~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

April 8, 2021

**S. 28**

Introduced by Senators Hutto, K. Johnson, Climer, McLeod and Stephens

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Read the first time January 12, 2021.

**A** **BILL**

TO AMEND SECTION 56‑1‑286 OF THE 1976 CODE, RELATING TO THE SUSPENSION OF A LICENSE OR PERMIT OR DENIAL OF ISSUANCE OF A LICENSE OR PERMIT TO PERSONS UNDER THE AGE OF TWENTY‑ONE WHO DRIVE MOTOR VEHICLES AND HAVE A CERTAIN AMOUNT OF ALCOHOL CONCENTRATION, TO ALLOW A PERSON UNDER THE AGE OF TWENTY‑ONE WHO IS SERVING A SUSPENSION OR DENIAL OF A LICENSE OR PERMIT TO ENROLL IN THE IGNITION INTERLOCK DEVICE PROGRAM; TO AMEND SECTION 56‑1‑385(A) OF THE 1976 CODE, RELATING TO THE REINSTATEMENT OF A PERMANENTLY REVOKED DRIVER’S LICENSE, TO LIMIT ITS APPLICATION TO OFFENSES OCCURRING PRIOR TO OCTOBER 1, 2014; TO AMEND SECTION 56‑1‑400 OF THE 1976 CODE, RELATING TO THE SURRENDER OF A LICENSE AND ENDORSING SUSPENSION AND IGNITION INTERLOCK DEVICE ON A LICENSE, TO REMOVE THE REQUIREMENT THAT A PERSON SEEKING TO HAVE A LICENSE ISSUED MUST FIRST PROVIDE PROOF THAT ANY FINE OWED HAS BEEN PAID, AND TO INCLUDE A REFERENCE TO THE HABITUAL OFFENDER STATUTE; TO AMEND SECTION 56‑1‑1090(A) OF THE 1976 CODE, RELATING TO REQUESTS FOR RESTORATION OF THE PRIVILEGE TO OPERATE A MOTOR VEHICLE, TO ALLOW A PERSON CLASSIFIED AS A HABITUAL OFFENDER TO OBTAIN A DRIVER’S LICENSE WITH AN INTERLOCK RESTRICTION IF HE PARTICIPATES IN THE IGNITION INTERLOCK DEVICE PROGRAM; TO AMEND SECTION 56‑1‑1320(A) OF THE 1976 CODE, RELATING TO PROVISIONAL DRIVERS’ LICENSES, TO ELIMINATE PROVISIONAL LICENSES FOR FIRST OFFENSE DRIVING UNDER THE INFLUENCE UNLESS THE OFFENSE OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS ACT; TO AMEND SECTION 56‑1‑1340 OF THE 1976 CODE, RELATING TO THE ISSUANCE OF LICENSES AND CONVICTIONS TO BE RECORDED, TO CONFORM INTERNAL STATUTORY REFERENCES; TO AMEND SECTION 56‑5‑2941 OF THE 1976 CODE, RELATING TO IGNITION INTERLOCK DEVICES, TO INCLUDE A REFERENCE TO THE HABITUAL OFFENDER STATUTE, REMOVE EXCEPTIONS TO IGNITION INTERLOCK DEVICES FOR OFFENDERS WHO ARE NONRESIDENTS AND FIRST‑TIME OFFENDERS OF DRIVING UNDER THE INFLUENCE WHO DID NOT REFUSE TO SUBMIT TO CHEMICAL TESTS AND HAD AN ALCOHOL CONCENTRATION OF FIFTEEN ONE-HUNDREDTHS OF ONE PERCENT OR MORE, REQUIRE DEVICE MANUFACTURERS PAY CERTIFICATION FEES ASSOCIATED WITH IGNITION INTERLOCK DEVICES, PERMIT THOSE DRIVERS WITH PERMANENTLY REVOKED LICENSES AFTER OCTOBER 2014 TO SEEK RELIEF AFTER FIVE YEARS, AND MAKE THE RECORDS OF THE IGNITION INTERLOCK DEVICES THE RECORDS OF THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES; TO AMEND SECTION 56‑5‑2951 OF THE 1976 CODE, RELATING TO TEMPORARY ALCOHOL LICENSES, TO REQUIRE AN IGNITION INTERLOCK DEVICE RESTRICTION ON A TEMPORARY ALCOHOL LICENSE AND TO DELETE PROVISIONS RELATING TO ROUTE‑RESTRICTED LICENSES; AND TO AMEND SECTION 56‑5‑2990 OF THE 1976 CODE, RELATING TO SUSPENSION OF A CONVICTED PERSON’S DRIVER’S LICENSE AND THE PERIOD OF SUSPENSION, TO REQUIRE AN IGNITION INTERLOCK DEVICE IF A FIRST‑TIME OFFENDER OF DRIVING UNDER THE INFLUENCE SEEKS TO END A SUSPENSION.

Amend Title To Conform

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

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

“Section 56‑1‑286. (A) The Department of Motor Vehicles shall suspend the driver’s license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to a person under the age of twenty‑one who drives a motor vehicle and has an alcohol concentration of two one‑hundredths of one percent or more. In cases in which a law enforcement officer initiates suspension proceedings for a violation of this section, the officer has elected to pursue a violation of this section and is subsequently prohibited from prosecuting the person for a violation of Section 63‑19‑2440, 63‑19‑2450, 56‑5‑2930, or 56‑5‑2933, arising from the same incident.

(B) A person under the age of twenty‑one who drives a motor vehicle in this State is considered to have given consent to chemical tests of the person’s breath or blood for the purpose of determining the presence of alcohol.

(C)(1) A law enforcement officer who has arrested a person under the age of twenty‑one for a violation of Chapter 5 of this title (Uniform Act Regulating Traffic on Highways), or any other traffic offense established by a political subdivision of this State, and has reasonable suspicion that the person under the age of twenty‑one has consumed alcoholic beverages and driven a motor vehicle may order the testing of the person arrested to determine the person’s alcohol concentration.

(2) A law enforcement officer may detain and order the testing of a person to determine the person’s alcohol concentration if the officer has reasonable suspicion that a motor vehicle is being driven by a person under the age of twenty‑one who has consumed alcoholic beverages.

