

REFERENCE TITLE: **DUI; drug metabolites**

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2273

Introduced by
Representatives Borrelli, Cobb, Kern: Barton, Campbell, Shope, Thorpe

AN ACT

**AMENDING SECTIONS 28-1321, 28-1381 AND 28-1385, ARIZONA REVISED STATUTES;
RELATING TO DRIVING UNDER THE INFLUENCE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

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

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

32 1. If the test results show a blood or breath alcohol concentration of
33 0.08 or more, if the results show a blood or breath alcohol concentration of
34 0.04 or more and the violator was driving or in actual physical control of a
35 commercial motor vehicle or if the results show there is any drug defined in
36 section 13-3401 or ~~ANY OF its metabolite~~ ACTIVE OR INACTIVE METABOLITES in
37 the person's body and the person does not possess a valid prescription for
38 the drug, the violator's license or permit to drive will be suspended or
39 denied for not less than ninety consecutive days.

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

44 C. A person who is dead, unconscious or otherwise in a condition
45 rendering the person incapable of refusal is deemed not to have withdrawn the

1 consent provided by subsection A of this section and the test or tests may be
2 administered, subject to section 4-244, paragraph 34 or section 28-1381,
3 28-1382 or 28-1383.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 H. The order for suspension shall:

19 1. Be accompanied by printed forms that are ready to mail to the
20 department, that may be filled out and signed by the person to indicate the
21 person's desire for a hearing and that advise the person that the person may
22 alternatively submit an online request for a hearing.

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

27 I. On the receipt of a request for a hearing, the department shall set
28 the hearing within sixty days. The department may hold the hearing in
29 person, by telephone or by videoconference. If the department holds the
30 hearing in person, the hearing shall be held in the county in which the
31 person named in the report resides unless the law enforcement agency filing
32 the certified report of refusal pursuant to subsection D of this section
33 requests at the time of its filing that the hearing be held in the county
34 where the refusal occurred.

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

44 K. Hearings requested under this section shall be conducted in the
45 same manner and under the same conditions as provided in section 28-3306.

1 For the purposes of this section, the scope of the hearing shall include only
2 the issues of whether:

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

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

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

9 2. The person was placed under arrest.

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

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

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

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

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

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

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

1 license pursuant to section 28-1401. Unless the certified ignition interlock
2 period is extended by the department pursuant to section 28-1461, a person
3 who is issued a special ignition interlock restricted driver license as
4 provided in this subsection shall maintain a functioning certified ignition
5 interlock device in compliance with this chapter during the remaining period
6 of the suspension prescribed by this section. This subsection does not apply
7 to a person whose driving privilege is suspended for a second or subsequent
8 refusal within a period of eighty-four months.

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

10 28-1381. Driving or actual physical control while under the
11 influence; trial by jury; presumptions; admissible
12 evidence; sentencing; classification

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

15 1. While under the influence of intoxicating liquor, any drug, a vapor
16 releasing substance containing a toxic substance or any combination of
17 liquor, drugs or vapor releasing substances if the person is impaired to the
18 slightest degree.

19 2. If the person has an alcohol concentration of 0.08 or more within
20 two hours of driving or being in actual physical control of the vehicle and
21 the alcohol concentration results from alcohol consumed either before or
22 while driving or being in actual physical control of the vehicle.

23 3. While there is any drug defined in section 13-3401 or **ANY OF** its
24 ~~metabolite~~ **ACTIVE OR INACTIVE METABOLITES** in the person's body.

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

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

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

33 D. A person using a drug as prescribed by a medical practitioner
34 licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of
35 violating subsection A, paragraph 3 of this section.

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

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

44 G. In a trial, action or proceeding for a violation of this section or
45 section 28-1383 other than a trial, action or proceeding involving driving or

1 being in actual physical control of a commercial vehicle, the defendant's
2 alcohol concentration within two hours of the time of driving or being in
3 actual physical control as shown by analysis of the defendant's blood, breath
4 or other bodily substance gives rise to the following 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, that fact shall not give rise to a presumption that the defendant
11 was or was not under the influence of intoxicating liquor, but that fact may
12 be considered with other competent evidence in determining the guilt or
13 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 H. Subsection G of this section does not limit the introduction of any
18 other competent evidence bearing on the question of whether or not the
19 defendant was under the influence of intoxicating liquor.

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

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

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

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

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

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

42 6. Shall be required by the department, on report of the conviction,
43 to equip any motor vehicle the person operates with a certified ignition
44 interlock device pursuant to section 28-3319. In addition, the court may
45 order the person to equip any motor vehicle the person operates with a

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

7 J. Notwithstanding subsection I, paragraph 1 of this section, at the
8 time of sentencing the judge may suspend all but one day of the sentence if
9 the person completes a court ordered alcohol or other drug screening,
10 education or treatment program. If the person fails to complete the court
11 ordered alcohol or other drug screening, education or treatment program and
12 has not been placed on probation, the court shall issue an order to show
13 cause to the defendant as to why the remaining jail sentence should not be
14 served.

