

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 105
SENATE BILL 1401

AN ACT

AMENDING SECTIONS 28-1301, 28-1461, 28-1462, 28-1464, 28-1467 AND 28-1468,
ARIZONA REVISED STATUTES; RELATING TO CERTIFIED IGNITION INTERLOCK
DEVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-1301, Arizona Revised Statutes, is amended to
3 read:

4 28-1301. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Certified ignition interlock device" means an ignition
7 interlock device that is certified pursuant to article 5 of this chapter.

8 2. "CIRCUMVENT" OR "CIRCUMVENTION" MEANS AN ATTEMPTED OR SUCCESSFUL
9 BYPASS OF THE PROPER FUNCTIONING OF A CERTIFIED IGNITION INTERLOCK DEVICE
10 AND INCLUDES ALL OF THE FOLLOWING:

11 (a) THE BUMP START OF A MOTOR VEHICLE WITH A CERTIFIED IGNITION
12 INTERLOCK DEVICE.

13 (b) THE INTRODUCTION OF A FALSE SAMPLE OTHER THAN A DEEP-LUNG
14 BREATH SAMPLE FROM THE PERSON DRIVING THE MOTOR VEHICLE.

15 (c) THE INTRODUCTION OF AN INTENTIONALLY CONTAMINATED OR A FILTERED
16 BREATH SAMPLE.

17 (d) THE INTENTIONAL DISRUPTION OR BLOCKING OF A DIGITAL IMAGE
18 IDENTIFICATION DEVICE.

19 (e) THE CONTINUED OPERATION OF THE MOTOR VEHICLE AFTER THE
20 CERTIFIED IGNITION INTERLOCK DEVICE DETECTS BREATH ALCOHOL EXCEEDING THE
21 PRESUMPTIVE LIMIT PRESCRIBED IN SECTION 28-1381, SUBSECTION G, PARAGRAPH 3
22 OR, IF THE PERSON IS UNDER TWENTY-ONE YEARS OF AGE, ANY ATTEMPT TO OPERATE
23 THE MOTOR VEHICLE WITH ANY SPIRITUOUS LIQUOR IN THE PERSON'S BODY.

24 (f) OPERATING A MOTOR VEHICLE WITHOUT A PROPERLY FUNCTIONING
25 CERTIFIED IGNITION INTERLOCK DEVICE.

26 (g) ALLOWING A PERSON OTHER THAN THE PERSON WHO IS REQUIRED TO
27 MAINTAIN A FUNCTIONING CERTIFIED IGNITION INTERLOCK DEVICE PURSUANT TO
28 THIS CHAPTER TO BREATHE INTO THE CERTIFIED IGNITION INTERLOCK DEVICE FOR
29 THE PURPOSE OF PROVIDING A BREATH ALCOHOL SAMPLE TO START THE MOTOR
30 VEHICLE OR FOR THE ROLLING RETEST.

31 ~~2.~~ 3. "Commercial motor vehicle" means a motor vehicle or
32 combination of motor vehicles used to transport passengers or property if
33 the motor vehicle either:

34 (a) Has a gross combined weight rating of twenty-six thousand one
35 or more pounds inclusive of a towed unit with a gross vehicle weight
36 rating of more than ten thousand pounds.

37 (b) Has a gross vehicle weight rating of twenty-six thousand one or
38 more pounds.

39 (c) Is a school bus.

40 (d) Is a bus.

41 (e) Is used in the transportation of materials found to be
42 hazardous for the purposes of the hazardous materials transportation act
43 (49 United States Code sections 5101 through 5127) and is required to be
44 placarded under 49 Code of Federal Regulations section 172.504, as adopted
45 by the department pursuant to chapter 14 of this title.

1 ~~3.~~ 4. "Education" means a program in which a person participates
2 in at least sixteen hours of classroom instruction relating to alcohol or
3 other drugs.

4 ~~4.~~ 5. "Ignition interlock device" means a device that is based on
5 alcohol specific electrochemical fuel sensor technology that meets the
6 national highway traffic safety administration specifications, that
7 connects a breath analyzer to a motor vehicle's ignition system, that is
8 constantly available to monitor the concentration by weight of alcohol in
9 the breath of any person attempting to start the motor vehicle by using
10 its ignition system and that deters starting the motor vehicle by use of
11 its ignition system unless the person attempting to start the motor
12 vehicle provides an appropriate breath sample for the device and the
13 device determines that the concentration by weight of alcohol in the
14 person's breath is below a preset level.

