders, and fellers.

(C) None of the vehicles or devices exempted by this section may exceed twelve feet in width, except farm implements which may not exceed sixteen feet in width, and they may be moved only in clear weather conditions during daylight hours.

HISTORY: 1962 Code Section 46‑653; 1952 Code Section 46‑653; 1949 (46) 466; 1954 (48) 1551; 1975 (59) 209; 1976 Act No. 588 Section 3; 1977 Act No. 77; 1980 Act No. 450; 1983 Act No. 151 Part II Section 28A; 1993 Act No. 164, Part II, Section 39B.

CROSS REFERENCES

Provisions relating to gross weight of vehicles, combinations of vehicles, and loads, and exceptions, see Section 56‑5‑4140.

Provisions relating to liability for damages to highway or highway structure, see Section 56‑5‑4230.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11, 15, 324, 337.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 49 to 50, 942 to 943, 1504 to 1505, 1508 to 1510, 1659, 1709 to 1714, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 209, Size and Weight Limits, Generally.

**SECTION 56‑5‑4030.** Width of vehicles.

(A) As contained in this section, “appurtenances” include:

(1) an awning and its support hardware; and

(2) an appendage that is intended to be an integral part of a motor home, travel trailer, or truck camper and is installed by the manufacturer or dealer which includes, but is not limited to, vents, electrical outlet covers, and window frames.

(B) The total outside width of a vehicle or the load on it may not exceed one hundred two inches exclusive of safety devices approved by the Department of Public Safety.

(C) Appurtenances on motor homes, travel trailers, and truck campers in noncommercial use may extend to a maximum of six inches on one side and four inches on the other beyond the maximum width requirement contained in subsection (B).

HISTORY: 1962 Code Section 46‑654; 1952 Code Section 46‑654; 1949 (46) 466; 1977 Act No. 36; 1986 Act No. 373, Section 1; 1989 Act No. 167, Section 1; 2002 Act No. 197, Section 1.

CROSS REFERENCES

Notwithstanding this section, Department may issue permits for cotton modular vehicles to use highways, see Section 57‑3‑160.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Tandem Trailer Combination and Other Larger Vehicle Access Control Act regulations, see S.C. Code of Regulations R. 63‑390 et seq.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

**SECTION 56‑5‑4035.** Permit for transporting culvert pipe; penalties.

The Department of Transportation may, under such terms and conditions as it may deem to be in the public interest for safety on the highways and in addition to any other permits required by Title 56, issue annual permits for vehicles transporting culvert pipe on public highways. No permit shall be issued for loads exceeding a width of one hundred six inches, exclusive of safety devices approved by the Department of Public Safety. The fee for each permit shall be fifteen dollars for each vehicle hauling such loads.

Any person violating the provisions of this section or any regulation promulgated by authority hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed two hundred dollars or imprisoned for a term not to exceed thirty days.

HISTORY: 1978 Act No. 516 Section 1; 1996 Act No. 459, Section 188.

Library References

Automobiles 11, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

**SECTION 56‑5‑4040.** Width of motor buses and trolley coaches; local ordinances.

Incorporated cities and municipalities may by ordinance permit the operation within their respective jurisdictions of any motor bus or trolley coach with a maximum outside width of not to exceed one hundred and two inches. But in the case of state highways within incorporated cities no such permit shall become effective until approved by the Department of Transportation. All such permits shall specify the streets or sections of streets over which such trolley coaches may be operated. The term “trolley coach” means a vehicle which is propelled by electric power obtained from overhead trolley wires though not operated upon rails.

The Department of Transportation with respect to the state highways and local authorities with respect to other highways, may issue permits for the operation of motor buses and trolley coaches, having a lateral outside width of not exceeding one hundred and two inches upon any highway, route or routes of sufficient width in suburban areas adjacent to municipalities.

HISTORY: 1962 Code Section 46‑655; 1952 Code Section 46‑655; 1949 (46) 466; 1950 (46) 2314; 1993 Act No. 181, Section 1428.

CROSS REFERENCES

Rights and duties of motor vehicle carriers, generally, see Sections 58‑23‑1010 et seq.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 7, 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 24, 28, 30 to 31, 33 to 38.

**SECTION 56‑5‑4050.** Side projecting loads on passenger vehicles.

No passenger vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side of such vehicle.

HISTORY: 1962 Code Section 46‑656; 1952 Code Section 46‑656; 1949 (46) 466.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

**SECTION 56‑5‑4055.** Oversized vehicle on interstate highway.

Notwithstanding any provision of this article, relating to the issuance of permits for the movement of oversized loads or vehicles on the highways of this State or exemptions from permit requirements provided for oversized loads or vehicles, no vehicle or load shall be moved within the interstate highway system if such oversized load or vehicle could not be lawfully moved on the highways of this State pursuant to permit or otherwise on July 1, 1956.

HISTORY: 1978 Act No. 516 Section 2.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

**SECTION 56‑5‑4060.** Height of vehicles; exception; routing permits; underpasses.

(A)(1) No vehicle, unladen or with load, may exceed a height of thirteen feet six inches except that the height of an automobile transporter unit or a heavy truck transporting one or more other heavy trucks in a saddle mount combination may not exceed fourteen feet. Automobile transporters and heavy trucks transporting one or more other heavy trucks in a saddle mount combination are responsible for any personal injury or property damage resulting from operating a unit at a height in excess of thirteen feet six inches.

(2) To qualify for the fourteen foot exception contained in subsection (A)(1), the owner or operator of the heavy truck transporting one or more other heavy trucks in a saddle mount combination must have a valid routing permit issued by the Department of Transportation. All applicants shall be issued routing permits at no charge upon providing the department with evidence of its general liability coverage. Routing permits shall remain valid for twelve months from the date of issuance and specify the routes that may be traveled by the permittee and the conditions the permittee must observe while transporting heavy trucks in a saddle mount combination. Routing permits do not limit or otherwise affect the holder’s liability for personal injuries or property damage.

(B) It is unlawful for any person to operate or attempt to operate under any underpass having a vertical clearance of less than thirteen feet six inches any vehicle with a height in excess of the vertical clearance of the underpass posted in accordance with the manual on uniform traffic‑control devices provided for in Section 56‑5‑920. No person is required to raise, alter, construct, or reconstruct any existing underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle, and neither the State nor any of its agencies or political subdivisions are liable for any personal injury or property damage resulting from the operation of a vehicle over any highway, road, or bridge or through any underpass having a vertical clearance of less than fourteen feet where the Department of Transportation or other body having maintenance jurisdiction of the underpass has posted notice of the reduced vertical clearance in accordance with the manual on uniform traffic‑control devices provided for in Section 56‑5‑920.

HISTORY: 1962 Code Section 46‑657; 1952 Code Section 46‑657; 1949 (46) 466; 1950 (46) 2314; 1956 (49) 1689; 1960 (51) 1611; 1988 Act No. 298; 1993 Act No. 181, Section 1429; 2008 Act No. 234, Section 4, eff upon approval (became law without the Governor’s signature on May 22, 2008).

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

Attorney General’s Opinions

Combination of vehicle known as “Mini‑Tow” and two motor vehicles is unlawful. 1972‑73 Op.Atty.Gen. No. 3565, p. 343 (November 2, 1973) 1973 WL 21107.

Code 1962 section 46‑659 refers to Code 1962 Section 46‑657.1 and Code 1962 Section 46‑658 and not this section [Code 1962 Section 46‑657] as set forth in the Code. The height requirement of thirteen feet and six inches should be followed except when provided for otherwise in the Code. 1967‑68 Op.Atty.Gen. No. 2584, p. 288 (July 25, 1968) 1968 WL 8976.

**SECTION 56‑5‑4070.** Length of vehicles; limitations on vehicle combinations.

(A) Two or three unit vehicle combinations may be operated on the National System of Interstate and Defense Highways, on those qualifying federal‑aid highways so designated by the United States Secretary of Transportation, and on other highways as designated by the Department of Transportation in accordance with Section 56‑5‑4075. The Department of Public Safety may require warning devices which may be necessary to protect public safety. When in use on the National System of Interstate and Defense Highways and “other qualifying highways”:

(1) No trailer or semitrailer may be operated in a two unit truck tractor‑trailer or truck tractor‑semitrailer combination in excess of fifty‑three feet, inclusive of the load carried on it. A fifty‑three foot long trailer must be equipped with a rear underride guard, and the distance between the kingpin of the vehicle and the center of the rear axle assembly or to the center of the tandem axle assembly if equipped with two axles may be no greater than forty‑one feet. However, trailers or semitrailers used exclusively or primarily to transport vehicles used in connection with motorsports competition events may not exceed forty‑six feet on the distance measured from the kingpin to the center of the rear axle.

(2) A trailer or semitrailer, operating in a three unit combination, may not exceed a length of twenty‑eight and one‑half feet, inclusive of the load carried on it.

(3) Auto and boat transporters may not have an overall length in excess of seventy‑five feet, exclusive of front and rear overhang. However, front overhang may not exceed three feet, and rear overhang may not exceed four feet.

(4) Saddle mounts and full mounts may not have an overall length in excess of seventy‑five feet.

(B) No motor vehicle, exclusive of truck tractors being used in two or three unit combinations on the National System of Interstate and Defense Highways, on those qualifying federal‑aid highways so designated by the United States Secretary of Transportation, and on other highways as designated by the Department of Transportation in accordance with Section 56‑5‑4075, may exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers and load carried on it, except buses as approved by the Department of Public Safety, or motor homes which may not exceed forty‑five feet in length, if the turning radius of the motor home is forty‑eight feet or less.

(C) A combination of vehicles coupled together or especially constructed to transport motor vehicles in a truckaway or driveaway service may tow up to three saddle mounts. No other combination of vehicles coupled together may consist of more than two units, except as permitted by subsection (A).

(D) Except as permitted by subsection (A), trailers or semitrailers used within combinations may not exceed a length of fifty‑three feet, and auto transporters are excluded from trailer length limitations. A fifty‑three foot long trailer must be equipped with a rear underride guard, and the distance between the kingpin of the vehicle and the center of the rear axle assembly or to the center of the tandem axle assembly if equipped with two axles may be no greater than forty‑one feet. Auto transporters may be allowed an upper level overhang not to exceed three feet on the front and four feet on the rear.

(E) Except where specifically prohibited in this article, there is no overall length limit on combination vehicles.

(F) Appropriate safety and energy conservation devices and compressors and fuel saving equipment on the front or loading devices on the rear of vehicles must not be considered when determining their length for purposes of this section if the overall length limitations of combinations of vehicles is not exceeded.

HISTORY: 1962 Code Section 46‑657.1; 1952 Code Section 46‑657; 1949 (46) 466; 1950 (46) 2314; 1956 (49) 1689; 1960 (51) 1611; 1963 (53) 75, 549; 1972 (57) 2397; 1974 (58) 2714; 1978 Act No. 411 Section 2; 1980 Act No. 500, Section 1; 1986 Act No. 373, Section 2; 1989 Act No. 167, Section 2; 1992 Act No. 413, Sections 1, 2; 1993 Act No. 181, Section 1430; 1994 Act No. 511, Section 2; 1996 Act No. 459, Section 189; 1998 Act No. 333, Section 3; 2002 Act No. 197, Sections 2, 3; 2016 Act No. 188 (H.4932), Section 1, eff May 25, 2016.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Tandem Trailer Combination and Other Larger Vehicle Access Control Act regulations, see S.C. Code of Regulations R. 63‑390 et seq.

Library References

Automobiles 11, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

Attorney General’s Opinions

Public officials may decline to enforce those provisions of Section 56‑5‑4070 that conflict with P. L. 97‑424 concerning the length limitation of trailers and combination of vehicles. 1983 Op.Atty.Gen. No. 83‑11, p. 24 (April 7, 1983) 1983 WL 142682.

Code 1962 section 46‑659 refers to this section [Code 1962 Section 46‑657.1] and Code 1962 Section 46‑658 and not Code 1962 Section 46‑657 as set forth in the Code. The height requirement of thirteen feet and six inches should be followed except when provided for otherwise in the Code. 1967‑68 Op.Atty.Gen. No. 2584, p. 288 (July 25, 1968) 1968 WL 8976.

NOTES OF DECISIONS

In general 1

1. In general

The Mini‑Tow, a towing device with four rear wheels on a single axle and one retractible front wheel, was not a vehicle, so that the two unit limit provided for in this section was not violated when it was linked to the towing and towed vehicles. Mini‑Tow, Inc. v. South Carolina Dept. of Highways and Public Transp. (S.C. 1978) 271 S.C. 11, 244 S.E.2d 516.

**SECTION 56‑5‑4075.** Promulgation of regulations; cooperation with United States Government; petition for removal of federally designated highway.

The Department of Public Safety and the Department of Transportation may promulgate regulations as necessary to implement the provisions of this article. Regulations may be promulgated to make designations as are necessary to provide for those vehicles which operate on the National System of Interstate and Defense Highways and “other qualifying highways” pursuant to Sections 56‑5‑4030 and 56‑5‑4070 reasonable access to:

(a) terminals, facilities for food, fuel, repairs, and rest;

(b) points of loading and unloading for household goods carriers and auto transporters; and

(c) specific industrial, commercial, warehousing, and similar sites, only after consulting with and considering the views of the local governments through whose jurisdictions such specific site access would pass.

The Department of Transportation may cooperate with the United States Government by providing information to accomplish uniformity in designating “other qualifying highways”. The information may only be provided after safety and operational requirements of the citizens of this State have been studied by the Department of Transportation. Any proposals by the Department of Transportation to add highways, other than those provided for in (a), (b), and (c) of this section, to the network of “qualifying highways” designated by the U. S. Secretary of Transportation must be approved by the General Assembly before they become effective.

The Governor may petition the Secretary of Transportation of the United States to remove any highway federally designated under the Surface Transportation Assistance Act of 1982 [49 USCS Appx Sections 2301 et seq.], as amended by Congress, and not considered safe.

HISTORY: 1986 Act No. 373, Section 4; 1989 Act No. 167, Section 3; 1993 Act No. 181, Section 1431; 1996 Act No. 459, Section 190.

CROSS REFERENCES

Limitations upon vehicle length and upon vehicle combinations on highways designated in accordance with this section, see Section 56‑5‑4070.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Tandem Trailer Combination and Other Larger Vehicle Access Control Act regulations, see S.C. Code of Regulations R. 63‑390 et seq.

**SECTION 56‑5‑4080.** Length of loads; hydraulic boom and bucket.

Subject to the foregoing provisions of this article limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six feet beyond the rear of the bed or body of such vehicle; provided, that the hydraulic boom and bucket permanently attached to a vehicle used in the maintenance and construction of electric service lines shall not be considered as load within the meaning of this section. Provided, further, that such boom and bucket shall not extend more than eight feet beyond the foremost part of the vehicle.

HISTORY: 1962 Code Section 46‑658; 1952 Code Section 46‑658; 1949 (46) 466; 1972 (57) 2269.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

Attorney General’s Opinions

Code 1962 section 46‑659 refers to Code 1962 Section 46‑657.1 and this section [Code 1962 Section 46‑658] and not Code 1962 Section 46‑657 as set forth in the Code. The height requirement of thirteen feet and six inches should be followed except when provided for otherwise in the Code. 1967‑68 Op.Atty.Gen. No. 2584, p. 288 (July 25, 1968) 1968 WL 8976.

**SECTION 56‑5‑4090.** Length of load on certain pole trailers or pole carriers; structural material.

(A) The limitations regarding length of vehicles and loads stated in Sections 56‑5‑4070 and 56‑5‑4080 do not apply to a load upon a pole trailer, longwood trailer, or self‑propelled pole carrier when transporting poles or logs.

(B) During daylight hours only, the limitations regarding length of vehicles and loads stated in Sections 56‑5‑4070 and 56‑5‑4080 do not apply to a load upon a pole trailer, longwood trailer, or self‑propelled pole carrier when transporting pipes or structural material which cannot be dismembered.

(C) Between 2:00 a.m. and thirty minutes past sunset, the limitations regarding length of loads stated in Section 56‑5‑4080 do not apply to loads of iron, steel, and concrete articles up to sixty feet in length carried on a fifty‑three foot long flat‑bed trailer so long as:

(1) the vehicle is traveling upon or within five miles of the South Carolina Truck Network as defined by regulation of the Department of Transportation;

(2) the load does not extend more than three feet six inches beyond the front of the bed of the trailer;

(3) the load does not extend more than four feet beyond the rear of the bed of the trailer;

(4) a flashing amber strobe light and a red flag as required by Section 56‑5‑4630 are attached to any overhanging rear load; and,

(5) the vehicle’s headlights, taillights, and any other exterior lights are on at all times while traveling upon the highways of this State.

(D) A pole, log, pipe, or other material exceeding eighty feet in length may not be transported unless a permit has been first obtained as authorized in Section 57‑3‑130.

(E) The provisions of this section do not apply to a pole trailer or self‑propelled pole carrier operated by a utility company when transporting a pole to replace a damaged one.

HISTORY: 1962 Code Section 46‑659; 1952 Code Section 46‑659; 1949 (46) 466; 1956 (49) 1689; 1972 (57) 2270; 1991 Act No. 122, 1996 Act No. 425, Section 4; 1998 Act No. 333, Section 4.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

Attorney General’s Opinions

A pole trailer used to carry dismembered logs, end to end, does not fall within the exemption provided for by Section 56‑5‑4090 and must therefore meet with the length restrictions contained in Section 56‑5‑4090 and other applicable statutes. 1976‑77 Op.Atty.Gen. No. 77‑321, p. 254 (October 13, 1977) 1977 WL 24660.

This section [Code 1962 Section 46‑659] refers to Code 1962 Section 46‑657.1 and Code 1962 Section 46‑658 and not Code 1962 Section 46‑657 as set forth in the Code. The height requirement of thirteen feet and six inches should be followed except when provided for otherwise in the Code. 1967‑68 Op.Atty.Gen. No. 2584, p. 288 (July 25, 1968) 1968 WL 8976.

**SECTION 56‑5‑4095.** Transportation of modular or sectional housing units.

An official of the Department of Transportation designated by the secretary, in his discretion, upon application in writing and good cause being shown, may issue to a vehicle a permit in writing authorizing the applicant to operate or move upon the state’s public highways a motor vehicle and loads for transporting not more than two modular housing units or sectional housing units if the total length of the vehicle, including the load, does not exceed the length presently authorized by law and regulation for the transporting of mobile homes. No permit may be issued to any vehicle whose operation upon the public highways of this State threatens the safety of others or threatens to unduly damage a highway or any of its appurtenances.

HISTORY: 1986 Act No. 391; 1993 Act No. 181, Section 1432; 1996 Act No. 459, Section 191.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

**SECTION 56‑5‑4100.** Preventing escape of materials loaded on vehicles; cleaning the highways of escaped substances or cargo.

(A) No vehicle may be driven or moved on any public highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping from the vehicle, except that sand, salt, or other chemicals may be dropped for the purpose of securing traction, and water or other substance may be sprinkled on a roadway in the cleaning or maintaining of the roadway by the public authority having jurisdiction.

(B) Trucks, trailers, or other vehicles when loaded with rock, gravel, stone, or other similar substances which could blow, leak, sift, or drop must not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point; or, if the load is not level, unless the height of the sides of the load against all four walls does not extend above a horizontal line six inches below their tops, and the highest point of the load does not extend above their tops, when loaded at the loading point; or, if not so loaded, unless the load is securely covered by tarpaulin or some other suitable covering; or unless it is otherwise constructed so as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping from the vehicle. This subsection also includes the transportation of garbage or waste materials to locations for refuse in this State.

(C) The loader of the vehicle and the driver of the vehicle, in addition to complying with the other provisions of this section, shall sweep or otherwise remove any loose gravel or similar material from the running boards, fenders, bumpers, or other similar exterior portions of the vehicle before it is moved on a public highway.

(D) Any person operating a vehicle from which any substances or cargo, excluding water, have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon the public highway, shall make every reasonable effort to immediately cause the public highway to be cleaned of all substances and shall pay any costs for the cleaning.

If the person does not make every reasonable effort to clean the public highway promptly, the Department of Transportation or any law enforcement officer may, without the consent of the owner or carrier of the substance or cargo, remove or have removed the substance from the public highway if the substance or cargo is blocking the public highway or endangering public safety. The State, its political subdivisions, and their officers and employees are not liable for any damages to the substance or cargo that may result from the removal or the disposal of the substance or cargo unless the removal or disposal was carried out recklessly or in a grossly negligent manner. The State, its political subdivisions, and their officers and employees are not liable for any damages or claims of damages that may result from the failure to exercise any authority granted under this section. The owner, driver of the vehicle, or motor carrier of the substance or cargo removed under this subsection shall bear all reasonable costs of its removal and subsequent storage or disposition.

Nothing in this section bars a claim for damages.

(E) Any person who violates the provisions of subsections (B), (C), or (D), is guilty of a misdemeanor and, upon conviction, must be fined one hundred dollars.

(F) The provisions contained in subsections (A), (B), and (C) are not applicable to and do not restrict the transportation of seed cotton, soybeans, tobacco, poultry, livestock or silage, or other feed grain used in the feeding of poultry or livestock or of paper, wastepaper utilized for the manufacture of industrial products, paper products, forest products, or textile products.

HISTORY: 1962 Code Section 46‑660; 1952 Code Section 46‑660; 1949 (46) 466; 1978 Act No. 496 Section 18; 1988 Act No. 532, Section 10; 2004 Act No. 286, Section 3.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11, 180, 266.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 515, 804 to 806.

Attorney General’s Opinions

Turkey feathers which escape from poultry trucks en route to processing do not constitute “litter,” and drivers of such trucks should not be prosecuted for violation of Litter Control Act. 1985 Op.Atty.Gen. No. 85‑34, p 107 (April 10, 1985) 1985 WL 166004.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

If defendant knows, or in the exercise of ordinary care should know, that load is not in a condition to be safely hauled on the highway, it must assume the risk of damages caused to other parties. Hicklin v. Jeff Hunt Machinery Co. (S.C. 1955) 226 S.C. 484, 85 S.E.2d 739.

2. Review

Defendant unknown truck driver and trucking company, represented by plaintiff truck driver’s uninsured motorist insurance carriers, failed to preserve for appeal claim that punitive damages should not have been submitted to the jury because plaintiff presented no evidence defendants acted recklessly, willfully, or wantonly; while defendants argued that violation of a strict liability statute should not constitute evidence of reckless or willfulness, defendants never made that argument in the trial court and did not object to trial court’s jury instruction on punitive damages, which was based on precedent, and defendant provided no authority for the proposition that an argument against precedent was preserved for appellate review when the argument was never raised at trial and the precedent was conceded. Tucker v. Doe (S.C.App. 2015) 413 S.C. 389, 776 S.E.2d 121, rehearing denied, certiorari denied. Appeal and Error 213

**SECTION 56‑5‑4110.** Loads and covers must be firmly attached.

No person shall operate on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

HISTORY: 1962 Code Section 46‑661; 1952 Code Section 46‑661; 1949 (46) 466.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

**SECTION 56‑5‑4120.** Connections to trailers and towed vehicles; display of white flag.

When one vehicle is towing another vehicle, the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and such drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered. When one vehicle is towing another vehicle and the connection consists of a chain, rope or cable there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.

HISTORY: 1962 Code Section 46‑662; 1952 Code Section 46‑662; 1949 (46) 466.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11, 174(4).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 791.

NOTES OF DECISIONS

In general 1

1. In general

The Mini‑Tow, a triangular‑shaped towing device with four rear wheels on a single axle and one retractible front wheel, so that when attached to a motor vehicle, the motor vehicle can be used for service towing, was an “other connection” within the meaning of this section. Mini‑Tow, Inc. v. South Carolina Dept. of Highways and Public Transp. (S.C. 1978) 271 S.C. 11, 244 S.E.2d 516.

**SECTION 56‑5‑4130.** Wheel and axle loads; high and low pressure tires.

(A)(1) The gross weight upon any wheel of a vehicle shall not exceed eight thousand pounds when equipped with high‑pressure pneumatic, solid rubber or cushion tires, nor ten thousand pounds when equipped with low‑pressure pneumatic tires. The gross weight upon any one axle of a vehicle shall not exceed sixteen thousand pounds when equipped with high‑pressure pneumatic, solid rubber or cushion tires, nor twenty thousand pounds when equipped with low‑pressure pneumatic tires.

(2) On the interstate and noninterstate highways of this State, any over‑the‑road bus as defined by Title 49 of the United States Code, motorhome, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus as defined by Title 49 of the United States Code, is excluded from the axle weight limits in item (1). However, these vehicles are limited to a maximum single axle weight limit of twenty‑four thousand pounds, including all enforcement tolerances.

(B) For the purpose of this section an “axle load” shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle, every pneumatic tire designed for use and used when inflated with air to less than one hundred pounds pressure shall be deemed a “low‑pressure tire” and every pneumatic tire inflated to one hundred pounds pressure or more shall be deemed a “high‑pressure tire”.

HISTORY: 1962 Code Section 46‑663; 1952 Code Section 46‑663; 1949 (46) 466; 2016 Act No. 188 (H.4932), Section 2, eff May 25, 2016.

CROSS REFERENCES

Penalties for violation of weight limits imposed by this section, see Section 56‑5‑4160.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 15, 337.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943, 1709 to 1714.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 212, Weighing Vehicles.

S.C. Jur. Automobiles and Other Motor Vehicles Section 213, Weighing Vehicles‑Penalties; Enforcement.

Attorney General’s Opinions

Vehicles or combinations of vehicles carrying a tandem axle weight of 35,200 pounds per axle would be permitted to have an overall gross vehicle weight of 80,000 pounds to operate on the state’s interstate highway system after expiration of the moratorium on September 1, 1988. 1988 Op.Atty.Gen. No. 88‑62, p. 172 (August 23, 1988) 1988 WL 383545.

**SECTION 56‑5‑4140.** Gross weight of vehicles, combinations of vehicles, and loads; exceptions.

(A)(1) The gross weight of a vehicle or combination of vehicles, operated or moved upon any section of highway, including the interstate highway system, except where the formula in item (4) allows for a higher weight, shall not exceed:

(The following weight limits do not include applicable tolerances)

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | (a) | Single‑unit vehicle with two axles | 35,000 lbs. |
|  | (b) | Single‑unit vehicle with three axles | 46,000 lbs. |
|  | (c) | Single‑unit vehicle with four axles | 63,500 lbs. |

except, on the interstate, vehicles must meet axle spacing requirements and corresponding maximum overall gross weights, not to exceed 63,500 lbs., in accordance with the table in item (4).

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | (d) | Single‑unit vehicle with five or more axles | 65,000 lbs. |

except, on the interstate, vehicles must meet axle spacing requirements and corresponding maximum overall gross weights, not to exceed 65,000 lbs., in accordance with the table in item (4).

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | (e) | Combination of vehicles with three axle | 50,000 lbs. |
|  | (f) | Combination of vehicles with four axles | 65,000 lbs. |
|  | (g) | Combination of vehicles with five or more axles | 73,280 lbs. |

The gross weight imposed upon any highway or section of highway other than the interstate by two or more consecutive axles in tandem articulated from a common attachment to the vehicle and spaced not less than forty inches nor more than ninety‑six inches apart shall not exceed thirty‑six thousand pounds, and no one axle of any such group of two or more consecutive axles shall exceed the load permitted for a single axle. The load imposed on the highway by two consecutive axles, individually attached to the vehicle and spaced not less than forty inches nor more than ninety‑six inches apart, shall not exceed thirty‑six thousand pounds and no one axle of any such group of two consecutive axles shall exceed the load permitted for a single axle.

The ten percent enforcement tolerance specified in Section 56‑5‑4160 applies to the vehicle weight limits specified in item (1), and subsections (B) and (C). However, the gross weight on a single axle operated on the interstate may not exceed 20,000 pounds, including all enforcement tolerances; the gross weight on a tandem axle operated on the interstate may not exceed 35,200 pounds, including all enforcement tolerances; the overall gross weight for vehicles operated on the interstate may not exceed 75,185 pounds, including all enforcement tolerances except as provided in item (4).

(2) Enforcement tolerance is fifteen percent for a vehicle or trailer transporting unprocessed forest products only on noninterstate routes.

(3) Enforcement tolerance is fifteen percent for a vehicle or trailer transporting sod only on noninterstate routes.

(4) Vehicles with an overall maximum gross weight in excess of 75,185 pounds may operate upon any section of highway in the Interstate System up to an overall maximum of 80,000 pounds in accordance with the following:

The weight imposed upon the highway by any group of two or more consecutive axles may not, unless specially permitted by the Department of Public Safety, exceed an overall gross weight produced by the application of the following formula:

W = 500 (LN/N‑1 + 12N + 36)

In the formula W equals overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in the group under consideration.

As an exception, two consecutive sets of tandem axles may carry a gross load of 68,000 pounds if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The formula is expressed by the following table:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| Distance in feet | Maximum load in pounds carried | | | | | |
| between the | on any group of 2 | | | | | |
| extremes of any | of 2 or more consecutive axles | | | | | |
| group of 2 or |  |  |  |  |  |  |
| more consecutive |  |  |  |  |  |  |
| axles |  |  |  |  |  |  |
|  | 2 axles | 3 axles | 4 axles | 5 axles | 6 axles | 7 axles |
| 4 | 35,200 |  |  |  |  |  |
| 5 | 35,200 |  |  |  |  |  |
| 6 | 35,200 |  |  |  |  |  |
| 7 | 35,200 |  |  |  |  |  |
| 8 and less | 35,200 | 35,200 |  |  |  |  |
| more than 8 | 38,000 | 42,000 |  |  |  |  |
| 9 | 39,000 | 42,500 |  |  |  |  |
| 10 | 40,000 | 43,500 |  |  |  |  |
| 11 |  | 44,000 |  |  |  |  |
| 12 |  | 45,000 | 50,000 |  |  |  |
| 13 |  | 45,500 | 50,500 |  |  |  |
| 14 |  | 46,500 | 51,500 |  |  |  |
| 15 |  | 47,500 | 52,000 |  |  |  |
| 16 |  | 48,000 | 52,500 | 58,000 |  |  |
| 17 |  | 48,500 | 53,500 | 58,500 |  |  |
| 18 |  | 49,500 | 54,000 | 59,000 |  |  |
| 19 |  | 50,500 | 54,500 | 60,000 |  |  |
| 20 |  | 51,000 | 55,500 | 60,500 | 66,000 |  |
| 21 |  | 51,500 | 56,000 | 61,000 | 66,500 |  |
| 22 |  | 52,500 | 56,500 | 61,500 | 67,000 |  |
| 23 |  | 53,000 | 57,500 | 62,500 | 68,000 |  |
| 24 |  | 54,000 | 58,000 | 63,000 | 68,500 | 74,000 |
| 25 |  | 54,500 | 58,500 | 63,500 | 69,000 | 74,500 |
| 26 |  | 55,500 | 59,500 | 64,000 | 69,500 | 75,000 |
| 27 |  | 56,000 | 60,000 | 65,000 | 70,000 | 75,500 |
| 28 |  | 57,000 | 60,500 | 65,500 | 71,000 | 76,500 |
| 29 |  | 57,500 | 61,500 | 66,000 | 71,500 | 77,000 |
| 30 |  | 58,500 | 62,000 | 66,500 | 72,000 | 77,500 |
| 31 |  | 59,000 | 62,500 | 67,500 | 72,500 | 78,000 |
| 32 |  | 60,000 | 63,500 | 68,000 | 73,000 | 78,500 |
| 33 |  |  | 64,000 | 68,500 | 74,000 | 79,000 |
| 34 |  |  | 64,500 | 69,000 | 74,500 | 80,000 |
| 35 |  |  | 65,500 | 70,000 | 75,000 |  |
| 36 |  |  | 68,000 | 70,500 | 75,500 |  |
| 37 |  |  | 68,000 | 71,000 | 76,000 |  |
| 38 |  |  | 68,000 | 71,500 | 77,000 |  |
| 39 |  |  | 68,000 | 72,500 | 77,500 |  |
| 40 |  |  | 68,500 | 73,000 | 78,000 |  |
| 41 |  |  | 69,500 | 73,500 | 78,500 |  |
| 42 |  |  | 70,000 | 74,000 | 79,000 |  |
| 43 |  |  | 70,500 | 75,000 | 80,000 |  |
| 44 |  |  | 71,500 | 75,500 |  |  |
| 45 |  |  | 72,000 | 76,000 |  |  |
| 46 |  |  | 72,500 | 76,500 |  |  |
| 47 |  |  | 73,500 | 77,500 |  |  |
| 48 |  |  | 74,000 | 78,000 |  |  |
| 49 |  |  | 74,500 | 78,500 |  |  |
| 50 |  |  | 75,500 | 79,000 |  |  |
| 51 |  |  | 76,000 | 80,000 |  |  |
| 52 |  |  | 76,500 |  |  |  |
| 53 |  |  | 77,500 |  |  |  |
| 54 |  |  | 78,000 |  |  |  |
| 55 |  |  | 78,500 |  |  |  |
| 56 |  |  | 79,500 |  |  |  |
| 57 |  |  | 80,000 |  |  |  |

(B) On the interstate and noninterstate highways of this State, any over‑the‑road bus as defined in Title 49 of the United States Code, motorhome, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus as defined in Title 49 of the United States Code, is excluded from the axle spacing requirements in subsection (A). However, these vehicles are limited to a maximum single axle weight limit of twenty‑four thousand pounds, including all enforcement tolerances.

