

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

# SENATE BILL 1295

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

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

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

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

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

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

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

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

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

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

43 L. Notwithstanding any other law, if a law enforcement officer has  
44 probable cause to believe that a person has violated this section and a  
45 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.

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

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

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

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

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

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

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

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

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

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

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

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

40 4. Shall pay an additional assessment of five hundred dollars to be  
41 deposited by the state treasurer in the prison construction and operations  
42 fund established by section 41-1651. This assessment is not subject to any  
43 surcharge. If the conviction occurred in the superior court or a justice  
44 court, the court shall transmit the assessed monies to the county treasurer.  
45 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.