15 ~~5.~~ 6. "Ignition interlock service provider" means a person who is
16 an authorized representative of a manufacturer and who is under contract
17 with the department to install or oversee the installation of ignition
18 interlock devices by the provider's authorized agents or subcontractors
19 and to provide services to the public related to ignition interlock
20 devices.

21 ~~6.~~ 7. "License" means any license, temporary instruction permit or
22 temporary license issued under the laws of this state or any other state
23 pertaining to the licensing of persons to operate motor vehicles.

24 ~~7.~~ 8. "Manufacturer" means a person ~~who~~ OR AN ORGANIZATION THAT IS
25 LOCATED IN THE UNITED STATES, THAT IS RESPONSIBLE FOR THE DESIGN,
26 CONSTRUCTION OR PRODUCTION OF AN IGNITION INTERLOCK DEVICE AND THAT is
27 certified by the department to offer ignition interlock devices for
28 installation in motor vehicles in this state.

29 9. "ROLLING RETEST" MEANS A BREATH ALCOHOL TEST THAT IS REQUIRED OF
30 A PERSON AT RANDOM INTERVALS AFTER THE MOTOR VEHICLE IS STARTED AND THAT
31 IS IN ADDITION TO THE INITIAL TEST REQUIRED TO START THE MOTOR VEHICLE.

32 ~~8.~~ 10. "Screening" means a preliminary interview and assessment of
33 an offender to determine if the offender requires alcohol or other drug
34 education or treatment.

35 ~~9.~~ 11. "Tampering" means an overt or conscious attempt to
36 physically disable, ~~circumvent~~ or otherwise disconnect the certified
37 ignition interlock device from its power source that allows the operator
38 to start the engine without taking and passing the requisite breath test.

39 ~~10.~~ 12. "Technician" means a person who is certified and properly
40 trained by an ignition interlock service provider to install, inspect,
41 repair, CALIBRATE, SERVICE ~~and~~ OR remove certified ignition interlock
42 devices.

43 ~~11.~~ 13. "Treatment" means a program consisting of at least twenty
44 hours of participation in a group setting dealing with alcohol or other
45 drugs in addition to the sixteen hours of education.

1 GUARDIAN, shall ~~also~~ provide to the person's parent or legal guardian the
2 information prescribed in subsection B of this section.

3 D. On request, the ignition interlock ~~service provider~~ MANUFACTURER
4 shall provide the information prescribed in subsection B of this section
5 to:

6 1. The department of health services authorized provider.

7 2. The probation department that is providing alcohol or other drug
8 screening, education or treatment to the person.

9 3. The physician, psychologist or substance abuse counselor who is
10 evaluating the person's ability to safely operate a motor vehicle
11 following a revocation of the person's driving privilege as prescribed in
12 section 28-3315, subsection D.

13 4. The court.

14 E. The department shall extend an ignition interlock restricted or
15 limited driver license and the certified ignition interlock device period
16 for six months if the department has reasonable grounds to believe that
17 any of the following applies:

18 1. The person tampered with or circumvented the certified ignition
19 interlock device.

20 2. The person attempted to operate the vehicle with an alcohol
21 concentration exceeding the presumptive limit as prescribed in section
22 28-1381, subsection G, paragraph 3, two or more times during the period of
23 license restriction or limitation.

24 3. If the person is under twenty-one years of age, the person
25 attempted to operate the vehicle with any spirituous liquor in the
26 person's body during the period of license restriction or limitation.

27 4. The person failed to provide proof of compliance or inspection
28 as prescribed in this section.

29 5. The person attempts to operate the vehicle with an alcohol
30 concentration of 0.08 or more during a six month extension pursuant to
31 this subsection.

32 6. THE PERSON FAILS TO PROPERLY PERFORM ANY SET OF THREE
33 CONSECUTIVE ROLLING RETESTS THAT OCCUR DURING A DRIVE CYCLE.

34 F. If the special ignition interlock restricted license is extended
35 pursuant to subsection E of this section, the limitations prescribed in
36 sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the
37 restrictive period of the license ends.

38 G. The department shall make a notation on the driving record of a
39 person whose driving privilege is limited pursuant to section 28-1381,
40 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section
41 28-1402 that states that the person shall not operate a motor vehicle
42 unless it is equipped with a certified ignition interlock device. Unless
43 the person is convicted of a second or subsequent violation of section
44 28-1381, 28-1382 or 28-1383, the notation may not include any mark, color

1 change or other notation or indication on the person's physical driver
2 license.