(C) Except on the interstate highway system:

(1) Dump trucks, dump trailers, trucks carrying agricultural products, concrete mixing trucks, fuel oil trucks, line trucks, and trucks designated and constructed for special type work or use are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to a weight of twenty thousand pounds for each axle plus scale tolerances and the maximum gross weight of these vehicles may not exceed the maximum weight allowed by subsection (A)(1) for the appropriate number of axles, plus allowable scale tolerances.

(2) Concrete mixing trucks which operate within a fifteen‑mile radius of their home base are not required to conform to the requirements of this section. However, these vehicles are limited to a maximum load of the rated capacity of the concrete mixer, the true gross load not to exceed sixty‑six thousand pounds. All of these vehicles shall have at least three axles each with brake‑equipped wheels.

(3) Well‑drilling, boring rigs, and tender trucks are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to seventy thousand pounds gross vehicle weight and twenty‑five thousand pounds for each axle plus scale tolerances.

HISTORY: 1962 Code Section 46‑664; 1952 Code Section 46‑664; 1949 (46) 466; 1963 (53) 76, 122; 1967 (55) 561, 1024; 1970 (56) 2041; 1976 Act No. 569 Section 1; 1980 Act No. 500, Section 2; 1983 Act No. 151 Part III Section 28B; 1985 Act No. 199, Section 2; 1986 Act No. 373, Section 3; 1993 Act No. 164, Part II, Section 92; 1993 Act No. 181, Section 1433; 1996 Act No. 459, Section 192; 1996 Act No. 461, Section 5; 2008 Act No. 234, Section 3, eff upon approval (became law without the Governor’s signature on May 22, 2008); 2009 Act No. 60, Section 1, eff June 2, 2009; 2016 Act No. 188 (H.4932), Section 3, eff May 25, 2016.

CROSS REFERENCES

Provisions relating to exemptions, annual permits for certain vehicles, and maximum width for exempt vehicles, see Section 56‑5‑4020.

Provisions relating to weighing vehicles and loads, unloading excess weight, and penalties, see Section 56‑5‑4160.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 15, 337.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943, 1709 to 1714.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 209, Size and Weight Limits, Generally.

S.C. Jur. Automobiles and Other Motor Vehicles Section 212, Weighing Vehicles.

S.C. Jur. Automobiles and Other Motor Vehicles Section 213, Weighing Vehicles‑Penalties; Enforcement.

Attorney General’s Opinions

The state’s treatment of tandem axle limits is separate and distinct from gross weight limits, and fully complies with federal law regarding tandem axle limits under the grandfathering provisions in the federal law. S.C. Op.Atty.Gen. (September 29, 1997) 1997 WL 665450.

NOTES OF DECISIONS

In general 1

1. In general

Three‑axle sanitation truck, as a truck designed and constructed for special type of work, was authorized to weigh 66,000 pounds, representing 20,000 pounds per axle plus a ten percent scale tolerance of 6,000 pounds, under statute regulating the maximum gross weight of vehicles driven on South Carolina roads, and was not subject to the limit of 46,000 pounds on gross weight of a three‑axle general vehicle. State v. Sweat (S.C. 2010) 386 S.C. 339, 688 S.E.2d 569. Automobiles 337

Maximum weight for three‑axle sanitation truck, as a truck designed and constructed for special type of work, was 66,000 pounds representing 20,000 pounds per axle plus a ten percent scale tolerance of 6,000 pounds, under statutory provision capping maximum allowable weight of vehicles at an amount directly proportional to number of axles; only vehicles with four to seven axles could carry an 88,000 pound maximum load. State v. Sweat (S.C. 2010) 386 S.C. 339, 688 S.E.2d 569. Automobiles 337

**SECTION 56‑5‑4145.** Limitations as to weight, width, and vehicle combinations on Grace Memorial Bridge.

(a) The weights stated in Sections 56‑5‑4070, 56‑5‑4075 and 56‑5‑4140 are applicable to all roads and bridges as designated except the Grace Memorial Bridge in Charleston County on which trucks of no greater weight than ten tons are allowed.

(b) The Grace Memorial Bridge (U.S. Route 17 over the Cooper River in Charleston County) is not a designated route in accordance with the provisions of the Surface Transportation Assistance Act of 1982 [49 USCS Appx Sections 2301 et seq.]. Vehicles being operated or used on such segment of highway may not exceed a width of ninety‑six inches nor exceed the gross weight limit as posted by the Department of Transportation, except during emergency conditions as determined by the Department of Transportation. Vehicle combinations of a truck‑tractor, trailer or a truck‑tractor, semitrailer or a truck‑tractor, semitrailer, trailer or a truck‑tractor, trailer‑trailer are prohibited from being operated or used on this segment of highway.

HISTORY: 1986 Act No. 373, Sections 7, 8; 1993 Act No. 181, Section 1434.

CROSS REFERENCES

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

Library References

Automobiles 11, 15.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 49 to 50, 942 to 943.

**SECTION 56‑5‑4150.** Investigation of vehicles; registration according to load capacity; marking empty weight on farm trucks; marking name of registered owner or lessor on certain vehicles.

(A) The Department of Motor Vehicles upon registering a vehicle, under the laws of this State, which is designed and used primarily for the transportation of property or for the transportation of ten or more persons, may require information and may make investigation or tests necessary to enable it to determine whether the vehicle may be operated safely upon the highways in accordance with all the provisions of this chapter. The department may register the vehicle for a load capacity which, added to the empty or unloaded weight of the vehicle, will result in a permissible gross weight not exceeding the limitations set forth in this chapter. It is unlawful for a person to operate a vehicle or combination of vehicles with a load capacity in excess of that for which it is registered by the department or in excess of the limitations set forth in this chapter. A person making application for a “farm truck” license shall declare in the form prescribed by the department the true unloaded or empty weight of the vehicle and shall stencil or mark in a conspicuous place on the left side of the vehicle the true unloaded or empty weight if the unloaded or empty weight is over five thousand pounds. A “farm truck” operating solely in intrastate commerce and otherwise specified in Section 56‑5‑225 is not required to have the name of the registered owner, lessor, or lessee stenciled or otherwise marked on the vehicle.

(B) A private motor truck or truck tractor equal to or exceeding 26,001 pounds gross weight and a for‑hire motor truck or truck tractor must have the name of the registered owner or lessor on the side clearly distinguishable at a distance of fifty feet. These provisions do not apply to two‑axle straight trucks hauling raw farm and forestry products. Except as provided in subsection (A) concerning certain “farm trucks”, a truck operating pursuant to the federal motor carrier safety regulations must operate with the owner’s, lessor’s, or lessee’s name as required.

HISTORY: 1962 Code Section 46‑665; 1952 Code Section 46‑665; 1949 (46) 466; 1959 (51) 391; 1977 Act No. 47; 1978 Act No. 491; 1983 Act No. 20; 1992 Act No. 498, Section 1; 1993 Act No. 164, Part II, Section 39C; 1993 Act No. 181, Section 1435; 1996 Act No. 459, Section 193; 2012 Act No. 180, Section 5, eff May 25, 2012.

CROSS REFERENCES

Application for registration and licensing including a statement of the load capacity for which a property‑carrying vehicle is to be registered, see Section 56‑3‑240.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

State Transport Police regulations, marking of commercial motor vehicles, see S.C. Code of Regulations R. 38‑390.21.

Library References

Automobiles 15.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

Attorney General’s Opinions

Wreckers are not required by Section 56‑5‑4150, S. C. Code of Laws (1976), as amended, to have the name of the registered owner placed on the side of the vehicle. 1978 Op.Atty.Gen. No. 78‑63, p. 91 (March 29, 1978) 1978 WL 22544.

**SECTION 56‑5‑4160.** Weighing vehicles and loads; unloading excess weight; penalties.

(A) An officer or agent of the Department of Public Safety having reason to believe that the weight of a vehicle and load is unlawful may require the driver to stop and submit to a weighing of the vehicle and load either by means of portable or stationary scales and may require that the vehicle be driven to the nearest public scales. Whenever an officer upon weighing a vehicle and load determines that the weight is unlawful, he may require the driver to stop the vehicle in a suitable place and remain standing until the portion of the load necessary to reduce the axle weight, or gross weight of the vehicle, or both, to the limits permitted under this chapter is removed. All material unloaded must be cared for by the owner or operator of the vehicle at his own risk. In determining whether the limits established by Section 56‑5‑4130 or 56‑5‑4140 have been exceeded, the scaled weights of the gross weight of vehicles and combinations of vehicles are considered to be not closer than ten percent to the true gross weight, except as otherwise provided in Section 56‑5‑4140.

(B) A person who operates a vehicle on a public highway whose axle weight is in excess of the limits imposed by Section 56‑5‑4130 or 56‑5‑4140 is guilty of a misdemeanor and, upon conviction, must be fined five cents per pound or imprisoned not more than thirty days, or both. If a vehicle does not exceed the gross weight limits provided for by this article, and the axle weight limits are not exceeded by more than five percent including enforcement tolerances, the fine imposed is reduced by fifty percent with a minimum fine of twenty‑five dollars.

(C) A person who operates a vehicle found to exceed the excess gross weight limitations imposed by Section 56‑5‑4130 or 56‑5‑4140 is guilty of a misdemeanor and, upon conviction, shall pay to the Department of Public Safety a fine based on the following scale:

(1) 500‑3,500 pounds: four cents per pound over weight limit;

(2) 3,501‑6000 pounds: six cents per pound over weight limit, beginning with the first pound in excess;

(3) 6,001 pounds and over: ten cents per pound over weight limit, beginning with the first pound in excess.

The fine imposed pursuant to items (1) and (2) must be equal to one‑half the rate for vehicles transporting raw farm or forest products from the farm or forest to the first market, or by fully enclosed motor vehicles designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters, or by motor vehicles operating open top trailers used for hauling recyclables, scrap, and waste materials from sites without facilities for weighing, when operating for those purposes. If an operator is found to be in violation of both gross and axle limits, only one citation may be issued, the fine being for the greater of the two, for that load. No fine may be issued for violation of the vehicle registration statutes if that vehicle is registered for the maximum allowable weight for that class of vehicle as provided in Section 56‑5‑4140.

If the operator of the vehicle, upon conviction, fails to remit the fine imposed by this subsection to the Department of Public Safety, the owner of the vehicle is responsible for remitting the fine. The court is prohibited from suspending any portion of this fine.

(D)(1) A person who operates a vehicle found to have out‑of‑service violations, other than violations of brakes out of adjustment and lighting violations which can be repaired at the scene, detected during a roadside inspection, is guilty of a misdemeanor and, upon conviction, shall pay to the Department of Public Safety a fine of two hundred dollars.

(2)(a) An individual who operates a commercial motor vehicle on a public highway whose vehicle or driver is in violation of the out‑of‑service order as defined in 49 CFR 390.5 is guilty of a misdemeanor and, upon conviction, must be fined five hundred dollars.

(b) A company or individual who operates or allows a commercial motor vehicle to be operated on a public highway in violation of a motor carrier operation out‑of‑service order, or order to cease operation, is guilty of a misdemeanor and, upon conviction, must be fined one thousand dollars.

(3) If the operator of the vehicle, upon conviction, fails to remit the fine imposed by this subsection to the Department of Public Safety, the owner of the vehicle is responsible for remitting the fine. The court is prohibited from suspending any portion of this fine.

(E) At the time that a uniform size, weight, and safety citation is issued pursuant to this section, the officer or agent who is authorized to issue the citation must inform the individual receiving the citation that he has the option, at that time, to elect to pay his fine directly to the Department of Public Safety or to receive a hearing in magistrate’s court. If the individual at the time the citation is issued elects to pay his fine directly to the department within twenty‑eight days, as specified on the citation, no assessments may be added to the original fine pursuant to this section. The fine may be deposited with the arresting officer or a person the department may designate. The fine must be deposited in full or other arrangements satisfactory to the department for payment must be made before the operator is allowed to move the vehicle.

(F) Magistrates have jurisdiction of all contested violations of this section. All monies collected pursuant to Section 56‑5‑4160 must be forwarded to the Department of Public Safety as provided for in this section. A magistrate, within forty‑five days, must forward all monies collected to the department for deposit in the account established in this section. The department shall use these monies to establish and maintain automated data bases, to upgrade and refurbish existing weigh stations, to purchase and maintain portable scales, to hire additional State Transport Police Officers, to purchase equipment for State Transport Police Officers, and to procure other commercial motor vehicle safety measures, and fund other commercial motor vehicle safety programs that the department considers necessary. The fine may be deposited with the arresting officer or a person the department may designate. The fine must be deposited in full or other arrangements satisfactory to the department for payment must be made before the operator is allowed to move the vehicle. If there is no conviction, the fine must be returned to the owner promptly.

“Conviction”, as used in this section, also includes the entry of a plea of guilty or nolo contendere and the forfeiture of bail or collateral deposited to secure a defendant’s presence in the court.

If the fine is not paid in full to the Department of Public Safety within forty‑five days after conviction, the license and registration of the vehicle found to violate Section 58‑23‑1120 or Regulations 38‑423 et seq. or exceed the limits imposed by Section 56‑5‑4130 or 56‑5‑4140 must be suspended. The owner of the vehicles immediately shall return the license and registration of the vehicle to the Department of Motor Vehicles. If a person fails to return them as provided in this section, the Department of Motor Vehicles may secure possession of them by a commissioned trooper or officer. The suspension continues until the fine is paid in full.

(G) The Department of Public Safety shall provide a separate uniform citation to be used by the State Transport Police Division of the Department of Public Safety. The uniform citation must be used for all size, weight, idling, and safety violations which the State Transport Police Division of the Department of Public Safety is primarily responsible for enforcing.

(H) The issuance of a uniform citation to the operator of a vehicle for a violation of this section, Section 58‑23‑1120, or Regulation 38‑423, et seq., constitutes notice to the owner of the violation. The uniform citation must include the following language in bold letters to be printed across the bottom of the citation “THE ISSUANCE OF A UNIFORM CITATION NOTICE TO THE OPERATOR OF A VEHICLE CONSTITUTES NOTICE TO THE OWNER OF A SIZE, WEIGHT, IDLING, OR SAFETY VIOLATION”.

(I) An individual who fails to conduct a safety inspection of a vehicle as required by Part 396 of the Federal Motor Carrier Safety Regulations or fails to have in his possession documentation that an inspection has been performed must be fined one hundred dollars per vehicle operated in violation of this subsection.

(J) Motor carriers, officers, or agents in charge of them, who fail or refuse to permit authorized State Transport Police representatives or employees to examine and inspect their books, records, accounts, and documents, or their plants, property, or facilities, as provided by law and with reasonable notice, are guilty of a misdemeanor. Each day of such failure or refusal constitutes a separate offense and each offense is punishable by a fine of one thousand dollars.

(K) Notwithstanding any other provision of law, all fines collected pursuant to this section must be deposited into an account in the Office of the State Treasurer and called the “Size, Weight, and Safety Revitalization Program Fund for Permanent Improvements”. Monies credited to the fund may only be expended as authorized in item (F) of this section.

(L) Notwithstanding any other provision of law, the maximum gross vehicle weight and axle weight limit for a vehicle or combination of vehicles equipped with an idle reduction system, as provided for in 23 U.S.C. 127, may be increased by an amount equal to the weight of the system, not to exceed five hundred fifty pounds. Upon request by a law enforcement officer, the vehicle operator must provide proof that the system is fully functional and that the vehicle’s gross weight increase allowed pursuant to this section is attributable only to the system.

(M) Any motor vehicle that is fueled primarily by natural gas shall be allowed to exceed the gross, single axle, tandem axle, or bridge formula weight limits, including tolerances, by no more than two thousand pounds each individually weighed, up to a maximum gross vehicle weight of eighty‑two thousand pounds on the interstate, by an amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system. To be eligible for this exception, the operator of the vehicle must be able to demonstrate that the vehicle is a natural gas vehicle, a biofuel vehicle using natural gas, or a vehicle that has been converted to a natural gas vehicle. The operator shall provide documentation which certifies the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

HISTORY: 1962 Code Section 46‑666; 1952 Code Section 46‑666; 1949 (46) 466; 1980 Act No. 500 Section 3; 1989 Act No. 167, Section 4; 1990 Act No. 612, Part II, Section 48; 1993 Act No. 164, Part II, Section 20A; 1993 Act No. 181, Sections 1436, 1437; 1996 Act No. 459, Section 194; 2006 Act No. 381, Section 12, eff 90 days after approval by the governor (approved June 13, 2006); 2008 Act No. 234, Sections 2, 7, eff upon approval (became law without the Governor’s signature on May 22, 2008); 2016 Act No. 188 (H.4932), Sections 4, 5, eff May 25, 2016.

CROSS REFERENCES

Provision that registration fees to be paid for vehicles exceeding 80,000 pounds gross vehicle weight are in addition to fees or penalties which may be required in accordance with this section, see Section 56‑3‑660.

Provisions relating to gross weight of vehicles, combinations of vehicles, and loads, and exceptions, see Section 56‑5‑4140.

Special permit for vehicle exceeding maximum size, weight, or load or otherwise not in conformity with this Article 33, see Section 57‑3‑130.

This section provides exception to percentage formula for allocating monies generated by courts from fines and assessments, see Section 14‑1‑205.

Library References

Automobiles 15, 337, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943, 1529, 1545, 1572, 1656, 1707, 1709 to 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 212, Weighing Vehicles.

S.C. Jur. Automobiles and Other Motor Vehicles Section 213, Weighing Vehicles‑Penalties; Enforcement.

Attorney General’s Opinions

Discussion of the collection of fines by the State Transport Police for certain violations of the Uniform Act Regulating Traffic on Highways. S.C. Op.Atty.Gen. (September 18, 2013) 2013 WL 5494616.

There is no violation of due process rights or equal protection in the requirement that weight violators pay the fine directly or receive a hearing and either not pay the fine if successful, or pay the fine plus additional fees if not successful. S.C. Op.Atty.Gen. (September 12, 1995) 1995 WL 805735.

Discussion of fees and assessments that should be collected for axle weight violations and gross weight violations. S.C. Op.Atty.Gen. (July 2, 1991) 1991 WL 632994.

**SECTION 56‑5‑4170.** Intermodal trailer, chassis, or container; tender; safety inspections; penalties and repairs; exceptions.

(A) For purposes of enforcing this section, “vehicle” means intermodal trailer, chassis, or container.

(B) A tender shall not tender or interchange a vehicle for use on any highway which is in violation of the requirements contained in the United States Department of Transportation Federal Motor Carrier Safety Regulations (FMCSR). A motor carrier shall not certify or guarantee to a person tendering or interchanging a vehicle to a motor carrier that the vehicle complies with the FMCSR unless the tenderer of the vehicle provides the motor carrier operator with certification that the vehicle meets FMCSR requirements. Before an operator may accept a vehicle, the tenderer must allow the motor carrier operator adequate equipment, time, and facilities to conduct a walk‑around pre‑trip inspection of the vehicle. If the vehicle fails to meet federal safety requirements, the tenderer immediately must make any necessary repairs to the vehicle so that it complies with applicable safety standards or immediately make available a replacement vehicle which meets the safety requirements.

(C) The Department of Public Safety State Transport Police, if requested by the State Ports Authority, may as a public safety service, enter upon, and perform courtesy inspections of vehicles for purposes of identifying and tagging vehicles which may require mechanical work before being tendered for use on public highways.

(D) If a vehicle that is tendered is placed out of service as a result of a roadside inspection within five complete working days from the time the motor carrier is tendered, the vehicle as indicated on the equipment interchange agreement, then the operator must be reimbursed for all fines and penalties incurred pursuant to the out‑of‑service order, including reimbursement for all equipment repair expenses necessary to bring the vehicle into compliance with FMCSR, unless the fines, penalties, or repair expenses are due to actions or omissions of the motor carrier operator after the vehicle was tendered. Reimbursement must be made to the operator no later than thirty days after the date of conviction and must include payment for the following equipment repairs:

(1) Brake Adjustments:

push rod travel exceeds limits.

(2) Brake Drum:

(a) drum cracks;

(b) lining thickness loose or missing;

(c) lining saturated with oil.

(3) Inoperative Brakes:

(a) no movement of any components;

(b) missing or broken (loose) components;

(c) mismatch components.

(4) Air Lines and Tubing:

(a) bulge and swelling;

(b) audible leak other than proper connection;

(c) air lines broken, cracked, or crimped.

(5) Reservoir Tank:

any separation of original attachment points.

(6) Frames:

(a) any cracked, loose, sagging, or broken frame members which measured one and one‑half inch in web or one inch or longer in bottom flange or any crack extending from web radius into bottom flange;

(b) any condition which causes moving parts to come in contact with the frame.

(7) Electrical.

(8) Wheel Assembly:

(a) low or no oil;

(b) oil leakage on brake components.

(9) Tire Separation:

(a) tire separation from casing;

(b) two inches of plies exposed.

(10) Rim Cracks:

(a) any circumferential crack except manufactured;

(b) lock or side ring cracked, bent, broken, sprung, improperly seated, or mismatched.

(11) Suspension:

(a) spring assembly leaves broken, missing, or separated;

(b) spring hanger, u‑bolts, or axle positioning components cracked, broken, loose, or missing.

(12) Chassis Locking Pins:

any twist lock or fitting for securement which is sprung, broken, or improperly latched.

(E) If the originating motor carrier interchanges the vehicle to another mode of transportation or warehouse in substantially the same condition as it was tendered originally to the motor carrier, the originating motor carrier is relieved of any further responsibility for the condition of the vehicle.

(F) The Department of Public Safety shall develop and maintain a separate database on roadside vehicle inspection reports for power unit defects and for defects on any vehicle tendered to the motor carrier. The database may be used to identify and monitor those entities whose responsibility it is to provide any vehicle to motor carriers in roadworthy conditions as prescribed by the FMCSR. Roadside vehicle inspection reports noting defects on any vehicle where there is not ownership by the motor carrier must not be used or applied against the motor carrier when this information may affect the motor carrier’s overall record of compliance with the FMCSR.

(G) Nothing in this section prevents a tenderer who is a railroad or a rail intermodal carrier and a motor carrier operator from agreeing to a different allocation of responsibility for compliance of a vehicle with the requirements of this section when the vehicle is owned or has been in the possession of or under the control of a railroad or rail intermodal carrier. This subsection does not apply to Section 56‑5‑4170(E).

HISTORY: 1998 Act No. 410, Section 1.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

**SECTION 56‑5‑4192.** Authorization; movement of mobile homes on Saturday.

Open‑end permits issued pursuant to the provisions of Chapter 3, Title 57 shall authorize the movement of a mobile home on the highways of this State on a Saturday.

HISTORY: 1994 Act No. 439, Section 2; 1996 Act No. 459, Section 195.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

**SECTION 56‑5‑4210.** Reduced load, weight, and speed limits; special regulation or prohibition of specified classes or sizes of vehicles; posting of notices.

Anything in this article to the contrary notwithstanding, the Department of Transportation with respect to state highways and local authorities with respect to highways under their jurisdiction may prescribe, by notice as herein provided, loads and weights and speed limits lower than the limits prescribed in this chapter and other laws, whenever in their judgment any road or part thereof or any bridge or culvert shall by reason of its design, deterioration, rain or other climatic or natural causes be liable to be damaged or destroyed by motor vehicles, trailers or semitrailers, if the gross weight or speed limit thereof shall exceed the limits prescribed in such notice. And the Department of Transportation or such local authority may, by like notice, regulate or prohibit, in whole or in part, the operation of any specified class or size of motor vehicle, trailer or semitrailer on any highways or specified parts thereof under its jurisdiction, whenever in its judgment, such regulation or prohibition is necessary to provide for the public safety and convenience on such highways or parts thereof by reason of traffic density, intensive use thereof by the traveling public or other reasons of public safety and convenience. The notice or the substance thereof shall be posted at conspicuous places at terminals of and all intermediate cross‑roads and road junctions with the section of highway to which such notice shall apply. After any such notice shall have been posted, the operation of any motor vehicle or combination contrary to its provisions shall constitute a violation of this chapter.

HISTORY: 1962 Code Section 46‑668; 1952 Code Section 46‑668; 1949 (46) 466; 1993 Act No. 181, Section 1445.

Library References

Automobiles 15.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 210, Reduced Limits; Prohibited Vehicles.

**SECTION 56‑5‑4220.** Local restrictions under Section 56‑5‑4210; approval by Department of Transportation.

No limitation shall be established by any county, municipal or other local authority pursuant to the provisions of Section 56‑5‑4210 that would interfere with or interrupt traffic as authorized hereunder over state highways, including officially established detours for such highways and cases where such traffic passes over roads, streets or thoroughfares within the sole jurisdiction of such county, municipal or other local authority, unless such limitations and further restrictions shall have first been approved by the Department of Transportation, except that with respect to county roads, other than such as are in use as state highway detours, the respective county road authorities shall have full power and authority to further limit the weights of vehicles upon bridges and culverts upon such public notice as they deem sufficient, and existing laws applicable thereto shall not be affected by the terms of this article.

HISTORY: 1962 Code Section 46‑669; 1952 Code Section 46‑669; 1949 (46) 466; 1993 Act No. 181, Section 1446.

Library References

Automobiles 7.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 24, 28, 30 to 31, 33 to 38.

**SECTION 56‑5‑4230.** Liability for damages to highway or highway structure.

Any person driving or moving any vehicle, object or contrivance upon any highway or highway structure shall be liable for all damages which such highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicles, objects or contrivances or whether such damage is a result of operating, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weights as provided in this article but authorized by special permit issued pursuant to Section 56‑5‑4170. Whenever such driver is not the owner of such vehicle, object or contrivance, but is so operating, driving or moving it with the express or implied permission of such owner, the owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in any civil action brought by the authorities in control of such highway or highway structure.

HISTORY: 1962 Code Section 46‑670; 1952 Code Section 46‑670; 1949 (46) 466.

CROSS REFERENCES

Provisions relating to exemptions; annual permits for certain vehicles; and maximum width for exempt vehicles, see Section 56‑5‑4020.

Library References

Automobiles 15.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 211, Liability for Damages to Highway.

**SECTION 56‑5‑4240.** Commercial motor vehicle and its driver.

(A) Except as otherwise provided by law or through regulations promulgated by the Department of Public Safety, a commercial motor vehicle (CMV) and its driver operating in intrastate commerce with a gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), and gross combination weight rating (GCWR) equal to or exceeding 26,001 pounds must meet the requirements of the Federal Motor Carrier Safety Regulations, as enforced exclusively by the State Transport Police Division of the Department of Public Safety.

(B) CMVs operating below 26,001 pounds are exempt from the regulations cited in subsection (A).

(C) A CMV or its driver is not exempt from the regulations cited in subsection (A) regardless of weight, if the vehicle is:

(1) designed or used to transport sixteen or more passengers, including the driver; or

(2) used in the transportation of hazardous materials and is required to be placarded pursuant to 49 C. F. R. part 172, subpart F.

HISTORY: 2012 Act No. 180, Section 2, eff May 25, 2012.

Federal Aspects

Placarding, hazardous materials regulations, see 49 C.F.R. Section 172.500 et seq.

Library References

Automobiles 15.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 49 to 50, 942 to 943.

ARTICLE 35

Equipment and Identification

**SECTION 56‑5‑4410.** Unlawful to operate unsafe or improperly equipped vehicle or to violate provisions of article.

It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such an unsafe condition as to endanger any person or property or which does not contain those parts or is not at all times equipped with lights, brakes, steering and other equipment in proper condition and adjustment as required in this article or which is equipped in any manner in violation of this article or for any person to do any act forbidden or fail to perform any act required under this article.

HISTORY: 1962 Code Section 46‑511; 1952 Code Section 46‑511; 1949 (46) 466.

CROSS REFERENCES

Miscellaneous traffic rules, see Sections 56‑5‑3810 et seq.

Provision that, with the exception of this article, inter alia, this chapter applies to the operation of mopeds on public roads, see Section 56‑5‑50.

Size, weight and load, see Sections 56‑5‑4010 et seq.

Library References

Automobiles 327 to 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1639 to 1640, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 193, Mopeds.

S.C. Jur. Automobiles and Other Motor Vehicles Section 214, Operation of Unsafe or Nonconforming Vehicle Prohibited.

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

NOTES OF DECISIONS

In general 1

1. In general

Where there is evidence from which the jury can reasonably infer that one is in violation of a statute, that evidence will support a charge of that statute. Thus, in a wrongful death action arising from an automobile accident, the trial judge did not commit error in charging Sections 56‑5‑4410 and 56‑5‑5310, even though the testimony regarding the condition of the brakes on the decedent’s automobile was circumstantial, since the evidence was sufficient to create a question of fact as to whether the decedent was operating a vehicle with defective brakes and was therefore contributorily negligent. Jefferson v. Synergy Gas, Inc. (S.C.App. 1991) 303 S.C. 479, 401 S.E.2d 427.

Although the owner or operator of a motor vehicle generally is not liable for an injury resulting from its defective condition in the absence of negligence on the part of the owner, before the owner operates the motor vehicle upon the highway, he or she has a duty to exercise reasonable care to see that the vehicle is in such safe mechanical condition as not to endanger any person or property. In order to fulfill this duty, the owner must make reasonable inspection of the vehicle to discover conditions that present an unreasonable risk of harm to others, and he is chargeable with knowledge of any defects that such an inspection would disclose. However, the owner of a motor vehicle does not have a general duty to inspect either the work or the invoice of a mechanic after he completes maintenance or repairs if (1) the work is of a kind within the competence of the ordinary mechanic performing that type of work; (2) the defect in the work is not of a character that would make it apparent to a person of ordinary prudence in the owner’s position; and (3) the owner reasonably relies on the competence of the mechanic as a sufficient assurance that the vehicle is safe to operate. Carter v. R.L. Jordan Oil Co., Inc. (S.C.App. 1988) 294 S.C. 435, 365 S.E.2d 324, reversed 299 S.C. 439, 385 S.E.2d 820, on remand 301 S.C. 84, 390 S.E.2d 367.

