

REFERENCE TITLE: *operating under the influence; watercraft*

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1080

Introduced by
Senator Gray L; Representative Pearce; Senators Huppenthal, O'Halleran,
Verschoor; Representatives Groe, Weiers JP

AN ACT

AMENDING SECTIONS 5-302, 5-321.01, 5-349, 5-391, 5-395, 5-395.01, 5-395.02,
5-395.03, 5-395.04, 5-396, 5-397 AND 28-1304, ARIZONA REVISED STATUTES;
RELATING TO BOATING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 5-302, Arizona Revised Statutes, is amended to
3 read:

4 5-302. Application of chapter

5 A. ~~The provisions of~~ This chapter ~~apply~~ APPLIES to all watercraft
6 operating on all of the waterways of this state, including that part of
7 waters THAT IS common to interstate boundaries ~~which~~ AND THAT is within the
8 boundaries of this state, excluding vessels owned by agencies of the federal
9 government in performance of their official duties.

10 B. ~~The provisions of~~ Section 5-391, subsections ~~F and~~ G AND H and
11 sections ~~5-329~~ 5-392 and 5-393 apply to all watercraft in this state, whether
12 or not operating on waterways of this state, and includes watercraft
13 operating on waterways that are part of water THAT IS common to interstate
14 boundaries ~~which are~~ AND THAT IS within the boundaries of this state.

15 Sec. 2. Section 5-321.01, Arizona Revised Statutes, is amended to
16 read:

17 5-321.01. Staggered watercraft registration; rules

18 A. The commission shall establish a system of staggered registration
19 on a monthly basis in order to distribute the work of registering watercraft
20 as uniformly as practicable throughout the twelve months of the calendar
21 year.

22 B. All watercraft registrations provided for in this article expire in
23 accordance with the schedules established by the commission. The commission
24 may set the number of renewal periods within a month from one each month to
25 one each day depending on which system is most economical and best
26 accommodates the public.

27 C. The commission, in order to initiate the staggered registration
28 system, may register a watercraft for a period of greater or less than twelve
29 months up to a period of ~~eighteen~~ THIRTY-SIX months. If a registration
30 period is set for a period other than twelve months the commission may
31 prorate the registration fee.

32 D. The commission shall adopt rules necessary to accomplish the
33 purposes of this section.

34 Sec. 3. Section 5-349, Arizona Revised Statutes, is amended to read:

35 5-349. Watercraft casualties; violation; classification

36 A. The operator of a watercraft involved in a collision, accident or
37 other casualty ~~shall~~, to the extent the operator can do so without serious
38 danger to the operator's own watercraft or persons aboard, SHALL:

39 1. IMMEDIATELY STOP THE WATERCRAFT AT THE SCENE OF THE COLLISION,
40 ACCIDENT OR OTHER CASUALTY OR AS CLOSE TO THE SCENE OF THE COLLISION,
41 ACCIDENT OR OTHER CASUALTY AS POSSIBLE BUT SHALL IMMEDIATELY RETURN TO THE
42 SCENE.

43 2. Render all practical and necessary assistance to persons affected
44 to save them from danger caused by the collision, accident or OTHER casualty.

1 3. REMAIN AT THE SCENE OF THE COLLISION, ACCIDENT OR OTHER CASUALTY
2 UNTIL THE OPERATOR HAS COMPLIED WITH SUBSECTION B OF THIS SECTION.

3 B. The operator of a watercraft involved in a collision, accident or
4 other casualty shall give the operator's name and address and the
5 identification of the operator's watercraft to any person injured and to the
6 owners of any property damaged.

7 C. Whenever death or injury results from any watercraft collision,
8 accident or other casualty, a written report shall be submitted within
9 forty-eight hours. For every other collision, accident or other casualty
10 involving property damage exceeding five hundred dollars, a report shall be
11 submitted within five days after the incident by the operator or owner of the
12 watercraft involved. Written reports shall be submitted directly to the
13 department for use in statistical studies for casualty prevention. Reports
14 shall not be used as evidence in any trial, civil or criminal, arising from
15 any collision, accident or other casualty. ~~Upon~~ ON request, a report shall
16 be forwarded to the United States coast guard or other authorized federal
17 agency to be used in statistical studies for casualty prevention.

18 D. To maintain uniformity, watercraft casualty reports shall be on a
19 form approved by the commission.

20 E. Every peace officer who, in the regular course of duty,
21 investigates any watercraft collision, accident or other casualty involving
22 death or personal injury or involving property damage exceeding five hundred
23 dollars shall prepare and transmit a report to the department pursuant to
24 subsection C of this section.

25 F. If the operator of a watercraft is involved in a collision or
26 accident that results in death or serious physical injury, as defined in
27 section 13-105, and the operator fails to stop or comply with the
28 requirements of subsection A of this section, the operator is guilty of a
29 class 5 felony. If the operator of a watercraft is involved in a collision
30 or accident that results in injury other than death or serious physical
31 injury and the operator fails to stop and comply with the requirements of
32 subsection A of this section, the operator is guilty of a class 6 felony. If
33 the operator of a watercraft is involved in a collision or accident that
34 results only in damage to another watercraft that is operated or attended by
35 another person, and the operator fails to stop and comply with the
36 requirements of subsection B of this section, the operator is guilty of a
37 class 3 misdemeanor.

