~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

June 1, 2011

**S. 263**

Introduced by Senators Knotts and Ford

S. Printed 6/1/11--S.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 263) to amend Article 23, Chapter 5, Title 56 of the South Carolina Code of Laws, 1976, by adding Section 56‑5‑2905, so as to provide that a person who while driving, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 23, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑2905. (A) A person who while driving a motor vehicle does any act forbidden by law in the driving of the motor vehicle, except a violation of Section 56‑5‑2930, Section 56‑5‑2935, or Section 56‑5‑2945, which unintentionally and proximately causes the death of another person, is guilty of the misdemeanor offense of vehicular homicide, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(B) This section does not apply if the person who dies does any act forbidden by law while driving a motor vehicle or as a pedestrian which contributes to the person’s own death.

(C)(1) The Department of Motor Vehicles shall suspend the driver’s license of a person who is convicted of, or pleads guilty or nolo contendere to, vehicular homicide for a period to include incarceration, if any, plus one year. The period of incarceration, if any, must not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident must run concurrently.

(2)(a) After ninety days from the date of suspension, the person may petition the circuit court in the county of the person’s residence for reinstatement of the 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 vehicular homicide of the person’s intent to seek reinstatement of the driver’s license.

(b) The solicitor or the solicitor’s designee within thirty days may respond to the petition and demand a hearing on the merits of the petition. If the solicitor or the solicitor’s 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.

(c) 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 incident that resulted in the vehicular homicide conviction or plea;

(2) the person has served the term of imprisonment, if any, or paid the fine, assessment, and restitution, if any, 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 driving a motor vehicle.

The circuit court may order the reinstatement of the driver’s license before the completion of the full one‑year suspension period, or the judge may order the granting of a route restricted license for the remainder of the one‑year suspension 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.

(d) The order of the judge must be transmitted to the Department of Motor Vehicles within ten days.

(e) If the person’s privilege to drive a motor vehicle is reinstated, a subsequent violation of the motor vehicle laws for any moving violation requires the automatic suspension of the person’s driver’s license and imposition of the full period of suspension for the vehicular homicide violation.”

SECTION 2. Section 56-5-2910 of the 1976 Code is amended to read:

“Section 56-5-2910. (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 ~~must~~ shall revoke for a period to include incarceration, if any, plus five years the driver’s license of a person convicted of reckless vehicular homicide. The period of incarceration, if any, must not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident must run concurrently.

(B) After one year from the date of revocation, the person ~~whose driver’s license has been revoked for five years pursuant to Subsection (A)~~ may petition the circuit court in the county of ~~his~~ the person’s residence for reinstatement of ~~his~~ the person’s driver’s license. ~~He~~The person shall serve a copy of the petition upon the solicitor of the county ~~and~~. The solicitor shall notify the representative of the victim of the reckless homicide of ~~his~~ the person’s intent to seek reinstatement of ~~his~~ 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 ~~his~~ the term of imprisonment or paid ~~his~~ 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 ~~provisional~~ 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 ~~pursuant to subsection (B)~~, 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.”

SECTION 3. Section 56‑5‑2946 of the 1976 Code is amended to read:

“Section 56‑5‑2946. (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:

(1) there is probable cause to believe that the person, while driving a motor vehicle, did any act forbidden by law in the driving of the motor vehicle which there is probable cause to believe caused a motor vehicle incident resulting in the death of another person; or

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

SECTION 4. This act takes effect six months after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JOHN M. KNOTTS, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

Department of Motor Vehicles

The department indicates enactment of this bill will have an impact ranging from $27,280 to $31,790 in cost related to programming DMV’s Phoenix system.

Other Agencies

The Department of Public Safety, Judicial Department and Prosecution Coordination Commission each indicate enactment of this bill would have either no fiscal impact or a minimal impact on the General Fund of the State which could be absorbed within existing resources

**LOCAL GOVERNMENT IMPACT:**

Pursuant to Section 2-7-76 of the Code of Laws of South Carolina, 1976, the Office of State Budget has surveyed members of the FIST Network. The responses will be forwarded upon receipt.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND ARTICLE 23, CHAPTER 5, TITLE 56 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, BY ADDING SECTION 56‑5‑2905, SO AS TO PROVIDE THAT A PERSON WHO WHILE DRIVING A MOTOR VEHICLE DOES ANY ACT FORBIDDEN BY LAW IN THE DRIVING OF THE MOTOR VEHICLE, EXCEPT A VIOLATION OF SECTIONS 56‑5‑2930, 56‑5‑2935, OR 56‑5‑2945, WHICH PROXIMATELY CAUSES DEATH TO A PERSON, IS GUILTY OF THE MISDEMEANOR OFFENSE OF VEHICULAR HOMICIDE; AND TO AMEND SECTION 56‑5‑2946 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, SO AS TO PROVIDE THAT 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 THE PERSON IS THE DRIVER OF A MOTOR VEHICLE INVOLVED IN A MOTOR VEHICLE INCIDENT RESULTING IN THE DEATH OF ANOTHER PERSON.

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

SECTION 1. Article 23, Chapter 5, Title 56 of the 1976 Code is amended by adding:

“Section 56‑5‑2905. (A) A person who while driving a motor vehicle does any act forbidden by law in the driving of the motor vehicle, except a violation of Sections 56‑5‑2930, 56‑5‑2935, or 56‑5‑2945, which proximately causes death to a person, is guilty of the misdemeanor offense of vehicular homicide, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both.

(B)(1) The Department of Motor Vehicles must suspend the driver’s license of a person who is convicted of, or pleads guilty or nolo contendere to, vehicular homicide for a period to include incarceration, if any, plus three years. The period of incarceration, if any, must not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident shall run concurrently.

(2)(a) After one year from the date of suspension, the person may petition the circuit court in the county of the person’s residence for reinstatement of the driver’s license. The person shall serve a copy of the petition upon the solicitor of the county and shall notify the representative of the victim of the vehicular homicide of the person’s intent to seek reinstatement of the driver’s license.

(b) The solicitor or the solicitor’s designee within thirty days may respond to the petition and demand a hearing on the merits of the petition. If the solicitor or the solicitor’s 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.

(c) 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 incident which resulted in the vehicular homicide conviction or plea;

(2) the person has served the term of imprisonment, if any, or paid the fine, assessment, and restitution, if any, 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 driving a motor vehicle.

The circuit court may order the reinstatement of the driver’s license before the completion of the full three‑year suspension period, or the judge may order the granting of a provisional license for the remainder of the three‑year suspension 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.

(d) The order of the judge must be transmitted to the Department of Motor Vehicles within ten days.

(e) If the person’s privilege to drive a motor vehicle is reinstated, a subsequent violation of the motor vehicle laws for any moving violation requires the automatic suspension of the person’s driver’s license and imposition of the full period of suspension for the vehicular homicide violation.”

SECTION 2. Section 56‑5‑2946 of the 1976 Code is amended to read:

“Section 56‑5‑2946. (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:

(1) the person is the driver of a motor vehicle involved in a motor vehicle incident resulting in the death of another person; or

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

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

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