

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 145

HOUSE BILL 2011

AN ACT

AMENDING TITLE 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-3403.01 AND 13-3403.02; AMENDING SECTIONS 28-3309 AND 28-3310, ARIZONA REVISED STATUTES; RELATING TO DRUG OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 34, Arizona Revised Statutes, is amended
3 by adding sections 13-3403.01 and 13-3403.02, to read:

4 13-3403.01. Nitrous oxide containers; sale to or purchase by
5 minors; classification

6 A. A PERSON SHALL NOT KNOWINGLY SELL, GIVE OR DELIVER TO A PERSON
7 UNDER EIGHTEEN YEARS OF AGE ANY CONTAINER EXCLUSIVELY CONTAINING NITROUS
8 OXIDE, UNLESS THE PERSON UNDER EIGHTEEN YEARS OF AGE IS DELIVERING OR
9 ACCEPTING DELIVERY IN THE PERSON'S CAPACITY AS AN EMPLOYEE.

10 B. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 5 FELONY
11 UNLESS THE COURT DOES EITHER OF THE FOLLOWING:

12 1. ENTERS A JUDGMENT OF CONVICTION FOR A CLASS 1 MISDEMEANOR AND MAKES
13 DISPOSITION ACCORDINGLY.

14 2. PLACES THE PERSON ON PROBATION IN ACCORDANCE WITH CHAPTER 9 OF THIS
15 TITLE AND REFRAINS FROM DESIGNATING THE OFFENSE AS A FELONY OR MISDEMEANOR
16 UNTIL THE PROBATION IS TERMINATED. THE OFFENSE SHALL BE TREATED AS A FELONY
17 FOR ALL PURPOSES UNTIL SUCH TIME AS THE COURT MAY ACTUALLY ENTER AN ORDER
18 DESIGNATING THE OFFENSE AS A MISDEMEANOR.

19 13-3403.02 Selling or giving nitrous oxide to underage person;
20 illegally obtaining nitrous oxide containers by
21 underage person; violation; classification

22 A. AN OPERATOR OR EMPLOYEE OF A COMMERCIAL ESTABLISHMENT WHO
23 QUESTIONS OR HAS REASON TO QUESTION WHETHER OR NOT A PERSON ORDERING,
24 PURCHASING, ATTEMPTING TO PURCHASE OR OTHERWISE PROCURING OR ATTEMPTING TO
25 PROCURE THE SERVING OR DELIVERY OF A NITROUS OXIDE CONTAINER IS UNDER
26 EIGHTEEN YEARS OF AGE SHALL REQUIRE THE PERSON TO EXHIBIT A WRITTEN
27 INSTRUMENT OF IDENTIFICATION AND MAY REQUIRE THE PERSON TO SIGN THE PERSON'S
28 NAME, THE DATE, AND THE NUMBER OF THE IDENTIFICATION ON A CARD TO BE RETAINED
29 BY THE OPERATOR, OR MAY REQUIRE THE PERSON TO SIGN THE PERSON'S NAME AND THE
30 DATE ON A PHOTOCOPY OF THE INSTRUMENT OF IDENTIFICATION TO BE RETAINED BY THE
31 OPERATOR. THE FOLLOWING WRITTEN INSTRUMENTS ARE THE ONLY ACCEPTABLE TYPES
32 OF IDENTIFICATION:

33 1. AN UNEXPIRED DRIVER LICENSE ISSUED BY ANY STATE OR BY CANADA,
34 PROVIDED THE LICENSE INCLUDES A PICTURE OF THE LICENSEE.

35 2. A NONOPERATING IDENTIFICATION LICENSE ISSUED PURSUANT TO SECTION
36 28-3165.

37 3. AN ARMED FORCES IDENTIFICATION CARD.

38 4. A VALID PASSPORT OR BORDER CROSSING IDENTIFICATION CARD THAT IS
39 ISSUED BY A GOVERNMENT.

40 5. A VOTER CARD ISSUED BY THE GOVERNMENT OF MEXICO AND THAT CONTAINS
41 A PHOTOGRAPH OF THE PERSON AND THE DATE OF BIRTH.

42 B. AN OPERATOR OR EMPLOYEE OF A COMMERCIAL ESTABLISHMENT WHO SELLS,
43 GIVES, SERVES OR FURNISHES A NITROUS OXIDE CONTAINER TO A PERSON WHO IS UNDER
44 EIGHTEEN YEARS OF AGE WITHOUT HAVING RECORDED AND RETAINED A RECORD OF THE
45 PERSON'S AGE OR A DATED AND SIGNED PHOTOCOPY OF THE INSTRUMENT OF

1 IDENTIFICATION EXHIBITED AS PRESCRIBED BY SUBSECTION A OF THIS SECTION IS
2 DEEMED TO HAVE CONSTRUCTIVE KNOWLEDGE OF THE PERSON'S AGE.

3 C. A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AND WHO MISREPRESENTS
4 THE PERSON'S AGE TO ANY PERSON BY MEANS OF A WRITTEN INSTRUMENT OF
5 IDENTIFICATION WITH THE INTENT TO INDUCE A PERSON TO SELL, SERVE, GIVE OR
6 FURNISH A NITROUS OXIDE CONTAINER CONTRARY TO SECTION 13-3403.01 IS GUILTY
7 OF A CLASS 1 MISDEMEANOR.