38 Sec. 4. Section 5-391, Arizona Revised Statutes, is amended to read:
39 5-391. Enforcement; violation; classification

40 A. Any person who violates any provision of this chapter, except
41 section 5-341, subsection A, B, C or D, section 5-349, section 5-350,
42 subsection C, section 5-393, 5-395, 5-396 or 5-397 and subsection C, ~~F~~ ~~or~~ G
43 OR H of this section or any rule issued thereunder, is guilty of a petty
44 offense. Any person who violates section 5-350, subsection C ~~or subsection C~~
45 ~~of this section~~ is guilty of a class 2 misdemeanor.

1 B. All peace officers of the state, counties and cities shall enforce
2 the provisions of this chapter and all laws and rules relating to the
3 operation of watercraft.

4 C. In the enforcement of this chapter, the operator of the watercraft
5 ~~upon~~ ON being hailed by any peace officer shall stop immediately and lay to,
6 or maneuver in such a way as to permit the peace officer to come aboard or
7 alongside. The operator may be ordered ashore to correct any unlawful
8 condition, issued a written warning or written repair order, ~~or~~ or issued a
9 citation for any violation of this chapter.

10 D. AN OPERATOR OF A WATERCRAFT WHO WILFULLY FLEES OR ATTEMPTS TO ELUDE
11 A PURSUING LAW ENFORCEMENT OFFICER ISSUING AN ORDER PURSUANT TO SUBSECTION C
12 OF THIS SECTION IS GUILTY OF A CLASS 5 FELONY. THE LAW ENFORCEMENT
13 WATERCRAFT SHALL BE APPROPRIATELY MARKED TO SHOW THAT IT IS AN OFFICIAL LAW
14 ENFORCEMENT WATERCRAFT.

15 ~~D.~~ E. In the enforcement of this chapter, ~~the provisions of~~ sections
16 13-2506 and 13-3903 ~~shall~~ apply.

17 ~~E.~~ F. Each failure to obey an order or to comply with a warning order
18 issued under ~~the provisions of~~ subsection C of this section shall constitute
19 a separate offense punishable as a separate violation of this chapter.

20 ~~F.~~ G. A person is guilty of a class 6 felony who knowingly removes,
21 defaces, obliterates, changes, alters or causes to be removed, defaced,
22 obliterated, changed or altered a factory, engine, serial, outdrive, lower
23 unit, power trim or hull identification number or mark on a watercraft.

24 ~~G.~~ H. A person is guilty of a class 2 misdemeanor who:

25 1. Knowingly displays or has in ~~his~~ THE PERSON'S possession a
26 fictitious, stolen, revoked or altered certificate of number, department
27 issued number or annual decal.

28 2. Lends to or knowingly permits the use of ~~his~~ THE PERSON'S
29 certificate of number, department issued number or annual decal on a
30 watercraft for which those items have not been issued.

31 ~~H.~~ I. ~~Upon~~ ON receipt of notice of conviction of a person under
32 subsection ~~For~~ G OR H of this section, the department may revoke the numbers
33 and decals issued to the watercraft ~~which~~ THAT was involved in the violation
34 and any other watercraft owned by the person convicted.

35 Sec. 5. Section 5-395, Arizona Revised Statutes, is amended to read:

36 5-395. Operating or in actual physical control of a motorized
37 watercraft while intoxicated; violation;
38 classification; definition

39 A. It is unlawful for any person to operate or be in actual physical
40 control of a motorized watercraft that is underway within this state under
41 any of the following circumstances:

42 1. While under the influence of intoxicating liquor, any drug, a vapor
43 releasing substance containing a toxic substance or any combination of
44 liquor, drugs or vapor releasing substances if the person is impaired to the
45 slightest degree.

1 2. If the person has an alcohol concentration of 0.08 or more within
2 two hours of operating or being in actual physical control of the motorized
3 watercraft and the alcohol concentration results from alcohol consumed either
4 before or while operating or being in actual physical control of the
5 motorized watercraft.

6 3. While there is any drug as defined in section 13-3401 or its
7 metabolite in the person's body.

8 4. If the motorized watercraft is a commercial motorized watercraft
9 and the person has an alcohol concentration of 0.04 or more.

10 B. It is not a defense to a charge of a violation of subsection A,
11 paragraph 1 of this section that the person is or has been entitled to use
12 the drug under the laws of this state.

13 C. A person using a drug prescribed by a medical practitioner licensed
14 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
15 subsection A, paragraph 3 of this section.

16 ~~C.~~ D. The state shall not dismiss a charge of violating this section
17 for either of the following:

18 1. In return for a plea of guilty or no contest to any other offense
19 by the person charged with the violation of this section.

20 2. For the purpose of pursuing any other misdemeanor or a petty
21 offense, including those arising out of the same event or course of conduct,
22 unless there is clearly an insufficient legal or factual basis to pursue the
23 charge of violating this section.

24 ~~D.~~ E. In any prosecution for a violation of this section the state,
25 for the purpose of classification and sentencing pursuant to section 5-395.01
26 or 5-396, shall allege all prior convictions of violating this section
27 occurring within the past thirty-six months, unless there is clearly an
28 insufficient legal or factual basis to do so.

29 ~~E.~~ F. In ~~any~~ A trial, action or proceeding for a violation of this
30 section or section 5-396 other than a trial, action or proceeding involving
31 operating or being in actual physical control of a commercial motorized
32 watercraft, the defendant's alcohol concentration within two hours of the
33 time of operating or being in actual physical control as shown by analysis of
34 the defendant's blood, breath or other bodily substance gives rise to the
35 following presumptions:

36 1. If there was at that time 0.05 or less alcohol concentration in the
37 defendant's blood, breath or other bodily substance, it may be presumed that
38 the defendant was not under the influence of intoxicating liquor.