3 H. Proof of compliance does not include a skipped or missed random
4 sample if the motor vehicle's ignition is off at the time of the skipped
5 or missed sample.

6 Sec. 3. Section 28-1462, Arizona Revised Statutes, is amended to
7 read:

8 28-1462. Ignition interlock device certification and
9 decertification; service provider bonds

10 A. After consulting with the director of the department of public
11 safety, the assistant director for the motor vehicle division of the
12 department of transportation shall:

- 13 1. Certify ignition interlock devices.
- 14 2. Publish a list of certified ignition interlock devices that
15 includes information about the manufacturers of the devices and where the
16 devices may be ordered.
- 17 3. Make the list available to the courts and probation departments
18 without charge.
- 19 4. Establish standards and qualifications for technicians.

20 B. The assistant director shall adopt rules prescribing the
21 requirements for certification and decertification of an ignition
22 interlock device. These rules shall include:

- 23 1. The procedure for certification of ignition interlock devices.
- 24 2. Provisions to ensure the reliability of the ignition interlock
25 device over the range of motor vehicle environments.
- 26 3. Provisions to ensure that the ignition interlock device works
27 accurately in an unsupervised environment.
- 28 4. The procedure for decertification of an ignition interlock
29 device for cause.

30 C. The assistant director shall not certify an ignition interlock
31 device unless all of the following are satisfied:

- 32 1. The device requires a deep-lung breath sample or another
33 accurate measure of the concentration by weight of alcohol in the breath.
- 34 2. The device is made by a manufacturer that is covered by product
35 liability insurance in the amount of one million dollars per event and
36 three million dollars in the aggregate.
- 37 3. The manufacturer of the device indemnifies this state against
38 any liability that may result from the use of the device.
- 39 4. The device meets or exceeds the 2013 national highway traffic
40 safety administration standards, including the ability to wirelessly
41 transmit and receive information, take a digital image and include the
42 global positioning system location of the device at the time of a
43 requested test.

44 **5. THE DEVICE IS REPAIRED OR MODIFIED ONLY BY THE MANUFACTURER OF**
45 **THE DEVICE.**

1 B. A person whose driving privilege is limited pursuant to section
2 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
3 28-1402 and who rents, leases or borrows a motor vehicle from another
4 person shall notify the person who rents, leases or lends the motor
5 vehicle to the person that the person has specific requirements for the
6 operation of the motor vehicle and the nature of the requirements.

7 C. During any period when a person whose driving privilege is
8 limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or
9 restricted pursuant to section 28-1402 is required to operate only a motor
10 vehicle that is equipped with a certified ignition interlock device, the
11 person shall not request or permit any other person to breathe into the
12 ignition interlock device or start a motor vehicle equipped with an
13 ignition interlock device for the purpose of providing the person with an
14 operable motor vehicle.

15 D. A person shall not breathe into an ignition interlock device or
16 start a motor vehicle equipped with an ignition interlock device for the
17 purpose of providing an operable motor vehicle to a person whose driving
18 privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or
19 28-3319 or restricted pursuant to section 28-1402.

20 E. A person whose driving privilege is limited pursuant to section
21 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
22 28-1402 shall not tamper with or circumvent the operation of an ignition
23 interlock device.

24 F. A person who is not an ignition interlock service provider or an
25 agent or subcontractor of an ignition interlock service provider and who
26 is not a person whose driving privilege is limited pursuant to section
27 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section
28 28-1402 shall not tamper with or circumvent the operation of an ignition
29 interlock device.

30 G. Except in cases of substantial emergency, a person whose driving
31 privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or
32 28-3319 or restricted pursuant to section 28-1402 shall not operate a
33 motor vehicle without a functioning certified ignition interlock device
34 during the applicable time period.

35 H. If the ignition interlock device is removed from a vehicle by an
36 ignition interlock service provider, the ignition interlock ~~service~~
37 ~~provider~~ MANUFACTURER shall electronically notify the department in a form
38 prescribed by the department that the ignition interlock device has been
39 removed from the vehicle.

40 I. If the person does not provide evidence to the department within
41 seventy-two hours that the person has installed a functioning certified
42 ignition interlock device in each vehicle operated by the person and has
43 provided proof of installation to the department, the department shall
44 suspend the special ignition interlock restricted driver license or
45 privilege as prescribed in section 28-1463.

