

State of Arizona  
Senate  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 225

## **SENATE BILL 1366**

AN ACT

AMENDING SECTIONS 5-391 AND 5-396, ARIZONA REVISED STATUTES; AMENDING TITLE 5, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 5-397 AND 5-398; AMENDING SECTION 28-1386, ARIZONA REVISED STATUTES; RELATING TO BOATING WHILE INTOXICATED.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 5-391, Arizona Revised Statutes, is amended to  
3 read:

4 5-391. Enforcement; violation; classification

5 A. Any person who violates any provision of this chapter, except  
6 section 5-341, subsection A, B, C or D, section 5-349, section 5-350,  
7 subsection C, or ~~sections~~ SECTION 5-393, 5-395, or 5-396 OR 5-397 and  
8 ~~subsections~~ SUBSECTION C, F and OR G of this section or any rule issued  
9 thereunder, is guilty of a petty offense. Any person who violates section  
10 5-350, subsection C or subsection C of this section is guilty of a class 2  
11 misdemeanor.

12 B. All peace officers of the state, counties and cities shall enforce  
13 the provisions of this chapter and all laws and rules relating to the  
14 operation of watercraft.

15 C. In the enforcement of this chapter, the operator of the watercraft  
16 upon being hailed by any peace officer shall stop immediately and lay to, or  
17 maneuver in such a way as to permit the peace officer to come aboard or  
18 alongside. The operator may be ordered ashore to correct any unlawful  
19 condition, issued a written warning or written repair order, or issued a  
20 citation for any violation of this chapter.

21 D. In the enforcement of this chapter, the provisions of sections  
22 13-2506 and 13-3903 shall apply.

23 E. Each failure to obey an order or to comply with a warning order  
24 issued under the provisions of subsection C of this section shall constitute  
25 a separate offense punishable as a separate violation of this chapter.

26 F. A person is guilty of a class 6 felony who knowingly removes,  
27 defaces, obliterates, changes, alters or causes to be removed, defaced,  
28 obliterated, changed or altered a factory, engine, serial, outdrive, lower  
29 unit, power trim or hull identification number or mark on a watercraft.

30 G. A person is guilty of a class 2 misdemeanor who:

31 1. Knowingly displays or has in his possession a fictitious, stolen,  
32 revoked or altered certificate of number, department issued number or annual  
33 decal.

34 2. Lends to or knowingly permits the use of his certificate of number,  
35 department issued number or annual decal on a watercraft for which those  
36 items have not been issued.

37 H. Upon receipt of notice of conviction of a person under subsection  
38 F or G of this section, the department may revoke the numbers and decals  
39 issued to the watercraft which was involved in the violation and any other  
40 watercraft owned by the person convicted.

1           Sec. 2. Section 5-396, Arizona Revised Statutes, is amended to read:

2           5-396. Aggravated operating or actual physical control of  
3           motorized watercraft while under the influence of  
4           intoxicating liquor or drugs; violation;  
5           classification; penalties; notice

6           A. A person is guilty of aggravated operating or actual physical  
7 control of a motorized watercraft that is underway while under the influence  
8 of intoxicating liquor or drugs if the person commits a third or subsequent  
9 violation of section 5-395 OR 5-397 or this section or is convicted of a  
10 violation of section 5-395 OR 5-397 or this section and has previously been  
11 convicted of any combination of convictions of section 5-395 OR 5-397 or this  
12 section or acts committed in another state that if committed in this state  
13 would be a violation of section 5-395 OR 5-397 or this section within a  
14 period of sixty months.

15           B. The dates of the commission of the offenses are the determining  
16 factor in applying the sixty month provision provided in subsection A of this  
17 section regardless of the sequence in which the offenses were committed. For  
18 purposes of this section, a third or subsequent violation for which a  
19 conviction occurs does not include a conviction for an offense arising out  
20 of the same series of acts.

21           C. Aggravated operating or actual physical control of a motorized  
22 watercraft that is underway while under the influence of intoxicating liquor  
23 or drugs is a class 4 felony.

24           D. Notwithstanding section 41-1604.06, a person who is convicted under  
25 subsection A of this section and who within a sixty month period has been  
26 convicted of two prior violations of section 5-395 OR 5-397 or this section,  
27 or acts committed in another state that if committed in this state would be  
28 a violation of section 5-395 OR 5-397 or this section is not eligible for  
29 probation, pardon, commutation or suspension of sentence or release on any  
30 other basis until the person has served not less than four months in prison.

31           E. Notwithstanding section 41-1604.06, a person who is convicted under  
32 subsection A of this section and who within a sixty month period has been  
33 convicted of three or more prior violations of section 5-395 OR 5-397 or this  
34 section, or acts committed in another state that if committed in this state  
35 would be a violation of section 5-395 OR 5-397 or this section is not  
36 eligible for probation, pardon, commutation or suspension of sentence or  
37 release on any other basis until the person has served not less than eight  
38 months in prison.

