

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1028

Introduced by
Senator Gray

AN ACT

AMENDING SECTIONS 28-1321 AND 28-1385, ARIZONA REVISED STATUTES; RELATING TO
DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-1321, Arizona Revised Statutes, is amended to
3 read:

4 28-1321. Implied consent; tests; refusal to submit to test;
5 order of suspension; hearing; review; temporary
6 permit; notification of suspension; special ignition
7 interlock restricted driver license

8 A. A person who operates a motor vehicle in this state gives consent,
9 subject to section 4-244, paragraph 34 or section 28-1381, 28-1382 or
10 28-1383, to a test or tests of the person's blood, breath, urine or other
11 bodily substance for the purpose of determining alcohol concentration or drug
12 content if the person is arrested for any offense arising out of acts alleged
13 to have been committed in violation of this chapter or section 4-244,
14 paragraph 34 while the person was driving or in actual physical control of a
15 motor vehicle while under the influence of intoxicating liquor or drugs. The
16 test or tests chosen by the law enforcement agency shall be administered at
17 the direction of a law enforcement officer having reasonable grounds to
18 believe that the person was driving or in actual physical control of a motor
19 vehicle in this state either:

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

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

23 B. After an arrest a violator shall be requested to submit to and
24 successfully complete any test or tests prescribed by subsection A of this
25 section, and if the violator refuses the violator shall be informed that the
26 violator's license or permit to drive will be suspended or denied for twelve
27 months, or for two years for a second or subsequent refusal within a period
28 of eighty-four months, unless the violator expressly agrees to submit to and
29 successfully completes the test or tests. A failure to expressly agree to
30 the test or successfully complete the test is deemed a refusal. The violator
31 shall also be informed that:

32 1. If the test results show a blood or breath alcohol concentration of
33 0.08 or more, ~~or~~ if the results show a blood or breath alcohol concentration
34 of 0.04 or more and the violator was driving or in actual physical control of
35 a commercial motor vehicle **OR IF THE RESULTS SHOW THERE IS ANY DRUG DEFINED**
36 **IN SECTION 13-3401 OR ITS METABOLITE IN THE PERSON'S BODY**, the violator's
37 license or permit to drive will be suspended or denied for not less than
38 ninety consecutive days.

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

43 C. A person who is dead, unconscious or otherwise in a condition
44 rendering the person incapable of refusal is deemed not to have withdrawn the
45 consent provided by subsection A of this section and the test or tests may be

1 administered, subject to section 4-244, paragraph 34 or section 28-1381,
2 28-1382 or 28-1383.

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

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

7 2. The law enforcement officer directing the administration of the
8 test shall:

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

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

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

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

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

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

23 E. The certified report is subject to the penalty for perjury as
24 prescribed by section 28-1561 and shall state all of the following:

25 1. The officer's reasonable grounds to believe that the arrested
26 person was driving or in actual physical control of a motor vehicle in this
27 state either:

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

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

31 2. The manner in which the person refused to submit to the test or
32 tests.

33 3. That the person was advised of the consequences of refusal.

34 F. On receipt of the certified report of refusal and a copy of the
35 order of suspension and on the effective date stated on the order, the
36 department shall enter the order of suspension on its records unless a
37 written request for a hearing as provided in this section has been filed by
38 the accused person. If the department receives only the certified report of
39 refusal, the department shall notify the person named in the report in
40 writing sent by mail that:

41 1. Fifteen days after the date of issuance of the notice the
42 department will suspend the person's license or permit, driving privilege or
43 nonresident driving privilege.

1 2. The department will provide an opportunity for a hearing if the
2 person requests a hearing in writing and the request is received by the
3 department within fifteen days after the notice is sent.

4 G. The order of suspension issued by a law enforcement officer or the
5 department under this section shall notify the person that:

6 1. The person may submit a written request for a hearing.

7 2. The request for a hearing must be received by the department within
8 fifteen days after the date of the notice or the order of suspension will
9 become final.

10 3. The affected person's license or permit to drive or right to apply
11 for a license or permit or any nonresident operating privilege will be
12 suspended for twelve months from that date or for two years from that date
13 for a second or subsequent refusal within a period of eighty-four months.

14 4. The person's driving privilege, license, permit, right to apply for
15 a license or permit or nonresident operating privilege may be issued or
16 reinstated following the period of suspension only if the person completes
17 alcohol or other drug screening.

18 H. The order for suspension shall:

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

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

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

31 J. A timely request for a hearing stays the suspension until a hearing
32 is held, except that the department shall not return any surrendered license
33 or permit to the person but may issue temporary permits to drive that expire
34 no later than when the department has made its final decision. If the person
35 is a resident without a license or permit or has an expired license or
36 permit, the department may allow the person to apply for a restricted license
37 or permit. If the department determines the person is otherwise entitled to
38 the license or permit, the department shall issue and retain a restricted
39 license or permit subject to this section.

