~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT AMENDED AND ADOPTED

April 26, 2012

**S. 746**

Introduced by Senators Lourie, Hutto, Fair, L. Martin, Rose, O’Dell, Ford and Cromer

S. Printed 4/26/12--S.

Read the first time March 30, 2011.

**A** **BILL**

TO AMEND SECTION 56‑1‑286, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SUSPENSION OF A DRIVER’S LICENSE TO A PERSON UNDER THE AGE OF TWENTY‑ONE FOR HAVING AN UNLAWFUL ALCOHOL CONCENTRATION, SO AS TO REVISE THE PENALTIES TO INCLUDE REQUIRING AN OFFENDER WHO OPERATES A VEHICLE TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED ON THE VEHICLE; TO AMEND SECTION 56‑1‑400, AS AMENDED, RELATING TO THE SUSPENSION OF A LICENSE, A LICENSE RENEWAL OR ITS RETURN, AND ISSUANCE OF A LICENSE THAT RESTRICTS THE DRIVER TO ONLY OPERATING A VEHICLE WITH AN IGNITION INTERLOCK DEVICE INSTALLED, SO AS TO REVISE THE DRIVER’S LICENSE SUSPENSION PERIOD FOR A PERSON WHO CHOOSES TO OR NOT TO HAVE AN INTERLOCK DEVICE INSTALLED ON HIS VEHICLE, TO PROVIDE ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS WHO CHOOSE NOT TO HAVE AN INTERLOCK DEVISE INSTALLED ON THEIR VEHICLES AFTER BEING CONVICTED OF CERTAIN DRIVING OFFENSES, AND TO REVISE THE PROCEDURE FOR A PERSON TO OBTAIN A LICENSE WHO DOES NOT OWN A VEHICLE; TO AMEND SECTION 56‑1‑1320, RELATING TO THE ISSUANCE OF A PROVISIONAL DRIVER’S LICENSE, SO AS TO PROVIDE THAT THE PROVISIONAL LICENSE MAY BE ISSUED AS LONG AS THE VEHICLE AUTHORIZED TO BE OPERATED HAS HAD AN IGNITION INTERLOCK DEVISE INSTALLED; TO AMEND SECTION 56‑5‑2941, AS AMENDED, RELATING TO PENALTIES THAT MAY BE IMPOSED FOR DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, SO AS TO PROVIDE THE LENGTH OF TIME AN INTERLOCK DEVICE MUST BE AFFIXED TO A VEHICLE FOR A FIRST OFFENSE, TO REVISE THE PENALTY FOR AN OFFENDER WHO HAS ACCUMULATED FOUR POINTS UNDER THE INTERLOCK DEVICE POINT SYSTEM, TO PROVIDE FOR THE USE OF FUNDS REMITTED TO THE INTERLOCK DEVICE FUND, TO REVISE THE FEES THAT MUST BE COLLECTED AND REMITTED TO THE INTERLOCK DEVICE FUND, TO REVISE THE FREQUENCY OF TIME IN WHICH AN OFFENDER MUST HAVE AN INTERLOCK DEVICE INSPECTED, AND TO PROVIDE THAT AN INTERLOCK DEVICE MUST CAPTURE A PHOTOGRAPHIC IMAGE OF A DRIVER AS HE OPERATES THE DEVICE; TO AMEND SECTION 56‑5‑2942, AS AMENDED, RELATING TO THE IMMOBILIZATION OF A PERSON’S VEHICLE UPON HIS CONVICTION OF AN ALCOHOL‑RELATED DRIVING OFFENSE, SO AS TO PROVIDE THAT AS LONG AS A PERSON HOLDS A VALID IGNITION INTERLOCK LICENSE, HE IS NOT REQUIRED TO SURRENDER HIS LICENSE PLATES AND VEHICLE REGISTRATIONS; TO AMEND SECTION 56‑5‑2947, AS AMENDED, RELATING TO THE OFFENSE OF CHILD ENDANGERMENT, SO AS TO REVISE THE DATE WHEN A PERSON MAY ENROLL IN AN ALCOHOL AND DRUG SAFETY ACTION PROGRAM AND BE ISSUED A PROVISIONAL DRIVER’S LICENSE; TO AMEND SECTION 56‑5‑2950, AS AMENDED, RELATING TO A PERSON WHO OPERATES A MOTOR VEHICLE GIVING IMPLIED CONSENT TO CHEMICAL TESTS TO DETERMINE THE PRESENCE OF ALCOHOL OR DRUGS, SO AS TO REVISE THE PENALTY IMPOSED UPON A PERSON WHO REFUSES TO BE SUBJECTED TO A CHEMICAL TEST; TO AMEND SECTION 56‑5‑2951, AS AMENDED, RELATING TO THE SUSPENSION OF A PERSON’S DRIVER’S LICENSE WHO REFUSES TO SUBMIT TO BE TESTED TO DETERMINE HIS ALCOHOL CONCENTRATION, SO AS TO LOWER THE ALCOHOL CONCENTRATION LEVEL THAT RESULTS IN A PERSON HAVING HIS LICENSE SUSPENDED, TO REVISE THE PERIOD OF TIME THAT A TEMPORARY ALCOHOL LICENSE REMAINS IN EFFECT, TO REVISE THE PERIOD OF TIME THAT A SUSPENSION OF A PERSON’S PRIVILEGE TO OPERATE A VEHICLE MUST REMAIN IN EFFECT WHEN AN ADMINISTRATIVE JUDGE UPHOLDS A SUSPENSION, TO PROVIDE THAT A HOLDER OF A RESTRICTED DRIVER’S LICENSE MAY OPERATE ONLY A VEHICLE EQUIPPED WITH AN IGNITION INTERLOCK DEVICE, AND TO REVISE THE PENALTY FOR VIOLATIONS OF VARIOUS DRIVING OFFENSES; AND TO AMEND SECTION 56‑5‑2990, RELATING TO THE SUSPENSION OF A PERSON’S DRIVER’S LICENSE FOR A VIOLATION OF CERTAIN ALCOHOL AND DRUG RELATED DRIVING OFFENSES, SO AS TO REVISE THE PENALTIES, AND TO PROVIDE THAT THIS PROVISION APPLIES TO CERTAIN PERSONS WHO HAVE BEEN ISSUED AN IGNITION INTERLOCK RESTRICTED LICENSE.