39           F. A person who is convicted of a violation of this section and who  
40 is placed on probation shall attend and complete alcohol or drug screening,  
41 counseling and education from an approved facility, and if ordered by the  
42 court, treatment from an approved facility. If the person fails to comply  
43 with the provisions of this subsection, in addition to the provisions of  
44 section 13-901 the court may order that the person be incarcerated as a term  
45 of probation as follows:

1           1. For a person sentenced pursuant to subsection D of this section,  
2 for an individual period of not more than four months and a total period of  
3 not more than one year.

4           2. For a person sentenced pursuant to subsection E of this section,  
5 for an individual period of not more than eight months and a total period of  
6 not more than two years.

7           G. The time that a person spends in custody pursuant to subsection D,  
8 E or F of this section shall not be counted toward the sentence imposed if  
9 the person's probation is revoked and the person is sentenced to prison  
10 following revocation of probation.

11           Sec. 3. Title 5, chapter 3, article 10, Arizona Revised Statutes, is  
12 amended by adding sections 5-397 and 5-398, to read:

13           5-397. Operating or in actual physical control of a motorized  
14                           watercraft while under the extreme influence of  
15                           intoxicating liquor; trial by jury; sentencing;  
16                           classification; definition

17           A. IT IS UNLAWFUL FOR A PERSON TO OPERATE OR BE IN ACTUAL PHYSICAL  
18 CONTROL OF A MOTORIZED WATERCRAFT THAT IS UNDERWAY WITHIN THIS STATE IF THE  
19 PERSON HAS AN ALCOHOL CONCENTRATION OF 0.15 OR MORE WITHIN TWO HOURS OF  
20 OPERATING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE MOTORIZED WATERCRAFT AND  
21 THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL CONSUMED EITHER BEFORE OR  
22 WHILE OPERATING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE MOTORIZED  
23 WATERCRAFT.

24           B. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS GUILTY  
25 OF OPERATING OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTORIZED WATERCRAFT  
26 WHILE UNDER THE EXTREME INFLUENCE OF ALCOHOL.

27           C. AT THE ARRAIGNMENT, THE COURT SHALL INFORM THE DEFENDANT THAT THE  
28 DEFENDANT MAY REQUEST A TRIAL BY JURY AND THAT THE REQUEST, IF MADE, SHALL  
29 BE GRANTED.

30           D. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION:

31           1. SHALL BE SENTENCED TO SERVE NOT LESS THAN THIRTY CONSECUTIVE DAYS  
32 IN JAIL AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF  
33 SENTENCE UNLESS THE ENTIRE SENTENCE IS SERVED.

34           2. SHALL PAY A FINE OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS.

35           3. MAY BE ORDERED BY A COURT TO PERFORM COMMUNITY SERVICE.

36           E. NOTWITHSTANDING SUBSECTION D, PARAGRAPH 1 OF THIS SECTION, AT THE  
37 TIME OF SENTENCING THE JUDGE MAY SUSPEND ALL BUT TEN DAYS OF THE SENTENCE IF  
38 THE PERSON COMPLETES A COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING,  
39 EDUCATION OR TREATMENT PROGRAM. IF THE PERSON FAILS TO COMPLETE THE COURT  
40 ORDERED ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM AND  
41 HAS NOT BEEN PLACED ON PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW  
42 CAUSE TO THE DEFENDANT AS TO WHY THE REMAINING JAIL SENTENCE SHOULD NOT BE  
43 SERVED.

44           F. IF WITHIN A PERIOD OF SIXTY MONTHS A PERSON IS CONVICTED OF A  
45 SECOND VIOLATION OF THIS SECTION OR IS CONVICTED OF A VIOLATION OF THIS

1 SECTION AND HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SECTION 5-395 OR  
2 5-396 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE WOULD  
3 BE A VIOLATION OF THIS SECTION OR SECTION 5-395 OR 5-396, THE PERSON:

4 1. SHALL BE SENTENCED TO SERVE NOT LESS THAN ONE HUNDRED TWENTY DAYS  
5 IN JAIL, SIXTY DAYS OF WHICH SHALL BE SERVED CONSECUTIVELY, AND IS NOT  
6 ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE  
7 ENTIRE SENTENCE HAS BEEN SERVED.

8 2. SHALL PAY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS.

9 3. MAY BE ORDERED BY A COURT TO PERFORM COMMUNITY SERVICE.

10 G. NOTWITHSTANDING SUBSECTION F, PARAGRAPH 1 OF THIS SECTION, AT THE  
11 TIME OF SENTENCING, THE JUDGE MAY SUSPEND ALL BUT SIXTY DAYS OF THE SENTENCE  
12 IF THE PERSON COMPLETES A COURT ORDERED ALCOHOL OR OTHER DRUG SCREENING,  
13 EDUCATION OR TREATMENT PROGRAM. IF THE PERSON FAILS TO COMPLETE THE COURT  
14 ORDERED ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM AND  
15 HAS NOT BEEN PLACED ON PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW  
16 CAUSE AS TO WHY THE REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

17 H. IN APPLYING THE SIXTY MONTH PROVISION OF SUBSECTION F OF THIS  
18 SECTION, THE DATES OF THE COMMISSION OF THE OFFENSE SHALL BE THE DETERMINING  
19 FACTOR, IRRESPECTIVE OF THE SEQUENCE IN WHICH THE OFFENSES WERE COMMITTED.

