

1975 WL 28868 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 29, 1975

**\*1 Re: Provisional Driver's License Law**

Mr. John A. Gaines  
Attorney at Law  
190 ½ West Evans Street  
Florence, S. C. 29501

Dear Mr. Gaines:

Thank you for your letter of May 23, 1975, which the Attorney General has forwarded to me for consideration and reply.

Please find enclosed a copy of the provisional driver's license law.

Your first question is whether the 90-day driver's license suspension for failure to submit to a breathalyzer test, pursuant to Section 46-344, South Carolina Code of Law, 1962, as amended, will bar a person from obtaining a provisional driver's license until the 90-day period has expired?

The answer to this question is stated in Section 2 of the new law. This section prescribes the class of person eligible to apply for a provisional driver's license. In defining the class, Section 2 states, ' . . . and whose license is not presently suspended for any other reason . . . '

Obviously, suspension of an individual's driver's license for failure to submit to a breathalyzer test falls within the above exception, since suspension under Section 46-344 is for failure to submit to the breathalyzer test and not for conviction under Section 46-343. Therefore, an individual cannot take advantage of the provisional driver's license law until the 90-day suspension under Section 46-344 is completed.

Secondly, you ask whether the provisional driver's license law alters present law, requiring nine (9) months driver's license suspension following both conviction under Section 46-343 and failure to submit to the breathalyzer test? The answer to this question must be no, since the provisional driver's license law does not alter existing suspension periods.

The provisional driver's license law merely allows one convicted under Section 46-343 to operate a motor vehicle during the mandatory suspension period. As you will note, the new law does not abolish the six (6) month suspension period provided by Section 46-348.

If I may be of further service to you on this matter, please call on me.

With kindest regards,  
Sincerely,

Paul S. League  
Staff Attorney

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