(D)(1) A test must be administered at the direction of the primary investigating law enforcement officer. At the officer’s direction, the person first must be offered a breath test to determine the person’s alcohol concentration. If the person physically is unable to provide an acceptable breath sample because the person has an injured mouth or is unconscious or dead, or for any other reason considered acceptable by licensed medical personnel, a blood sample may be taken. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to the State Law Enforcement Division’s policies. The primary investigating officer may administer the test. Blood samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, or other medical personnel trained to obtain these samples in a licensed medical facility. Blood samples must be obtained and handled in accordance with procedures approved by the division. The division shall administer the provisions of this subsection and shall promulgate regulations necessary to carry out the subsection’s provisions. The costs of the tests administered at the officer’s direction must be paid from the state’s general fund. However, if the person is subsequently convicted of violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, then, upon conviction, the person shall pay twenty‑five dollars for the costs of the tests. The twenty‑five dollars must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

(2) The person tested or giving samples for testing may have a qualified person of the person’s choice conduct additional tests at the person’s expense and must be notified in writing of that right. A person’s request or failure to request additional blood tests is not admissible against the person in any proceeding. The person’s failure or inability to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the officer’s direction. The officer shall provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance shall, at a minimum, include providing transportation for the person to the nearest medical facility which provides blood tests to determine a person’s alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood to determine the person’s alcohol concentration, the State Law Enforcement Division shall test the blood and provide the result to the person and to the officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in a judicial or administrative proceeding.

(E) A qualified person and the person’s employer who obtain samples or administer the tests or assist in obtaining samples or administering of tests at the primary investigating officer’s direction are immune from civil and criminal liability unless the obtaining of samples or the administering of tests is performed in a negligent, reckless, or fraudulent manner. A person may not be required by the officer ordering the tests to obtain or take any sample of blood or urine.

(F) If a person refuses upon the primary investigating officer’s request to submit to chemical tests as provided in subsection (C), the department shall suspend the person’s license, permit, or nonresident operating privilege, or deny the issuance of a license or permit to the person for:

(1) six months; or

(2) one year, if the person, within the three years preceding the violation of this section, has been previously convicted of violating 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, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, 56‑5‑2951, or 56‑5‑2990.

(G) 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 shall suspend the person’s license, permit, or nonresident operating privilege, or deny the issuance of a license or permit to the person for:

(1) three months; or

(2) six months, if the person, within the three years preceding the violation of this section, has been previously convicted of violating 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, or the person has had a previous suspension imposed pursuant to Section 56‑1‑286, 56‑5‑2951, or 56‑5‑2990.

(H)(1) In lieu of serving the remainder of a suspension or denial of the issuance of a license or permit, a person may enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension or denial of the issuance of a license or permit, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension or denial of the issuance of a license or permit. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months.

(2) The person must receive credit for the number of days the person maintained an ignition interlock restriction on the temporary alcohol license.

(3) Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.

(I) A person’s driver’s license, permit, or nonresident operating privilege must be restored when the person’s period of suspension or ignition interlock restricted license requirement pursuant to subsection (F) or (G) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program ~~in which the person is enrolled~~. After the person’s driving privilege is restored, the person shall continue ~~to participate in~~ the services of the Alcohol and Drug Safety Action Program ~~in which the person is enrolled~~. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person’s license must be suspended until ~~the person completes~~ completion of the Alcohol and Drug Safety Action Program. A person shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before the person’s driving privilege ~~may~~ can be restored at the conclusion of the suspension period or ignition interlock restricted license requirement.

~~(I)~~(J)(1) 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)~~(a) the person does not have to take the test or give the samples but that the person’s privilege to drive must be suspended or denied for at least six months if the person refuses to submit to the tests, and that the person’s refusal may be used against the person in court;

~~(2)~~(b) the person’s privilege to drive must be suspended for at least three months if the person takes the test or gives the samples and has an alcohol concentration of two one‑hundredths of one percent or more;

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

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

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

(2) The primary investigating officer promptly shall notify the department of a person’s refusal to submit to a test requested pursuant to this section as well as the test result of 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.

~~(J)~~(K) If the test registers an alcohol concentration of two one‑hundredths of one percent or more or if the person refuses to be tested, the primary investigating officer shall issue a notice of suspension, and the suspension is effective beginning on the date of the alleged violation of this section. The person, within thirty days of the issuance of the notice of suspension, shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 if the person does not request an administrative hearing. If the person does not request an administrative hearing and does not enroll in an Alcohol and Drug Safety Action Program within thirty days, the suspension remains in effect, and a temporary alcohol license must not be issued. If the person drives a motor vehicle during the period of suspension without a temporary alcohol license, the person must be penalized for driving while the person’s license is suspended pursuant to Section 56‑1‑460.

~~(K)~~(L)(1) Within thirty days of the issuance of the notice of suspension the person may:

~~(1)~~(a) request a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure;

(b) enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941; and

(c) obtain a temporary alcohol license ~~by filing~~ with an ignition interlock restriction pursuant to Section 56‑1‑400 from the Department of Motor Vehicles ~~a form for this purpose~~. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty‑five dollars of the fee ~~collected by the Department of Motor Vehicles~~ must be distributed to the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy‑five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57‑11‑20, to be distributed as provided in Section 11‑43‑167. The temporary alcohol license allows the person to drive a motor vehicle ~~without any restrictive conditions~~ pending the outcome of the contested case hearing provided for in this section or the final decision or disposition of the matter~~; and~~.

(2) ~~request a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure.~~ The ignition interlock restriction must be maintained on the temporary alcohol license for three months. If the contested case hearing has not reached a final disposition by the time the ignition interlock restriction has been removed, then the person can obtain a temporary alcohol license without an ignition interlock restriction.

(3) At the contested case hearing if:

(a) the suspension is upheld, the person shall enroll in an Alcohol and Drug Safety Action Program and the person’s driver’s license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension periods provided for in subsections (F) and (G); or

(b) the suspension is overturned, the person’s driver’s license, permit, or nonresident operating privilege must be reinstated.

~~(L)~~(M) The periods of suspension provided for in subsections (F) and (G) begin on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continue until the person applies for a temporary alcohol license and requests an administrative hearing.

~~(M)~~(N) If a person does not request a contested case hearing, the person has waived the person’s right to the hearing and the person’s suspension must not be stayed but shall continue for the periods provided for in subsections (F) and (G).

~~(N)~~(O) The notice of suspension must advise the person of the requirement to enroll in an Alcohol and Drug Safety Action Program and of the person’s right to obtain a temporary alcohol license and to request a contested case hearing. The notice of suspension also must advise the person that, if the person does not request a contested case hearing within thirty days of the issuance of the notice of suspension, the person shall enroll in an Alcohol and Drug Safety Action Program, and the person waives the person’s right to the contested case hearing, and the suspension continues for the periods provided for in subsections (F) and (G).

~~(O)~~(P) A contested case hearing must be held after the request for the hearing is received by the Office of Motor Vehicle Hearings.

(1) The scope of the hearing is limited to whether the person:

~~(1)~~(a) was lawfully arrested or detained;

~~(2)~~(b) was given a written copy of and verbally informed of the rights enumerated in subsection ~~(I)~~(J);

~~(3)~~(c) refused to submit to a test pursuant to this section; or

~~(4)~~(d) consented to taking a test pursuant to this section, and the:

~~(a)~~(i) reported alcohol concentration at the time of testing was two one‑hundredths of one percent or more;

~~(b)~~(ii) individual who administered the test or took samples was qualified pursuant to this section;

(c)(iii) test administered and samples taken were conducted pursuant to this section; and

~~(d)~~(iv) the machine was operating properly.

