

House Engrossed Senate Bill

~~DUI; transportation network drivers~~  
(now: DUI threshold; drivers)

State of Arizona  
Senate  
Fifty-sixth Legislature  
Second Regular Session  
2024

# SENATE BILL 1025

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  
7 ignition interlock restricted driver license

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

21 1. While under the influence of intoxicating liquor as prescribed  
22 in section 28-1381 or drugs.

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

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

34 1. If the test results show a blood or breath alcohol concentration  
35 of 0.08 or more, if the results show a blood or breath alcohol  
36 concentration of 0.04 or more and the violator was driving or in actual  
37 physical control of a commercial motor vehicle, A VEHICLE FOR HIRE AS  
38 DEFINED IN SECTION 28-9501 OR WHILE PROVIDING TRANSPORTATION NETWORK  
39 SERVICES AS DEFINED IN SECTION 28-9551 AS A TRANSPORTATION NETWORK COMPANY  
40 DRIVER AS DEFINED IN SECTION 28-9551 or if the results show there is any  
41 drug defined in section 13-3401 or its metabolite in the person's body and  
42 the person does not possess a valid prescription for the drug, the  
43 violator's license or permit to drive will be suspended or denied for not  
44 less than ninety consecutive days.

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

5           C. A person who is dead, unconscious or otherwise in a condition  
6 rendering the person incapable of refusal is deemed not to have withdrawn  
7 the consent provided by subsection A of this section and the test or tests  
8 may be administered, subject to section 4-244, paragraph 34 or section  
9 28-1381, 28-1382 or 28-1383.

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

13           1. The test shall not be given, except as provided in section  
14 28-1388, subsection E or pursuant to a search warrant.

15           2. The law enforcement officer directing the administration of the  
16 test shall:

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

18           (b) On behalf of the department, serve an order of suspension on  
19 the person that is effective thirty days after the date the order is  
20 served.

21           (c) Require the immediate surrender of any license or permit to  
22 drive that is issued by this state and that is in the possession or  
23 control of the person. The law enforcement agency may do either of the  
24 following to a driver license or permit taken into possession under this  
25 subdivision:

26           (i) In compliance with sections 41-151.15 and 41-151.19, destroy  
27 the driver license or permit.

28           (ii) Forward the driver license or permit to the department within  
29 five days after the issuance of the notice of suspension.

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

32           (e) If a valid license or permit is surrendered, issue a temporary  
33 driving permit that is valid for thirty days.

34           (f) Forward the certified report of refusal, a copy of the  
35 completed notice of suspension and a copy of any completed temporary  
36 permit to the department within five days after the issuance of the notice  
37 of suspension.

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

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

1 (a) While under the influence of intoxicating liquor as prescribed  
2 in section 28-1381 or drugs.

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

5 2. The manner in which the person refused to submit to the test or  
6 tests.

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

8 F. On receipt of the certified report of refusal and a copy of the  
9 order of suspension and on the effective date stated on the order, the  
10 department shall enter the order of suspension on its records unless a  
11 written or online request for a hearing as provided in this section has  
12 been filed by the accused person. If the department receives only the  
13 certified report of refusal, the department shall notify the person named  
14 in the report in writing sent by mail that:

15 1. Thirty days after the date of issuance of the notice the  
16 department will suspend the person's license or permit, driving privilege  
17 or nonresident driving privilege.

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

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

23 1. The person may submit a written or online request for a hearing.

24 2. The request for a hearing must be received by the department  
25 within thirty days after the date of the notice or the order of suspension  
26 will become final.

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

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

36 H. The order for suspension shall:

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

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

1 I. On the receipt of a request for a hearing, the department shall  
2 set the hearing within sixty days. The department may hold the hearing in  
3 person, by telephone or by videoconference. If the department holds the  
4 hearing in person, the hearing shall be held in the county in which the  
5 person named in the report resides unless the law enforcement agency  
6 filing the certified report of refusal pursuant to subsection D of this  
7 section requests at the time of its filing that the hearing be held in the  
8 county where the refusal occurred.

9 J. A timely request for a hearing stays the suspension until a  
10 hearing is held, except that the department shall not return any  
11 surrendered license or permit to the person but may issue temporary  
12 permits to drive that expire not later than when the department has made  
13 its final decision. If the person is a resident without a license or  
14 permit or has an expired license or permit, the department may allow the  
15 person to apply for a restricted license or permit. If the department  
16 determines the person is otherwise entitled to the license or permit, the  
17 department shall issue and retain a restricted license or permit subject  
18 to this section.

