

House Engrossed Senate Bill

~~DUI; transportation network drivers~~
(now: DUI threshold; drivers)

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

CHAPTER 101
SENATE BILL 1025

AN ACT

AMENDING SECTIONS 28-1321, 28-1381 AND 28-1385, 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 28-1321, Arizona Revised Statutes, is amended to
3 read:

4 28-1321. Implied consent; tests; refusal to submit to test;
5 order of suspension; hearing; review; temporary
6 permit; notification of suspension; special
7 ignition interlock restricted driver license

8 A. A person who operates a motor vehicle in this state gives
9 consent, subject to section 4-244, paragraph 34 or section 28-1381,
10 28-1382 or 28-1383, to a test or tests of the person's blood, breath,
11 urine or other bodily substance for the purpose of determining alcohol
12 concentration or drug content if the person is arrested for any offense
13 arising out of acts alleged to have been committed in violation of this
14 chapter or section 4-244, paragraph 34 while the person was driving or in
15 actual physical control of a motor vehicle while under the influence of
16 intoxicating liquor as prescribed in section 28-1381 or drugs. The test
17 or tests chosen by the law enforcement agency shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe that the person was driving or in actual physical control of a
20 motor vehicle in this state either:

21 1. While under the influence of intoxicating liquor as prescribed
22 in section 28-1381 or drugs.

23 2. If the person is under twenty-one years of age, with spirituous
24 liquor in the person's body.

25 B. After an arrest a violator shall be requested to submit to and
26 successfully complete any test or tests prescribed by subsection A of this
27 section, and if the violator refuses the violator shall be informed that
28 the violator's license or permit to drive will be suspended or denied for
29 twelve months, or for two years for a second or subsequent refusal within
30 a period of eighty-four months, unless the violator expressly agrees to
31 submit to and successfully completes the test or tests. A failure to
32 expressly agree to the test or successfully complete the test is deemed a
33 refusal. The violator shall also be informed that:

34 1. If the test results show a blood or breath alcohol concentration
35 of 0.08 or more, if the results show a blood or breath alcohol
36 concentration of 0.04 or more and the violator was driving or in actual
37 physical control of a commercial motor vehicle, A VEHICLE FOR HIRE AS
38 DEFINED IN SECTION 28-9501 OR WHILE PROVIDING TRANSPORTATION NETWORK
39 SERVICES AS DEFINED IN SECTION 28-9551 AS A TRANSPORTATION NETWORK COMPANY
40 DRIVER AS DEFINED IN SECTION 28-9551 or if the results show there is any
41 drug defined in section 13-3401 or its metabolite in the person's body and
42 the person does not possess a valid prescription for the drug, the
43 violator's license or permit to drive will be suspended or denied for not
44 less than ninety consecutive days.

1 2. The violator's driving privilege, license, permit, right to
2 apply for a license or permit or nonresident operating privilege may be
3 issued or reinstated following the period of suspension only if the
4 violator completes alcohol or other drug screening.

5 C. A person who is dead, unconscious or otherwise in a condition
6 rendering the person incapable of refusal is deemed not to have withdrawn
7 the consent provided by subsection A of this section and the test or tests
8 may be administered, subject to section 4-244, paragraph 34 or section
9 28-1381, 28-1382 or 28-1383.

10 D. If a person under arrest refuses to submit to the test
11 designated by the law enforcement agency as provided in subsection A of
12 this section:

13 1. The test shall not be given, except as provided in section
14 28-1388, subsection E or pursuant to a search warrant.

15 2. The law enforcement officer directing the administration of the
16 test shall:

17 (a) File a certified report of the refusal with the department.

18 (b) On behalf of the department, serve an order of suspension on
19 the person that is effective thirty days after the date the order is
20 served.

21 (c) Require the immediate surrender of any license or permit to
22 drive that is issued by this state and that is in the possession or
23 control of the person. The law enforcement agency may do either of the
24 following to a driver license or permit taken into possession under this
25 subdivision:

26 (i) In compliance with sections 41-151.15 and 41-151.19, destroy
27 the driver license or permit.