**SECTION 56‑5‑4420.** Special rules for implements of husbandry, farm tractors, and road machinery.

The provisions of this article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery or farm tractors except as herein made applicable. Every farm tractor equipped with an electric‑lighting system shall at all times mentioned in Section 56‑5‑4450 display a red tail lamp and either a multiple‑beam or single‑beam road‑lighting equipment meeting the requirements of Sections 56‑5‑4510 to 56‑5‑4530, 56‑5‑4770 and 56‑5‑4790, respectively.

HISTORY: 1962 Code Section 46‑512; 1952 Code Section 46‑512; 1949 (46) 466.

CROSS REFERENCES

When lighted lamps are required on farm tractors, road machinery, etc., see Section 56‑5‑4650.

Library References

Automobiles 11.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37.

NOTES OF DECISIONS

In general 1

1. In general

Where motorist about dark suddenly turned to his left into path of oncoming automobile in which decedent was riding in order to avoid colliding with rear of improperly lighted farm tractor, nonobservance by owner of tractor of statutes prescribing requirements for lighting of vehicles was properly considered a proximate cause of injury to decedent. Code 1962, Section 46‑512. Zorn v. Crawford (S.C. 1969) 252 S.C. 127, 165 S.E.2d 640.

**SECTION 56‑5‑4430.** Additional parts and accessories not prohibited.

Nothing contained in this article shall be construed to prohibit the use of additional parts and accessories of any vehicle which are not inconsistent with the provisions of this article.

HISTORY: 1962 Code Section 46‑513; 1952 Code Section 46‑513; 1949 (46) 466.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

**SECTION 56‑5‑4435.** Safety equipment required for motor vehicles used in vending food.

A motor vehicle which performs business in a residential or abundant housing area and makes frequent or unscheduled stops for the purpose of vendor sales of frozen dairy products or other types of snack foods must be equipped with the following safety features:

(1) an audible alarm signal device when the vehicle is in reverse gear, but the signal must not emit an unreasonably loud or harsh sound;

(2) signal lamps mounted on the front and on the rear as high and as widely spaced laterally as practicable, which are capable of displaying two alternately flashing red lights at the same level. These lights must have sufficient intensity to be visible at five hundred feet in normal sunlight;

(3) an extended mirror outside on both the right and left side of the vehicle to reflect to the driver a view of the street or highway for a distance of at least two hundred feet behind the vehicle;

(4) a rear mirror situated to provide the operator a view of the area immediately behind the vehicle; and

(5) a swing arm located on the front and rear of the vehicle that prohibits a person from walking directly in front of or behind the vehicle. The swing arm must be engaged when the vehicle is stopped for the purpose of vending products.

This section does not apply to a vehicle that delivers or distributes foods to commercial properties or construction sites only.

HISTORY: 1994 Act No. 303, Section 1.

Library References

Automobiles 148, 149, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 633, 666, 681, 1639.

**SECTION 56‑5‑4440.** Image display devices.

(A) As used in this section, “image display device” means equipment capable of displaying to the driver of a motor vehicle:

(1) a broadcast television image; or

(2) a visual image, other than text, from a digital video disc or other storage device.

(B) Except as provided in subsection (E) of this section, no person shall drive a motor vehicle equipped with any image display device which is located in the motor vehicle at any point forward of the back of the driver’s seat, or which is visible, directly or indirectly, to the driver while operating the motor vehicle.

(C) Except as provided in subsection (E) of this section, no person may install in a motor vehicle an image display device intended to be visible to a driver in the normal driving position when the vehicle is in motion and when restrained by the vehicle seat belts adjusted in accordance with the manufacturer’s recommendations.

(D) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

(E) Subsections (B) and (C) of this section do not apply to the following:

(1) emergency vehicles;

(2) image display devices that are displaying images that provide the driver with navigation and related traffic, road, and weather information;

(3) image display devices providing vehicle information or information related to the driving task;

(4) image display devices used to enhance or supplement the driver’s view forward, behind, or to the sides of the motor vehicle;

(5) image display devices that permit the driver to monitor vehicle occupants seated rearward of the driver;

(6) image display devices that do not display images to the driver while the vehicle is in motion; or

(7) any use of an image display device while a vehicle is parked.

HISTORY: 1962 Code Section 46‑514; 1965 (54) 323; 2008 Act No. 285, Section 3, eff June 11, 2008.

Library References

Automobiles 327, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1639, 1656, 1707, 1714, 1743.

**SECTION 56‑5‑4445.** Unlawful to elevate or lower motor vehicle; exception for “pickup trucks”.

It shall be unlawful for any person to drive a passenger motor vehicle on the highways of this State which has been elevated or lowered either in front or back more than six inches by a modification, alteration or change in the physical structure of the vehicle. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty‑five dollars nor more than fifty dollars. Provided, however, this shall not apply to motor vehicles commonly called “pickup trucks”.

HISTORY: 1978 Act No. 447.

Library References

Automobiles 327, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1639, 1656, 1707, 1714, 1743.

**SECTION 56‑5‑4450.** Times when vehicles must be equipped with lights.

Section effective until November 19, 2018. See, also, section 56‑5‑4450 effective November 19, 2018.

Every vehicle upon a street or highway within this State shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead as required in this article for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided in this article; provided, however, the provisions of this section requiring use of lights in conjunction with the use of windshield wipers shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow.

Until January 1, 1989, any person who fails to display the lights of a vehicle he is operating when lights are required by this section due to inclement weather or environmental factors may be issued only a warning ticket.

Any person who violates this section is guilty of a misdemeanor and, upon conviction, may be fined up to twenty‑five dollars.

HISTORY: 1962 Code Section 46‑521; 1952 Code Section 46‑521; 1949 (46) 466; 1988 Act No. 532, Section 11.

**SECTION 56‑5‑4450.** Times when vehicles must be equipped with lights.

Section effective November 19, 2018. See, also, section 56‑5‑4450 effective until November 19, 2018.

(A) Every vehicle upon a street or highway within this State shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead as required in this article for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided in this article; provided, however, the provisions of this section requiring use of lights in conjunction with the use of windshield wipers shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow.

(B) Any person who violates this section is guilty of a misdemeanor and, upon conviction, may be fined up to twenty‑five dollars.

HISTORY: 1962 Code Section 46‑521; 1952 Code Section 46‑521; 1949 (46) 466; 1988 Act No. 532, Section 11; 2017 Act No. 89 (H.3247), Section 27, eff November 19, 2018.

Effect of Amendment

2017 Act No. 89, Section 27, inserted the paragraph identifiers, and deleted the second paragraph of (A), which had related to warning tickets for failure to display the lights of a vehicle.

CROSS REFERENCES

Lamps on bicycles, see Section 56‑5‑3470.

Speed restriction on motor‑driven cycles with head lamps of limited intensity, see Section 56‑5‑1550.

Library References

Automobiles 328, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1640, 1656, 1707, 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

Attorney General’s Opinions

Operators of motorcycles which are approved for daylight use only are exempted from the operation of section 56‑5‑4460 of the Code of South Carolina (1976). 1978 Op.Atty.Gen. No. 78‑57, p. 82 (March 23, 1978) 1978 WL 22539.

NOTES OF DECISIONS

Admissibility of evidence 1

Instructions 3

Questions for jury 2

1. Admissibility of evidence

The admission of testimony as to witness’s nighttime experiment in placing unlighted automobile on highway approximately where plaintiff’s unlighted automobile had been stopped and measuring distance to rear from which vehicle could be seen coming around curve was reversible error, where witness had failed to place opposite the unlighted automobile a parked vehicle with burning headlights which had assertedly blinded defendant whose automobile had come from rear and had run into plaintiff’s automobile. Code 1952, Sections 46‑521 et seq., 46‑548. McDowell v. Floyd (S.C. 1962) 240 S.C. 158, 125 S.E.2d 4. Appeal And Error 1050.1(8.1); Evidence 150

2. Questions for jury

Evidence in pedestrian’s action for injuries sustained while crossing highway at dusk was sufficient to take to jury question whether defendant’s lights were on, bearing on issues of pedestrian’s contributory negligence or driver’s recklessness, willfulness and wantonness under South Carolina law. Code S.C.1962, Sections 46‑361, 46‑521. Price v. Lowman (C.A.4 (S.C.) 1967) 373 F.2d 390.

3. Instructions

Since violation of a statute can be considered by the jury as some evidence of recklessness, where the complaint charged the defendants with violation of Sections 55‑5‑2510, 56‑5‑4450, 56‑5‑4640 and 56‑5‑5090, and the answer alleged that plaintiff violated Section 56‑5‑1520, and there was evidence in the record to support such allegations, the trial court did not err in instructing the jury concerning recklessness and contributory recklessness. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

**SECTION 56‑5‑4460.** Time when motorcycle lights must be turned on.

(1) Any person who operates a motorcycle or motor‑driven cycle on public streets or highways shall, while so engaged, have the headlights of such motorcycle or motor‑driven cycle turned on except for those vehicles exempted by Section 56‑5‑4470.

(2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than twenty‑five dollars or be imprisoned for not more than ten days.

HISTORY: 1962 Code Section 46‑521.1; 1973 (58) 634.

Library References

Automobiles 328, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1640, 1656, 1707, 1714, 1743.

Attorney General’s Opinions

Operators of motorcycles which are approved for daylight use only are exempted from the operation of section 56‑5‑4460 of the Code of South Carolina (1976). 1978 Op.Atty.Gen. No. 78‑57, p. 82 (March 23, 1978) 1978 WL 22539.

**SECTION 56‑5‑4470.** Lighted lamps not required for vehicles not operated at night.

Vehicles which are not kept for use or used at any time when lighted lamps are required by Section 56‑5‑4450 need not be equipped with the lighting equipment otherwise required in this article for use at such times and it shall be unlawful for any person to drive or move any such vehicle or for the owner to permit such vehicle to be driven or moved on any highway during such times unless it shall comply with all provisions of this article with respect to lighted lamps and other equipment.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days or both.

HISTORY: 1962 Code Section 46‑522; 1952 Code Section 46‑522; 1949 (46) 466; 1967 (55) 1024.

Library References

Automobiles 328, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1640, 1656, 1707, 1714, 1743.

Attorney General’s Opinions

Operators of motorcycles which are approved for daylight use only are exempted from the operation of section 56‑5‑4460 of the Code of South Carolina (1976). 1978 Op.Atty.Gen. No. 78‑57, p. 82 (March 23, 1978) 1978 WL 22539.

**SECTION 56‑5‑4480.** Visibility distance and mounted height of lamps.

Whenever a requirement is herein declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall render objects visible, such provisions shall apply during the times stated in Section 56‑5‑4450 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated. Whenever a requirement is herein declared as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without load.

HISTORY: 1962 Code Section 46‑523; 1952 Code Section 46‑523; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4490.** Head lamps required on motor vehicles and motorcycles.

Every motor vehicle other than a motorcycle or motor‑driven cycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle. Such head lamps shall comply with the requirements and limitations set forth in this article. Every motorcycle and every motor‑driven cycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this article.

HISTORY: 1962 Code Section 46‑524; 1952 Code Section 46‑524; 1949 (46) 466.

CROSS REFERENCES

Farm tractors, road machinery, etc., see Section 56‑5‑4420.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4500.** Height of head lamps from ground.

Every head lamp upon every motor vehicle, including every motorcycle and motor‑driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty‑four inches nor less than twenty‑four inches to be measured as set forth in Section 56‑5‑4480. However, this section shall apply only to new vehicles sold in this State after June 30, 1949.

HISTORY: 1962 Code Section 46‑525; 1952 Code Section 46‑525; 1949 (46) 466; 1957 (50) 113.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4510.** Tail lamps required.

Every motor vehicle, trailer, semitrailer and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one tail lamp mounted on the rear which, when lighted as herein required, shall emit a red light plainly visible from a distance of five hundred feet to the rear; provided, that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

HISTORY: 1962 Code Section 46‑526; 1952 Code Section 46‑526; 1949 (46) 466.

CROSS REFERENCES

Farm tractors, road machinery, etc., see Section 56‑5‑4420.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

Attorney General’s Opinions

Neither Section 22‑3‑740 nor potential double jeopardy claims would prohibit prosecutions for driving with defective tail lights or an expired inspection sticker and driving under the influence arising out of the same incident. 1988 Op.Atty.Gen. No. 88‑39, p. 120 (May 3, 1988) 1988 WL 383522.

**SECTION 56‑5‑4520.** Height of tail lamps.

Every tail lamp upon every vehicle shall be located at a height of not more than sixty inches nor less than twenty inches to be measured as set forth in Section 56‑5‑4480.

HISTORY: 1962 Code Section 46‑527; 1952 Code Section 46‑527; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4530.** Illumination of rear registration plate.

Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

HISTORY: 1962 Code Section 46‑528; 1952 Code Section 46‑528; 1949 (46) 466.

CROSS REFERENCES

Display of license plates, motorcycles equipped with vertically mounted brackets, missing plates, see Section 56‑3‑1240.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4540.** Motor vehicles must be equipped with rear reflectors.

Every new motor vehicle sold after June 7, 1949 and operated upon a highway, other than a truck tractor, motorcycle and motor‑driven cycle, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors meeting the requirements of this article, and every such motorcycle and every such motor‑driven cycle shall carry at least one such reflector, except that vehicles of the type referred to in Section 56‑5‑4570 shall be equipped with reflectors as required in the sections applicable thereto.

HISTORY: 1962 Code Section 46‑529; 1952 Code Section 46‑529; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4550.** Characteristics and mounting of rear reflectors.

Every such reflector shall be mounted on the vehicle at a height not less than twenty inches nor more than sixty inches measured as set forth in Section 56‑5‑4480 and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle except that visibility from the greater distance is herein required of reflectors on certain types of vehicles.

HISTORY: 1962 Code Section 46‑530; 1952 Code Section 46‑530; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4560.** Stop lamps required on motor vehicles.

From and after July 1, 1949 it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor‑driven cycle, in this State or for any person to drive such vehicle on the highways unless it is equipped with a stop lamp meeting the requirements of Section 56‑5‑4730.

HISTORY: 1962 Code Section 46‑531; 1952 Code Section 46‑531; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

22 Am. Jur. Proof of Facts 2d 225, Defective or Improperly Operated Taillights.

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Officer’s error of law in initiating traffic stop was an objectively reasonable mistake of law, and thus, officer had reasonable suspicion for traffic stop; while officer stopped vehicle because one of its brake lights was out, and a North Carolina court later determined that a North Carolina statute, requiring “a stop lamp” to be functional, required only a single working brake light, the statute also stated that “[t]he stop lamp” could be incorporated into a unit with one or more “other” rear lamps, suggesting that a stop lamp was a type of rear lamp, and another subsection of the statute, which required vehicles to have all originally equipped rear lamps or the equivalent in good working order, arguably indicated that if a vehicle had multiple stop lamps, all had to be functional. Heien v. North Carolina, 2014, 135 S.Ct. 530, 190 L.Ed.2d 475. Automobiles 349(5)

**SECTION 56‑5‑4570.** Application of succeeding sections; lighting of lamp equipment.

Those sections of this chapter which follow immediately, including Sections 56‑5‑4580 to 56‑5‑4620, relating to clearance and marker lamps, reflectors and stop lights shall apply as stated in such sections to vehicles of the type therein enumerated, namely passenger buses, trucks, truck tractors and certain trailers, semitrailers and pole trailers, respectively, when operated upon any highway, and such vehicles shall be equipped as required, and all lamp equipment required shall be lighted at the times stated in Section 56‑5‑4450, except that clearance and side‑marker lamps need not be lighted on any such vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet.

HISTORY: 1962 Code Section 46‑532; 1952 Code Section 46‑532; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4580.** Additional lighting equipment required on buses, trucks, trailers, semitrailers, and pole trailers.

In addition to other equipment required in this article, the vehicles listed below must be equipped as provided in this section when operated under the conditions stated in Section 56‑5‑4570:

(1) On every bus or truck, whatever its size, on the rear, two reflectors, one on each side and one stop light;

(2) On every bus or truck eighty inches or more in over‑all width, in addition to the requirements in item (1),

(a) on the front, two clearance lamps, one at each side,

(b) on the rear, two clearance lamps, one at each side,

(c) on each side, two side‑marker lamps, one at or near the front and one at or near the rear, and

(d) on each side, two reflectors, one at or near the front and one at or near the rear;

(3) On every truck tractor,

(a) on the front, two clearance lamps, one at each side, and

(b) on the rear, one stop light;

(4) On every trailer or semitrailer having a gross weight in excess of three thousand pounds,

(a) on the front, two clearance lamps, one at each side,

(b) on each side, two side‑marker lamps, one at or near the front and one at or near the rear,

(c) on each side, two reflectors, one at or near the front and one at or near the rear, and

(d) on the rear, two clearance lamps, one at each side, and also two reflectors, one at each side, and one stop light;

(5) On every pole trailer in excess of three thousand pounds gross weight,

(a) on each side, one side‑marker lamp and one clearance lamp, which may be in combination, to show to the front, side, and rear, and

(b) on the rear of the pole trailer or load, two reflectors, one at each side;

(6) On every trailer, semitrailer, or pole trailer weighing three thousand pounds gross or less, on the rear two reflectors, one on each side. If a trailer or semitrailer is loaded or is of dimensions so as to obscure the stop light on the towing vehicle then the vehicle also must be equipped with one stop light;

(7) On every pole truck or trailer, a strip of light reflecting paint, tape, or reflectors on the external sides of the pole support frame or bolsters, or both, where practical.

HISTORY: 1962 Code Section 46‑533; 1952 Code Section 46‑533; 1949 (46) 466; 1993 Act No. 81, Section 1.

CROSS REFERENCES

Requirements for reflectors, see S.C. Code of Regulations R. 38‑393.26.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4590.** Color of clearance lamps, side‑marker lamps, reflectors, stop lights, and back‑up lamps.

Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color. Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color. All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow and except that the light illuminating the license plate or the light emitted by a back‑up lamp shall be white.

HISTORY: 1962 Code Section 46‑534; 1952 Code Section 46‑534; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4600.** Mounting of reflectors, clearance lamps, and side‑marker lamps.

Reflectors, when required pursuant to Section 56‑5‑4580, shall be mounted at a height not less than twenty‑four inches and not higher than sixty inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty‑four inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit. The rear reflectors on a pole trailer may be mounted on each side of the bolster or load. Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side‑marker lamps may be mounted in combination, provided illumination is given as required herein with reference to both.

HISTORY: 1962 Code Section 46‑535; 1952 Code Section 46‑535; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4610.** Visibility of reflectors, clearance lamps, and marker lamps.

Every reflector upon any vehicle referred to in Section 56‑5‑4580 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within five hundred to fifty feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides and those mounted on the rear shall reflect a red color to the rear.

Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet from the front and rear, respectively, of the vehicle.

Side‑marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the time lights are required at a distance of five hundred feet from the side of the vehicle on which mounted.

HISTORY: 1962 Code Section 46‑536; 1952 Code Section 46‑536; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4620.** Lighting lamps on vehicles operated in combination.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp, except tail lamps, need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

HISTORY: 1962 Code Section 46‑537; 1952 Code Section 46‑537; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4630.** Lamp or flag on projecting load.

(A) Whenever the load upon a vehicle extends to the rear four feet or more beyond the bed or body of the vehicle, the vehicle must be equipped with, at the times specified in Section 56‑5‑4450, the following safety equipment:

(1) for any commercial motor vehicle as defined in this title transporting unmanufactured forest products as defined in Department of Public Safety Regulation 38‑390, one amber strobe‑type lamp equipped with a multi‑directional‑type lens securely affixed as close as practical to the end of the projecting load, so as to be visible from the rear and side of the projecting load. If one strobe lamp fails to make the projecting load visible from both sides and the rear of the projecting load, multiple strobe lamps must be utilized to meet the visibility requirements. The strobe lamp shall flash at a rate of at least sixty flashes per minute and must be plainly visible from a distance of at least five hundred feet to the sides and rear of the projecting load. The lamp must be operating any time the vehicle is operated on a highway or parked on the shoulder or immediately adjacent to the traveled portion of a public roadway; or

(2) a red light or lantern plainly visible from a distance of at least five hundred feet to the side or rear must be displayed at the extreme rear of the load if the strobe light required by this section becomes temporarily inoperable while transporting a load between points.

(B) The projecting load must be marked at the extreme rear of the load with a red flag or cloth not less than twelve inches by twelve inches and hung so that the entire area is visible to the driver of a vehicle approaching from the rear.

(C) Utility companies when responding to an emergency situation such as caused by storms or accidents are exempt from the provisions of this section.

HISTORY: 1962 Code Section 46‑538; 1952 Code Section 46‑538; 1949 (46) 466; 1985 Act No. 199, Section 1; 1996 Act No. 425, Section 5; 2008 Act No. 234, Section 1, eff upon approval (became law without the Governor’s signature on May 22, 2008).

Library References

Automobiles 149, 151, 328, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 629 to 633, 666, 668 to 670, 1640, 1658.

**SECTION 56‑5‑4640.** Lights on parked vehicles.

Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway, no lights need be displayed upon such parked vehicle. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle and the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of such lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor‑driven cycle.

Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

HISTORY: 1962 Code Section 46‑539; 1952 Code Section 46‑539; 1949 (46) 466; 1959 (51) 124.

CROSS REFERENCES

Stopping, standing and parking, see Sections 56‑5‑2510 et seq.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

Forms

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 366 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Automobiles and Highway Traffic Section 443 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Instructions 3

Questions for jury 2

1. In general

Trial judge committed prejudicial error in refusing to take judicial notice of the time of sunset at the place and on the day of the collision and in holding that such was not relevant to any issue in the case. Toole v. Salter (S.C. 1967) 249 S.C. 354, 154 S.E.2d 434.

Violation of this section would not only constitute actionable negligence but, under some circumstances, would be some evidence of reckless conduct on the part of the employees of the defendant. Dudley Trucking Co. v. Hollingsworth (S.C. 1964) 243 S.C. 439, 134 S.E.2d 399.

2. Questions for jury

Where parked vehicle in nighttime showed no lights but there was testimony of lights in area, absence of lights upon parked vehicle did not conclusively establish violation of this section and question was one for jury. Nickelson v. Davis (C.A.4 (S.C.) 1963) 315 F.2d 782.

3. Instructions

Since violation of a statute can be considered by the jury as some evidence of recklessness, where the complaint charged the defendants with violation of Sections 55‑5‑2510, 56‑5‑4450, 56‑5‑4640 and 56‑5‑5090, and the answer alleged that plaintiff violated Section 56‑5‑1520, and there was evidence in the record to support such allegations, the trial court did not err in instructing the jury concerning recklessness and contributory recklessness. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

**SECTION 56‑5‑4650.** Lamps on other vehicles and equipment.

All vehicles, including animal‑drawn vehicles and implements of husbandry, road machinery or farm tractors and other vehicles not otherwise specifically required to be equipped with lamps, shall at the times specified in Section 56‑5‑4450 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern or reflector exhibiting a red light visible from a distance of five hundred feet to the rear.

HISTORY: 1962 Code Section 46‑540; 1952 Code Section 46‑540; 1949 (46) 466.

CROSS REFERENCES

Special rules for implements of husbandry, farm tractors and road machinery, see Section 56‑5‑4420.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

**SECTION 56‑5‑4660.** Spot lamps.

Any motor vehicle may be equipped with not to exceed one spot lamp, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high‑intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle.

HISTORY: 1962 Code Section 46‑541; 1952 Code Section 46‑541; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4670.** Fog lamps.

Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height of not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that, when the vehicle is not loaded, none of the high‑intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty‑five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

HISTORY: 1962 Code Section 46‑542; 1952 Code Section 46‑542; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4680.** Auxiliary passing lamps.

Any motor vehicle may be equipped with not to exceed one auxiliary passing lamp mounted on the front at a height not less than twenty‑four inches nor more than forty‑two inches above the level surface upon which the vehicle stands, and every such auxiliary passing lamp shall meet the requirements and limitations set forth in this article.

HISTORY: 1962 Code Section 46‑543; 1952 Code Section 46‑543; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4690.** Auxiliary driving lamps.

Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty‑two inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article.

HISTORY: 1962 Code Section 46‑544; 1952 Code Section 46‑544; 1949 (46) 466.

CROSS REFERENCES

Giving signal by signal devices, see Section 56‑5‑2180.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4700.** Audible signal devices and signal lamps for authorized emergency vehicles, school buses and police vehicles; restrictions on use; effect of use.

(A) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren, exhaust whistle, or bell capable of giving an audible signal.

(B) Every school bus and every authorized emergency vehicle, in addition to any other equipment and distinctive markings required by this chapter, must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet in normal sunlight. However, vehicles of a fire department or funeral home when equipped with a mounted, oscillating, rotating, or flashing red light, visible in all directions for a distance of five hundred feet in normal sunlight, are not required to have additional signal lamps.

(C) All police vehicles when used as authorized emergency vehicles must be equipped with oscillating, rotating, or flashing blue lights. In addition to the blue lights, the police vehicle may, but need not be equipped with alternately flashing red lights as herein specified, and may, but need not be equipped with oscillating, rotating, or flashing red lights, white lights, or both, in combination with the required blue lights. The authorized emergency police vehicle lights described herein must be visible for a distance of five hundred feet in all directions in normal sunlight. It shall be unlawful for any person to possess or display on any vehicle any blue light that is visible from outside the vehicle except one used primarily for law enforcement purposes.

(D) The alternately flashing lighting described in subsection (B) of this section shall not be used on any vehicle other than an authorized emergency vehicle. Provided, that a school bus may use the alternately flashing red lighting described in subsection (B), or red flashing lights in the rear and amber flashing lights in the front.

(E) The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right‑of‑way and stop as prescribed in Sections 56‑5‑2360 and 56‑5‑2770.

HISTORY: 1962 Code Section 46‑544.1; 1966 (54) 2567; 1967 (55) 131; 1970 (56) 2320; 1979 Act No. 43; 2003 Act No. 65, Section 1.

CROSS REFERENCES

Option for Forestry Commission emergency vehicles to have emergency lights or sirens, see Section 56‑5‑4715.

Library References

Automobiles 115, 175(5), 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 43 to 45, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

Attorney General’s Opinions

Authorized emergency vehicles must utilize their lights and sirens while responding to an emergency; this requirement cannot be restricted by the Authority Having Jurisdiction. S.C. Op.Atty.Gen. (May 12, 2014) 2014 WL 2538229.

York County cannot enact an ordinance restricting the use of red lights and sirens by volunteer firefighters. S.C. Op.Atty.Gen. (May 12, 2014) 2014 WL 2538229.

The personal vehicle of a campus police officer cannot be construed as one which is “used primarily for law enforcement purposes” for purposes of Section 56‑5‑4700(C); thus, such vehicles are prohibiting from utilizing or displaying blue lights. S.C. Op.Atty.Gen. (August 6, 2013) 2013 WL 4397079.

Discussion of whether it is legal for a motor vehicle, other than a school bus or emergency vehicle, to have any colored lights other than red, white, or amber. S.C. Op.Atty.Gen. (June 18, 2013) 2013 WL 3243061.

No statutes specifically prohibit the use of neon lights on motor vehicles as long as they are not installed or use colors inconsistent with other statutory provisions; flashing lights are prohibited on vehicles other than in the circumstances authorized. S.C. Op.Atty.Gen. (August 8, 2006) 2006 WL 2593083.

Animal control officers, county fire code officials, and building code officials commissioned pursuant to Section 4‑9‑145 can use blue or red lights on their county vehicles. S.C. Op.Atty.Gen. (July 29, 2005) 2005 WL 1983360.

Palmetto Dunes security officers may not use either flashing red or blue lights on their patrol vehicles. S.C. Op.Atty.Gen. (September 28, 2004) 2004 WL 2247468.

A process server employed by the clerk of court’s office cannot use a blue light on his vehicle. S.C. Op.Atty.Gen. (January 5, 2004) 2004 WL 40242.

The use of neon colored lights on motor vehicles is not prohibited so long as they are installed in a manner consistent with the provisions of the chapter. S.C. Op.Atty.Gen. (February 13, 2003) 2003 WL 21040137.

The Cherokee Springs Fire District fire units may not use blue lights. S.C. Op.Atty.Gen. (June 12, 2002) 2002 WL 1925743.

A coroner may use a flashing blue light on his vehicle when going to and returning from his actual duties as a coroner. S.C. Op.Atty.Gen. (December 16, 1996) 1996 WL 766543.

County code enforcement officers commissioned pursuant to Section 4‑9‑145 may use blue lights on their county vehicles when performing law enforcement duties. S.C. Op.Atty.Gen. (September 13, 1993) 1993 WL 439030.

A coroner may carry a firearm while engaged in official duties and he may use a blue light in his personal vehicle when going to and returning from his actual duties as coroner. S.C. Op.Atty.Gen. (June 27, 1991) 1991 WL 632997.

There is no statutory provision which specifically provides for the size of emergency lights. Emergency lights and sirens may only be used on personal vehicles complying with circumstances set forth in Section 56‑5‑170. S.C. Op.Atty.Gen. (February 2, 1990) 1990 WL 599174.

Single portable light visible at least 500 feet in all directions in ordinary sunlight, magnetically mounted at top of emergency vehicle, complies with provisions of Section 56‑5‑4700(6). S.C. Op.Atty.Gen. (May 31, 1984) 1984 WL 159870.

Use of red lights and sirens in private automobiles by full‑time and volunteer firemen engaged in emergency activities is required by statute. S.C. Op.Atty.Gen. (February 15, 1984) 1984 WL 159825.

Absent a municipal ordinance to the contrary, police chiefs of incorporated municipalities may designate personal cars of police officers as police cars and authorized emergency vehicles provided such vehicles are equipped with the necessary warning devices, and are primarily used for law enforcement purposes. S.C. Op.Atty.Gen. (August 18, 1975) 1975 WL 22379.

Section inapplicable to automobiles of members of volunteer fire departments and rescue squads. S.C. Op.Atty.Gen. (April 6, 1967) 1967 WL 8572.

Number of red flashing lamps required. Subsection (b) of this section [Code 1962 Section 46‑544.1] does not necessarily require four signal lamps. If two lamps would achieve the prescribed effect, such would be sufficient to comply with the law. S.C. Op.Atty.Gen. (December 29, 1966) 1966 WL 8647.

Use of portable red flashing lamps. The requirement of subsection (b) of this section [Code 1962 Section 46‑544.1] can be met by placing of a portable bar with two signal lamps attached on top of an authorized emergency vehicle where the two lamps are synchronized so as to display two alternately flashing red lights to the front and two to the rear. S.C. Op.Atty.Gen. (December 29, 1966) 1966 WL 8647.

Vehicles and boats of the Division of Commercial Fisheries need not be equipped with flashing blue lights. S.C. Op.Atty.Gen. (November 18, 1966) 1966 WL 8633.

Authorized emergency vehicles. There is no authorization for a single dome‑mounted oscillating red light for authorized emergency vehicles. S.C. Op.Atty.Gen. (September 22, 1966) 1966 WL 8607.

Unmarked highway patrol cars not required to have dome‑mounted blue light. Subsection (c) requiring police vehicles to be equipped with oscillating, dome‑mounted blue light does not require unmarked highway patrol vehicles to be equipped with such a light on the roof of such vehicles. S.C. Op.Atty.Gen. (June 28, 1966) 1966 WL 8550.

