

REFERENCE TITLE: **handguns; restaurants; posting**

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1113

Introduced by
Senators Harper, Pearce; Representatives Gowan, Stevens: Senators Allen S,
Gould, Gray L, Verschoor; Representatives Antenori, Barnes, Biggs, Burges,
Kavanagh, McLain, Quelland

AN ACT

AMENDING SECTION 4-226, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-229; AMENDING SECTIONS 4-244, 4-246, 5-395.03, 28-1321, 28-1385, 28-3320, 28-3322 AND 28-3511, ARIZONA REVISED STATUTES; RELATING TO HANDGUNS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 4-226, Arizona Revised Statutes, is amended to
3 read:

4 4-226. Exemptions

5 The provisions of this title do not apply to:

6 1. Drugstores selling spirituous liquors only upon prescription.

7 2. Any confectionery candy containing less than five per cent by
8 weight of alcohol.

9 3. Ethyl alcohol intended for use or used for the following purposes:

10 (a) Scientific, chemical, mechanical, industrial and medicinal
11 purposes.

12 (b) Use by those authorized to procure spirituous liquor or ethyl
13 alcohol tax-free, as provided by the acts of Congress and regulations
14 promulgated thereunder.

15 (c) In the manufacture of denatured alcohol produced and used as
16 provided by the acts of Congress and regulations promulgated thereunder.

17 (d) In the manufacture of patented, patent, proprietary, medicinal,
18 pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical and
19 industrial preparations or products, unfit and not used for beverage
20 purposes.

21 (e) In the manufacture of flavoring extracts and syrups unfit for
22 beverage purposes.

23 4. The purchase, storage, distribution, service or consumption of wine
24 in connection with the bona fide practice of a religious belief or as an
25 integral part of a religious exercise by a church recognized by the United
26 States internal revenue service under section 501(c)(3) of the internal
27 revenue code and in a manner not dangerous to public health or safety. This
28 exemption does not apply to any alleged violation of section 4-244, paragraph
29 9, ~~33, 34 or 40~~ 35, 36 OR 42.

30 Sec. 2. Title 4, chapter 2, article 2, Arizona Revised Statutes, is
31 amended by adding section 4-229, to read:

32 4-229. Restaurant licenses; handguns; posting of notice

33 A. A LICENSEE WHO HOLDS A RESTAURANT LICENSE ISSUED PURSUANT TO
34 SECTION 4-205.02 MAY ALLOW THE POSSESSION OF A HANDGUN ON THE LICENSED
35 PREMISES.

36 B. A LICENSEE WHO DOES NOT ALLOW POSSESSION OF A HANDGUN UNDER THIS
37 SECTION SHALL POST A NOTICE ON THE LICENSED PREMISES THAT STATES "THIS
38 ESTABLISHMENT DOES NOT ALLOW HANDGUNS. THIS NOTICE IS POSTED PURSUANT TO
39 SECTION 4-229, ARIZONA REVISED STATUTES". THE NOTICE SHALL BE IN AT LEAST
40 EIGHT POINT TYPE EXCEPT THAT THE WORDS "SECTION 4-229, ARIZONA REVISED
41 STATUTES" MAY BE IN ANY OTHER POINT TYPE.

42 C. A NOTICE POSTED PURSUANT TO THIS SECTION SHALL BE CONSPICUOUSLY
43 POSTED IN A POSITION THAT ASSURES IT IS LIKELY TO BE READ. THE DEPARTMENT OF
44 LIQUOR LICENSES AND CONTROL SHALL ADOPT RULES PERTAINING TO THIS SECTION,
45 INCLUDING RULES RELATING TO THE DESIGN, LOCATION AND POSTING OF NOTICE.

1 Sec. 3. Section 4-244, Arizona Revised Statutes, is amended to read:

2 4-244. Unlawful acts

3 It is unlawful:

4 1. For a person to buy for resale, sell or deal in spirituous liquors
5 in this state without first having procured a license duly issued by the
6 board.

7 2. For a person to sell or deal in alcohol for beverage purposes
8 without first complying with this title.

9 3. For a distiller, vintner, brewer or wholesaler knowingly to sell,
10 dispose of or give spirituous liquor to any person other than a licensee
11 except in sampling wares as may be necessary in the ordinary course of
12 business, except in donating spirituous liquor to a nonprofit organization
13 which has obtained a special event license for the purpose of charitable fund
14 raising activities or except in donating spirituous liquor with a cost to the
15 distiller, brewer or wholesaler of up to one hundred dollars in a calendar
16 year to an organization that is exempt from federal income taxes under
17 section 501(c) of the internal revenue code and not licensed under this
18 title.

19 4. For a distiller, vintner or brewer to require a wholesaler to offer
20 or grant a discount to a retailer, unless the discount has also been offered
21 and granted to the wholesaler by the distiller, vintner or brewer.

22 5. For a distiller, vintner or brewer to use a vehicle for trucking or
23 transportation of spirituous liquors unless there is affixed to both sides of
24 the vehicle a sign showing the name and address of the licensee and the type
25 and number of the person's license in letters not less than three and
26 one-half inches in height.

27 6. For a person to take or solicit orders for spirituous liquors
28 unless the person is a salesman or solicitor of a licensed wholesaler, a
29 salesman or solicitor of a distiller, brewer, vintner, importer or broker or
30 a registered retail agent.

31 7. For any retail licensee to purchase spirituous liquors from any
32 person other than a solicitor or salesman of a wholesaler licensed in this
33 state.

34 8. For a retailer to acquire an interest in property owned, occupied
35 or used by a wholesaler in his business, or in a license with respect to the
36 premises of the wholesaler.

37 9. Except as provided in paragraphs 10 and 11 of this section, for a
38 licensee or other person to sell, furnish, dispose of or give, or cause to be
39 sold, furnished, disposed of or given, to a person under the legal drinking
40 age or for a person under the legal drinking age to buy, receive, have in the
41 person's possession or consume spirituous liquor. This paragraph shall not
42 prohibit the employment by an off-sale retailer of persons who are at least
43 sixteen years of age to check out, if supervised by a person on the premises
44 who is at least nineteen years of age, package or carry merchandise,
45 including spirituous liquor, in unbroken packages, for the convenience of the

1 customer of the employer, if the employer sells primarily merchandise other
2 than spirituous liquor.

