

REFERENCE TITLE: **DUI; administrative suspension; restricted license**

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2299

Introduced by
Representative Stringer

AN ACT

AMENDING SECTIONS 28-144 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 28-144, Arizona Revised Statutes, is amended to
3 read:

4 28-144. Driver license or permit restrictions

5 A. Except as otherwise provided by law, a restriction on a person's
6 driver license or permit to drive as a result of a conviction for a
7 violation of this title may limit the person's privilege to drive for the
8 following applicable purposes:

9 1. Between the person's residence and place of employment during
10 specified periods of time while at employment.

11 2. Between the person's residence or place of employment and the
12 person's school according to the person's employment or education
13 schedule.

14 3. Between the person's residence, place of employment or school
15 and the office of a health professional as defined in section 32-3201.

16 4. Between the person's residence, place of employment or school
17 and a screening, education or treatment facility for scheduled
18 appointments.

19 5. Between the person's residence, place of employment or school
20 and the office of the person's probation officer for scheduled
21 appointments, **INCLUDING ANY APPOINTMENT THAT IS REQUIRED TO FULFILL ANY**
22 **CONDITION OR REQUIREMENT THAT IS IMPOSED ON THE PERSON BY THIS STATE OR A**
23 **POLITICAL SUBDIVISION OF THIS STATE.**

24 6. Between the person's residence, place of employment or school
25 and a certified ignition interlock device service facility.

26 7. Between the person's residence and a location designated for the
27 purpose of parenting time as defined in section 25-401.

28 8. To transport a dependent person ~~who is living with the driver,~~
29 between the driver's residence and the dependent person's employment,
30 school or medical appointment.

31 **9. BETWEEN THE PERSON'S RESIDENCE AND THE PERSON'S PLACE OF**
32 **WORSHIP. FOR THE PURPOSES OF THIS PARAGRAPH, "PLACE OF WORSHIP" MEANS ANY**
33 **ORGANIZATION, CHURCH, BODY OF COMMUNICANTS OR GROUP, NOT FOR PECUNIARY**
34 **PROFIT, THAT GATHERS IN COMMON MEMBERSHIP FOR REGULAR WORSHIP AND**
35 **RELIGIOUS OBSERVANCES.**

36 B. ~~The provisions of~~ This section ~~do~~ **DOES** not apply to a person who
37 is the holder of a commercial driver license issued pursuant to this
38 title.

1 Sec. 2. Section 28-1385, Arizona Revised Statutes, is amended to
2 read:

3 28-1385. Administrative license suspension for driving under
4 the influence or for homicide or assault involving
5 a motor vehicle; report; hearing; summary review;
6 ignition interlock device requirement; definitions

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

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

15 2. The person submits to a blood or breath alcohol test permitted
16 by section 28-1321 or any other law or a sample of blood is obtained
17 pursuant to section 28-1388 and the results are either not available or
18 the results indicate any of the following:

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

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

24 (c) Any drug defined in section 13-3401 or its metabolite is in the
25 person's body except if the person possesses a valid prescription for the
26 drug.

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

31 1. Information that adequately identifies the arrested person.

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

37 3. A statement that the person was arrested for a violation of
38 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
39 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
40 13-1204 involving a motor vehicle.

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

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

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

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

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

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

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

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

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

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

24 E. If the license or permit is not surrendered pursuant to
25 subsection C of this section, the officer shall state the reason for the
26 nonsurrender. If a valid license or permit is surrendered, the officer
27 shall issue a temporary driving permit that is valid for fifteen days.
28 The officer shall forward a copy of the completed order of suspension and
29 a copy of any completed temporary permit to the department within five
30 days after the issuance of the order of suspension along with the report.
31 The law enforcement agency may do either of the following with a valid
32 license or permit that is surrendered pursuant to this section:

33 1. In compliance with sections 41-151.15 and 41-151.19, destroy the
34 license or permit.

35 2. Forward the license or permit to the department within five days
36 after the issuance of the notice of suspension.