15 K. If within a period of eighty-four months a person is convicted of a
16 second violation of this section or is convicted of a violation of this
17 section and has previously been convicted of a violation of section 28-1382
18 or 28-1383 or an act in another jurisdiction that if committed in this state
19 would be a violation of this section or section 28-1382 or 28-1383, the
20 person:

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

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

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

28 4. Shall have the person's driving privilege revoked for one year.
29 The court shall report the conviction to the department. On receipt of the
30 report, the department shall revoke the person's driving privilege and shall
31 require the person to equip any motor vehicle the person operates with a
32 certified ignition interlock device pursuant to section 28-3319. In
33 addition, the court may order the person to equip any motor vehicle the
34 person operates with a certified ignition interlock device for more than
35 twelve months beginning on the date of reinstatement of the person's driving
36 privilege following a suspension or revocation or on the date of the
37 department's receipt of the report of conviction, whichever occurs later.
38 The person who operates a motor vehicle with a certified ignition interlock
39 device under this paragraph shall comply with article 5 of this chapter.

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

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

4 6. Shall pay an additional assessment of one thousand two hundred
5 fifty dollars to be deposited by the state treasurer in the public safety
6 equipment fund established by section 41-1723. 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 L. Notwithstanding subsection K, paragraph 1 of this section, at the
13 time of sentencing, the judge may suspend all but thirty days of the sentence
14 if the person completes a court ordered alcohol or other drug screening,
15 education or treatment program. If the person fails to complete the court
16 ordered alcohol or other drug screening, education or treatment program and
17 has not been placed on probation, the court shall issue an order to show
18 cause as to why the remaining jail sentence should not be served.

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

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

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

30 Sec. 3. Section 28-1385, Arizona Revised Statutes, is amended to read:

31 28-1385. Administrative license suspension for driving under
32 the influence or for homicide or assault involving a
33 motor vehicle; report; hearing; summary review;
34 ignition interlock device requirement

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

39 1. The officer arrests a person for a violation of section 4-244,
40 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a
41 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a
42 motor vehicle.

43 2. The person submits to a blood or breath alcohol test permitted by
44 section 28-1321 or any other law or a sample of blood is obtained pursuant to

1 section 28-1388 and the results are either not available or the results
2 indicate any of the following:

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

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

8 (c) Any drug defined in section 13-3401 or ~~ANY OF its metabolite is~~
9 ~~ACTIVE OR INACTIVE METABOLITES ARE~~ in the person's body except if the person
10 possesses a valid prescription for the drug.

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

15 1. Information that adequately identifies the arrested person.

16 2. A statement of the officer's grounds for belief that the person was
17 driving or in actual physical control of a motor vehicle in violation of
18 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
19 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201
20 or 13-1204 involving a motor vehicle.

21 3. A statement that the person was arrested for a violation of section
22 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or
23 for a violation of title 13, chapter 11 or section 13-1201 or 13-1204
24 involving a motor vehicle.

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

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

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

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

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

36 4. Shall be accompanied by printed forms that are ready to mail to the
37 department, that the person may fill out and sign to indicate the person's
38 desire for a hearing and that advise the person that the person may
39 alternatively submit an online request for a hearing.

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

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

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

4 D. If the blood test result is unavailable at the time the test is
5 administered, the result shall be forwarded to the department before the
6 hearing held pursuant to this section in a form prescribed by the director.

7 E. If the license or permit is not surrendered pursuant to subsection
8 C of this section, the officer shall state the reason for the nonsurrender.
9 If a valid license or permit is surrendered, the officer shall issue a
10 temporary driving permit that is valid for fifteen days. The officer shall
11 forward a copy of the completed order of suspension, a copy of any completed
12 temporary permit and any driver license or permit taken into possession under
13 this section to the department within five days after the issuance of the
14 order of suspension along with the report.

15 F. The department shall suspend the affected person's license or
16 permit to drive or right to apply for a license or permit or any nonresident
17 operating privilege for not less than ninety consecutive days from that date.
18 If the person is otherwise qualified, the department may reinstate the
19 person's driving privilege, license, permit, right to apply for a license or
20 permit or nonresident operating privilege following the period of suspension
21 only if the violator completes alcohol or other drug screening.

