

State DUI Laws: South Carolina

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

South Carolina Code Annotated

§ 56-1-286. Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty-one who drive motor vehicles with certain amount of alcohol concentration.

(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 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 20-7-8920, 20-7-8925, 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 his breath or blood for the purpose of determining the presence of alcohol.

(C) 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 probable cause to believe 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.

A law enforcement officer may detain and order the testing of a person to determine the person's alcohol concentration if the officer has probable cause to believe that a motor vehicle is being driven by a person under the age of twenty-one who has consumed alcoholic beverages.

(D) A test must be administered at the direction of the primary investigating law enforcement officer. At the direction of the officer, 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 he 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 State Law Enforcement Division, using methods approved by the division. The primary investigating officer may administer the test if the person's conduct during the twenty-minute pre-test waiting period is videotaped pursuant to Section 56-5-2953(A)(2)(d). 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 its provisions. The costs of the tests administered at the direction of the officer must be paid from the general fund of the State.

The person tested or giving samples for testing may have a qualified person of his 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 failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the direction of the officer. The officer must 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, SLED must 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 any judicial or administrative proceeding.

(E) A qualified person and his employer who obtain samples or administer the tests or assist in obtaining samples or administering of tests at the direction of the primary investigating officer 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 request of the primary investigating officer to submit to chemical tests as provided in subsection (C), the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) six months; or

(2) one year if the person, within the five years preceding the violation of this section, has been previously convicted of violating Sections 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 or has had a previous suspension imposed pursuant to Sections 56-1-286, 56-5-2950, or 56-5-2951.

(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 must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) three months; or

(2) six months if the person, within the five years preceding the violation of this section, has been previously convicted of violating Sections 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 any other drug or has had a previous suspension imposed pursuant to Sections 56-1-286, 56-5-2950, or 56-5-2951.

(H) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension under subsection (F) or (G) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person's driving privilege is restored, he must continue to participate in the Alcohol and Drug Safety Action Program in which he 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 shall be suspended until he completes the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 before his driving privilege can be restored at the conclusion of the suspension period.

(I) A test may not be administered or samples taken unless the person has been informed in writing 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 tests and that his refusal may be used against him in court;
- (2) his privilege to drive must be suspended for at least three months if he takes the test or gives the samples and has an alcohol concentration of two 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) he must enroll in an Alcohol and Drug Safety Action Program within thirty days of the issuance of the notice of suspension if he does not request an administrative hearing or within thirty days of the issuance of notice that the suspension has been upheld at the administrative hearing.

The primary investigating officer must notify promptly the department of the refusal of a person to submit to a test requested pursuant to this section as well as the test result of any 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) 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 must 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, must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 if he 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 restricted license must not be issued. If the person drives during the period of suspension without a temporary alcohol restricted license, the person must be penalized for driving while his license is suspended pursuant to Section 56-1-460.

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

- (1) obtain a temporary alcohol restricted license by filing with the department a form for this purpose. A one-hundred-dollar fee must be assessed for obtaining a temporary alcohol restricted license. Twenty-five dollars of the fee must be retained by the department for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into a special restricted account to be used by the department to defray the expenses of the Division of Motor Vehicles. The temporary alcohol restricted license allows the person to drive without any restrictive conditions pending the outcome of the administrative hearing provided for in this section or the final decision or disposition of the matter; and

(2) request an administrative hearing.

At the administrative hearing if:

(a) the suspension is upheld, the person must enroll in an Alcohol and Drug Safety Action Program and his 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);

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

(L) 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 restricted license and requests an administrative hearing.

(M) If a person does not request an administrative hearing, he shall have waived his right to the hearing and his suspension must not be stayed but shall continue for the periods provided for in subsections (F) and (G).

