

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

**CHAPTER 127**  
**HOUSE BILL 2003**

AN ACT

AMENDING SECTIONS 5-349, 5-383, 5-395.01, 5-395.03, 5-396, 5-397 AND 41-1723,  
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 5-349, Arizona Revised Statutes, is amended to  
3 read:

4 5-349. Watercraft casualties; violation; classification

5 A. The operator of a watercraft involved in a collision, accident or  
6 other casualty, to the extent the operator can do so without serious danger  
7 to the operator's own watercraft or persons aboard, shall:

8 1. Immediately stop the watercraft at the scene of the collision,  
9 accident or other casualty or as close to the scene of the collision,  
10 accident or other casualty as possible but shall immediately return to the  
11 scene.

12 2. Render all practical and necessary assistance to persons affected  
13 to save them from danger caused by the collision, accident or other casualty.

14 3. Remain at the scene of the collision, accident or other casualty  
15 until the operator has complied with subsection B of this section.

16 B. The operator of a watercraft involved in a collision, accident or  
17 other casualty shall give the operator's name and address and the  
18 identification of the operator's watercraft to any person injured and to the  
19 owners of any property damaged.

20 C. Whenever death or injury results from any watercraft collision,  
21 accident or other casualty, a written report shall be submitted within  
22 forty-eight hours. For every other collision, accident or other casualty  
23 involving property damage exceeding five hundred dollars, a report shall be  
24 submitted within five days after the incident by the operator or owner of the  
25 watercraft involved. Written reports shall be submitted directly to the  
26 department for use in statistical studies for casualty prevention. Reports  
27 shall not be used as evidence in any trial, civil or criminal, arising from  
28 any collision, accident or other casualty. On request, a report shall be  
29 forwarded to the United States coast guard or other authorized federal agency  
30 to be used in statistical studies for casualty prevention.

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

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

38 F. If the operator of a watercraft is involved in a collision or  
39 accident that results in death or serious physical injury, as defined in  
40 section 13-105, and the operator fails to stop or comply with the  
41 requirements of subsection A of this section, the operator is guilty of a  
42 class 5 felony. If the operator of a watercraft is involved in a collision  
43 or accident that results in injury other than death or serious physical  
44 injury and the operator fails to stop and comply with the requirements of  
45 subsection A of this section, the operator is guilty of a class 6 felony. If  
46 the operator of a watercraft is involved in a collision or accident that

1 results only in damage to PROPERTY OF ANOTHER OR another watercraft ~~that is~~  
2 ~~operated or attended by another person~~, and the operator fails to stop and  
3 comply with the requirements of subsection B of this section, the operator is  
4 guilty of a class 3 misdemeanor.

5 Sec. 2. Section 5-383, Arizona Revised Statutes, is amended to read:

6 5-383. Law enforcement and boating safety fund; boating law  
7 enforcement, personnel, equipment and training funding  
8 to counties

9 A. A law enforcement and boating safety fund is established that  
10 consists of monies distributed to the fund pursuant to ~~section~~ SECTIONS  
11 5-323, 5-395.01, 5-395.03, 5-396 AND 5-397. The monies are subject to  
12 legislative appropriation.

13 B. Only a board of supervisors of a county that has a law enforcement  
14 and boating safety program that was in existence before July 1, 1990 shall be  
15 eligible to receive law enforcement and boating safety fund monies.

16 C. The state treasurer shall administer the fund. Using an allocation  
17 formula as determined annually by the commission, the state treasurer shall  
18 distribute monies monthly from the law enforcement and boating safety fund to  
19 eligible counties as prescribed in subsection B of this section.

20 D. In determining the allocation formula, the commission may consider  
21 the following:

22 1. The adequacy of existing county boating safety programs that  
23 include accident investigations.

24 2. The number of recreational days of use on water within the  
25 jurisdiction of the counties in areas of administrative authority.

26 3. The surface acreage of water within the jurisdiction of the  
27 counties in areas of administrative authority.

28 4. The county water safety record.

29 5. The ability of the county to constructively use additional monies.

30 6. The ratio of boating use to water surface within the jurisdiction  
31 of the counties in areas of administrative authority.

32 7. The ability of participating counties to provide continued funding  
33 of the program.

34 8. Annual input and feedback from the county boards of supervisors  
35 receiving funds.

36 9. Boat accident data for the waterways within the jurisdiction of the  
37 county.

