

**SECTION 56-5-2930. Operating motor vehicle while under influence of alcohol or drugs; penalties; enrollment in Alcohol and Drug Safety Action Program; prosecution.**

(A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:

(1) for a first offense, by a fine of four hundred dollars or imprisonment for not less than forty-eight hours nor more than thirty days. However, in lieu of the forty-eight hour minimum imprisonment, the court may provide for forty-eight hours of public service employment. The minimum forty-eight hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum forty-eight hour sentence. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of five hundred dollars or imprisonment for not less than seventy-two hours nor more than thirty days. However, in lieu of the seventy-two hour minimum imprisonment, the court may provide for seventy-two hours of public service employment. The minimum seventy-two hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum sentence. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of one thousand dollars or imprisonment for not less than thirty days nor more than ninety days. However, in lieu of the thirty-day minimum imprisonment, the court may provide for thirty days of public service employment. The minimum thirty days imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment instead of the thirty-day minimum sentence. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, a first offense charged for this item may be tried in magistrates court;

(2) for a second offense, by a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of not less than two thousand five hundred dollars nor more than five thousand five hundred dollars and imprisonment for not less than thirty days nor more than two years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of not less than three thousand five hundred dollars nor more than six thousand five hundred dollars and imprisonment for not less than ninety days nor more than three years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars;

(3) for a third offense, by a fine of not less than three thousand eight hundred dollars nor more than six thousand three hundred dollars, and imprisonment for not less than sixty days nor more than three years. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of not less than five thousand

dollars nor more than seven thousand five hundred dollars and imprisonment for not less than ninety days nor more than four years. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of not less than seven thousand five hundred dollars nor more than ten thousand dollars and imprisonment for not less than six months nor more than five years; or

(4) for a fourth or subsequent offense, by imprisonment for not less than one year nor more than five years. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by imprisonment for not less than two years nor more than six years. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by imprisonment for not less than three years nor more than seven years.

(B) No part of the minimum sentences provided in this section may be suspended. Instead of public service employment the court may invoke another sentence provided in this section. For a second or subsequent offense of this section, 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.

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

(D) For the purposes of this section, a conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of a law or ordinance of this or another state or a municipality of this or another state that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including, but not limited to, this section, or prohibits a person from driving a motor vehicle with an unlawful alcohol concentration, including, but not limited to, Section 56-5-2933, constitutes a prior offense of this section. 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.

(E) 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.

(F) 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.

(G) Two hundred dollars of the fine imposed pursuant to subsection (A)(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 breath testing devices, breath testing site video program, and toxicology laboratory.

(H) A person convicted of violating this section, whether for a first offense or subsequent offense, must enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. An assessment of the extent and nature of the alcohol and drug abuse problem of the applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. The Alcohol and Drug Safety Action Program shall determine if the applicant successfully has completed the services. The applicant must attend the first Alcohol and Drug Safety Action Program available after the date of enrollment. 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. An applicant may not 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 successfully has completed services. The court must be notified whether an offender failed to enroll in a certified program within thirty days or failed to participate in the plan of education or treatment. The court may hold the individual in contempt of court if the individual cannot show cause as to why no enrollment occurred within the mandated thirty days or why no progress has been made on the plan of education or treatment.

(I) A person charged for a violation of this section may be prosecuted pursuant to Section 56-5-2933 if the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. A person may not be prosecuted for both a violation of this section and a violation of Section 56-5-2933 for the same incident. A person who violates the provisions of this section is entitled to a jury trial and is afforded the right to challenge certain factors including the following:

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

(J) 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 video recording 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 a motor vehicle 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 allowed to present evidence relating to 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 thirty calendar days before his trial date.

(K) For the purpose of this section, any offense carrying a penalty of imprisonment of ninety days or less may be tried in magistrates court.

(L) In cases in which enhanced penalties for higher levels of alcohol concentration may be applicable, upon the determination of guilt, the finder of fact shall determine the alcohol concentration and the judge shall apply the appropriate penalty. In cases involving jury trials, upon the return of a guilty verdict by the jury, the judge shall instruct the jury to make a finding of fact as to the following: "We the jury find the alcohol concentration of the defendant to be (1) at least eight one-hundredths of one percent but less than ten one-hundredths of one percent; (2) at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent; or (3) sixteen one hundredths of one percent or more." Based on the jury's finding of fact, the judge shall apply the appropriate penalty. If the jury cannot reach a unanimous verdict as to the finding of fact, then the judge shall sentence the defendant based on the nonenhanced penalties.