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

(O) An administrative hearing must be held within thirty days after the request for the hearing is received by the department. If the department does not hold the hearing within thirty days, a written order must be issued by the department within thirty days. The order must set forth the reasons why the hearing was not held within thirty days, and a new hearing must be scheduled. If the department does not issue a written order within thirty days or fails within thirty days to notify the defendant of a new hearing date, the person shall have his driver's license, permit, or nonresident operating privilege reinstated. The scope of the hearing must be limited to whether the person:

(1) was lawfully arrested or detained;

(2) was advised in writing of the rights enumerated in subsection (I);

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

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

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

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

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

(d) the machine was operating properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

A written order must be issued to the person upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit within thirty days after the conclusion of the administrative hearing. 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 restricted license and requested the administrative hearing.

(P) An administrative hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to judicial review pursuant to that act. The filing of a petition for review shall stay the suspension until a final decision is issued.

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

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

(V) 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 he was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one-hundredths of one percent.

§ 56-5-2930. Unlawful to operate motor vehicle while under influence.

It is unlawful for a person to drive a motor vehicle within this State while:

(1) under the influence of alcohol to the extent that the person's faculties to drive are materially and appreciably impaired;

(2) 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 are materially and appreciably impaired; or

(3) 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 are materially and appreciably impaired.

§ 56-5-2933. Driving with an unlawful alcohol concentration.

It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more. A person who violates the provisions of this section is guilty of the offense of Driving With An Unlawful Alcohol Concentration. A person may be charged for a violation of Section 56-5-2930 but 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 articulable suspicion existed to justify the traffic stop. This section does not apply to cases arising out of a stop at a traffic roadblock or driver's license checkpoint. A person shall 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, but not limited to, the following:

- (1) whether or not the person was lawfully arrested or detained;
- (2) whether or not articulable suspicion existed to justify the stop;
- (3) the period of time between arrest and testing;
- (4) whether or not the person was advised in writing of the rights enumerated in Section 56-5-2950;
- (5) whether the person consented to taking a test pursuant to Section 56-5-2950, and the:
 - (a) reported alcohol concentration at the time of testing was eight one-hundredths of one percent or more;
 - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
 - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950 and regulations adopted pursuant to Section 56-5-2951(Q) and Section 56-5-2953(F); and
 - (d) machine was working properly.

Nothing contained in this section prohibits the introduction of:

- (1) the results of any additional tests of the person's breath or other bodily fluids;
- (2) any evidence that may corroborate or question the validity of the breath or bodily fluid test result including, but not limited to:
 - (a) evidence of field sobriety tests;
 - (b) evidence of the amount of alcohol consumed by the person; and

(c) evidence of the person's driving;

(3) a videotape of the person's conduct at the incident site and breath testing site taken pursuant to Section 56-5-2953 which is subject to redaction under the South Carolina Rules of Evidence; or

(4) any other evidence of the state of a person's faculties to drive which would call into question the results of a breath or bodily fluid test.

At trial, a person charged with a violation of this section is entitled to a jury instruction stating that the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence.

A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least fourteen days before his trial date.

§ 56-5-2934. Right to compulsory process.

Notwithstanding any other provision of law, a person charged with a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 who is being tried in any court of competent jurisdiction in this State has the right to compulsory process for obtaining witnesses, documents, or both, including, but not limited to, state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this article. This process may be issued under the official signature of the magistrate, judge, clerk, or other officer of the court of competent jurisdiction. The term "documents" includes, but is not limited to, a copy of the computer software program of breath testing devices. The portion of compulsory process provided for in this section that requires the attendance, at any administrative hearing or court proceeding, of state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this article, takes effect once the compulsory process program at the State Law Enforcement Division is specifically, fully, and adequately funded. In addition, at the time of arrest for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, the arresting officer, in addition to other notice requirements, must inform the defendant of his right to all hearings provided by law to include those if a breath test is refused or taken with a result that would require license suspension. The arresting officer, if the defendant wishes to avail himself of any such hearings, depending on the choices made or the breath test results obtained, must provide the defendant with the appropriate form to request the hearing or hearings. The defendant must acknowledge receipt of the notice requirements and receipt of the hearing form if such a hearing or hearings are desired.