39 2. If there was at that time in excess of 0.05 but less than 0.08
40 alcohol concentration in the defendant's blood, breath or other bodily
41 substance, such fact shall not give rise to any presumption that the
42 defendant was or was not under the influence of intoxicating liquor, but such
43 fact may be considered with other competent evidence in determining the guilt
44 or innocence of the defendant.

1 3. If there was at that time 0.08 or more alcohol concentration in the
2 defendant's blood, breath or other bodily substance, it may be presumed that
3 the defendant was under the influence of intoxicating liquor.

4 ~~G. Paragraph 1, 2 or 3~~ SUBSECTION F of this ~~subsection~~ SECTION shall
5 not be construed as limiting the introduction of any other competent evidence
6 bearing on the question of whether or not the defendant was under the
7 influence of intoxicating liquor.

8 ~~F.~~ H. If a blood test is administered, only a physician, a registered
9 nurse or another qualified person may withdraw blood for the purpose of
10 determining the alcohol concentration or drug content. The qualifications of
11 the individual withdrawing the blood and the method used to withdraw the
12 blood are not foundational prerequisites for the admissibility of any blood
13 alcohol content determination made pursuant to this subsection.

14 ~~G.~~ I. If a law enforcement officer administers a duplicate breath
15 test and the person tested is given a reasonable opportunity to arrange for
16 an additional test pursuant to subsection ~~H.~~ J of this section, a sample of
17 the person's breath does not have to be collected or preserved.

18 ~~H.~~ J. The person tested shall be given a reasonable opportunity to
19 arrange for any physician, registered nurse or other qualified person of the
20 tested person's own choosing to administer a test or tests in addition to any
21 administered at the direction of a law enforcement officer. The failure or
22 inability to obtain an additional test by a person does not preclude the
23 admission of evidence relating to the test or tests taken at the direction of
24 a law enforcement officer.

25 ~~I.~~ K. If a person under arrest refuses to submit to a test or tests
26 under section 5-395.03, whether or not a sample was collected pursuant to
27 subsection ~~J.~~ L of this section or a search warrant, evidence of refusal is
28 admissible in any civil or criminal action or other proceeding. The issue of
29 refusal shall be an issue of fact to be determined by the trier of fact in
30 all cases.

31 ~~J.~~ L. Notwithstanding any other law, if a law enforcement officer has
32 probable cause to believe that a person has violated this section and a
33 sample of blood, urine or any other bodily substance is taken from that
34 person for any reason a portion of that sample sufficient for analysis shall
35 be provided to a law enforcement officer if requested for law enforcement
36 purposes. A person who fails to comply with this subsection is guilty of a
37 class 1 misdemeanor.

38 ~~K.~~ M. A person who collects blood, urine or any other bodily
39 substance under this section or any hospital, laboratory or clinic employing
40 or utilizing the services of the person does not incur any civil liability as
41 a result of this activity if requested by a law enforcement officer to
42 collect blood, urine or any other bodily substances unless the person, while
43 performing the activity, acts with gross negligence.

44 ~~L.~~ N. A statement by the defendant that the defendant was operating a
45 motorized watercraft that was underway and that was involved in an accident

1 resulting in injury to or death of any person is admissible in any criminal
2 proceeding without further proof of corpus delicti if it is otherwise
3 admissible.

4 ~~M.~~ O. At the arraignment, the court shall inform the defendant that
5 the defendant may request a trial by jury and that the request, if made,
6 shall be granted.

7 ~~N.~~ P. ~~In~~ FOR THE PURPOSES OF this section, "alcohol concentration"
8 means grams of alcohol per one hundred milliliters of blood or grams of
9 alcohol per two hundred ten liters of breath.

10 Sec. 6. Section 5-395.01, Arizona Revised Statutes, is amended to
11 read:

12 5-395.01. Operating or in actual physical control of a
13 motorized watercraft while intoxicated;
14 classification; penalties

15 A. A person who is convicted of a violation of section 5-395 is guilty
16 of a class 1 misdemeanor. The person:

17 1. SHALL BE SENTENCED TO SERVE NOT LESS THAN TEN CONSECUTIVE DAYS IN
18 JAIL AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE
19 UNLESS THE ENTIRE SENTENCE IS SERVED.

20 2. Shall pay a fine of not less than two hundred fifty dollars. ~~In~~
21 ~~addition to any other penalties under this section, the judge shall order the~~
22 ~~person to complete alcohol or other drug screening that is provided by a~~
23 ~~facility approved by the department of health services or a probation~~
24 ~~department. If a judge determines that the person requires further alcohol~~
25 ~~or other drug education or treatment, the person may be required pursuant to~~
26 ~~court order to obtain alcohol or other drug education or treatment under the~~
27 ~~court's supervision from an approved facility. The judge may review an~~
28 ~~education or treatment determination at the request of the state or the~~
29 ~~defendant or on the judge's initiative. The person shall pay the costs of~~
30 ~~the screening, education or treatment unless the court waives part or all of~~
31 ~~the costs.~~

32 3. MAY BE ORDERED BY A COURT TO PERFORM COMMUNITY RESTITUTION.