Amend Title To Conform

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

SECTION 1. Section 56‑1‑286(F) of the 1976 Code is amended to read:

“(F)(1) ~~If~~ Except as provided in subitem (F)(2), if a person refuses upon the ~~request of the~~ primary investigating ~~officer~~ officer’s request to submit to chemical tests as provided in subsection (C), the department ~~must~~ shall suspend ~~his~~ the person’s license, permit, or ~~any~~ nonresident operating privilege, or deny the issuance of a license or permit to ~~him~~ the person for:

~~(1)~~(a) six months; or

~~(2)~~(b) one year, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, or ~~any other~~ a 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~~ other drugs, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, ~~56‑5‑2950, or~~ 56‑5‑2951, or 56-5-2990.

(2) In lieu 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 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 the person would have otherwise been subject to suspension or denial of the issuance of a license or permit. 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 can not subsequently choose to serve the suspension.”

SECTION 2. Section 56‑1‑286(G) of the 1976 Code is amended to read:

“(G)(1) ~~If~~ Except as provided in subitem (G)(2), if a person submits to a chemical test and the test result indicates an alcohol concentration of two one‑hundredths of one percent or more, the department ~~must~~ shall suspend ~~his~~ the person’s license, permit, or ~~any~~ nonresident operating privilege, or deny the issuance of a license or permit to ~~him~~ the person for:

~~(1)~~(a) three months; or

~~(2)~~(b) six months, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, or ~~any other~~ a 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~~ other drugs, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, ~~56‑5‑2950, or~~ 56‑5‑2951, or 56-5-2990.

(2) In lieu 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 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 the person would have otherwise been subject to suspension or denial of the issuance of a license or permit. 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 can not subsequently choose to serve the suspension.”