“Dome‑mounted” defined. The term “dome‑mounted” used in subsection (c) means that on each police vehicle there should be a blue light that is in the form of a dome, i.e., conical, and that such conically shaped light be placed in an elevated position either on or in such vehicle and visible from a distance of five hundred feet. S.C. Op.Atty.Gen. (June 28, 1966) 1966 WL 8550.

**SECTION 56‑5‑4710.** Use of mounted oscillating, rotating, or flashing red light by wreckers.

Wreckers may use a mounted oscillating, rotating or flashing red light only at the scene of accidents.

HISTORY: 1962 Code Section 46‑544.2; 1970 (56) 2319.

Library References

Automobiles 174(4).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 791.

**SECTION 56‑5‑4715.** Forestry Commission vehicles authorized to use flashing red lights in fire emergencies.

Notwithstanding Section 56‑5‑4700, emergency and fire fighting vehicles of the South Carolina Forestry Commission may but not need be equipped with oscillating, rotating, or flashing red lights for use during any fire emergency. If a red light is used, it must be visible for a distance of five hundred feet in all directions in normal sunlight. The State Forestry Commission shall determine which vehicles should have red, yellow, white, or amber lights, or a combination thereof, and determine when a fire emergency exists. A forestry vehicle equipped with a red light is not required to have a siren or any other audible signal pursuant to Section 56‑5‑4700(a).

HISTORY: 1991 Act No. 97, Section 1.

Library References

Automobiles 175(5).

Westlaw Topic No. 48A.

**SECTION 56‑5‑4720.** Use of oscillating, rotating or flashing red lights on Department of Transportation vehicles.

Notwithstanding the provisions of Section 56‑5‑4700, any Department of Transportation vehicle may use oscillating, rotating or flashing red lights during any emergency. The Department of Transportation personnel shall determine when an emergency exists.

HISTORY: 1962 Code Section 46‑544.3; 1971 (57) 453; 1993 Act No. 181, Section 1447; 1996 Act No. 459, Section 196.

Library References

Automobiles 175(5).

Westlaw Topic No. 48A.

**SECTION 56‑5‑4730.** Signal lamps and signal devices.

Any motor vehicle may be equipped, and when required under this chapter shall be equipped, with the following signal lamps and devices:

(1) A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp; and

(2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

A stop lamp shall be plainly visible and understandable from a distance of one hundred feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

All mechanical signal devices shall be self‑illuminated when in use at the times specified in Section 56‑5‑4450.

When a vehicle is so constructed or loaded that a hand‑and‑arm signal would not be visible both to the front and rear of such vehicle, such vehicle shall be equipped with such signal devices as are described in this section.

HISTORY: 1962 Code Section 46‑545; 1952 Code Section 46‑545; 1949 (46) 466.

CROSS REFERENCES

Giving signals by signal devices, see Section 56‑5‑2180.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

RESEARCH REFERENCES

Encyclopedias

22 Am. Jur. Proof of Facts 2d 225, Defective or Improperly Operated Taillights.

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Probable cause existed to support police officer’s traffic stop of defendant’s vehicle, where defendant was driving a vehicle with a non‑functioning brake light. State v. Jihad (S.C. 2001) 347 S.C. 12, 553 S.E.2d 249. Automobiles 349(5)

2. Constitutional issues

Officer’s error of law in initiating traffic stop was an objectively reasonable mistake of law, and thus, officer had reasonable suspicion for traffic stop; while officer stopped vehicle because one of its brake lights was out, and a North Carolina court later determined that a North Carolina statute, requiring “a stop lamp” to be functional, required only a single working brake light, the statute also stated that “[t]he stop lamp” could be incorporated into a unit with one or more “other” rear lamps, suggesting that a stop lamp was a type of rear lamp, and another subsection of the statute, which required vehicles to have all originally equipped rear lamps or the equivalent in good working order, arguably indicated that if a vehicle had multiple stop lamps, all had to be functional. Heien v. North Carolina, 2014, 135 S.Ct. 530, 190 L.Ed.2d 475. Automobiles 349(5)

**SECTION 56‑5‑4740.** Warning lamps.

Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this chapter. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable and shall show simultaneously flashing amber or red lights or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred feet under normal atmospheric conditions at night.

HISTORY: 1962 Code Section 46‑545.1; 1957 (50) 59.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

NOTES OF DECISIONS

Instructions 1

1. Instructions

Court charge on statute relating to warning lights on vehicles was not required despite request of jury for information concerning the requirements for warning lights, since the act of the defendant in entering opposite lane to pass raised a jury issue as to negligence. Jackson v. H & S Oil Co., Inc. (S.C. 1975) 263 S.C. 407, 211 S.E.2d 223.

**SECTION 56‑5‑4750.** Side cowl, running board, and back‑up lamps.

Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

Any motor vehicle may be equipped with not more than one running‑board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

Any motor vehicle may be equipped with not more than two back‑up lamps either separately or in combination with other lamps, but any such back‑up lamp shall not be lighted when the motor vehicle is in forward motion.

HISTORY: 1962 Code Section 46‑546; 1952 Code Section 46‑546; 1949 (46) 466; 1957 (50) 59.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4760.** Identification lamps for large commercial vehicles.

Any commercial vehicle eighty inches or more in over‑all width may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be placed in a row and may be mounted either horizontally or vertically.

HISTORY: 1962 Code Section 46‑546.1; 1957 (50) 59.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4770.** Multiple‑beam road‑lighting equipment.

Except as hereinafter provided in this article the head lamps, the auxiliary driving lamps or the auxiliary passing lamps, or combinations thereof, on motor vehicles other than motorcycles or motor‑driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and may be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred and fifty feet ahead for all conditions of loading;

(2) There shall be a lowermost distribution of light or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead, and on a straight level road under any condition of loading none of the high‑intensity portion of the beam shall be directed so as to strike the eyes of an approaching driver; and

(3) Every motor vehicle, other than a motorcycle or motor‑driven cycle, registered in this State after January 1, 1949 which has multiple‑beam road‑lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

HISTORY: 1962 Code Section 46‑547; 1952 Code Section 46‑547; 1949 (46) 466; 1955 (49) 89.

CROSS REFERENCES

Farm tractors, road machinery, etc., see Section 56‑5‑4420.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

NOTES OF DECISIONS

In general 1

1. In general

In a negligence action brought by a pedestrian who had been struck by a car, the jury should have been allowed to determine whether the driver of the car violated motor vehicle statutes Sections 56‑5‑1860, 56‑5‑3230, and 56‑5‑4770 where the inferences deducible from controverted evidence in the record raised questions of fact as to whether the driver violated these statutes. Cooper by Cooper v. County of Florence (S.C. 1991) 306 S.C. 408, 412 S.E.2d 417.

**SECTION 56‑5‑4780.** Use of multiple‑beam road‑lighting equipment.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 56‑5‑4450, the driver shall use a distribution of light or composite beam directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver;

(2) The lowermost distribution of light or composite beam specified in item (2) of Section 56‑5‑4770 shall be aimed to avoid glare at all times, regardless of road contour and loading; and

(3) Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this section other than the uppermost distribution of light specified in item (1) of Section 56‑5‑4770.

HISTORY: 1962 Code Section 46‑548; 1952 Code Section 46‑548; 1949 (46) 466; 1955 (49) 89.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

NOTES OF DECISIONS

Admissibility of evidence 1

1. Admissibility of evidence

The admission of testimony as to witness’s nighttime experiment in placing unlighted automobile on highway approximately where plaintiff’s unlighted automobile had been stopped and measuring distance to rear from which vehicle could be seen coming around curve was reversible error, where witness had failed to place opposite the unlighted automobile a parked vehicle with burning headlights which had assertedly blinded defendant whose automobile had come from rear and had run into plaintiff’s automobile. Code 1952, Sections 46‑521 et seq., 46‑548. McDowell v. Floyd (S.C. 1962) 240 S.C. 158, 125 S.E.2d 4. Appeal And Error 1050.1(8.1); Evidence 150

**SECTION 56‑5‑4790.** Single‑beam road‑lighting equipment.

Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to April 29, 1939 in lieu of multiple‑beam road‑lighting equipment herein specified, if the single distribution of light complies with the following requirements and limitations:

(1) The head lamps shall be so aimed that when the vehicle is not loaded none of the high‑intensity portion of the light shall at a distance of twenty‑five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes and in no case higher than forty‑two inches above the level on which the vehicle stands at a distance of seventy‑five feet ahead; and

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

HISTORY: 1962 Code Section 46‑549; 1952 Code Section 46‑549; 1949 (46) 466.

CROSS REFERENCES

Farm tractors, road machinery, etc., see Section 56‑5‑4420.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4800.** Road‑lighting equipment on motor‑driven cycles.

The head lamp or head lamps upon every motor‑driven cycle may be of the single‑beam or multiple‑beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every such head lamp or head lamps on a motor‑driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor‑driven cycle is operated at any speed less than twenty‑five miles per hour and at a distance of not less than two hundred feet when the motor‑driven cycle is operated at a speed of twenty‑five or more miles per hour, and any such motor‑driven cycle shall be subject to the speed limitations in Section 56‑5‑1550;

(2) In the event the motor‑driven cycle is equipped with a multiple‑beam head lamp or head lamps, the upper beam shall meet the minimum requirements set forth above and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in item (2) of Section 56‑5‑4770; and

(3) In the event the motor‑driven cycle is equipped with a single‑beam lamp or lamps, such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high‑intensity portion of light, at a distance of twenty‑five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

HISTORY: 1962 Code Section 46‑550; 1952 Code Section 46‑550; 1949 (46) 466; 1955 (49) 89.

CROSS REFERENCES

Other equipment required for motorcycle, see Sections 56‑5‑3650 to 56‑5‑3680.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4810.** Alternate road‑lighting equipment at low speeds.

Any motor vehicle may be operated under the conditions specified in Section 56‑5‑4450 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy‑five feet ahead in lieu of lamps required in Sections 56‑5‑4770 and 56‑5‑4790, provided that it is at no time operated at a speed in excess of twenty miles per hour.

HISTORY: 1962 Code Section 46‑551; 1952 Code Section 46‑551; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4820.** Number of driving lamps required or permitted.

At all times specified in Section 56‑5‑4450 at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motor cycle or motor‑driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles. Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps, a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candle power, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

HISTORY: 1962 Code Section 46‑552; 1952 Code Section 46‑552; 1949 (46) 466.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

**SECTION 56‑5‑4830.** Special restrictions on lamps; degree of intensity; red, blue and flashing lights.

Any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which project a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy‑five feet from the vehicle.

A person shall not drive, move, or park any vehicle or equipment upon a highway with a lamp or device on it displaying a red or blue light visible from directly in front of the center of it. This section shall not apply to a vehicle upon which a red or blue light visible from the front is expressly authorized or required by this chapter.

Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow‑removal equipment, or on any vehicle as a means of indicating a right or left turn or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

HISTORY: 1962 Code Section 46‑553; 1952 Code Section 46‑553; 1949 (46) 466; 1957 (50) 112; 2003 Act No. 65, Section 2.

Library References

Automobiles 149, 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 629 to 633, 666, 1640.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

Attorney General’s Opinions

Blinking a car’s headlights during daylight hours does not violate Section 56‑5‑4830, nor does it constitute a violation of any other law of this state. 1983 Op.Atty.Gen. No. 83‑34, p. 52 (July 8, 1983) 1983 WL 142705.

**SECTION 56‑5‑4840.** Selling or using devices or equipment to change design or performance of lamps or reflectors.

It shall be unlawful for any person to sell, offer for sale or use any device or equipment which tends to change the original design or performance of any head lamps or any other lamps or reflectors required by law to be attached to motor vehicles, trailers or semitrailers unless the equipment or device has been approved by the director of the Department of Public Safety.

HISTORY: 1962 Code Section 46‑554; 1960 (51) 1969; 1993 Act No. 181, Section 1448.

Library References

Automobiles 328.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1640.

**SECTION 56‑5‑4850.** Brake equipment.

Every motor vehicle, trailer, semitrailer and pole trailer and any combination of such vehicles operating upon a highway within this State, shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Every such vehicle and combination of vehicles, except special mobile equipment, shall be equipped with service brakes complying with the performance requirements of Section 56‑5‑4860 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Every such vehicle and combination of vehicles, except motorcycles and motor‑driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver’s muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Every vehicle, manufactured or assembled after June 7, 1949, shall be equipped with brakes acting on all wheels except:

(1) Trailers, semitrailers or pole trailers, of a gross weight not exceeding three thousand pounds, provided that:

(a) The total weight on and including the wheels of the trailer shall not exceed forty per cent of the gross weight of the towing vehicle when connected to the trailer, and

(b) The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of Section 56‑5‑4860.

(2) Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of Section 56‑5‑4860.

(3) Trucks and truck‑tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck‑tractors must be capable of complying with the performance requirements of Section 56‑5‑4860.

(4) Special mobile equipment.

(5) The wheel of a sidecar attached to a motorcycle or to a motor‑driven cycle, or the front wheel of a motor‑driven cycle need not be equipped with brakes, provided that such motorcycle or motor‑driven cycle is capable of complying with the performance requirements of Section 56‑5‑4860.

(d) Every trailer, semitrailer and pole trailer, equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer, with a gross weight in excess of three thousand pounds, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen minutes, upon breakaway from the towing vehicle.

(e) Every motor vehicle, manufactured or assembled after July 1, 1964 and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Air brakes systems, installed on trailers manufactured or assembled after July 1, 1964, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g)(1) Every towing vehicle, manufactured or assembled after July 1, 1964, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty pounds per square inch nor higher than forty‑five pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(2) Every towing vehicle, manufactured or assembled after July 1, 1964, used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by item (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Every motor vehicle, trailer, semitrailer and pole trailer, manufactured or assembled after July 1, 1964, and every combination of such vehicles, except motorcycles and motor‑driven cycles equipped with brakes, shall have the braking system so arranged that one control device can be used to operate all service brakes. Trailers, equipped with special automatic braking systems actuated by forward pressure on the towing hitch when the towing vehicle is braked, shall be considered as satisfying this requirement, provided the performance capabilities of the trailer brake system meet the requirements of Section 56‑5‑4860. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i)(1) Every bus, truck or truck‑tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut‑out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(2) Every truck with three or more axles equipped with vacuum assistor type brakes, manufactured or assembled after July 1, 1964, and every truck‑tractor and truck, manufactured or assembled after July 1, 1964, used for towing a vehicle equipped with vacuum brakes, shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent.

(3) All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j)(1) Every bus, truck or truck‑tractor, using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent of the air compressor governer cut‑out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(2) Every motor vehicle, manufactured or assembled after July 1, 1964, and used for towing a vehicle equipped with vacuum operated brakes and every truck, manufactured or assembled after July 1, 1964, with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle’s supply reservoir or reserve capacity is less than eight inches of mercury.

(3) When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

HISTORY: 1962 Code Section 46‑561; 1952 Code Section 46‑561; 1949 (46) 466; 1964 (53) 2127.

CROSS REFERENCES

This section not apply to trailers not exceeding 8,000 lbs. gross weight pulled behind farm tractors or trucks for farm purposes, see Section 56‑5‑4900.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 216, Brakes.

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Placing gear shift in “park” position does not comply with statutory requirement of “effectively setting the brake”, and trial court did not err in limiting word “brake” to mean brake mechanism on drums of wheels of automobile. Worthington v. Belcher (S.C. 1980) 274 S.C. 366, 264 S.E.2d 148.

Where the evidence is conflicting or susceptible of more than one inference, the issue of compliance with the brake statute is for the jury. Grier v. Cornelius (S.C. 1966) 247 S.C. 521, 148 S.E.2d 338.

There is no inconsistency with the Supreme Court’s view that the violation of an applicable statute is negligence per se in holding that the mere failure of brakes to properly function is not a violation per se of the brake statute. Grier v. Cornelius (S.C. 1966) 247 S.C. 521, 148 S.E.2d 338.

A violation of the brake statute is negligence as a matter of law. Grier v. Cornelius (S.C. 1966) 247 S.C. 521, 148 S.E.2d 338. Negligence 259

The defendants were only required to use ordinary care and diligence in inspecting their vehicle and keeping it in repair. Grier v. Cornelius (S.C. 1966) 247 S.C. 521, 148 S.E.2d 338.

The legislature did not intend the equipment statute to impose liability without fault or make the owner or operator of an automobile an absolute insurer of his brakes. Grier v. Cornelius (S.C. 1966) 247 S.C. 521, 148 S.E.2d 338.

Plaintiff’s decedent was held not guilty of gross contributory negligence as a matter of law merely because his brakes proved ineffective at the critical moment before the collision. Seay v. Southern Railway‑Carolina Division (S.C. 1944) 205 S.C. 162, 31 S.E.2d 133.

2. Instructions

In an action brought by a parent of a minor daughter to recover for injuries sustained in a collision against a defendant whose trailer separated from his truck and came across the highway, striking the car driven by the daughter, the trial court properly granted the defendant’s motion for a new trial on the grounds that the judge improperly failed to charge Section 56‑5‑4850, that brakes were required for trailers. Richburg v. Baughman (S.C. 1985) 283 S.C. 599, 325 S.E.2d 326, appeal after new trial 290 S.C. 431, 351 S.E.2d 164. New Trial 39.5(2)

**SECTION 56‑5‑4860.** Performance ability of brakes; tests for deceleration and stopping distances.

Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty miles per hour at not less than the feet per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or controls begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent grade), dry, smooth, hard surface that is free from loose material.

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| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Classification  of Vehicles | | Braking force at a percentage of gross vehicle or combination weight | Deceleration in feet  per second | Brake System application and braking distance in feet from an initial speed of 20 m.p.h. |
| (A) | Passenger vehicles with a seating capacity of ten people or less including driver, not having a manufacturer’s gross vehicle weight rating | 52.8% | 17 | 25 |
| (B‑1) | All motorcycles and motor‑driven cycles | 43.5% | 14 | 30 |
| (B‑2) | Single unit vehicles with a manufacturer’s gross vehicle weight rating of 10,000 pounds or less | 43.5% | 14 | 30 |
| (C‑1) | Single unit vehicles with a manufacturer’s gross weight rating of more than 10,000 pounds | 43.5% | 14 | 40 |
| (C‑2) | Combination of a two‑axle towing vehicle and a trailer with a gross trailer weight of 3,000 pounds or less | 43.5% | 14 | 40 |
| (C‑3) | Buses, regardless of the number of axles, not having a manufacturer’s gross weight rating | 43.5% | 14 | 40 |
| (C‑4) | All combinations of vehicles in driveaway‑towaway operations | 43.5% | 14 | 40 |
| (D) | All other vehicles and combinations of vehicles | 43.5% | 14 | 50 |

HISTORY: 1962 Code Section 46‑562; 1952 Code Section 46‑562; 1949 (46) 466; 1964 (53) 2127.

CROSS REFERENCES

This section not apply to trailers not exceeding 8,000 lbs. gross weight pulled behind farm tractors or trucks for farm purposes, see Section 56‑5‑4900.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 216, Brakes.

**SECTION 56‑5‑4870.** Maintenance and adjustment of brakes.

All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

HISTORY: 1962 Code Section 46‑563; 1952 Code Section 46‑563; 1949 (46) 466; 1964 (53) 2127.

CROSS REFERENCES

Provision prohibiting vehicle from being operated unless equipment is in good working order and vehicle is in safe mechanical condition, see Section 56‑5‑5310.

This section not apply to trailers not exceeding 8,000 lbs. gross weight pulled behind farm tractors or trucks for farm purposes, see Section 56‑5‑4900.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 216, Brakes.

**SECTION 56‑5‑4880.** Inspection of brakes; effect of disapproval.

(a) The Department of Public Safety is authorized to require an inspection of the braking system on any motor‑driven cycle and to disapprove any such braking system on a vehicle which it finds will not comply with the performance ability standard set forth in Section 56‑5‑4860, or which in its opinion is equipped with a braking system that is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(b) The Department of Motor Vehicles may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when the Department of Public Safety determines that the braking system thereon does not comply with the provisions of this section.

(c) No person shall operate on any highway any vehicle referred to in this section in the event the Department of Public Safety has disapproved the braking system upon such vehicle.

HISTORY: 1962 Code Section 46‑564; 1952 Code Section 46‑564; 1949 (46) 466; 1964 (53) 2127; 1993 Act No. 181, Section 1449; 1996 Act No. 459, Section 197.

CROSS REFERENCES

General power and duties of Department of Highways and Public Transportation, see Sections 57‑3‑600 et seq.

This section not apply to trailers not exceeding 8,000 lbs. gross weight pulled behind farm tractors or trucks for farm purposes, see Section 56‑5‑4900.

Library References

Automobiles 55, 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 299 to 302, 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 216, Brakes.

**SECTION 56‑5‑4890.** Hydraulic brake fluid; distribution and servicing; minimum standards; labelling.

(a) The term “hydraulic brake fluid” as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) No hydraulic brake fluid for use in motor vehicles shall be shipped into this State for sale in this State if such brake fluid shall be below the minimum standard of the then current specifications established by the Society of Automotive Engineers for heavy duty brake fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

(e) Every container in which hydraulic brake fluid is sold in this State shall carry a manufacturer’s or packer’s label clearly stating that the fluid in the container meets or exceeds the SAE specifications for heavy duty brake fluid and giving the then current SAE identification number for the specifications which are met or exceeded.

HISTORY: 1962 Code Section 46‑565; 1952 Code Section 46‑565; 1949 (46) 466; 1964 (53) 2127.

CROSS REFERENCES

This section not apply to trailers not exceeding 8,000 lbs. gross weight pulled behind farm tractors or trucks for farm purposes, see Section 56‑5‑4900.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑4900.** Regulations concerning brakes inapplicable to certain farm trailers; speed limit; small tandem tobacco trailers; chains, hooks, other safety equipment required.

Sections 56‑5‑4850 to 56‑5‑4890 do not apply to trailers, not exceeding eight thousand pounds gross weight, which are pulled behind farm tractors or trucks and used in the transportation of farm products and articles to and from farms. These trailers may not exceed a speed of twenty miles an hour. However, farm trailers exceeding eight thousand pounds gross weight, excluding gooseneck‑type trailers, which are not equipped with brakes must be pulled by tow vehicles whose empty vehicle weight is at least one‑half of the farm trailer’s gross vehicle weight. These trailers may not exceed a speed of thirty miles an hour and may only be pulled in clear weather conditions.

Two small tobacco trailers may be pulled in tandem if:

(1) the maximum trailer length of each trailer is thirteen feet six inches;

(2) the maximum gross weight of each trailer is three thousand pounds;

(3) the maximum speed is twenty miles an hour;

(4) within a twenty‑mile radius of the operations center; and

(5) operated in daylight hours only.

Notwithstanding any other provision of this section or of this chapter, all farm and tobacco trailers when towed must be secured by a pintle hook, spring‑load latch, safety lock hitch pin, or equivalent mechanism and also must be equipped with and shall have in use safety chains secured by a spring‑loaded latch or other mechanism to ensure positive closure under loaded, operating conditions when the trailers are used to haul farm products and articles on the roads, streets, or highways of this State.

HISTORY: 1962 Code Section 46‑566; 1952 Code Section 46‑566; 1949 (46) 466; 1964 (53) 2127; 1992 Act No. 479, Section 1; 1993 Act No. 164, Part II, Section 39E.

Library References

Automobiles 11, 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 36 to 37, 621 to 628, 681, 1639.

**SECTION 56‑5‑4910.** Bumpers; “private passenger automobile” defined.

For the purposes of Sections 56‑5‑4910 to 56‑5‑4940, the term “private passenger automobile” shall mean a four‑wheeled motor vehicle designed for carrying ten persons or less, except a multipurpose passenger vehicle which is constructed either on a truck chassis or with special features for occasional off‑road operation.

HISTORY: 1962 Code Section 46‑571; 1972 (57) 2115, 2677.

CROSS REFERENCES

Regulation of manufacturers, distributors and dealers, see Section 56‑15‑10 et seq.

Library References

Automobiles 1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1 to 18.

**SECTION 56‑5‑4920.** Bumpers; warranty as to energy absorption system and ability to sustain shock; automobiles manufactured on and after August 1, 1972.

Every private passenger automobile manufactured on and after August 1, 1972, sold and licensed in the State of South Carolina, shall be sold subject to the manufacturer’s warranty that it is equipped with an appropriate energy absorption system and that, without compromising existing standards of passenger safety, it can be driven front directly into a standard Society of Automotive Engineers (SAE‑J‑850) test barrier at a speed of five miles per hour, rear directly into a standard Society of Automotive Engineers (SAE J‑850) test barrier at a speed of two and one‑half miles per hour without sustaining any damage to the automobile.

HISTORY: 1962 Code Section 46‑572; 1972 (57) 2115.

CROSS REFERENCES

Regulation of manufacturers, distributors and dealers, see Section 56‑15‑10 et seq.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑4930.** Bumpers; warranty as to energy absorption system and ability to sustain shock; automobiles manufactured on and after August 1, 1974.

Every private passenger automobile manufactured on and after August 1, 1974, sold and licensed in the State of South Carolina, shall be sold subject to the manufacturer’s warranty that it is equipped with an appropriate energy absorption system and that without compromising existing standards of passenger safety, it can be driven, both front and rear, directly into a standard Society of Automotive Engineers (SAE J‑850) test barrier at a speed of five miles per hour without sustaining any damage to the automobile other than minor deformation of bumper parts.

HISTORY: 1962 Code Section 46‑573; 1972 (57) 2115.

CROSS REFERENCES

Regulation of manufacturers, distributors and dealers, see Section 56‑15‑10 et seq.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑4940.** Bumpers; exceptions to warranty requirements; common‑law and statutory remedies not removed.

The warranty provisions of Sections 56‑5‑4910 to 56‑5‑4940 shall not be applicable with respect to any private passenger automobile as to which the manufacturer files a written certification under oath with the Department of Motor Vehicles, on a form to be prescribed by that department, that the particular make and model described therein complies with the applicable standards of Sections 56‑5‑4910 to 56‑5‑4940. Nothing in Sections 56‑5‑4910 to 56‑5‑4940 should be construed to remove any common‑law or statutory remedy available against the manufacturer, distributor or ultimate vendor for a defective product.

HISTORY: 1962 Code Section 46‑574; 1972 (57) 2115; 1993 Act No. 181, Section 1450.

CROSS REFERENCES

Regulation of manufacturers, distributors and dealers, see Section 56‑15‑10 et seq.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Treatises and Practice Aids

American Law of Products Liability 3d PS STATESTATS, State Statutes.

**SECTION 56‑5‑4950.** Horns and warning devices.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or whistle. No vehicle other than an authorized emergency vehicle shall be equipped with nor shall any person use upon any such vehicle any siren, whistle or bell.

HISTORY: 1962 Code Section 46‑581; 1952 Code Section 46‑581; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

NOTES OF DECISIONS

In general 1

1. In general

The duties imposed by this section and former Code 1962 Section 46‑582 [see now Section 56‑5‑4960] are virtually the same as those existing under the common law. Conyers v. Stewart (S.C. 1966) 247 S.C. 403, 147 S.E.2d 640.

**SECTION 56‑5‑4960.** Use of horn.

The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his horn but shall not otherwise use such horn when upon a highway.

HISTORY: 1962 Code Section 46‑582; 1952 Code Section 46‑582; 1949 (46) 466.

CROSS REFERENCES

Giving audible signal upon overtaking vehicle on left, see Section 56‑5‑1840.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

This section and former Code 1962 Section 46‑384 [see now Section 56‑5‑1840], construed together, require that the horn of an overtaking vehicle be sounded, not under all circumstances, but only where conditions are such that the sounding of a horn is reasonably necessary to insure the safe operation of the vehicle. Woods v Wilhelm (1957) 232 SC 108, 101 SE2d 252. Nationwide Mut. Ins. Co. v De Loach (1959, CA4 SC) 262 F2d 775.

In the exercise of due care one must recognize that an automobile which is reducing its speed or stopping is likely to make a turn, and a driver of an overtaking automobile under such circumstances, especially in the nighttime, should sound the horn to give notice to the driver of the lead automobile that he is about to attempt to pass him. Seitz v. Hammond (D.C.S.C. 1967) 265 F.Supp. 162. Automobiles 172(8)

A violation of this section constitutes negligence per se. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

A violation of this section is evidence of recklessness, willfulness and wantonness. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47.

Even though the violation of an applicable statute is negligence per se and some evidence of recklessness, willfulness and wantonness, whether or not such breach contributed as a proximate cause to plaintiff’s injury is ordinarily a question for the jury. Rowe v. Frick (S.C. 1968) 250 S.C. 499, 159 S.E.2d 47. Automobiles 245(51)

The duties imposed by this section and former Code 1962 Section 46‑581 [see now Section 56‑5‑4950] are virtually the same as those existing under the common law. Conyers v. Stewart (S.C. 1966) 247 S.C. 403, 147 S.E.2d 640.

In action for damages resulting from collision between defendant’s automobile which overtook and passed plaintiff’s automobile which made a left turn without signal, evidence of defendant’s negligence in failing to sound his horn was sufficient for jury. Code 1952, Sections 46‑384, 46‑582. Howle v. Woods (S.C. 1957) 231 S.C. 75, 97 S.E.2d 205. Automobiles 245(15)

2. Sufficiency of evidence

In action by truck driver for personal injuries sustained when truck in which he was driving and making a left‑hand turn off highway onto an unpaved country road was struck by following vehicle attempting to pass, evidence disclosed negligence of driver of following vehicle, in attempting to pass within 100 feet of intersection contrary to statute, in disregarding turning signal given by truck driver, in passing at a high and excessive rate of speed, and in failing to give any warning or signal of intention to pass. Code S.C.1952, Sections 46‑361 to 46‑363, 46‑384, 46‑388(2), 46‑582. Hicks v. Kosa, 1958, 167 F.Supp. 289.

In action for death of decedent struck by one of two trucks approaching from opposite directions as decedent, standing by his vehicle which was parked on highway, attempted to stop trucks, evidence established that driver of truck which struck decedent, was grossly negligent in respect to speed, lookout, and due care, and in failing to warn, to apply brakes, or to take any action to avert injury, and that driver of other truck was grossly negligent in respect to speed, lookout, control and due care, and in driving without proper brakes, and that the gross negligence of each combined to cause decedent’s death. Code 1952 S.Car. Sections 10‑1951 to 10‑1954, 46‑243, 46‑342, 46‑361, 46‑363, 46‑442, 46‑582. Greene v. Miller, 1953, 114 F.Supp. 150.

**SECTION 56‑5‑4970.** Sirens, whistle, or bell on authorized emergency vehicles.

Any authorized emergency vehicle may be equipped with a siren, whistle or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the Department of Public Safety, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter event the driver of such vehicle shall sound such siren when necessary to warn pedestrians and other drivers of the approach thereof.

HISTORY: 1962 Code Section 46‑583; 1952 Code Section 46‑583; 1949 (46) 466.

CROSS REFERENCES

Operation of authorized emergency vehicles, see Section 56‑5‑760.

Library References

Automobiles 175(5).

Westlaw Topic No. 48A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 146, Right‑Of‑Way, Generally.

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.

Attorney General’s Opinions

It is not lawful for a volunteer fireman to operate a motor vehicle with only a red light and no siren in an emergency situation. S.C. Op.Atty.Gen. (May 12, 2014) 2014 WL 2538229.

NOTES OF DECISIONS

In general 1

1. In general

Causative violation of former Code 1962 Sections 46‑291 to 46‑293 [see now Sections 56‑5‑760 to 56‑5‑780] and this section constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671.

