

Senate Engrossed

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**Betsey Bayless
Secretary of State**

State of Arizona
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Forty-fourth Legislature
Second Regular Session
2000

CHAPTER 4

SENATE BILL 1022

AN ACT

AMENDING SECTIONS 5-395, 28-1381 AND 28-1382, ARIZONA REVISED STATUTES;
RELATING TO ALCOHOL RELATED OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 5-395, Arizona Revised Statutes, is amended to
3 read:

4 5-395. Operating or in actual physical control of a motorized
5 watercraft while intoxicated; violation;
6 classification; definition

7 A. It is unlawful for any person to operate or be in actual physical
8 control of a motorized watercraft that is underway within this state under
9 any of the following circumstances:

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

14 2. If the person has an alcohol concentration of 0.10 or more within
15 two hours of driving OPERATING or being in actual physical control of the
16 motorized watercraft AND THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL
17 CONSUMED EITHER BEFORE OR WHILE OPERATING OR BEING IN ACTUAL PHYSICAL CONTROL
18 OF THE MOTORIZED WATERCRAFT.

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

21 4. If the motorized watercraft is a commercial motorized watercraft
22 and the person has an alcohol concentration of 0.04 or more.

23 B. ~~It is an affirmative defense to a charge of a violation of~~
24 ~~subsection A, paragraph 2 of this section if the person did not have an~~
25 ~~alcohol concentration of 0.10 or more at the time of operating or of being~~
26 ~~in actual physical control of a motorized watercraft that is underway. If~~
27 ~~a defendant produces some credible evidence that his alcohol concentration~~
28 ~~at the time of operating or being in actual physical control of a motorized~~
29 ~~watercraft was below 0.10, the state must prove beyond a reasonable doubt~~
30 ~~that the defendant's alcohol concentration was 0.10 or more at the time of~~
31 ~~operating or being in actual physical control of a motorized watercraft. It~~
32 ~~is not a defense to a charge of a violation of subsection A, paragraph 1 of~~
33 ~~this section that the person is or has been entitled to use the drug under~~
34 ~~the laws of this state. A person using a drug prescribed by a medical~~
35 ~~practitioner licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not~~
36 ~~guilty of violating subsection A, paragraph 3 of this section.~~

37 C. The state shall not dismiss a charge of violating this section for
38 either of the following:

39 1. In return for a plea of guilty or no contest to any other offense
40 by the person charged with the violation of this section.

41 2. For the purpose of pursuing any other misdemeanor or a petty
42 offense, including those arising out of the same event or course of conduct,
43 unless there is clearly an insufficient legal or factual basis to pursue the
44 charge of violating this section.

1 D. In any prosecution for a violation of this section the state, for
2 the purpose of classification and sentencing pursuant to section 5-395.01 or
3 5-396, shall allege all prior convictions of violating this section occurring
4 within the past thirty-six months, unless there is clearly an insufficient
5 legal or factual basis to do so.

6 E. In any trial, action or proceeding for a violation of this section
7 or section 5-396 other than a trial, action or proceeding involving operating
8 or being in actual physical control of a commercial motorized watercraft, if
9 the defendant's alcohol concentration within two hours of the time of
10 operating or being in actual physical control as shown by analysis of the
11 defendant's blood, breath or other bodily substance gives rise to the
12 following presumptions:

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

16 2. If there was at that time in excess of 0.05 but less than 0.10
17 alcohol concentration in the defendant's blood, breath or other bodily
18 substance, such fact shall not give rise to any presumption that the
19 defendant was or was not under the influence of intoxicating liquor, but such
20 fact may be considered with other competent evidence in determining the guilt
21 or innocence of the defendant.

22 3. If there was at that time 0.10 or more alcohol concentration in the
23 defendant's blood, breath or other bodily substance, it may be presumed that
24 the defendant was under the influence of intoxicating liquor.

25 Paragraph 1, 2 or 3 of this subsection shall not be construed as limiting the
26 introduction of any other competent evidence bearing on the question of
27 whether or not the defendant was under the influence of intoxicating liquor.

28 F. If a blood test is administered, only a physician, a registered
29 nurse or another qualified person may withdraw blood for the purpose of
30 determining the alcohol concentration or drug content. The qualifications
31 of the individual withdrawing the blood and the method used to withdraw the
32 blood are not foundational prerequisites for the admissibility of any blood
33 alcohol content determination made pursuant to this subsection.

34 G. If a law enforcement officer administers a duplicate breath test
35 and the person tested is given a reasonable opportunity to arrange for an
36 additional test pursuant to subsection H of this section, a sample of the
37 person's breath does not have to be collected or preserved.

38 H. The person tested shall be given a reasonable opportunity to
39 arrange for any physician, registered nurse or other qualified person of his
40 own choosing to administer a test or tests in addition to any administered
41 at the direction of a law enforcement officer. The failure or inability to
42 obtain an additional test by a person does not preclude the admission of
43 evidence relating to the test or tests taken at the direction of a law
44 enforcement officer.