SECTION 3. Section 56‑1‑286(I) of the 1976 Code is amended to read:

“(I) A test may not be administered or samples taken 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) ~~he~~ the person does not have to take the test or give the samples but that ~~his~~ the person’s privilege to drive must be suspended or denied for at least six months or, as an alternative, the person may enroll in the Ignition Interlock Device Program for at least six months, if ~~he~~ the person refuses to submit to the tests, and that ~~his~~ the person’s refusal may be used against ~~him~~ the person in court;

(2) ~~his~~ the person’s privilege to drive must be suspended for at least three months or, as an alternative, the person may enroll in the Ignition Interlock Device Program for at least three months, if ~~he~~ the person takes the test or gives the samples and has an alcohol concentration of two one‑hundredths of one percent or more;

(3) ~~he~~ the person has the right to have a qualified person of ~~his~~ the person’s own choosing conduct additional independent tests at ~~his~~ the person’s expense;

(4) ~~he~~ the person has the right to request ~~an administrative~~ a contested hearing within thirty days of the issuance of the notice of suspension; and

(5) ~~he~~ the person ~~must~~ shall enroll in an Alcohol and Drug Safety Action Program within thirty days of the issuance of the notice of suspension if ~~he~~ the person does not request an administrative hearing or within thirty days of the issuance of notice that the suspension has been upheld at the ~~administrative~~ contested hearing.

The primary investigating officer ~~must notify~~ shall promptly notify the department of ~~the~~ a person’s refusal ~~of a person~~ to submit to a test requested pursuant to this section as well as the test result of ~~any~~ a person who submits to a test pursuant to this section and registers an alcohol concentration of two one‑hundredths of one percent or more. The notification must be in a manner prescribed by the department.”

SECTION 4. Section 56‑1‑400 of the 1976 Code is amended to read:

“Section 56-1-400. (A) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that ~~such~~ the license ~~shall~~ be surrendered to the Department of Motor Vehicles. At the end of the suspension period ~~of suspension~~, other than a suspension for reckless driving, driving under the influence of intoxicants, or pursuant to the point system ~~such license so~~ the surrendered license ~~shall~~ must be returned to the licensee, or in the discretion of the Department of Motor Vehicles, a new license issued to ~~him~~ the licensee. The Department of Motor Vehicles shall not return nor restore a license which has been suspended for reckless driving, driving under the influence of intoxicants, or for violations under the point system until the person has filed an application for a new license, submitted to an examination as upon an original application, and has satisfied the Department of Motor Vehicles, after an investigation of the person’s character, habits, and driving ability ~~of the person~~, that it would be safe to grant ~~him~~ the person the privilege of driving a motor vehicle on the public highways. ~~Provided, the~~ The Department of Motor Vehicles, ~~in its discretion,~~ where the suspension is for a violation under the point system, may waive ~~such~~ the examination, application, and investigation. A record of the suspension ~~shall~~ must be endorsed on the license returned to the licensee, or the new license issued to the licensee, showing the grounds of ~~such~~ the suspension. ~~In the case of a license suspended for driving under the influence of intoxicants~~ If a person is permitted to operate a motor vehicle only with an ignition interlock device installed pursuant to Section 56-5-2941, the restriction on the license returned to the licensee, or the new license issued to the licensee, must conspicuously identify the licensee as a person who may only drive a motor vehicle with an ignition interlock device installed and the restriction must be maintained on the license for the duration of the period for which the ignition interlock device must be maintained pursuant to Section ~~56‑5‑2941~~ 56-1-286, 56-5-2945, 56-5-2951, or 56-5-2990. For purposes of Title 56, the license must be referred to as an ignition interlock restricted license. Unless the person establishes that ~~he~~ the person is entitled to the exemption set forth in subsection (B), no ignition interlock restricted license ~~containing an ignition interlock device restriction shall~~ may be issued by the Department of Motor Vehicles without written notification from the authorized ignition interlock service provider that the ignition interlock device has been installed and confirmed to be in working order. If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended ~~for three years from the date the suspension for driving under the influence of intoxicants ends~~ indefinitely. If ~~during this three‑year period~~ the person subsequently decides to have the ignition interlock device installed, the device must be installed for the ~~full suspension period or until the end of the three‑year period, whichever comes first~~ length of time set forth in Section 56‑1‑286, 56‑5‑2945, 56‑5‑2951, or 56‑5‑2990. This provision ~~shall~~ does not affect nor bar the reckoning of prior offenses for reckless driving and driving under the influence of intoxicating liquor or narcotic drugs, as provided in Article 23 of Chapter 5 of this title.