19 K. Hearings requested under this section shall be conducted in the  
20 same manner and under the same conditions as provided in section 28-3306.  
21 For the purposes of this section, the scope of the hearing shall include  
22 only the issues of whether:

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

26 (a) While under the influence of intoxicating liquor as prescribed  
27 in section 28-1381 or drugs.

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

30 2. The person was placed under arrest.

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

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

33 L. If the department determines at the hearing to suspend the  
34 affected person's privilege to operate a motor vehicle, the suspension  
35 provided in this section is effective thirty days after giving written  
36 notice of the suspension, except that the department may issue or extend a  
37 temporary license that expires on the effective date of the suspension.  
38 If the person is a resident without a license or permit or has an expired  
39 license or permit to operate a motor vehicle in this state, the department  
40 shall deny to the person the issuance of a license or permit for a period  
41 of twelve months after the order of suspension becomes effective or for a  
42 period of two years after the order of suspension becomes effective for a  
43 second or subsequent refusal within a period of eighty-four months, and  
44 may reinstate the person's driving privilege, license, permit, right to

1 apply for a license or permit or nonresident operating privilege following  
2 the period of suspension only if the person completes alcohol or other  
3 drug screening.

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

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

14 O. If it has been determined under the procedures of this section  
15 that a nonresident's privilege to operate a motor vehicle in this state  
16 has been suspended, the department shall give information either in  
17 writing or by electronic means of the action taken to the motor vehicle  
18 administrator of the state of the person's residence and of any state in  
19 which the person has a license.

20 P. After completing any alcohol or other drug screening that is  
21 ordered by the department pursuant to this chapter, a person whose driving  
22 privilege is suspended pursuant to this section may apply to the  
23 department for a special ignition interlock restricted driver license  
24 pursuant to section 28-1401. Unless the certified ignition interlock  
25 period is extended by the department pursuant to section 28-1461, a person  
26 who is issued a special ignition interlock restricted driver license as  
27 provided in this subsection shall maintain a functioning certified  
28 ignition interlock device in compliance with this chapter during the  
29 remaining period of the suspension prescribed by this section. This  
30 subsection does not apply to a person whose driving privilege is suspended  
31 for a second or subsequent refusal within a period of eighty-four months.

32 Q. Notwithstanding section 28-1401, the department may issue a  
33 special ignition interlock restricted driver license to a person for an  
34 offense described in subsection A of this section. A person who applies  
35 for and who is issued a special ignition interlock restricted driver  
36 license pursuant to this subsection agrees to the administrative action  
37 taken by the department against the person's license. Once the department  
38 issues a special ignition interlock restricted driver license pursuant to  
39 this subsection, the person waives any right to an administrative hearing  
40 contesting the administrative action against the person's license pursuant  
41 to this section or section 28-1385.

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

3           28-1381. Driving or actual physical control while under the  
4                                   influence; trial by jury; presumptions; admissible  
5                                   evidence; sentencing; time limitation; violation;  
6                                   classification

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

10           1. While under the influence of intoxicating liquor, any drug, a  
11 vapor releasing substance containing a toxic substance or any combination  
12 of liquor, drugs or vapor releasing substances if the person is impaired  
13 to the slightest degree.

14           2. If the person has an alcohol concentration of 0.08 or more  
15 within two hours of driving or being in actual physical control of the  
16 vehicle and the alcohol concentration results from alcohol consumed either  
17 before or while driving or being in actual physical control of the  
18 vehicle.

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

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

24           5. WHILE OPERATING A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501  
25 OR WHILE PROVIDING TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION  
26 28-9551 AS A TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN SECTION  
27 28-9551 IF THE 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  
32 guilty of a class 1 misdemeanor.

33           D. A person using a drug as prescribed by a medical practitioner  
34 who is licensed pursuant to title 32 and who is authorized to prescribe  
35 the drug is not guilty of violating subsection A, paragraph 3 of this  
36 section.

