

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1229

AN ACT

AMENDING SECTION 28-1383, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-1383, Arizona Revised Statutes, is amended to
3 read:

4 28-1383. Aggravated driving or actual physical control while
5 under the influence; violation; classification;
6 definition

7 A. A person is guilty of aggravated driving or actual physical control
8 while under the influence of intoxicating liquor or drugs if the person does
9 any of the following:

10 1. Commits a violation of section 28-1381, section 28-1382 or this
11 section while the person's driver license or privilege to drive is suspended,
12 canceled, revoked or refused or while a restriction is placed on the person's
13 driver license or privilege to drive as a result of violating section 28-1381
14 or 28-1382 or under section 28-1385.

15 2. Within a period of eighty-four months commits a third or subsequent
16 violation of section 28-1381, section 28-1382 or this section or is convicted
17 of a violation of section 28-1381, section 28-1382 or this section and has
18 previously been convicted of any combination of convictions of section
19 28-1381, section 28-1382 or this section or acts in another jurisdiction that
20 if committed in this state would be a violation of section 28-1381, section
21 28-1382 or this section.

22 3. While a person under fifteen years of age is in the vehicle,
23 commits a violation of either:

24 (a) Section 28-1381.

25 (b) Section 28-1382.

26 4. While the person is ordered by the court or required pursuant to
27 section 28-3319 by the department to equip any motor vehicle the person
28 operates with a certified ignition interlock device, does either of the
29 following:

30 (a) While under arrest refuses to submit to any test chosen by a law
31 enforcement officer pursuant to section 28-1321, subsection A.

32 (b) Commits a violation of section 28-1381, section 28-1382 or this
33 section.

34 B. The dates of the commission of the offenses are the determining
35 factor in applying the eighty-four month provision provided in subsection A,
36 paragraph 2 of this section regardless of the sequence in which the offenses
37 were committed. For the purposes of this section, a third or subsequent
38 violation for which a conviction occurs does not include a conviction for an
39 offense arising out of the same series of acts. THE TIME THAT A PROBATIONER
40 IS FOUND TO BE ON ABSCONDER STATUS OR THE TIME THAT A PERSON IS INCARCERATED
41 IN ANY STATE, FEDERAL, COUNTY OR CITY JAIL OR CORRECTIONAL FACILITY IS
42 EXCLUDED WHEN DETERMINING THE EIGHTY-FOUR MONTH PERIOD PROVIDED IN SUBSECTION
43 A, PARAGRAPH 2 AND SUBSECTION E OF THIS SECTION.

1 C. The notice to a person of the suspension, cancellation, revocation
2 or refusal of a driver license or privilege to drive is effective as provided
3 in section 28-3318 or pursuant to the laws of the state issuing the license.

4 D. A person is not eligible for probation, pardon, commutation or
5 suspension of sentence or release on any other basis until the person has
6 served not less than four months in prison if the person is convicted under
7 either of the following:

8 1. Subsection A, paragraph 1 of this section.

9 2. Subsection A, paragraph 2 of this section and within an eighty-four
10 month period has been convicted of two prior violations of section 28-1381,
11 section 28-1382 or this section, or any combination of those sections, or
12 acts in another jurisdiction that if committed in this state would be a
13 violation of section 28-1381, section 28-1382 or this section.

14 E. A person who is convicted under subsection A, paragraph 2 of this
15 section and who within an eighty-four month period has been convicted of
16 three or more prior violations of section 28-1381, section 28-1382 or this
17 section, or any combination of those sections, or acts in another
18 jurisdiction that if committed in this state would be a violation of section
19 28-1381, section 28-1382 or this section is not eligible for probation,
20 pardon, commutation or suspension of sentence or release on any other basis
21 until the person has served not less than eight months in prison.

22 F. A person who is convicted under subsection A, paragraph 3,
23 subdivision (a) of this section shall serve at least the minimum term of
24 incarceration required pursuant to section 28-1381.

25 G. A person who is convicted under subsection A, paragraph 3,
26 subdivision (b) of this section shall serve at least the minimum term of
27 incarceration required pursuant to section 28-1382.