§ 56-5-2940. Penalty for violating §§ 56-5-2930 and 56-5-2933; subsequent violations; fines placed in special restricted accounts.

A person who violates a provision of Section 56-5-2930 or 56-5-2933, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished:

(1) by a fine of four hundred dollars or imprisonment for not less than forty-eight hours nor more than thirty days, for the first offense; 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 off from work 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;

(2) 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 for the second offense. However, the fine imposed by this item shall not be suspended in an amount less than one thousand one hundred dollars. In lieu of service of imprisonment, the court may require that the individual complete an appropriate term of public service employment of not less than thirty days upon terms and conditions the court considers proper;

(3) 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 for the third offense;

(4) by imprisonment for not less than one year nor more than five years for a fourth offense or subsequent offense.

No part of the minimum sentences provided in this section may be suspended. The court may provide instead of service other sentences provided in this section. For a third or subsequent offense or for a violation of Section 56-5-2945 for great bodily injury, the service of the minimum sentence is mandatory. However, the judge may provide for the sentence to be served upon terms and conditions as he considers proper including, but not limited to, weekend service or nighttime service in any fashion he considers necessary.

The fine for a first offense may not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

For the purposes of this chapter any conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of any law or ordinance of this or any other state or any municipality of this or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics constitutes a prior offense for the purpose of any prosecution for any subsequent violation hereof. Only those violations which occurred within a period of ten years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside.

One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

Two hundred dollars of the fine imposed pursuant to subsection (3) must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the datamaster, breath testing site video program, ignition interlock provisions, and toxicology laboratory.

§ 56-5-2941. Penalties; installation of ignition interlock device.

In addition to the penalties required and authorized to be imposed against a person violating the provisions of Section 56-5-2930 , 56-5-2933, or 56-5-2945, the court may require such person, whether or not he is a first or subsequent offender and if he is a resident of this State, to have installed on the vehicle he was operating if it is registered and licensed in his name or in the name of a member of his immediate family an ignition interlock device designed to prevent the operation of the motor vehicle if the operator has consumed alcoholic beverages. The court in imposing the

requirements of this section shall specify the length of time which the interlock device is required to be affixed to the vehicle, shall provide that the cost of the interlock device must be borne by the offender, and shall require the offender to periodically report to appropriate law enforcement or probation authorities for the purpose of verifying that the interlock device is affixed to the vehicle and operational during the time required by the court. The State Law Enforcement Division, in consultation with the department, shall develop regulations including, but not limited to, regulations governing the use, maintenance, and operation of ignition interlock devices.

If the offender is determined to be indigent by the court and cannot afford the cost of the ignition interlock device, the court may order an interlock device to be affixed to the vehicle and paid for by the jurisdiction making the arrest from fines paid pursuant to Sections 56-5-2930, 56-5-2933, and 56-5-2945.

§ 56-5-2942. Vehicle immobilization after conviction for subsequent violation of §§ 56-5-2930, 56-5-2933, or 56-5-2945; immobilized defined; identity of immobilized vehicle; surrendering of license plates and registration; release of vehicle; hearing; penalties; fees.

(A) A person who is convicted of or pleads guilty or nolo contendere to a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 must have all motor vehicles owned by or registered to him immobilized if the person is a resident of this State, unless the vehicle has been confiscated pursuant to Section 56-5-6240.

(B) For purposes of this section, "

immobilized" and " immobilization" mean suspension and surrender of the registration and motor vehicle license plate.(C) Upon sentencing for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, the court must ascertain the registration numbers or other information to determine the identity of the vehicles to be immobilized. The court must notify the department of a person's conviction for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 and the identity of the vehicles to be immobilized.