3 10. For a licensee to employ a person under ~~the age of~~ nineteen years
4 **OF AGE** to manufacture, sell or dispose of spirituous liquors. This paragraph
5 shall not prohibit the employment by an off-sale retailer of persons who are
6 at least sixteen years of age to check out, if supervised by a person on the
7 premises who is at least nineteen years of age, package or carry merchandise,
8 including spirituous liquor, in unbroken packages, for the convenience of the
9 customer of the employer, if the employer sells primarily merchandise other
10 than spirituous liquor.

11 11. For an on-sale retailer to employ a person under ~~the age of~~
12 nineteen years **OF AGE** in any capacity connected with the handling of
13 spirituous liquors. This paragraph does not prohibit the employment by an
14 on-sale retailer of a person under ~~the age of~~ nineteen years **OF AGE** who
15 cleans up the tables on the premises for reuse, removes dirty dishes, keeps a
16 ready supply of needed items and helps clean up the premises.

17 12. For a licensee, when engaged in waiting on or serving customers, to
18 consume spirituous liquor or for a licensee or on-duty employee to be on or
19 about the licensed premises while in an intoxicated or disorderly condition.

20 13. For an employee of a retail licensee, during that employee's
21 working hours or in connection with such employment, to give to or purchase
22 for any other person, accept a gift of, purchase for himself or consume
23 spirituous liquor, except that:

24 (a) An employee of a licensee, during that employee's working hours or
25 in connection with the employment, while the employee is not engaged in
26 waiting on or serving customers, may give spirituous liquor to or purchase
27 spirituous liquor for any other person.

28 (b) An employee of an on-sale retail licensee, during that employee's
29 working hours or in connection with the employment, while the employee is not
30 engaged in waiting on or serving customers, may taste samples of beer or wine
31 not to exceed four ounces per day or distilled spirits not to exceed two
32 ounces per day provided by an employee of a wholesaler or distributor who is
33 present at the time of the sampling.

34 (c) An employee of an on-sale retail licensee, under the supervision
35 of a manager as part of the employee's training and education, while not
36 engaged in waiting on or serving customers may taste samples of distilled
37 spirits not to exceed two ounces per educational session or beer or wine not
38 to exceed four ounces per educational session, and provided that a licensee
39 shall not have more than two educational sessions in any thirty day period.

40 (d) An unpaid volunteer who is a bona fide member of a club and who is
41 not engaged in waiting on or serving spirituous liquor to customers may
42 purchase for himself and consume spirituous liquor while participating in a
43 scheduled event at the club. An unpaid participant in a food competition may
44 purchase for himself and consume spirituous liquor while participating in the
45 food competition.

1 (e) An unpaid volunteer of a special event licensee under section
2 4-203.02 may purchase and consume spirituous liquor while not engaged in
3 waiting on or serving spirituous liquor to customers at the special event.
4 This subdivision does not apply to an unpaid volunteer whose responsibilities
5 include verification of a person's legal drinking age, security or the
6 operation of any vehicle or heavy machinery.

7 14. For a licensee or other person to serve, sell or furnish spirituous
8 liquor to a disorderly or obviously intoxicated person, or for a licensee or
9 employee of the licensee to allow or permit a disorderly or obviously
10 intoxicated person to come into or remain on or about the premises, except
11 that a licensee or an employee of the licensee may allow an obviously
12 intoxicated person to remain on the premises for a period of time of not to
13 exceed thirty minutes after the state of obvious intoxication is known or
14 should be known to the licensee in order that a nonintoxicated person may
15 transport the obviously intoxicated person from the premises. For the
16 purposes of this section, "obviously intoxicated" means inebriated to the
17 extent that a person's physical faculties are substantially impaired and the
18 impairment is shown by significantly uncoordinated physical action or
19 significant physical dysfunction that would have been obvious to a reasonable
20 person.

21 15. For an on-sale or off-sale retailer or an employee of such retailer
22 to sell, dispose of, deliver or give spirituous liquor to a person between
23 the hours of 2:00 a.m. and 6:00 a.m. on weekdays, and 2:00 a.m. and
24 10:00 a.m. on Sundays.

25 16. For a licensee or employee to knowingly permit any person on or
26 about the licensed premises to give or furnish any spirituous liquor to any
27 person under ~~the age of~~ twenty-one YEARS OF AGE or knowingly permit any
28 person under ~~the age of~~ twenty-one YEARS OF AGE to have in the person's
29 possession spirituous liquor on the licensed premises.

30 17. For an on-sale retailer or an employee of such retailer to allow a
31 person to consume or possess spirituous liquors on the premises between the
32 hours of 2:30 a.m. and 6:00 a.m. on weekdays, and 2:30 a.m. and 10:00 a.m. on
33 Sundays.

34 18. For an on-sale retailer to permit an employee or for an employee to
35 solicit or encourage others, directly or indirectly, to buy the employee
36 drinks or anything of value in the licensed premises during the employee's
37 working hours. No on-sale retailer shall serve employees or allow a patron
38 of the establishment to give spirituous liquor to, purchase liquor for or
39 drink liquor with any employee during the employee's working hours.

40 19. For an off-sale retailer or employee to sell spirituous liquor
41 except in the original unbroken container, to permit spirituous liquor to be
42 consumed on the premises or to knowingly permit spirituous liquor to be
43 consumed on adjacent property under the licensee's exclusive control.

44 20. For a person to consume spirituous liquor in a public place,
45 thoroughfare or gathering. The license of a licensee permitting a violation

1 of this paragraph on the premises shall be subject to revocation. This
2 paragraph does not apply to the sale of spirituous liquors on the premises of
3 and by an on-sale retailer. This paragraph also does not apply to a person
4 consuming beer from a broken package in a public recreation area or on
5 private property with permission of the owner or lessor or on the walkways
6 surrounding such private property.

7 21. For a person to have possession of or to transport spirituous
8 liquor which is manufactured in a distillery, winery, brewery or rectifying
9 plant contrary to the laws of the United States and this state. Any property
10 used in transporting such spirituous liquor shall be forfeited to the state
11 and shall be seized and disposed of as provided in section 4-221.