33 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE
34 DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS
35 FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY
36 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE
37 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER.
38 IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE
39 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL
40 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

41 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE
42 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
43 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
44 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
45 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT

1 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
2 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

3 B. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 1 OF THIS SECTION AND
4 except as provided in section 5-398.01, the ~~court~~ JUDGE may suspend ~~any~~
5 ~~imposed sentence for a first violation of section 5-395~~ ALL BUT TWENTY-FOUR
6 CONSECUTIVE HOURS OF THE SENTENCE if the person completes a court ordered
7 alcohol or other drug screening, education or treatment program. If the
8 person fails to complete the court ordered alcohol or other drug screening,
9 education or treatment program and has not been placed on probation, the
10 court shall issue an order to show cause to the defendant as to why the
11 remaining jail sentence should not be served.

12 ~~C. A court may order a person sentenced pursuant to this section to~~
13 ~~perform community restitution.~~

14 ~~D. C. Notwithstanding subsection B of this section,~~ If within a
15 period of ~~sixty~~ EIGHTY-FOUR months a person is convicted of a second
16 violation of section 5-395 or is convicted of a violation of section 5-395
17 and has previously been convicted of an act in another ~~state~~ JURISDICTION
18 that if committed in this state would be a violation of section 5-395, the
19 person:

20 1. Shall be sentenced to serve not less than ninety days in jail,
21 thirty days of which shall be served consecutively, and ~~the person~~ is not
22 eligible for probation or suspension of execution of sentence unless the
23 entire sentence has been served. ~~, except that the judge may suspend at the~~
24 ~~time of sentencing all but thirty days of the sentence if the person~~
25 ~~completes a court ordered alcohol or other drug screening, education or~~
26 ~~treatment program. If the person fails to complete the court ordered alcohol~~
27 ~~or other drug screening, education or treatment program and has not been~~
28 ~~placed on probation, the court shall issue an order to show cause as to why~~
29 ~~the remaining jail sentence should not be served. The judge~~

30 2. Shall order the person to pay a fine of not less than five hundred
31 dollars.

32 3. SHALL BE ORDERED BY THE COURT TO PERFORM AT LEAST THIRTY HOURS OF
33 COMMUNITY RESTITUTION.

34 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
35 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON
36 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
37 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
38 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
39 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
40 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
41 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
42 TREASURER.

43 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
44 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
45 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION

1 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
2 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
3 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
4 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED
5 TO THE STATE TREASURER.

6 D. NOTWITHSTANDING SUBSECTION C, PARAGRAPH 1 OF THIS SECTION, AT THE
7 TIME OF SENTENCING, THE JUDGE MAY SUSPEND ALL BUT THIRTY DAYS OF THE SENTENCE
8 IF THE PERSON COMPLETES A COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING,
9 EDUCATION OR TREATMENT PROGRAM. IF THE PERSON FAILS TO COMPLETE THE COURT
10 ORDERED ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM AND
11 HAS NOT BEEN PLACED ON PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW
12 CAUSE AS TO WHY THE REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

13 E. ~~The dates of the commission of the offense are the determining~~
14 ~~factor~~ In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection ~~D~~ C
15 of this section, THE DATES OF THE COMMISSION OF THE OFFENSE SHALL BE THE
16 DETERMINING FACTOR irrespective of the sequence in which the offenses were
17 committed.

18 F. A second violation for which a conviction occurs as provided in
19 this section shall not include a conviction for an offense arising out of the
20 same series of acts.

21 ~~F. If a person is referred to a screening or treatment facility, that~~
22 ~~facility shall report to the court whether the person has successfully~~
23 ~~completed the screening, education or treatment program.~~

24 ~~G. Any political subdivision processing or utilizing the services of a~~
25 ~~person ordered to perform community restitution pursuant to this section does~~
26 ~~not incur any civil liability to the person ordered to perform community~~
27 ~~restitution as a result of these activities unless the political subdivision~~
28 ~~or its agent or employee acts with gross negligence.~~

29 ~~H. After a person who is sentenced pursuant to subsection B of this~~
30 ~~section has served twenty four consecutive hours in jail or after a person~~
31 ~~who is sentenced pursuant to subsection D of this section has served~~
32 ~~forty eight consecutive hours in jail and after receiving confirmation that~~
33 ~~the person is employed or is a student, the court, on pronouncement of any~~
34 ~~jail sentence under this section, may provide in the sentence that the person~~
35 ~~may be permitted, if the person is employed or is a student and can continue~~
36 ~~the person's employment or studies, to continue such employment or studies~~
37 ~~for not more than twelve hours per day nor more than five days per week, and~~
38 ~~the remaining day, days or parts of days shall be spent in jail until the~~
39 ~~sentence is served. The person shall be allowed out of jail only long enough~~
40 ~~to complete the actual hours of employment or studies and no longer.~~

41 ~~I. A person who is sentenced pursuant to this section is eligible for~~
42 ~~a home detention program pursuant to the provisions of section 9-499.07,~~
43 ~~subsections M through R or section 11-459, subsections L through Q.~~

44 ~~J. The court shall allow the allegation of a prior conviction or other~~
45 ~~pending charge of a violation of section 5-395 filed twenty or more days~~

1 ~~before the date the case is actually tried and may allow the allegation of a~~
2 ~~prior conviction or other pending charge of a violation of section 5-395~~
3 ~~filed any time before the date the case is actually tried, provided that when~~
4 ~~the allegation is filed this state must make available to the defendant a~~
5 ~~copy of any information obtained concerning the prior conviction or other~~
6 ~~pending charge. Any conviction may be used to enhance another conviction~~
7 ~~irrespective of the dates on which the offenses occurred within the sixty~~
8 ~~month provision.~~

9 ~~K. If a person is placed on probation for violating section 5-395, the~~
10 ~~probation shall be supervised unless the court finds that supervised~~
11 ~~probation is not necessary or the court does not have supervisory probation~~
12 ~~services.~~