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

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

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

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

7 2. The person was placed under arrest.

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

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

10 L. If the department determines at the hearing to suspend the affected
11 person's privilege to operate a motor vehicle, the suspension provided in
12 this section is effective fifteen days after giving written notice of the
13 suspension, except that the department may issue or extend a temporary
14 license that expires on the effective date of the suspension. If the person
15 is a resident without a license or permit or has an expired license or permit
16 to operate a motor vehicle in this state, the department shall deny to the
17 person the issuance of a license or permit for a period of twelve months
18 after the order of suspension becomes effective or for a period of two years
19 after the order of suspension becomes effective for a second or subsequent
20 refusal within a period of eighty-four months, and may reinstate the person's
21 driving privilege, license, permit, right to apply for a license or permit or
22 nonresident operating privilege following the period of suspension only if
23 the person completes alcohol or other drug screening.

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

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

33 O. If it has been determined under the procedures of this section that
34 a nonresident's privilege to operate a motor vehicle in this state has been
35 suspended, the department shall give information either in writing or by
36 electronic means of the action taken to the motor vehicle administrator of
37 the state of the person's residence and of any state in which the person has
38 a license.

39 P. After completing not less than ninety consecutive days of the
40 period of suspension required by this section and any alcohol or other drug
41 screening that is ordered by the department pursuant to this chapter, a
42 person whose driving privilege is suspended pursuant to this section may
43 apply to the department for a special ignition interlock restricted driver
44 license pursuant to section 28-1401. Unless the certified ignition interlock
45 period is extended by the department pursuant to section 28-1461, a person

1 who is issued a special ignition interlock restricted driver license as
2 provided in this subsection shall maintain a functioning certified ignition
3 interlock device in compliance with this chapter during the remaining period
4 of the suspension prescribed by this section. This subsection does not apply
5 to a person whose driving privilege is suspended for a second or subsequent
6 refusal within a period of eighty-four months or a person who within a period
7 of eighty-four months has been convicted of a second or subsequent violation
8 of article 3 of this chapter or section 4-244, paragraph 34 or an act in
9 another jurisdiction that if committed in this state would be a violation of
10 article 3 of this chapter or section 4-244, paragraph 34.

11 Sec. 2. Section 28-1385, Arizona Revised Statutes, is amended to read:

12 28-1385. Administrative license suspension for driving under
13 the influence or for homicide or assault involving a
14 motor vehicle; report; hearing; summary review;
15 ignition interlock device requirement

16 A. A law enforcement officer shall forward to the department a
17 certified report as prescribed in subsection B of this section, subject to
18 the penalty for perjury prescribed by section 28-1561, if both of the
19 following occur:

20 1. The officer arrests a person for a violation of section 4-244,
21 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a
22 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a
23 motor vehicle.

24 2. The person submits to a blood or breath alcohol test permitted by
25 section 28-1321 or any other law or a sample of blood is obtained pursuant to
26 section 28-1388 and the results are either not available or the results
27 indicate ~~either~~ ANY of the following:

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

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

33 (c) ANY DRUG DEFINED IN SECTION 13-3401 OR ITS METABOLITE IS IN THE
34 PERSON'S BODY.

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

39 1. Information that adequately identifies the arrested person.

40 2. A statement of the officer's grounds for belief that the person was
41 driving or in actual physical control of a motor vehicle in violation of
42 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
43 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201
44 or 13-1204 involving a motor vehicle.

1 3. A statement that the person was arrested for a violation of section
2 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or
3 for a violation of title 13, chapter 11 or section 13-1201 or 13-1204
4 involving a motor vehicle.

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

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

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

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

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

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

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

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

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

28 D. If the blood ~~alcohol concentration~~ test result is unavailable at
29 the time the test is administered, the result shall be forwarded to the
30 department before the hearing held pursuant to this section in a form
31 prescribed by the director.

32 E. If the license or permit is not surrendered pursuant to subsection
33 C of this section, the officer shall state the reason for the nonsurrender.
34 If a valid license or permit is surrendered, the officer shall issue a
35 temporary driving permit that is valid for fifteen days. The officer shall
36 forward a copy of the completed order of suspension, a copy of any completed
37 temporary permit and any driver license or permit taken into possession under
38 this section to the department within five days after the issuance of the
39 order of suspension along with the report.

40 F. The department shall suspend the affected person's license or
41 permit to drive or right to apply for a license or permit or any nonresident
42 operating privilege for not less than ninety consecutive days from that
43 date. If the person is otherwise qualified, the department may reinstate the
44 person's driving privilege, license, permit, right to apply for a license or

1 permit or nonresident operating privilege following the period of suspension
2 only if the violator completes alcohol or other drug screening.