38 E. The monies distributed to a county board of supervisors shall be  
39 used by the law enforcement agencies of the county solely for boating law  
40 enforcement, personnel, equipment and training.

41 Sec. 3. Section 5-395.01, Arizona Revised Statutes, is amended to  
42 read:

43 5-395.01. Operating or in actual physical control of a  
44 motorized watercraft while under the influence;  
45 classification; penalties

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

3           1. Shall be sentenced to serve not less than ten consecutive days in  
4 jail and is not eligible for probation or suspension of execution of sentence  
5 unless the entire sentence is served.

6           2. Shall pay a fine of not less than two hundred fifty dollars.

7           3. May be ordered by a court to perform community restitution.

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

16           5. Shall pay an additional assessment of five hundred dollars to be  
17 deposited by the state treasurer in the ~~public safety equipment~~ LAW  
18 ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383.  
19 This assessment is not subject to any surcharge. If the conviction occurred  
20 in the superior court or a justice court, the court shall transmit the  
21 assessed monies to the county treasurer. If the conviction occurred in a  
22 municipal court, the court shall transmit the assessed monies to the city  
23 treasurer. The city or county treasurer shall transmit the monies received  
24 to the state treasurer.

25           B. In addition to any other penalties under this section, the judge  
26 shall order the person to complete alcohol or other drug screening that is  
27 provided by a facility approved by the department of health services or a  
28 probation department. If a judge determines that the person requires further  
29 alcohol or other drug education or treatment, the person may be required  
30 pursuant to court order to obtain alcohol or other drug education or  
31 treatment under the court's supervision from an approved facility. The judge  
32 may review an education or treatment determination at the request of the  
33 state or the defendant or on the judge's own initiative. The person shall  
34 pay the costs of the screening, education or treatment unless the court  
35 waives part or all of the costs. If a person is referred to a screening,  
36 education or treatment facility, the facility shall report to the court  
37 whether the person has successfully completed the screening, education or  
38 treatment program.

39           C. Notwithstanding subsection A, paragraph 1 of this section and  
40 except as provided in section 5-398.01, the judge may either:

41           1. Suspend any imposed sentence for a first violation of section 5-395  
42 if the person completes a court ordered alcohol or other drug screening,  
43 education or treatment program. If the person fails to complete the court  
44 ordered alcohol or other drug screening, education or treatment program and  
45 has not been placed on probation, the court shall issue an order to show

1 cause to the defendant as to why the remaining jail sentence should not be  
2 served.

3 2. Suspend all but twenty-four consecutive hours of the sentence if  
4 the person completes a court ordered alcohol or other drug screening,  
5 education or treatment program and if the court determines the person  
6 recklessly endangered another person with a substantial risk of physical  
7 injury. If the person fails to complete the court ordered alcohol or other  
8 drug screening, education or treatment program and has not been placed on  
9 probation, the court shall issue an order to show cause to the defendant as  
10 to why the remaining jail sentence should not be served.

11 D. If within a period of eighty-four months a person is convicted of a  
12 second violation of section 5-395 or is convicted of a violation of section  
13 5-395 and has previously been convicted of an act in another jurisdiction  
14 that if committed in this state would be a violation of section 5-395, the  
15 person:

16 1. Shall be sentenced to serve not less than ninety days in jail,  
17 thirty days of which shall be served consecutively, and is not eligible for  
18 probation or suspension of execution of sentence unless the entire sentence  
19 has been served.

20 2. Shall pay a fine of not less than five hundred dollars.

21 3. Shall be ordered by the court to perform at least thirty hours of  
22 community restitution. If the person fails to complete the community  
23 restitution ordered pursuant to this paragraph, the court may order  
24 alternative sanctions if the court determines that alternative sanctions are  
25 more appropriate.

26 4. Shall pay an additional assessment of one thousand two hundred  
27 fifty dollars to be deposited by the state treasurer in the prison  
28 construction and operations fund established by section 41-1651. This  
29 assessment is not subject to any surcharge. If the conviction occurred in  
30 the superior court or a justice court, the court shall transmit the assessed  
31 monies to the county treasurer. If the conviction occurred in a municipal  
32 court, the court shall transmit the assessed monies to the city treasurer.  
33 The city or county treasurer shall transmit the monies received to the state  
34 treasurer.

35 5. Shall pay an additional assessment of one thousand two hundred  
36 fifty dollars to be deposited by the state treasurer in the ~~public-safety~~  
37 ~~equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section  
38 ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the  
39 conviction occurred in the superior court or a justice court, the court shall  
40 transmit the assessed monies to the county treasurer. If the conviction  
41 occurred in a municipal court, the court shall transmit the assessed monies  
42 to the city treasurer. The city or county treasurer shall transmit the  
43 monies received to the state treasurer.

44 E. Notwithstanding subsection D, paragraph 1 of this section, at the  
45 time of sentencing, except if the court determines the person recklessly  
46 endangered another person with a substantial risk of physical injury, the

1 judge may suspend all but thirty days of the sentence if the person completes  
2 a court ordered alcohol or other drug screening, education or treatment  
3 program. If the person fails to complete the court ordered alcohol or other  
4 drug screening, education or treatment program and has not been placed on  
5 probation, the court shall issue an order to show cause as to why the  
6 remaining jail sentence should not be served.

7 F. In applying the eighty-four month provision of subsection D of this  
8 section, the dates of the commission of the offense shall be the determining  
9 factor irrespective of the sequence in which the offenses were committed.

10 G. A second violation for which a conviction occurs as provided in  
11 this section shall not include a conviction for an offense arising out of the  
12 same series of acts.

13 H. Any political subdivision processing or utilizing the services of a  
14 person ordered to perform community restitution pursuant to this section does  
15 not incur any civil liability to the person ordered to perform community  
16 restitution as a result of these activities unless the political subdivision  
17 or its agent or employee acts with gross negligence.

18 I. After a person who is sentenced pursuant to subsection A of this  
19 section has served twenty-four consecutive hours in jail or after a person  
20 who is sentenced pursuant to subsection D of this section has served  
21 forty-eight consecutive hours in jail and after receiving confirmation that  
22 the person is employed or is a student, the court, on pronouncement of any  
23 jail sentence under this section, may provide in the sentence that the person  
24 may be permitted, if the person is employed or is a student and can continue  
25 the person's employment or studies, to continue such employment or studies  
26 for not more than twelve hours per day nor more than five days per week, and  
27 the remaining day, days or parts of days shall be spent in jail until the  
28 sentence is served. The person shall be allowed out of jail only long enough  
29 to complete the actual hours of employment or studies and no longer.

30 J. A person who is sentenced pursuant to this section is eligible for  
31 a home detention program pursuant to section 9-499.07, subsections L through  
32 R or section 11-459, subsections K through Q.

33 K. The court shall allow the allegation of a prior conviction or other  
34 pending charge of a violation of section 5-395 filed twenty or more days  
35 before the date the case is actually tried and may allow the allegation of a  
36 prior conviction or other pending charge of a violation of section 5-395  
37 filed any time before the date the case is actually tried, provided that when  
38 the allegation is filed this state must make available to the defendant a  
39 copy of any information obtained concerning the prior conviction or other  
40 pending charge. Any conviction may be used to enhance another conviction  
41 irrespective of the dates on which the offenses occurred within the  
42 eighty-four month provision.

43 L. If a person is placed on probation for violating section 5-395, the  
44 probation shall be supervised unless the court finds that supervised  
45 probation is not necessary or the court does not have supervisory probation  
46 services.

1           Sec. 4. Section 5-395.03, Arizona Revised Statutes, is amended to  
2 read:

3           5-395.03. Test for alcohol concentration or drug content;  
4                                   refusal; civil penalty

5           A. Any person who operates a motorized watercraft that is underway  
6 within this state gives consent, subject to section 4-244, paragraph 35,  
7 section 5-395 or section 5-396, to a test or tests of the person's blood,  
8 breath, urine or other bodily substance for the purpose of determining  
9 alcohol concentration or drug content if the person is arrested for any  
10 offense arising out of acts alleged to have been committed in violation of  
11 this chapter or section 4-244, paragraph 35 while the person was operating or  
12 in actual physical control of a motorized watercraft that was underway while  
13 under the influence of intoxicating liquor or drugs. The test or tests  
14 chosen by the law enforcement agency shall be administered at the direction  
15 of a law enforcement officer having reasonable grounds to believe the person  
16 to have been operating or in actual physical control of a motorized  
17 watercraft that is underway within this state while under the influence of  
18 intoxicating liquor or drugs, or if the person is under twenty-one years of  
19 age, with spirituous liquor in the person's body.

20           B. Following an arrest a violator shall be requested to submit to and  
21 successfully complete any test or tests prescribed by subsection A of this  
22 section, AND, IF THE VIOLATOR REFUSES TO SUBMIT TO OR COMPLETE THE TEST OR  
23 TESTS, THE VIOLATOR SHALL BE INFORMED THAT THE VIOLATOR IS SUBJECT TO A CIVIL  
24 PENALTY. THE CASE SHALL PROCEED AS PROVIDED IN TITLE 28, CHAPTER 5,  
25 ARTICLE 4.

26           C. A PERSON WHO REFUSES ANY TEST OR TESTS PRESCRIBED BY SUBSECTION A  
27 OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF SEVEN HUNDRED FIFTY DOLLARS  
28 AND:

29           1. AN ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS TO BE DEPOSITED  
30 BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS FUND  
31 ESTABLISHED BY SECTION 41-1651. THE CIVIL PENALTY AUTHORIZED PURSUANT TO  
32 THIS PARAGRAPH IS NOT SUBJECT TO ANY SURCHARGE. IF THE CIVIL PENALTY  
33 AUTHORIZED PURSUANT TO THIS PARAGRAPH IS IMPOSED BY THE SUPERIOR COURT OR A  
34 JUSTICE COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED TO THE COUNTY  
35 TREASURER. IF THE CIVIL PENALTY AUTHORIZED PURSUANT TO THIS PARAGRAPH IS  
36 IMPOSED BY A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED  
37 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE  
38 MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE STATE TREASURER.

39           2. IF THE PERSON IS CONVICTED OR ADJUDICATED OF ANY OFFENSE ARISING  
40 OUT OF ACTS COMMITTED IN VIOLATION OF THIS CHAPTER OR SECTION 4-244,  
41 PARAGRAPH 35 WHILE THE PERSON WAS OPERATING OR IN ACTUAL PHYSICAL CONTROL OF  
42 A MOTORIZED WATERCRAFT THAT WAS UNDERWAY WHILE UNDER THE INFLUENCE OF  
43 INTOXICATING LIQUOR OR DRUGS, AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED  
44 DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE LAW ENFORCEMENT AND  
45 BOATING SAFETY FUND ESTABLISHED BY SECTION 5-383. THE ASSESSMENT IMPOSED  
46 PURSUANT TO THIS PARAGRAPH IS NOT SUBJECT TO ANY SURCHARGE. IF THE

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

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

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

12 ~~5-396.~~ Aggravated operating or actual physical control of  
13 motorized watercraft while under the influence of  
14 intoxicating liquor or drugs; classification

15 A. A person is guilty of aggravated operating or actual physical  
16 control of a motorized watercraft that is underway while under the influence  
17 of intoxicating liquor or drugs if the person does any of the following:

18 1. Within a period of eighty-four months commits a third or subsequent  
19 violation of section 5-395 or 5-397 or this section or is convicted of a  
20 violation of section 5-395 or 5-397 or this section and has previously been  
21 convicted of any combination of convictions of section 5-395 or 5-397 or this  
22 section or acts committed in another jurisdiction that if committed in this  
23 state would be a violation of section 5-395 or 5-397 or this section.

24 2. While a person under fifteen years of age is aboard the motorized  
25 watercraft, commits ~~any of the following~~ A VIOLATION OF EITHER:

26 ~~(a) A first violation of section 5-395, if the person recklessly~~  
27 ~~endangers the person who is under fifteen years of age with a substantial~~  
28 ~~risk of physical injury.~~

29 ~~(b) A second violation of section 5-395 within a period of eighty four~~  
30 ~~months.~~

31 (a) SECTION 5-395.

32 ~~(c)~~ (b) ~~A violation of~~ Section 5-397.

33 B. The dates of the commission of the offenses are the determining  
34 factor in applying the eighty-four month provision provided in subsection A,  
35 paragraph 1 ~~or paragraph 2, subdivision (b)~~ of this section regardless of the  
36 sequence in which the offenses were committed. For THE purposes of this  
37 section, a third or subsequent violation for which a conviction occurs does  
38 not include a conviction for an offense arising out of the same series of  
39 acts. The time that a probationer is found to be on absconder status or the  
40 time that a person is incarcerated in any state, federal, county or city jail  
41 or correctional facility is excluded when determining the eighty-four month  
42 period provided in subsection A, paragraph 1, ~~subsection A, paragraph 2,~~  
43 ~~subdivision (b)~~ and subsection D of this section.

44 C. A person who is convicted under subsection A, paragraph 1 of this  
45 section and who within an eighty-four month period has been convicted of two  
46 prior violations of section 5-395 or 5-397 or this section, or acts committed

1 in another jurisdiction that if committed in this state would be a violation  
2 of section 5-395 or 5-397 or this section, is not eligible for probation,  
3 pardon, commutation or suspension of sentence or release on any other basis  
4 until the person has served not less than four months in prison.

5 D. A person who is convicted under subsection A, paragraph 1 of this  
6 section and who within an eighty-four month period has been convicted of  
7 three or more prior violations of section 5-395 or 5-397 or this section, or  
8 acts committed in another jurisdiction that if committed in this state would  
9 be a violation of section 5-395 or 5-397 or this section, is not eligible for  
10 probation, pardon, commutation or suspension of sentence or release on any  
11 other basis until the person has served not less than eight months in prison.

12 E. A person who is convicted under subsection A, paragraph 2,  
13 subdivision (a) ~~or (b)~~ of this section shall serve at least the minimum term  
14 of incarceration required pursuant to section 5-395.01.

15 F. A person who is convicted under subsection A, paragraph 2,  
16 subdivision ~~(e)~~ (b) of this section shall serve at least the minimum term of  
17 incarceration required pursuant to section 5-397.

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

24 1. For a person sentenced pursuant to subsection C of this section,  
25 for an individual period of not more than four months and a total period of  
26 not more than one year.

27 2. For a person sentenced pursuant to subsection D of this section,  
28 for an individual period of not more than eight months and a total period of  
29 not more than two years.

30 H. The time that a person spends in custody pursuant to subsection G  
31 of this section shall not be counted toward the sentence imposed if the  
32 person's probation is revoked and the person is sentenced to prison following  
33 revocation of probation.

34 I. On conviction for a violation of this section, the court:

35 1. Shall order the person to pay a fine of not less than seven hundred  
36 fifty dollars.

37 2. In addition to any other penalty prescribed by law, shall order the  
38 person to pay an additional assessment of two hundred fifty dollars. If the  
39 conviction occurred in the superior court or a justice court, the court shall  
40 transmit the assessed monies to the county treasurer. If the conviction  
41 occurred in a municipal court, the court shall transmit the assessed monies  
42 to the city treasurer. The city or county treasurer shall transmit the  
43 monies received to the state treasurer. The state treasurer shall deposit  
44 the monies received in the driving under the influence abatement fund  
45 established by section 28-1304. Any fine imposed for a violation of this

1 section and any assessments, restitution and incarceration costs shall be  
2 paid before the assessment prescribed in this paragraph.

3 3. In addition to any other penalty prescribed by law, shall order the  
4 person to pay an additional assessment of one thousand five hundred dollars  
5 to be deposited by the state treasurer in the prison construction and  
6 operations fund established by section 41-1651. This assessment is not  
7 subject to any surcharge. If the conviction occurred in the superior court  
8 or a justice court, the court shall transmit the assessed monies to the  
9 county treasurer. If the conviction occurred in a municipal court, the court  
10 shall transmit the assessed monies to the city treasurer. The city or county  
11 treasurer shall transmit the monies received to the state treasurer.

12 4. In addition to any other penalty prescribed by law, shall order the  
13 person to pay an additional assessment of one thousand five hundred dollars  
14 to be deposited by the state treasurer in the ~~public safety equipment~~ LAW  
15 ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383.  
16 This assessment is not subject to any surcharge. If the conviction occurred  
17 in the superior court or a justice court, the court shall transmit the  
18 assessed monies to the county treasurer. If the conviction occurred in a  
19 municipal court, the court shall transmit the assessed monies to the city  
20 treasurer. The city or county treasurer shall transmit the monies received  
21 to the state treasurer.

22 J. Aggravated operating or actual physical control of a motorized  
23 watercraft that is underway while under the influence of an intoxicating  
24 liquor or drugs committed under:

25 1. Subsection A, paragraph 1 of this section is a class 4 felony.

26 2. Subsection A, paragraph 2 of this section is a class 6 felony.

27 Sec. 6. Section 5-397, Arizona Revised Statutes, is amended to read:

28 5-397. Operating or in actual physical control of a motorized  
29 watercraft while under the extreme influence of  
30 intoxicating liquor; trial by jury; sentencing;  
31 classification; definition

32 A. It is unlawful for a person to operate or be in actual physical  
33 control of a motorized watercraft that is underway within this state if the  
34 person has an alcohol concentration as follows within two hours of operating  
35 or being in actual physical control of the motorized watercraft and the  
36 alcohol concentration results from alcohol consumed either before or while  
37 operating or being in actual physical control of the motorized watercraft:

38 1. 0.15 or more but less than 0.20.

39 2. 0.20 or more.

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

43 C. At the arraignment, the court shall inform the defendant that the  
44 defendant may request a trial by jury and that the request, if made, shall be  
45 granted.

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

1           1. Shall be sentenced to serve not less than thirty consecutive days  
2 in jail and is not eligible for probation or suspension of execution of  
3 sentence unless the entire sentence is served if the person is convicted of a  
4 violation of subsection A, paragraph 1 of this section. A person who is  
5 convicted of a violation of subsection A, paragraph 2 of this section shall  
6 be sentenced to serve not less than forty-five consecutive days in jail and  
7 is not eligible for probation or suspension of execution of sentence unless  
8 the entire sentence is served.

9           2. Shall pay a fine of not less than two hundred fifty dollars, except  
10 that a person who is convicted of a violation of subsection A, paragraph 2 of  
11 this section shall pay a fine of not less than five hundred dollars. The  
12 fine prescribed in this paragraph and any assessments, restitution and  
13 incarceration costs shall be paid before the assessment prescribed in  
14 paragraph 3 of this subsection.

15           3. Shall pay an additional assessment of two hundred fifty dollars.  
16 If the conviction occurred in the superior court or a justice court, the  
17 court shall transmit the assessed monies to the county treasurer. If the  
18 conviction occurred in a municipal court, the court shall transmit the  
19 assessed monies to the city treasurer. The city or county treasurer shall  
20 transmit the monies received to the state treasurer. The state treasurer  
21 shall deposit the monies received in the driving under the influence  
22 abatement fund established by section 28-1304.

23           4. May be ordered by a court to perform community restitution.

24           5. Shall pay an additional assessment of one thousand dollars to be  
25 deposited by the state treasurer in the prison construction and operations  
26 fund established by section 41-1651. This assessment is not subject to any  
27 surcharge. If the conviction occurred in the superior court or a justice  
28 court, the court shall transmit the assessed monies to the county treasurer.  
29 If the conviction occurred in a municipal court, the court shall transmit the  
30 assessed monies to the city treasurer. The city or county treasurer shall  
31 transmit the monies received to the state treasurer.

32           6. Shall pay an additional assessment of one thousand dollars to be  
33 deposited by the state treasurer in the ~~public safety equipment~~ LAW  
34 ENFORCEMENT AND BOATING SAFETY fund established by section ~~41-1723~~ 5-383.  
35 This assessment is not subject to any surcharge. If the conviction occurred  
36 in the superior court or a justice court, the court shall transmit the  
37 assessed monies to the county treasurer. If the conviction occurred in a  
38 municipal court, the court shall transmit the assessed monies to the city  
39 treasurer. The city or county treasurer shall transmit the monies received  
40 to the state treasurer.

41           E. Notwithstanding subsection D, paragraph 1 of this section, at the  
42 time of sentencing if the person is convicted of a violation of subsection A,  
43 paragraph 1 of this section, the judge may suspend all but ten days of the  
44 sentence if the person completes a court ordered alcohol or other drug  
45 screening, education or treatment program. If the person fails to complete  
46 the court ordered alcohol or other drug screening, education or treatment

1 program and has not been placed on probation, the court shall issue an order  
2 to show cause to the defendant as to why the remaining jail sentence should  
3 not be served.

4 F. If within a period of eighty-four months a person is convicted of a  
5 second violation of this section or is convicted of a violation of this  
6 section and has previously been convicted of a violation of section 5-395 or  
7 5-396 or an act in another jurisdiction that if committed in this state would  
8 be a violation of this section or section 5-395 or 5-396, the person:

9 1. Shall be sentenced to serve not less than one hundred twenty days  
10 in jail, sixty days of which shall be served consecutively, and is not  
11 eligible for probation or suspension of execution of sentence unless the  
12 entire sentence has been served if the person is convicted of a violation of  
13 subsection A, paragraph 1 of this section. A person who is convicted of a  
14 violation of subsection A, paragraph 2 of this section shall be sentenced to  
15 serve not less than one hundred eighty days in jail, ninety of which shall be  
16 served consecutively, and is not eligible for probation or suspension of  
17 execution of sentence unless the entire sentence has been served.