(2) 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.

(3) 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.

(4) A written order must be issued to all parties either reversing or upholding the suspension of the person’s license, permit, or nonresident’s operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days the person’s license was suspended before the person received a temporary alcohol license and requested the contested case hearing and must receive credit for the number of days the person maintained an ignition interlock restriction on the temporary alcohol license.

~~(P)~~(Q) A contested case hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal shall stay the suspension until a final decision is issued.

~~(Q)~~(R) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided for in subsection (B) of this section.

~~(R)~~(S) When a nonresident’s privilege to drive a motor vehicle in this State has been suspended under the procedures of this section, the department shall give written notice of the action taken to the motor vehicle administrator of the state of the person’s residence and of any state in which he has a license or permit.

~~(S)~~(T) A person required to submit to a test must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of any additional tests to the officer before any trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

~~(T)~~(U) A person whose driver’s license or permit is suspended under this section is not required to file proof of financial responsibility.

~~(U)~~(V) The department shall administer the provisions of this section, not including subsection (D), and shall promulgate regulations necessary to carry out its provisions.

~~(V)~~(W) Notwithstanding any other provision of law, no suspension imposed pursuant to this section is counted as a demerit or result in any insurance penalty for automobile insurance purposes if at the time the person was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one‑hundredths of one percent.”

SECTION 2. Section 56‑1‑385(A) of the 1976 Code is amended to read:

“Section 56‑1‑385. (A) Notwithstanding any other provision of law, a person whose driver’s license or privilege to operate a motor vehicle has been revoked permanently pursuant to Section 56‑5‑2990 for an offense that occurred prior to October 1, 2014, excluding persons convicted of felony driving under the influence of alcohol or another controlled substance under Section 56‑5‑2945, may petition the circuit court in the county of his residence for reinstatement of his driver’s license and shall serve a copy of the petition upon the solicitor of the circuit. 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) the person must not have been convicted in this State or any other state of an alcohol or drug violation during the previous seven‑year period;

(2) the person must not have been convicted of or have charges pending in this State or another state for a violation of driving while his license is canceled, suspended, or revoked during the previous seven‑year period;

(3) the person must have completed successfully an alcohol or drug assessment and treatment program provided by the South Carolina Department of Alcohol and Other Drug Abuse Services or an equivalent program designated by that agency; and

(4) the person’s overall driving record, attitude, habits, character, and driving ability would make it safe to grant him the privilege to operate a motor vehicle.”

SECTION 3. Section 56‑1‑400 of the 1976 Code is amended to read:

“Section 56‑1‑400. (A)(1) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that the license be surrendered to the department. At the end of the suspension period, other than a suspension for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or pursuant to the point system, the department shall issue a new license to the person.

(2) If the person has not held a license within the previous nine months, the department shall not issue or restore a license which has been suspended for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony 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 satisfied the department, after an investigation of the person’s driving ability, that it would be safe to grant the person the privilege of driving a motor vehicle on the public highways. The department, in the department’s discretion, where the suspension is for a violation under the point system, may waive the examination, application, and investigation. A record of the suspension must be endorsed on the license issued to the person, showing the grounds of the suspension.

(B) 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 issued to the person must conspicuously identify the person as a person who only may 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~~s~~ 56‑1‑286~~,~~; 56‑1‑1090; 56‑5‑2945~~,~~; ~~and 56‑5‑2947 except if the conviction was for Section 56‑5‑750,~~ 56‑5‑2951~~,~~; ~~or~~ 56‑5‑2990; or 56‑5‑2947, except if the conviction was for Section 56‑5‑750.

(C) For purposes of Title 56, the license must be referred to as an ignition interlock restricted license. The fee for an ignition interlock restricted license is one hundred dollars, which shall be placed by the Comptroller General into the State Highway Fund as established by Section 57‑11‑20, to be distributed as provided in Section 11‑43‑167.

(D) Unless the person establishes that the person is entitled to the exemption set forth in subsection ~~(B)~~(G), no ignition interlock restricted license may be issued by the department 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.

(E) If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended indefinitely. If the person subsequently decides to have the ignition interlock device installed, the device must be installed for the length of time set forth in ~~Sections 56‑1‑286, 56‑5‑2945, and 56‑5‑2947 except if the conviction was for Section 56‑5‑750, 56‑5‑2951, or 56‑5‑2990~~ subsection (B).

(F) This provision 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, Chapter 5 of this title.

~~(B)~~(G)(1) A person who does not own a vehicle, as shown in the Department of Motor Vehicles’ records, and who certifies that the person:

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

(b) will not be driving a vehicle other than a vehicle owned by the person’s employer; and

(c) will not own a vehicle during the ignition interlock period, may petition the department, on a form provided by the department, for issuance of an ignition interlock restricted license 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.

(2) The form must contain:

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

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

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

(3) This subsection does not apply to:

(a) a person convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, unless the person’s driving privileges have been suspended for not less than one year or the person has had an ignition interlock device installed for not less than one year on each of the motor vehicles owned or operated, or both, by the person~~.~~;

(b) a person who is self‑employed or to a person who is employed by a business owned in whole or in part by the person or a member of the person’s household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle’s ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section~~.~~; or

(c) a person participating in the Ignition Interlock Device Program as an habitual offender as provided for in Section 56‑1‑1090(A).

(4) Whenever the person operates the employer’s vehicle pursuant to this subsection, the person shall have with the person a copy of the form specified by this subsection.

(5) The determination of eligibility for the waiver is subject to periodic review at the discretion of the department. The department shall revoke a waiver issued pursuant to this exemption if the department determines that the person has been driving a vehicle other than the vehicle owned by 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’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.

~~(C)~~ ~~A person whose license has been suspended or revoked for an offense within the jurisdiction of the court of general sessions shall provide the department with proof that the fine owed by the person has been paid before the department may 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 4. Section 56‑1‑1090(A) of the 1976 Code is amended to read:

“Section 56‑1‑1090. (A) No license to operate motor vehicles in this State may be issued to an habitual offender nor shall a nonresident habitual offender operate a motor vehicle in this State for a period of five years from the date of a determination by the Department of Motor Vehicles that a person is an habitual offender unless the period is reduced to two years as permitted in item (1) or (2) or the person has enrolled in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941 and has obtained a license with an ignition interlock restriction pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension or denial of the issuance of a license or permit. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.