(B) A person who does not own a vehicle, as shown in the Department of Motor Vehicles' records, and who certifies that ~~he~~ the person:

(1) cannot obtain a vehicle owner’s permission to have an ignition interlock device installed on a vehicle;

(2) will not be driving ~~any~~ a vehicle other than the one owned by ~~his~~ the person’s employer; and

(3) ~~that he~~ will not own a vehicle during the interlock period, may petition the Department of Motor Vehicles, on a form provided by ~~it~~ the department, for issuance of ~~a~~ an ignition interlock restricted license ~~containing an ignition interlock device restriction,~~ that permits the person to operate a vehicle specified by the employee according to the employer’s needs as contained in the employer’s statement during the days and hours specified in the employer’s statement without having to show that an ignition interlock device has been installed. The form must contain:

(1) identifying information about the employer’s noncommercial vehicles the person will be operating;

(2) a statement that explains the circumstances in which the person will be operating the employer’s vehicles; and

(3) the notarized signature of the person’s employer.

This subsection does not apply during the first three hundred and twenty days a person who is convicted, pleads guilty or nolo contendere, or forfeits bail for a second or subsequent conviction 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, is required to have an ignition interlock installed pursuant to Section 56-5-2945 or 56-5-2990. The determination of eligibility for ~~this~~ the waiver is subject to periodic review at the discretion of the Department of Motor Vehicles. The Department of Motor Vehicles ~~must~~ shall revoke a ~~license~~ waiver issued pursuant to this exemption if ~~it~~ the department determines that the person has been driving a vehicle other than the one owned by ~~his~~ the person’s employer or has been operating the person’s employer’s vehicle outside the locations, days, or hours specified by the employer in the department’s records. The person may seek relief from the Department of Motor Vehicle's determination 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. However, the filing of a request for a contested case hearing will not stay the revocation of the waiver pending the hearing.

(C) Any person whose license has been suspended or revoked for an offense within the jurisdiction of the court of general sessions shall provide the Department of Motor Vehicles with proof that the fine owed by the person has been paid before the Department of Motor Vehicles may return or issue the person a license. Proof that the fine has been paid may be a receipt from the clerk of court of the county in which the conviction occurred stating that the fine has been paid in full.”

SECTION 5. Section 56‑1‑748 of the 1976 Code is amended to read:

“Section 56-1-748. No person issued a restricted driver's license under the provisions of Section 56‑1‑170(B), ~~Section~~ 56‑1‑320(A), ~~Section~~ 56‑1‑740(B), ~~Section~~ 56‑1‑746 (D), ~~Section~~ 56‑5‑750(G), ~~Section~~ 56‑9‑430(B), ~~Section~~ 56‑10‑260(B), ~~Section~~ 56‑10‑270(C), or ~~Section~~ 56‑5‑2951~~(H)~~ shall subsequently be eligible for issuance of a restricted driver's license under these provisions.”

SECTION 6. Section 56‑1‑1320(A) of the 1976 Code is amended to read:

“(A) ~~A~~ For offenses that occurred prior to July 2, 2013, a person with a South Carolina driver's license, a person who had a South Carolina driver's license at the time of the offense referenced below, or a person exempted from the licensing requirements by Section 56‑1‑30, who is or has been convicted of a first offense violation of ~~an ordinance of a municipality, or~~ a law of this State~~,~~ that prohibits a person from operating a vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including Section 56‑5‑2930 and ~~Section~~ 56‑5‑2933, and whose license is not presently suspended for any other reason, may apply to the Department of Motor Vehicles to obtain a provisional driver's license of a design to be determined by the department to operate a motor vehicle. The person shall enter an Alcohol and Drug Safety Action Program as provided for in Section 56‑1‑1330, shall furnish proof of responsibility as provided for in Section 56‑1‑1350, and shall pay to the department a fee of one hundred dollars for the provisional driver's license. The provisional driver's license is not valid for more than six months from the date of issue shown on the license. ~~The determination of whether or not a provisional driver's license may be issued pursuant to the provisions of this article as well as reviews of cancellations or suspensions under Sections 56‑1‑370 and 56‑1‑820 must be made by the director of the department or his designee.~~”