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

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

1 G. In a trial, action or proceeding for a violation of this section  
2 or section 28-1383 other than a trial, action or proceeding involving A  
3 PERSON WHO IS driving or being in actual physical control of a commercial  
4 MOTOR vehicle, A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501 OR  
5 INVOLVING A PERSON WHO IS PROVIDING TRANSPORTATION NETWORK SERVICES AS  
6 DEFINED IN SECTION 28-9551 AS A TRANSPORTATION NETWORK COMPANY DRIVER AS  
7 DEFINED IN SECTION 28-9551, the defendant's alcohol concentration within  
8 two hours of the time of driving or being in actual physical control as  
9 shown by analysis of the defendant's blood, breath or other bodily  
10 substance gives rise to the following presumptions:

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

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

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

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

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

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

32 2. Shall pay a fine of not less than \$250.

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

34 4. Shall pay an additional assessment of \$500 to be deposited by  
35 the state treasurer in the prison construction and operations fund  
36 established by section 41-1651. 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  
39 treasurer. If the conviction occurred in a municipal court, the court  
40 shall transmit the assessed monies to the city treasurer. The city or  
41 county treasurer shall transmit the monies received to the state  
42 treasurer.



1           5. Shall pay an additional assessment of \$500 to be deposited by  
2 the state treasurer in the public safety equipment fund established by  
3 section 41-1723. This assessment is not subject to any surcharge. If the  
4 conviction occurred in the superior court or a justice court, the court  
5 shall transmit the assessed monies to the county treasurer. If the  
6 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. If the violation involved intoxicating liquor, shall be required  
10 by the department, on report of the conviction, to equip any motor vehicle  
11 the person operates with a certified ignition interlock device pursuant to  
12 section 28-3319. In addition, the court may order the person to equip any  
13 motor vehicle the person operates with a certified ignition interlock  
14 device for more than twelve months beginning on the date the person  
15 successfully completes the alcohol or other drug screening, education or  
16 treatment program requirements of this title and the person is otherwise  
17 eligible to reinstate the person's driver license or driving privilege.  
18 The person who operates a motor vehicle with a certified ignition  
19 interlock device under this paragraph shall comply with article 5 of this  
20 chapter.

21           7. Shall be required by the department to attend and successfully  
22 complete an approved traffic survival school course.

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

31           K. If within a period of eighty-four months a person is convicted  
32 of a second violation of this section or is convicted of a violation of  
33 this section and has previously been convicted of a violation of section  
34 28-1382 or 28-1383 or an act in another jurisdiction that if committed in  
35 this state would be a violation of this section or section 28-1382 or  
36 28-1383, the person:

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

41           2. Shall pay a fine of not less than \$500.

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

1           4. Shall have the person's driving privilege revoked for one year.  
2 The court shall report the conviction to the department. On receipt of  
3 the report, the department shall revoke the person's driving privilege  
4 and, if the violation involved intoxicating liquor, shall require the  
5 person to equip any motor vehicle the person operates with a certified  
6 ignition interlock device pursuant to section 28-3319. In addition, the  
7 court may order the person to equip any motor vehicle the person operates  
8 with a certified ignition interlock device for more than twelve months  
9 beginning on the date the person successfully completes the alcohol or  
10 other drug screening, education or treatment program requirements of this  
11 title and the person is otherwise eligible to reinstate the person's  
12 driver license or driving privilege. The person who operates a motor  
13 vehicle with a certified ignition interlock device under this paragraph  
14 shall comply with article 5 of this chapter.

15           5. Shall pay an additional assessment of \$1,250 to be deposited by  
16 the state treasurer in the prison construction and operations fund  
17 established by section 41-1651. This assessment is not subject to any  
18 surcharge. If the conviction occurred in the superior court or a justice  
19 court, the court shall transmit the assessed monies to the county  
20 treasurer. If the conviction occurred in a municipal court, the court  
21 shall transmit the assessed monies to the city treasurer. The city or  
22 county treasurer shall transmit the monies received to the state  
23 treasurer.

24           6. Shall pay an additional assessment of \$1,250 to be deposited by  
25 the state treasurer in the public safety equipment fund established by  
26 section 41-1723. This assessment is not subject to any surcharge. If the  
27 conviction occurred in the superior court or a justice court, the court  
28 shall transmit the assessed monies to the county treasurer. If the  
29 conviction occurred in a municipal court, the court shall transmit the  
30 assessed monies to the city treasurer. The city or county treasurer shall  
31 transmit the monies received to the state treasurer.