(1)(a) Upon request to the department on a form prescribed by it, the department may restore to the person the privilege to operate a motor vehicle in this State subject to other provisions of law relating to the issuance of drivers’ licenses. The request permitted by this item may be filed after two years have expired from the beginning date of the habitual offender suspension and if the following conditions are met:

~~(a)~~(i) the person must not have had a previous habitual offender suspension in this or another state;

~~(b)~~(ii) the person must not have driven a motor vehicle during the habitual offender suspension period;

~~(c)~~(iii) the person must not have been convicted of or have charges pending for any alcohol or drug violations committed during the habitual offender suspension period;

~~(d)~~(iv) the person must not have been convicted of or have charges pending for any offense listed in Section 56‑1‑1020 committed during the habitual offender suspension period; and

~~(e)~~(v) the person must not have any other mandatory driver’s license suspension that has not yet reached its end date.

(b) The department will issue its decision within thirty days after receipt of the request.

(2) If the department denies the request referenced in item (1), the person may seek relief from the department’s determination by filing a request for a de novo 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. For good cause shown, the Office of Motor Vehicle Hearings may restore to the person the privilege to operate a motor vehicle in this State subject to other provisions of law relating to the issuance of driver’s licenses. The provisions of item (1) shall not be construed to limit the discretion or authority of the Office of Motor Vehicle Hearings in considering the person’s request for a reduction of the five‑year suspension period; however, those provisions may be used as guidelines for determinations of good cause for relief from the normal five‑year suspension period.”

SECTION 5. Section 56‑1‑1320(A) of the 1976 Code is amended to read:

“Section 56‑1‑1320 (A) 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 a law of this State that prohibits a person from operating a vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including Sections 56‑5‑2930 and 56‑5‑2933, ~~and~~ whose license is not presently suspended for any other reason, and whose offense date is prior to the effective date of this section, 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 pursuant to Section 56‑1‑1330, 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 6. Section 56‑1‑1340 of the 1976 Code is amended to read:

“Section 56‑1‑1340. The applicant shall have a provisional driver’s license in his possession at all times while driving a motor vehicle, and the issuance of such license and the violation convictions shall be entered in the records of the Department of Motor Vehicles for a period of ten years as required by Sections ~~56‑5‑2940~~ 56‑5‑2930, 56‑5‑2933, and 56‑5‑2990 ~~of the 1976 Code~~.”

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

“Section 56‑5‑2941. (A)(1) The Department of Motor Vehicles shall require a person who ~~is a resident of this State and who~~ is convicted of violating the provisions of Sections 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, 56‑5‑2947 except if the conviction was for Section 56‑5‑750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, or who is issued a temporary alcohol license pursuant to Section 56‑1‑286 or 56‑5‑2951, to have installed on any motor vehicle the person drives, except a moped or motorcycle, an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. ~~This section does not apply to a person convicted of a first offense violation of Section 56‑5‑2930 or 56‑5‑2933, unless the person submitted to a breath test pursuant to Section 56‑5‑2950 and had an alcohol concentration of fifteen one‑hundredths of one percent or more.~~

(2) The department may waive the requirements of this section if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person’s driver’s license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person’s medical condition has improved to the extent that the person has become capable of properly operating an installed device.

(3) The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver’s license suspension, denial of license to operate a vehicle as an habitual offender pursuant to Section 56‑1‑1090, or denial of the issuance of a driver’s license or permit to have an ignition interlock device installed on any motor vehicle the person drives, except a moped or motorcycle.

(4) The length of time that a device is required to be affixed to a motor vehicle ~~as~~ is set forth in ~~Sections~~ Section 56‑1‑286~~,~~; 56‑1‑1090; 56‑5‑2945~~,~~; ~~56‑5‑2947 except if the conviction was for Sections 56‑5‑750,~~ 56‑5‑2951~~, and~~; 56‑5‑2990; or 56‑5‑2947, except if the conviction was for Section 56‑5‑750.

(B) Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that a device is required to be affixed to a motor vehicle is based on the Department of Motor Vehicle’s records for offenses pursuant to Section 56‑1‑286~~,~~; 56‑1‑1090; 56‑5‑2930~~,~~; 56‑5‑2933~~,~~; 56‑5‑2945~~,~~; ~~56‑5‑2947 except if the conviction was for Sections 56‑5‑750,~~ 56‑5‑2950~~,~~; or 56‑5‑2951; or 56‑5‑2947, except if the conviction was for Section 56‑5‑750.

(C) If a resident of this State is convicted of violating a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, and, as a result of the conviction, the person is subject to an ignition interlock device requirement in the other state, the person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

(D) If a person from another state becomes a resident of South Carolina while subject to an ignition interlock device requirement in another state, the person only may obtain a South Carolina driver’s license if the person enrolls in the South Carolina Ignition Interlock Device Program pursuant to this section. The person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

(E) The person must be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services. A person accumulating a total of:

(1) two points or more, but less than three points, must have the length of time that the device is required extended by two months;

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

(3) four points or more must have the person’s ignition interlock restricted license suspended for a period of six months, shall submit to a substance abuse assessment pursuant to Section 56‑5‑2990, and successfully shall complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the person not complete the recommended plan or not make progress toward completing the plan, the Department of Motor Vehicles shall leave the person’s ignition interlock restricted license in suspended status, or, if the license has already been reinstated following the six‑month suspension, shall resuspend the person’s ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan. The Department of Alcohol and Other Drug Abuse Services is responsible for notifying the Department of Motor Vehicles of a person’s completion and compliance with education and treatment programs. Upon reinstatement of driving privileges following the six‑month suspension, the Department of Probation, Parole and Pardon Services shall reset the person’s point total to zero points, and the person shall complete the remaining period of time on the ignition interlock device.

(F) The cost of the device must be borne by the person. However, unless a person is participating in the Interlock Ignition Device Program as an habitual offender pursuant to Section 56‑1‑1090(A), if the person is indigent and cannot afford the cost of the device, the person may submit an affidavit of indigency to the Department of Probation, Parole and Pardon Services for a determination of indigency as it pertains to the cost of the device. The affidavit of indigency form must be made publicly accessible on the Department of Probation, Parole and Pardon Services’ Internet website. If the Department of Probation, Parole and Pardon Services determines that the person is indigent as it pertains to the device, the Department of Probation, Parole and Pardon Services may authorize a device to be affixed to the motor vehicle and the cost of the initial installation and standard use of the device to be paid for by the Ignition Interlock Device Fund managed by the Department of Probation, Parole and Pardon Services. Funds remitted to the Department of Probation, Parole and Pardon Services for the Ignition Interlock Device Fund also may be used by the Department of Probation, Parole and Pardon Services to support the Ignition Interlock Device Program. For purposes of this section, a person is indigent if the person is financially unable to afford the cost of the ignition interlock device. In making a determination whether a person is indigent, all factors concerning the person’s financial conditions should be considered including, but not limited to, income, debts, assets, number of dependents claimed for tax purposes, living expenses, and family situation. A presumption that the person is indigent is created if the person’s net family income is less than or equal to the poverty guidelines established and revised annually by the United States Department of Health and Human Services published in the Federal Register. ‘Net income’ means gross income minus deductions required by law. The determination of indigency is subject to periodic review at the discretion of the Department of Probation, Parole and Pardon Services.

