

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

CHAPTER 339
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
46 defendant's alcohol concentration within two hours of the time of operating

1 or being in actual physical control as shown by analysis of the defendant's
2 blood, breath or other bodily substance gives rise to the following
3 presumptions:

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

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

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

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

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

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

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

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

42 L. Notwithstanding any other law, if a law enforcement officer has
43 probable cause to believe that a person has violated this section and a
44 sample of blood, urine or any other bodily substance is taken from that
45 person for any reason a portion of that sample sufficient for analysis shall
46 be provided to a law enforcement officer if requested for law enforcement

1 purposes. A person who fails to comply with this subsection is guilty of a
2 class 1 misdemeanor.

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

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

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

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

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

21 ~~28-1381.~~ Driving or actual physical control while under the
22 influence; trial by jury; presumptions; admissible
23 evidence; sentencing; classification

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

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

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

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

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

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

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

44 D. A person using a drug as prescribed by a medical practitioner WHO
45 IS licensed pursuant to title 32, ~~chapter 7, 11, 13 or 17~~ AND WHO IS

1 AUTHORIZED TO PRESCRIBE THE DRUG is not guilty of violating subsection A,
2 paragraph 3 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 4. Shall have the person's driving privilege revoked for one year.
41 The court shall report the conviction to the department. On receipt of the
42 report, the department shall revoke the person's driving privilege and shall
43 require the person to equip any motor vehicle the person operates with a
44 certified ignition interlock device pursuant to section 28-3319. In
45 addition, the court may order the person to equip any motor vehicle the
46 person operates with a certified ignition interlock device for more than

1 twelve months beginning on the date of reinstatement of the person's driving
2 privilege following a suspension or revocation or on the date of the
3 department's receipt of the report of conviction, whichever occurs later.
4 The person who operates a motor vehicle with a certified ignition interlock
5 device under this paragraph shall comply with article 5 of this chapter.

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

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

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

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

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

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

APPROVED BY THE GOVERNOR MAY 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.