House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 119

HOUSE BILL 2182

AN ACT

AMENDING SECTIONS 28-1401, 28-1464, 28-3319 AND 28-3511, 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 28-1401, Arizona Revised Statutes, is amended to read:

28-1401. Special ignition interlock restricted driver licenses; application fee

A. A person whose class D or class G license has been suspended pursuant to section 28-1385 or suspended or revoked for a first refusal pursuant to section 28-1321, a second violation of section 28-1381 or 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3 may apply to the department for a special ignition interlock restricted driver license that allows a person to operate a motor vehicle during the period of suspension or revocation subject to the restrictions prescribed in section 28-1402 and the certified ignition interlock device requirements prescribed in article 5 of this chapter if the person's privilege to operate a motor vehicle has been suspended or revoked due to an alcohol related offense pursuant to any of the following:

1. Section 28-1321, if the person meets the criteria of section 28-1321, subsection P.

2. Section 28-1381, if the person meets the criteria of section 28-1381, subsection O and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.

3. Section 28-1382, if the person meets the criteria of section 28-1382, subsection H and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.

4. Section 28-1383, if the person meets the criteria of section 28-1383, subsection K and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.

5. Section 28-1385, if the person meets the criteria of section 28-1385, subsection G.

B. An applicant for a special ignition interlock restricted driver license shall pay an application fee in an amount to be determined by the director.

C. The department shall issue a special ignition interlock restricted driver license during the period of a court ordered restriction pursuant to sections 28-3320 and 28-3322 subject to the restrictions prescribed in section 28-1402 and the certified ignition interlock requirements prescribed in article 5 of this chapter.

D. If the department issues a special ignition interlock restricted driver license, the department shall not delete a suspension or revocation from its records.

E. The granting of a special ignition interlock restricted driver license does not reduce or eliminate the required use of an ignition interlock device pursuant to section 28-3319.

~~F. The department shall make a notation on a special ignition interlock restricted driver license that is issued to a person who is placed in a continuous alcohol monitoring program pursuant to section 28-3319, subsection I.~~

Sec. 2. Section 28-1464, Arizona Revised Statutes, is amended to read:

28-1464. Ignition interlock devices; violations; classification; definition

~~A. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 and who is required to operate a motor vehicle owned by the person's employer in the course and scope of the person's employment may operate that motor vehicle without the installation of a certified ignition interlock device if the person notifies the person's employer that the person, in conjunction with the person's sentence or if the person has been issued a special ignition interlock restricted driver license pursuant to section 28-1402, has specific requirements in order to operate a motor vehicle and the nature of the requirements and the person has proof of the employer's notification in the person's possession while operating the employer's motor vehicle for normal business. For the purposes of this subsection, a motor vehicle that is partly or entirely owned or controlled by the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is not a motor vehicle that is owned by an employer.~~

~~B.~~ A. Except in cases of a substantial emergency, a person shall not knowingly rent, lease or lend a motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 unless the motor vehicle is equipped with a functioning certified ignition interlock device.

~~C.~~ B. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 and who rents, leases or borrows a motor vehicle from another person shall notify the person who rents, leases or lends the motor vehicle to the person that the person has specific requirements for the operation of the motor vehicle and the nature of the requirements.

~~D.~~ C. During any period when a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is required to operate only a motor vehicle that is equipped with a certified ignition interlock device, the person shall not request or permit any other person to breathe into the ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

~~E.~~ D. A person shall not breathe into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402.

~~F.~~ E. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

~~G.~~ F. A person who is not a manufacturer's authorized installer or an agent of a manufacturer's authorized installer and who is not a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

~~H.~~ G. Except ~~as provided in subsection A of this section or~~ in cases of substantial emergency, a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not operate a motor vehicle without a functioning certified ignition interlock device during the applicable time period.

~~I.~~ H. If the ignition interlock device is removed from a vehicle by an installer, the installer shall electronically notify the department in a form prescribed by the department that the ignition interlock device has been removed from the vehicle.

~~J.~~ I. If the person does not provide evidence to the department within seventy-two hours that the person has installed a functioning certified ignition interlock device in each vehicle operated by the person and has provided proof of installation to the department, the department shall suspend the special ignition interlock restricted driver license or privilege as prescribed in section 28-1463.

~~K.~~ J. A person who is ordered by the court or required by the department pursuant to section 28-3319 to equip any motor vehicle the person operates with a certified ignition interlock device shall while under arrest submit to any test chosen by a law enforcement officer pursuant to section 28-1321, subsection A.

~~L. A person shall comply with the requirements of a continuous alcohol monitoring program ordered pursuant to section 28-3319, subsection I.~~

~~M.~~ K. A person who violates this section is guilty of a class 1 misdemeanor. Additionally, if a person is convicted of violating subsection ~~A, C, D, F or H~~ B, C, E OR G of this section, the department shall extend the duration of the certified ignition interlock device requirement for not more than one year.

~~N.~~ L. For the purposes of this section, "substantial emergency" means that a person other than the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted

pursuant to section 28-1402 is not reasonably available to drive in response to an emergency.

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

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

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, 28-1383 or 28-1385 is ordered, pursuant to section 28-1381, 28-1382, 28-1383 or 28-1385, 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. Except as provided in subsection G of this section, 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 as follows:

1. For twelve months if:

(a) Except as provided in subsection H of this section, the person is convicted of a violation of section 28-1381, section 28-1382, subsection A, paragraph 1 or section 28-1383, subsection A, paragraph 3, subdivision (a).

(b) The department determines that within a period of eighty-four months the person is convicted of a second or subsequent violation of section 28-1381 or section 28-1382, subsection A, paragraph 1 with a prior conviction

of a violation of section 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of section 28-1381, 28-1382 or 28-1383.