(D) Upon notification by a court in this State or by any other state of a conviction for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, the department must require the person convicted to surrender all license plates and vehicle registrations subject to immobilization pursuant to this section. The immobilization is for a period of thirty days to take place during the driver's license suspension pursuant to a conviction for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. The department must maintain a record of all vehicles immobilized pursuant to this section.

(E) An immobilized motor vehicle must be released to the holder of a bona fide lien on the motor vehicle when possession of the motor vehicle is requested, as provided by law, by the lienholder for the purpose of foreclosing on and satisfying the lien.

(F) An immobilized motor vehicle may be released by the department without legal or physical restraints to a person who has not been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, if that person is a registered owner of the motor vehicle or a member of the household of a registered owner. The vehicle must be released if an affidavit is submitted by that person to the department stating that:

(1) he regularly drives the motor vehicle subject to immobilization;

(2) the immobilized motor vehicle is necessary to his employment, transportation to an educational facility, or for the

performance of essential household duties;

(3) no other vehicle is available for the use of the person;

(4) the person will not authorize the use of the motor vehicle by any other person known by him to have been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945;

(5) the person will report immediately to a local law enforcement agency any unauthorized use of the motor vehicle by a person known by him to have been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945.

(G) The department may conduct a hearing and receive testimony regarding the veracity of an affidavit submitted pursuant to subsection (F) or issue an agency decision to permit or deny the release of the vehicle based on the affidavit. A person may seek relief pursuant to the provisions of the Administrative Procedures Act from an agency action immobilizing a vehicle or denying the release of the vehicle.

(H) A person who operates an immobilized vehicle except as provided in subsections (E) and (F) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(I) A person who falsifies a report concerning vehicles owned by or registered to that person, or who fails to surrender registrations and license plates pursuant to this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(J) The court must assess a fee of forty dollars for each motor vehicle owned by or registered to the person convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. This fee must be placed by the Comptroller General into a special restricted interest bearing account to be used by the Department of Public Safety to defray the expenses of the Division of Motor Vehicles.

§ 56-5-2945. Causing great bodily injury or death by operating vehicle while under influence of drugs or alcohol; penalty; "great bodily injury" defined; fines placed in special restricted account.

(A) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a vehicle and when driving does any act forbidden by law or neglects any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of a felony and upon conviction must be punished:

(1) by a mandatory fine of not less than five thousand one hundred dollars nor more than ten thousand one hundred dollars and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results;

(2) by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty-five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results.

A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation must

not be granted for any portion.

(B) As used in this section, "

great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. The department must suspend the driver's license of a person who is convicted or who receives sentence upon a plea of guilty or nolo contendere pursuant to this section for a period to include a term of imprisonment plus three years.

(C) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the department for the Highway Patrol.

§ 56-5-2946. Submission to testing for alcohol or drugs.

Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.

The tests must be administered at the direction of a law enforcement officer who has probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945. The administration of one test does not preclude the administration of other tests. The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at the trial of the offense which precipitated the requirement for testing. A person who is tested or gives samples for testing may have a qualified person of his choice conduct additional tests at his expense and must be notified of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial.

The provisions of Section 56-5-2950, relating to the administration of tests to determine a person's alcohol concentration, additional tests at the person's expense, the availability of other evidence on the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them, availability of test information to the person or his attorney, and the liability of medical institutions and persons administering the tests are applicable to this section and also extend to the officer requesting the test, the State or its political subdivisions, or governmental agency, or entity which employs the officer making the request, and the agency, institution, or employer, either governmental or private, of persons administering the tests. Notwithstanding any other provision of state law pertaining to confidentiality of hospital records or other medical records, information regarding tests performed pursuant to this section must be released, upon subpoena, to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of Section 56-5-2945.

§ 56-5-2947. Child endangerment; definition; penalties; jurisdiction; evidence for taking child into protective custody.