13 ~~L. Persons who are convicted pursuant to section 5-395 shall pay an~~
14 ~~additional assessment of five hundred dollars or, if the person is convicted~~
15 ~~of a second violation pursuant to subsection D of this section, shall pay an~~
16 ~~additional assessment of one thousand two hundred fifty dollars to be~~
17 ~~deposited by the state treasurer in the prison construction and operations~~
18 ~~fund established by section 41-1651. These assessments are not subject to~~
19 ~~any surcharge. If the conviction occurred in the superior court or a justice~~
20 ~~court, the court shall transmit the assessed monies to the county treasurer.~~
21 ~~If the conviction occurred in a municipal court, the court shall transmit the~~
22 ~~assessed monies to the city treasurer. The city or county treasurer shall~~
23 ~~transmit the monies received to the state treasurer.~~

24 ~~M. Persons convicted pursuant to section 5-395 shall pay an additional~~
25 ~~assessment of five hundred dollars or for a second violation pursuant to~~
26 ~~subsection D of this section shall pay an additional assessment of one~~
27 ~~thousand two hundred fifty dollars to be deposited by the state treasurer in~~
28 ~~the state general fund. These assessments are not subject to any surcharge.~~
29 ~~If the conviction occurred in the superior court or a justice court, the~~
30 ~~court shall transmit the assessed monies to the county treasurer. If the~~
31 ~~conviction occurred in a municipal court, the court shall transmit the~~
32 ~~assessed monies to the city treasurer. The city or county treasurer shall~~
33 ~~transmit the monies received to the state treasurer.~~

34 Sec. 7. Section 5-395.02, Arizona Revised Statutes, is amended to
35 read:

36 5-395.02. Admissibility of breath test or other records

37 A. The results of a breath test administered for the purpose of
38 determining a person's alcohol concentration as defined in section 5-395 are
39 admissible as evidence in any trial, action or proceeding on establishing the
40 following foundational requirements:

41 1. The test was performed using a quantitative breath testing device
42 approved by the ~~department of health services or the~~ department of public
43 safety. A properly authenticated certification by the ~~department of health~~
44 ~~services or the~~ department of public safety or judicial notice of ~~department~~

1 ~~of health services or~~ department of public safety rules is sufficient to
2 establish this requirement.

3 2. The operator who conducted the test possessed a valid permit issued
4 by the department of health services or the department of public safety to
5 operate the device used to conduct the test.

6 3. Duplicate tests were administered and the test results were within
7 0.02 alcohol concentration of each other ~~or~~ AND an operator observed the
8 person charged with the violation for ~~twenty~~ FIFTEEN minutes immediately
9 preceding the administration of the test.

10 4. The operator who conducted the test followed an operational
11 checklist approved by the ~~department of health services or the~~ department of
12 public safety for the operation of the device used to conduct the test. The
13 testimony of the operator is sufficient to establish this requirement.

14 5. The device used to conduct the test was in proper operating
15 condition. Records of periodic maintenance that show that the device was in
16 proper operating condition are admissible in any proceeding as prima facie
17 evidence that the device was in proper operating condition at the time of the
18 test. Calibration checks with a standard alcohol concentration solution
19 bracketing each person's duplicate breath test are one type of records of
20 periodic maintenance that satisfies the requirements of this section. The
21 records are public records.

22 B. Compliance with subsection A of this section is the only
23 requirement for the admission in evidence of a breath test result.

24 C. The inability of any person to obtain manufacturer's schematics and
25 software for a quantitative breath testing device that is approved as
26 prescribed in subsection A of this section shall not affect the admissibility
27 of the results of a breath test pursuant to this section.

28 D. Records that may be obtained or are otherwise maintained pursuant
29 to section 28-1327 are admissible as evidence in any trial, action or
30 proceeding.

31 Sec. 8. Section 5-395.03, Arizona Revised Statutes, is amended to
32 read:

33 5-395.03. Test for alcohol concentration or drug content;
34 refusal; civil penalty

35 A. Any person who operates a motorized watercraft that is underway
36 within this state ~~shall submit~~ GIVES CONSENT, subject to section 4-244,
37 paragraph 34, section 5-395 or section 5-396, to a test or tests of the
38 person's blood, breath, urine or other bodily substance for the purpose of
39 determining alcohol concentration or drug content if the person is arrested
40 for any offense arising out of acts alleged to have been committed in
41 violation of this chapter or section 4-244, paragraph 34 while the person was
42 operating or in actual physical control of a motorized watercraft that was
43 underway while under the influence of intoxicating liquor or drugs. The test
44 or tests chosen by the law enforcement agency shall be administered at the
45 direction of a law enforcement officer having reasonable grounds to believe

1 the person to have been operating or in actual physical control of a
2 motorized watercraft that is underway within this state while under the
3 influence of intoxicating liquor or drugs, or if the person is under
4 twenty-one years of age, with spirituous liquor in the person's body.

5 B. Following an arrest a violator shall be requested to submit to and
6 successfully complete any test or tests prescribed by subsection A of this
7 section, and if the violator refuses the violator shall be informed that the
8 violator is subject to a civil penalty.