32           7. Shall be required by the department to attend and successfully  
33 complete an approved traffic survival school course.

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

42           M. In applying the eighty-four month provision of subsection K of  
43 this section, the dates of the commission of the offense shall be the

1 determining factor, irrespective of the sequence in which the offenses  
2 were committed.

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

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

11 P. The court may order a person who is convicted of a violation of  
12 this section that does not involve intoxicating liquor to equip any motor  
13 vehicle the person operates with a certified ignition interlock device  
14 pursuant to section 28-3319. On receipt of the report of conviction and  
15 certified ignition interlock device requirement, the department shall  
16 require the person to equip any motor vehicle the person operates with a  
17 certified ignition interlock device pursuant to section 28-3319. In  
18 addition, the court may order the person to equip any motor vehicle the  
19 person operates with a certified ignition interlock device for more than  
20 twelve months beginning on the date the person successfully completes the  
21 alcohol or other drug screening, education or treatment program  
22 requirements of this title and the person is otherwise eligible to  
23 reinstate the person's driver license or driving privilege. The person  
24 who operates a motor vehicle with a certified ignition interlock device  
25 under this subsection shall comply with article 5 of this chapter.

26 Q. A prosecution for a violation of this section involving a  
27 collision that resulted in serious physical injury or death as identified  
28 in a written accident report completed pursuant to section 28-667 must be  
29 commenced within two years after actual discovery of the offense by the  
30 state or the political subdivision having jurisdiction or discovery by the  
31 state or the political subdivision that should have occurred with the  
32 exercise of reasonable diligence, whichever first occurs.

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

35 28-1385. Administrative license suspension for driving under  
36 the influence or for homicide or assault involving  
37 a motor vehicle; report; hearing; summary review;  
38 ignition interlock device requirement

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

43 1. The officer arrests a person for a violation of section 4-244,  
44 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a

1 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving  
2 a motor vehicle.

3 2. The person submits to a test of the person's blood, breath,  
4 urine or other bodily substance that is allowed by section 28-1321 or any  
5 other law or a sample of blood is obtained pursuant to section 28-1388 and  
6 the results are either not available or the results indicate any of the  
7 following:

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

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

13 (c) 0.04 OR MORE ALCOHOL CONCENTRATION IN THE PERSON'S BLOOD OR  
14 BREATH IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A  
15 VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501 OR WHILE PROVIDING  
16 TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION 28-9551 AS A  
17 TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN SECTION 28-9551.

18 (d) Any drug defined in section 13-3401 or its metabolite is in the  
19 person's body except if the person possesses a valid prescription for the  
20 drug.

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

25 1. Information that adequately identifies the arrested person.

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

31 3. A statement that the person was arrested for a violation of  
32 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section  
33 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or  
34 13-1204 involving a motor vehicle.

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

37 C. If a breath test is administered, a law enforcement agency shall  
38 forward the certified report that is required by subsection A of this  
39 section to the department within thirty days after the arrest occurs. If  
40 a sample of blood, urine or other bodily substance is obtained, the law  
41 enforcement agency shall forward the certified report that is required by  
42 subsection A of this section to the department within thirty days after  
43 the date the report of the analysis is provided to the law enforcement  
44 agency. If a report is not forwarded to the department within the time

1 limit prescribed by this subsection, the report is inadmissible in a  
2 hearing held pursuant to this section unless the violation listed in  
3 subsection A of this section resulted in death or serious physical injury.  
4 For the purposes of this subsection, "serious physical injury" has the  
5 same meaning prescribed in section 13-105.

6 D. The officer shall also serve an order of suspension on the  
7 person on behalf of the department. The order of suspension:

8 1. Is effective thirty days after the date it is served.

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

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

15 4. Shall be accompanied by printed forms that are ready to mail to  
16 the department, that the person may fill out and sign to indicate the  
17 person's desire for a hearing or summary review and that advise the person  
18 that the person may alternatively submit an online request for a hearing  
19 or summary review.

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

22 6. Shall inform the person that the person's driving privilege,  
23 license, permit, right to apply for a license or permit or nonresident  
24 operating privilege may be issued or reinstated following the period of  
25 suspension or issuance of a special ignition interlock restricted driver  
26 license only if the person completes alcohol or other drug screening.