SECTION 7. Section 56‑5‑2941 of the 1976 Code is amended to read:

“Section 56-5-2941. (A) ~~Except as otherwise provided in this section, in addition to the penalties required and authorized to be imposed against a person violating the provisions of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or violating the provisions of another law of any other state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs~~ Pursuant to Section 56-5-2945 and 56-5-2990, the Department of Motor Vehicles ~~must~~ shall require ~~the~~ a person~~, if he is a subsequent offender and a resident of this State,~~ who has violated the provisions 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 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. The Department of Motor Vehicles may waive the requirements of this section if ~~it~~ the department ~~finds~~ determines that the ~~offender~~ person has a medical condition that makes ~~him~~ the person incapable of properly operating the installed ignition interlock device. In such case, the Department of Motor Vehciles shall suspend the person’s driver’s license pursuant to Section 56-5-2945 and 56-5-2990. The Department of Motor Vehicles shall also require a person who has enrolled in the Ignition Interlock Device Program in lieu of a driver’s license suspension or denial of the issuance of a driver’s license or permit pursuant to Section 56-1-286, 56-5-2945, 56-5-2951, 56-5-2990 to have an ignition interlock device installed on any motor vehicle the person drives. The length of time that an ignition interlock device is required to be affixed to a motor vehicle is set forth in Section 56-1-286, 56-5-2945, 56-5-2951, and 56-5-2990 ~~following the completion of a period of license suspension imposed on the offender is two years for a second offense, three years for a third offense, and the remainder of the offender's life for a fourth or subsequent offense~~.

(B) Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that an ignition interlock 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, Section 56‑5‑2930, 56‑5‑2933, ~~or~~ 56‑5‑2945, or 56-5-2950.

~~(B)~~(C) If a ~~person who is a subsequent offender and a~~ resident of this State is convicted of violating ~~the provisions of~~ a law of ~~any other~~ 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.

~~(C)~~(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 may only obtain a South Carolina driver's license if the person enrolls in the South Carolina ~~ignition interlock device program~~ 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.

~~(D)~~(E) The ~~offender~~ person shall be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services.

(1) ~~An offender~~ A person receiving a total of:

(a) two points will have ~~their~~ the length of time that the ignition interlock device is required extended by two months~~.~~;

(b) ~~An offender receiving a total of~~ three points will have ~~their~~ the length of time that the ignition interlock device is required extended by four months, ~~and must~~ shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the ~~individual~~ person not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles ~~must~~ shall suspend the ~~individual's driver's~~ person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan~~.~~;

(c) ~~An offender receiving a total of~~ four points ~~shall~~ will have ~~their~~ the person’s ignition interlock restricted license suspended for a period of ~~one year~~ three months, ~~and~~ shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. ~~Completion of the plan is mandatory as a condition of reinstatement of the person's driving privileges.~~ 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 three month suspension, shall re-suspend 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 ~~an individual's~~ a person’s completion and compliance with education and treatment programs. Upon reinstatement of driving privileges following the three month suspension, the Department of Probation, Parole and Pardon Services shall reset the person’s point total to zero points.

~~(E)~~(F) The cost of the ignition interlock device must be borne by the ~~offender~~ person. However, if the ~~offender~~ ~~believes he~~ person is indigent and cannot afford the cost of the ignition interlock device, the ~~offender~~ 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 ignition interlock device. The affidavit of indigency form must be made publicly accessible on the Department of Probation, Parole and Pardon Services' Internet web site. If the Department of Probation, Parole and Pardon Services determines that the ~~offender~~ person is indigent as it pertains to the ignition interlock device, ~~it~~ the Department of Probation, Parole and Pardon Services may authorize an ignition interlock device to be affixed to the motor vehicle and the cost of the initial installation and standard use of the ignition interlock 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 may also 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 ~~dependants~~ 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.