12 22. For an on-sale retailer or employee to allow a person under the
13 legal drinking age to remain in an area on the licensed premises during those
14 hours in which its primary use is the sale, dispensing or consumption of
15 alcoholic beverages after the licensee, or the licensee's employees, know or
16 should have known that the person is under the legal drinking age. An
17 on-sale retailer may designate an area of the licensed premises as an area in
18 which spirituous liquor will not be sold or consumed for the purpose of
19 allowing underage persons on the premises if the designated area is separated
20 by a physical barrier and at no time will underage persons have access to the
21 area in which spirituous liquor is sold or consumed. A licensee or an
22 employee of a licensee may require a person who intends to enter a licensed
23 premises or a portion of a licensed premises where persons under the legal
24 drinking age are prohibited under this section to exhibit a written
25 instrument of identification that is acceptable under section 4-241 as a
26 condition of entry. The director, or a municipality, may adopt rules to
27 regulate the presence of underage persons on licensed premises provided the
28 rules adopted by a municipality are more stringent than those adopted by the
29 director. The rules adopted by the municipality shall be adopted by local
30 ordinance and shall not interfere with the licensee's ability to comply with
31 this paragraph. This paragraph does not apply:

32 (a) If the person under the legal drinking age is accompanied by a
33 spouse, parent or legal guardian of legal drinking age or is an on-duty
34 employee of the licensee.

35 (b) If the owner, lessee or occupant of the premises is a club as
36 defined in section 4-101, paragraph 7, subdivision (a) and the person under
37 the legal drinking age is any of the following:

38 (i) An active duty military service member.

39 (ii) A veteran.

40 (iii) A member of the United States army national guard or the United
41 States air national guard.

42 (iv) A member of the United States military reserve forces.

43 (c) To the area of the premises used primarily for the serving of food
44 during the hours when food is served.

1 23. For an on-sale retailer or employee to conduct drinking contests,
2 to sell or deliver to a person an unlimited number of spirituous liquor
3 beverages during any set period of time for a fixed price, to deliver more
4 than thirty-two ounces of beer, one liter of wine or four ounces of distilled
5 spirits in any spirituous liquor drink to one person at one time for that
6 person's consumption or to advertise any practice prohibited by this
7 paragraph.

8 24. For a licensee or employee to knowingly permit the unlawful
9 possession, use, sale or offer for sale of narcotics, dangerous drugs or
10 marijuana on the premises.

11 25. For a licensee or employee to knowingly permit prostitution or the
12 solicitation of prostitution on the premises.

13 26. For a licensee or employee to knowingly permit unlawful gambling on
14 the premises.

15 27. For a licensee or employee to knowingly permit trafficking or
16 attempted trafficking in stolen property on the premises.

17 28. For a licensee or employee to fail or refuse to make the premises
18 or records available for inspection and examination as provided in this title
19 or to comply with a lawful subpoena issued under this title.

20 29. For any person other than a peace officer, the licensee or an
21 employee of the licensee acting with the permission of the licensee to be in
22 possession of a firearm while on the licensed premises of an on-sale retailer
23 ~~knowing~~, OTHER THAN THE PREMISES OF A RESTAURANT LICENSEE WHO HAS NOT POSTED
24 A NOTICE PURSUANT TO SECTION 4-229, IF THE PERSON KNOWS such possession is
25 prohibited. This paragraph shall not be construed to include a situation in
26 which a person is on licensed premises for a limited time in order to seek
27 emergency aid and such person does not buy, receive, consume or possess
28 spirituous liquor. This paragraph shall not apply to hotel or motel guest
29 room accommodations nor to the exhibition or display of a firearm in
30 conjunction with a meeting, show, class or similar event.

31 30. For a licensee or employee to knowingly permit a person in
32 possession of a firearm other than a peace officer, the licensee or an
33 employee of the licensee acting with the permission of the licensee to remain
34 on the licensed premises OTHER THAN THE PREMISES OF A RESTAURANT LICENSEE WHO
35 HAS NOT POSTED A NOTICE PURSUANT TO SECTION 4-229 or to serve, sell or
36 furnish spirituous liquor to a person in possession of a firearm while on the
37 licensed premises of an on-sale retailer OTHER THAN THE PREMISES OF A
38 RESTAURANT LICENSEE WHO HAS NOT POSTED A NOTICE PURSUANT TO SECTION 4-229.
39 This paragraph shall not apply to hotel or motel guest room accommodations
40 nor to the exhibition or display of a firearm in conjunction with a meeting,
41 show, class or similar event. It shall be a defense to action under this
42 paragraph if the licensee or employee requested assistance of a peace officer
43 to remove such person.

1 31. FOR ANY PERSON IN POSSESSION OF A HANDGUN WHILE ON THE LICENSED
2 PREMISES OF A RESTAURANT LICENSEE WHO HAS NOT POSTED A NOTICE PURSUANT TO
3 SECTION 4-229 TO CONSUME SPIRITUOUS LIQUOR.

4 32. FOR ANY PERSON, EXCEPT A PERSON CERTIFIED BY THE ARIZONA PEACE
5 OFFICER STANDARDS AND TRAINING BOARD PURSUANT TO SECTION 41-1822 OR A PERSON
6 WHO HAS THE AUTHORITY OF A PEACE OFFICER PURSUANT TO SECTION 8-205, 12-253 OR
7 13-916, IN POSSESSION OF A HANDGUN WHILE ON THE LICENSED PREMISES OF A
8 RESTAURANT LICENSEE WHO HAS NOT POSTED A NOTICE PURSUANT TO SECTION 4-229 TO
9 REMOVE THE HANDGUN FROM A HOLSTER OR TO REMOVE THE HANDGUN FROM A PLACE OF
10 LAWFUL CONCEALMENT EXCEPT TO DEFEND THE LIFE OF THAT PERSON OR TO DEFEND THE
11 LIFE OF ANOTHER PERSON.

12 ~~31.~~ 33. For a licensee or employee to knowingly permit spirituous
13 liquor to be removed from the licensed premises, except in the original
14 unbroken package. This paragraph shall not apply to either of the following:

15 (a) A person who removes a bottle of wine which has been partially
16 consumed in conjunction with a purchased meal from licensed premises if a
17 cork is inserted flush with the top of the bottle or the bottle is otherwise
18 securely closed.

19 (b) A person who is in licensed premises that have noncontiguous
20 portions that are separated by a public or private walkway or driveway and
21 who takes spirituous liquor from one portion of the licensed premises across
22 the public or private walkway OR DRIVEWAY directly to the other portion of
23 the licensed premises.

24 ~~32.~~ 34. For a person who is obviously intoxicated to buy or attempt to
25 buy spirituous liquor from a licensee or employee of a licensee or to consume
26 spirituous liquor on licensed premises.

27 ~~33.~~ 35. For a person under ~~the age of~~ twenty-one years OF AGE to drive
28 or be in physical control of a motor vehicle while there is any spirituous
29 liquor in the person's body.

30 ~~34.~~ 36. For a person under ~~the age of~~ twenty-one years OF AGE to
31 operate or be in physical control of a motorized watercraft that is underway
32 while there is any spirituous liquor in the person's body. For the purposes
33 of this paragraph, "underway" has the same meaning prescribed in section
34 5-301.