20 I. A SECOND VIOLATION FOR WHICH A CONVICTION OCCURS AS PROVIDED IN  
21 THIS SECTION SHALL NOT INCLUDE A CONVICTION FOR AN OFFENSE ARISING OUT OF THE  
22 SAME SERIES OF ACTS.

23 J. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS GUILTY  
24 OF A CLASS 1 MISDEMEANOR.

25 K. FOR THE PURPOSES OF THIS SECTION, "ALCOHOL CONCENTRATION" MEANS  
26 GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR GRAMS OF ALCOHOL PER  
27 TWO HUNDRED TEN LITERS OF BREATH.

28 5-398. Reimbursement of incarceration costs

29 A. THE COURT SHALL ORDER A PERSON WHO IS SENTENCED TO A TERM OF  
30 INCARCERATION FOR A VIOLATION OF THIS ARTICLE TO REIMBURSE THE POLITICAL  
31 SUBDIVISION THAT IS RESPONSIBLE FOR THE COSTS OF THE PERSON'S INCARCERATION  
32 FOR THOSE INCARCERATION COSTS.

33 B. THE COURT MAY DETERMINE THE AMOUNT OF INCARCERATION COSTS TO BE  
34 PAID BASED ON THE FOLLOWING FACTORS:

35 1. THE PER DIEM PER PERSON COST OF INCARCERATION INCURRED BY THE  
36 POLITICAL SUBDIVISION THAT INCARCERATES THE PERSON.

37 2. THE PERSON'S ABILITY TO PAY PART OR ALL OF THE INCARCERATION COSTS.

38 Sec. 4. Section 28-1386, Arizona Revised Statutes, is amended to read:

39 28-1386. Operating a motor vehicle, aircraft, watercraft or  
40 water skis under the influence; emergency response  
41 costs; definitions

42 A. A person who is under the influence of intoxicating liquor, any  
43 drug, a vapor releasing substance containing a toxic substance or any  
44 combination of liquor, drugs or vapor releasing substances, who causes an  
45 accident that results in an appropriate emergency response and who is

1 convicted of a violation of any of the following sections is liable for the  
2 expenses of that emergency response:

3 1. Section 28-1381, 28-1382 or 28-1383.

4 2. Section 28-8279, section 28-8280 or section 28-8282, subsection C.

5 3. Section 5-395 OR 5-397.

6 B. The expenses of an emergency response are a charge against the  
7 person liable for those expenses pursuant to subsection A, paragraph 1 of  
8 this section. The charge is a debt of that person. The public agency,  
9 for-profit entity or not-for-profit entity that incurred the expenses may  
10 collect the debt proportionally. The person's liability for the expenses of  
11 an emergency response shall not exceed one thousand dollars for a single  
12 accident. The liability imposed under this section is in addition to and not  
13 in limitation of any other liability that may be imposed.

14 C. Any testimony, admission or other statement made by a defendant in  
15 a proceeding brought pursuant to this section or any evidence derived from  
16 the testimony, admission or statement is not admissible in a criminal  
17 proceeding arising out of the same accident.

18 D. As used in this section:

19 1. "Expenses of an emergency response" means reasonable costs directly  
20 incurred by a public agency, for-profit entity or not-for-profit entity that  
21 makes an appropriate emergency response to an accident, including the costs  
22 of providing police, fire fighting, rescue and emergency medical services at  
23 the scene of an accident and the salaries of the persons who respond to the  
24 accident but excluding charges assessed by an ambulance service that is  
25 regulated pursuant to title 36, chapter 21.1, article 2.

26 2. "Public agency" means this state and any city, county, municipal  
27 corporation, district or other public authority that is located in whole or  
28 in part in this state and that provides police, fire fighting, medical or  
29 other emergency services.

APPROVED BY THE GOVERNOR MAY 17, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2002.

Passed the House May 2, 2002

by the following vote: 42 Ayes,

11 Nays, 7 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate March 25, 2002

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

[Signature]  
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~~

S.B. 1366

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~~

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate May 13, 2002

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

*Randall Arant*  
President of the Senate

*Chambers Ballington*  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13 day of May, 2002

at 2:20 o'clock P M.

*Sandra Gray*  
Secretary to the Governor

Approved this 17 day of

May, 2002,

at 8:38 o'clock A M.

*Janet Napolitano*  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 17 day of May, 2002

at 3:32 o'clock P M.

*Debra Taylor*  
Secretary of State

S.B. 1366