8 D. A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AND WHO SOLICITS
9 ANOTHER PERSON TO PURCHASE, SELL, GIVE, SERVE OR FURNISH A NITROUS OXIDE
10 CONTAINER CONTRARY TO LAW IS GUILTY OF A CLASS 3 MISDEMEANOR.

11 E. A PERSON WHO DOES NOT HAVE A VALID DRIVER OR NONOPERATING
12 IDENTIFICATION LICENSE AND WHO USES A DRIVER OR NONOPERATING IDENTIFICATION
13 LICENSE OF ANOTHER IN VIOLATION OF SUBSECTION C OF THIS SECTION SHALL HAVE
14 THAT PERSON'S RIGHT SUSPENDED TO APPLY FOR A DRIVER OR NONOPERATING
15 IDENTIFICATION LICENSE AS PROVIDED BY SECTION 28-3309, SUBSECTION B. A
16 PERSON WHO USES A DRIVER OR NONOPERATING IDENTIFICATION LICENSE IN VIOLATION
17 OF SUBSECTION C OF THIS SECTION IS SUBJECT TO SUSPENSION OF THE DRIVER OR
18 NONOPERATING IDENTIFICATION LICENSE AS PROVIDED IN SECTION 28-3309,
19 SUBSECTION C.

20 F. A PERSON WHO KNOWINGLY INFLUENCES THE SELLING, GIVING OR SERVING
21 OF A NITROUS OXIDE CONTAINER TO A PERSON UNDER EIGHTEEN YEARS OF AGE BY
22 MISREPRESENTING THE AGE OF THE PERSON OR WHO ORDERS, REQUESTS, RECEIVES OR
23 PROCURES A NITROUS OXIDE CONTAINER FROM AN OPERATOR OR EMPLOYEE OF A
24 COMMERCIAL ESTABLISHMENT WITH THE INTENT OF SELLING, GIVING OR SERVING IT TO
25 A PERSON UNDER EIGHTEEN YEARS OF AGE IS GUILTY OF A CLASS 1 MISDEMEANOR.

26 G. FOR PURPOSES OF THIS SECTION, "NITROUS OXIDE CONTAINER" MEANS ANY
27 CONTAINER OR CANISTER EXCLUSIVELY CONTAINING NITROUS OXIDE.

28 Sec. 2. Section 28-3309, Arizona Revised Statutes, is amended to read:

29 28-3309. License suspension and denial; improper use by persons
30 under legal drinking age; improper use by persons
31 under eighteen years of age

32 A. The department shall promptly suspend a driver license or
33 nonoperating identification license issued to or the driving privilege of a
34 person who is under the legal drinking age and who is convicted of using a
35 false or lawfully issued license of this state or any other jurisdiction in
36 violation of section 4-241, subsection C or E for not less than:

- 37 1. Six months for a first conviction.
- 38 2. Twelve months for a second or subsequent conviction.

39 B. The department shall promptly deny the right of an otherwise
40 qualified person to apply for a driver and identification license if the
41 person does not have a valid driver or identification license and the person
42 is convicted of using the driver or identification license of another person
43 in violation of section 4-241, subsection C or E OR IN VIOLATION OF SECTION
44 13-3403.02, SUBSECTION C for not less than:

- 45 1. Six months for a first conviction.

1 hearing be held in the county where the offense occurred. The request stays
2 the suspension by the department until a hearing is held.

3 E. At the hearing, the department or its duly authorized agent may
4 administer oaths, issue subpoenas for the attendance of witnesses and the
5 production of relevant books and papers and require a reexamination of the
6 person named in the affidavit. If at the hearing the department suspends the
7 person's privilege to operate a motor vehicle, the suspension is effective
8 fifteen days after the department gives written notice of the suspension,
9 except as provided in section 28-3311.

10 F. If the suspension or determination of a denial of issuance is
11 sustained after the hearing, the person whose driver license, nonoperating
12 identification license or permit to drive or nonresident operating privilege
13 is suspended or the person to whom a driver license, nonoperating
14 identification license or permit is denied under this section may file a
15 petition in the superior court to review the final order in the same manner
16 as provided in section 28-3317.

17 G. If the suspension or determination of a denial of issuance is not
18 sustained, the ruling is not admissible in and does not affect any civil or
19 criminal court proceeding.

20 Sec. 4. Emergency

21 This act is an emergency measure that is necessary to preserve the
22 public peace, health or safety and is operative immediately as provided by
23 law.

APPROVED BY THE GOVERNOR APRIL 18, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2001.

Passed the House March 6, 2001,

Passed the Senate April 4, 2001,

by the following vote: 58 Ayes,

by the following vote: 30 Ayes,

0 Nays, 2 Not Voting

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House
Pro Tempore

Rancho Sant *with Emergency*
President of the Senate

Sperman L. Moore
Chief Clerk of the House

Chasmin Billington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this
_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of
_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2011

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 12, 2001,

by the following vote: 47 Ayes,

0 Nays, 13 Not Voting
with emergency

Jake Flake
Speaker of the House
Pro Tempore
Speman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

12 day of April, 2001,

at 1:41 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 18 day of

April, 2001,

at 2:37 o'clock P M.

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19 day of April, 2001,

at 3:13 o'clock P M.

Britney Taylor
Secretary of State

H.B. 2011