35 ~~35.~~ 37. For a licensee, manager, employee or controlling person to
36 purposely induce a voter, by means of alcohol, to vote or abstain from voting
37 for or against a particular candidate or issue on an election day.

38 ~~36.~~ 38. For a licensee to fail to report an occurrence of an act of
39 violence to either the department or a law enforcement agency.

40 ~~37.~~ 39. For a licensee to use a vending machine for the purpose of
41 dispensing spirituous liquor.

42 ~~38.~~ 40. For a licensee to offer for sale a wine carrying a label
43 including a reference to Arizona or any Arizona city, town or geographic
44 location unless at least seventy-five per cent by volume of the grapes used
45 in making the wine were grown in Arizona.

1 ~~39-~~ 41. For a retailer to knowingly allow a customer to bring
 2 spirituous liquor onto the licensed premises, except that an on-sale retailer
 3 may allow a wine and food club to bring wine onto the premises for
 4 consumption by the club's members and guests of the club's members in
 5 conjunction with meals purchased at a meeting of the club that is conducted
 6 on the premises and that at least seven members attend. An on-sale retailer
 7 who allows wine and food clubs to bring wine onto its premises under this
 8 paragraph shall comply with all applicable provisions of this title and any
 9 rules adopted pursuant to this title to the same extent as if the on-sale
 10 retailer had sold the wine to the members of the club and their guests. For
 11 the purposes of this paragraph, "wine and food club" means an association
 12 that has more than twenty bona fide members paying at least six dollars per
 13 year in dues and that has been in existence for at least one year.

14 ~~40-~~ 42. For a person under ~~the age of~~ twenty-one years **OF AGE** to have
 15 in the person's body any spirituous liquor. In a prosecution for a violation
 16 of this paragraph:

17 (a) Pursuant to section 4-249, it is a defense that the spirituous
 18 liquor was consumed in connection with the bona fide practice of a religious
 19 belief or as an integral part of a religious exercise and in a manner not
 20 dangerous to public health or safety.

21 (b) Pursuant to section 4-226, it is a defense that the spirituous
 22 liquor was consumed for a bona fide medicinal purpose and in a manner not
 23 dangerous to public health or safety.

24 ~~41-~~ 43. For an employee of a licensee to accept any gratuity,
 25 compensation, remuneration or consideration of any kind to either:

26 (a) Permit a person who is under twenty-one years of age to enter any
 27 portion of the premises where that person is prohibited from entering
 28 pursuant to paragraph 22 of this section.

29 (b) Sell, furnish, dispose of or give spirituous liquor to a person
 30 who is under twenty-one years of age.

31 ~~42-~~ 44. For a person to purchase, offer for sale or use any device,
 32 machine or process which mixes spirituous liquor with pure oxygen or another
 33 gas to produce a vaporized product for the purpose of consumption by
 34 inhalation.

35 ~~43-~~ 45. For a retail licensee or an employee of a retail licensee to
 36 sell spirituous liquor to a person if the retail licensee or employee knows
 37 the person intends to resell the spirituous liquor.

38 Sec. 4. Section 4-246, Arizona Revised Statutes, is amended to read:
 39 4-246. Violation; classification

40 A. A person violating any provision of this title is guilty of a class
 41 2 misdemeanor unless another classification is prescribed.

42 B. A person violating section 4-244, paragraph 9, 14, ~~33, 41 or 43~~ 31,
 43 35, 43 OR 45 is guilty of a class 1 misdemeanor.

44 C. In addition to any other penalty prescribed by law, the court may
 45 suspend the privilege to drive of a person under eighteen years of age for a

1 period of up to one hundred eighty days on receiving the record of the
2 person's first conviction for a violation of section 4-244, paragraph 9.

3 D. In addition to any other penalty prescribed by law, a person who is
4 convicted of a violation of section 4-244, paragraph ~~41~~ 43 shall pay a fine
5 of not less than five hundred dollars.

6 E. In addition to any other penalty prescribed by law, a person who is
7 convicted of a violation of section 4-241, subsection L, M or N shall pay a
8 fine of not less than two hundred fifty dollars.

9 Sec. 5. Section 5-395.03, Arizona Revised Statutes, is amended to
10 read:

11 5-395.03. Test for alcohol concentration or drug content;
12 refusal

13 A. Any person who operates a motorized watercraft that is underway
14 within this state gives consent, subject to section 4-244, paragraph ~~34~~ 36,
15 section 5-395 or section 5-396, to a test or tests of the person's blood,
16 breath, urine or other bodily substance for the purpose of determining
17 alcohol concentration or drug content if the person is arrested for any
18 offense arising out of acts alleged to have been committed in violation of
19 this chapter or section 4-244, paragraph ~~34~~ 36 while the person was operating
20 or in actual physical control of a motorized watercraft that was underway
21 while under the influence of intoxicating liquor or drugs. The test or tests
22 chosen by the law enforcement agency shall be administered at the direction
23 of a law enforcement officer having reasonable grounds to believe the person
24 to have been operating or in actual physical control of a motorized
25 watercraft that is underway within this state while under the influence of
26 intoxicating liquor or drugs, or if the person is under twenty-one years of
27 age, with spirituous liquor in the person's body.

28 B. Following an arrest a violator shall be requested to submit to and
29 successfully complete any test or tests prescribed by subsection A of this
30 section.

31 C. If a person under arrest refuses to submit to the test designated
32 by the law enforcement agency as provided in subsection A of this section
33 none shall be given, except as provided in section 5-395, subsection L or
34 pursuant to a search warrant.

35 Sec. 6. Section 28-1321, Arizona Revised Statutes, is amended to read:

36 28-1321. Implied consent; tests; refusal to submit to test;
37 order of suspension; hearing; review; temporary
38 permit; notification of suspension; special ignition
39 interlock restricted driver license

40 A. A person who operates a motor vehicle in this state gives consent,
41 subject to section 4-244, paragraph ~~33~~ 35 or section 28-1381, 28-1382 or
42 28-1383, to a test or tests of the person's blood, breath, urine or other
43 bodily substance for the purpose of determining alcohol concentration or drug
44 content if the person is arrested for any offense arising out of acts alleged
45 to have been committed in violation of this chapter or section 4-244,

1 paragraph ~~33~~ 35 while the person was driving or in actual physical control of
2 a motor vehicle while under the influence of intoxicating liquor or drugs.
3 The test or tests chosen by the law enforcement agency shall be administered
4 at the direction of a law enforcement officer having reasonable grounds to
5 believe that the person was driving or in actual physical control of a motor
6 vehicle in this state either:

7 1. While under the influence of intoxicating liquor or drugs.