Violations of former Code 1962 Sections 46‑291 to 46‑293 [see now Sections 56‑5‑760 to 56‑5‑780] and this section if the proximate cause of a collision, would justify punitive as well as actual damages. Carter v. Beals (S.C. 1966) 248 S.C. 526, 151 S.E.2d 671. Damages 89(1)

**SECTION 56‑5‑4975.** Operation of vehicle upfitted but no longer licensed as an ambulance; removal of exterior equipment and markings; penalties.

(A) It is unlawful for a person to operate a vehicle that is upfitted as an ambulance or no longer permitted and licensed as an ambulance pursuant to Article 1, Chapter 61, Title 44, unless the vehicle’s exterior equipment and markings including, but not limited to, emergency lights, sirens, and decals that distinguish it as an ambulance are removed. A person who violates this subsection, except as provided in subsections (B) and (C), is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(B) A person who operates a vehicle in violation of subsection (A) with the intent to commit a felony, or in the commission of a felony, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(C) A person who operates a vehicle in violation of subsection (A) with the intent to commit a terrorist act, or in the commission of a terrorist act, is guilty of a felony and, upon conviction, must be fined ten thousand dollars and imprisoned for a mandatory minimum of ten years, no part of which may be suspended nor probation granted. For purposes of this section, “terrorist act” means activities that:

(1) involve acts dangerous to human life, which are a violation of the criminal laws of this State;

(2) appear to be intended to:

(a) intimidate or coerce a civilian population;

(b) influence the policy of a government by intimidation or coercion; or

(c) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(3) occur primarily within the territorial jurisdiction of this State.

(D) The provisions of this section do not apply to:

(1) eleemosynary or not‑for‑profit organizations that operate an ambulance that is no longer permitted and licensed and whose exterior markings have been removed for use in parades, fundraising activities, and other official functions;

(2) a person operating a vehicle that is going from the place of purchase to his home or his fixed place of business;

(3) a person operating a vehicle going to a location for the purpose of removing the vehicle’s exterior equipment or markings; or

(4) a person operating an antique vehicle as defined by Section 56‑3‑2210.

HISTORY: 2009 Act No. 5, Section 1, eff May 6, 2009.

Library References

Automobiles 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 1639.

**SECTION 56‑5‑4980.** Theft alarm signal.

It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

HISTORY: 1962 Code Section 46‑584; 1952 Code Section 46‑584; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

**SECTION 56‑5‑4990.** Mirrors.

Every motor vehicle which is so constructed or loaded as to obstruct the driver’s view to the rear thereof from the driver’s position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

HISTORY: 1962 Code Section 46‑591; 1952 Code Section 46‑591; 1949 (46) 466.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

NOTES OF DECISIONS

In general 1

1. In general

As to simple negligence per se through violation of former similar statute, see Dobson v. Henrietta Mills (S.C. 1938) 187 S.C. 281, 197 S.E. 313.

**SECTION 56‑5‑5000.** Windows unobstructed; windshield wipers.

No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, sidewings or side or rear windows of such vehicle which obstructs the driver’s clear view of the highway or any intersecting highway. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which shall be so constructed as to be controlled or operated by the driver of the vehicle. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

HISTORY: 1962 Code Section 46‑592; 1952 Code Section 46‑592; 1949 (46) 466.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑5010.** Safety glass in motor vehicles.

No person shall sell any new motor vehicle nor shall any new motor vehicle be registered unless such vehicle is equipped with safety glass wherever glass is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger‑type motor vehicles, including passenger buses and school buses. But in respect to trucks, including truck tractors, the requirements as to safety glass shall apply to all glass used in doors, windows, and windshields in the drivers’ compartments of such vehicles.

The Department of Motor Vehicles shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glass, and the department may thereafter suspend the registration of any motor vehicle so subject to this section which it finds is not so equipped until it is made to conform to the requirements of this section.

HISTORY: 1962 Code Section 46‑593; 1952 Code Section 46‑593; 1949 (46) 466; 1993 Act No. 181, Section 1451; 1996 Act No. 459, Section 198.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑5015.** Sunscreen devices.

(A) No person may operate a motor vehicle that is required to be registered in this State on any public highway, road, or street that has a sunscreen device on the windshield, the front side wings, and side windows adjacent to the right and left of the driver and windows to the rear of the driver that do not meet the requirements of this section. If no after‑factory installed sunscreen device has been added to the window surface, the provisions of this section regarding light transmittance do not apply.

(B) A sunscreening device must be nonreflective and may not be red, yellow, or amber in color. A sunscreening device may be used only along the top of the windshield and may not extend downward beyond the AS1 line. If the AS1 line is not visible, no sunscreening device may be applied to the windshield.

(C) A single sunscreening device may be installed on the side wings or side windows, or both, located at the immediate right and left of the driver and the side windows behind the driver. The sunscreening device must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must not be less than twenty‑seven percent.

(D)(1) A sunscreening device to be applied to the rear‑most window must be nonreflective and have a light transmission of not less than twenty percent. If a sunscreening device is used on the rear‑most window, one right and one left outside rearview mirror is required.

(2) Beginning January 1, 1993, a single sunscreening device to be applied to the rear‑most window must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must not be less than twenty‑seven percent. If a sunscreening device is used on the rear‑most window, one right and one left outside rearview mirror is required.

(3) A motor vehicle with a sunscreening device which complied with the requirements of item (1) at the time of installation is not considered to be in violation of this section on January 1, 1993, so long as the original sunscreen device is in place.

(E) Each vehicle equipped with an after‑factory sunscreening device, whether installed by a consumer or professional window tinter, at all times must bear a certificate of compliance. The certificate of compliance must be of a size and form prescribed by the Department of Public Safety. Each certificate of compliance must be properly attached to the vehicle on the inside and lower right hand corner of each window containing an after‑factory installed sunscreen device and must contain the following information:

(1) the percentage of light transmission allowed by the sunscreening device;

(2) the identity of the installer by name, address, and telephone number; and

(3) date of installation.

(F) Sunscreening devices offered for sale or use in South Carolina must include instructions with the product or material for proper installation. The manufacturer of the sunscreen device offered for sale or use in South Carolina must provide the certificate of compliance specified in subsection (E) and instructions for affixing it to the sunscreen device.

(G) No person may:

(1) offer for sale or for use any sunscreening product or material for motor vehicle use not in compliance with this section;

(2) install any sunscreening product or material on vehicles titled for use on public roads without permanently affixing the certificate of compliance specified in this section.

A professional window tinter who violates the provisions of subsections (E) or (G) is guilty of a misdemeanor triable in magistrate’s court and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than thirty days, or both, for each offense. A consumer who violates the provisions of subsection (E) or (G) is guilty of a misdemeanor triable in magistrate’s court and, upon conviction, must be fined not less than two hundred dollars or imprisoned not more than thirty days for each offense.

(H) The provisions of this section do not apply to:

(1) a motor vehicle registered in this State in the name of a person, or the person’s legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sunscreening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the vehicle at all times during its operation and must be produced at the request of a law enforcement officer. The affidavit must be updated every two years; or

(2) a law enforcement vehicle used regularly to transport a canine trained for law enforcement purposes.

(I) The light transmittance requirement of this section applies to windows behind the driver on pickup trucks, but does not apply to windows behind the driver on other trucks, buses, trailers, mobile homes, multipurpose passenger vehicles, and recreational vehicles.

(J) As used in this section:

(1) “Sunscreening device” means a film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(2) “Light transmission” means the ratio of the amount of total visible light to pass through a product or material to the amount of the total light falling on the product or material.

(3) “Luminous reflectant” means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.

(4) “Nonreflective” means a product or material primarily designed to absorb light rather than to reflect it.

(5) “Multipurpose passenger vehicle” means a vehicle with motive power designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional off‑road operation.

(6) “Motor home” means a vehicular unit designed to provide temporary living quarters built into and an integral part of or permanently attached to a self‑propelled motor vehicle chassis.

(7) “Truck” means a vehicle with motive power designed primarily for the transportation of property or special purpose equipment.

(8) “Bus” means a vehicle with motive power designed for carrying more than ten persons.

(9) “Manufacturer” means a person engaged in the manufacturing or assembling of sunscreening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

(10) “Recreational vehicle” means a self‑propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes, and is used solely as a family/personal conveyance.

(11) “AS1” means a glazing material position marking as defined in 49 Code of Federal Regulations, Section 571.205, Subsection S5.1.1.

(12) “Trailer” means every vehicle without motive power designed to carry persons or property, and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(13) “Professional window tinter” means a person who installs sunscreening devices for profit.

(K) A person who owns or operates a motor vehicle in violation of the provisions of this section is guilty of a misdemeanor triable in magistrate’s court and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1978 Act No. 484; 1981 Act No. 139, Section 1; 1983 Act No. 88; 1988 Act No. 532, Section 12; 1990 Act No. 411, Section 1; 1992 Act No. 462, Section 1; 1996 Act No. 459, Section 246A; 2002 Act No. 339, Section 40.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 217, Sunscreening Devices.

Attorney General’s Opinions

This section applies to the light transmittance, luminous reflectance, and placement of a sunscreen on a vehicle. S.C. Op.Atty.Gen. (May 13, 2015) 2015 WL 3429143.

The definitive answer as to whether or not evidence from a tint meter would be admissible at trial could only be given by the appellate courts of this State in an appropriate case. S.C. Op.Atty.Gen. (March 1, 2012) 2012 WL 889086.

Section 56‑5‑5015 of the Code, relative to vehicle window tinting, is applicable as of January 1, 1989, only to vehicles manufactured after January 1, 1989, until January 1, 1992, at which time it would be applicable to all vehicles. 1989 Op.Atty.Gen. No. 89‑141, p. 381 (December 20, 1989) 1989 WL 406230.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Traffic stop was invalid because state trooper did not possess articulable, reasonable suspicion that defendant’s vehicle was in violation of South Carolina law establishing light transmission requirements for sunscreen devices. U.S. v. Johnson (C.A.4 (S.C.) 2001) 256 F.3d 214. Automobiles 349(5)

**SECTION 56‑5‑5020.** Mufflers.

Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke and no person shall use a muffler cutout, bypass or similar device upon a motor vehicle upon a highway. The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes and smoke.

HISTORY: 1962 Code Section 46‑601; 1952 Code Section 46‑601; 1949 (46) 466.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 218, Mufflers.

**SECTION 56‑5‑5030.** Devices to emit smoke screen, noisome gases, or odors prohibited.

It shall be unlawful for any person to attach to any motor vehicle any device to emit from the exhaust pipe or any other part of such vehicle any smoke screen, noisome gases or odors. It shall be unlawful for any person to drive upon any highway or to have in his possession any motor vehicle to which is attached or unattached or in which is transported any device or substantial part of a device, attached or unattached, used in whole or in part for any smoke screen or any noisome gases or odors. It shall be unlawful for any person to use or operate in this State any device attached to any motor vehicle so as to emit from such device any smoke screen, noisome gases or odors. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor and upon conviction shall be imprisoned for not less than six months nor more than two years or fined not less than two hundred dollars nor more than five hundred dollars, in the discretion of the court, and his driver’s license shall be forthwith revoked for a period of two years.

Any motor vehicle possessed or operated by any person in violation of this section shall be forfeited to the county in which such conviction is had. But the rights of innocent owners of mortgages shall be protected. Any such motor vehicle so forfeited may be redeemed by the owner upon the payment to the county treasurer of a sum of money agreed upon by the governing body and the sheriff of such county.

HISTORY: 1962 Code Section 46‑602; 1952 Code Section 46‑602; 1949 (46) 466; 1960 (51) 1602; 1962 (52) 2179.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑5040.** Tires.

Every motor vehicle, trailer or semitrailer operated upon the highways shall be equipped with tires of sufficient size and in sufficient number to distribute the wheel loads on the road surface so as to avoid damage to the highway, and all such tires shall be in a safe operating condition. Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery. No person shall operate or move on any highway any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway. No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber (or other resilient material) which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety, because of snow, ice or other conditions tending to cause a vehicle to skid. It shall also be permissible to use upon any vehicle for increased safety, regular and snow tires with studs which project beyond the tread of the traction surface of the tire not more than one sixteenth of an inch when compressed.

HISTORY: 1962 Code Section 46‑611; 1952 Code Section 46‑611; 1949 (46) 466; 1968 (55) 2518.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

NOTES OF DECISIONS

Questions for jury 1

1. Questions for jury

Evidence generated jury question as to any recklessness on part of unlicensed driver, who on rainy night was operating automobile that had two slick tires, who had been warned to slow down and to watch for dog on side of street, who was traveling at 25 miles an hour when dog ran in front of car and who slammed on brakes and slid into mailbox and fence, stopping some nine feet off the road, and whether such recklessness was proximate cause of collision and resulting injury to suing guest passenger. Player v. Thompson (S.C. 1972) 259 S.C. 600, 193 S.E.2d 531.

**SECTION 56‑5‑5050.** Toilets or other devices hazardous to health.

No motor vehicle, trailer or semitrailer shall be equipped with an open toilet or other device that may be hazardous from a health and sanitation standpoint.

HISTORY: 1962 Code Section 46‑612; 1952 Code Section 46‑612; 1949 (46) 466.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

**SECTION 56‑5‑5060.** Certain vehicles must carry flares and other warning devices.

No person shall operate any motor truck, passenger bus or truck tractor upon any highway outside of the corporate limits of municipalities at any time from a half hour after sunset to half hour before sunrise unless there shall be carried in such vehicle the following equipment, except as provided in Section 56‑5‑5070:

(1) At least three flares or three red electric lanterns, each of which shall be capable of being seen and distinguished at a distance of five hundred feet under normal atmospheric conditions at nighttime. Each flare (liquid‑burning pot torch) shall be capable of burning for not less than twelve hours in a five‑mile‑per‑hour wind velocity and capable of burning in any air velocity from zero to forty miles per hour. Every such flare shall be substantially constructed so as to withstand reasonable shocks without leaking. Every such flare shall be carried in the vehicle in a metal rack box. Every such red electric lantern shall be capable of operating continuously for not less than twelve hours and shall be substantially constructed so as to withstand reasonable shock without breakage.

(2) At least three red‑burning fusees unless red electric lanterns are carried. Every fusee shall be made in accordance with specifications of the Bureau of Explosives, New York, and so marked and shall be capable of burning at least fifteen minutes.

(3) At least two red cloth flags, not less than twelve inches square, with standards to support them.

HISTORY: 1962 Code Section 46‑621; 1952 Code Section 46‑621; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

**SECTION 56‑5‑5070.** Red electric lanterns shall be carried in vehicles transporting inflammable liquids or gases.

No person shall operate at the time and under the conditions stated in Section 56‑5‑5060 any motor vehicle used in the transportation of inflammable liquids in bulk or transporting compressed inflammable gases unless there shall be carried in such vehicle three red electric lanterns meeting the requirements stated in Section 56‑5‑5060, and there shall not be carried in any such vehicle any flare, fusee or signal produced by a flame.

HISTORY: 1962 Code Section 46‑622; 1952 Code Section 46‑622; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 215, Lights.

NOTES OF DECISIONS

In general 1

1. In general

Diesel fuel being hauled to emergency generators by regional sewer authority’s pick‑up truck did not qualify as an “inflammable liquid” under statute requiring motor vehicles hauling inflammable liquids to carry lantern warning devices at night; there was no evidence that diesel fuel had a flash point of 70 degrees Fahrenheit or lower. Hughes v. Western Carolina Regional Sewer Authority (S.C.App. 2010) 386 S.C. 641, 689 S.E.2d 638. Automobiles 151; Automobiles 329

**SECTION 56‑5‑5080.** Alternative warning device; portable reflector units.

As an alternative it shall be deemed a compliance with Sections 56‑5‑5060 and 56‑5‑5070 in the event the person operating any motor vehicle described therein shall carry in such vehicle three portable reflector units on standards of a type approved by the Department of Public Safety. No portable reflector unit shall be approved unless it is so designed and constructed as to include two reflectors, one above the other, each of which shall be capable of reflecting red light clearly visible from all distances within five hundred to fifty feet under normal atmospheric conditions at nighttime when directly in front of lawful upper beams of head lamps.

HISTORY: 1962 Code Section 46‑623; 1952 Code Section 46‑623; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

**SECTION 56‑5‑5090.** Display of warning devices when vehicle disabled.

Whenever any motor truck, passenger bus, truck tractor, trailer, semitrailer or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles, the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway, except as provided in Section 56‑5‑5100:

(1) A lighted fusee shall be immediately placed on the roadway at the traffic side of the motor vehicle unless electric lanterns are displayed; and

(2) Within the burning period of the fusee and as promptly as possible three lighted flares (pot torches) or three electric lanterns shall be placed on the roadway as follows: One at a distance of approximately one hundred feet in advance of the vehicle, one at a distance of approximately one hundred feet to the rear of the vehicle, each in the center of the lane of traffic occupied by the disabled vehicle, and one at the traffic side of the vehicle approximately ten feet rearward or forward thereof.

HISTORY: 1962 Code Section 46‑624; 1952 Code Section 46‑624; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

NOTES OF DECISIONS

In general 1

Instructions 3

Questions for jury 2

1. In general

As to right of State to regulate carriers using highways, see South Carolina State Highway Department v. Barnwell Bros. (U.S.S.C. 1938) 58 S.Ct. 510, 303 U.S. 177, 82 L.Ed. 734.

Even if shippers negligently overloaded truck to such an extent that it became disabled on road where it was struck in rear by vehicle in which plaintiff was passenger because owner‑driver of truck had not taken steps commanded by South Carolina statute with respect to warning of approaching traffic, shippers could not be held liable for injuries to plaintiff, but they were entitled to presume that owner‑driver would comply with requirements of statute. Code S.C.1952, Sections 46‑624, 46‑626, 46‑627. Burleson v. Canada (C.A.4 (S.C.) 1961) 297 F.2d 588.

Violation of this section would not only constitute actionable negligence but, under some circumstances, would be some evidence of reckless conduct on the part of the employees of the defendant. Dudley Trucking Co. v. Hollingsworth (S.C. 1964) 243 S.C. 439, 134 S.E.2d 399.

This section is applicable solely to a disabled motor truck and its lighting system while on a highway outside of a business or residence section. Jones v. American Fidelity & Cas. Co. (S.C. 1947) 210 S.C. 470, 43 S.E.2d 355. Automobiles 173(5)

2. Questions for jury

In action for death of plaintiff’s intestate when automobile in which he was riding crashed into rear end of disabled truck which was parked partially on highway, evidence that driver of truck had made no effort to move it off highway despite fact that several hours had intervened from time it was parked until time of collision, made question for jury on negligence of truck driver, even though warning flares had been set out in accordance with statute. Act June 7, 1949, Sections 109(a, b), 162 (a) 1, 2, 46 St. at Large, pp. 501, 525. Howey v. Jordan’s, Inc. (S.C. 1953) 223 S.C. 71, 74 S.E.2d 216.

3. Instructions

Since violation of a statute can be considered by the jury as some evidence of recklessness, where the complaint charged the defendants with violation of Sections 55‑5‑2510, 56‑5‑4450, 56‑5‑4640 and 56‑5‑5090, and the answer alleged that plaintiff violated Section 56‑5‑1520, and there was evidence in the record to support such allegations, the trial court did not err in instructing the jury concerning recklessness and contributory recklessness. Ellison v. Pope (S.C.App. 1986) 290 S.C. 100, 348 S.E.2d 367.

**SECTION 56‑5‑5100.** Display of warning devices when disabled vehicle is carrying inflammable liquids or gases.

Whenever any vehicle used in the transportation of inflammable liquids in bulk or transporting compressed inflammable gases is disabled upon a highway at any time or place mentioned in Section 56‑5‑5090, the driver of such vehicle shall display upon the roadway the following lighted warning devices: One red electric lantern shall be immediately placed on the roadway at the traffic side of the vehicle and two other red electric lanterns shall be placed in the front and rear of the vehicle in the same manner as prescribed in Section 56‑5‑5090 for flares.

When a vehicle of a type specified in this section is involved, the use of flares, fusees or any signal produced by flame as warning signals is prohibited.

HISTORY: 1962 Code Section 46‑625; 1952 Code Section 46‑625; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

**SECTION 56‑5‑5110.** Display of flags when vehicle disabled in daytime.

Whenever any vehicle of a type referred to in Sections 56‑5‑5090 and 56‑5‑5100 is disabled upon the traveled portion of a highway or the shoulder thereof, outside of any municipality, at any time when the display of fusees, flares or electric lanterns is not required, the driver of such vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle and one at a distance of approximately one hundred feet to the rear of the vehicle.

HISTORY: 1962 Code Section 46‑626; 1952 Code Section 46‑626; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

NOTES OF DECISIONS

In general 1

1. In general

Even if shippers negligently overloaded truck to such an extent that it became disabled on road where it was struck in rear by vehicle in which plaintiff was passenger because owner‑driver of truck had not taken steps commanded by South Carolina statute with respect to warning of approaching traffic, shippers could not be held liable for injuries to plaintiff, but they were entitled to presume that owner‑driver would comply with requirements of statute. Code S.C.1952, Sections 46‑624, 46‑626, 46‑627. Burleson v. Canada (C.A.4 (S.C.) 1961) 297 F.2d 588.

In an action for damage, it was for the jury to determine whether, under all of the circumstances, the defendant’s failure to display warnings as required by this section or, alternatively, those required by former Code 1962 Section 46‑627 [see now Section 56‑5‑5120] amounted to recklessness and willfulness and was a proximate cause of plaintiff’s injury. Moss v. Malone Freight Lines, Inc. (S.C. 1971) 255 S.C. 435, 179 S.E.2d 603.

**SECTION 56‑5‑5120.** Alternative warning devices.

In the alternative it shall be deemed a compliance with Sections 56‑5‑5090, 56‑5‑5100 or 56‑5‑5110 in the event three portable reflector units on standards of a type approved by the Department of Public Safety are displayed at the times and under the conditions specified in said sections, either during the daytime or at nighttime, and such portable reflector units shall be placed on the roadway in the locations as described with reference to the placing of electric lanterns and lighted flares.

HISTORY: 1962 Code Section 46‑627; 1952 Code Section 46‑627; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

NOTES OF DECISIONS

In general 1

1. In general

Even if shippers negligently overloaded truck to such an extent that it became disabled on road where it was struck in rear by vehicle in which plaintiff was passenger because owner‑driver of truck had not taken steps commanded by South Carolina statute with respect to warning of approaching traffic, shippers could not be held liable for injuries to plaintiff, but they were entitled to presume that owner‑driver would comply with requirements of statute. Code S.C.1952, Sections 46‑624, 46‑626, 46‑627. Burleson v. Canada (C.A.4 (S.C.) 1961) 297 F.2d 588.

In an action for damage, it was for the jury to determine whether, under all of the circumstances, the defendant’s failure to display warnings as required by former Code 1962 Section 46‑626 [see now Section 56‑5‑5110] or, alternatively, those required by this section amounted to recklessness and willfulness and was a proximate cause of plaintiff’s injury. Moss v. Malone Freight Lines, Inc. (S.C. 1971) 255 S.C. 435, 179 S.E.2d 603.

**SECTION 56‑5‑5130.** Requirements as to flares, fusees, and other warning devices.

The flares, fusees, lanterns and flags to be displayed as required in Sections 56‑5‑5090 to 56‑5‑5110 shall conform with the requirements of Section 56‑5‑5060 applicable thereto.

HISTORY: 1962 Code Section 46‑628; 1952 Code Section 46‑628; 1949 (46) 466.

Library References

Automobiles 151, 329.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 623, 668 to 670, 1658.

**SECTION 56‑5‑5140.** Vehicles transporting explosives.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section. Such vehicle shall be marked or placarded on each side and the rear with the word “Explosive” in letters not less than eight inches high or there shall be displayed on the rear of such vehicle a red flag not less than twenty‑four inches square marked with the word “Danger” in white letters six inches high. Every such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use and placed at a convenient point on the vehicle so used.

The Department of Public Safety shall promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as it shall deem advisable for the protection of the public.

HISTORY: 1962 Code Section 46‑629; 1952 Code Section 46‑629; 1949 (46) 466.

Library References

Explosives 3.

Westlaw Topic No. 164.

C.J.S. Explosives Sections 14 to 17, 20, 30 to 36.

**SECTION 56‑5‑5150.** Use of safety devices when towing vehicles.

When a vehicle is towing another vehicle on a public road or highway, the towing vehicle must be attached to the towed vehicle by a safety chain, cable, or equivalent device in addition to the regular drawbar, tongue, trailer hitch, or other connection. The safety connections or attachments must be of sufficient strength to maintain connection of the towed vehicle to the pulling vehicle under all conditions while the towed vehicle is being pulled by the towing vehicle. The provisions of this section do not apply to vehicles using a hitch known as a fifth wheel and kingpin assembly.

HISTORY: 1984 Act No. 455.

Library References

Automobiles 174(1).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 789 to 790.

ARTICLE 37

Condition of Vehicles

**SECTION 56‑5‑5310.** Condition of vehicle and vehicle equipment.

No person shall drive or move on any highway any vehicle unless the equipment thereon is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

HISTORY: 1962 Code Section 46‑641; 1952 Code Section 46‑641; 1949 (46) 466; 1965 (54) 649.

CROSS REFERENCES

Brake equipment on motor vehicles, see Section 56‑5‑4850 et seq.

Bumpers on motor vehicles, see Section 56‑5‑4910 et seq.

Horns and warning devices on motor vehicles, see Section 56‑5‑4950.

Lighting requirements for motor vehicles, see Section 56‑5‑4450 et seq.

Mirrors on motor vehicles, see Section 56‑5‑4990.

Mufflers on motor vehicles, see Section 56‑5‑5020.

Provision that, with the exception of this article, inter alia, this chapter applies to the operation of mopeds on public roads, see Section 56‑5‑50.

Tires on motor vehicles, see Section 56‑5‑5040.

Library References

Automobiles 148, 327.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 621 to 628, 681, 1639.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 219, Civil Actions.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Although the owner or operator of a motor vehicle generally is not liable for an injury resulting from its defective condition in the absence of negligence on the part of the owner, before the owner operates the motor vehicle upon the highway, he or she has a duty to exercise reasonable care to see that the vehicle is in such safe mechanical condition as not to endanger any person or property. In order to fulfill this duty, the owner must make reasonable inspection of the vehicle to discover conditions that present an unreasonable risk of harm to others, and he is chargeable with knowledge of any defects that such an inspection would disclose. However, the owner of a motor vehicle does not have a general duty to inspect either the work or the invoice of a mechanic after he completes maintenance or repairs if (1) the work is of a kind within the competence of the ordinary mechanic performing that type of work; (2) the defect in the work is not of a character that would make it apparent to a person of ordinary prudence in the owner’s position; and (3) the owner reasonably relies on the competence of the mechanic as a sufficient assurance that the vehicle is safe to operate. Carter v. R.L. Jordan Oil Co., Inc. (S.C.App. 1988) 294 S.C. 435, 365 S.E.2d 324, reversed 299 S.C. 439, 385 S.E.2d 820, on remand 301 S.C. 84, 390 S.E.2d 367.

2. Instructions

Where there is evidence from which the jury can reasonably infer that one is in violation of a statute, that evidence will support a charge of that statute. Thus, in a wrongful death action arising from an automobile accident, the trial judge did not commit error in charging Sections 56‑5‑4410 and 56‑5‑5310, even though the testimony regarding the condition of the brakes on the decedent’s automobile was circumstantial, since the evidence was sufficient to create a question of fact as to whether the decedent was operating a vehicle with defective brakes and was therefore contributorily negligent. Jefferson v. Synergy Gas, Inc. (S.C.App. 1991) 303 S.C. 479, 401 S.E.2d 427.

ARTICLE 39

Disposition of Abandoned Motor Vehicles on Highways

**SECTION 56‑5‑5620.** Duty of sheriffs and police officers to remove vehicles; storage; personnel, equipment, and facilities for removing and storing.

(a) It shall be the duty of every police officer having knowledge of an abandoned motor vehicle to seize it and have it removed for safekeeping to such place as may be designated by the sheriff of the county, or the chief of police of the municipality, in which it was found, who shall be charged with its custody and disposition as provided in this article.

(b) A sheriff or chief of police may employ his own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving and storing abandoned motor vehicles.

HISTORY: 1962 Code Section 46‑490.12; 1972 (57) 2459; 1974 (58) 2103.

CROSS REFERENCES

General powers and duties of sheriff and deputy sheriffs, see Sections 23‑15‑20 et seq.

Police commissioners in city of 20,000 to 50,000, see Sections 23‑21‑10 et seq.

Police districts in unincorporated communities, see Sections 23‑27‑10 et seq.

**SECTION 56‑5‑5630.** Notice to owners and lienholders; payment for release of vehicle; liability of lienholders; stolen vehicles.

(A)(1) For purposes of this article, “ vehicle” means a motor vehicle, trailer, mobile home, watercraft, or any other item or object that is subject to towing and storage, and applies to any vehicle in custody at the time of the enactment of this section. “Vehicle” includes:

(a) items that are towed and left in the possession of a towing, storage, garage, or repair facility;

(b) contents contained in the vehicle; and

(c) personal property affixed to the vehicle.

Storage costs for those vehicles in custody at the time of the enactment of this section must not exceed sixty days.

(2) When an abandoned vehicle has been taken into custody, the towing company and storage facility having towed and received the vehicle shall notify by registered or certified mail, return receipt requested, the last known registered owner of the vehicle and all lienholders of record that the vehicle has been taken into custody. Notification of the owner and all lienholders by certified or registered mail, return receipt requested, constitutes notification for purposes of this section. This notification must satisfy the notification requirements contained in Section 29‑15‑10. The notice must:

(a) give a description of the year, make, model, and identification number of the vehicle;

(b) set forth the location where the vehicle is being held;

(c) inform the owner and all lienholders of the right to reclaim the vehicle within thirty days beginning the day after the notice is mailed, return receipt requested, upon payment of all towing, preservation, storage charges, notification, publication, and court costs resulting from placing the vehicle in custody; and

(d) state that the failure of the owner and all lienholders to exercise their right to reclaim the vehicle within the time provided is considered a waiver by the owner and lienholders of all rights, title, and interest in the vehicle and is considered as their consent to the sale of the vehicle at a public auction.

If a vehicle has been towed pursuant to the provisions of this section, the towing company and storage facility must accept as payment for the release of the vehicle the same manner of payment that they would accept if the owner of the vehicle had requested his vehicle towed.

(B) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles. This notice must be within the time requirements prescribed for notice by registered or certified mail and must have the same contents required for a notice by registered or certified mail.

(C) A lienholder is not subject to a criminal penalty imposed by law in this State for abandonment unless the vehicle is abandoned by the lienholder or his agent or if a false statement or report to a law enforcement officer is made as provided by Section 16‑17‑722. The owner of a vehicle which has been stolen, whether or not the vehicle was subsequently abandoned, is liable for:

(1) actual recovery and towing charges; and

(2) storage costs that accrue beginning seven days after the vehicle was towed.

The law enforcement agency must, within two days after the vehicle’s towing, notify the owner that the vehicle has been recovered, provide the owner with the location of the vehicle, and explain that daily storage charges will begin to accrue if the vehicle is not reclaimed within seven days of the towing date.

A vehicle is considered to be stolen when the registered owner notifies a police officer and files a report which is accepted and placed on the records of the sheriff or chief of police as a stolen vehicle. The law enforcement agency that requested the tow must provide the towing company and storage facility, at no cost to the towing company and storage facility, the owner’s name and address. A law enforcement agency is not liable for any costs or fees associated with the towing and storage of a vehicle as provided by this section.