37 F. The department shall suspend the affected person's license or
38 permit to drive or right to apply for a license or permit or any
39 nonresident operating privilege for not less than ninety consecutive days
40 from that date. If the person is otherwise qualified, the department may
41 reinstate the person's driving privilege, license, permit, right to apply
42 for a license or permit or nonresident operating privilege following the
43 period of suspension only if the violator completes alcohol or other drug
44 screening.

1 G. Notwithstanding subsections A through F of this section, the
 2 department ~~shall~~ MAY suspend the driving privileges of the person
 3 described in subsection A of this section for not less than thirty
 4 consecutive days and shall restrict the driving privileges of the person
 5 for not less than sixty consecutive additional days to travel between the
 6 person's place of employment and residence and during specified periods of
 7 time while at employment, to travel between the person's ~~place of~~
 8 residence and the person's OR THE PERSON'S DEPENDENT'S secondary or
 9 postsecondary school, according to the person's OR THE PERSON'S
 10 DEPENDENT'S employment or educational schedule, to travel between the
 11 person's ~~place of~~ residence and ~~the office of the person's probation~~
 12 ~~officer for scheduled appointments~~ ANY APPOINTMENT THAT IS REQUIRED TO
 13 FULFILL ANY CONDITION OR REQUIREMENT THAT IS IMPOSED ON THE PERSON BY THIS
 14 STATE OR A POLITICAL SUBDIVISION OF THIS STATE, TO TRAVEL BETWEEN THE
 15 PERSON'S RESIDENCE AND THE PERSON'S PLACE OF WORSHIP or to travel between
 16 the person's ~~place of~~ residence and a screening, education or treatment
 17 facility for scheduled appointments if the person:

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

21 ~~2. Has not been convicted of a violation of section 4-244,~~
 22 ~~paragraph 34, section 28-1381, section 28-1382 or section 28-1383 within~~
 23 ~~eighty-four months of the date of commission of the acts out of which the~~
 24 ~~current action arose. The dates of commission of the acts are the~~
 25 ~~determining factor in applying the eighty-four month provision.~~

26 ~~3.~~ 2. Has not had the person's privilege to drive suspended
 27 pursuant to this section or section 28-1321 within eighty-four months of
 28 the date of commission of the acts out of which the current action arose.

29 ~~4.~~ 3. Provides satisfactory evidence to the department of the
 30 person's completion of alcohol or other drug screening that is ordered by
 31 the department. If the person does not complete alcohol or other drug
 32 screening, the department may impose a ninety day suspension pursuant to
 33 this section.

34 H. If the officer does not serve an order of suspension pursuant to
 35 subsection C of this section and if the department does not receive the
 36 report of the results of the blood or breath alcohol test pursuant to
 37 subsection B, paragraph 4 of this section, but subsequently receives the
 38 results and the results indicate 0.08 or more alcohol concentration in the
 39 person's blood or breath, a blood or breath alcohol concentration of 0.04
 40 or more and the person was driving or in actual physical control of a
 41 commercial motor vehicle or any drug defined in section 13-3401 or its
 42 metabolite in the person's body and the person does not possess a valid
 43 prescription for the drug, the department shall notify the person named in
 44 the report in writing sent by mail that fifteen days after the date of
 45 issuance of the notice the department will suspend the person's license or

1 permit, driving privilege or nonresident driving privilege. The notice
2 shall also state that the department will provide an opportunity for a
3 hearing and administrative review if the person requests a hearing or
4 review in writing and the request is received by the department within
5 fifteen days after the notice is sent.

6 I. A timely request for a hearing stays the suspension until a
7 hearing is held, except that the department shall not return any
8 surrendered license or permit to the person but may issue temporary
9 permits to drive that expire no later than when the department has made
10 its final decision. If the person is a resident without a license or
11 permit or has an expired license or permit, the department may allow the
12 person to apply for a restricted license or permit. If the department
13 determines the person is otherwise entitled to the restricted license or
14 permit, the department shall issue, but retain, the license or permit,
15 subject to this section. All hearings requested under this section shall
16 be conducted in the same manner and under the same conditions as provided
17 in section 28-3306, INCLUDING HOLDING THE HEARING IN PERSON, BY TELEPHONE
18 OR BY VIDEOCONFERENCE.