28 H. A person who is convicted of a violation of this section shall
29 attend and complete alcohol or other drug screening, education or treatment
30 from an approved facility. If the person fails to comply with this
31 subsection and is placed on probation, in addition to the provisions of
32 section 13-901 the court may order that the person be incarcerated as a term
33 of probation as follows:

34 1. For a person sentenced pursuant to subsection D of this section,
35 for an individual period of not more than four months and a total period of
36 not more than one year.

37 2. For a person sentenced pursuant to subsection E of this section,
38 for an individual period of not more than eight months and a total period of
39 not more than two years.

40 I. The time that a person spends in custody pursuant to subsection H
41 of this section shall not be counted towards the sentence imposed if the
42 person's probation is revoked and the person is sentenced to prison after
43 revocation of probation.

44 J. On a conviction for a violation of this section, the court:

1 1. Shall report the conviction to the department. On receipt of the
2 report, the department shall revoke the driving privilege of the person. The
3 department shall not issue the person a new driver license within three years
4 of the date of the conviction and, for a conviction of a violation of
5 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b) of this
6 section, shall require the person to equip any motor vehicle the person
7 operates with a certified ignition interlock device pursuant to section
8 28-3319. In addition, the court may order the person to equip any motor
9 vehicle the person operates with a certified ignition interlock device for
10 more than twelve months beginning on the date of reinstatement of the
11 person's driving privilege following a suspension or revocation or on the
12 date of the department's receipt of the report of conviction, whichever
13 occurs later. The person who operates a motor vehicle with a certified
14 ignition interlock device under this paragraph shall comply with article 5 of
15 this chapter.

16 2. In addition to any other penalty prescribed by law, shall order the
17 person to pay an additional assessment of two hundred fifty dollars. If the
18 conviction occurred in the superior court or a justice court, the court shall
19 transmit the monies received pursuant to this paragraph to the county
20 treasurer. If the conviction occurred in a municipal court, the court shall
21 transmit the monies received pursuant to this paragraph to the city
22 treasurer. The city or county treasurer shall transmit the monies received
23 to the state treasurer. The state treasurer shall deposit the monies
24 received in the driving under the influence abatement fund established by
25 section 28-1304. Any fine imposed for a violation of this section and any
26 assessments, restitution and incarceration costs shall be paid before the
27 assessment prescribed in this paragraph.

28 3. Shall order the person to pay a fine of not less than seven hundred
29 fifty dollars.

30 4. In addition to any other penalty prescribed by law, shall order the
31 person to pay an additional assessment of one thousand five hundred dollars
32 to be deposited by the state treasurer in the prison construction and
33 operations fund established by section 41-1651. This assessment is not
34 subject to any surcharge. If the conviction occurred in the superior court
35 or a justice court, the court shall transmit the assessed monies to the
36 county treasurer. If the conviction occurred in a municipal court, the court
37 shall transmit the assessed monies to the city treasurer. The city or county
38 treasurer shall transmit the monies received to the state treasurer.

39 5. In addition to any other penalty prescribed by law, shall order the
40 person to pay an additional assessment of one thousand five hundred dollars
41 to be deposited by the state treasurer in the state general fund. This
42 assessment is not subject to any surcharge. If the conviction occurred in
43 the superior court or a justice court, the court shall transmit the assessed
44 monies to the county treasurer. If the conviction occurred in a municipal
45 court, the court shall transmit the assessed monies to the city treasurer.

1 The city or county treasurer shall transmit the monies received to the state
2 treasurer.

3 K. After completing the period of suspension required by section
4 28-1385, a person whose driving privilege is revoked for a violation of
5 subsection A, paragraph 3 of this section may apply to the department for a
6 special ignition interlock restricted driver license pursuant to section
7 28-1401.

8 L. Aggravated driving or actual physical control while under the
9 influence of intoxicating liquor or drugs committed under:

10 1. Subsection A, paragraph 1 or 2 or paragraph 4, subdivision (b) of
11 this section is a class 4 felony.

12 2. Subsection A, paragraph 3 or paragraph 4, subdivision (a) of this
13 section is a class 6 felony.

14 M. For the purposes of this section, "suspension, cancellation,
15 revocation or refusal" means any suspension, cancellation, revocation or
16 refusal.