8 2. If the person is under twenty-one years of age, with spirituous
9 liquor in the person's body.

10 B. After an arrest a violator shall be requested to submit to and
11 successfully complete any test or tests prescribed by subsection A of this
12 section, and if the violator refuses the violator shall be informed that the
13 violator's license or permit to drive will be suspended or denied for twelve
14 months, or for two years for a second or subsequent refusal within a period
15 of eighty-four months, unless the violator expressly agrees to submit to and
16 successfully completes the test or tests. A failure to expressly agree to
17 the test or successfully complete the test is deemed a refusal. The violator
18 shall also be informed that:

19 1. If the test results show a blood or breath alcohol concentration of
20 0.08 or more, or if the results show a blood or breath alcohol concentration
21 of 0.04 or more and the violator was driving or in actual physical control of
22 a commercial motor vehicle, the violator's license or permit to drive will be
23 suspended or denied for not less than ninety consecutive days.

24 2. The violator's driving privilege, license, permit, right to apply
25 for a license or permit or nonresident operating privilege may be issued or
26 reinstated following the period of suspension only if the violator completes
27 alcohol or other drug screening.

28 C. A person who is dead, unconscious or otherwise in a condition
29 rendering the person incapable of refusal is deemed not to have withdrawn the
30 consent provided by subsection A of this section and the test or tests may be
31 administered, subject to section 4-244, paragraph ~~33~~ 35 or section 28-1381,
32 28-1382 or 28-1383.

33 D. If a person under arrest refuses to submit to the test designated
34 by the law enforcement agency as provided in subsection A of this section:

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

37 2. The law enforcement officer directing the administration of the
38 test shall:

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

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

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

- 1 (d) If the license or permit is not surrendered, state the reason why
2 it is not surrendered.
- 3 (e) If a valid license or permit is surrendered, issue a temporary
4 driving permit that is valid for fifteen days.
- 5 (f) Forward the certified report of refusal, a copy of the completed
6 notice of suspension, a copy of any completed temporary permit and any driver
7 license or permit taken into possession under this section to the department
8 within five days after the issuance of the notice of suspension.
- 9 E. The certified report is subject to the penalty for perjury as
10 prescribed by section 28-1561 and shall state all of the following:
- 11 1. The officer's reasonable grounds to believe that the arrested
12 person was driving or in actual physical control of a motor vehicle in this
13 state either:
- 14 (a) While under the influence of intoxicating liquor or drugs.
15 (b) If the person is under twenty-one years of age, with spirituous
16 liquor in the person's body.
- 17 2. The manner in which the person refused to submit to the test or
18 tests.
- 19 3. That the person was advised of the consequences of refusal.
- 20 F. On receipt of the certified report of refusal and a copy of the
21 order of suspension and on the effective date stated on the order, the
22 department shall enter the order of suspension on its records unless a
23 written request for a hearing as provided in this section has been filed by
24 the accused person. If the department receives only the certified report of
25 refusal, the department shall notify the person named in the report in
26 writing sent by mail that:
- 27 1. Fifteen days after the date of issuance of the notice the
28 department will suspend the person's license or permit, driving privilege or
29 nonresident driving privilege.
- 30 2. The department will provide an opportunity for a hearing if the
31 person requests a hearing in writing and the request is received by the
32 department within fifteen days after the notice is sent.
- 33 G. The order of suspension issued by a law enforcement officer or the
34 department under this section shall notify the person that:
- 35 1. The person may submit a written request for a hearing.
36 2. The request for a hearing must be received by the department within
37 fifteen days after the date of the notice or the order of suspension will
38 become final.
- 39 3. The affected person's license or permit to drive or right to apply
40 for a license or permit or any nonresident operating privilege will be
41 suspended for twelve months from that date or for two years from that date
42 for a second or subsequent refusal within a period of eighty-four months.
- 43 4. The person's driving privilege, license, permit, right to apply for
44 a license or permit or nonresident operating privilege may be issued or

1 reinstated following the period of suspension only if the person completes
2 alcohol or other drug screening.

3 H. The order for suspension shall:

4 1. Be accompanied by printed forms that are ready to mail to the
5 department and that may be filled out and signed by the person to indicate
6 the person's desire for a hearing.

7 2. Advise the person that unless the person has surrendered any driver
8 license or permit issued by this state the person's hearing request will not
9 be accepted, except that the person may certify pursuant to section 28-3170
10 that the license or permit is lost or destroyed.

11 I. On the receipt of a request for a hearing, the department shall set
12 the hearing within thirty days in the county in which the person named in the
13 report resides unless the law enforcement agency filing the certified report
14 of refusal pursuant to subsection D of this section requests at the time of
15 its filing that the hearing be held in the county where the refusal occurred.

16 J. A timely request for a hearing stays the suspension until a hearing
17 is held, except that the department shall not return any surrendered license
18 or permit to the person but may issue temporary permits to drive that expire
19 no later than when the department has made its final decision. If the person
20 is a resident without a license or permit or has an expired license or
21 permit, the department may allow the person to apply for a restricted license
22 or permit. If the department determines the person is otherwise entitled to
23 the license or permit, the department shall issue and retain a restricted
24 license or permit subject to this section.

25 K. Hearings requested under this section shall be conducted in the
26 same manner and under the same conditions as provided in section 28-3306.
27 For the purposes of this section, the scope of the hearing shall include only
28 the issues of whether:

29 1. A law enforcement officer had reasonable grounds to believe that
30 the person was driving or was in actual physical control of a motor vehicle
31 in this state either:

32 (a) While under the influence of intoxicating liquor or drugs.

33 (b) If the person is under twenty-one years of age, with spirituous
34 liquor in the person's body.

35 2. The person was placed under arrest.

36 3. The person refused to submit to the test.

37 4. The person was informed of the consequences of refusal.

38 L. If the department determines at the hearing to suspend the affected
39 person's privilege to operate a motor vehicle, the suspension provided in
40 this section is effective fifteen days after giving written notice of the
41 suspension, except that the department may issue or extend a temporary
42 license that expires on the effective date of the suspension. If the person
43 is a resident without a license or permit or has an expired license or permit
44 to operate a motor vehicle in this state, the department shall deny to the
45 person the issuance of a license or permit for a period of twelve months

1 after the order of suspension becomes effective or for a period of two years
2 after the order of suspension becomes effective for a second or subsequent
3 refusal within a period of eighty-four months, and may reinstate the person's
4 driving privilege, license, permit, right to apply for a license or permit or
5 nonresident operating privilege following the period of suspension only if
6 the person completes alcohol or other drug screening.