(D) The court may order restitution from a person convicted of stealing a vehicle to cover the costs associated with the recovery, towing, and storage of the vehicle.

HISTORY: 1962 Code Section 46‑490.13; 1972 (57) 2459; 1989 Act No. 159, Section 1; 2002 Act No. 195, Section 5; 2003 Act No. 71, Section 4; 2004 Act No. 269, Section 3.

CROSS REFERENCES

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Sale of unclaimed vehicles, disposition of proceeds, see Section 56‑5‑5640.

Library References

Automobiles 12, 19.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 75 to 95.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

When an abandoned vehicle is left on airport property and no claim of ownership has been made, the vehicle can be sold and the proceeds retained by the governing entity upon whose property the vehicle was abandoned. S.C. Op.Atty.Gen. (January 13, 1998) 1998 WL 62936.

**SECTION 56‑5‑5635.** Law enforcement towing and storage procedures; notification of registered owner; disposition of vehicle and personal property.

(A) Notwithstanding another provision of law, a law enforcement officer who directs that a vehicle be towed for any reason, whether on public or private property, must use the established towing procedure for his jurisdiction. A request by a law enforcement officer resulting from a law enforcement action including, but not limited to, a vehicle collision, vehicle breakdown, or vehicle recovery incident to an arrest, is considered a law enforcement towing for purposes of recovering costs associated with the towing and storage of the vehicle unless the request for towing is made by a law enforcement officer at the direct request of the owner or operator of the vehicle.

(B) Within ten days following a law enforcement’s towing request, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop must provide to the sheriff or chief of police a list describing the vehicles remaining in the possession of the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop. A person who fails to provide the law enforcement agency with this list forfeits recovery of any storage fees that have accrued from the date of towing until the day after the mailing of the notification to the owner and all lienholders by certified or registered mail, return receipt requested, pursuant to Section 29‑15‑10. Within ten days of receipt of this list, the sheriff or chief of police must provide to the towing company or storage facility, the current owner’s name, address, and a record of all lienholders along with the make, model, and identification number or a description of the vehicle at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop having towed or received the vehicle must notify by registered or certified mail, return receipt requested, the last known registered owner and all lienholders of record that the vehicle has been taken into custody.

(C) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must provide notice by one publication in one newspaper of general circulation in the area from which the vehicle was abandoned which is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles.

(D) Before a vehicle is sold, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must apply to the appropriate titling facility including, but not limited to, the Department of Motor Vehicles or the Department of Natural Resources for the name and address of any owner or lienholder. For nontitled vehicles, where the owner’s name is known, a search must be conducted through the Secretary of State’s Office to determine any lienholders. The application must be on prescribed forms as required by the appropriate titling facility or the Secretary of State. If the vehicle has an out‑of‑state registration, an application must be made to that state’s appropriate titling facility. When the vehicle is not titled in this State and does not have a registration from another state, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may apply to the sheriff or chief of police in the jurisdiction where the vehicle is stored to determine the state where the vehicle is registered. The sheriff or chief of police shall conduct a records search. This search must include, but is not limited to, a search on the National Crime Information Center and any other appropriate search that may be conducted with the vehicle’s identification number. The sheriff or chief of police must supply, at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the name of the state in which the vehicle is titled.

(E) The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop that has towed and stored a vehicle has a lien against the vehicle and may have the vehicle sold at public auction pursuant to Section 29‑15‑10. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may hold the license tag of any vehicle until all towing and storage costs have been paid, or if the vehicle is not reclaimed, until it is declared abandoned and sold. Storage costs may be charged that have accrued before the notification of the owner and lienholder, by certified or registered mail, of the location of the vehicle. Notification to the owner and lienholder by the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must occur within five days, after receiving the owner’s and lienholders’ identities from the appropriate law enforcement agency. If the notice is not mailed within this period, storage costs after the five‑day period must not be charged until the notice is mailed. If the vehicle is not reclaimed within thirty days after the day the notice is mailed, return receipt requested, the vehicle is considered abandoned and may be sold by the magistrate pursuant to the procedures set forth in Section 29‑15‑10.

(F) After the vehicle is in the possession of the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the owner of the vehicle as demonstrated by providing a certificate of registration has one opportunity to remove from the vehicle any personal property not attached to the vehicle. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

(G) When a law enforcement agency stores a vehicle at a law enforcement facility, the agency must follow the notification procedures contained in this section and submit vehicle information to a magistrate in the county where the vehicle is stored to provide for the sale of the vehicle at public auction. A law enforcement agency is exempt from paying filing fees in any matter related to the towing and storing of a vehicle.

HISTORY: 2003 Act No. 71, Section 1; 2004 Act No. 269, Section 4.

Library References

Automobiles 12, 368.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 1764, 1787 to 1829.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 56‑5‑5640.** Sale of unclaimed vehicles; disposition of proceeds.

If an abandoned vehicle has not been reclaimed pursuant to Section 56‑5‑5630, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may have the abandoned vehicle sold at a public auction pursuant to Section 29‑15‑10. The vehicle’s purchaser shall take title to the vehicle free and clear of all liens and claims of ownership, shall receive a magistrate’s order of sale, and is entitled to register the purchased vehicle and receive a certificate of title. The Office of Court Administration shall design a uniform magistrate’s order of sale for purposes of this section, Section 56‑5‑5670, and Section 56‑5‑5945, and shall make the order available for distribution to the magistrates. The magistrate’s order of sale given at the sale must be sufficient title for purposes of transferring the vehicle to a demolisher or secondary metals recycler for demolition, wrecking, or dismantling, and in such case no further titling of the vehicle is necessary. The expenses of the auction, the costs of towing, preserving, and storing the vehicle which resulted from placing the vehicle in custody, and all notice and publication costs incurred pursuant to Section 29‑15‑10 must be reimbursed up to the amount of the auction sale price from the vehicle’s sale proceeds. The remaining sale proceeds must be held for the vehicle’s owner or entitled lienholder for ninety days. The magistrate shall notify the vehicle’s owner and all lienholders by certified or registered mail, return receipt requested, that the vehicle’s owner or lienholder has ninety days to claim the proceeds from the vehicle’s sale. If the vehicle’s proceeds are not collected within ninety days from the day after the notice to the vehicle’s owner and all lienholders is mailed, then the vehicle’s proceeds must be deposited in the county or municipality’s general fund.

HISTORY: 1962 Code Section 46‑490.14; 1972 (57) 2459; 2002 Act No. 195, Section 1; 2003 Act No. 71, Section 5; 2004 Act No. 269, Section 5; 2012 Act No. 242, Section 6, eff December 15, 2012.

CROSS REFERENCES

Application of this section to disposition of vehicle seized for driver’s conviction of DUS or DUI, see Section 56‑5‑6240.

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Duties of demolishers, surrender of receipts and certificates, records, penalties, see Section 56‑5‑5670.

Library References

Automobiles 19, 371.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 75 to 95, 1767 to 1771.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

S.C. Jur. Automobiles and Other Motor Vehicles Section 204, Vehicles Seized for Certain Convictions.

**SECTION 56‑5‑5650.** Claims of and awards to persons damaged by sale of vehicle.

For a period not in excess of two years after the payment of any sum into the general fund of any county or municipality on account of the sale of any abandoned motor vehicle, governing bodies of the respective counties or municipalities shall hear and determine claims of any persons claiming to be damaged by the sale of any such vehicle and shall make awards to owners or lienholders as their interests may appear, but in no event shall the awards be in excess of the net amount received by the county or municipality from the sale of the vehicle. The decision of the county or municipal governing body in connection with any such claim shall be final.

HISTORY: 1962 Code Section 46‑490.15; 1972 (57) 2459.

Library References

Automobiles 19.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 75 to 95.

**SECTION 56‑5‑5670.** Duties of demolishers; disposal of vehicle to demolisher or secondary metals recycler; records; penalties.

(A) For purposes of this section, “vehicle” has the same meaning as defined by Section 56‑5‑120 and includes, but is not limited to, a “trailer”, as defined by Section 56‑5‑240, a “semitrailer”, as defined by Section 56‑5‑250, and a “pole trailer”, as defined by Section 56‑5‑260.

(B)(1) Except as provided by subsections (C), (D), and (E), a person or entity may not dispose of a vehicle to a demolisher or secondary metals recycler without a valid title certificate for the vehicle in the person or entity’s name. The person or entity shall provide the vehicle’s title certificate to the demolisher or secondary metals recycler.

(2) The demolisher or secondary metals recycler is not required to obtain a certificate of title for the vehicle in the demolisher or secondary metals recycler’s own name. After the vehicle has been demolished, processed, or changed so that the vehicle physically is no longer a vehicle, the demolisher or secondary metals recycler shall surrender the certificate of title to the Department of Motor Vehicles for cancellation.

(3) The Department of Motor Vehicles shall issue forms and regulations governing the surrender of certificates of title as appropriate.

(4) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a title certificate pursuant to this subsection may wreck, dismantle, demolish, or otherwise dispose of the vehicle after the transaction has taken place. The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations.

(C)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler with a valid magistrate’s order of sale in lieu of a title certificate, if the person or entity purchases the vehicle at a public auction pursuant to Section 56‑5‑5640. The person or entity shall provide the magistrate’s order of sale to the demolisher or secondary metals recycler.

(2) The demolisher or secondary metals recycler is not required to obtain a certificate of title for the vehicle in the demolisher or secondary metals recycler’s own name. After the vehicle has been demolished, processed, or changed so that the vehicle physically is no longer a vehicle, the demolisher or secondary metals recycler shall surrender the magistrate’s order of sale to the Department of Motor Vehicles.

(3) The Office of Court Administration shall design a uniform magistrate’s order of sale for purposes of this subsection and Section 56‑5‑5640, and shall make the order available for distribution to the magistrates. The Department of Motor Vehicles shall issue forms and regulations governing the surrender of magistrates’ orders of sale as appropriate.

(4) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a magistrate’s order of sale pursuant to this subsection may wreck, dismantle, demolish, or otherwise dispose of the vehicle after the transaction has taken place. The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations.

(D)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler with a valid sheriff’s disposal authority certificate in lieu of a title certificate, if the vehicle is abandoned upon the person or entity’s property or into the person or entity’s possession and the vehicle does not meet the requirements of subsection (E)(1). The person or entity shall provide the sheriff’s disposal authority certificate to the demolisher or secondary metals recycler.

(2) The person or entity shall apply to the sheriff of the jurisdiction in which the vehicle is located for a disposal authority certificate to dispose of the vehicle to a demolisher or secondary metals recycler. The application must provide, at a minimum, the person or entity’s name and address, the year, make, model, and identification number of the vehicle, if ascertainable, along with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment. The person or entity shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld. If the sheriff determines that the application is executed in proper form, and the application demonstrates that the vehicle has been abandoned upon the person or entity’s property or into the person or entity’s possession, the notification procedures set forth in Section 56‑5‑5630 must be followed. If the vehicle is not reclaimed pursuant to Section 56‑5‑5630, the sheriff shall give the applicant a certificate of authority to dispose of the vehicle to a demolisher or secondary metals recycler. A disposal authority certificate may contain multiple listings.

(3) The demolisher or secondary metals recycler is not required to obtain a certificate of title for the vehicle in the demolisher or secondary metals recycler’s own name. After the vehicle has been demolished, processed, or changed so that the vehicle physically is no longer a vehicle, the demolisher or secondary metals recycler shall surrender the sheriff’s disposal authority certificate to the Department of Motor Vehicles.

(4) The South Carolina Law Enforcement Division shall design a uniform sheriff’s disposal authority certificate for purposes of this subsection and shall make the certificate available for distribution to the sheriffs. The Department of Motor Vehicles shall issue forms and regulations governing the surrender of sheriffs’ disposal authority certificates as appropriate.

(5) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a sheriff’s disposal authority certificate pursuant to this subsection may wreck, dismantle, demolish, or otherwise dispose of the vehicle after the transaction has taken place. The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations.

(E)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler without a title certificate, magistrate’s order of sale, or sheriff’s disposal authority certificate, if:

(a) the vehicle is abandoned upon the person or entity’s property or into the person or entity’s possession, or if the person or entity is the owner of the vehicle and the vehicle’s title certificate is faulty, lost, or destroyed; and

(b) the vehicle:

(i) is lawfully in the person or entity’s possession;

(ii) is twelve model years old or older;

(iii) does not have a valid registration plate affixed; and

(iv) has no engine or is otherwise totally inoperable.

(2) The person or entity shall complete and sign a form affirming that the vehicle complies with the requirements of subsection (E)(1). The demolisher or secondary metals recycler shall maintain the original form affidavit in the transaction records as required by this section.

(3) The Department of Motor Vehicles shall develop a form affidavit for purposes of this subsection and shall make the form affidavit available for distribution to the demolishers and secondary metals recyclers.

(4) Prior to completion of the transaction, the demolisher or secondary metals recycler shall verify with the Department of Motor Vehicles whether the vehicle has been reported stolen. The Department of Motor Vehicles shall develop an electronic system for demolishers and secondary metals recyclers to use to verify at the time of a transaction whether a vehicle has been reported stolen. The Department of Motor Vehicles shall not charge a demolisher or secondary metals recycler a fee for verifying whether a vehicle has been reported stolen. If the Department of Motor Vehicles indicates to the demolisher or secondary metals recycler that the vehicle has been reported stolen, the demolisher or secondary metals recycler shall not complete the transaction and shall notify the appropriate law enforcement agency. The demolisher or secondary metals recycler is under no obligation to apprehend the person attempting to sell the vehicle. If the Department of Motor Vehicles indicates to the demolisher or secondary metals recycler that the vehicle has not been reported stolen, the demolisher or secondary metals recycler may proceed with the transaction. In such case, the demolisher or secondary metals recycler is not criminally or civilly liable if the vehicle later turns out to be a stolen vehicle, unless the demolisher or secondary metals recycler had some other knowledge that the vehicle was a stolen vehicle.

(5) The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations at the time of the transaction or no later than the end of the day of the transaction. A demolisher or secondary metals recycler who reports vehicles to the National Motor Vehicle Title Information System through a third party consolidator and complies with the requirements of this item if the demolisher or secondary metals recycler reports the vehicle to the third party consolidator so that the third party consolidator is able to transmit the vehicle information to the National Motor Vehicle Title Information System in compliance with federal laws and regulations no later than the end of the day of the transaction.

(6) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a form affidavit pursuant to this subsection shall not wreck, dismantle, demolish, or otherwise dispose of the vehicle until at least three business days after the transaction has taken place.

(F) A demolisher or secondary metals recycler who purchases or otherwise acquires nonferrous metals, as defined by Section 16‑17‑680, shall comply with and is subject to the provisions of Section 16‑17‑680.

(G)(1) A demolisher or secondary metals recycler shall keep an accurate and complete record of all vehicles purchased or received by the demolisher or secondary metals recycler in the course of business. A demolisher, but not a secondary metals recycler, also shall keep an accurate and complete record of all vehicle parts with a total weight of twenty‑five pounds or more purchased or received by the demolisher in the course of business. These records must contain, at a minimum:

(a) the demolisher or secondary metals recycler’s name and address;

(b) the name of the demolisher or secondary metals recycler’s employee entering the information;

(c) the name and address of the person or entity from whom the vehicle or vehicle parts, as applicable, were purchased or received;

(d) a photo or copy of the person’s driver’s license or other government issued picture identification card that legibly shows the person’s name and address. If the vehicle or vehicle parts, as applicable, are being purchased or received from an entity, the demolisher or secondary metals recycler shall obtain a photo or copy of the entity’s agent’s driver’s license or other government issued picture identification card. If the demolisher or secondary metals recycler has a photo or copy of the person or entity’s agent’s identification on file, the demolisher or secondary metals recycler may reference the identification on file without making a photocopy for each transaction;

(e) the date when the purchases or receipts occurred;

(f) the year, make, model, and identification number of the vehicle or vehicle parts, as applicable and if ascertainable, along with any other identifying features; and

(g) a copy of the title certificate, magistrate’s order of sale, sheriff’s disposal authority certificate, or an original form affidavit, as applicable.

(2) The records must be kept open for inspection by any law enforcement officer at any time during normal business hours. All vehicles on the demolisher or secondary metals recycler’s property or otherwise in the possession of the demolisher or secondary metals recycler must be available for inspection by any law enforcement officer at any time during normal business hours.

(3) Records required by this section must be kept by the demolisher or secondary metals recycler for at least one year after the transaction to which it applies. A demolisher or secondary metals recycler may maintain records in an electronic database provided that the information is legible and can be accessed by law enforcement upon request.

(H)(1) A person who violates the provisions of this section for a first offense is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars for each offense not to exceed five thousand dollars for the same set of transactions or occurrences, or imprisoned for not more than sixty days, or both. Each violation constitutes a separate offense. For a second or subsequent offense, the person is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars for each offense not to exceed ten thousand dollars for the same set of transactions or occurrences, or imprisoned for not more than three years, or both. Each violation constitutes a separate offense.

(2) A person who falsifies any information on an application, form, or affidavit required by this section is guilty of a felony and, upon conviction, must be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned for not less than one year nor more than three years, or both.

(3) In lieu of criminal penalties, the Department of Motor Vehicles’ director, or the director’s designee, may issue an administrative fine not to exceed one thousand dollars for each violation, whenever the director, or the director’s designee, after a hearing, determines that a demolisher or secondary metals recycler has unknowingly and unwilfully violated any provisions of this section. The hearing and any administrative review must be conducted in accordance with the procedure for contested cases under the Administrative Procedures Act. The proceeds from the administrative fine 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 implementing this section.

(4) A vehicle used to transport a vehicle or vehicle parts, as applicable, illegally disposed of in violation of this section may be seized by law enforcement and is subject to forfeiture; provided, however, that no vehicle is subject to forfeiture unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to the commission of the crime, and a forfeiture of the vehicle encumbered by a security interest is subject to the interest of the secured party who had no knowledge of or consented to the act. The seizure and forfeiture must be accomplished in accordance with the provisions of Section 56‑29‑50.

(I) The Department of Motor Vehicles shall convene a working group chaired by the Director of the Department of Motor Vehicles, or the director’s designee, for the purpose of assisting in the development of a form affidavit to be used for the disposal of vehicles to demolishers or secondary metals recyclers, the development of an electronic system for demolishers and secondary metals recyclers to use to verify at the time of a transaction whether a vehicle has been reported stolen, and assisting in the development of forms and regulations pursuant to this section. The working group must consist of representatives from the demolishing industry, secondary metals recycling industry, the trucking industry, law enforcement agencies, and other relevant agencies, organizations, or industries as determined by the director, or the director’s designee.

HISTORY: 1962 Code Section 46‑490.17; 1972 (57) 2459; 1993 Act No. 181, Section 1461; 1996 Act No. 459, Section 199; 2004 Act No. 269, Section 7; 2009 Act No. 26, Section 7, eff June 2, 2009; 2012 Act No. 242, Section 8, eff June 18, 2012; December 15, 2012.

CROSS REFERENCES

Junk required to be kept open for inspection, see Section 40‑27‑20.

Record of purchases, nonferrous metals, see Section 40‑27‑10.

Return of registration card and license plates for wrecked or dismantled vehicle, see Section 56‑3‑1380.

Sale of unclaimed vehicles, disposition of proceeds, see Section 56‑5‑5640.

Transfer and surrender of certificates, license plates, registration cards and manufacturers’ serial plates of vehicles sold as salvage, abandoned, scrapped or destroyed, see Section 56‑19‑480.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

ARTICLE 41

Disposition of Abandoned or Derelict Motor Vehicles on Public or Private Property

**SECTION 56‑5‑5810.** Definitions.

For the purposes of this article and Article 39:

(a) “Officer” means any state, county, or municipal law enforcement officer, including county and municipal code enforcement and sanitation officers.

(b) “Abandoned vehicle” means a vehicle required to be registered in this State if operated on a public highway in this State that is left unattended on a highway for more than forty‑eight hours, or a vehicle that has remained on private or other public property for a period of more than seven days without the consent of the owner or person in control of the property.

(c) “Derelict vehicle” means a vehicle required to be registered in this State if operated on a public highway in this State:

(1) whose certificate of registration has expired and the registered owner no longer resides at the address listed on the last certificate of registration on record with the Department of Motor Vehicles; or

(2) whose motor or other major parts have been removed so as either to render the vehicle inoperable or the operation of which would violate Section 56‑5‑4410; or

(3) whose manufacturer’s serial plates, motor vehicle identification numbers, license number plates, and any other means of identification have been removed so as to nullify efforts to locate or identify the registered owner; or

(4) whose registered owner of record disclaims ownership or releases his rights thereto; or

(5) which is more than eight years old and does not bear a current registration.

(d) “Demolisher” means any person, firm, or corporation whose business is to convert a vehicle into processed scrap or scrap metal or otherwise to wreck or dismantle such a vehicle.

(e) “Colored tag” means any type of notice affixed to an abandoned or derelict vehicle advising the owner or the person in possession that it has been declared an abandoned or derelict vehicle and will be treated as such. The tag shall be of sufficient size to be easily discernable and shall contain such information as the Department of Public Safety deems necessary to carry out the provisions of this article.

(f) “Demolisher” means any person whose business is to convert a vehicle into processed scrap or scrap metal for recycling purposes or otherwise to wreck or dismantle vehicles.

(g) “Salvage yard” means a business or a person who holds a license issued by the State required of all retailers, possesses ten or more derelict vehicles, and regularly engages in buying or selling used vehicle parts.

HISTORY: 1962 Code Section 46‑490.22; 1974 (58) 2103; 1993 Act No. 181, Section 1462; 1996 Act No. 459, Section 200; 2008 Act No. 308, Section 1, eff upon approval (became law without the Governor’s signature on June 12, 2008).

CROSS REFERENCES

Motor vehicles abandoned on highways, see Sections 56‑5‑5620 et seq.

Secondary metals recycler permit to purchase nonferrous metals, permit to transport and sell nonferrous metals, violations, penalties, records, notice, preemption, see Section 16‑17‑680.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

Attorney General’s Opinions

Discussion of the authority of municipal code enforcement officers to tag vehicles on private property. S.C. Op.Atty.Gen. (April 1, 2009) 2009 WL 1266920.

**SECTION 56‑5‑5820.** Abandoned and derelict vehicles as hazard to health and welfare.

Abandoned and derelict vehicles constitute a hazard to the health and welfare of the people in the State in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well‑being of children and other citizens. It is, therefore, in the public interest that the present accumulation of abandoned and derelict vehicles be eliminated and that the future abandonment of such vehicles be prevented.

HISTORY: 1962 Code Section 46‑490.21; 1974 (58) 2103; 1996 Act No. 459, Section 201.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5840.** Abandoned and derelict vehicles subject to removal and disposal.

All abandoned and derelict vehicles shall be subject to removal from public or private property and disposed of in accordance with the provisions of this article.

HISTORY: 1962 Code Section 46‑490.24; 1974 (58) 2103; 1996 Act No. 459, Section 202.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5850.** Tagging and removal of unattended vehicles; disposition.

(A) When any vehicle is left unattended on a highway or on other public or private property without the consent of the owner or person in control of the property, an officer may place a colored tag on the vehicle which is notice to the owner, the person in possession of the vehicle, or any lienholder that it may be considered to be derelict or abandoned and is subject to forfeiture to the State.

(B) The colored tag serves as the only legal notice that the vehicle will be moved to a designated place to be sold if the vehicle is not removed by the owner or person in control of the vehicle. The vehicle must be removed within the following times from the date the tag is placed on the vehicle:

(1) forty‑eight hours if it is located on a highway, or

(2) seven days if it is located on other public or private property.

(C) A vehicle that has had at least two colored tags previously placed on it is an abandoned vehicle for purposes of this article and may be removed immediately by a law enforcement agency to a designated place to be sold.

(D) Abandoned or derelict vehicles must be disposed of pursuant to Sections 29‑15‑10 and 56‑5‑5635.

HISTORY: 1962 Code Section 46‑490.25; 1974 (58) 2103; 1993 Act No. 181, Section 1464; 1996 Act No. 459, Section 203; 2004 Act No. 269, Section 8; 2009 Act No. 26, Section 8, eff June 2, 2009.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

United States Supreme Court Annotations

Motor vehicles, Federal law deregulating trucking industry does not preempt state‑law claims stemming from storage and disposal of towed vehicle, see Dan’s City Used Cars, Inc. v. Pelkey, 2013, 133 S.Ct. 1769, 569 U.S. 251, 185 L.Ed.2d 909. Antitrust and Trade Regulation 132; Automobiles 372(3.1); States 18.61, 18.84

NOTES OF DECISIONS

Constitutional considerations 1

1. Constitutional considerations

The fact that vehicle owner’s state statutory and common law negligence claims, alleging towing company towed his vehicle and later traded it to a third party in violation of New Hampshire statutes regulating the disposal of stored vehicles, did not fit within any exception to the Federal Aviation Administration Authorization Act’s (FAAAA) preemption of state laws related to a price, route, or service of any motor carrier with respect to the transportation of property, did not mean that the owner’s claims were preempted by the FAAAA; the FAAAA’s general rule of preemption identified matters a State may regulate when it would otherwise be precluded from doing so, but did not control more than that. Dan’s City Used Cars, Inc. v. Pelkey, 2013, 133 S.Ct. 1769, 569 U.S. 251, 185 L.Ed.2d 909. Antitrust and Trade Regulation 132; Automobiles 368; Automobiles 372(3.1); States 18.61; States 18.84

**SECTION 56‑5‑5870.** Contract for collection of vehicles and related services; collecting areas.

The Department of Public Safety, or any county or municipality may contract with any federal, other state, county, or municipal authority or private enterprise for tagging, collection, storage, transportation, or any other services necessary to prepare derelict or abandoned vehicles for recycling or other methods of disposal. Publicly‑owned properties, when available, shall be provided as temporary collecting areas for the motor vehicles defined herein.

HISTORY: 1962 Code Section 46‑490.27; 1974 (58) 2103; 1993 Act No. 181, Section 1466; 1996 Act No. 459, Section 204.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5880.** Right of entry on property to enforce article; criminal or civil liability arising out of enforcement.

All officers, employees, and agents of any person under contract with the Department of Public Safety, county, or municipality, are authorized to go on private property for the purposes of enforcing this article. No agent or employee of any federal, state, county, or municipal government or other political subdivision, no person or occupant of the premises from which any derelict or abandoned motor vehicle shall be removed, nor any person or firm contracting for the removal of or disposition of any such motor vehicle shall be held criminally or civilly liable in any way arising out of or caused by carrying out or enforcing any provisions of this article unless such person is guilty of willfulness, wantonness, or recklessness.

HISTORY: 1962 Code Section 46‑490.28; 1974 (58) 2103; 1996 Act No. 459, Section 205.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5890.** Property may not be willfully damaged.

In removing the abandoned and derelict vehicles, the enforcing agency will do so without wilfully harming or damaging the property on which the vehicles are located.

HISTORY: 1962 Code Section 46‑490.29; 1974 (58) 2103; 1996 Act No. 459, Section 206.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5900.** Lienholders and owners of stolen vehicles not subject to penalties and charges.

No lienholder shall be subject to any penalty imposed by law in this State for abandonment unless the vehicle is abandoned by the lienholder or his agent or servant. No owner of a vehicle which has been stolen and thereafter abandoned shall be liable for any charges or penalties imposed herein. A vehicle shall be deemed to be stolen when the owner notifies a law enforcement officer of this or another state, and such report is accepted and carried on the records of the agency receiving the report as a stolen vehicle.

HISTORY: 1962 Code Section 46‑490.30; 1974 (58) 2103; 1996 Act No. 459, Section 207.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5910.** Unlawful to tamper with, remove or destroy colored tags.

It shall be unlawful for any person to tamper with, remove or destroy any colored tag placed on any vehicle in compliance with this article and any person found guilty of this provision shall, upon conviction, be subject to a fine not exceeding five hundred dollars.

HISTORY: 1962 Code Section 46‑490.31; 1974 (58) 2103; 1996 Act No. 459, Section 208.

Library References

Automobiles 12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68.

**SECTION 56‑5‑5920.** Article not applicable to certain vehicles.

The provisions of this article shall not apply to vehicles housed or protected from the elements, those classified as antiques and registered pursuant to Sections 56‑3‑2210 and 56‑3‑2220, those exempted from registration pursuant to Section 56‑3‑120, those vehicles reported as stolen in accordance with Section 56‑5‑5900, unless any such vehicle presents an immediate safety or health hazard or constitutes a nuisance.

HISTORY: 1962 Code Section 46‑490.32; 1974 (58) 2103; 1996 Act No. 459, Section 209.

**SECTION 56‑5‑5940.** Seizure, sale or disposal of vehicle in violation of article constitutes conversion.

(a) Seizure, sale, or disposal of an abandoned or derelict motor vehicle in a manner inconsistent with the provisions of this article shall constitute conversion for which the owner shall have redress in any court of competent jurisdiction.

(b) Any person or unit of government upon whose property or in whose possession is found an abandoned or derelict vehicle may apply to the sheriff or chief of police of the jurisdiction in which the vehicle is located to implement the procedures outlined in this article, and the sheriff or chief of police shall tag the vehicle and dispose of the vehicle pursuant to this chapter.

HISTORY: 1962 Code Section 46‑490.34; 1974 (58) 2103; 1996 Act No. 459, Section 210.

Library References

Automobiles 12, 19.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 13, 57 to 64, 66 to 68, 75 to 95.

**SECTION 56‑5‑5945.** Duties of demolishers; disposal of vehicle; title requirements; records; penalties.

(A) For purposes of this section, “vehicle” has the same meaning as defined by Section 56‑5‑120, and includes, but is not limited to, a “trailer”, as defined by Section 56‑5‑240, a “semitrailer”, as defined by Section 56‑5‑250, and a “pole trailer”, as defined by Section 56‑5‑260.

(B)(1) Except as provided by subsections (C), (D), and (E), a person or entity may not dispose of a vehicle to a demolisher or secondary metals recycler without a valid title certificate for the vehicle in the person or entity’s name. The person or entity shall provide the vehicle’s title certificate to the demolisher or secondary metals recycler.

(2) The demolisher or secondary metals recycler is not required to obtain a certificate of title for the vehicle in the demolisher or secondary metals recycler’s own name. After the vehicle has been demolished, processed, or changed so that the vehicle physically is no longer a vehicle, the demolisher or secondary metals recycler shall surrender the certificate of title to the Department of Motor Vehicles for cancellation.

(3) The Department of Motor Vehicles shall issue forms and regulations governing the surrender of certificates of title as appropriate.

(4) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a title certificate pursuant to this subsection may wreck, dismantle, demolish, or otherwise dispose of the vehicle after the transaction has taken place. The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations.

(C)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler with a valid magistrate’s order of sale in lieu of a title certificate, if the person or entity purchases the vehicle at a public auction pursuant to Section 56‑5‑5640. The person or entity shall provide the magistrate’s order of sale to the demolisher or secondary metals recycler.

(2) The demolisher or secondary metals recycler is not required to obtain a certificate of title for the vehicle in the demolisher or secondary metals recycler’s own name. After the vehicle has been demolished, processed, or changed so that the vehicle physically is no longer a vehicle, the demolisher or secondary metals recycler shall surrender the magistrate’s order of sale to the Department of Motor Vehicles.

(3) The Office of Court Administration shall design a uniform magistrate’s order of sale for purposes of this subsection and Section 56‑5‑5640, and shall make the order available for distribution to the magistrates. The Department of Motor Vehicles shall issue forms and regulations governing the surrender of magistrates’ orders of sale as appropriate.