(G) The ignition interlock service provider shall collect and remit monthly to the Ignition Interlock Device Fund a fee as determined by the Department of Probation, Parole and Pardon Services not to exceed thirty dollars per month for each month the person is required to drive a vehicle with a device. A service provider who fails to properly remit funds to the Ignition Interlock Device Fund may be decertified as a service provider by the Department of Probation, Parole and Pardon Services. If a service provider is decertified for failing to remit funds to the Ignition Interlock Device Fund, the cost for removal and replacement of a device must be borne by the service provider.

(H)(1) The person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the person’s alcohol content at each attempt to start and running retest during each sixty‑day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

(2) Only a service provider authorized by the Department of Probation, Parole and Pardon Services to perform inspections on ignition interlock devices may conduct inspections. The service provider immediately shall report devices that fail inspection to the Department of Probation, Parole and Pardon Services. The report must contain the person’s name, identify the vehicle upon which the failed device is installed, and the reason for the failed inspection.

(3) If the inspection report reflects that the person has failed to complete a running retest, the person must be assessed one ignition interlock device point.

(4) If any inspection report or any photographic images collected by the device shows that the person has violated subsection (M), (O), or (P), the person must be assessed one and one‑half ignition interlock device points.

(5) The inspection report must indicate the person’s alcohol content at each attempt to start and running retest during each sixty‑day period. If the report reflects that the person violated a running retest by having an alcohol concentration of:

(a) two one‑hundredths of one percent or more but less than four one‑hundredths of one percent, the person must be assessed one‑half ignition interlock device point;

(b) four one‑hundredths of one percent or more but less than fifteen one‑hundredths of one percent, the person must be assessed one ignition interlock device point; or

(c) fifteen one‑hundredths of one percent or more, the person must be assessed two ignition interlock device points.

(6) A person may appeal less than four ignition interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer’s decision on appeal is final and no appeal from such decision is allowed.

(I)(1) If a person’s license is suspended due to the accumulation of four or more ignition interlock device points, the Department of Probation, Parole and Pardon Services must provide a notice of assessment of ignition interlock points which must advise the person of his right to request a contested case hearing before the Office of Motor Vehicle Hearings. The notice of assessment of ignition interlock points also must advise the person that, if he does not request a contested case hearing within thirty days of the issuance of the notice of assessment of ignition interlock points, he waives his right to the administrative hearing and the person’s driver’s license is suspended pursuant to subsection (E).

(2) The person may seek relief from the Department of Probation, Parole and Pardon Services’ determination that a person’s license is suspended due to the accumulation of four or more ignition interlock device points by filing a request for a contested case hearing with the Office of Motor Vehicle Hearings pursuant to the Administrative Procedures Act. The filing of the request for a contested case hearing will stay the driver’s license suspension pending the outcome of the hearing. However, the filing of the request for a contested case hearing will not stay the requirements of the person having the ignition interlock device.

(3) At the contested case hearing:

(a) the assessment of driver’s license suspension can be upheld;

(b) the driver’s license suspension can be overturned, or any or all of the contested ignition interlock points included in the device inspection report that results in the contested suspension can be overturned, and the penalties as specified pursuant to subsection (E) will then be imposed accordingly.

(4) A contested case hearing must be held after the request for the hearing is received by the Office of Motor Vehicle Hearings. Nothing in this section prohibits the introduction of evidence at the contested case hearing on the issue of the accuracy of the ignition interlock device. However, if the ignition interlock device is found to not be in working order due to failure of regular maintenance and upkeep by the person challenging the accumulation of ignition interlock points pursuant to the requirement of the ignition interlock program, such allegation cannot serve as a basis to overturn point accumulations.

(5) A written order must be issued by the Office of Motor Vehicle Hearings to all parties either reversing or upholding the assessment of ignition interlock points.

(6) A contested case hearing is governed by the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal does not stay the ignition interlock requirement.

(J) Five years from the date of the person’s driver’s license reinstatement and every five years thereafter, a fourth or subsequent offender whose license has been reinstated pursuant to Section 56‑1‑385, or a person with a lifetime ignition interlock requirement due to a conviction on or after October 1, 2014, may apply to the Department of Probation, Parole and Pardon Services for removal of the ignition interlock device and the removal of the restriction from the person’s driver’s license. The Department of Probation, Parole and Pardon Services may, for good cause shown, notify the Department of Motor Vehicles that the person is eligible to have the restriction removed from the person’s license.

(K)(1) Except as otherwise provided in this section, it is unlawful for a person who is subject to the provisions of this section to drive a motor vehicle that is not equipped with a properly operating, certified ignition interlock device. A person who violates this subsection:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than one year. The person must have the length of time that the ignition interlock device is required extended by six months;

(b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than five thousand dollars or imprisoned not more than three years. The person must have the length of time that the ignition interlock device is required extended by one year; and

(c) for a third or subsequent offense, is guilty of a felony, and, upon conviction, must be fined not less than ten thousand dollars or imprisoned not more than ten years. The person must have the length of time that the ignition interlock device is required extended by three years.

(2) No portion of the minimum sentence imposed pursuant to this subsection may be suspended.

(3) Notwithstanding any other provision of law, a first or second offense punishable pursuant to this subsection may be tried in summary court.

(4) Nothing in this subsection shall be construed to prevent a person who is participating in the Ignition Interlock Device Program pursuant to Section 56‑1‑1090(A) and who drives a motor vehicle that is not equipped with a properly operating, certified ignition interlock device from being charged with a violation of Section 56‑1‑1100.

(L)(1) A person who is required in the course and scope of the person’s employment to drive a motor vehicle owned by the person’s employer may drive the employer’s motor vehicle without installation of an ignition interlock device, provided that the person’s use of the employer’s motor vehicle is solely for the employer’s business purposes.

(2) This subsection does not apply to:

(a) a person convicted of a second or subsequent violation of Section 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, unless the person’s driving privileges have been suspended for not less than one year or the person has had an ignition interlock device installed for not less than one year on each of the motor vehicles owned or operated, or both, by the person~~.~~;

(b) a person who is self employed or to a person who is employed by a business owned in whole or in part by the person or a member of the person’s household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle’s ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section~~.~~; or

(c) a person participating in the Ignition Interlock Device Program as an habitual offender pursuant to Section 56‑1‑1090(A).