22 G. Notwithstanding subsections A through F of this section, the
23 department shall suspend the driving privileges of the person described in
24 subsection A of this section for not less than thirty consecutive days and
25 shall restrict the driving privileges of the person for not less than sixty
26 consecutive additional days to travel between the person's place of
27 employment and residence and during specified periods of time while at
28 employment, to travel between the person's place of residence and the
29 person's secondary or postsecondary school, according to the person's
30 employment or educational schedule, to travel between the person's place of
31 residence and the office of the person's probation officer for scheduled
32 appointments or to travel between the person's place of residence and a
33 screening, education or treatment facility for scheduled appointments if the
34 person:

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

38 2. Has not been convicted of a violation of section 4-244, paragraph
39 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four
40 months of the date of commission of the acts out of which the current action
41 arose. The dates of commission of the acts are the determining factor in
42 applying the eighty-four month provision.

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

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

5 H. If the officer does not serve an order of suspension pursuant to
6 subsection C of this section and if the department does not receive the
7 report of the results of the blood or breath alcohol test pursuant to
8 subsection B, paragraph 4 of this section, but subsequently receives the
9 results and the results indicate 0.08 or more alcohol concentration in the
10 person's blood or breath, a blood or breath alcohol concentration of 0.04 or
11 more and the person was driving or in actual physical control of a commercial
12 motor vehicle or any drug defined in section 13-3401 or ANY OF its metabolite
13 ACTIVE OR INACTIVE METABOLITES in the person's body and the person does not
14 possess a valid prescription for the drug, the department shall notify the
15 person named in the report in writing sent by mail that fifteen days after
16 the date of issuance of the notice the department will suspend the person's
17 license or permit, driving privilege or nonresident driving privilege. The
18 notice shall also state that the department will provide an opportunity for a
19 hearing and administrative review if the person requests a hearing or review
20 in writing and the request is received by the department within fifteen days
21 after the notice is sent.

22 I. A timely request for a hearing stays the suspension until a hearing
23 is held, except that the department shall not return any surrendered license
24 or permit to the person but may issue temporary permits to drive that expire
25 no later than when the department has made its final decision. If the person
26 is a resident without a license or permit or has an expired license or
27 permit, the department may allow the person to apply for a restricted license
28 or permit. If the department determines the person is otherwise entitled to
29 the restricted license or permit, the department shall issue, but retain, the
30 license or permit, subject to this section. All hearings requested under
31 this section shall be conducted in the same manner and under the same
32 conditions as provided in section 28-3306.

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

35 1. Whether the officer had reasonable grounds to believe the person
36 was driving or was in actual physical control of a motor vehicle while under
37 the influence of intoxicating liquor or drugs.

38 2. Whether the person was placed under arrest for a violation of
39 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
40 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
41 13-1204 involving a motor vehicle.

42 3. Whether a test was taken, the results of which indicated any of the
43 following:

44 (a) An alcohol concentration in the person's blood or breath at the
45 time the test was administered of either:

1 (i) 0.08 or more.
2 (ii) 0.04 or more if the person was driving or in actual physical
3 control of a commercial motor vehicle.

4 (b) Any drug defined in section 13-3401 or ANY OF its metabolite
5 ACTIVE OR INACTIVE METABOLITES in the person's body except if the person
6 possesses a valid prescription for the drug.

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

8 5. Whether the test results were accurately evaluated.

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

11 L. If the department determines at the hearing to suspend the affected
12 person's privilege to operate a motor vehicle, the suspension provided in
13 this section is effective fifteen days after giving written notice of the
14 suspension, except that the department may issue or extend a temporary
15 license that expires on the effective date of the suspension. If the person
16 is a resident without a license or permit or has an expired license or permit
17 to operate a motor vehicle in this state, the department shall deny the
18 issuance of a license or permit to the person for not less than ninety
19 consecutive days. The department may reinstate the person's driving
20 privilege, license, permit, right to apply for a license or permit or
21 nonresident operating privilege following the period of suspension only if
22 the violator completes alcohol or other drug screening.

23 M. A person may apply for a summary review of an order issued pursuant
24 to this section instead of a hearing at any time before the effective date of
25 the order. The person shall submit the application in writing to any
26 department driver license examining office together with any written
27 explanation as to why the department should not suspend the driving
28 privilege. The agent of the department receiving the notice shall issue to
29 the person an additional driving permit that expires twenty days from the
30 date the request is received. The department shall review all reports
31 submitted by the officer and any written explanation submitted by the person
32 and shall determine if the order of suspension should be sustained or
33 cancelled. The department shall not hold a hearing, and the review is not
34 subject to title 41, chapter 6. The department shall notify the person of
35 its decision before the temporary driving permit expires.

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

40 O. If it has been determined under the procedures of this section that
41 a nonresident's privilege to operate a motor vehicle in this state has been
42 suspended, the department shall give information either in writing or by
43 electronic means of the action taken to the motor vehicle administrator of
44 the state of the person's residence and of any state in which the person has
45 a license.