9 C. A person who refuses any test or tests prescribed by subsection A
10 of this section is subject to a civil penalty of ~~seven hundred fifty~~ THREE
11 THOUSAND dollars and shall pay an additional civil penalty of ~~five hundred~~
12 ONE THOUSAND dollars. ~~to~~ THE ADDITIONAL CIVIL PENALTY OF ONE THOUSAND
13 DOLLARS SHALL be deposited by the state treasurer in the prison construction
14 and operations fund established by section 41-1651. ~~The additional civil~~
15 ~~penalty of five hundred dollars~~ AND is not subject to any surcharge. If the
16 additional civil penalty is imposed by the superior court or a justice court,
17 the court shall transmit the amount collected for the additional civil
18 penalty to the county treasurer. If the additional civil penalty is imposed
19 by a municipal court, the court shall transmit the amount collected for the
20 additional civil penalty to the city treasurer. The city or county treasurer
21 shall transmit the monies received pursuant to this subsection to the state
22 treasurer.

23 D. If a person under arrest refuses to submit to the test designated
24 by the law enforcement agency as provided in subsection A of this section
25 none shall be given, except as provided in section 5-395, subsection ~~J~~ L or
26 pursuant to a search warrant.

27 Sec. 9. Section 5-395.04, Arizona Revised Statutes, is amended to
28 read:

29 5-395.04. Preliminary breath tests; authority

30 A. A law enforcement officer who has reasonable suspicion to believe
31 that a person has committed a violation of section 5-395 may request that the
32 person submit to a preliminary breath test or tests before an arrest.

33 B. In addition to a breath test or tests the officer may require that
34 the person submit to further testing pursuant to section 5-395.03.

35 C. The director of the ~~department of health services or the~~ department
36 of public safety shall adopt rules prescribing the approval of quantitative
37 preliminary breath testing devices.

38 Sec. 10. Section 5-396, Arizona Revised Statutes, is amended to read:

39 5-396. Aggravated operating or actual physical control of
40 motorized watercraft while under the influence of
41 intoxicating liquor or drugs; classification

42 A. A person is guilty of aggravated operating or actual physical
43 control of a motorized watercraft that is underway while under the influence
44 of intoxicating liquor or drugs if the person DOES ANY OF THE FOLLOWING:

1 1. WITHIN A PERIOD OF EIGHTY-FOUR MONTHS commits a third or subsequent
2 violation of section 5-395 or 5-397 or this section or is convicted of a
3 violation of section 5-395 or 5-397 or this section and has previously been
4 convicted of any combination of convictions of section 5-395 or 5-397 or this
5 section or acts committed in another ~~state~~ JURISDICTION that if committed in
6 this state would be a violation of section 5-395 or 5-397 or this section
7 ~~within a period of sixty months.~~

8 2. WHILE A PERSON UNDER FIFTEEN YEARS OF AGE IS ABOARD THE MOTORIZED
9 WATERCRAFT, COMMITS A VIOLATION OF EITHER:

10 (a) SECTION 5-395.

11 (b) SECTION 5-397.

12 B. The dates of the commission of the offenses are the determining
13 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision provided in
14 subsection A, PARAGRAPH 1 of this section regardless of the sequence in which
15 the offenses were committed. For purposes of this section, a third or
16 subsequent violation for which a conviction occurs does not include a
17 conviction for an offense arising out of the same series of acts. THE TIME
18 THAT A PROBATIONER IS FOUND TO BE ON ABSCONDER STATUS OR THE TIME THAT A
19 PERSON IS INCARCERATED IN ANY STATE, FEDERAL, COUNTY OR CITY JAIL OR
20 CORRECTIONAL FACILITY IS EXCLUDED WHEN DETERMINING THE EIGHTY-FOUR MONTH
21 PERIOD PROVIDED IN SUBSECTION A, PARAGRAPH 1 AND SUBSECTION D OF THIS
22 SECTION.

23 ~~C. Aggravated operating or actual physical control of a motorized
24 watercraft that is underway while under the influence of intoxicating liquor
25 or drugs is a class 4 felony.~~

26 ~~D. C. Notwithstanding section 41-1604.06,~~ A person who is convicted
27 under subsection A, PARAGRAPH 1 of this section and who within a ~~sixty~~
28 EIGHTY-FOUR month period has been convicted of two prior violations of
29 section 5-395 or 5-397 or this section, or acts committed in another ~~state~~
30 JURISDICTION that if committed in this state would be a violation of section
31 5-395 or 5-397 or this section, is not eligible for probation, pardon,
32 commutation or suspension of sentence or release on any other basis until the
33 person has served not less than four months in prison.

34 ~~E. D. Notwithstanding section 41-1604.06,~~ A person who is convicted
35 under subsection A, PARAGRAPH 1 of this section and who within a ~~sixty~~
36 EIGHTY-FOUR month period has been convicted of three or more prior violations of section
37 5-395 or 5-397 or this section, or acts committed in another state that if
38 committed in this state would be a violation of section 5-395 or 5-397 or
39 this section, is not eligible for probation, pardon, commutation or
40 suspension of sentence or release on any other basis until the person has
41 served not less than eight months in prison.

42 E. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,
43 SUBDIVISION (a) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM TERM OF
44 INCARCERATION REQUIRED PURSUANT TO SECTION 5-395.

1 F. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,
2 SUBDIVISION (b) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM TERM OF
3 INCARCERATION REQUIRED PURSUANT TO SECTION 5-397.

4 ~~F.~~ G. A person who is convicted of a violation of this section and
5 who is placed on probation shall attend and complete alcohol or drug
6 screening, counseling and education from an approved facility and, if ordered
7 by the court, treatment from an approved facility. If the person fails to
8 comply with this subsection, in addition to section 13-901 the court may
9 order that the person be incarcerated as a term of probation as follows:

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

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

16 ~~G.~~ H. The time that a person spends in custody pursuant to subsection
17 ~~D, E or F~~ G of this section shall not be counted toward the sentence imposed
18 if the person's probation is revoked and the person is sentenced to prison
19 following revocation of probation.

