

PROPOSED  
SENATE AMENDMENTS TO S.B. 1025  
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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

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

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

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

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

1           5. WHILE PROVIDING TRANSPORTATION NETWORK SERVICES AS DEFINED IN  
2 SECTION 28-9551 AS A TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN  
3 SECTION 28-9551 IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF 0.04 OR MORE.

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

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

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

12           E. In any prosecution for a violation of this section, the state  
13 shall allege, for the purpose of classification and sentencing pursuant to  
14 this section, all prior convictions of violating this section, section  
15 28-1382 or section 28-1383 occurring within the past thirty-six months,  
16 unless there is an insufficient legal or factual basis to do so.

17           F. At the arraignment, the court shall inform the defendant that the  
18 defendant may request a trial by jury and that the request, if made, shall  
19 be granted.

20           G. In a trial, action or proceeding for a violation of this section  
21 or section 28-1383 other than a trial, action or proceeding involving A  
22 PERSON WHO IS driving or being in actual physical control of a commercial  
23 MOTOR vehicle OR INVOLVING A PERSON WHO IS PROVIDING TRANSPORTATION NETWORK  
24 SERVICES AS DEFINED IN SECTION 28-9551 AS A TRANSPORTATION NETWORK COMPANY  
25 DRIVER AS DEFINED IN SECTION 28-9551, the defendant's alcohol concentration  
26 within two hours of the time of driving or being in actual physical control  
27 as shown by analysis of the defendant's blood, breath or other bodily  
28 substance gives rise to the following presumptions:

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

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

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

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

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

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

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

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

19           4. Shall pay an additional assessment of \$500 to be deposited by the  
20 state treasurer in the prison construction and operations fund established  
21 by section 41-1651. This assessment is not subject to any surcharge. If  
22 the conviction occurred in the superior court or a justice court, the court  
23 shall transmit the assessed monies to the county treasurer. If the  
24 conviction occurred in a municipal court, the court shall transmit the  
25 assessed monies to the city treasurer. The city or county treasurer shall  
26 transmit the monies received to the state treasurer.

27           5. Shall pay an additional assessment of \$500 to be deposited by the  
28 state treasurer in the public safety equipment fund established by section  
29 41-1723. This assessment is not subject to any surcharge. If the  
30 conviction occurred in the superior court or a justice court, the court  
31 shall transmit the assessed monies to the county treasurer. If the  
32 conviction occurred in a municipal court, the court shall transmit the

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

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

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

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

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

30 1. Shall be sentenced to serve not less than ninety days in jail,  
31 thirty days of which shall be served consecutively, and is not eligible for

1       probation or suspension of execution of sentence unless the entire sentence  
2       has been served.

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

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

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

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

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

1 conviction occurred in a municipal court, the court shall transmit the  
2 assessed monies to the city treasurer. The city or county treasurer shall  
3 transmit the monies received to the state treasurer.

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

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

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

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

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

26 P. The court may order a person who is convicted of a violation of  
27 this section that does not involve intoxicating liquor to equip any motor  
28 vehicle the person operates with a certified ignition interlock device  
29 pursuant to section 28-3319. On receipt of the report of conviction and  
30 certified ignition interlock device requirement, the department 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

1 addition, the court may order the person to equip any motor vehicle the  
2 person operates with a certified ignition interlock device for more than  
3 twelve months beginning on the date the person successfully completes the  
4 alcohol or other drug screening, education or treatment program  
5 requirements of this title and the person is otherwise eligible to  
6 reinstate the person's driver license or driving privilege. The person who  
7 operates a motor vehicle with a certified ignition interlock device under  
8 this subsection shall comply with article 5 of this chapter.

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

16 Amend title to conform

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