(A) A person eighteen years of age or over is guilty of child endangerment when:

(1) the person is in violation of:

(a) Section 56-5-750;

(b) Section 56-5-2930; or

(c) Section 56-5-2945; and

(2) the person has one or more passengers under sixteen years of age in the motor vehicle when the violation occurs.

If more than one passenger under sixteen years of age is in the vehicle when a violation of subsection (A)(1) occurs, the person may be charged with only one violation of this section.

(B) Upon conviction the person must be punished by:

(1) a fine of not more than one-half of the maximum fine allowed for committing the violation enumerated in subsection (A)(1), when the person is fined for that offense;

(2) a term of imprisonment of not more than one-half of the maximum term of imprisonment allowed for committing the violation enumerated in subsection (A)(1), when the person is imprisoned for the offense; or

(3) both a fine and imprisonment as prescribed in items (1) and (2) when the person is fined and imprisoned for the offense.

(C) No portion of the penalty assessed under subsection (B) may be suspended or revoked and probation may not be awarded.

(D) In addition to imposing the penalties for offenses enumerated in subsection (A)(1) and the penalties contained in subsection (B), the department must suspend the person's driver's license for sixty days. Sections 56-1-1320 and 56-5-2990 as they relate to enrollment in an alcohol and drug safety action program and to the issuance of a provisional driver's license will not be effective until the sixty-day suspension period is completed.

(E) A person may be convicted under this section for child endangerment in addition to being convicted for an offense enumerated in subsection (A)(1).

(F) The court that has jurisdiction over an offense enumerated in subsection (A)(1) has jurisdiction over the offense of child endangerment.

(G) A first offense charge for a violation of this section may not be used as the only evidence for taking a child into protective custody pursuant to Section 20-7-610(A) and (F).

§ 56-5-2950. Implied consent to testing for alcohol or drugs; procedures; inference of DUI.

(a) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of 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 grounds to believe that the person is under the influence of drugs other than alcohol, the officer may order that a urine sample be taken for testing. If the alcohol concentration is eight one-hundredths of one percent or above, the officer may not require additional tests of the person as provided in this chapter. The breath test must be administered by a person trained and certified by the department, pursuant to SLED policies. The arresting officer may administer the tests if the person's conduct during the twenty-minute pre-test waiting period is videotaped pursuant to Section 56-5-2953(A)(2)(d). Before the breath test is administered, an eight one-hundredths of one percent simulator test must be performed and the result must reflect a reading between 0.076 percent and 0.084 percent. Blood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility. Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED.

No tests may be administered or samples obtained unless the person has been informed in writing 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 ninety days if he refuses to submit to the tests and that his refusal may be used against him in court;
- (2) his privilege to drive must be suspended for at least thirty days if he takes the tests or gives the samples and has an alcohol concentration of fifteen 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.

A hospital, physician, qualified technician, chemist, or registered nurse who obtains the samples or conducts the test or participates in the process of obtaining the samples or conducting the test in accordance with this section is not subject to a cause of action for assault, battery, or another cause alleging that the drawing of blood or taking samples at the request of the arrested person or a law enforcement officer was wrongful. This release from liability does not reduce the standard of medical care required of the person obtaining the samples or conducting the test. This qualified release also applies to the employer of the person who conducts the test or obtains the samples.

The person tested or giving samples for testing may have a qualified person of his own choosing conduct additional tests at his expense and must be notified in writing of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples obtained at the direction of the law enforcement officer.

The arresting officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which 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 sample to determine the person's alcohol concentration, SLED must test the blood sample and provide the result to the person and to the arresting officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in any judicial or administrative proceeding.

SLED must administer the provisions of this subsection and must make regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the law enforcement officer must be paid from the general fund of the State.

A qualified person who obtains samples or administers the tests or assists in obtaining samples or the administration of tests at the direction of a law enforcement officer is released from civil and criminal liability unless the obtaining of samples or tests is performed in a negligent, reckless, or fraudulent manner. No person may be required by the arresting officer, or by another law enforcement officer, to obtain or take any sample of blood or urine.