(4) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a magistrate’s order of sale pursuant to this subsection may wreck, dismantle, demolish, or otherwise dispose of the vehicle after the transaction has taken place. The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations.

(D)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler with a valid sheriff’s disposal authority certificate in lieu of a title certificate, if the vehicle is abandoned upon the person or entity’s property or into the person or entity’s possession and the vehicle does not meet the requirements of subsection (E)(1). The person or entity shall provide the sheriff’s disposal authority certificate to the demolisher or secondary metals recycler.

(2) The person or entity shall apply to the sheriff of the jurisdiction in which the vehicle is located for a disposal authority certificate to dispose of the vehicle to a demolisher or secondary metals recycler. The application must provide, at a minimum, the person or entity’s name and address, the year, make, model, and identification number of the vehicle, if ascertainable, along with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment. The person or entity shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld. If the sheriff determines that the application is executed in proper form, and the application demonstrates that the vehicle has been abandoned upon the person or entity’s property or into the person or entity’s possession, the notification procedures set forth in Section 56‑5‑5630 must be followed. If the vehicle is not reclaimed pursuant to Section 56‑5‑5630, the sheriff shall give the applicant a certificate of authority to dispose of the vehicle to a demolisher or secondary metals recycler. A disposal authority certificate may contain multiple listings.

(3) The demolisher or secondary metals recycler is not required to obtain a certificate of title for the vehicle in the demolisher or secondary metals recycler’s own name. After the vehicle has been demolished, processed, or changed so that the vehicle physically is no longer a vehicle, the demolisher or secondary metals recycler shall surrender the sheriff’s disposal authority certificate to the Department of Motor Vehicles.

(4) The South Carolina Law Enforcement Division shall design a uniform sheriff’s disposal authority certificate for purposes of this subsection and shall make the certificate available for distribution to the sheriffs. The Department of Motor Vehicles shall issue forms and regulations governing the surrender of sheriffs’ disposal authority certificates as appropriate.

(5) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a sheriff’s disposal authority certificate pursuant to this subsection may wreck, dismantle, demolish, or otherwise dispose of the vehicle after the transaction has taken place. The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations.

(E)(1) A person or entity may dispose of a vehicle to a demolisher or secondary metals recycler without a title certificate, magistrate’s order of sale, or sheriff’s disposal authority certificate, if:

(a) the vehicle is abandoned upon the person or entity’s property or into the person or entity’s possession, or if the person or entity is the owner of the vehicle and the vehicle’s title certificate is faulty, lost, or destroyed; and

(b) the vehicle:

(i) is lawfully in the person or entity’s possession;

(ii) is twelve model years old or older;

(iii) does not have a valid registration plate affixed; and

(iv) has no engine or is otherwise totally inoperable.

(2) The person or entity shall complete and sign a form affirming that the vehicle complies with the requirements of subsection (E)(1). The demolisher or secondary metals recycler shall maintain the original form affidavit in the transaction records as required by this section.

(3) The Department of Motor Vehicles shall develop a form affidavit for purposes of this subsection and shall make the form affidavit available for distribution to the demolishers and secondary metals recyclers.

(4) Prior to completion of the transaction, the demolisher or secondary metals recycler shall verify with the Department of Motor Vehicles whether the vehicle has been reported stolen. The Department of Motor Vehicles shall develop an electronic system for demolishers and secondary metals recyclers to use to verify at the time of a transaction whether a vehicle has been reported stolen. The Department of Motor Vehicles shall not charge a demolisher or secondary metals recycler a fee for verifying whether a vehicle has been reported stolen. If the Department of Motor Vehicles indicates to the demolisher or secondary metals recycler that the vehicle has been reported stolen, the demolisher or secondary metals recycler shall not complete the transaction and shall notify the appropriate law enforcement agency. The demolisher or secondary metals recycler is under no obligation to apprehend the person attempting to sell the vehicle. If the Department of Motor Vehicles indicates to the demolisher or secondary metals recycler that the vehicle has not been reported stolen, the demolisher or secondary metals recycler may proceed with the transaction. In such case, the demolisher or secondary metals recycler is not criminally or civilly liable if the vehicle later turns out to be a stolen vehicle, unless the demolisher or secondary metals recycler had some other knowledge that the vehicle was a stolen vehicle.

(5) The demolisher or secondary metals recycler shall report the vehicle to the National Motor Vehicle Title Information System in compliance with federal laws and regulations at the time of the transaction or no later than the end of the day of the transaction. A demolisher or secondary metals recycler who reports vehicles to the National Motor Vehicle Title Information System through a third party consolidator and complies with the requirements of this item if the demolisher or secondary metals recycler reports the vehicle to the third party consolidator so that the third party consolidator is able to transmit the vehicle information to the National Motor Vehicle Title Information System in compliance with federal laws and regulations no later than the end of the day of the transaction.

(6) A demolisher or secondary metals recycler who purchases or otherwise acquires a vehicle with a form affidavit pursuant to this subsection shall not wreck, dismantle, demolish, or otherwise dispose of the vehicle until at least three business days after the transaction has taken place.

(F) A demolisher or secondary metals recycler who purchases or otherwise acquires nonferrous metals, as defined by Section 16‑17‑680, shall comply with and is subject to the provisions of Section 16‑17‑680.

(G)(1) A demolisher or secondary metals recycler shall keep an accurate and complete record of all vehicles purchased or received by the demolisher or secondary metals recycler in the course of business. A demolisher, but not a secondary metals recycler, also shall keep an accurate and complete record of all vehicle parts with a total weight of twenty‑five pounds or more purchased or received by the demolisher in the course of business. These records must contain, at a minimum:

(a) the demolisher or secondary metals recycler’s name and address;

(b) the name of the demolisher or secondary metals recycler’s employee entering the information;

(c) the name and address of the person or entity from whom the vehicle or vehicle parts, as applicable, were purchased or received;

(d) a photo or copy of the person’s driver’s license or other government issued picture identification card that legibly shows the person’s name and address. If the vehicle or vehicle parts, as applicable, are being purchased or received from an entity, the demolisher or secondary metals recycler shall obtain a photo or copy of the entity’s agent’s driver’s license or other government issued picture identification card. If the demolisher or secondary metals recycler has a photo or copy of the person or entity’s agent’s identification on file, the demolisher or secondary metals recycler may reference the identification on file without making a photocopy for each transaction;

(e) the date when the purchases or receipts occurred;

(f) the year, make, model, and identification number of the vehicle or vehicle parts, as applicable and if ascertainable, along with any other identifying features; and

(g) a copy of the title certificate, magistrate’s order of sale, sheriff’s disposal authority certificate, or an original form affidavit, as applicable.

(2) The records must be kept open for inspection by any law enforcement officer at any time during normal business hours. All vehicles on the demolisher or secondary metals recycler’s property or otherwise in the possession of the demolisher or secondary metals recycler must be available for inspection by any law enforcement officer at any time during normal business hours.

(3) Records required by this section must be kept by the demolisher or secondary metals recycler for at least one year after the transaction to which it applies. A demolisher or secondary metals recycler may maintain records in an electronic database provided that the information is legible and can be accessed by law enforcement upon request.

(H)(1) A person who violates the provisions of this section for a first offense is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars for each offense not to exceed five thousand dollars for the same set of transactions or occurrences, or imprisoned for not more than sixty days, or both. Each violation constitutes a separate offense. For a second or subsequent offense, the person is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars for each offense not to exceed ten thousand dollars for the same set of transactions or occurrences, or imprisoned for not more than three years, or both. Each violation constitutes a separate offense.

(2) A person who falsifies any information on an application, form, or affidavit required by this section is guilty of a felony and, upon conviction, must be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned for not less than one year nor more than three years, or both.

(3) In lieu of criminal penalties, the Department of Motor Vehicles’ director, or the director’s designee, may issue an administrative fine not to exceed one thousand dollars for each violation, whenever the director, or the director’s designee, after a hearing, determines that a demolisher or secondary metals recycler has unknowingly and unwilfully violated any provisions of this section. The hearing and any administrative review must be conducted in accordance with the procedure for contested cases under the Administrative Procedures Act. The proceeds from the administrative fine 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 implementing this section.

(4) A vehicle used to transport a vehicle or vehicle parts, as applicable, illegally disposed of in violation of this section may be seized by law enforcement and is subject to forfeiture; provided, however, that no vehicle is subject to forfeiture unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to the commission of the crime, and a forfeiture of the vehicle encumbered by a security interest is subject to the interest of the secured party who had no knowledge of or consented to the act. The seizure and forfeiture must be accomplished in accordance with the provisions of Section 56‑29‑50.

(I) The Department of Motor Vehicles shall convene a working group chaired by the Director of the Department of Motor Vehicles, or the director’s designee, for the purpose of assisting in the development of a form affidavit to be used for the disposal of vehicles to demolishers or secondary metals recyclers, the development of an electronic system for demolishers and secondary metals recyclers to use to verify at the time of a transaction whether a vehicle has been reported stolen, and assisting in the development of forms and regulations pursuant to this section. The working group must consist of representatives from the demolishing industry, secondary metals recycling industry, trucking industry, law enforcement agencies, and other relevant agencies, organizations, or industries as determined by the director, or the director’s designee.

HISTORY: 1996 Act No. 459, Section 211; 2009 Act No. 26, Section 9, eff June 2, 2009; 2012 Act No. 242, Section 9, eff June 18, 2012; December 15, 2012.

CROSS REFERENCES

Junk required to be kept open for inspection, see Section 40‑27‑20.

Record of purchases, nonferrous metals, see Section 40‑27‑10.

Return of registration card and license plates for wrecked or dismantled vehicle, see Section 56‑3‑1380.

Sale of unclaimed vehicles, disposition of proceeds, see Section 56‑5‑5640.

Transfer and surrender of certificates, license plates, registration cards and manufacturers’ serial plates of vehicles sold as salvage, abandoned, scrapped or destroyed, see Section 56‑19‑480.

Library References

Automobiles 20.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 80 to 85, 88 to 110.

Attorney General’s Opinions

Discussion of the requirements related to obtaining a signature and photo ID for purchases of nonferrous metals, disposed vehicles, and junk that consists of nonferrous metals or vehicles. S.C. Op.Atty.Gen. (May 17, 2016) 2016 WL 3097465.

**SECTION 56‑5‑5950.** Penalties for abandoning vehicle.

A person who abandons a vehicle either on public or private property shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars, and shall pay all costs of having such abandoned vehicle removed, stored, and sold as provided for in Section 56‑5‑5850. All such vehicles shall be removed and disposed of in accordance with Section 56‑5‑5850.

HISTORY: 1962 Code Section 46‑490.35; 1974 (58) 2103; 1996 Act No. 459, Section 212.

Library References

Automobiles 334, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1656, 1707, 1714, 1743, 1754.

ARTICLE 43

Enforcement; Traffic Violations Procedure

**SECTION 56‑5‑6110.** Parties to a crime.

Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense and every person who falsely, fraudulently, forcibly or wilfully induces, causes, coerces, requires, permits or directs another to violate any provisions of this chapter is likewise guilty of such offense.

HISTORY: 1962 Code Section 46‑682; 1952 Code Section 46‑682; 1949 (46) 466.

CROSS REFERENCES

Accessories in crimes, generally, see Section 16‑1‑40.

Library References

Automobiles 323.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1511, 1646, 1664, 1710, 1721.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 200, Parties to Crime.

NOTES OF DECISIONS

In general 1

Instructions 2

Review 3

1. In general

Section 56‑5‑6110 does not in itself create a distinct crime; rather, it simply embodies the common‑law doctrine of liability as an aider and abetter. State v. Leonard (S.C.App. 1986) 287 S.C. 462, 339 S.E.2d 159, certiorari granted 290 S.C. 46, 348 S.E.2d 176, reversed 292 S.C. 133, 355 S.E.2d 270.

2. Instructions

In the prosecution of two men for reckless homicide under Section 56‑5‑2910, it was error to instruct the jury on aiding and abetting under Section 56‑5‑2910, and on offenses by persons owning or controlling vehicles under Section 56‑5‑6120, where the two defendants were jointly indicted, one was tried and convicted as a principal, and there was much evidence of the complicity of the other defendant, because the charge would confuse a jury. State v. Leonard (S.C.App. 1986) 287 S.C. 462, 339 S.E.2d 159, certiorari granted 290 S.C. 46, 348 S.E.2d 176, reversed 292 S.C. 133, 355 S.E.2d 270.

3. Review

Intoxicated minor’s employer failed to preserve for appellate review claim that criminal aiding and abetting instruction did not apply to negligence action brought by personal representative of passenger’s estate against employer arising from fatal accident when minor’s vehicle struck passenger’s car after minor consumed alcohol at employer’s Christmas party, under statutes prohibiting social hosts from providing alcoholic beverages to persons under age 21, where employer’s objection at trial was premised on claim that application of aiding and abetting statute would supersede social host immunity because it would apply to serving visibly intoxicated adults as well as minors, and trial court failed to rule on issue. Barnes v. Cohen Dry Wall, Inc. (S.C.App. 2003) 357 S.C. 280, 592 S.E.2d 311, rehearing denied, certiorari granted, reversed 372 S.C. 452, 643 S.E.2d 85. Appeal And Error 232(3); Appeal And Error 242(1)

**SECTION 56‑5‑6120.** Offenses by persons owning or controlling vehicles.

It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

HISTORY: 1962 Code Section 46‑683; 1952 Code Section 46‑683; 1949 (46) 466.

CROSS REFERENCES

Liability for municipal parking or traffic violations, see Section 56‑5‑715.

Library References

Automobiles 322, 323.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1511, 1646, 1664, 1710, 1721, 1729.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 200, Parties to Crime.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Vehicular crimes are unique in that there can ordinarily be only one “driver” of vehicle at time offense is committed, such that guilt of other participants, if any, can only be based on theory of accomplice liability; when 2 or more defendants are charged as principles in vehicular crime, jury must be instructed to first determine which defendant was driver of vehicle at time of offense, and instructions should then set forth elements of primary offense and should specify applicability only as to driver. State v. Leonard (S.C. 1987) 292 S.C. 133, 355 S.E.2d 270.

2. Instructions

In the prosecution of two men for reckless homicide under Section 56‑5‑2910, it was error to instruct the jury on aiding and abetting under Section 56‑5‑6110, and on offenses by persons owning or controlling vehicles under Section 56‑5‑6120, where the two defendants were jointly indicted, one was tried and convicted as a principal, and there was much evidence of the complicity of the other defendant, because the charge would confuse a jury. State v. Leonard (S.C.App. 1986) 287 S.C. 462, 339 S.E.2d 159, certiorari granted 290 S.C. 46, 348 S.E.2d 176, reversed 292 S.C. 133, 355 S.E.2d 270.

**SECTION 56‑5‑6130.** Parents and guardians shall not permit children and wards to violate chapter.

The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.

HISTORY: 1962 Code Section 46‑684; 1952 Code Section 46‑684; 1949 (46) 466.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 200, Parties to Crime.

**SECTION 56‑5‑6150.** Trial jurisdiction of municipal courts.

All municipal courts of the State may try and determine criminal cases involving violations of this chapter occurring within the respective limits of such municipalities when the penalty prescribed by this chapter for such violations does not exceed thirty days’ imprisonment nor one hundred dollars’ fine and may have trial jurisdiction over such criminal cases the same as magistrates.

HISTORY: 1962 Code Section 46‑685; 1952 Code Section 46‑685; 1949 (46) 466.

CROSS REFERENCES

Municipal courts, generally, see Sections 14‑25‑5 et seq.

Library References

Automobiles 350.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1513, 1556, 1599 to 1601, 1648, 1711, 1735.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 199, Jurisdiction.

Attorney General’s Opinions

Neither a magistrate nor a city recorder has the power or authority to suspend any part of a sentence once it has been imposed or to reduce the fine to less than the prescribed minimum. 1971‑72 Op.Atty.Gen. No. 3285, p. 90 (March 21, 1972) 1972 WL 20429.

City recorder cannot reduce charge of driving under influence. A city recorder may try and determine cases under this article, but he does not have the power or authority to reduce a charge of driving under the influence to one of reckless driving. 1971‑72 Op.Atty.Gen. No. 3279, p. 83 (March 10, 1972) 1972 WL 20423.

Municipal courts have jurisdiction of first offense drunk driving violations under State law. 1971‑72 Op.Atty.Gen. No. 3262, p. 59 (February 17, 1972) 1972 WL 20409.

NOTES OF DECISIONS

In general 1

1. In general

Although a case involving a violation of the Uniform Act Regulating Traffic on the Highways is made returnable to the city recorder, the state, and not the city, is the prosecuting authority. City of Lake City v. Daniels (S.C. 1977) 268 S.C. 396, 234 S.E.2d 222.

Where assistant city attorney entered into plea agreement with driver arrested by the State Highway Patrol, which was approved by the City Recorder without giving notice to the state, state, as proper prosecuting authority, had right to appeal to county court. City of Lake City v. Daniels (S.C. 1977) 268 S.C. 396, 234 S.E.2d 222.

Time for state to appeal traffic case from city recorder to county court commenced when the state was informed of judgment entered pursuant to unauthorized plea bargain between city attorney and defendant. City of Lake City v. Daniels (S.C. 1977) 268 S.C. 396, 234 S.E.2d 222.

**SECTION 56‑5‑6160.** Evidence of conviction inadmissible in civil action.

No evidence of conviction of any person for any violation of this chapter shall be admissible in any court in any civil action.

HISTORY: 1962 Code Section 46‑686; 1952 Code Section 46‑686; 1949 (46) 466.

CROSS REFERENCES

Evidence, generally, see Sections 19‑1‑10 et seq.

Library References

Automobiles 243(1).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1253, 1258 to 1268, 1271, 1273, 1276, 1278 to 1287.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 233, Evidence of Conviction.

NOTES OF DECISIONS

In general 1

1. In general

In an action to recover damages for personal injuries sustained in a motor vehicle collision, testimony of the highway patrolman, which would have shown that the driver of the van in which plaintiff was a passenger was charged with driving left of center and had forfeited bond on that charge, was inadmissible since the fact that the defendant had forfeited bond could not be received into evidence other as an admission or for impeachment purposes in the subsequent civil case. Samuel v. Mouzon (S.C.App. 1984) 282 S.C. 616, 320 S.E.2d 482. Evidence 205(1)

In action by motorist for injuries sustained in collision with defendant’s employee, court erred in refusing to permit plaintiff’s counsel to cross‑examine driver about his guilty plea to charge of failing to yield right of way arising out of same accident, since Section 56‑5‑6160 does not bar use of such evidence to impeach credibility of witness. Addyman v. Specialties of Greenville, Inc. (S.C. 1979) 273 S.C. 342, 257 S.E.2d 149. Witnesses 345(2)

In action arising out of highway collision, evidence as to whether patrolman had preferred charges against driver or driver had been given a summons was irrelevant, but, propounding of questions seeking to adduce such evidence did not require declaration of a mistrial, even though improper reference was also made to driver’s failure to respond to summons, where overwhelming weight of evidence showed a case of liability and patrolman had previously testified that defendant‑driver had violated law. Code 1952, Section 46‑686. Wynn v. Rood (S.C. 1956) 228 S.C. 577, 91 S.E.2d 276. Automobiles 243(1); Trial 110

**SECTION 56‑5‑6170.** Enforcement.

The Department of Public Safety shall administer and enforce the provisions of this chapter with respect to State highways, and law enforcement officers generally shall also enforce this chapter within their respective jurisdictions. No police officer in investigating a traffic accident shall necessarily deem the fact that an accident has occurred as giving rise to the presumption that a violation of a law has occurred. Arrests and criminal prosecution for violation of this chapter shall be based upon evidence of a violation of the law.

HISTORY: 1962 Code Section 46‑687; 1952 Code Section 46‑687; 1949 (46) 466.

Library References

Automobiles 349(2.1).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1514 to 1517, 1519 to 1520, 1523 to 1524.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 28, Judicial Review.

S.C. Jur. Automobiles and Other Motor Vehicles Section 202, Duties of Police Officers.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Section 56‑5‑6170 does not expressly or by implication create private cause of action against law enforcement officer or his jurisdiction for failure to arrest person for driving under influence. Patel v McIntyre (1987, DC SC) 667 F Supp 1131, affd without op (CA4 SC) 848 F2d 185.

Officer’s arrest of motorist for driving under the influence (DUI) did not violate statute, providing that no police officer in investigating traffic accident shall necessarily deem the fact that accident has occurred as giving rise to presumption that a violation of a law has occurred; officer was dispatched to the scene of automobile accident, and upon arriving at scene, officer observed motorist sitting in her vehicle, motorist’s arrest was predicated upon more than just fact that accident had occurred, officer stated that motorist smelled strongly of alcohol and she refused field sobriety testing, and motorist admitted to officer that she had struck two vehicles. Lapp v. South Carolina Dept. of Motor Vehicles (S.C.App. 2010) 387 S.C. 500, 692 S.E.2d 565. Automobiles 349(6)

Although an arresting officer is permitted to prosecute a traffic violation case in magistrate’s court, an officer who appeared at the scene of the arrest should not have been permitted to prosecute the case where he was not an arresting officer nor a supervisor of the sheriff’s deputies who arrested the defendants. State v. Sossamon (S.C. 1989) 298 S.C. 72, 378 S.E.2d 259.

2. Review

Motorist’s claim that her driving under the influence (DUI) arrest was unlawful under statute, providing that no police officer in investigating traffic accident shall necessarily deem the fact that accident has occurred as giving rise to presumption that a violation of a law has occurred, was not preserved for appeal; motorist did not specifically argue to the Division of Motor Vehicle Hearings (DMVH) officer that her arrest was unlawful under statute, and although motorist’s attorney argued in closing that her arrest was unlawful and that there was no testimony given to any impairment in motorist’s driving, he did not expressly reference statute, and neither the DMVH hearing officer nor Administrative Law Court (ALC) mentioned statute in their decisions. Lapp v. South Carolina Dept. of Motor Vehicles (S.C.App. 2010) 387 S.C. 500, 692 S.E.2d 565. Automobiles 144.2(2.1)

**SECTION 56‑5‑6190.** General penalty for violations of chapter.

It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this State declared to be a felony.

Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 46‑689; 1952 Code Section 46‑689; 1949 (46) 466.

CROSS REFERENCES

Liability for municipal parking or traffic violations, see Section 56‑5‑715.

Penalties for violating the Commercial Driver License Act, see Section 56‑1‑2160.

Library References

Automobiles 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1656, 1707, 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 141, No Passing Zones.

Attorney General’s Opinions

Discussion of the punishment for speeding in terms of the number of offenses committed. S.C. Op.Atty.Gen. (April 2, 1996) 1996 WL 265505.

State‑wide legislation is required for Sheriffs of individual counties in South Carolina to be empowered to accept bond for traffic violations. S.C. Op.Atty.Gen. (August 15, 1977) 1977 WL 24599.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

It is clear from plain reading of Sections 56‑5‑6180 and 56‑5‑6190 that legislature intended that regulations promulgated pursuant to Section 56‑5‑6180 would form basis of misdemeanor crimes. Pritchett v. Lanier, 1991, 766 F.Supp. 442, affirmed and remanded 973 F.2d 307.

2. Admissibility of evidence

Traffic violations committed by drug defendant constituted intervening illegal act breaking trail of taint arising from unlawful warrantless installation of tracking device on defendant’s vehicle, rendering vehicle stop lawful and permitting admission at trial of any contraband lawfully obtained during such stop. State v. Adams (S.C.App. 2012) 397 S.C. 481, 725 S.E.2d 523, rehearing denied, certiorari granted, reversed 409 S.C. 641, 763 S.E.2d 341. Criminal Law 392.39(10)

**SECTION 56‑5‑6200.** Disposition of fines and forfeitures.

All fines collected as penalties for violation of this chapter and bond or bail forfeitures shall be paid over by the magistrate or person collecting them to the county treasurer of the county in which such fines and bond or bail forfeitures are collected, except that when such fines or bond or bail forfeitures are collected by municipal police officers and municipal courts the amounts so collected shall be paid over to the city treasurer of the municipality.

HISTORY: 1962 Code Section 46‑690; 1952 Code Section 46‑690; 1950 (46) 2313.

Library References

Automobiles 349(19), 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1515, 1517, 1519 to 1521, 1523 to 1524, 1528 to 1529, 1545, 1572, 1656, 1707, 1714, 1743.

**SECTION 56‑5‑6210.** Officers shall receive no part of fines or forfeitures.

No municipal police officer, rural policeman, magistrate’s constable, sheriff, deputy sheriff, highway patrolman or other police officer shall receive as compensation any portion of any fine imposed or bond or bail forfeiture for violations of the highway traffic laws of the State.

HISTORY: 1962 Code Section 46‑691; 1952 Code Section 46‑691; 1950 (46) 2313.

Library References

Automobiles 349(19), 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1515, 1517, 1519 to 1521, 1523 to 1524, 1528 to 1529, 1545, 1572, 1656, 1707, 1714, 1743.

**SECTION 56‑5‑6220.** Entry of guilty plea, forfeiture of bail posted, or entry of plea of nolo contendere to have same effect as conviction after trial.

Notwithstanding any other provision of law, the entry of any plea of guilty, the forfeiture of any bail posted or the entry of plea of nolo contendere for a violation of the traffic laws of this State or any political subdivision thereof shall have the same effect as a conviction after trial under the provisions of such traffic laws. Provided, however, that in any such case where bail is posted by the defendant, no forfeiture of such bail shall become effective until ten days following the date of arrest nor shall the defendant be required to plead prior to the elapse of such ten‑day period. Provided, further that the provisions of this section shall not be construed to prohibit a defendant from voluntarily entering a plea or forfeiting bail within the ten‑day period.

HISTORY: 1976 Act No. 482.

Library References

Automobiles 349(19).

Criminal Law 273.2(1).

Westlaw Topic Nos. 48A, 110.

C.J.S. Criminal Procedure and Rights of the Accused Sections 230, 232 to 234.

C.J.S. Motor Vehicles Sections 1515, 1517, 1519 to 1521, 1523 to 1524, 1528.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 205, Effect of Certain Pleas or Forfeiture of Bail.

Attorney General’s Opinions

Section 56‑5‑6220 operates on section 5‑7‑90 to prohibit a municipal judge from requiring a defendant to plead in all traffic cases until the elapse of a ten‑day period following the date of arrest. S.C. Op.Atty.Gen. (August 20, 2012) 2012 WL 3732821.

The provisions of Act No. 482 of the 1976 Acts prohibit disposing of traffic cases until 10 days following the date of arrest, unless the individual defendant voluntarily waives that period, either by entry of a plea to the charge or by forfeiture of his bail. 1976‑77 Op.Atty.Gen. No. 77‑347, p. 277 (November 3, 1977) 1977 WL 24686.

Act No. 482 of 1976 operates on 1962 Code Section 47‑38 [1976 Code Section 5‑7‑90] to prohibit a municipal judge from requiring a defendant to plead in a traffic case until the elapse of a ten‑day period following the date of arrest. 1975‑76 Op.Atty.Gen. No. 4361, p. 194 (May 31, 1976) 1976 WL 22980.

**SECTION 56‑5‑6230.** Notification of Department of Motor Vehicles upon payment of fine or forfeiture of bond.

Any magistrate’s court, municipal court, or other court of competent jurisdiction must notify the Department of Motor Vehicles when any person charged with a traffic violation in such court, upon conviction, or other plea has paid the fine therefor, or forfeited the bond previously posted.

HISTORY: 1984 Act No. 478, Section 2; 1996 Act No. 459, Section 213.

Library References

Automobiles 144.2(5.1), 349(19).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 370, 415, 1515, 1517, 1519 to 1521, 1523 to 1524, 1528.

**SECTION 56‑5‑6240.** Forfeiture, confiscation, and disposition of vehicles seized for conviction of DUS or DUI; notice to registered owner; request for hearing; return of vehicle.

(A) In addition to the penalties for a person convicted of a fourth or subsequent violation within the last five years of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS), or a third or subsequent violation within the last ten years of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI), the person must have the motor vehicle he drove during this offense forfeited as provided in subsections (B) and (C) if the person is the registered owner or a resident of the household of the registered owner. The vehicle must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest. The officer shall deliver it immediately to the sheriff, chief of police, or the authorized agent of the sheriff or chief of police, in the jurisdiction where the motor vehicle was confiscated. The sheriff, chief of police, or the authorized agent of the sheriff or chief of police shall by certified mail notify the registered owner of the confiscation within seventy‑two hours. Upon notification of the confiscation, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer. The hearing must be held within ten days from the date of receipt of the request. The purpose of the hearing is to determine if there is a preponderance of the evidence that (1) the use of the vehicle on the occasion of the arrest was not expressly or impliedly authorized, or (2) the registered owner did not know that the driver did not possess a valid license. If the requisite showing is made, the vehicle must be returned to the registered owner. The vehicle confiscated pursuant to this section may be returned to the registered owner upon petition to the court by the law enforcement agency confiscating the vehicle if the criminal charge has not been disposed of within twelve months of the date of confiscation. If the registered owner of the vehicle does not remove the vehicle from law enforcement’s possession within ten days of service of the court order allowing the return, law enforcement may dispose of the vehicle as provided in subsection (C). The sheriff or chief of police in possession of the vehicle must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

(B) If a person fails to file an appeal within ten days after his conviction or plea of guilty or nolo contendere to the offenses in subsection (A), the sheriff or chief of police shall initiate an action in the circuit court of the county in which the vehicle was confiscated to accomplish forfeiture by giving notice pursuant to subsection (C) to registered owners, lienholders of record, and other persons claiming an interest in the vehicle subject to forfeiture and by giving these persons an opportunity to appear at a hearing and show why the vehicle should not be forfeited and disposed of as provided in subsection (C). The failure of the lienholder to appear at the hearing does not in any way alter or affect the claim of a lienholder of record. Forfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances. The court, after hearing, shall order that the vehicle be forfeited to the sheriff or chief of police and sold in the manner provided in subsection (C), or returned to the registered owner. The court shall order a vehicle returned to the registered owner if it is shown by a preponderance of the evidence that (1) the use of the vehicle on the occasion of arrest was not expressly or impliedly authorized, or (2) the registered owner did not know that the driver did not possess a valid driver’s license. Otherwise, the court shall order the vehicle forfeited and disposed of in the manner provided in subsection (C).

(C) A forfeited vehicle with a fair market value of more than five hundred dollars must be disposed of pursuant to Section 56‑5‑5640 for abandoned vehicles, except that any remaining proceeds from the sale must be deposited in the general fund of the county or municipality. If the fair market value of the vehicle is less than five hundred dollars, it must be sold as scrap to the highest bidder after first receiving at least two bids.

(D) If the registered owner, new purchaser, or lienholder believes the towing, preservation, and storage costs are excessive, he may petition the magistrate in the jurisdiction where the vehicle was taken into custody to determine the fair market price of the services.

(E) Nothing contained in this section shall alter a contractual obligation in an existing insurance policy.

HISTORY: 1988 Act No. 532, Section 26; 1992 Act No. 465, Section 1; 1998 Act No. 434, Section 13; 1999 Act No. 115, Section 1; 2002 Act No. 195, Section 2.

Library References

Forfeitures 56, 80.

Westlaw Topic No. 180.

C.J.S. Forfeitures Sections 1, 30 to 33, 44, 49 to 78.

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) Sections 48, 50.

RESEARCH REFERENCES

ALR Library

89 ALR 5th 539 , Validity, Construction, and Application of Statute Permitting Forfeiture of Motor Vehicle for Operation of Vehicle While Intoxicated.

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 204, Vehicles Seized for Certain Convictions.

S.C. Jur. Forfeitures Section 18, Legislative Protection of Innocent Parties.