7 M. If the suspension order is sustained after the hearing, a motion
8 for rehearing is not required. Within thirty days after a suspension order
9 is sustained, the affected person may file a petition in the superior court
10 to review the final order of suspension or denial by the department in the
11 same manner provided in section 28-3317. The court shall hear the review of
12 the final order of suspension or denial on an expedited basis.

13 N. If the suspension or determination that there should be a denial of
14 issuance is not sustained, the ruling is not admissible in and has no effect
15 on any administrative, civil or criminal court proceeding.

16 O. If it has been determined under the procedures of this section that
17 a nonresident's privilege to operate a motor vehicle in this state has been
18 suspended, the department shall give information either in writing or by
19 electronic means of the action taken to the motor vehicle administrator of
20 the state of the person's residence and of any state in which the person has
21 a license.

22 P. After completing not less than ninety consecutive days of the
23 period of suspension required by this section and any alcohol or other drug
24 screening that is ordered by the department pursuant to this chapter, a
25 person whose driving privilege is suspended pursuant to this section may
26 apply to the department for a special ignition interlock restricted driver
27 license pursuant to section 28-1401. Unless the certified ignition interlock
28 period is extended by the department pursuant to section 28-1461, a person
29 who is issued a special ignition interlock restricted driver license as
30 provided in this subsection shall maintain a functioning certified ignition
31 interlock device in compliance with this chapter during the remaining period
32 of the suspension prescribed by this section. This subsection does not apply
33 to a person whose driving privilege is suspended for a second or subsequent
34 refusal within a period of eighty-four months or a person who within a period
35 of eighty-four months has been convicted of a second or subsequent violation
36 of article 3 of this chapter or section 4-244, paragraph ~~33~~ 35 or an act in
37 another jurisdiction that if committed in this state would be a violation of
38 article 3 of this chapter or section 4-244, paragraph ~~33~~ 35.

39 Sec. 7. Section 28-1385, Arizona Revised Statutes, is amended to read:

40 28-1385. Administrative license suspension for driving under
41 the influence or for homicide or assault involving a
42 motor vehicle; report; hearing; summary review;
43 ignition interlock device requirement

44 A. A law enforcement officer shall forward to the department a
45 certified report as prescribed in subsection B of this section, subject to

1 the penalty for perjury prescribed by section 28-1561, if both of the
2 following occur:

3 1. The officer arrests a person for a violation of section 4-244,
4 paragraph ~~33~~ 35, section 28-1381, section 28-1382 or section 28-1383 or for a
5 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a
6 motor vehicle.

7 2. The person submits to a blood or breath alcohol test permitted by
8 section 28-1321 or any other law or a sample of blood is obtained pursuant to
9 section 28-1388 and the results are either not available or the results
10 indicate either of the following:

11 (a) 0.08 or more alcohol concentration in the person's blood or
12 breath.

13 (b) 0.04 or more alcohol concentration in the person's blood or breath
14 if the person was driving or in actual physical control of a commercial motor
15 vehicle.

16 B. The officer shall make the certified report required by subsection
17 A of this section on forms supplied or approved by the department. The
18 report shall state information that is relevant to the enforcement action,
19 including:

20 1. Information that adequately identifies the arrested person.

21 2. A statement of the officer's grounds for belief that the person was
22 driving or in actual physical control of a motor vehicle in violation of
23 section 4-244, paragraph ~~33~~ 35, section 28-1381, section 28-1382 or section
24 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201
25 or 13-1204 involving a motor vehicle.

26 3. A statement that the person was arrested for a violation of section
27 4-244, paragraph ~~33~~ 35, section 28-1381, section 28-1382 or section 28-1383
28 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204
29 involving a motor vehicle.

30 4. A report of the results of the blood or breath alcohol test that
31 was administered, if the results are available.

32 C. The officer shall also serve an order of suspension on the person
33 on behalf of the department. The order of suspension:

34 1. Is effective fifteen days after the date it is served.

35 2. Shall require the immediate surrender of any license or permit to
36 drive that is issued by this state and that is in the possession or control
37 of the person.

38 3. Shall contain information concerning the right to a summary review
39 and hearing, including information concerning the hearing as required by
40 section 28-1321, subsections G and H.

41 4. Shall be accompanied by printed forms ready to mail to the
42 department that the person may fill out and sign to indicate the person's
43 desire for a hearing.

44 5. Shall be entered on the department's records on receipt of the
45 report by the officer and a copy of the order of suspension.

1 6. Shall inform the person that the person's driving privilege,
2 license, permit, right to apply for a license or permit or nonresident
3 operating privilege may be issued or reinstated following the period of
4 suspension only if the person completes alcohol or other drug screening.

5 7. Shall contain information on alcohol or other drug education and
6 treatment programs that are provided by a facility approved by the department
7 of health services.

8 D. If the blood alcohol concentration test result is unavailable at
9 the time the test is administered, the result shall be forwarded to the
10 department before the hearing held pursuant to this section in a form
11 prescribed by the director.

12 E. If the license or permit is not surrendered pursuant to subsection
13 C of this section, the officer shall state the reason for the nonsurrender.
14 If a valid license or permit is surrendered, the officer shall issue a
15 temporary driving permit that is valid for fifteen days. The officer shall
16 forward a copy of the completed order of suspension, a copy of any completed
17 temporary permit and any driver license or permit taken into possession under
18 this section to the department within five days after the issuance of the
19 order of suspension along with the report.

20 F. The department shall suspend the affected person's license or
21 permit to drive or right to apply for a license or permit or any nonresident
22 operating privilege for not less than ninety consecutive days from that
23 date. If the person is otherwise qualified, the department may reinstate the
24 person's driving privilege, license, permit, right to apply for a license or
25 permit or nonresident operating privilege following the period of suspension
26 only if the violator completes alcohol or other drug screening.

27 G. Notwithstanding subsections A through F of this section, the
28 department shall suspend the driving privileges of the person described in
29 subsection A of this section for not less than thirty consecutive days and
30 shall restrict the driving privileges of the person for not less than sixty
31 consecutive additional days to travel between the person's place of
32 employment and residence and during specified periods of time while at
33 employment, to travel between the person's place of residence and the
34 person's secondary or postsecondary school, according to the person's
35 employment or educational schedule, to travel between the person's place of
36 residence and the office of the person's probation officer for scheduled
37 appointments or to travel between the person's place of residence and a
38 screening, education or treatment facility for scheduled appointments if the
39 person:

40 1. Did not cause ~~a~~ death or ~~a~~ serious physical injury as defined in
41 section 13-105 to another person during the course of conduct out of which
42 the current action arose.