20 I. ON CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT:

21 1. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE
22 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS. IF THE
23 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
24 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
25 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES
26 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
27 MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT
28 THE MONIES RECEIVED IN THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND
29 ESTABLISHED BY SECTION 28-1304. ANY FINE IMPOSED FOR A VIOLATION OF THIS
30 SECTION AND ANY ASSESSMENTS, RESTITUTION AND INCARCERATION COSTS SHALL BE
31 PAID BEFORE THE ASSESSMENT PRESCRIBED IN THIS PARAGRAPH.

32 ~~H.~~ 2. ~~A~~ SHALL ORDER THE person ~~convicted of a violation of this~~
33 ~~section shall~~ TO pay a fine of not less than seven hundred fifty dollars.

34 ~~I.~~ 3. In addition to any other penalty prescribed by law, ~~persons~~
35 ~~convicted pursuant to this section~~ shall ORDER THE PERSON TO pay an
36 additional assessment of one thousand five hundred dollars to be deposited by
37 the state treasurer in the prison construction and operations fund
38 established by section 41-1651. This assessment is not subject to any
39 surcharge. If the conviction occurred in the superior court or a justice
40 court, the court shall transmit the assessed monies to the county treasurer.
41 If the conviction occurred in a municipal court, the court shall transmit the
42 assessed monies to the city treasurer. The city or county treasurer shall
43 transmit the monies received to the state treasurer.

44 ~~J.~~ 4. In addition to any other penalty prescribed by law, ~~persons~~
45 ~~convicted pursuant to this section~~ shall ORDER THE PERSON TO pay an

1 additional assessment of one thousand five hundred dollars to be deposited by
2 the state treasurer in the state general fund. This assessment is not
3 subject to any surcharge. If the conviction occurred in the superior court
4 or a justice court, the court shall transmit the assessed monies to the
5 county treasurer. If the conviction occurred in a municipal court, the court
6 shall transmit the assessed monies to the city treasurer. The city or county
7 treasurer shall transmit the monies received to the state treasurer.

8 J. AGGRAVATED OPERATING OR ACTUAL PHYSICAL CONTROL OF A MOTORIZED
9 WATERCRAFT THAT IS UNDERWAY WHILE UNDER THE INFLUENCE OF AN INTOXICATING
10 LIQUOR OR DRUGS COMMITTED UNDER:

11 1. SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS A CLASS 4 FELONY.

12 2. SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS A CLASS 6 FELONY.

13 Sec. 11. Section 5-397, Arizona Revised Statutes, is amended to read:

14 5-397. Operating or in actual physical control of a motorized
15 watercraft while under the extreme influence of
16 intoxicating liquor; trial by jury; sentencing;
17 classification; definition

18 A. It is unlawful for a person to operate or be in actual physical
19 control of a motorized watercraft that is underway within this state if the
20 person has an alcohol concentration of 0.15 or more within two hours of
21 operating or being in actual physical control of the motorized watercraft and
22 the alcohol concentration results from alcohol consumed either before or
23 while operating or being in actual physical control of the motorized
24 watercraft.

25 B. A person who is convicted of a violation of this section is guilty
26 of operating or being in actual physical control of a motorized watercraft
27 while under the extreme influence of alcohol.

28 C. At the arraignment, the court shall inform the defendant that the
29 defendant may request a trial by jury and that the request, if made, shall be
30 granted.

31 D. A person who is convicted of a violation of this section:

32 1. Shall be sentenced to serve not less than thirty consecutive days
33 in jail and is not eligible for probation or suspension of execution of
34 sentence unless the entire sentence is served. A PERSON WHO HAS AN ALCOHOL
35 CONCENTRATION OF 0.20 OR MORE SHALL BE SENTENCED TO SERVE NOT LESS THAN
36 FORTY-FIVE CONSECUTIVE DAYS IN JAIL AND IS NOT ELIGIBLE FOR PROBATION OR
37 SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE IS SERVED.

38 2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT
39 THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A
40 FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. THE FINE PRESCRIBED IN THIS
41 PARAGRAPH AND ANY ASSESSMENTS, RESTITUTION AND INCARCERATION COSTS SHALL BE
42 PAID BEFORE THE ASSESSMENT PRESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION.

43 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS.
44 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE
45 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE

1 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE
2 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL
3 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER
4 SHALL DEPOSIT THE MONIES IN THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND
5 ESTABLISHED BY SECTION 28-1304.

6 ~~3-~~ 4. May be ordered by a court to perform community restitution.

7 ~~4-~~ 5. Shall pay an additional assessment of one thousand dollars to
8 be deposited by the state treasurer in the prison construction and operations
9 fund established by section 41-1651. This assessment is not subject to any
10 surcharge. If the conviction occurred in the superior court or a justice
11 court, the court shall transmit the assessed monies to the county treasurer.
12 If the conviction occurred in a municipal court, the court shall transmit the
13 assessed monies to the city treasurer. The city or county treasurer shall
14 transmit the monies received to the state treasurer.

15 ~~5-~~ 6. Shall pay an additional assessment of one thousand dollars to
16 be deposited by the state treasurer in the state general fund. This
17 assessment is not subject to any surcharge. If the conviction occurred in
18 the superior court or a justice court, the court shall transmit the assessed
19 monies to the county treasurer. If the conviction occurred in a municipal
20 court, the court shall transmit the assessed monies to the city treasurer.
21 The city or county treasurer shall transmit the monies received to the state
22 treasurer.