(b) In the criminal prosecution for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 relating to driving a vehicle under the influence of alcohol, drugs, or a combination of alcohol and drugs, the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

(1) If the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol.

(2) If the alcohol concentration was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person.

(3) If the alcohol concentration was at that time eight one-hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

(4) If the alcohol concentration was at that time eight one-hundredths of one percent or more and the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest, the person has violated Section 56-5-2933.

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.

(c) 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 by subsection (a) of this section.

(d) A person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence. A person who obtains additional tests must furnish a copy of the time, method, and results of any test 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.

(e) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on

motion of either party. The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence any tests results, if the trial judge or hearing officer finds that such failure materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure.

(f) If a state employee charged with the maintenance of breath testing devices in this State and the administration of breath testing policy is required to testify at an administrative hearing or court proceeding, the entity employing the witness may charge a reasonable fee to the defendant for these services.

§ 56-5-2951. Suspension of license for refusal to submit to testing or for certain level of alcohol concentration; temporary alcohol restricted license; administrative hearing; special restricted driver's license; automobile insurance increases.

(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 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.

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

(1) obtain a temporary alcohol restricted license by filing with the Department of Motor Vehicles a form for this purpose. A one hundred-dollar fee must be assessed for obtaining a temporary alcohol restricted license. Twenty-five dollars of the fee must be retained by 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 a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles. The temporary alcohol restricted license allows the person to drive without any restrictive conditions pending the outcome of the administrative hearing provided for in subsection (F) or the final decision or disposition of the matter. If the suspension is upheld at the administrative hearing, the temporary alcohol restricted license remains in effect until the department issues the hearing officer's decision and sends notice to the person that he is eligible to receive a special restricted license pursuant to subsection (H); and

(2) request an administrative hearing.

At the administrative 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 must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990;

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

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

(C) The period of suspension provided for in subsection (I) begins on the day the notice of suspension is issued, or at the

expiration of any other suspensions, and continues until the person applies for a temporary alcohol restricted license and requests an administrative hearing.

(D) If a person does not request an administrative hearing, he waives his right to the hearing, and his suspension must not be stayed but continues for the period provided for in subsection (I).

(E) The notice of suspension must advise the person of his right to obtain a temporary alcohol restricted driver's license and to request an administrative hearing. The notice of suspension also must advise the person that, if he does not request an administrative hearing within thirty days of the issuance of the notice of suspension, he waives his right to the administrative hearing, and the suspension continues for the period provided for in subsection (I). The notice of suspension must also advise the person that if the suspension is upheld at the administrative hearing or if he does not request an administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(F) An administrative hearing must be held within thirty days after the request for the hearing is received by the department. If the department does not hold the hearing within thirty days, a written order must be issued by the department within thirty days. The order must set forth the reasons why the hearing was not held within thirty days, and a new hearing must be scheduled. If the department does not issue a written order within thirty days or fails within thirty days to notify the defendant of a new hearing, the person must have his driver's license, permit, or nonresident operating privilege reinstated. The scope of the hearing must be limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) was advised in writing of the rights enumerated in Section 56-5-2950;
- (3) refused to submit to a test pursuant to Section 56-5-2950; or
- (4) consented to taking a test pursuant to Section 56-5-2950, and the:
 - (a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;
 - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
 - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and
 - (d) the machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

A written order must be issued to the person upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit within thirty days after the conclusion of the administrative hearing. 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 restricted license and requested the administrative hearing.

(G) An administrative hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to judicial review pursuant to that act. The filing of a petition for review stays the suspension until a final decision is

issued.

(H)(1) If the suspension is upheld at the administrative hearing, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 and may apply for a special restricted driver's license if he is employed or enrolled in a college or university. The special 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 special restricted license also permits him to drive to and from the Alcohol Drug Safety Action Program classes or to a court-ordered drug program. The department may issue the special restricted driver's license only upon 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, or 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.