28 (ii) Forward the driver license or permit to the department within
29 five days after the issuance of the notice of suspension.

30 (d) If the license or permit is not surrendered, state the reason
31 why it is not surrendered.

32 (e) If a valid license or permit is surrendered, issue a temporary
33 driving permit that is valid for thirty days.

34 (f) Forward the certified report of refusal, a copy of the
35 completed notice of suspension and a copy of any completed temporary
36 permit to the department within five days after the issuance of the notice
37 of suspension.

38 E. The certified report is subject to the penalty for perjury as
39 prescribed by section 28-1561 and shall state all of the following:

40 1. The officer's reasonable grounds to believe that the arrested
41 person was driving or in actual physical control of a motor vehicle in
42 this state either:

1 (a) While under the influence of intoxicating liquor as prescribed
2 in section 28-1381 or drugs.

3 (b) If the person is under twenty-one years of age, with spirituous
4 liquor in the person's body.

5 2. The manner in which the person refused to submit to the test or
6 tests.

7 3. That the person was advised of the consequences of refusal.

8 F. On receipt of the certified report of refusal and a copy of the
9 order of suspension and on the effective date stated on the order, the
10 department shall enter the order of suspension on its records unless a
11 written or online request for a hearing as provided in this section has
12 been filed by the accused person. If the department receives only the
13 certified report of refusal, the department shall notify the person named
14 in the report in writing sent by mail that:

15 1. Thirty days after the date of issuance of the notice the
16 department will suspend the person's license or permit, driving privilege
17 or nonresident driving privilege.

18 2. The department will provide an opportunity for a hearing if the
19 person requests a hearing in writing or online and the request is received
20 by the department within thirty days after the notice is sent.

21 G. The order of suspension issued by a law enforcement officer or
22 the department under this section shall notify the person that:

23 1. The person may submit a written or online request for a hearing.

24 2. The request for a hearing must be received by the department
25 within thirty days after the date of the notice or the order of suspension
26 will become final.

27 3. The affected person's license or permit to drive or right to
28 apply for a license or permit or any nonresident operating privilege will
29 be suspended for twelve months from that date or for two years from that
30 date for a second or subsequent refusal within a period of eighty-four
31 months.

32 4. The person's driving privilege, license, permit, right to apply
33 for a license or permit or nonresident operating privilege may be issued
34 or reinstated following the period of suspension only if the person
35 completes alcohol or other drug screening.

36 H. The order for suspension shall:

37 1. Be accompanied by printed forms that are ready to mail to the
38 department, that may be filled out and signed by the person to indicate
39 the person's desire for a hearing and that advise the person that the
40 person may alternatively submit an online request for a hearing.

41 2. Advise the person that unless the person has surrendered any
42 driver license or permit issued by this state the person's hearing request
43 will not be accepted, except that the person may certify pursuant to
44 section 28-3170 that the license or permit is lost or destroyed.

1 I. On the receipt of a request for a hearing, the department shall
2 set the hearing within sixty days. The department may hold the hearing in
3 person, by telephone or by videoconference. If the department holds the
4 hearing in person, the hearing shall be held in the county in which the
5 person named in the report resides unless the law enforcement agency
6 filing the certified report of refusal pursuant to subsection D of this
7 section requests at the time of its filing that the hearing be held in the
8 county where the refusal occurred.

9 J. A timely request for a hearing stays the suspension until a
10 hearing is held, except that the department shall not return any
11 surrendered license or permit to the person but may issue temporary
12 permits to drive that expire not later than when the department has made
13 its final decision. If the person is a resident without a license or
14 permit or has an expired license or permit, the department may allow the
15 person to apply for a restricted license or permit. If the department
16 determines the person is otherwise entitled to the license or permit, the
17 department shall issue and retain a restricted license or permit subject
18 to this section.

19 K. Hearings requested under this section shall be conducted in the
20 same manner and under the same conditions as provided in section 28-3306.
21 For the purposes of this section, the scope of the hearing shall include
22 only the issues of whether:

23 1. A law enforcement officer had reasonable grounds to believe that
24 the person was driving or was in actual physical control of a motor
25 vehicle in this state either:

26 (a) While under the influence of intoxicating liquor as prescribed
27 in section 28-1381 or drugs.