3 G. Notwithstanding subsections A through F of this section, the
4 department shall suspend the driving privileges of the person described in
5 subsection A of this section for not less than thirty consecutive days and
6 shall restrict the driving privileges of the person for not less than sixty
7 consecutive additional days to travel between the person's place of
8 employment and residence and during specified periods of time while at
9 employment, to travel between the person's place of residence and the
10 person's secondary or postsecondary school, according to the person's
11 employment or educational schedule, to travel between the person's place of
12 residence and the office of the person's probation officer for scheduled
13 appointments or to travel between the person's place of residence and a
14 screening, education or treatment facility for scheduled appointments if the
15 person:

16 1. Did not cause death or serious physical injury as defined in
17 section 13-105 to another person during the course of conduct out of which
18 the current action arose.

19 2. Has not been convicted of a violation of section 4-244, paragraph
20 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four
21 months of the date of commission of the acts out of which the current action
22 arose. The dates of commission of the acts are the determining factor in
23 applying the eighty-four month provision.

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

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

31 H. If the officer does not serve an order of suspension pursuant to
32 subsection C of this section and if the department does not receive the
33 report of the results of the blood or breath alcohol test pursuant to
34 subsection B, paragraph 4 of this section, but subsequently receives the
35 results and the results indicate 0.08 or more alcohol concentration in the
36 person's blood or breath, ~~or~~ a blood or breath alcohol concentration of 0.04
37 or more and the person was driving or in actual physical control of a
38 commercial motor vehicle **OR ANY DRUG DEFINED IN SECTION 13-3401 OR ITS**
39 **METABOLITE IN THE PERSON'S BODY**, the department shall notify the person named
40 in the report in writing sent by mail that fifteen days after the date of
41 issuance of the notice the department will suspend the person's license or
42 permit, driving privilege or nonresident driving privilege. The notice shall
43 also state that the department will provide an opportunity for a hearing and
44 administrative review if the person requests a hearing or review in writing

1 and the request is received by the department within fifteen days after the
2 notice is sent.

3 I. A timely request for a hearing stays the suspension until a hearing
4 is held, except that the department shall not return any surrendered license
5 or permit to the person but may issue temporary permits to drive that expire
6 no later than when the department has made its final decision. If the person
7 is a resident without a license or permit or has an expired license or
8 permit, the department may allow the person to apply for a restricted license
9 or permit. If the department determines the person is otherwise entitled to
10 the restricted license or permit, the department shall issue, but retain, the
11 license or permit, subject to this section. All hearings requested under
12 this section shall be conducted in the same manner and under the same
13 conditions as provided in section 28-3306.

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

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

19 2. Whether the person was placed under arrest for a violation of
20 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
21 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
22 13-1204 involving a motor vehicle.

23 3. Whether a test was taken, the results of which indicated **ANY OF** the
24 **FOLLOWING:**

25 (a) **AN** alcohol concentration in the person's blood or breath at the
26 time the test was administered of either:

27 ~~(a)~~ (i) 0.08 or more.

28 ~~(b)~~ (ii) 0.04 or more if the person was driving or in actual physical
29 control of a commercial motor vehicle.

30 (b) **ANY DRUG DEFINED IN SECTION 13-3401 OR ITS METABOLITE IN THE**
31 **PERSON'S BODY.**

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

33 5. Whether the test results were accurately evaluated.

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

36 L. If the department determines at the hearing to suspend the affected
37 person's privilege to operate a motor vehicle, the suspension provided in
38 this section is effective fifteen days after giving written notice of the
39 suspension, except that the department may issue or extend a temporary
40 license that expires on the effective date of the suspension. If the person
41 is a resident without a license or permit or has an expired license or permit
42 to operate a motor vehicle in this state, the department shall deny the
43 issuance of a license or permit to the person for not less than ninety
44 consecutive days. The department may reinstate the person's driving
45 privilege, license, permit, right to apply for a license or permit or

1 nonresident operating privilege following the period of suspension only if
2 the violator completes alcohol or other drug screening.

3 M. A person may apply for a summary review of an order issued pursuant
4 to this section instead of a hearing at any time before the effective date of
5 the order. The person shall submit the application in writing to any
6 department driver license examining office together with any written
7 explanation as to why the department should not suspend the driving
8 privilege. The agent of the department receiving the notice shall issue to
9 the person an additional driving permit that expires twenty days from the
10 date the request is received. The department shall review all reports
11 submitted by the officer and any written explanation submitted by the person
12 and shall determine if the order of suspension should be sustained or
13 cancelled. The department shall not hold a hearing, and the review is not
14 subject to title 41, chapter 6. The department shall notify the person of
15 its decision before the temporary driving permit expires.

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

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