1 I. If a person under arrest refuses to submit to a test or tests under
2 section 5-395.03, whether or not a sample was collected pursuant to
3 subsection J of this section or a search warrant, evidence of refusal is
4 admissible in any civil or criminal action or other proceeding. The issue
5 of refusal shall be an issue of fact to be determined by the trier of fact
6 in all cases.

7 J. Notwithstanding any other law, if a law enforcement officer has
8 probable cause to believe that a person has violated this section and a
9 sample of blood, urine or any other bodily substance is taken from that
10 person for any reason a portion of that sample sufficient for analysis shall
11 be provided to a law enforcement officer if requested for law enforcement
12 purposes. A person who fails to comply with this subsection is guilty of a
13 class 1 misdemeanor.

14 K. A person who collects blood, urine or any other bodily substance
15 under this section or any hospital, laboratory or clinic employing or
16 utilizing the services of the person does not incur any civil liability as
17 a result of this activity if requested by a law enforcement officer to
18 collect blood, urine or any other bodily substances unless the person, while
19 performing the activity, acts with gross negligence.

20 L. A statement by the defendant that he was operating a motorized
21 watercraft that was underway and that was involved in an accident resulting
22 in injury to or death of any person is admissible in any criminal proceeding
23 without further proof of corpus delicti if it is otherwise admissible.

24 M. At the arraignment, the court shall inform the defendant that he
25 may request a trial by jury and that the request, if made, shall be granted.

26 N. In this section, "alcohol concentration" means grams of alcohol per
27 one hundred milliliters of blood or grams of alcohol per two hundred ten
28 liters of breath.

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

30 28-1381. Driving or actual physical control while under the
31 influence; trial by jury; presumptions; admissible
32 evidence; sentencing; classification

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

35 1. While under the influence of intoxicating liquor, any drug, a vapor
36 releasing substance containing a toxic substance or any combination of
37 liquor, drugs or vapor releasing substances if the person is impaired to the
38 slightest degree.

39 2. If the person has an alcohol concentration of 0.10 or more within
40 two hours of driving or being in actual physical control of the vehicle AND
41 THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL CONSUMED EITHER BEFORE OR
42 WHILE DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE.

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

1 4. If the vehicle is a commercial motor vehicle that requires a person
2 to obtain a commercial driver license as defined in section 28-3001 and the
3 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. It is an affirmative defense to a charge of a violation of~~
8 ~~subsection A, paragraph 2 of this section if the person did not have an~~
9 ~~alcohol concentration of 0.10 or more at the time of driving or of being in~~
10 ~~actual physical control of a vehicle. If a defendant produces some credible~~
11 ~~evidence that the defendant's alcohol concentration at the time of driving~~
12 ~~or being in actual physical control of a vehicle was below 0.10, the state~~
13 ~~must prove beyond a reasonable doubt that the defendant's alcohol~~
14 ~~concentration was 0.10 or more at the time of driving or being in actual~~
15 ~~physical control of a vehicle.~~

16 C. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS GUILTY
17 OF A CLASS 1 MISDEMEANOR.

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

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

26 F. At the arraignment, the court shall inform the defendant that the
27 defendant may request a trial by jury and that the request, if made, shall
28 be granted.

29 G. In a trial, action or proceeding for a violation of this section
30 or section 28-1383 other than a trial, action or proceeding involving driving
31 or being in actual physical control of a commercial vehicle, the defendant's
32 alcohol concentration within two hours of the time of driving or being in
33 actual physical control as shown by analysis of the defendant's blood, breath
34 or other bodily substance gives rise to the following presumptions:

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

38 2. If there was at that time in excess of 0.05 but less than 0.10
39 alcohol concentration in the defendant's blood, breath or other bodily
40 substance, that fact shall not give rise to a presumption that the defendant
41 was or was not under the influence of intoxicating liquor, but that fact may
42 be considered with other competent evidence in determining the guilt or
43 innocence of the defendant.

1 3. If there was at that time 0.10 or more alcohol concentration in the
2 defendant's blood, breath or other bodily substance, it may be presumed that
3 the defendant was under the influence of intoxicating liquor.

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

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

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

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

12 3. May be ordered by a court to perform community service.

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

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

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

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

32 3. May be ordered by a court to perform community service.

33 4. Shall have the person's driving privilege revoked for one
34 year. The court shall report the conviction to the department. On receipt
35 of the report, the department shall revoke the person's driving privilege.

36 5. Shall be ordered by a court to equip any motor vehicle the person
37 operates with a certified ignition interlock device for at least one year
38 upon the conclusion of the license suspension or revocation. The person who
39 operates a vehicle with a certified ignition interlock device under this
40 paragraph shall comply with article 5 of this chapter.

41 L. Notwithstanding subsection K, paragraph 1 of this section at the
42 time of sentencing, the judge may suspend all but thirty days of the sentence
43 if the person completes a court ordered alcohol or other drug screening,
44 education or treatment program. If the person fails to complete the court
45 ordered alcohol or other drug screening, education or treatment program and

1 has not been placed on probation, the court shall issue an order to show
2 cause as to why the remaining jail sentence should not be served.

3 M. In applying the sixty month provision of subsection K of this
4 section, the dates of the commission of the offense shall be the determining
5 factor, irrespective of the sequence in which the offenses were committed.