(2) If the department issues a special restricted driver's license, it must designate reasonable restrictions on the times during which and routes on which the individual may operate 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 his court-ordered drug program, or residence must be reported immediately to the department by the licensee.

(3) The fee for a special restricted driver's 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 general fund, and eighty dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles.

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

(1)(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 any other 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) ninety days for a person who refuses to submit to a test pursuant to Section 56-5-2950; or (b) thirty days for a person who takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more.

(2) The period of a driver's license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has been convicted previously for violating Section 56-5-2930, 56-5-2933, or 56-5-2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other 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 one hundred eighty days if he refuses to submit to a test pursuant to Section 56-5-2950 or sixty days if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more.

(J) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension under subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person's driving privilege is restored, he must continue the services of the Alcohol and Drug Safety Action Program in which he 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 completion of the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 before his driving privilege can be restored at the conclusion of the suspension period.

(K) When a nonresident's privilege to drive a motor vehicle in this State has been suspended under the provisions of this section, the department must 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.

(L) The department must 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 under 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 may not increase premiums on or add surcharges to the automobile insurance of a person charged with a violation of Section 56-1-286, 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 any other drug unless he is convicted of the violation.

(O) The department must administer the provisions of this section and must promulgate regulations necessary to carry out its provisions.

(P) If a person does not request an administrative hearing within the thirty-day period as authorized pursuant to this section, the person may file with the department a form after enrolling in an approved Alcohol and Drug Safety Action Program to apply for a special restricted driver's license. The special 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 special 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 special restricted driver's 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 operate 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 special restricted driver's license issued pursuant to this item are the same as those provided in this section had the person requested an administrative hearing. A special restricted driver's license is valid until the person successfully completes an approved Alcohol and Drug Safety Action Program, unless the person fails to complete or make satisfactory progress to complete the program.

§ 56-5-2953. Incident site and breath site videotaping; admissibility as evidence; purchase and maintenance of videotaping equipment.

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site videotaped.

(1) The videotaping at the incident site must:

(a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930, 56-5-2933, or a probable cause determination that the person violated Section 56-5-2945; and

(b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered.

(2) The videotaping at the breath site:

(a) must be completed within three hours of the person's arrest for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 or a probable cause determination that the person violated Section 56-5-2945, unless compliance is not possible because the person needs emergency medical treatment considered necessary by licensed medical personnel;

(b) must include the reading of Miranda rights, the entire breath test procedure, the person being informed that he is being videotaped, and that he has the right to refuse the test;

(c) must include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test;

(d) must also include the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to videotape this waiting period. However, if the arresting officer administers the breath test, the person's conduct during the twenty-minute pre-test waiting period must be videotaped.

The videotapes of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the videotape equipment at the time of the arrest, probable cause determination, or breath test device was in an inoperable condition, stating reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the videotape because the person needed emergency medical treatment, or exigent circumstances existed. Further, in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this

section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape.

(C) A videotape must not be disposed of in any manner except for its transfer to a master tape for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary videotaping equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of videotaping equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used for traffic enforcement to ensure proper maintenance of videotaping equipment.

(E) Beginning one month from the effective date of this act, all of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to equip all breath test sites with videotaping devices and supplies. Once all breath test sites have been equipped fully with videotaping devices and supplies, eighty-seven and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply videotaping equipment for vehicles used for traffic enforcement. The remaining twelve and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to purchase, maintain, and supply videotaping equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14-1-208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of videotaping equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department's and SLED's annual appropriation request to the General Assembly.

(F) The Department of Public Safety and SLED must promulgate regulations necessary to implement the provisions of this section.

(G) The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a videotaping device. The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a videotaping device.

§ 56-5-2954. Breath testing sites; records of problems with devices.

