

COMMITTEE ON PUBLIC SAFETY AND HUMAN SERVICES

SENATE AMENDMENTS TO S.B. 1008

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 22-371, Arizona Revised Statutes, is amended to
3 read:

4 22-371. Right of appeal; procedure for taking appeal;
5 transcript

6 A. The defendant in a criminal action may appeal to the superior court
7 from the final judgment of a justice or municipal court.

8 B. THE APPELLANT IN AN ACTION HELD IN A JUSTICE OF THE PEACE COURT
9 PURSUANT TO SECTION 28-673, SUBSECTION H MAY APPEAL TO THE SUPERIOR COURT
10 FROM THE FINAL ORDER OF THE JUSTICE OF THE PEACE COURT.

11 ~~B.~~ C. The procedure for appeals from a justice or municipal court to
12 the superior court shall be as provided by rules promulgated by the supreme
13 court.

14 ~~C.~~ D. In a trial in a justice or municipal court, a transcript of the
15 proceedings by a court reporter may be ordered in the sole discretion of the
16 court.

17 ~~D.~~ E. A defendant may not appeal from a judgment or sentence that is
18 entered pursuant to a plea agreement or from an admission to a probation
19 violation.

20 Sec. 2. Section 28-673, Arizona Revised Statutes, is amended to read:

21 28-673. Traffic accidents; implied consent; tests

22 A. A person who operates a motor vehicle within this state gives
23 consent to a test or tests of the person's blood, breath, urine or other
24 bodily substance for the purposes of determining alcohol concentration or
25 drug content if the person is involved in a traffic accident resulting in
26 death or serious physical injury as defined in section 13-105 and a law
27 enforcement officer has probable cause to believe that the person caused the
28 accident or the person is issued a citation for a violation of any provision

1 of this article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of
2 this title.

3 B. The test or tests chosen by the law enforcement agency shall be
4 administered at the direction of a law enforcement officer who has reasonable
5 grounds to believe that the person was involved in a traffic accident
6 resulting in death or serious physical injury as defined in section 13-105
7 and who has probable cause to believe that the person caused the accident or
8 the person was issued a citation for a violation of any provision of this
9 article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of this
10 title.

11 C. After a determination is made that a person was involved in a
12 traffic accident resulting in death or serious physical injury as defined in
13 section 13-105 and the officer has probable cause to believe that the person
14 caused the accident or the person was issued a citation for a violation of
15 any provision of this article, article 2, 3 or 5 through 15 of this chapter
16 or chapter 4 of this title, the person may be requested to submit to and
17 successfully complete any test or tests prescribed by subsection A of this
18 section, and if the person refuses, the person shall be informed that the
19 person's license or permit to drive will be suspended or denied for twelve
20 months, or for two years for a second or subsequent refusal in a period of
21 eighty-four months, unless the person expressly agrees to submit to and
22 successfully completes the test or tests. A failure to expressly agree to
23 the test or successfully complete the test is deemed a refusal. The person
24 shall also be informed that if the test results show a blood or breath
25 alcohol concentration of 0.08 or more, or if the results show a blood or
26 breath alcohol concentration of 0.04 or more and the person was driving or in
27 actual physical control of a commercial motor vehicle, the person's license
28 or permit to drive will be suspended or denied for not less than ninety
29 consecutive days.

30 D. If a person refuses to submit to the test designated by the law
31 enforcement agency as provided in subsection B of this section:

1 1. The test shall not be given, except as provided in section 28-1388,
2 subsection E or pursuant to a search warrant.

3 2. The law enforcement officer directing the administration of the
4 test shall:

5 (a) File a certified report of the refusal with the department.

6 (b) On behalf of the department, serve an order of suspension on the
7 person that is effective fifteen days after the date the order is served.

8 (c) Require the immediate surrender of any license or permit to drive
9 that is issued by this state and that is in the possession or control of the
10 person.

11 (d) If the license or permit is not surrendered, state the reason why
12 it is not surrendered.

13 (e) If a valid license or permit is surrendered, issue a temporary
14 driving permit that is valid for fifteen days.

15 (f) Forward the certified report of refusal, a copy of the completed
16 notice of suspension, a copy of any completed temporary permit and any driver
17 license or permit taken into possession under this section to the department
18 within five days after the issuance of the notice of suspension.

19 E. Section 28-1321, subsections E through P apply to any test
20 prescribed by this section and to any person who refuses to submit to a test
21 prescribed by this section, except that:

22 1. The certified report shall state the law enforcement officer's
23 reasonable grounds to believe that the person was involved in a traffic
24 accident resulting in death or serious physical injury as defined in section
25 13-105 and the law enforcement officer's probable cause to believe that the
26 person caused the accident or the person was issued a citation for a
27 violation of any provision of this article, article 2, 3 or 5 through 15 of
28 this chapter or chapter 4 of this title.