(3) Whenever the person operates the employer’s vehicle pursuant to this subsection, the person shall have with the person a copy of the Department of Motor Vehicles’ form specified by Section 56‑1‑400(B).

(4) This subsection will be construed in parallel with the requirements of Section 56‑1‑400(B). A waiver issued pursuant to this subsection will be subject to the same review and revocation as described in Section 56‑1‑400(B).

(M) It is unlawful for a person to tamper with or disable, or attempt to tamper with or disable, an ignition interlock device installed on a motor vehicle pursuant to this section. Obstructing or obscuring the camera lens of an ignition interlock device constitutes tampering. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(N) It is unlawful for a person to knowingly rent, lease, or otherwise provide a person who is subject to this section with a motor vehicle without a properly operating, certified ignition interlock device. This subsection does not apply if the person began the lease contract period for the motor vehicle prior to the person’s arrest for a first offense violation of Section 56‑5‑2930 or 56‑5‑2933 or prior to a person who is participating in the Ignition Interlock Device Program as an habitual offender pursuant to Section 56‑1‑1090(A) receiving his license with an ignition interlock restriction. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(O) It is unlawful for a person who is subject to the provisions of this section to solicit or request another person, or for a person to solicit or request another person on behalf of a person who is subject to the provisions of this section, to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section or to conduct a running retest while the vehicle is in operation. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(P) It is unlawful for another person on behalf of a person subject to the provisions of this section to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section or to conduct a running retest while that vehicle is in operation. A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(Q) Only ignition interlock devices certified by the Department of Probation, Parole and Pardon Services may be used to fulfill the requirements of this section.

(1) The Department of Probation, Parole and Pardon Services shall certify whether a device meets the accuracy requirements and specifications provided in guidelines or regulations adopted by the National Highway Traffic Safety Administration, as amended from time to time. Manufacturers of ignition interlock devices shall apply to the Department of Probation, Parole and Pardon Services for certification of devices provided to South Carolina drivers who are subject to the ignition interlock restriction. The Department of Probation, Parole and Pardon Services may charge an initial annual fee on the manufacturer’s application for certification of each device, and a subsequent fee for every year the manufacturer continues to provide the certified device to South Carolina drivers. This fee shall be remitted to the Ignition Interlock Device Fund for use by the Department of Probation, Parole and Pardon Services in support of the Ignition Interlock Device Program.

(2) All devices certified to be used in South Carolina must be set to prohibit the starting of a motor vehicle when an alcohol concentration of two one‑hundredths of one percent or more is measured and all running retests must record violations of an alcohol concentration of two one‑hundredths of one percent or more, and must capture a photographic image of the driver as the driver is operating the ignition interlock device. The photographic images recorded by the ignition interlock device may be used by the Department of Probation, Parole and Pardon Services to aid in the Department of Probation, Parole and Pardon Services’ management of the Ignition Interlock Device Program; however, neither the Department of Probation, Parole and Pardon Services, the Department of Probation, Parole and Pardon Services’ employees, nor any other political subdivision of this State may be held liable for any injury caused by a driver or other person who operates a motor vehicle after the use or attempted use of an ignition interlock device.

~~(2)~~(3) The Department of Probation, Parole and Pardon Services shall maintain a current list of certified ignition interlock devices and manufacturers. The list must be updated at least quarterly. If a particular certified device fails to continue to meet federal requirements, the device must be decertified, may not be used until it is compliant with federal requirements, and must be replaced with a device that meets federal requirements. The cost for removal and replacement must be borne by the manufacturer of the noncertified device.

~~(3)~~(4) Only ignition interlock installers certified by the Department of Probation, Parole and Pardon Services may install and service ignition interlock devices required pursuant to this section. The Department of Probation, Parole and Pardon Services shall maintain a current list of vendors that are certified to install the devices.

(R) In addition to availability under the Freedom of Information Act, any Department of Probation, Parole and Pardon Services policy concerning ignition interlock devices must be made publicly accessible on the Department of Probation, Parole and Pardon Services’ Internet website. The information regarding a person’s participation in the Ignition Interlock Device Program recorded by the ignition interlock device is collected at the direction of the Department of Probation, Parole and Pardon Services and is a record of the department. Information obtained by the Department of Probation, Parole and Pardon Services and ignition interlock service providers regarding a person’s participation in the Ignition Interlock Device Program is to be used for internal purposes only and is not subject to the Freedom of Information Act. A person participating in the Ignition Interlock Device Program or the person’s family member may request that the Department of Probation, Parole and Pardon Services provide the person or family member with information obtained by the department and ignition interlock service providers. The Department of Probation, Parole and Pardon Services may release the information to the person or family member at the department’s discretion. The Department of Probation, Parole and Pardon Services and ignition interlock service providers must purge all photographic images collected by the device no later than twelve months from the date of the person’s completion of the Ignition Interlock Device Program. The Department of Probation, Parole and Pardon Services may retain the images past twelve months if there are any pending appeals or contested case hearings involved with that person, and at their conclusion must purge the images. The Department of Probation, Parole and Pardon Services and ignition interlock service providers must purge all personal information regarding a person’s participation in the Ignition Interlock Device Program no later than twelve months from the date of the person’s completion of the Ignition Interlock Device Program except for that information which is relevant for pending legal matters.

(S) The Department of Probation, Parole and Pardon Services shall develop policies including, but not limited to, the certification, use, maintenance, and operation of ignition interlock devices and the Ignition Interlock Device Fund.

(T) This section shall apply retroactively to any person currently serving a suspension or denial of the issuance of a license or permit due to a suspension listed in subsection (A).”

SECTION 8. Section 56‑5‑2951 of the 1976 Code is amended to read:

“Section 56‑5‑2951. (A) The Department of Motor Vehicles shall suspend the driver’s license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to, a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56‑5‑2950 or has an alcohol concentration of fifteen one‑hundredths of one percent or more. The arresting officer shall issue a notice of suspension which is effective beginning on the date of the alleged violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945.

(B)(1) Within thirty days of the issuance of the notice of suspension, the person may:

(a) request a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure;

(b) enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941; and

~~(1)~~(c) obtain a temporary alcohol license with an ignition interlock device restriction pursuant to Section 56‑1‑400 from the Department of Motor Vehicles. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license and such fee must be held in trust by the Department of Motor Vehicles until final disposition of any contested case hearing. Should the temporary suspension provided for in this subsection be upheld during the contested case hearing, ~~T~~twenty‑five dollars of the fee must be distributed by the Department of Motor Vehicles to the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment~~.~~, while ~~T~~the remaining seventy‑five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57‑11‑20, to be distributed as provided in Section 11‑43‑167. The temporary alcohol license allows the person to drive without any restrictive conditions pending the outcome of the contested case hearing provided for in subsection (F), this section or the final decision or disposition of the matter. If the suspension is upheld at the contested case hearing, the temporary alcohol license remains in effect until the Office of Motor Vehicle Hearings issues the hearing officer’s decision and the Department of Motor Vehicles sends notice to the person that the person is eligible to receive a restricted license pursuant to subsection (H); and

(2) request a contested case hearing before the Office of Motor Vehicle Hearings in accordance with the Office of Motor Vehicle Hearings’ rules of procedure. The ignition interlock restriction must be maintained on the temporary alcohol license for three months. If the contested case hearing has not reached a final disposition by the time the ignition interlock restriction has been removed, the person can obtain a temporary alcohol license without an ignition interlock restriction.