43 2. Has not been convicted of a violation of section 4-244, paragraph
44 ~~33~~ 35, section 28-1381, section 28-1382 or section 28-1383 within eighty-four
45 months of the date of commission of the acts out of which the current action

1 arose. The dates of commission of the acts are the determining factor in
2 applying the eighty-four month provision.

3 3. Has not had the person's privilege to drive suspended pursuant to
4 this section or section 28-1321 within eighty-four months of the date of
5 commission of the acts out of which the current action arose.

6 4. Provides satisfactory evidence to the department of the person's
7 completion of alcohol or other drug screening that is ordered by the
8 department. If the person does not complete alcohol or other drug screening,
9 the department may impose a ninety day suspension pursuant to this section.

10 H. If the officer does not serve an order of suspension pursuant to
11 subsection C of this section and if the department does not receive the
12 report of the results of the blood or breath alcohol test pursuant to
13 subsection B, paragraph 4 of this section, but subsequently receives the
14 results and the results indicate 0.08 or more alcohol concentration in the
15 person's blood or breath, or a blood or breath alcohol concentration of 0.04
16 or more and the person was driving or in actual physical control of a
17 commercial motor vehicle, the department shall notify the person named in the
18 report in writing sent by mail that fifteen days after the date of issuance
19 of the notice the department will suspend the person's license or permit,
20 driving privilege or nonresident driving privilege. The notice shall also
21 state that the department will provide an opportunity for a hearing and
22 administrative review if the person requests a hearing or review in writing
23 and the request is received by the department within fifteen days after the
24 notice is sent.

25 I. A timely request for a hearing stays the suspension until a hearing
26 is held, except that the department shall not return any surrendered license
27 or permit to the person but may issue temporary permits to drive that expire
28 no later than when the department has made its final decision. If the person
29 is a resident without a license or permit or has an expired license or
30 permit, the department may allow the person to apply for a restricted license
31 or permit. If the department determines the person is otherwise entitled to
32 the restricted license or permit, the department shall issue, but retain, the
33 license or permit, subject to this section. All hearings requested under
34 this section shall be conducted in the same manner and under the same
35 conditions as provided in section 28-3306.

36 J. For the purposes of this section, the scope of the hearing shall
37 include only the following issues:

38 1. Whether the officer had reasonable grounds to believe the person
39 was driving or was in actual physical control of a motor vehicle while under
40 the influence of intoxicating liquor.

41 2. Whether the person was placed under arrest for a violation of
42 section 4-244, paragraph ~~33~~ 35, section 28-1381, section 28-1382 or section
43 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
44 13-1204 involving a motor vehicle.

1 3. Whether a test was taken, the results of which indicated the
2 alcohol concentration in the person's blood or breath at the time the test
3 was administered of either:

4 (a) 0.08 or more.

5 (b) 0.04 or more if the person was driving or in actual physical
6 control of a commercial motor vehicle.

7 4. Whether the testing method used was valid and reliable.

8 5. Whether the test results were accurately evaluated.

9 K. The results of the blood or breath alcohol test shall be admitted
10 on establishing the requirements in section 28-1323 or 28-1326.

11 L. If the department determines at the hearing to suspend the affected
12 person's privilege to operate a motor vehicle, the suspension provided in
13 this section is effective fifteen days after giving written notice of the
14 suspension, except that the department may issue or extend a temporary
15 license that expires on the effective date of the suspension. If the person
16 is a resident without a license or permit or has an expired license or permit
17 to operate a motor vehicle in this state, the department shall deny the
18 issuance of a license or permit to the person for not less than ninety
19 consecutive days. The department may reinstate the person's driving
20 privilege, license, permit, right to apply for a license or permit or
21 nonresident operating privilege following the period of suspension only if
22 the violator completes alcohol or other drug screening.

23 M. A person may apply for a summary review of an order issued pursuant
24 to this section instead of a hearing at any time before the effective date of
25 the order. The person shall submit the application in writing to any
26 department driver license examining office together with any written
27 explanation as to why the department should not suspend the driving
28 privilege. The agent of the department receiving the notice shall issue to
29 the person an additional driving permit that expires twenty days from the
30 date the request is received. The department shall review all reports
31 submitted by the officer and any written explanation submitted by the person
32 and shall determine if the order of suspension should be sustained or
33 cancelled. The department shall not hold a hearing, and the review is not
34 subject to title 41, chapter 6. The department shall notify the person of
35 its decision before the temporary driving permit expires.

36 N. If the suspension or determination that there should be a denial of
37 issuance is not sustained after a hearing or review, the ruling is not
38 admissible in and does not have any effect on any civil or criminal court
39 proceeding.

40 O. If it has been determined under the procedures of this section that
41 a nonresident's privilege to operate a motor vehicle in this state has been
42 suspended, the department shall give information either in writing or by
43 electronic means of the action taken to the motor vehicle administrator of
44 the state of the person's residence and of any state in which the person has
45 a license.

1 Sec. 8. Section 28-3320, Arizona Revised Statutes, is amended to read:
2 28-3320. Suspension of license for persons under eighteen years
3 of age; notice; definition

4 A. In addition to the grounds for mandatory suspension or revocation
5 provided for in chapters 3, 4 and 5 of this title, the department shall
6 immediately suspend the driver license or privilege to drive or refuse to
7 issue a driver license or privilege to drive of a person who commits an
8 offense while under eighteen years of age as follows:

9 1. For a period of two years on receiving the record of the person's
10 conviction for a violation of section 4-244, paragraph ~~33~~ 35, section 28-1381
11 or section 28-1382.

12 2. For a period of three years on receiving the record of the person's
13 conviction for a violation of section 28-1383.

14 3. Until the person's eighteenth birthday on receiving the record of
15 the person's conviction for a violation of section 13-1602, subsection A,
16 paragraph 1 or section 13-1604, subsection A involving the damage or
17 disfigurement of property by graffiti.

18 4. Until the person's eighteenth birthday on receiving the record of
19 the person's conviction of criminal damage pursuant to section 13-1602,
20 subsection A, paragraph 5 or a violation of a city or town ordinance that
21 prohibits the type of criminal action prescribed in section 13-1602,
22 subsection A, paragraph 5.