~~(F)~~(G) The ignition interlock service provider ~~must~~ 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 ~~three hundred sixty~~ thirty dollars per ~~year~~ month for each ~~year~~ month the person is required to drive a vehicle with an ignition interlock device. Any ignition interlock service provider failing to properly remit funds to the Ignition Interlock Device Fund may be decertified as an ignition interlock 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 an ignition interlock device must be borne by the service provider.

~~(G)~~(H) The ~~offender must~~ person shall have the ignition interlock device inspected every sixty days to verify that the ignition interlock 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 ~~offender's~~ person’s alcohol content at each attempt to start and running ~~re‑test~~ retest during each sixty‑day period. 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 ~~must~~ shall report any devices that fail inspection to the Department of Probation, Parole and Pardon Services. The report must contain the name of the ~~offender~~ person, identify the vehicle upon which the failed device is installed and the reason for the failed inspection, and indicate the ~~offender's~~ person’s alcohol content at each attempt to start and running ~~re‑test~~ retest during each sixty‑day period. Failure of the ~~offender~~ person to have the ignition interlock device inspected every sixty days will result in one ignition interlock device point. ~~Upon review of the interlock device inspection report, if the report reflects that the offender attempted to start the motor vehicle with an alcohol concentration of two one‑hundredths of one percent or more, the offender is assessed one‑half interlock device point.~~ Upon review of the ignition interlock device inspection report, if the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration between two one‑hundredths of one percent and less than four one‑hundredths of one percent, the ~~offender~~ person is assessed one‑half ignition interlock device point. Upon review of the ignition interlock device inspection report, if the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration between four one‑hundredths of one percent and less than fifteen one‑hundredths of one percent, the ~~offender~~ person is assessed one ignition interlock device point. Upon review of the ignition interlock device inspection report, if the report reflects that the ~~offender~~ person violated a running ~~re‑test~~ retest by having an alcohol concentration above fifteen one‑hundredths of one percent, the ~~offender~~ person is assessed two ignition interlock device points. Upon review of the ignition interlock device inspection report, if the report reflects that the person has failed to complete a running retest, the person must be assessed one ignition interlock device point. ~~An individual~~ A person may appeal any 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 ~~shall be~~ is final and no appeal from such decision ~~shall be~~ is allowed.

~~(H)~~(I) Ten years from the date of the person's last conviction 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 ~~his~~ the person’s driver's license. The Department of Probation, Parole and Pardon Services may, for good cause shown, ~~remove the device and remove the restriction~~ notify the Department of Motor Vehicles that the person is eligible to have the restriction removed from the ~~offender's~~ person’s license.

~~(I)~~(J) Except as otherwise provided in this section, it is unlawful for a person issued ~~a driver's license with~~ an ignition interlock ~~restriction~~ restricted license to drive a motor vehicle that is not equipped with a properly operating, certified ignition interlock device. A person who violates this ~~section must be punished in the manner provided by law~~ subsection is in violation of Section 56-1-460.

~~(J)~~(K)(1) An ~~offender that~~ person who is required in the course and scope of ~~his~~ the person’s employment to drive a motor vehicle owned by the ~~offender's~~ person’s employer may drive ~~his~~ the employer's motor vehicle without installation of an ignition interlock device, provided that the ~~offender's~~ person’s use of the employer's motor vehicle is solely for the employer's business purposes. This subsection does not apply to ~~an offender~~ a person who is self‑employed or to ~~an offender~~ a person who is employed by a business owned in whole or in part by the ~~offender~~ person or a member of the ~~offender's~~ 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. This subsection also does not apply during the first three hundred and twenty days a person who is convicted, pleads guilty or nolo contendere, or forfeits bail for a second or subsequent conviction 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, is required to have an ignition interlock installed pursuant to Section 56-5-2945 or 56-5-2990.

(2) 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 Vehicle’s form specified by Section 56-1-400(B).

~~(K)~~(L) 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.

~~(L)~~(M) It is unlawful for a person to knowingly rent, lease, or otherwise provide ~~an offender~~ a person who is subject to the provisions of this section with a motor vehicle without a properly operating, certified ignition interlock device. 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.