(3) At the contested case hearing, if:

(a) the suspension is upheld, the person’s driver’s license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension period provided for in subsection (I). Within thirty days of the issuance of the notice that the suspension has been upheld, the person shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990;

(b) the suspension is overturned, the person must have the person’s driver’s license, permit, or nonresident operating privilege reinstated and the person must be reimbursed by the Department of Motor Vehicles in the amount of the fees provided for in subsection (B)(1)(c).

(4) The provisions of this subsection do not affect the trial for a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945.

(C) The period of suspension provided for in subsection (I) begins on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continues until the person applies for a temporary alcohol license and requests a contested case hearing.

(D) If a person does not request a contested case hearing, the person waives the person’s right to the hearing, and the person’s suspension must not be stayed but continues for the period provided for in subsection (I).

(E) The notice of suspension must advise the person:

(1) of the person’s right to obtain a temporary alcohol driver’s license and to request a contested case hearing before the Office of Motor Vehicle Hearings;

(2) ~~the notice of suspension also must advise the person~~ that, if the person does not request a contested case hearing within thirty days of the issuance of the notice of suspension, the person waives the person’s right to the contested case hearing, and the suspension continues for the period provided for in subsection (I); and

(3) ~~the notice of suspension also must advise the person~~ that, if the suspension is upheld at the contested case hearing or the person does not request a contested case hearing, the person shall enroll in an Alcohol and Drug Safety Action Program.

(F)(1) 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)~~(a) was lawfully arrested or detained;

~~(2)~~(b) was given a written copy of and verbally informed of the rights enumerated in Section 56‑5‑2950;

~~(3)~~(c) refused to submit to a test pursuant to Section 56‑5‑2950; or

~~(4)~~(d) consented to taking a test pursuant to Section 56‑5‑2950, and the:

~~(a)~~(i) reported alcohol concentration at the time of testing was fifteen one‑hundredths of one percent or more;

~~(b)~~(ii) individual who administered the test or took samples was qualified pursuant to Section 56‑5‑2950;

~~(c)~~(iii) tests administered and samples obtained were conducted pursuant to Section 56‑5‑2950; and

~~(d)~~(iv) machine was working properly.

(2) 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.

(3) A written order must be issued to all parties either reversing or upholding the suspension of the person’s license, permit, or nonresident’s operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days the person’s license was suspended before the person received a temporary alcohol license and requested the contested case hearing and must receive credit for the number of days, if any, the person maintained an ignition interlock restriction on the temporary alcohol license.

(4) The Department of Motor Vehicles and the arresting officer shall have the burden of proof in contested case hearings conducted pursuant to this section. If neither the Department of Motor Vehicles nor the arresting officer appears at the contested case hearing, the hearing officer shall rescind the suspension of the person’s license, permit, or nonresident’s operating privilege regardless of whether the person requesting the contested case hearing or the person’s attorney appears at the contested case hearing.

(G) A contested case hearing is governed by the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with the Administrative Law Court’s appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(H)~~(1)~~ If the person did not request a contested case hearing or the suspension is upheld at the contested case hearing, the person shall enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990~~, and may apply for a restricted license if the person is employed or enrolled in a college or university~~. ~~The restricted license permits the person to drive only to and from work and the person’s place of education and in the course of the person’s employment or education during the period of suspension. The restricted license also permits the person to drive to and from the Alcohol Drug Safety Action Program classes or to a court‑ordered drug program. The department may issue the restricted license only upon showing by the person that the person is employed or enrolled in a college or university, that the person lives further than one mile from the person’s place of employment, place of education, or location of the person’s Alcohol and Drug Safety Action Program classes, or the location of the person’s court‑ordered drug program, and that there is no adequate public transportation between the person’s residence and the person’s place of employment, the person’s place of education, the location of the person’s Alcohol and Drug Safety Action Program classes, or the location of the person’s court‑ordered drug program.~~

~~(2)~~ ~~If the department issues a restricted license pursuant to this subsection, the department shall designate reasonable restrictions on the times during which and routes on which the person may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of attendance of the person’s court‑ordered drug program, or residence must be reported immediately to the department by the person.~~

~~(3)~~ ~~The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state’s general fund, and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57‑11‑20, to be distributed as provided in Section 11‑43‑167.~~

~~(4)~~ ~~Driving a motor vehicle outside the time limits and route imposed by a restricted license is a violation of Section 56‑1‑460.~~

(I)(1) Except as provided in item (3), the period of a driver’s license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has no previous convictions for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section 56‑1‑286, 56‑5‑2951, or 56‑5‑2990, within the ten years preceding a violation of this section is:

(a) six months for a person who refuses to submit to a test pursuant to Section 56‑5‑2950; or

(b) one month for a person who takes a test pursuant to Section 56‑5‑2950 and has an alcohol concentration of fifteen one‑hundredths of one percent or more.

(2) The period of a driver’s license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, a person who has been convicted previously for violating Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945, or another law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section 56‑1‑286, 56‑5‑2951, or 56‑5‑2990, within the ten years preceding a violation of this section is:

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

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

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

(3)(a) In lieu of serving the remainder of a suspension or denial of the issuance of a license or permit, a person may enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension or denial of the issuance of a license or permit, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension or denial of the issuance of a license or permit. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months.

(b) The person must receive credit for the number of days the person maintained an ignition interlock restriction on the temporary alcohol license.

(c) Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.

(J) A person’s driver’s license, permit, or nonresident operating privilege must be restored when the person’s period of suspension or ignition interlock restricted license requirement pursuant to subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program. After the person’s driving privilege is restored, the person shall continue the services of the Alcohol and Drug Safety Action Program. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person’s license must be suspended until the completion of the Alcohol and Drug Safety Action Program. A person shall be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56‑5‑2990 before the person’s driving privilege can be restored at the conclusion of the suspension period or ignition interlock restricted license requirement.

(K) When a nonresident’s privilege to drive a motor vehicle in this State has been suspended pursuant to the provisions of this section, the department shall give written notice of the action taken to the motor vehicle administrator of the state of the person’s residence and of any state in which the person has a license or permit.