The State Law Enforcement Division and each law enforcement agency with a breath testing site is required to maintain a detailed record of malfunctions, repairs, complaints, or other problems regarding breath testing devices at each site. The records required by this section are subject to compulsory process issued by any court of competent jurisdiction in this State and are public records under the Freedom of Information Act.

§ 56-5-2990. Suspension of convicted person's driver's license; period of suspension.

(A) The department shall suspend the driver's license of a person who is convicted, receives sentence upon a plea of

guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56-5-2930, 56-5-2933, or for the violation of another law or ordinance of this State or of a municipality of this State that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics for six months for the first conviction, plea of guilty or of nolo contendere, or forfeiture of bail; one year for the second conviction, plea of guilty or of nolo contendere, or forfeiture of bail; two years for the third conviction, plea of guilty or of nolo contendere, or forfeiture of bail; and a permanent revocation of the driver's license for the fourth or subsequent conviction, plea of guilty or of nolo contendere, or forfeiture of bail. Only those violations which occurred within ten years including and immediately preceding the date of the last violation shall constitute prior violations within the meaning of this section. However, if the third conviction occurs within five years from the date of the first offense, then the department shall suspend the driver's license for four years. A person whose license is revoked following conviction for a fourth offense as provided in this section is forever barred from being issued any license by the Department of Motor Vehicles to operate a motor vehicle except as provided in Section 56-1-385.

(B) A person whose license is suspended under the provisions of this section, Section 56-1-286, or Section 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 applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. Entry into and successful completion of the services, if the services are necessary, recommended in the plan of education or treatment, or both, developed for the applicant is a mandatory requirement of the restoration of driving privileges to the applicant whose license is suspended pursuant to this section. The Alcohol and Drug Safety Action Program shall determine if the applicant has successfully completed the services. Alcohol and Drug Safety Action Programs shall meet at least once a month. The person whose license is suspended must 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 applicant shall bear the cost of services recommended in the applicant's plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. No applicant 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 applicant has successfully completed services. An applicant who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the applicant has successfully completed services. The Department of Alcohol and Other Drug Abuse Services will 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 applicant 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 applicant is unsuccessful in the Alcohol and Drug Safety Action Program, the department may restore the privilege to drive a motor vehicle upon the recommendation of the Medical Advisory Board as utilized by the department if it determines public

safety and welfare of the petitioner may not be endangered.

(E) The department 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 the drivers license of any person is suspended by authority of this section, no insurance company may refuse to issue insurance to cover the remaining members of his family, but the insurance company is not liable for any actions of the person whose license has been suspended or who has voluntarily turned his license in to the department.

(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 violation of Section 56-5-2930, 56-5-2933, or for the violation of any other 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, drugs, 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).

§ 56-5-2995. Additional assessment on persons convicted of driving under influence of intoxicating liquors or drugs.

(A) In addition to the penalties imposed for a first offense violation of Section 56-5-2930 or 56-5-2933 in magistrate's or municipal court, an additional assessment of twelve dollars must be added to any punishment imposed which must be remitted to the State Treasurer who shall then distribute the twelve-dollar assessments in the manner provided in Section 14-1-201.

(B) In addition to the penalties and assessments imposed for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or a violation of Section 56-5-2945 in general sessions court, an additional assessment of twelve dollars must be added to any punishment imposed which must be remitted to the State Treasurer who shall then distribute these twelve-dollar assessments in the manner provided in Section 14-1-201.

§ 56-5-3000. Publication of names of drivers whose licenses are suspended.

The Department shall on or before the tenth day of each month release to the public the names and addresses of all persons whose drivers' licenses are suspended under § 56-5-2990 during the preceding month. The person so publishing the names of such persons whose drivers' licenses are so suspended shall not be guilty of libel in the courts of this State, and no person whose driver's license is suspended under § 56-5-2990 shall have right of action in the courts of the State for libel suits against any person so publishing the name of such person whose license has been suspended.