28 (b) If the person is under twenty-one years of age, with spirituous
29 liquor in the person's body.

30 2. The person was placed under arrest.

31 3. The person refused to submit to the test.

32 4. The person was informed of the consequences of refusal.

33 L. If the department determines at the hearing to suspend the
34 affected person's privilege to operate a motor vehicle, the suspension
35 provided in this section is effective thirty days after giving written
36 notice of the suspension, except that the department may issue or extend a
37 temporary license that expires on the effective date of the suspension.
38 If the person is a resident without a license or permit or has an expired
39 license or permit to operate a motor vehicle in this state, the department
40 shall deny to the person the issuance of a license or permit for a period
41 of twelve months after the order of suspension becomes effective or for a
42 period of two years after the order of suspension becomes effective for a
43 second or subsequent refusal within a period of eighty-four months, and
44 may reinstate the person's driving privilege, license, permit, right to

1 apply for a license or permit or nonresident operating privilege following
2 the period of suspension only if the person completes alcohol or other
3 drug screening.

4 M. If the suspension order is sustained after the hearing, a motion
5 for rehearing is not required. Within thirty days after a suspension
6 order is sustained, the affected person may file a petition in the
7 superior court to review the final order of suspension or denial by the
8 department in the same manner provided in section 28-3317. The court
9 shall hear the review of the final order of suspension or denial on an
10 expedited basis.

11 N. If the suspension or determination that there should be a denial
12 of issuance is not sustained, the ruling is not admissible in and has no
13 effect on any administrative, civil or criminal court proceeding.

14 O. If it has been determined under the procedures of this section
15 that a nonresident's privilege to operate a motor vehicle in this state
16 has been suspended, the department shall give information either in
17 writing or by electronic means of the action taken to the motor vehicle
18 administrator of the state of the person's residence and of any state in
19 which the person has a license.

20 P. After completing any alcohol or other drug screening that is
21 ordered by the department pursuant to this chapter, a person whose driving
22 privilege is suspended pursuant to this section may apply to the
23 department for a special ignition interlock restricted driver license
24 pursuant to section 28-1401. Unless the certified ignition interlock
25 period is extended by the department pursuant to section 28-1461, a person
26 who is issued a special ignition interlock restricted driver license as
27 provided in this subsection shall maintain a functioning certified
28 ignition interlock device in compliance with this chapter during the
29 remaining period of the suspension prescribed by this section. This
30 subsection does not apply to a person whose driving privilege is suspended
31 for a second or subsequent refusal within a period of eighty-four months.

32 Q. Notwithstanding section 28-1401, the department may issue a
33 special ignition interlock restricted driver license to a person for an
34 offense described in subsection A of this section. A person who applies
35 for and who is issued a special ignition interlock restricted driver
36 license pursuant to this subsection agrees to the administrative action
37 taken by the department against the person's license. Once the department
38 issues a special ignition interlock restricted driver license pursuant to
39 this subsection, the person waives any right to an administrative hearing
40 contesting the administrative action against the person's license pursuant
41 to this section or section 28-1385.

1 Sec. 2. Section 28-1381, Arizona Revised Statutes, is amended to
2 read:

3 28-1381. Driving or actual physical control while under the
4 influence; trial by jury; presumptions; admissible
5 evidence; sentencing; time limitation; violation;
6 classification

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

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

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

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

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

24 5. WHILE OPERATING A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501
25 OR WHILE PROVIDING TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION
26 28-9551 AS A TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN SECTION
27 28-9551 IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF 0.04 OR MORE.

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

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

33 D. A person using a drug as prescribed by a medical practitioner
34 who is licensed pursuant to title 32 and who is authorized to prescribe
35 the drug is not guilty of violating subsection A, paragraph 3 of this
36 section.

37 E. In any prosecution for a violation of this section, the state
38 shall allege, for the purpose of classification and sentencing pursuant to
39 this section, all prior convictions of violating this section, section
40 28-1382 or section 28-1383 occurring within the past thirty-six months,
41 unless there is an insufficient legal or factual basis to do so.