1 J. A person who is ordered by the court or required by the
2 department pursuant to section 28-3319 to equip any motor vehicle the
3 person operates with a certified ignition interlock device shall while
4 under arrest submit to any test chosen by a law enforcement officer
5 pursuant to section 28-1321, subsection A.

6 K. A person who violates this section is guilty of a class 1
7 misdemeanor. Additionally, if a person is convicted of violating
8 subsection B, C, E or G of this section, the department shall extend the
9 duration of the certified ignition interlock device requirement for not
10 more than one year.

11 L. For the purposes of this section, "substantial emergency" means
12 that a person other than the person whose driving privilege is limited
13 pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted
14 pursuant to section 28-1402 is not reasonably available to drive in
15 response to an emergency.

16 Sec. 5. Section 28-1467, Arizona Revised Statutes, is amended to
17 read:

18 28-1467. Ignition interlock service provider contracts;
19 cancellation; notice

20 If the director cancels an ignition interlock service provider's
21 contract ~~pursuant to a rule adopted by the director~~, the director shall
22 notify each person with an ignition interlock device from the ignition
23 interlock service provider that the person has thirty days to obtain
24 another ignition interlock service provider.

25 Sec. 6. Section 28-1468, Arizona Revised Statutes, is amended to
26 read:

27 28-1468. Ignition interlock service provider application;
28 denial; appeal; contract requirements;
29 manufacturer reporting requirements; cease and
30 desist order

31 A. An application for authorization of an ignition interlock
32 service provider contract must be submitted to the director **BY THE**
33 **MANUFACTURER** in writing ~~and~~ on a form prescribed and furnished by the
34 director. The person shall include with the application all documents and
35 fees prescribed by the director.

36 B. The application shall be verified and must contain:

37 1. The name and residence address of the applicant, the name and
38 residence address of each partner if the applicant is a partnership or the
39 name and residence address of each principal officer if the applicant is a
40 corporation.

41 2. The applicant's principal place of business.

42 3. The location or planned location for each place of business at
43 or from which the business is to be conducted.

44 4. Any other information the director requires.

1 C. The director may approve an application for authorization of a
2 contract if the director determines that the requirements of this article
3 are met.

4 D. The director may deny an application for authorization of a
5 contract if any person included in the application has:

6 1. Made a misrepresentation or misstatement in the application to
7 conceal a matter that would cause the application to be denied.

8 2. Been convicted of a class 1, 2, 3 or 4 felony or a crime of
9 moral turpitude, breach of trust, fraud, theft or dishonesty in any
10 jurisdiction or any foreign country within ten years before the date of
11 the application.

12 3. Been convicted of any criminal act, other than a crime described
13 in paragraph 2 of this subsection, in any jurisdiction or a foreign
14 country within five years before the date of the application.

15 4. Been involved in any activity that the director determines to be
16 inappropriate in relation to the authority granted.

17 E. The director may deny an application for authorization of an
18 ignition interlock service provider contract under this article and, if
19 denied, shall notify the applicant in writing OF THE DENIAL within twenty
20 days after the denial and of the grounds for the denial if the director
21 determines that any of the following applies:

22 1. The applicant is not eligible for an ignition interlock service
23 provider contract under this article.

24 2. The application is not made in good faith.

25 3. The application contains a material misrepresentation or
26 misstatement.

27 4. The applicant has not met the requirements of this chapter.

28 F. An applicant whose application is denied may make a written
29 request to the department for a hearing on the denial of the application
30 within ~~thirty~~ FIFTEEN days after the notice of denial. If the applicant
31 does not request a hearing within thirty days, the denial is final.

32 G. If the applicant requests a hearing, the director shall provide
33 written or electronic notice to the applicant to appear at a hearing to
34 show cause why the denial of the applicant's application should not be
35 upheld. After consideration of the evidence presented at the hearing, the
36 director shall issue a written decision and order.