~~(M)~~(N) It is unlawful for ~~an offender~~ 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 ~~an offender~~ 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. 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)~~(O) It is unlawful for another person to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. 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)~~(P) 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 ~~must~~ 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 ~~re‑tests~~ 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 attempt to use an ignition interlock device.

(2) The Department of Probation, Parole and Pardon Services shall maintain a current list of certified ignition interlock devices and ~~their~~ manufacturers. The list must be updated at least quarterly. If a particular certified ignition interlock device fails to continue to meet federal requirements, the ignition interlock device must be decertified, may not be used until it is compliant with federal requirements, and must be replaced with ~~a~~ an ignition interlock device that meets federal requirements. The cost for removal and replacement must be borne by the manufacturer of the noncertified ignition interlock 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 ignition interlock devices.

~~(P)~~(Q) 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 ~~Service's~~ Services’ Internet web site.

~~(Q)~~(R) 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.”

SECTION 8. Section 56‑5‑2942(D) of the 1976 Code is amended to read:

“(D) Upon notification by a court in this State or ~~by any other~~ 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 ~~must~~ shall require the ~~person~~ convicted person, unless the convicted 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 ~~must~~ shall maintain a record of all vehicles immobilized pursuant to this section.”

SECTION 9. Section 56‑5‑2945(B) of the 1976 Code is amended to read:

“(B)(1) 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.

(2) The Department of Motor Vehicles ~~must~~ 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 section for a period to include a period of incarceration plus:

(a) for a first offense, three years ~~for a conviction of Section 56‑5‑2945~~ when ~~"~~great bodily injury~~"~~ occurs and five years when a death occurs. ~~This~~ The period of incarceration ~~shall~~ 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~~ must run concurrently. In lieu 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 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 the person would have otherwise been subject to suspension or denial of the issuance of a license or permit; however, the person is not required to have an ignition interlock device affixed to the motor vehicle during a period of incarceration. 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 can not subsequently choose to serve the suspension; and

(b) for a second or subsequent offense, forty-five days followed by a requirement that the person have an ignition interlock device installed for three years when great bodily injury occurs and five years when a death occurs. During the first three hundred and twenty days, the person must be restricted to driving to and from work, school, an alcohol treatment program, or an ignition interlock service provider. The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941. The Department of Motor Vehicles may waive the requirement if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for three years when great bodily injury occurs and five years when a death occurs. The period of incarceration 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.”

SECTION 10. Section 56‑5‑2950(B) of the 1976 Code is amended to read:

“(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) ~~he~~ the person does not have to take the test or give the samples, but that ~~his~~ the person’s privilege to drive must be suspended or denied for at least six months or, as an alternative, the person may enroll in the Ignition Interlock Device Program for at least six months, if ~~he~~ the person refuses to submit to the test, and that ~~his~~ the person’s refusal may be used against ~~him~~ the person in court;

(2) ~~his~~ the person’s privilege to drive must be suspended for at least one month or, as an alternative for a second or subsequent offense, the person may enroll in the Ignition Interlock Device Program for at least two months, if ~~he~~ the person takes the test or gives the samples and has an alcohol concentration of fifteen one‑hundredths of one percent or more;

(3) ~~he~~ the person has the right to have a qualified person of ~~his~~ the person’s own choosing conduct additional independent tests at ~~his~~ the person’s expense;

(4) ~~he~~ the person has the right to request ~~an administrative~~ a contested hearing within thirty days of the issuance of the notice of suspension; and

(5) if ~~he~~ the person does not request an administrative hearing or if ~~his~~ the person’s suspension is upheld at the ~~administrative~~ contested hearing, ~~he~~ the person must enroll in an Alcohol and Drug Safety Action Program.”

