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The State of South Carolina



Office of the Attorney General

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February 15, 1989

The Honorable R. Carey Werner
Greenville County Magistrate
117 South Main Street
Greer, South Carolina 29651

Dear Magistrate Werner:

In a letter to this Office you referenced that pursuant to Section 56-1-365 of the Code

(a)ny person who forfeits bail posted for, is convicted of, or pleads guilty or nolo contendere in general sessions, municipal, or magistrate's court to an offense which as part of the punishment to be imposed requires that his driver's license be revoked or suspended shall surrender immediately or cause to be surrendered his driver's license to the clerk of court or magistrate upon the verdict or plea.

The Department of Highways and Public Transportation is authorized to collect the driver's license from the clerk of court or magistrate immediately upon receipt. However, if the license is not immediately collected, the magistrate or clerk of court must forward the license to the Department within five days of receiving the license. The Department then notifies the defendant of the suspension or revocation.

Section 56-1-1320 of the Code authorizes the issuance of a provisional drivers' license to a licensed driver who has been convicted of a first offense driving under the influence violation whose license is not already suspended for any other reason. Prior to obtaining the license, the individual must apply for the license, enter an Alcohol and Drug Safety Action Program (hereafter "ADSAP"), furnish proof of responsibility as set forth in Section 56-1-1350 and pay the fee established. The license is only valid for six months from the date it is issued. According to individuals with the Department, before a provisional license can be issued the Department must receive notice of the conviction.

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You have asked whether a driver convicted of driving under the influence whose license is to be immediately surrendered pursuant to Section 56-1-365 may retain his license if enrolled in ADSAP. I am unaware of any authority for such a driver to retain his license simply by enrolling in ADSAP. However the driver may where appropriate seek a provisional driver's license as referenced above.

In order to get a driver's license reinstated, the individual must take those steps typically required of a driver such as those requirements set forth by Sections 56-5-2990, 56-1-400 and 56-9-500. These requirements include successfully completing an ADSAP course, applying for a new license, submitting to an examination and providing proof of financial responsibility. I am unaware of any changes in the policy regarding reinstatement which were brought about by the enactment of the provision noted above which requires the immediate surrender of a driver's license in certain circumstances.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions