

REFERENCE TITLE: **DUI; watercraft; medical practitioner; authorization**

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1295

Introduced by
Senators Driggs, Allen S

AN ACT

**AMENDING SECTIONS 5-395 AND 28-1381, 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 5-395, Arizona Revised Statutes, is amended to
3 read:

4 5-395. Operating or in actual physical control of a motorized
5 watercraft while under the influence: violation:
6 classification: definition

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

10 1. While under the influence of intoxicating liquor, any drug, a vapor
11 releasing substance containing a toxic substance or any combination of
12 liquor, drugs or vapor releasing substances if the person is impaired to the
13 slightest degree.

14 2. If the person has an alcohol concentration of 0.08 or more within
15 two hours of operating or being in actual physical control of the motorized
16 watercraft and the alcohol concentration results from alcohol consumed either
17 before or while operating or being in actual physical control of the
18 motorized watercraft.

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

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

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

26 C. A person using a drug prescribed by a medical practitioner WHO IS
27 licensed pursuant to title 32, ~~chapter 7, 11, 13 or 17~~ AND WHO IS AUTHORIZED
28 TO PRESCRIBE THE DRUG is not guilty of violating subsection A, paragraph 3 of
29 this section.

30 D. The state shall not dismiss a charge of violating this section for
31 either of the following:

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

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

38 E. In any prosecution for a violation of this section the state, for
39 the purpose of classification and sentencing pursuant to section 5-395.01 or
40 5-396, shall allege all prior convictions of violating this section occurring
41 within the past eighty-four months, unless there is clearly an insufficient
42 legal or factual basis to do so.

43 F. In a trial, action or proceeding for a violation of this section or
44 section 5-396 other than a trial, action or proceeding involving operating or
45 being in actual physical control of a commercial motorized watercraft, the

defendant's alcohol concentration within two hours of the time of operating or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

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

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

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

G. Subsection F of this section shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

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

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

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

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

L. Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated this section and a sample of blood, urine or any other bodily substance is taken from that

1 person for any reason a portion of that sample sufficient for analysis shall
2 be provided to a law enforcement officer if requested for law enforcement
3 purposes. A person who fails to comply with this subsection is guilty of a
4 class 1 misdemeanor.

5 M. A person who collects blood, urine or any other bodily substance
6 under this section or any hospital, laboratory or clinic employing or
7 ~~utilizing~~ USING the services of the person does not incur any civil liability
8 as a result of this activity if requested by a law enforcement officer to
9 collect blood, urine or any other bodily substances unless the person, while
10 performing the activity, acts with gross negligence.

11 N. A statement by the defendant that the defendant was operating a
12 motorized watercraft that was underway and that was involved in an accident
13 resulting in injury to or death of any person is admissible in any criminal
14 proceeding without further proof of corpus delicti if it is otherwise
15 admissible.

16 O. At the arraignment, the court shall inform the defendant that the
17 defendant may request a trial by jury and that the request, if made, shall be
18 granted.

19 P. For the purposes of this section, "alcohol concentration" means
20 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
21 two hundred ten liters of breath.

22 Sec. 2. Section 28-1381, Arizona Revised Statutes, is amended to read:

23 28-1381. Driving or actual physical control while under the
24 influence; trial by jury; presumptions; admissible
25 evidence; sentencing; classification

26 A. It is unlawful for a person to drive or be in actual physical
27 control of a vehicle in this state under any of the following circumstances:

28 1. While under the influence of intoxicating liquor, any drug, a vapor
29 releasing substance containing a toxic substance or any combination of
30 liquor, drugs or vapor releasing substances if the person is impaired to the
31 slightest degree.

32 2. If the person has an alcohol concentration of 0.08 or more within
33 two hours of driving or being in actual physical control of the vehicle and
34 the alcohol concentration results from alcohol consumed either before or
35 while driving or being in actual physical control of the vehicle.

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

38 4. If the vehicle is a commercial motor vehicle that requires a person
39 to obtain a commercial driver license as defined in section 28-3001 and the
40 person has an alcohol concentration of 0.04 or more.

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

44 C. A person who is convicted of a violation of this section is guilty
45 of a class 1 misdemeanor.

D. A person using a drug as prescribed by a medical practitioner WHO IS licensed pursuant to title 32, ~~chapter 7, 11, 13 or 17~~ AND WHO IS AUTHORIZED TO PRESCRIBE THE DRUG is not guilty of violating subsection A, paragraph 3 of this section.

E. In any prosecution for a violation of this section, the state shall allege, for the purpose of classification and sentencing pursuant to this section, all prior convictions of violating this section, section 28-1382 or section 28-1383 occurring within the past thirty-six months, unless there is an insufficient legal or factual basis to do so.

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

G. In a trial, action or proceeding for a violation of this section or section 28-1383 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

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

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

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

H. Subsection G of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

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

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

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

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

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

1 assessed monies to the city treasurer. The city or county treasurer shall
2 transmit the monies received to the state treasurer.

3 5. Shall pay an additional assessment of five hundred dollars to be
4 deposited by the state treasurer in the public safety equipment fund
5 established by section 41-1723. This assessment is not subject to any
6 surcharge. If the conviction occurred in the superior court or a justice
7 court, the court shall transmit the assessed monies to the county treasurer.
8 If the conviction occurred in a municipal court, the court shall transmit the
9 assessed monies to the city treasurer. The city or county treasurer shall
10 transmit the monies received to the state treasurer.

11 6. Shall be required by the department, on report of the conviction,
12 to equip any motor vehicle the person operates with a certified ignition
13 interlock device pursuant to section 28-3319. In addition, the court may
14 order the person to equip any motor vehicle the person operates with a
15 certified ignition interlock device for more than twelve months beginning on
16 the date of reinstatement of the person's driving privilege following a
17 suspension or revocation or on the date of the department's receipt of the
18 report of conviction, whichever occurs later. The person who operates a
19 motor vehicle with a certified ignition interlock device under this paragraph
20 shall comply with article 5 of this chapter.

21 J. Notwithstanding subsection I, paragraph 1 of this section, at the
22 time of sentencing the judge may suspend all but one day of the sentence if
23 the person completes a court ordered alcohol or other drug screening,
24 education or treatment program. If the person fails to complete the court
25 ordered alcohol or other drug screening, education or treatment program and
26 has not been placed on probation, the court shall issue an order to show
27 cause to the defendant as to why the remaining jail sentence should not be
28 served.

29 K. If within a period of eighty-four months a person is convicted of a
30 second violation of this section or is convicted of a violation of this
31 section and has previously been convicted of a violation of section 28-1382
32 or 28-1383 or an act in another jurisdiction that if committed in this state
33 would be a violation of this section or section 28-1382 or 28-1383, the
34 person:

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

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

40 3. Shall be ordered by a court to perform at least thirty hours of
41 community restitution.

42 4. Shall have the person's driving privilege revoked for one year.
43 The court shall report the conviction to the department. On receipt of the
44 report, the department shall revoke the person's driving privilege and shall
45 require the person to equip any motor vehicle the person operates with a

1 certified ignition interlock device pursuant to section 28-3319. In
2 addition, the court may order the person to equip any motor vehicle the
3 person operates with a certified ignition interlock device for more than
4 twelve months beginning on the date of reinstatement of the person's driving
5 privilege following a suspension or revocation or on the date of the
6 department's receipt of the report of conviction, whichever occurs later.
7 The person who operates a motor vehicle with a certified ignition interlock
8 device under this paragraph shall comply with article 5 of this chapter.

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

18 6. Shall pay an additional assessment of one thousand two hundred
19 fifty dollars to be deposited by the state treasurer in the public safety
20 equipment fund established by section 41-1723. This assessment is not
21 subject to any surcharge. If the conviction occurred in the superior court
22 or a justice court, the court shall transmit the assessed monies to the
23 county treasurer. If the conviction occurred in a municipal court, the court
24 shall transmit the assessed monies to the city treasurer. The city or county
25 treasurer shall transmit the monies received to the state treasurer.

26 L. Notwithstanding subsection K, paragraph 1 of this section, at the
27 time of sentencing, the judge may suspend all but thirty days of the sentence
28 if the person completes a court ordered alcohol or other drug screening,
29 education or treatment program. If the person fails to complete the court
30 ordered alcohol or other drug screening, education or treatment program and
31 has not been placed on probation, the court shall issue an order to show
32 cause as to why the remaining jail sentence should not be served.

33 M. In applying the eighty-four month provision of subsection K of this
34 section, the dates of the commission of the offense shall be the determining
35 factor, irrespective of the sequence in which the offenses were committed.

36 N. A second violation for which a conviction occurs as provided in
37 this section shall not include a conviction for an offense arising out of the
38 same series of acts.

39 O. After completing forty-five days of the revocation period
40 prescribed by subsection K of this section, a person whose driving privilege
41 is revoked for a violation of this section and who is sentenced pursuant to
42 subsection K of this section is eligible for a special ignition interlock
43 restricted driver license pursuant to section 28-1401.