29 2. The certified report shall be filed pursuant to subsection D of
30 this section.

31 3. The scope of the hearing shall include the law enforcement
32 officer's probable cause to believe that the person was involved in a traffic

1 accident resulting in death or serious physical injury as defined in section
2 13-105 and the law enforcement officer's probable cause to believe that the
3 person caused the accident or the person was issued a citation for a
4 violation of any provision of this article, article 2, 3 or 5 through 15 of
5 this chapter or chapter 4 of this title.

6 F. A person who is dead, unconscious or otherwise in a condition
7 rendering the person incapable of refusal is deemed not to have withdrawn the
8 consent provided by subsection A of this section and the test or tests shall
9 be administered.

10 G. IF THE LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE TO BELIEVE THE
11 PERSON CAUSED A TRAFFIC ACCIDENT RESULTING IN DEATH OR SERIOUS PHYSICAL
12 INJURY AND WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS, THE
13 OFFICER SHALL ALSO SERVE AN ORDER OF SUSPENSION ON BEHALF OF THE DEPARTMENT.
14 THE ORDER OF SUSPENSION SHALL SUSPEND THE PERSON'S DRIVER LICENSE OR
15 PRIVILEGE TO DRIVE FOR NINETY CONSECUTIVE DAYS. THE ORDER OF SUSPENSION:

- 16 1. IS EFFECTIVE IMMEDIATELY ON SERVICE BY THE LAW ENFORCEMENT OFFICER.
- 17 2. SHALL REQUIRE THE IMMEDIATE SURRENDER OF ANY LICENSE OR PERMIT
18 ISSUED BY THIS STATE IN POSSESSION OF THE PERSON.
- 19 3. SHALL CONTAIN INFORMATION CONCERNING THE RIGHT TO A HEARING.
- 20 4. SHALL BE ACCOMPANIED BY PRINTED FORMS THAT THE PERSON MAY FILL OUT
21 AND SIGN AND MAIL TO THE APPROPRIATE JURISDICTION TO REQUEST A HEARING.
- 22 5. SHALL BE ENTERED ON THE DEPARTMENT'S RECORDS UPON RECEIPT OF THE
23 REPORT BY THE OFFICER AND A COPY OF THE ORDER OF SUSPENSION.

24 H. THE PERSON MAY SUBMIT A WRITTEN REQUEST TO THE EXECUTIVE HEARING
25 OFFICE OF THE DEPARTMENT FOR A HEARING TO CONTEST AN ORDER OF SUSPENSION
26 ISSUED UNDER SUBSECTION G OF THIS SECTION. THE REQUEST MUST BE RECEIVED
27 WITHIN SEVEN DAYS AFTER THE ORDER OF SUSPENSION IS SERVED. THE DEPARTMENT
28 SHALL TRANSMIT THE REQUEST FOR A HEARING AND THE ORDER OF SUSPENSION FILED
29 PURSUANT TO SUBSECTION G OF THIS SECTION TO THE JUSTICE COURT OF THE PRECINCT
30 IN WHICH THE ACCIDENT OCCURRED. THE JUSTICE COURT SHALL CONDUCT THE HEARING
31 WITHIN FIFTEEN DAYS AFTER RECEIPT OF THE REQUEST FOR A HEARING AND ORDER OF
32 SUSPENSION.

1 I. THE ATTORNEY FOR THE JURISDICTION OF THE LAW ENFORCEMENT AGENCY
2 THAT SUBMITTED THE ORDER OF SUSPENSION SHALL REPRESENT THE AGENCY AT THE
3 HEARING. THE SCOPE OF A HEARING UNDER SUBSECTION H OF THIS SECTION SHALL
4 INCLUDE ONLY THE FOLLOWING ISSUES:

5 1. WHETHER THE OFFICER HAD PROBABLE CAUSE TO BELIEVE THE PERSON CAUSED
6 AN ACCIDENT RESULTING IN DEATH OR SERIOUS PHYSICAL INJURY AS DEFINED IN
7 SECTION 13-105.

8 2. WHETHER THE OFFICER HAD PROBABLE CAUSE TO BELIEVE THE PERSON WAS
9 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

10 J. THE DEPARTMENT AND THE SUPREME COURT MAY ADOPT RULES AS NECESSARY
11 TO IMPLEMENT THIS SECTION.

12 Sec. 3. Effective date

13 Sections 22-371 and 28-673, Arizona Revised Statutes, as amended by
14 this act, are effective from and after December 31, 2008.”

15 Amend title to conform

2/12/08
3:31 PM
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