Attorney General’s Opinions

Convictions for violating Section 56‑5‑2933, as well as out of state convictions, for violation of laws prohibiting a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics both count toward the number of offenses that trigger this section’s confiscation and forfeiture provisions. S.C. Op.Atty.Gen. (December 1, 2015) 2015 WL 9243425.

The release of confiscated vehicles upon the service of claim and delivery or other repossession orders from the lienholder prior to the adjudication of criminal charges. S.C. Op.Atty.Gen. (September 15, 2015) 2015 WL 5737884.

Discussion of the forfeiture of a vehicle after a fourth DUS offense. S.C. Op.Atty.Gen. (January 22, 2001) 2001 WL 129345.

A sheriff or chief of police should not contract with an auction house to sell forfeited property, particularly forfeited vehicles. S.C. Op.Atty.Gen. (September 27, 2000) 2000 WL 1803610.

The original owner of a vehicle may bid on the vehicle at the public auction that ensues after the vehicle has been forfeited to a law enforcement agency due to a fourth or subsequent DUI or DUS violation. S.C. Op.Atty.Gen. (June 28, 1996) 1996 WL 452758.

The confiscation of the vehicle being driven at the time of a fourth or subsequent DUI or DUS violation is mandatory. The statute does not permit the law enforcement agency to weigh the costs of confiscation and forfeiture in choosing whether to carry out these duties. S.C. Op.Atty.Gen. (February 7, 1996) 1996 WL 93994.

A motor vehicle could not be seized if such is not seized at the time of arrest. 1994 Op.Atty.Gen. No. 94‑35 p. 83 (June 2, 1994) 1994 WL 377810.

In circumstances where a defendant originally charged with fourth offense driving while license is canceled, suspended, or revoked (DUS) or driving under influence of intoxicating liquor or drugs (DUI) pleads to third offense, vehicle driven at time of arrest may still remain subject to forfeiture if in fact that offense was fourth or subsequent DUI or DUS violation for that driver within last 10 years. 1991 Op.Atty.Gen. No. 91‑40, p. 102 (June 25, 1991) 1991 WL 474770.

Funds generated pursuant to Section 56‑5‑6240 are to be dispersed to state or political subdivision of arresting law enforcement agency for use in law enforcement. In absence of specific language prohibiting such funds from “supplanting operating funds,” such cannot be read in as further restriction, unlike restrictions associated with proceeds generated from control substances cases under different statutory provisions. 1991 Op.Atty.Gen. No. 91‑27 p. 79 (April 17, 1991) 1991 WL 474757.

The vehicle forfeiture provisions of section 56‑5‑6240(A) are inapplicable to offenses which were committed prior to January 1, 1989, the effective date of the provision. 1989 Op.Atty.Gen. No. 89‑77, p. 204 (August 1, 1989) 1989 WL 406167.

The General Assembly intended to provide separate time periods of 5 years and 10 years respectively for relating back to prior offenses for driving with a license canceled, suspended, or revoked and for forfeiture of vehicles of such offenders. 1989 Op.Atty.Gen. No. 89‑73, p. 194 (July 20, 1989) 1989 WL 406163.

NOTES OF DECISIONS

In general 1

1. In general

Statute allowing forfeiture of motor vehicles for persons convicted of fourth or subsequent violation within last ten years provides for forfeiture when defendant has four or more convictions for operating motor vehicle while under influence of intoxicating liquor or drugs (DUI), and does not require conviction of fourth level offense. City of Sumter Police Dept. v. One (1) Blue Mazda Truck VIN No. JM2UF1132N0294812 (S.C.App. 1998) 330 S.C. 371, 498 S.E.2d 894. Forfeitures 48(2)

**SECTION 56‑5‑6250.** Determination of prior convictions; sentence.

When an arrest is made under the provisions of this chapter, the arresting officer must make every effort to determine prior convictions under this chapter. In no instance is sentence to be imposed on a defendant until the court is satisfied prior convictions are properly considered as a part of the sentence.

HISTORY: 1988 Act No. 532, Section 27.

Library References

Automobiles 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1529, 1545, 1572, 1656, 1707, 1714, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 202, Duties of Police Officers.

ARTICLE 45

Applicability of South Carolina Uniform Act Regulating Traffic to Private Roads

**SECTION 56‑5‑6310.** Application of chapter to private roads upon owner’s consent.

The provisions of Chapters 1, 3, 5, 7, 9, and 10 of Title 56 shall be applicable to private roads if the owner, including any corporation or homeowners’ association holding title to community roads and excluding those only holding easements over such roads, shall file a written consent stating that the undersigned is the owner of the private roads shown on an attached plat and consents to the application of the provisions of this chapter for purposes of highway safety on such private roads. When the road is owned by two abutting owners, both shall consent to the application of this chapter. In the event there are more than two owners of the road, the provisions of this chapter shall apply when a majority of those owners of the total front footage abutting such road shall consent thereto. The consent shall be executed with the same formalities as a deed and with the plat shall be filed with the clerk of court or register of deeds for the county in which the private road is located and with the sheriff of such county. No derivation clause shall be required. Such filing shall not constitute a dedication to the public of such roads nor shall it constitute permission by the owner for the public to use such roads. The written consent shall become effective thirty days from the date it is filed with the clerk of court or register of deeds.

HISTORY: 1978 Act No. 518 Section 1; 2005 Act No. 68, Section 5, eff May 23, 2005.

CROSS REFERENCES

State Uniform Traffic Summons tickets, private security, see S.C. Code of Regulations R. 73‑413.

Library References

Automobiles 13, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 38, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 118, Application to Private Roads.

S.C. Jur. Dedication Section 11, Statutory and Local Law.

S.C. Jur. Private or Neighborhood Roads Section 7, Use and Obstruction of Use of Private Roads.

Attorney General’s Opinions

A registered private security officer is a law enforcement officer for purposes of issuing a Uniform Traffic Ticket for violations enumerated in Section 56‑7‑10 on private roads which are properly brought under the Uniform Act Regulating Traffic. The registered private security officer must use a UTT when citing for violations enumerated in Section 56‑7‑10. A homeowners’ association administrative ticket may not be substituted for a UTT by a registered private security officer for these statutory traffic offenses. Moreover, a registered private security officer may not issue a UTT for a violation of a private traffic policy of the homeowners’ association, since such a violation would fit none of the categories set forth in Section 56‑7‑10. S.C. Op.Atty.Gen. (March 21, 2012) 2012 WL 1036298.

Discussion of the authority of a security guard to issue a uniform traffic ticket, perform a custodial arrest, and use flashing lights on a vehicle. S.C. Op.Atty.Gen. (August 30, 2001) 2001 WL 1215463.

It is the duty of the owner or homeowners’ association to submit proposed speed limits and proposed locations for traffic control signs to the sheriff, to obtain the sheriff’s approval of such, and to file the approval with the clerk of court or RMC office and to have the roads properly posted, after which, speed limits and traffic control signs are effective as soon as posted and may be enforced by law enforcement officers. S.C. Op.Atty.Gen. (April 2, 1990) 1990 WL 599243.

Property used as private parking lot may be posted pursuant to Section 23‑1‑15 so as to make lot subject to police jurisdiction, and no other statutory requirements, such as those set forth in Section 56‑5‑6310, need be met to bring such area under police jurisdiction. S.C. Op.Atty.Gen. (February 28, 1990) 1990 WL 482414.

Speed limits or other traffic control devices posted by owners or tenants which are more restrictive than those which may be imposed on public highways, would not be subject to enforcement by law enforcement officers. S.C. Op.Atty.Gen. (February 28, 1990) 1990 WL 482414.

Private and/or premise security companies may not utilize blue lights in carrying out their functions and duties. S.C. Op.Atty.Gen. (December 8, 1983) 1983 WL 142763.

NOTES OF DECISIONS

In general 1

1. In general

Section 56‑5‑2930, prohibiting driving under the influence, applied to defendant who operated vehicle on private property since the DUI statute is not limited to public highways but applies to property anywhere within state boundaries. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

The Uniform Act Regulating Traffic, Sections 56‑5‑10 et seq., of which Section 56‑5‑2930 is a part, is automatically applicable to private roads even where there is no written consent to such application from the owner of the road. State v. Allen (S.C. 1993) 314 S.C. 539, 431 S.E.2d 563.

**SECTION 56‑5‑6320.** Termination of consent.

The consent may be terminated by filing a notice of termination with the clerk of court or register of deeds and the sheriff in the same manner as is provided in Section 56‑5‑6310 for the consent of the owners. The same percentage of owners shall be required for termination as is required for consent; provided, however, that the heirs, successors or assigns of owners may exercise such right of termination. The termination shall be executed with the same formalities as a deed and shall make reference to the recordation of the original consent and plat. Termination of consent shall become effective thirty days from the date it is filed with the clerk of court or register of deeds.

HISTORY: 1978 Act No. 518 Section 2.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 118, Application to Private Roads.

**SECTION 56‑5‑6330.** Termination shall not affect roads otherwise covered by Act.

The termination shall not affect those portions of this chapter which apply to private roads irrespective of the provisions of this article.

HISTORY: 1978 Act No. 518 Section 3.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Private or Neighborhood Roads Section 7, Use and Obstruction of Use of Private Roads.

**SECTION 56‑5‑6340.** Establishment of speed limits and traffic control signs.

The speed limits and location of traffic control signs on private roads subjected to the Uniform Act Regulating Traffic pursuant to Section 56‑5‑6310 shall be established as follows:

(a) The owner of the private roads or both owners, or a majority of the owners, as the case may be, shall submit proposed speed limits and proposed locations for traffic control signs to the sheriff of the county in which the roads are situate and shall obtain the sheriff’s written approval of such speed limits and traffic control signs. Such approval shall be filed with the clerk of court or register of deeds and the affected roads then posted by signs identical or similar to those used on public roads.

(b) After filing with the clerk or register such speed limits and traffic control signs shall become effective as soon as they are posted on signs and thereafter may be enforced by the State Highway Patrol, officers of the sheriff’s department and state constables appointed by the Governor, in addition to any other persons having authority to take out warrants or make arrests.

HISTORY: 1978 Act No. 518 Section 4.

Library References

Automobiles 13, 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 38, 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 118, Application to Private Roads.

**SECTION 56‑5‑6350.** Application of article to certain private roads.

Nothing contained in this article shall affect the application of this chapter to private roads in any county which complied with any laws in effect prior to the effective date of this article but such roads shall be governed by the provisions of this article as it applies to termination.

HISTORY: 1978 Act No. 518 Section 5.

Library References

Automobiles 13.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Section 38.

ARTICLE 47

Child Passenger Restraint System

**SECTION 56‑5‑6410.** Child passenger restraint systems; age and weight as basis for required restraining system; standards.

(A) Every driver of a motor vehicle (passenger car, pickup truck, van, or recreational vehicle) operated on the highways and streets of this State when transporting a child under eight years of age upon the public streets and highways of the State must properly secure the child in the vehicle as follows:

(1) An infant or child under two years of age must be properly secured in a rear‑facing child passenger restraint system in a rear passenger seat of the vehicle until the child exceeds the height or weight limit allowed by the manufacturer of the child passenger restraint system being used.

(2) A child at least two years of age or a child under two years of age who has outgrown his rear‑facing child passenger restraint system must be secured in a forward‑facing child passenger restraint system with a harness in a rear passenger seat of the vehicle until the child exceeds the highest height or weight requirements of the forward‑facing child passenger restraint system.

(3) A child at least four years of age who has outgrown his forward‑facing child passenger restraint system must be secured by a belt‑positioning booster seat in a rear seat of the vehicle until he can meet the height and fit requirements for an adult safety seat belt as described in item (4). The belt‑positioning booster seat must be used with both lap and shoulder belts. A booster seat must not be used with a lap belt alone.

(4) A child at least eight years of age or at least fifty‑seven inches tall may be restrained by an adult safety seat belt if the child can be secured properly by an adult safety seat belt. A child is properly secured by an adult safety seat belt if:

(a) the lap belt fits across the child’s thighs and hips and not across the abdomen;

(b) the shoulder belt crosses the center of the child’s chest and not the neck; and

(c) the child is able to sit with his back straight against the vehicle seat back cushion with his knees bent over the vehicle’s seat edge without slouching.

(5) For medical reasons that are substantiated with written documentation from the child’s physician, advanced nurse practitioner, or physician assistant, a child who is unable to be transported in a standard child passenger safety restraint system may be transported in a standard child passenger safety restraint system designed for his medical needs.

Any child restraint system of a type sufficient to meet the physical standards prescribed by the National Highway Traffic Safety Administration at the time of its manufacture is sufficient to meet the requirements of this article.

(B) For the purposes of this section, any portion of a recreational vehicle that is equipped with temporary living quarters shall be considered a rear passenger seat.

HISTORY: 1983 Act No. 2 Section 1; 1988 Act No. 532, Section 16; 1999 Act No. 115, Section 12; 2001 Act No. 65, Section 1; 2017 Act No. 78 (H.3864), Section 1, eff May 19, 2017.

Effect of Amendment

2017 Act No. 78, Section 1, rewrote the section, revising the age, weight, and position of a child who must be secured in a child passenger restraint system and providing exceptions when medically necessary.

CROSS REFERENCES

Mandatory use of safety belt, see Sections 56‑5‑6510 et seq.

Transportation of children in the front seat of a motor vehicle, see Section 56‑5‑6420.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 128, Use of Safety Belts; Exceptions.

S.C. Jur. Public Health Section 109, Child Safety Restraints.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seatbelt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

**SECTION 56‑5‑6420.** Transportation of children in the front seat of a motor vehicle.

If a motor vehicle lacks a rear passenger seat or if all of its rear seating positions are occupied by children under eight years of age, a child under eight years of age may be transported in the front seat of the motor vehicle if the child is secured properly in an appropriate child passenger safety restraint system or belt‑positioning booster seat as described in Section 56‑5‑6410(1), (2), or (3).

HISTORY: 1983 Act No. 2 Section 1; 1988 Act No. 532, Section 17; 2017 Act No. 78 (H.3864), Section 2, eff May 19, 2017.

Effect of Amendment

2017 Act No. 78, Section 2, rewrote the section, providing that a child under eight years of age may be transported in the front seat of a motor vehicle under certain circumstances.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 109, Child Safety Restraints.

**SECTION 56‑5‑6440.** Persons and vehicles excepted from article.

The provisions of this article do not apply to:

(1) Taxi drivers.

(2) Drivers of emergency vehicles when operating in an emergency situation.

(3) Church, day care and school bus drivers.

(4) Public transportation operators.

(5) Commercial vehicles.

HISTORY: 1983 Act No. 2 Section 1.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 109, Child Safety Restraints.

Attorney General’s Opinions

It cannot be said in every case whether a vehicle used by a real estate agent is a “commercial vehicle” for purposes of requiring a child restraint system. 1983 Op.Atty.Gen. No. 83‑96, p. 163 (December 8, 1983) 1983 WL 142765.

**SECTION 56‑5‑6445.** Applicability of chapter.

The provisions of this article apply to all motor vehicles equipped with safety belts.

HISTORY: 1988 Act No. 532, Section 19.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seatbelt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

**SECTION 56‑5‑6450.** Penalty for violation of article; waiver of fine.

A person who violates the provisions of this article, upon conviction, must be fined not more than one hundred fifty dollars. The court shall waive the fine against a person who, before, or upon the appearance date on the summons, supplies the court with evidence of acquisition, purchase, or rental of a child restraint system meeting the requirements of this article.

HISTORY: 1983 Act No. 2 Section 1; 2005 Act No. 147, Section 1, eff 6 months after approval (became law without the Governor’s signature on June 9, 2005); 2006 Act No. 273, Section 1, eff May 9, 2006.

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 109, Child Safety Restraints.

Attorney General’s Opinions

While fine may be waived for conviction under Section 56‑5‑6450, such statute does not authorize waiver or suspension of assessments authorized by Section 23‑23‑70 or by Section 52(A)(1) of 1985 General Appropriations Act; assessment provided by Section 24‑23‑210 would not be assessed inasmuch as Section 56‑5‑6450 should be classified as nonmoving traffic offense. 1985 Op.Atty.Gen. No. 85‑97, p. 274 (September 4, 1985) 1985 WL 166067.

**SECTION 56‑5‑6460.** Violation of article does not constitute negligence.

A violation of this article shall not constitute negligence, per se, contributory negligence nor be admissible as evidence in any trial of any civil action.

HISTORY: 1983 Act No. 2 Section 1.

Library References

Automobiles 243(1), 243(17).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1253 to 1296.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 109, Child Safety Restraints.

Treatises and Practice Aids

American Law of Products Liability 3d Section 40:22, Failure to Use Motor Vehicle Safety Equipment‑Child Passenger Restraints.

American Law of Products Liability 3d Section 95:18, Nonuse of Seat Belts or Child Restraint Systems‑Statutes.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

**SECTION 56‑5‑6470.** Enforcement after June 30, 1984.

After June 30, 1984, any person violating the provisions of Article 47 of Chapter 5 of Title 56 may be, when apprehended, issued a summons, to appear in court for the violation, but no person shall at any time be placed under arrest or taken into custody for such a violation, other than upon a warrant issued for failure to appear in court in accordance with the summons or upon failure to pay a fine duly imposed by a court upon conviction.

HISTORY: 1983 Act No. 2 Section 1.

ARTICLE 48

Safety Belts

**SECTION 56‑5‑6510.** Definitions.

As used in this article:

(1) “Motor vehicle” means a passenger car, truck, van, or recreational vehicle required to be equipped with safety belts by Federal Motor Vehicle Safety Standard No. 208 (49 CFR 571.208), manufactured after July, 1966.

(2) “Driver” means a person who drives or is in actual physical control of a motor vehicle.

HISTORY: 1989 Act No. 148, Section 47(A).

CROSS REFERENCES

Child passenger restraint requirements, see Section 56‑5‑6410 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seatbelt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

**SECTION 56‑5‑6520.** Mandatory use of seat belt.

The driver and every occupant of a motor vehicle, when it is being operated on the public streets and highways of this State, must wear a fastened safety belt which complies with all provisions of federal law for its use. The driver is charged with the responsibility of requiring each occupant seventeen years of age or younger to wear a safety belt or be secured in a child restraint system as provided in Article 47 of this chapter. However, a driver is not responsible for an occupant seventeen years of age or younger who has a driver’s license, special restricted license, or beginner’s permit and who is not wearing a seat belt; such occupant is in violation of this article and must be fined in accordance with Section 56‑5‑6540.

HISTORY: 1989 Act No. 148, Section 47(A); 2001 Act No. 65, Section 2.

Library References

Automobiles 324, 349(5.3).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1515, 1517, 1519 to 1520, 1523 to 1524, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 128, Use of Safety Belts; Exceptions.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seat belt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

Discussion of when minors may ride in the bed of a pickup truck. S.C. Op.Atty.Gen. (September 15, 2003) 2003 WL 22172236.

Unless no seat with a seat belt is available in the cab of a pickup truck, an unrestrained passenger in the bed of the truck is in violation, and a driver of a pickup truck allowing children under six years of age to ride in the bed is in violation. S.C. Op.Atty.Gen. (August 23, 2001) 2001 WL 1215447.

A citation for violation of the mandatory seat belt law cannot be issued without an additional citation, unless the driver was stopped at an established checkpoint for a driver’s license or registration check. S.C. Op.Atty.Gen. (November 27, 2000) 2000 WL 1803588.

A driver may be charged with a violation of the mandatory seat belt law when stopped at an established checkpoint, even where the driver is not cited for any other traffic violation, but may not be stopped and cited in the absence of another violation of the motor vehicle law. S.C. Op.Atty.Gen. (October 11, 1990) 1990 WL 599323.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Officers had probable cause to believe that motorist was operating motor vehicle without wearing safety belt, in violation of safety belt statute, so as to justify investigatory stop of vehicle; both officers clearly saw motorist across intersection from where they were parked operating motor vehicle without wearing safety belt. State v. Odom (S.C.App. 2007) 376 S.C. 330, 656 S.E.2d 748, rehearing denied, certiorari denied. Automobiles 349(5.3)

**SECTION 56‑5‑6525.** Limits on use of checkpoints or roadblocks to enforce this article.

(A) The Department of Public Safety or any other law enforcement agency must not use a “Click It or Ticket” campaign or a similar endeavor of systematic checkpoints or roadblocks as a law enforcement tool where the principal purpose is to detect and issue a ticket to a violator of the provisions of this article on either a primary or secondary basis.

(B) A person must not be issued a citation at any checkpoint established to stop all drivers on a certain road for a period of time for removing their seatbelts in order to retrieve documentation that must be produced at the checkpoint.

HISTORY: 2001 Act No. 65, Section 3; 2005 Act No. 147, Section 2, eff 6 months after approval (became law without the Governor’s signature on June 9, 2005).

Library References

Automobiles 349(5.3), 349(9).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1515, 1517, 1519 to 1520, 1523 to 1524.

Attorney General’s Opinions

Non‑discretionary license and registration checks are constitutionally valid and proof of insurance and registration must be displayed upon demand of a police officer. S.C. Op.Atty.Gen. (March 6, 2008) 2008 WL 903978.

**SECTION 56‑5‑6530.** Exceptions.

The provisions of this article do not apply to:

(1) a driver or occupant who possesses a written verification from a physician that he is unable to wear a safety belt for physical or medical reasons;

(2) medical or rescue personnel attending to injured or sick individuals in an emergency vehicle when operating in an emergency situation as well as the injured or sick individuals;

(3) school, church, or day care buses;

(4) public transportation vehicles except taxis;

(5) occupants of vehicles in parades;

(6) United States mail carriers;

(7) an occupant for which no safety belt is available because all belts are being used by other occupants;

(8) a driver or occupants in a vehicle not originally equipped with safety belts.

HISTORY: 1989 Act No. 148, Section 47(A); 2001 Act No. 65, Section 4; 2005 Act No. 147, Section 3, eff 6 months after approval (became law without the Governor’s signature on June 9, 2005).

Library References

Automobiles 324.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1659, 1728 to 1731, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 128, Use of Safety Belts; Exceptions.

Attorney General’s Opinions

Discussion of whether a passenger in a pickup truck is required to ride in the cab with a seatbelt, if available. S.C. Op.Atty.Gen. (June 7, 2006) 2006 WL 1877111.

**SECTION 56‑5‑6540.** Penalty; nature of offense; issuance of citations at checkpoints; admissibility as evidence of negligence in civil action; searches; probable cause that violation has occurred; trial; appeals.

(A) A person who is adjudicated to be in violation of the provisions of this article must be fined not more than twenty‑five dollars, no part of which may be suspended. No court costs, assessments, or surcharges may be assessed against a person who violates a provision of this article. A person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this article. A custodial arrest for a violation of this article must not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. A violation of this article does not constitute a criminal offense. Notwithstanding Section 56‑1‑640, a violation of this article must not be:

(1) included in the offender’s motor vehicle records maintained by the Department of Motor Vehicles or in the criminal records maintained by SLED; or

(2) reported to the offender’s motor vehicle insurer.

(B) A law enforcement officer must not issue a citation to a driver or a passenger for a violation of this article when the stop is made in conjunction with a driver’s license check, safety check, or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time, except when the driver is cited for violating another motor vehicle law. The driver and any passenger shall be required to buckle up before departing the checkpoint and should the driver or the passenger refuse, then the person refusing may be charged with a primary violation.

(C) A violation of this article is not negligence per se or contributory negligence, and is not admissible as evidence in a civil action.

(D) A vehicle, driver, or occupant in a vehicle must not be searched, nor may consent to search be requested by a law enforcement officer, solely because of a violation of this article.

(E) A law enforcement officer must not stop a driver for a violation of this article except when the officer has probable cause that a violation has occurred based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is not wearing a safety belt or is not secured in a child restraint system as required by Article 47 of this chapter.

(F) A person charged with a violation of this article may admit or deny the violation, enter a plea of nolo contendere, or be tried before either a judge or a jury. If the trier of fact is convinced beyond a reasonable doubt that the person was not wearing a safety belt at the time of the incident, the penalty is a civil fine pursuant to Section 56‑5‑6540. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was not wearing a safety belt, no penalty shall be assessed.

(G) A person found to be in violation of this article may bring an appeal to the court of common pleas pursuant to Section 18‑3‑10 or Section 14‑25‑95.

HISTORY: 1989 Act No. 148, Section 47(A); 2001 Act No. 65, Section 5; 2005 Act No. 147, Section 4, eff 6 months after approval (became law without the Governor’s signature on June 9, 2005).

Library References

Automobiles 324, 349(5.3), 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1515, 1517, 1519 to 1520, 1523 to 1524, 1529, 1545, 1572, 1656, 1659, 1707, 1714, 1728 to 1731, 1743, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 128, Use of Safety Belts; Exceptions.

S.C. Jur. Automobiles and Other Motor Vehicles Section 129, Use of Safety Belts; Exceptions‑Penalties; Enforcement.

S.C. Jur. Automobiles and Other Motor Vehicles Section 225, Negligence.

Attorney General’s Opinions

Non‑discretionary license and registration checks are constitutionally valid and proof of insurance and registration must be displayed upon demand of a police officer. S.C. Op.Atty.Gen. (March 6, 2008) 2008 WL 903978.

If a license and registration check is conducted at a checkpoint established to stop all drivers on a certain road for a period of time, and is not a pretense for issuing seat belt citations, then no other citation is required to issue a ticket for a seat belt violation. S.C. Op.Atty.Gen. (December 30, 2004) 2004 WL 3058230.

A citation for violation of the mandatory seat belt law cannot be issued without an additional citation, unless the driver was stopped at an established checkpoint for a driver’s license or registration check. S.C. Op.Atty.Gen. (November 27, 2000) 2000 WL 1803588.

No more than a fine of ten dollars may be levied for a violation of the seat‑belt law. S.C. Op.Atty.Gen. (March 25, 1997) 1997 WL 208034.

A driver may be charged with a violation of the mandatory seat belt law when stopped at an established checkpoint, even where the driver is not cited for any other traffic violation, but may not be stopped and cited in the absence of another violation of the motor vehicle laws. S.C. Op.Atty.Gen. (November 6, 1991) 1991 WL 633067.

NOTES OF DECISIONS

Admissibility of evidence 2

Constitutional issues 1

1. Constitutional issues

A seat belt violation can be the sole basis for a police officer to pull over a vehicle. State v. Odom (S.C.App. 2007) 376 S.C. 330, 656 S.E.2d 748, rehearing denied, certiorari denied. Automobiles 349(5.3)

Officer had reasonable suspicion that motorist was armed, as required to warrant patdown search of motorist incident to investigatory stop stemming from seat belt violation; officer smelled strong odor of marijuana as he approached motorist’s vehicle, noticed cigar that was common indicium of paraphernalia on dashboard, and observed empty gun holster in back seat. State v. Odom (S.C.App. 2007) 376 S.C. 330, 656 S.E.2d 748, rehearing denied, certiorari denied. Automobiles 349.5(10)

Officers had probable cause to believe that motorist was operating motor vehicle without wearing safety belt, in violation of safety belt statute, so as to justify investigatory stop of vehicle; both officers clearly saw motorist across intersection from where they were parked operating motor vehicle without wearing safety belt. State v. Odom (S.C.App. 2007) 376 S.C. 330, 656 S.E.2d 748, rehearing denied, certiorari denied. Automobiles 349(5.3)

2. Admissibility of evidence

Since minivan manufacturer’s liability under South Carolina law was predicated under crashworthiness doctrine, evidence that driver may have been at fault in the accident in which liftgate latch failed, causing passenger to be ejected and killed and evidence of nonusage of seatbelts was irrelevant and inadmissible on negligent design and negligent misrepresentation claims against manufacturer. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Products Liability 208; Products Liability 360

Language of safety belt statute section providing that a vehicle, driver, or occupant in a vehicle must not be searched, nor may consent to search requested by law enforcement officer, solely because of safety belt violation did not limit admission of evidence in same manner as criminal domestic violence (CDV) statute, which expressly forbade admissibility of evidence gained as result of complaint filed under that statute. State v. Odom (S.C.App. 2007) 376 S.C. 330, 656 S.E.2d 748, rehearing denied, certiorari denied. Criminal Law 392.17(2)

**SECTION 56‑5‑6550.** No points against license for violation.

No points provided for in Section 56‑1‑720 or any other provision of law may be assessed for a violation of this article.

HISTORY: 1989 Act No. 148, Section 47(A).

Library References

Automobiles 144.1(3).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 363, 374 to 378.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 129, Use of Safety Belts; Exceptions‑Penalties; Enforcement.

**SECTION 56‑5‑6560.** Collection of motor vehicle stop data regarding age, gender, and race of driver; development of database; reports.

(A) Any time a motor vehicle is stopped by a state or local law enforcement officer without a citation being issued or an arrest being made, the officer who initiated the stop must complete a data collection form designed by the Department of Public Safety that must include information regarding the age, gender, and race or ethnicity of the driver of the vehicle. This information may be gathered and transmitted electronically under the supervision of the department which shall develop and maintain a database storing the information collected. The department must promulgate rules and regulations with regard to the collection and submission of the information gathered.

(B) The Department of Public Safety shall develop and maintain a database for the information submitted to the department under subsection (A) and prepare a report to be posted on the department’s website regarding motor vehicle stops using the collected information.

(C) The General Assembly shall have the authority to withhold any state funds or federal pass‑through funds from any state or local law enforcement agency that fails to comply with the requirements of this section.

(D) This section must be reviewed by the Senate Transportation Committee and the House of Representatives Education and Public Works Committee during the 2010 Session of the General Assembly. The committees must make recommendations of appropriate changes, if any, to this section before the end of the 2010 Session.

HISTORY: 2005 Act No. 147, Section 5, eff 6 months after approval (became law without the Governor’s signature on June 9, 2005), except requirements relating to the Department of Public Safety take effect July 1, 2006, and requirements relating to local law enforcement take effect July 1, 2007.

CROSS REFERENCES

Contact information from traffic stops, form, see S.C. Code of Regulations R. 38‑1000.

Contact information from traffic stops, see S.C. Code of Regulations R. 38‑1000.

Library References

Automobiles 130.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 318, 322 to 326, 328 to 330, 335 to 336, 338.

**SECTION 56‑5‑6565.** Safety belt education programs.

(A) The Department of Public Safety shall develop and implement education programs designed to create awareness of the state’s safety belt laws and to increase safety belt use in rural and ethnically diverse areas throughout the State. The Department of Public Safety, when securing consultant, contractor, and subcontractor services for developing and implementing programs related to safety belt laws, shall select providers that have experience working with the communities the provider is procured to target. The Department of Public Safety shall confer with members of the targeted communities for input on the development of effective safety education programs and on the identification of providers that have the appropriate experience with the targeted communities.

(B) The Department of Transportation may develop additional programs to promote safety belt use or may coordinate with the Department of Public Safety to fund and carry out the programs jointly. If there is coordination between the two departments, the Department of Public Safety has final authority on all issues including, but not limited to, program content and dissemination, allocation of funds, and procurement procedures.

(C) The Department of Public Safety may use available federal funds or private sector contributions to meet the requirements of subsection (A). The General Assembly may provide funds to supplement federal or private sector funds used by the Department of Public Safety or the Department of Transportation to develop and implement the programs described in subsection (A). The General Assembly shall provide the Department of Public Safety the funds necessary to meet the requirements of subsection (A), if federal or private sector funds are unavailable.

HISTORY: 2005 Act No. 147, Section 6, eff 6 months after approval (became law without the Governor’s signature on June 9, 2005).

Library References

Automobiles 130.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 318, 322 to 326, 328 to 330, 335 to 336, 338.