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**S. 706**

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**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[5/15/2013](file:///p:\pprever\2013-14\706_20130515.docx)

**A** **BILL**

TO AMEND SECTION 56‑5‑2930, THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO A PERSON DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR OTHER DRUGS; TO AMEND SECTION 56‑5‑2933, RELATING TO A PERSON DRIVING A MOTOR VEHICLE WITH AN UNLAWFUL ALCOHOL CONCENTRATION; TO AMEND SECTION 56‑5‑2950, RELATING TO IMPLIED CONSENT TO TESTING OF A PERSON DRIVING A MOTOR VEHICLE FOR ALCOHOL OR OTHER DRUGS; AND TO AMEND SECTION 56‑5‑2951, RELATING TO SUSPENSION OF A PERSON’S DRIVER’S LICENSE FOR REFUSING TO SUBMIT TO TESTING OR FOR CERTAIN LEVELS OF ALCOHOL CONCENTRATION, SO AS TO CHANGE THE LEVELS OF UNLAWFUL ALCOHOL CONCENTRATION FROM EIGHT ONE‑HUNDREDTHS OF ONE PERCENT OR MORE TO FIVE ONE‑HUNDREDTHS OF ONE PERCENT OR MORE, TEN ONE‑HUNDREDTHS OF ONE PERCENT OR MORE TO SEVEN ONE‑HUNDREDTHS OF ONE PERCENT OR MORE, AND SIXTEEN ONE HUNDREDTHS OF ONE PERCENT OR MORE TO THIRTEEN ONE‑HUNDREDTHS OF ONE PERCENT OR MORE.

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

SECTION 1. Section 56‑5‑2930(A) of the 1976 Code is amended to read:

“(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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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.”

SECTION 2. Section 56‑5‑2930(I) of the 1976 Code is amended to read:

“(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~~ five 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.”

SECTION 3. Section 56‑5‑2930(L) of the 1976 Code is amended to read:

“(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~~ five one‑hundredths of one percent but less than ~~ten~~ seven one‑hundredths of one percent; (2) at least ~~ten~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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.”

SECTION 4. Section 56‑5‑2933(A) of the 1976 Code is amended to read:

“(A) It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is ~~eight~~ five 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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~~ seven one‑hundredths of one percent but less than ~~sixteen~~ thirteen 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~~ thirteen 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.”

SECTION 5. Section 56‑5‑2933(I) of the 1976 Code is amended to read:

“(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~~ five 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.”

SECTION 6. Section 56‑5‑2950(A) of the 1976 Code is amended to read:

“(A) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath 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 he has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing. A breath 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~~ five one‑hundredths of one percent simulator test must be performed and the result must reflect a reading between ~~0.076~~ 0.046 percent and ~~0.084~~ 0.054 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.”

SECTION 7. 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 does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of ~~fifteen~~ thirteen one‑hundredths of one percent or more;

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

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

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

SECTION 8. Section 56‑5‑2950(G) of the 1976 Code is amended to read:

“(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~~ two 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~~ two one‑hundredths of one percent but less than ~~eight~~ five 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~~ five 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 them.”

SECTION 9. Section 56‑5‑2951(A) of the 1976 Code is amended to read:

“(A) The Department of Motor Vehicles must 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~~ thirteen one‑hundredths of one percent or more. The arresting officer must 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.”

SECTION 10. Section 56‑5‑2951(F) of the 1976 Code is amended to read:

“(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~~ thirteen 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 his license was suspended before he 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.”

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

“(I)(1) 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 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, and who has had no previous suspension imposed pursuant to Section 56‑5‑2950 or 56‑5‑2951 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~~ thirteen 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 or 56‑5‑2951 within the ten years preceding a violation of this section is:

(a) for a second offense, nine months if he refuses to submit to a test pursuant to Section 56‑5‑2950 or two months if he takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of ~~fifteen~~ thirteen one‑hundredths of one percent or more;

(b) for a third offense, twelve months if he refuses to submit to a test pursuant to Section 56‑5‑2950 or three months if he takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of ~~fifteen~~ thirteen one‑hundredths of one percent or more; and

(c) for a fourth or subsequent offense, fifteen months if he refuses to submit to a test pursuant to Section 56‑5‑2950 or four months if he takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of ~~fifteen~~ thirteen one‑hundredths of one percent or more.”

SECTION 12. This act takes effect upon approval by the Governor.

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