23 5. Until the person's eighteenth birthday on receiving the record of
24 the person's conviction for a violation of any statute or ordinance involving
25 the purchase or possession of materials used for graffiti.

26 6. Until the person's eighteenth birthday on receiving the record of
27 the person's conviction for a violation of any provision of title 13,
28 chapter 34.

29 7. Until the person's eighteenth birthday or for a period of two years
30 on receiving the record of the person's conviction for a second or subsequent
31 violation of section 4-244, paragraph 9, if ordered by the court.

32 8. Until the person's eighteenth birthday on receiving the record of
33 the person's conviction of theft of a motor vehicle pursuant to section
34 13-1802, unlawful use of means of transportation pursuant to section 13-1803
35 or theft of means of transportation pursuant to section 13-1814.

36 B. If ordered by the court, the department shall restrict the person's
37 privilege to drive between the person's home, school and place of employment
38 during specified periods of time according to the person's school and
39 employment schedule.

40 C. If a person commits an offense prescribed in subsection A,
41 paragraph 1 of this section and the person's privilege to drive is restricted
42 as prescribed in subsection B of this section, the department shall issue a
43 special ignition interlock restricted driver license to the person pursuant
44 to section 28-1401.

1 D. If ordered by the court pursuant to section 4-246, subsection C,
2 the department shall suspend the driving privilege of a person under ~~the age~~
3 ~~of~~ eighteen YEARS OF AGE for a period of up to one hundred eighty days on
4 receiving the record of the person's first conviction for a violation of
5 section 4-244, paragraph 9.

6 E. For the purposes of this section, "conviction" means a final
7 conviction or judgment, including an order of the juvenile court finding that
8 a juvenile violated any provision of this title or committed a delinquent act
9 that if committed by an adult would constitute a criminal offense.

10 Sec. 9. Section 28-3322, Arizona Revised Statutes, is amended to read:

11 28-3322. Suspension of license for persons eighteen, nineteen
12 and twenty years of age; definition

13 A. In addition to the grounds for mandatory suspension or revocation
14 provided for in chapters 3, 4 and 5 of this title, the department shall
15 immediately suspend the driver license or privilege to drive or refuse to
16 issue a driver license or privilege to drive of a person who commits a
17 violation of section 4-244, paragraph ~~33~~ 35 while the person is eighteen,
18 nineteen or twenty years of age on receipt of the record of the person's
19 conviction for a violation of section 4-244, paragraph ~~33~~ 35 for a period of
20 two years.

21 B. If ordered by the court, the department shall restrict the person's
22 privilege to drive between the person's home, school and place of employment
23 during specified periods of time according to the person's school and
24 employment schedule.

25 C. If a person's privilege to drive is restricted as prescribed in
26 subsection B of this section, the department shall issue a special ignition
27 interlock restricted driver license to the person pursuant to section
28 28-1401.

29 D. For the purposes of this section, "conviction" means a final
30 conviction or judgment, including an order of the juvenile court finding that
31 a juvenile violated any provision of this title or committed a delinquent act
32 that if committed by an adult would constitute a criminal offense.

33 Sec. 10. Section 28-3511, Arizona Revised Statutes, is amended to
34 read:

35 28-3511. Removal and immobilization or impoundment of vehicle

36 A. A peace officer shall cause the removal and either immobilization
37 or impoundment of a vehicle if the peace officer determines that a person is
38 driving the vehicle while either of the following applies:

39 1. The person's driving privilege is suspended or revoked for any
40 reason.

41 2. The person has not ever been issued a valid driver license or
42 permit by this state and the person does not produce evidence of ever having
43 a valid driver license or permit issued by another jurisdiction.

44 3. The person is subject to an ignition interlock device requirement
45 pursuant to chapter 4 of this title and the person is operating a vehicle

1 without a functioning certified ignition interlock device. This paragraph
2 does not apply to a person operating an employer's vehicle or the operation
3 of a vehicle due to a substantial emergency as defined in section 28-1464.

4 B. A peace officer shall cause the removal and impoundment of a
5 vehicle if the peace officer determines that a person is driving the vehicle
6 and if all of the following apply:

7 1. The person's driving privilege is canceled, suspended or revoked
8 for any reason or the person has not ever been issued a driver license or
9 permit by this state and the person does not produce evidence of ever having
10 a driver license or permit issued by another jurisdiction.

11 2. The person is not in compliance with the financial responsibility
12 requirements of chapter 9, article 4 of this title.

13 3. The person is driving a vehicle that is involved in an accident
14 that results in either property damage or injury to or death of another
15 person.

16 C. Except as provided in subsection D of this section, while a peace
17 officer has control of the vehicle the peace officer shall cause the removal
18 and either immobilization or impoundment of the vehicle if the peace officer
19 has probable cause to arrest the driver of the vehicle for a violation of
20 section 4-244, paragraph ~~33~~ 35 or section 28-1382 or 28-1383.

21 D. A peace officer shall not cause the removal and either the
22 immobilization or impoundment of a vehicle pursuant to subsection C of this
23 section if all of the following apply:

24 1. The peace officer determines that the vehicle is currently
25 registered and that the driver or the vehicle is in compliance with the
26 financial responsibility requirements of chapter 9, article 4 of this title.

27 2. The spouse of the driver is with the driver at the time of the
28 arrest.

29 3. The peace officer has reasonable grounds to believe that the spouse
30 of the driver:

31 (a) Has a valid driver license.

32 (b) Is not impaired by intoxicating liquor, any drug, a vapor
33 releasing substance containing a toxic substance or any combination of
34 liquor, drugs or vapor releasing substances.

35 (c) Does not have any spirituous liquor in the spouse's body if the
36 spouse is under twenty-one years of age.

37 4. The spouse notifies the peace officer that the spouse will drive
38 the vehicle from the place of arrest to the driver's home or other place of
39 safety.

40 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
41 subsection.

42 E. Except as otherwise provided in this article, a vehicle that is
43 removed and either immobilized or impounded pursuant to subsection A, B or C
44 of this section shall be immobilized or impounded for thirty days. An

1 insurance company does not have a duty to pay any benefits for charges or
2 fees for immobilization or impoundment.

3 F. The owner of a vehicle that is removed and either immobilized or
4 impounded pursuant to subsection A, B or C of this section, the spouse of the
5 owner and each person identified on the department's record with an interest
6 in the vehicle shall be provided with an opportunity for an immobilization or
7 poststorage hearing pursuant to section 28-3514.

8 Sec. 11. Legislative intent

9 The legislature finds that there are serious and continuing concerns
10 regarding the combination of spirituous liquor consumption and handguns.