SECTION 11. Section 56‑5‑2951(I) of the 1976 Code is amended to read:

“(I)(1) ~~The~~ Except as provided in subitem (I)(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 ~~any other~~ a 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~~ other drugs within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section ~~56-5-2950~~ 56-1-286, 56-5-2945, ~~or~~ 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, an arrested person who has been convicted previously for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section ~~56‑5‑2950~~ 56‑1‑286, 56‑5‑2945, ~~or~~ 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 ~~he~~ the person refuses to submit to a test pursuant to Section 56‑5‑2950 or two months if ~~he~~ 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 ~~he~~ the person refuses to submit to a test pursuant to Section 56‑5‑2950 or three months if ~~he~~ 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 ~~he~~ the person refuses to submit to a test pursuant to Section 56‑5‑2950 or four months if ~~he~~ 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 a suspension or denial of the issuance of a license or permit, except a suspension or denial pursuant to subitem (I)(1)(b), a person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941 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 the person would have otherwise been subject to suspension or denial of the issuance of a license or permit; however, the person is not required to have an ignition interlock device affixed to the motor vehicle during a period of incarceration. 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 can not subsequently choose to serve the suspension.”

SECTION 12. Section 56‑5‑2990(A) of the 1976 Code is amended to read:

“(A)(1) The Department of Motor Vehicles shall suspend the driver's license of a person who is convicted, receives a sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56‑5‑2930, Section 56‑5‑2933, or ~~for the violation of another law or ordinance of this State or of a municipality of this State~~ a law of another state that prohibits a person from driving a motor vehicle while under the influence of ~~intoxicating liquor, drugs, or narcotics~~ alcohol or other drugs for:

(a) six months for ~~the~~ a first conviction, plea of guilty or of nolo contendere, or forfeiture of bail. In lieu of a suspension, a person may enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941 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 the person would have otherwise been subject to suspension. 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 can not subsequently choose to serve the suspension;

(b) ~~one year~~ forty-five days for ~~the~~ a second conviction, plea of guilty or of nolo contendere, or forfeiture of bail. Following the suspension, the Department of Motor Vehicles shall require the person to have an ignition interlock device installed for two years on any motor vehicle the person drives. During the first three hundred and twenty days, the person must be restricted to driving to and from work, school, an alcohol treatment program, or an ignition interlock service provider. The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941. The department may waive the requirement if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for two years;

(c) ~~two years~~ forty-five days for ~~the~~ a third conviction, plea of guilty or of nolo contendere, or forfeiture of bail. Following the suspension, the Department of Motor Vehicles shall require the person to have an ignition interlock device installed for three years on any motor vehicle the person drives. During the first three hundred and twenty days, the person must be restricted to driving to and from work, school, an alcohol treatment program, or an ignition interlock service provider. The ignition interlock device must be administered pursuant to the provisions of Section 56-5-2941. The department may waive the requirement if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for three years; and

(d) a permanent revocation of the driver's license for ~~the~~ a fourth or subsequent conviction, plea of guilty or of nolo contendere, or forfeiture of bail. If the driver’s license is ever reinstated, the Department of Motor Vehicles shall suspend the driver’s license for forty-five days. Following the suspension, the department shall require the person to have an ignition interlock device installed for life on any motor vehicle the person drives. During the first three hundred and twenty days, the person must be restricted to driving to and from work, school, an alcohol treatment program, or an ignition interlock service provider. The ignition interlock device must be administered pursuant to the provisions of Section 56‑5‑2941. The department may waive the requirement if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for life.

(2) Only those violations which occurred within ten years including and immediately preceding the date of the last violation shall constitute prior violations within the meaning of this section. However, if the third conviction occurs within five years from the date of the first offense, then the department shall suspend the driver's license for ~~four years~~ forty-five days. Following the suspension, the Department of Motor Vehicles shall require the person to have an ignition interlock device installed for four years on any motor vehicle the person drives. During the first three hundred and twenty days, the person must be restricted to driving to and from work, school, an alcohol treatment program, or an ignition interlock service provider. The ignition interlock device must be administered pursuant to the provisions of Section 56‑5‑2941. The department may waive the requirement if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed ignition interlock device. In such case, the department shall suspend the person’s driver’s license for four years.

(3) A person whose license is revoked following conviction for a fourth offense as provided in this section is forever barred from being issued any license by the Department of Motor Vehicles to operate a motor vehicle except as provided in Section 56‑1‑385.”

SECTION 13. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 14. This act takes effect on July 2, 2013.

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