23 E. Notwithstanding subsection D, paragraph 1 of this section, at the
24 time of sentencing IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN
25 0.20, the judge may suspend all but ten days of the sentence if the person
26 completes a court ordered alcohol or other drug screening, education or
27 treatment program. If the person fails to complete the court ordered alcohol
28 or other drug screening, education or treatment program and has not been
29 placed on probation, the court shall issue an order to show cause to the
30 defendant as to why the remaining jail sentence should not be served.

31 F. If within a period of ~~sixty~~ EIGHTY-FOUR months a person is
32 convicted of a second violation of this section or is convicted of a
33 violation of this section and has previously been convicted of a violation of
34 section 5-395 or 5-396 or an act in another jurisdiction that if committed in
35 this state would be a violation of this section or section 5-395 or 5-396,
36 the person:

37 1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced
38 to serve not less than one hundred twenty days in jail, sixty days of which
39 shall be served consecutively, and is not eligible for probation or
40 suspension of execution of sentence unless the entire sentence has been
41 served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE
42 SENTENCED TO SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF
43 WHICH SHALL BE SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR
44 SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN
45 SERVED.

1 2. Shall pay a fine of not less than five hundred dollars, EXCEPT THAT
2 A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A FINE OF
3 NOT LESS THAN ONE THOUSAND DOLLARS. THE FINE PRESCRIBED IN THIS PARAGRAPH
4 AND ANY ASSESSMENTS, RESTITUTION AND INCARCERATION COSTS SHALL BE PAID BEFORE
5 THE ASSESSMENT PRESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION.

6 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY DOLLARS.
7 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE
8 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE
9 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE
10 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL
11 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER
12 SHALL DEPOSIT THE MONIES IN THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND
13 ESTABLISHED BY SECTION 28-1304.

14 ~~3-~~ 4. ~~May~~ SHALL be ordered by a court to perform AT LEAST THIRTY
15 HOURS OF community restitution.

16 ~~4-~~ 5. Shall pay an additional assessment of one thousand two hundred
17 fifty dollars to be deposited by the state treasurer in the prison
18 construction and operations fund established by section 41-1651. This
19 assessment is not subject to any surcharge. If the conviction occurred in
20 the superior court or a justice court, the court shall transmit the assessed
21 monies to the county treasurer. If the conviction occurred in a municipal
22 court, the court shall transmit the assessed monies to the city treasurer.
23 The city or county treasurer shall transmit the monies received to the state
24 treasurer.

25 ~~5-~~ 6. Shall pay an additional assessment of one thousand two hundred
26 fifty dollars to be deposited by the state treasurer in the state general
27 fund. This assessment is not subject to any surcharge. If the conviction
28 occurred in the superior court or a justice court, the court shall transmit
29 the assessed monies to the county treasurer. If the conviction occurred in a
30 municipal court, the court shall transmit the assessed monies to the city
31 treasurer. The city or county treasurer shall transmit the monies received
32 to the state treasurer.

33 G. Notwithstanding subsection F, paragraph 1 of this section, at the
34 time of sentencing, IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN
35 0.20, the judge may suspend all but sixty days of the sentence if the person
36 completes a court ordered alcohol or other drug screening, education or
37 treatment program. If the person fails to complete the court ordered alcohol
38 or other drug screening, education or treatment program and has not been
39 placed on probation, the court shall issue an order to show cause as to why
40 the remaining jail sentence should not be served.

41 H. In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection F
42 of this section, the dates of the commission of the offense shall be the
43 determining factor, irrespective of the sequence in which the offenses were
44 committed.

1 I. A second violation for which a conviction occurs as provided in
2 this section shall not include a conviction for an offense arising out of the
3 same series of acts.

4 J. A person who is convicted of a violation of this section is guilty
5 of a class 1 misdemeanor.

6 K. For the purposes of this section, "alcohol concentration" means
7 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
8 two hundred ten liters of breath.

9 Sec. 12. Section 28-1304, Arizona Revised Statutes, is amended to
10 read:

11 28-1304. Driving under the influence abatement fund

12 A. The driving under the influence abatement fund is established
13 consisting of monies deposited pursuant to [SECTION 5-396](#), [SECTION 5-397](#),
14 section 28-1382, subsection D, paragraph 3 and subsection F, paragraph 3 and
15 section 28-1383, subsection J, paragraph 2.

16 B. The oversight council on driving or operating under the influence
17 abatement established by section 28-1303 shall administer the fund.

18 C. Twenty-five per cent of the monies deposited in the fund shall be
19 used for grants for innovative programs pursuant to section 28-1303,
20 subsection H, paragraph 2 and seventy per cent of the monies deposited in the
21 fund shall be used for grants to political subdivisions and tribal
22 governments pursuant to section 28-1303, subsection H, paragraph 1.

23 D. Not more than five per cent of the monies deposited in the fund
24 shall be used for both of the following:

25 1. Administrative purposes of the oversight council on driving or
26 operating under the influence abatement.

27 2. Payment of the costs of notification prescribed by section 28-1467.

28 E. Monies in the fund are:

29 1. Continuously appropriated.

30 2. Exempt from the provisions of section 35-190 relating to lapsing of
31 appropriations.

32 F. On notice from the oversight council on driving or operating under
33 the influence abatement, the state treasurer shall invest and divest monies
34 in the fund as provided in section 35-313, and monies earned from investments
35 shall be credited to the fund.