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

30 E. If the blood test result is unavailable at the time the test is  
31 administered, the result shall be forwarded to the department before the  
32 hearing held pursuant to this section in a form prescribed by the  
33 director.

34 F. If the license or permit is not surrendered pursuant to  
35 subsection D of this section, the officer shall state the reason for the  
36 nonsurrender. If a valid license or permit is surrendered, the officer  
37 shall issue a temporary driving permit that is valid for thirty days. The  
38 officer shall forward a copy of the completed order of suspension and a  
39 copy of any completed temporary permit to the department within five days  
40 after the issuance of the order of suspension along with the report. The  
41 law enforcement agency may do either of the following with a valid license  
42 or permit that is surrendered pursuant to this section:

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

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

3           G. The department shall suspend the affected person's license or  
4 permit to drive or right to apply for a license or permit or any  
5 nonresident operating privilege for not less than ninety consecutive days  
6 from that date. If the person is otherwise qualified, the department may  
7 reinstate the person's driving privilege, license, permit, right to apply  
8 for a license or permit or nonresident operating privilege following the  
9 period of suspension only if the violator completes alcohol or other drug  
10 screening.

11           H. Notwithstanding subsections A, B, C, D, E, F and G of this  
12 section and except as provided in subsection I of this section, the  
13 department shall suspend the driving privileges of the person described in  
14 subsection A of this section for at least thirty consecutive days and  
15 shall restrict the person's driving privileges as prescribed in section  
16 28-144 for at least sixty consecutive additional days if the person:

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

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

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

30           I. In lieu of a driving privilege suspension pursuant to subsection  
31 H of this section, on a person's request, the department shall issue a  
32 special ignition interlock restricted driver license to the person if the  
33 requirements set forth in subsection H, paragraphs 1, 2 and 3 are met.

34           J. Notwithstanding section 28-1401, the department may issue a  
35 special ignition interlock restricted driver license to a person for an  
36 offense described in subsection A of this section. A person who applies  
37 for and who is issued a special ignition interlock restricted driver  
38 license pursuant to this subsection agrees to the administrative action  
39 taken by the department against the person's license. Once the department  
40 issues a special ignition interlock restricted driver license pursuant to  
41 this subsection, the person waives any right to an administrative hearing  
42 contesting the administrative action against the person's license pursuant  
43 to this section or section 28-1321.

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

18 L. A timely request for a hearing stays the suspension until a  
19 hearing is held, except that the department shall not return any  
20 surrendered license or permit to the person but may issue temporary  
21 permits to drive that expire not later than when the department has made  
22 its final decision. If the person is a resident without a license or  
23 permit or has an expired license or permit, the department may allow the  
24 person to apply for a restricted license or permit. If the department  
25 determines the person is otherwise entitled to the restricted license or  
26 permit, the department shall issue, but retain, the license or permit,  
27 subject to this section. All hearings requested under this section shall  
28 be conducted in the same manner and under the same conditions as provided  
29 in section 28-3306.

30 M. For the purposes of this section, the scope of the hearing shall  
31 include only the following issues:

32 1. Whether the officer had reasonable grounds to believe the person  
33 was driving or was in actual physical control of a motor vehicle while  
34 under the influence of intoxicating liquor as prescribed in section  
35 28-1381 or drugs.

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

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

42 (a) An alcohol concentration in the person's blood or breath at the  
43 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 (iii) 0.04 OR MORE IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL  
5 CONTROL OF A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501 OR WHILE  
6 PROVIDING TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION 28-9551 AS  
7 A TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN SECTION 28-9551.

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

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

12 5. Whether the test results were accurately evaluated.

13 N. 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 O. 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 thirty 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  
20 suspension. If the person is a resident without a license or permit or  
21 has an expired license or permit to operate a motor vehicle in this state,  
22 the department shall deny the issuance of a license or permit to the  
23 person for not less than ninety consecutive days. The department may  
24 reinstate the person's driving privilege, license, permit, right to apply  
25 for a license or permit or nonresident operating privilege following the  
26 period of suspension only if the violator completes alcohol or other drug  
27 screening.

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

39 Q. 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.



1           R. If it has been determined under the procedures of this section  
2 that a nonresident's privilege to operate a motor vehicle in this state  
3 has been suspended, the department shall give information either in  
4 writing or by electronic means of the action taken to the motor vehicle  
5 administrator of the state of the person's residence and of any state in  
6 which the person has a license.