(L) The department shall not suspend the privilege to drive of a person under the age of twenty‑one pursuant to Section 56‑1‑286, if the person’s privilege to drive has been suspended pursuant to this section arising from the same incident.

(M) A person whose driver’s license or permit is suspended pursuant to this section is not required to file proof of financial responsibility.

(N) An insurer shall not increase premiums on, add surcharges to, or cancel the automobile insurance of a person charged with a violation of Section 56‑1‑286, 56‑5‑2930, 56‑5‑2933, 56‑5‑2945, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs based solely on the violation unless the person is convicted of the violation.

(O) The department shall administer the provisions of this section.

(P) ~~If a person does not request a contested case hearing within the thirty‑day period as authorized pursuant to this section, the person may file with the department a form after enrolling in a certified Alcohol and Drug Safety Action Program to apply for a restricted license. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from Alcohol and Drug Safety Action Program classes or a court‑ordered drug program. The department may issue the restricted license at any time following the suspension upon a showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court‑ordered drug program. The department must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of his court‑ordered drug program, or residence must be reported immediately to the department by the licensee. The route restrictions, requirements, and fees imposed by the department for the issuance of the restricted license issued pursuant to this item are the same as those provided in this section had the person requested a contested case hearing. A restricted license is valid until the person successfully completes a certified Alcohol and Drug Safety Action Program, unless the person fails to complete or make satisfactory progress to complete the program.~~ Nothing in this section shall prevent the prosecuting authority from waiving or dismissing the charge.”

SECTION 9. Section 56‑5‑2990 of the 1976 Code is amended to read:

“Section 56‑5‑2990. (A)(1) The Department of Motor Vehicles shall suspend the driver’s license of a person who is convicted for a violation of Section 56‑5‑2930, 56‑5‑2933, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs.

(2) For a first offense~~:~~,

~~(a)~~ ~~If a person is found to have refused to submit to a breath test pursuant to Section 56‑5‑2950 and is convicted of Section 56‑5‑2930 or 56‑5‑2933, the person’s driver’s license must be suspended six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person may enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.~~

~~(b)~~ ~~If a person submitted to a breath test pursuant to Section 56‑5‑2950 and is convicted of having an alcohol concentration of less than fifteen one‑hundredths of one percent, the person’s driver’s license must be suspended six months. The person is eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person may enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle equal to the length of time remaining on the person’s suspension. If the length of time remaining is less than three months, the ignition interlock device is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the Ignition Interlock Device Program and obtained an ignition interlock restricted license, the person is subject to Section 56‑5‑2941 and cannot subsequently choose to serve the suspension.~~

~~(c)~~ ~~If a person submitted to a breath test pursuant to Section 56‑5‑2950 and is convicted of having an alcohol concentration of fifteen one‑hundredths of one percent or more, the~~ a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56.

(3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for two years.

(4) For a third offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for three years. If the third offense occurs within five years from the date of the first offense, the ignition interlock device is required to be affixed to the motor vehicle for four years.

(5) For a fourth or subsequent offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56‑5‑2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56‑1‑400. The ignition interlock device is required to be affixed to the motor vehicle for life.

(6) Except as provided in subsection (A)(4), only those offenses which occurred within ten years, including and immediately preceding the date of the last offense, shall constitute prior offenses within the meaning of this section.

(B) A person whose license is suspended pursuant to this section, Section 56‑1‑286, 56‑5‑2945, or 56‑5‑2951 must be notified by the department of the suspension and of the requirement to enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. ~~A person who must complete an Alcohol and Drug Safety Action Program as a condition of reinstatement of his driving privileges or a court‑ordered drug program may use the route restricted or special restricted driver’s license to attend the Alcohol and Drug Safety Action Program classes or court‑ordered drug program in addition to the other permitted uses of a route restricted driver’s license or a special restricted driver’s license.~~ An assessment of the extent and nature of the alcohol and drug abuse problem, if any, of the person must be prepared and a plan of education or treatment, or both, must be developed for the person. Entry into the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the person is a mandatory requirement of the issuance of an ignition interlock restricted license to the person whose license is suspended pursuant to this section. Successful completion of the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the person is a mandatory requirement of the full restoration of driving privileges to the person whose license is suspended pursuant to this section. The Alcohol and Drug Safety Action Program shall determine if the person has successfully completed the services. Alcohol and Drug Safety Action Programs shall meet at least once a month. The person whose license is suspended shall attend the first Alcohol and Drug Safety Action Program available after the date of enrollment.

(C) The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each person shall bear the cost of services recommended in the person’s plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. No person may be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the person has successfully completed services. A person who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the person has successfully completed services. The Department of Alcohol and Other Drug Abuse Services shall report annually to the House Ways and Means Committee and Senate Finance Committee on the number of first and multiple offenders completing the Alcohol and Drug Safety Action Program, the amount of fees collected and expenses incurred by each Alcohol and Drug Safety Action Program, and the number of community service hours performed in lieu of payment.

(D) If the person has not successfully completed the services as directed by the Alcohol and Drug Safety Action Program within one year of enrollment, a hearing must be provided by the Alcohol and Drug Safety Action Program whose decision is appealable to the Department of Alcohol and Other Drug Abuse Services. If the person is unsuccessful in the Alcohol and Drug Safety Action Program, the Department of Motor Vehicles may waive the successful completion of the program as a mandatory requirement of the issuance of an ignition interlock restricted license upon the recommendation of the Medical Advisory Board as utilized by the Department of Motor Vehicles, if the Medical Advisory Board determines public safety and welfare of the person may not be endangered.

(E) The Department of Motor Vehicles and the Department of Alcohol and Other Drug Abuse Services shall develop procedures necessary for the communication of information pertaining to relicensing, or otherwise. These procedures must be consistent with the confidentiality laws of the State and the United States. If a person’s driver’s license is suspended pursuant to this section, an insurance company shall not refuse to issue insurance to cover the remaining members of the person’s family, but the insurance company is not liable for any actions of the person whose license has been suspended or who has voluntarily turned the person’s license in to the Department of Motor Vehicles.

~~(F)~~ ~~Except as provided for in Section 56‑1‑365(D) and (E), the driver’s license suspension periods under this section begin on the date the person is convicted, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for the a violation of Section 56‑5‑2930, 56‑5‑2933, or for the violation of any other a law of this State or ordinance of a county or municipality of this State that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, or narcotics; however, a person is not prohibited from filing a notice of appeal and receiving a certificate which entitles him to operate a motor vehicle for a period of sixty days after the conviction, plea of guilty or nolo contendere, or bail forfeiture pursuant to Section 56‑1‑365(F).~~”

SECTION 10. (A) Sections 56-5-2941(J), 56-5-2941(Q)(1), and 56-5-2941(R), as amended by this act, take effect upon approval by the Governor.

(B) Except as otherwise provided, this act takes effect one year after the date approved by the Governor.

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