37 H. If the application is denied, the applicant may appeal the
38 decision pursuant to title 12, chapter 7, article 6.

39 I. If the director authorizes an ignition interlock service
40 provider's application for a contract, the ignition interlock service
41 provider's contract with the department must meet or exceed the
42 requirements in this section, be for a term of at least three years and
43 include all of the following provisions and requirements:

44 1. Require the IGNITION INTERLOCK SERVICE provider to ~~have a~~
45 ~~sufficient number of ignition interlock service locations in all counties~~

1 ~~and designated population centers in this state. The department shall~~
2 ~~establish designated population areas and the number of locations required~~
3 ~~for a sufficient number based on the average number of certified ignition~~
4 ~~interlock device installations~~ MAINTAIN AT LEAST ONE SERVICE CENTER IN
5 each county in this state ~~since July 1, 2008.~~

6 2. Ignition interlock devices must be effectively and efficiently
7 installed, calibrated and removed.

8 3. Ignition interlock devices must be serviced, inspected and
9 monitored.

10 4. The ignition interlock ~~service provider~~ MANUFACTURER must
11 electronically transmit reports to the department, in a format that is
12 determined by the department and that includes any of the following:

13 (a) Driver activity.

14 (b) Bypass approval.

15 (c) Compliance.

16 (d) Client violations.

17 (e) Unique identifying numbers for each device.

18 (f) Unique employee numbers identifying the person who installed or
19 removed an ignition interlock device.

20 5. A detailed implementation plan that outlines the steps and the
21 time frames necessary for the ignition interlock service provider to be
22 fully operational.

23 6. The ignition interlock service provider must collect and remit
24 all applicable fees and taxes to the appropriate government entity.

25 7. If the ignition interlock service provider is out of compliance,
26 corrective actions that will be taken, including penalty provisions and
27 liquidated damages.

28 8. The ignition interlock device must have security protections,
29 including each device having the capability to record each event and
30 provide visual evidence of any actual or attempted tampering, alteration,
31 bypass or circumvention.

32 9. The ignition interlock service provider will process the
33 transition and ensure that continuous monitoring occurs if an ignition
34 interlock device client requires transition of services.

35 10. The ignition interlock service provider will self-certify,
36 complete background checks and train technicians in compliance with the
37 rules adopted by the department.

38 11. The ignition interlock service provider must ~~maintain at least~~
39 ~~one readily accessible service center in each county in this state.~~ ENSURE
40 THAT each service center ~~must be~~ IS adequately staffed and equipped to
41 provide all ignition interlock device support services. Mobile service
42 operations based at a service center are permitted, except that a tow
43 truck may not be used for mobile service. A service center may not
44 provide services for more than one ignition interlock service provider.

1 12. The ignition interlock service provider must train clients on
2 how to use the ignition interlock device.

3 13. A transition plan that will ensure continuous monitoring is
4 achieved if the ignition interlock service provider leaves this state.

5 14. Require the ignition interlock service provider to have and
6 maintain insurance that is approved by the department.

7 15. A procedure for progressive discipline of an employee, agent or
8 subcontractor of an ignition interlock service provider who fails to
9 comply with the requirements of this chapter or of the ignition interlock
10 service provider contract.

11 16. Require client information and financial records to be
12 maintained at a commercial business location in this state that is not a
13 residence and that has posted business hours where the department may
14 access the records. On termination or expiration of the contract, the
15 ignition interlock service provider must submit all client information to
16 the department.

17 17. The ignition interlock service provider may not charge a client
18 to replace a defective ignition interlock device.

19 18. The ignition interlock device must take a digital image
20 identifying the client who is providing the breath sample and the digital
21 image must include the date and time that the breath sample was provided.

22 19. The ignition interlock service provider must comply with all
23 county and municipal zoning regulations for commercial businesses and
24 provide a corresponding business license to the department.

25 20. The ignition interlock service provider must clearly post all
26 client fees for the installation, removal and inspection of the certified
27 ignition interlock device.

28 J. If the director has reasonable cause to believe that a person
29 who is a party to an ignition interlock service provider contract pursuant
30 to this article is violating any provision of this chapter, the director
31 shall immediately issue and mail a cease and desist order to the person's
32 last known address.

33 K. On receipt of the cease and desist order, the person shall
34 immediately cease and desist, or cease and desist as provided in the
35 contract between the department and the ignition interlock service
36 provider, from further engaging in any activity that is not authorized
37 pursuant to this chapter and that is specified in the cease and desist
38 order.

39 L. On failure of the person to comply with the cease and desist
40 order, the director may conduct a hearing pursuant to this section.

41 Sec. 7. Retroactivity

42 This act applies retroactively to from and after June 30, 2018.

S.B. 1401

APPROVED BY THE GOVERNOR MARCH 29, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2018.