

House Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

CHAPTER 91

## **HOUSE BILL 2369**

AN ACT

AMENDING SECTION 28-1387, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER  
THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-1387, Arizona Revised Statutes, is amended to  
3 read:

4 28-1387. Prior convictions; alcohol or other drug screening,  
5 education and treatment; license suspension;  
6 supervised probation; civil liability; procedures

7 A. The court shall allow the allegation of a prior conviction or any  
8 other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or  
9 an act in another jurisdiction that if committed in this state would be a  
10 violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days  
11 before the date the case is actually tried and may allow the allegation of a  
12 prior conviction or any other pending charge of a violation of section  
13 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if  
14 committed in this state would be a violation of section 28-1381, 28-1382 or  
15 28-1383 filed at any time before the date the case is actually tried if this  
16 state makes available to the defendant when the allegation is filed a copy of  
17 any information obtained concerning the prior conviction or other pending  
18 charge. Any conviction may be used to enhance another conviction  
19 irrespective of the dates on which the offenses occurred within the  
20 eighty-four month provision. For the purposes of this article, an order of a  
21 juvenile court adjudicating a person delinquent is equivalent to a  
22 conviction.

23 B. In addition to any other penalties prescribed by law, the judge  
24 shall order a person who is convicted of a violation of section 28-1381,  
25 28-1382 or 28-1383 to complete alcohol or other drug screening that is  
26 provided by a facility approved by the department of health services or a  
27 probation department. If a judge determines that the person requires further  
28 alcohol or other drug education or treatment, the person may be required  
29 pursuant to court order to obtain alcohol or other drug education or  
30 treatment under the court's supervision from an approved facility. The judge  
31 may review an education or treatment determination at the request of the  
32 state, the defendant or the probation officer or on the judge's initiative.  
33 The person shall pay the costs of the screening, education or treatment  
34 unless, after considering the person's ability to pay all or part of the  
35 costs, the court waives all or part of the costs. If a person is referred to  
36 a screening, education or treatment facility, the facility shall report to  
37 the court whether the person has successfully completed the screening,  
38 education or treatment program. The court may accept evidence of a person's  
39 completion of an alcohol or other drug screening, education or treatment  
40 program pursuant to section 28-1445 as sufficient to meet the requirements of  
41 this section or section 28-1381, 28-1382 or 28-1383 or may order the person  
42 to complete additional alcohol or other drug screening, education or  
43 treatment programs. If a person has previously been ordered to complete an  
44 alcohol or other drug screening, education or treatment program pursuant to  
45 this section, the judge shall order the person to complete an alcohol or

1 other drug screening, education or treatment program unless the court  
2 determines that alternative sanctions are more appropriate.

3 C. After a person who is sentenced pursuant to section 28-1381,  
4 subsection I has served twenty-four consecutive hours in jail or after a  
5 person who is sentenced pursuant to section 28-1381, subsection K or section  
6 28-1382, subsection D or E has served forty-eight consecutive hours in jail  
7 and after the court receives confirmation that the person is employed or is a  
8 student, the court may SHALL provide in the sentence that the defendant, if  
9 the defendant is employed or is a student and can continue the defendant's  
10 employment or schooling, may continue the employment or schooling for not  
11 more than twelve hours a day nor more than five SIX days a week, UNLESS THE  
12 COURT FINDS GOOD CAUSE TO NOT ALLOW THE RELEASE AND PLACES THOSE FINDINGS ON  
13 THE RECORD. The person shall spend the remaining day, days or parts of days  
14 in jail until the sentence is served and shall be allowed out of jail only  
15 long enough to complete the actual hours of employment or schooling.

16 D. Unless the license of a person convicted under section 28-1381 or  
17 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the  
18 department on receipt of the abstract of conviction of a violation of section  
19 28-1381 or 28-1382 shall suspend the license of the affected person for not  
20 less than ninety consecutive days.

21 E. When the department receives notification that the person meets the  
22 criteria provided in section 28-1385, subsection G, the department shall  
23 suspend the driving privileges of the person for not less than thirty  
24 consecutive days and shall restrict the driving privileges of the person for  
25 not less than sixty consecutive additional days to travel between any of the  
26 following:

27 1. The person's place of employment and residence and during specified  
28 periods of time while at employment.

29 2. The person's place of residence and the person's secondary or  
30 postsecondary school, according to the person's employment or educational  
31 schedule.

32 3. The person's place of residence and a screening, education or  
33 treatment facility for scheduled appointments.

34 4. The person's place of residence and the office of the person's  
35 probation officer for scheduled appointments.

36 F. If a person is placed on probation for violating section 28-1381 or  
37 28-1382, the probation shall be supervised unless the court finds that  
38 supervised probation is not necessary or the court does not have supervisory  
39 probation services.

40 G. Any political subdivision processing or using the services of a  
41 person ordered to perform community restitution pursuant to section 28-1381  
42 or 28-1382 does not incur any civil liability to the person ordered to  
43 perform community restitution as a result of these activities unless the  
44 political subdivision or its agent or employee acts with gross negligence.

1           H. If a person fails to complete the community restitution ordered  
2 pursuant to section 28-1381, subsection K or section 28-1382, subsection E,  
3 the court may order alternative sanctions if the court determines that  
4 alternative sanctions are more appropriate.

5           I. Except for another violation of this article, the state shall not  
6 dismiss a charge of violating any provision of this article unless there is  
7 an insufficient legal or factual basis to pursue that charge.

APPROVED BY THE GOVERNOR APRIL 13, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2011.

Passed the House February 21, 2011

by the following vote: 53 Ayes,

6 Nays, 1 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

Passed the Senate April 6, 2011

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

Charmian Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

7 day of April, 20 11

at 10:55 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 13<sup>th</sup> day of

April

at 10:02 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13<sup>th</sup> day of April, 20 11

at 4:59 o'clock P. M.

[Signature]  
Secretary of State

H.B. 2369