House Engrossed Senate Bill

**FILED**

**JANICE K. BREWER**
**SECRETARY OF STATE**

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 219

# SENATE BILL 1029

AN ACT

AMENDING SECTIONS 28-1381, 28-1382 AND 28-3319, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Shall pay an additional assessment of five hundred dollars to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

5. Shall pay an additional assessment of five hundred dollars to be deposited by the state treasurer in the state general fund. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

6. SHALL BE REQUIRED BY THE DEPARTMENT, ON REPORT OF THE CONVICTION, TO EQUIP ANY MOTOR VEHICLE THE PERSON OPERATES WITH A CERTIFIED IGNITION INTERLOCK DEVICE PURSUANT TO SECTION 28-3319. IN ADDITION, THE COURT MAY ORDER THE PERSON TO EQUIP ANY MOTOR VEHICLE THE PERSON OPERATES WITH A CERTIFIED IGNITION INTERLOCK DEVICE FOR MORE THAN TWELVE MONTHS BEGINNING ON THE DATE OF REINSTATEMENT OF THE PERSON'S DRIVING PRIVILEGE FOLLOWING A SUSPENSION OR REVOCATION OR ON THE DATE OF THE DEPARTMENT'S RECEIPT OF THE REPORT OF CONVICTION, WHICHEVER OCCURS LATER. THE PERSON WHO OPERATES A MOTOR VEHICLE WITH A CERTIFIED IGNITION INTERLOCK DEVICE UNDER THIS PARAGRAPH SHALL COMPLY WITH ARTICLE 5 OF THIS CHAPTER.

J. Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but twenty-four consecutive hours of the sentence if the person completes a court ordered alcohol or

other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

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

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

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

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

4. Shall have the person's driving privilege revoked for one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

5. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

6. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the state general fund. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city

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

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

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

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

Sec. 2. Section 28-1382, Arizona Revised Statutes, is amended to read:

28-1382. <u>Driving or actual physical control while under the extreme influence of intoxicating liquor; trial by jury; sentencing; classification</u>

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state if the person has an alcohol concentration of 0.15 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.

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

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

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

1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced to serve not less than thirty consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECUTIVE DAYS IN JAIL AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE IS SERVED.

2. Shall pay a fine of not less than two hundred fifty dollars, EXCEPT THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. The fine prescribed in this paragraph and any assessments, restitution and incarceration costs shall be paid before the assessment prescribed in paragraph 3 of this subsection.

3. Shall pay an additional assessment of two hundred fifty dollars. If the conviction occurred in the superior court or a justice court, the court

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

4. May be ordered by a court to perform community restitution.

5. Shall be required by the department, on receipt of the report of conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever occurs later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

6. Shall pay an additional assessment of one thousand dollars to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

7. Shall pay an additional assessment of one thousand dollars to be deposited by the state treasurer in the state general fund. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

E. Notwithstanding subsection D, paragraph 1 of this section, at the time of sentencing IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN 0.20, the judge may suspend all but ten days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

F. If within a period of eighty-four months a person is convicted of a second violation of this section or is convicted of a violation of this section and has previously been convicted of a violation of section 28-1381 or 28-1383 or an act in another jurisdiction that if committed in this state

would be a violation of this section or section 28-1381 or 28-1383, the person:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be sentenced to serve not less than one hundred twenty days in jail, sixty days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE SENTENCED TO SERVE NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF WHICH SHALL BE SERVED CONSECUTIVELY, AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS BEEN SERVED.

2. Shall pay a fine of not less than five hundred dollars, EXCEPT THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL PAY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS. The fine prescribed in this paragraph and any assessments, restitution and incarceration costs shall be paid before the assessment prescribed in paragraph 3 of this subsection.

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

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

5. Shall have the person's driving privilege revoked for at least one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever is later. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

6. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer.