2. For eighteen months if the person is convicted of a violation of section 28-1382, subsection A, paragraph 2.

3. For twenty-four months if:

(a) The person is convicted of a violation of section 28-1382, subsection A, paragraph 2 and the department determines that within a period of eighty-four months the person has a prior conviction of a violation of section 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of section 28-1381, 28-1382 or 28-1383.

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

E. The 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 this section shall comply with chapter 4, article 5 of this title.

G. The department shall remove the requirement that the person maintain a functioning certified ignition interlock device if the person is only convicted of a violation of section 28-1381, subsection A, paragraph 3 and completes alcohol or other drug screening required pursuant to section 28-1387 and the court determines that no alcohol education or treatment is required.

H. The department shall defer the remainder of the time period prescribed in subsection D, paragraph 1, subdivision (a) of this section commencing with the later of six months from the date the interlock was installed or the completion of the requirements of this subsection if all of the following apply:

1. The person is sentenced pursuant to section 28-1381, subsection I.

2. The person successfully completes an alcohol education program consisting of at least sixteen hours pursuant to section 28-1381.

3. The person has maintained a functioning ignition interlock device on all motor vehicles the person operates and has met the requirements of section 28-1461.

4. The person has not attempted to operate a vehicle with an alcohol concentration of 0.08 or more two or more times during the period of license restriction or limitation.

5. At the time of the offense, the person was not involved in a motor vehicle accident that resulted in physical injury or property damage.

6. All necessary compliance information has been provided to the department by the ignition interlock device provider, the alcohol screening program and the alcohol education program.

I. The deferment pursuant to subsection H of this section is permanent, unless the person is arrested for a violation of section 28-1381, 28-1382 or 28-1383 that occurs during the period of the deferment. If the person is arrested as described in this subsection, the department shall revoke the deferment and require the person to complete the remainder of the time period prescribed in subsection D, paragraph 1, subdivision (a) of this section.

~~J. On a showing of sufficient medical evidence or an employment requirement, the department may allow a person who is unable to operate an ignition interlock device to be placed in a continuous alcohol monitoring program instead of equipping any motor vehicle the person operates with an ignition interlock device. The person shall bear the cost of all testing, monitoring and enrollment in the continuous alcohol monitoring program. A person who is placed in a continuous alcohol monitoring program pursuant to this subsection shall remain in the program for the same amount of time the person is required to maintain an ignition interlock device. During the period of continuous alcohol monitoring the person shall be tested at a minimum once a day for the use of alcoholic beverages by a scientific method that is chosen by the director. If the person tests positive for alcohol two times, the department shall discontinue the continuous alcohol monitoring and require the person to install a certified ignition interlock device as otherwise provided by law.~~

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

Sec. 4. Section 28-3511, Arizona Revised Statutes, is amended to read:

28-3511. Removal and immobilization or impoundment of vehicle

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while any of the following applies:

1. Except as otherwise provided in this paragraph, the person's driving privilege is suspended or revoked for any reason. A peace officer shall not cause the removal and either immobilization or impoundment of a vehicle pursuant to this paragraph if the person's privilege to drive is valid in this state.

2. The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This paragraph does not apply to the operation of an implement of husbandry.

3. The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This paragraph

does not apply to ~~a person operating an employer's vehicle or~~ the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

4. In furtherance of the illegal presence of an alien in the United States and in violation of a criminal offense, the person is transporting or moving or attempting to transport or move an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

5. The person is concealing, harboring or shielding or attempting to conceal, harbor or shield from detection an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, entered or remains in the United States in violation of law.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled, suspended or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection D of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

D. A peace officer shall not cause the removal and either the immobilization or impoundment of a vehicle pursuant to subsection C of this section if all of the following apply:

1. The peace officer determines that the vehicle is currently registered and that the driver or the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

2. The spouse of the driver is with the driver at the time of the arrest.

3. The peace officer has reasonable grounds to believe that the spouse of the driver:

(a) Has a valid driver license.

(b) Is not impaired by intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.

(c) Does not have any spirituous liquor in the spouse's body if the spouse is under twenty-one years of age.

4. The spouse notifies the peace officer that the spouse will drive the vehicle from the place of arrest to the driver's home or other place of safety.

5. The spouse drives the vehicle as prescribed by paragraph 4 of this subsection.

E. Except as otherwise provided in this article, a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section shall be immobilized or impounded for thirty days. An insurance company does not have a duty to pay any benefits for charges or fees for immobilization or impoundment.

F. The owner of a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section, the spouse of the owner and each person identified on the department's record with an interest in the vehicle shall be provided with an opportunity for an immobilization or poststorage hearing pursuant to section 28-3514.

Sec. 5. Continuous alcohol monitoring program

Any person who was allowed by the department of transportation to be in a continuous alcohol monitoring program pursuant to section 28-3319, subsection J, Arizona Revised Statutes, as amended by this act, before the effective date of this act, may continue to be in a continuous alcohol monitoring program instead of equipping the person's motor vehicle with an ignition interlock device for the remainder of the time the person is in compliance with all applicable laws and is required to equip the person's motor vehicle with an ignition interlock device.

APPROVED BY THE GOVERNOR APRIL 17, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2013.

Passed the House February 20, 20 13

by the following vote: 47 Ayes,

11 Nays, 2 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 15, 20 13

by the following vote: 21 Ayes,

8 Nays, 1 Not Voting

President of the Senate

Charmian Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

16 day of April, 20 13

at 2:40 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 17th day of

April

at 11:30 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 17 th day of April, 20 13

at 4:09 o'clock P M.

Ken Bennett

Secretary of State

H.B. 2182