18 2. Shall pay a fine of not less than five hundred dollars, except that  
19 a person who is convicted of a violation of subsection A, paragraph 2 of this  
20 section shall pay a fine of not less than one thousand dollars. The fine  
21 prescribed in this paragraph and any assessments, restitution and  
22 incarceration costs shall be paid before the assessment prescribed in  
23 paragraph 3 of this subsection.

24 3. Shall pay an additional assessment of two hundred fifty dollars.  
25 If the conviction occurred in the superior court or a justice court, the  
26 court shall transmit the assessed monies to the county treasurer. If the  
27 conviction occurred in a municipal court, the court shall transmit the  
28 assessed monies to the city treasurer. The city or county treasurer shall  
29 transmit the monies received to the state treasurer. The state treasurer  
30 shall deposit the monies received in the driving under the influence  
31 abatement fund established by section 28-1304.

32 4. Shall be ordered by a court to perform at least thirty hours of  
33 community restitution. If the person fails to complete the community  
34 restitution ordered pursuant to this paragraph, the court may order  
35 alternative sanctions if the court determines that alternative sanctions are  
36 more appropriate.

37 5. Shall pay an additional assessment of one thousand two hundred  
38 fifty dollars to be deposited by the state treasurer in the prison  
39 construction and operations fund established by section 41-1651. This  
40 assessment is not subject to any surcharge. If the conviction occurred in  
41 the superior court or a justice court, the court shall transmit the assessed  
42 monies to the county treasurer. If the conviction occurred in a municipal  
43 court, the court shall transmit the assessed monies to the city treasurer.  
44 The city or county treasurer shall transmit the monies received to the state  
45 treasurer.

1           6. Shall pay an additional assessment of one thousand two hundred  
2 fifty dollars to be deposited by the state treasurer in the ~~public safety~~  
3 ~~equipment~~ LAW ENFORCEMENT AND BOATING SAFETY fund established by section  
4 ~~41-1723~~ 5-383. This assessment is not subject to any surcharge. If the  
5 conviction occurred in the superior court or a justice court, the court shall  
6 transmit the assessed monies to the county treasurer. If the conviction  
7 occurred in a municipal court, the court shall transmit the assessed monies  
8 to the city treasurer. The city or county treasurer shall transmit the monies  
9 received to the state treasurer.

10           G. Notwithstanding subsection F, paragraph 1 of this section, at the  
11 time of sentencing, if the person is convicted of a violation of subsection  
12 A, paragraph 1 of this section, the judge may suspend all but sixty days of  
13 the sentence if the person completes a court ordered alcohol or other drug  
14 screening, education or treatment program. If the person fails to complete  
15 the court ordered alcohol or other drug screening, education or treatment  
16 program and has not been placed on probation, the court shall issue an order  
17 to show cause as to why the remaining jail sentence should not be served.

18           H. In applying the eighty-four month provision of subsection F of this  
19 section, the dates of the commission of the offense shall be the determining  
20 factor, irrespective of the sequence in which the offenses were committed.

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

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

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

29           Sec. 7. Section 41-1723, Arizona Revised Statutes, is amended to read:  
30 ~~41-1723.~~ Public safety equipment fund; distribution

31           A. The public safety equipment fund is established consisting of  
32 monies deposited in the fund pursuant to sections ~~5-395.01, 5-396, 5-397,~~  
33 12-116.04, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288.  
34 The department shall administer the fund.

35           B. Monies deposited in the fund pursuant to sections ~~5-395.01, 5-396,~~  
36 ~~5-397,~~ 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288 shall  
37 be distributed as follows:

38           1. The first one million two hundred thousand dollars received each  
39 fiscal year as a continuing appropriation to the department for vehicles,  
40 protective armor, electronic stun devices and other safety equipment. Monies  
41 appropriated pursuant to this paragraph are exempt from the provisions of  
42 section 35-190 relating to lapsing of appropriations.

43           2. All other monies each fiscal year shall be deposited in the state  
44 general fund.

45           C. Monies deposited in the fund pursuant to section 12-116.04 are  
46 subject to legislative appropriation and shall be used by the department for

H.B. 2003

1 vehicles, protective armor, electronic stun devices and other safety  
2 equipment.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

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