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

7. Shall pay an additional assessment of one thousand two hundred fifty dollars to be deposited by the state treasurer in the state general fund. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

G. Notwithstanding subsection F, paragraph 1 of this section, at the time of sentencing, IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF LESS THAN 0.20, the judge may suspend all but sixty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

H. In applying the eighty-four month provision of subsection F of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

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

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

Sec. 3. Section 28-3319, Arizona Revised Statutes, is amended to read:

28-3319. <u>Action after license suspension, revocation or denial for driving under the influence or refusal of test; ignition interlock device requirement; definition</u>

A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320 or 28-3322, the license of a driver or the driving privilege of a nonresident is suspended or revoked, the department shall not terminate the suspension or revocation or issue a special ignition interlock restricted driver license, if applicable, pursuant to chapter 4, article 3.1 of this title until the person provides proof of financial responsibility pursuant to chapter 9, article 3 of this title.

B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320 or 28-3322, an unlicensed resident is denied a license or permit to operate a motor vehicle, the department shall not issue a license or permit until the person provides proof of financial responsibility pursuant to chapter 9, article 3 of this title.

C. If a person whose license or driving privilege is suspended or revoked pursuant to section 28-1321, 28-1381, 28-1382 or 28-1383 is ordered, pursuant to section 28-1381, 28-1382 or 28-1383, to attend alcohol or other drug screening, education or treatment, the department shall not either:

1. Terminate the suspension or issue a special ignition interlock restricted driver license, if applicable, pursuant to chapter 4, article 3.1 of this title until the person provides proof from the treatment facility that the person has completed or is participating satisfactorily in alcohol or other drug screening, education or treatment.

2. Issue a new license or a special ignition interlock restricted driver license, if applicable, pursuant to chapter 4, article 3.1 of this title to operate a motor vehicle after the revocation until the person provides proof from the facility that the person has completed the court ordered program.

D. On receipt of a report of conviction from a court, the department shall require any motor vehicle the convicted person operates to be equipped with a functioning certified ignition interlock device and the convicted person to meet the requirements prescribed in section 28-1461 for twelve months if any of the following applies:

1. The department determines that within a period of eighty-four months a person is convicted of a second or subsequent violation of section 28-1381 with a prior conviction of a violation of section 28-1381 or 28-1382 or an act in another jurisdiction that if committed in this state would be a violation of section 28-1381 or 28-1382.

2. The ~~conviction is for a violation of~~ PERSON IS SENTENCED PURSUANT TO section 28-1381 OR 28-1382, SUBSECTION D, EXCEPT THAT IF THE PERSON'S ALCOHOL CONCENTRATION IS 0.20 OR MORE, THE CERTIFIED IGNITION INTERLOCK DEVICE IS REQUIRED FOR EIGHTEEN MONTHS.

3. THE PERSON IS SENTENCED PURSUANT TO SECTION 28-1382, SUBSECTION F, EXCEPT THAT IF THE PERSON'S ALCOHOL CONCENTRATION IS 0.20 OR MORE, THE CERTIFIED IGNITION INTERLOCK DEVICE IS REQUIRED FOR TWENTY-FOUR MONTHS.

~~3.~~ 4. The conviction is for a violation of section 28-1383, subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b).

E. The ~~twelve-month period~~ REQUIREMENT prescribed in subsection D of this section begins on the date of reinstatement of the person's driving privilege following a suspension or revocation or on the date of the department's receipt of the report of conviction, whichever occurs later.

F. A person who is required to equip a motor vehicle with a certified ignition interlock device pursuant to subsection D of this section shall comply with chapter 4, article 5 of this title.

G. For the purposes of this section, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

APPROVED BY THE GOVERNOR MAY 18, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2007.

Passed the House April 19, 20 07,

by the following vote: 54 Ayes,

2 Nays, 4 Not Voting

Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate January 29, 20 07,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Timothy S Bee
President of the Senate

Charmin 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

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

S.B. 1029

**SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE**

Passed the Senate May 15, 20 07

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

Timothy S. Bee
President of the Senate

Charmin Billington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill received by the Governor this

15th day of May, 20 07

at 11:54 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 18 day of

May 2007

at 8:45 o'clock A. M.

Governor of Arizona

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

This Bill received by the Secretary of State

this 18 day of May, 20 07

at 9:35 o'clock A. M.

Janice K. Brewer
Secretary of State

S.B. 1029