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

9 ~~O. A person who is convicted of a violation of this section is guilty~~
10 ~~of a class 1 misdemeanor.~~

11 Sec. 3. Section 28-1382, Arizona Revised Statutes, is amended to read:
12 28-1382. Driving or actual physical control while under the
13 extreme influence of intoxicating liquor; trial by
14 jury; sentencing; classification

15 A. It is unlawful for a person to drive or be in actual physical
16 control of a vehicle in this state if the person has an alcohol concentration
17 of 0.18 or more within two hours of driving or being in actual physical
18 control of the vehicle AND THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL
19 CONSUMED EITHER BEFORE OR WHILE DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL
20 OF THE VEHICLE.

21 B. A person who is convicted of a violation of this section is guilty
22 of driving or being in actual physical control of a vehicle while under the
23 extreme influence of intoxicating liquor.

24 ~~B. It is an affirmative defense to a charge of a violation of this~~
25 ~~section if the person did not have an alcohol concentration of 0.18 or more~~
26 ~~at the time of driving or of being in actual physical control of a~~
27 ~~vehicle. If a defendant produces some credible evidence that the defendant's~~
28 ~~alcohol concentration at the time of driving or being in actual physical~~
29 ~~control of a vehicle was below 0.18, the state must prove beyond a reasonable~~
30 ~~doubt that the defendant's alcohol concentration was 0.18 or more at the time~~
31 ~~of driving or being in actual physical control of a vehicle.~~

32 C. At the arraignment, the court shall inform the defendant that the
33 defendant may request a trial by jury and that the request, if made, shall
34 be granted.

35 D. A person who is convicted of a violation of this section:

36 1. Shall be sentenced to serve not less than thirty consecutive days
37 in jail and is not eligible for probation or suspension of execution of
38 sentence unless the entire sentence is served.

39 2. Shall pay a fine of not less than two hundred fifty dollars. The
40 fine prescribed in this paragraph and any assessments, restitution and
41 incarceration costs shall be paid before the assessment prescribed in
42 paragraph 3 of this subsection.

43 3. Shall pay an additional assessment of two hundred fifty
44 dollars. If the conviction occurred in the superior court or a justice
45 court, the court shall transmit the monies received pursuant to this

1 paragraph to the county treasurer. If the conviction occurred in a municipal
2 court, the court shall transmit the monies received pursuant to this
3 paragraph to the city treasurer. The city or county treasurer shall transmit
4 the monies received to the state treasurer. The state treasurer shall
5 deposit the monies received in the driving under the influence abatement fund
6 established by section 28-1304.

7 4. May be ordered by a court to perform community service.

8 5. May be ordered by a court to equip any motor vehicle the person
9 operates with a certified ignition interlock device for at least one year
10 upon the conclusion of the license suspension or revocation. The person who
11 operates a vehicle with a certified ignition interlock device under this
12 paragraph shall comply with article 5 of this chapter.

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

21 F. If within a period of sixty months a person is convicted of a
22 second violation of this section or is convicted of a violation of this
23 section and has previously been convicted of a violation of section 28-1381
24 or 28-1383 or an act in another jurisdiction that if committed in this state
25 would be a violation of this section or section 28-1381 or 28-1383, the
26 person:

27 1. Shall be sentenced to serve not less than one hundred twenty days
28 in jail, sixty days of which shall be served consecutively, and is not
29 eligible for probation or suspension of execution of sentence unless the
30 entire sentence has been served.

31 2. Shall pay a fine of not less than five hundred dollars. The fine
32 prescribed in this paragraph and any assessments, restitution and
33 incarceration costs shall be paid before the assessment prescribed in
34 paragraph 3 of this subsection.

35 3. Shall pay an additional assessment of two hundred fifty
36 dollars. If the conviction occurred in the superior court or a justice
37 court, the court shall transmit the monies received pursuant to this
38 paragraph to the county treasurer. If the conviction occurred in a municipal
39 court, the court shall transmit the monies received pursuant to this
40 paragraph to the city treasurer. The city or county treasurer shall transmit
41 the monies received to the state treasurer. The state treasurer shall
42 deposit the monies received in the driving under the influence abatement fund
43 established by section 28-1304.

44 4. May be ordered by a court to perform community service.

1 5. Shall have the person's driving privilege revoked for at least one
2 year. The court shall report the conviction to the department. On receipt
3 of the report, the department shall revoke the person's driving privilege.

4 6. Shall be ordered by a court to equip any motor vehicle the person
5 operates with a certified ignition interlock device for at least one year
6 upon the conclusion of the license suspension or revocation. The person who
7 operates a vehicle with a certified ignition interlock device under this
8 paragraph shall comply with article 5 of this chapter.

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

16 H. In applying the sixty month provision of subsection F of this
17 section, the dates of the commission of the offense shall be the determining
18 factor, irrespective of the sequence in which the offenses were committed.

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

22 J. A person who is convicted of a violation of this section is guilty
23 of a class 1 misdemeanor.

APPROVED BY THE GOVERNOR MARCH 1, 2000

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