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

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

24 2. Whether the person was placed under arrest for a violation of
25 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
26 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
27 13-1204 involving a motor vehicle.

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

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

32 (i) 0.08 or more.

33 (ii) 0.04 or more if the person was driving or in actual physical
34 control of a commercial motor vehicle.

35 (b) Any drug defined in section 13-3401 or its metabolite in the
36 person's body except if the person possesses a valid prescription for the
37 drug.

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

39 5. Whether the test results were accurately evaluated.

40 6. WHETHER A LICENSE OR PERMIT SUSPENSION WOULD CAUSE THE PERSON
41 UNDUE FINANCIAL HARDSHIP. FOR THE PURPOSES OF THIS PARAGRAPH:

42 (a) EVIDENCE OF EMPLOYMENT OR ENROLLMENT IN AN EDUCATIONAL
43 INSTITUTION RAISES A PRESUMPTION THAT UNDUE FINANCIAL HARDSHIP EXISTS.

44 (b) UNDUE FINANCIAL HARDSHIP IS LIMITED TO CIRCUMSTANCES IN WHICH
45 THE PERSON WOULD INCUR COSTS THAT HAVE A SUBSTANTIAL ADVERSE IMPACT ON THE

1 PAYMENT OF THE PERSON'S NECESSARY DAILY LIVING EXPENSES OR ON THOSE FOR
2 WHOM THE PERSON PROVIDES REGULAR EMPLOYMENT OR THE PRINCIPLE MEANS OF
3 SUPPORT.

4 (c) THE PERSON MUST PROVIDE SUFFICIENT PROOF TO THE DEPARTMENT THAT
5 DEMONSTRATES A REASONABLE LIKELIHOOD OF UNDUE FINANCIAL HARDSHIP,
6 INCLUDING FEDERAL AND STATE INCOME TAX RETURNS, PAYROLL RECORDS OR PROOF
7 OF ENROLLMENT IN AN EDUCATIONAL INSTITUTION.

8 (d) THE DEPARTMENT MAY IMMEDIATELY ISSUE A RESTRICTED LICENSE OR
9 PERMIT IF THE DEPARTMENT RECEIVES PROOF THAT CLEARLY DEMONSTRATES THE
10 PERSON'S UNDUE FINANCIAL HARDSHIP.

11 (e) PROOF THAT IS SUBMITTED TO THE DEPARTMENT PURSUANT TO THIS
12 PARAGRAPH IS NOT A PUBLIC RECORD AND MAY NOT BE DISCLOSED TO THE PUBLIC.

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

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

27 M. A person may apply for a summary review of an order issued
28 pursuant to this section instead of a hearing at any time before the
29 effective date of the order. A timely request for summary review stays
30 the suspension until a decision is issued. The person shall submit the
31 application in writing to any department driver license examining office
32 together with any written explanation as to why the department should not
33 suspend the driving privilege. The department shall review all reports
34 submitted by the officer and any written explanation submitted by the
35 person and shall determine if the order of suspension should be sustained
36 or cancelled. The department shall not hold a hearing, and the review is
37 not subject to title 41, chapter 6. The department shall notify the
38 person of its decision.

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

43 O. If it has been determined under the procedures of this section
44 that a nonresident's privilege to operate a motor vehicle in this state
45 has been suspended, the department shall give information either in

1 writing or by electronic means of the action taken to the motor vehicle
2 administrator of the state of the person's residence and of any state in
3 which the person has a license.

4 P. FOR THE PURPOSES OF THIS SECTION:

5 1. "EDUCATIONAL INSTITUTION" HAS THE SAME MEANING PRESCRIBED IN
6 SECTION 35-771.

7 2. "PLACE OF WORSHIP" MEANS AN ORGANIZATION, CHURCH, BODY OF
8 COMMUNICANTS OR GROUP, NOT FOR PECUNIARY PROFIT, THAT GATHERS IN COMMON
9 MEMBERSHIP FOR REGULAR WORSHIP AND RELIGIOUS OBSERVANCES.