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

1 G. In a trial, action or proceeding for a violation of this section
2 or section 28-1383 other than a trial, action or proceeding involving A
3 PERSON WHO IS driving or being in actual physical control of a commercial
4 MOTOR vehicle, A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501 OR
5 INVOLVING A PERSON WHO IS PROVIDING TRANSPORTATION NETWORK SERVICES AS
6 DEFINED IN SECTION 28-9551 AS A TRANSPORTATION NETWORK COMPANY DRIVER AS
7 DEFINED IN SECTION 28-9551, the defendant's alcohol concentration within
8 two hours of the time of driving or being in actual physical control as
9 shown by analysis of the defendant's blood, breath or other bodily
10 substance gives rise to the following presumptions:

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

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

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

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

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

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

32 2. Shall pay a fine of not less than \$250.

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

34 4. Shall pay an additional assessment of \$500 to be deposited by
35 the state treasurer in the prison construction and operations fund
36 established by section 41-1651. This assessment is not subject to any
37 surcharge. If the conviction occurred in the superior court or a justice
38 court, the court shall transmit the assessed monies to the county
39 treasurer. If the conviction occurred in a municipal court, the court
40 shall transmit the assessed monies to the city treasurer. The city or
41 county treasurer shall transmit the monies received to the state
42 treasurer.

1 5. Shall pay an additional assessment of \$500 to be deposited by
2 the state treasurer in the public safety equipment fund established by
3 section 41-1723. This assessment is not subject to any surcharge. If the
4 conviction occurred in the superior court or a justice court, the court
5 shall transmit the assessed monies to the county treasurer. If the
6 conviction occurred in a municipal court, the court shall transmit the
7 assessed monies to the city treasurer. The city or county treasurer shall
8 transmit the monies received to the state treasurer.

9 6. If the violation involved intoxicating liquor, shall be required
10 by the department, on report of the conviction, to equip any motor vehicle
11 the person operates with a certified ignition interlock device pursuant to
12 section 28-3319. In addition, the court may order the person to equip any
13 motor vehicle the person operates with a certified ignition interlock
14 device for more than twelve months beginning on the date the person
15 successfully completes the alcohol or other drug screening, education or
16 treatment program requirements of this title and the person is otherwise
17 eligible to reinstate the person's driver license or driving privilege.
18 The person who operates a motor vehicle with a certified ignition
19 interlock device under this paragraph shall comply with article 5 of this
20 chapter.

21 7. Shall be required by the department to attend and successfully
22 complete an approved traffic survival school course.

23 J. Notwithstanding subsection I, paragraph 1 of this section, at
24 the time of sentencing the judge may suspend all but one day of the
25 sentence if the person completes a court ordered alcohol or other drug
26 screening, education or treatment program. If the person fails to
27 complete the court ordered alcohol or other drug screening, education or
28 treatment program and has not been placed on probation, the court shall
29 issue an order to show cause to the defendant as to why the remaining jail
30 sentence should not be served.

31 K. If within a period of eighty-four months a person is convicted
32 of a second violation of this section or is convicted of a violation of
33 this section and has previously been convicted of a violation of section
34 28-1382 or 28-1383 or an act in another jurisdiction that if committed in
35 this state would be a violation of this section or section 28-1382 or
36 28-1383, the person:

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

41 2. Shall pay a fine of not less than \$500.

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

1 4. Shall have the person's driving privilege revoked for one year.
2 The court shall report the conviction to the department. On receipt of
3 the report, the department shall revoke the person's driving privilege
4 and, if the violation involved intoxicating liquor, shall require the
5 person to equip any motor vehicle the person operates with a certified
6 ignition interlock device pursuant to section 28-3319. In addition, the
7 court may order the person to equip any motor vehicle the person operates
8 with a certified ignition interlock device for more than twelve months
9 beginning on the date the person successfully completes the alcohol or
10 other drug screening, education or treatment program requirements of this
11 title and the person is otherwise eligible to reinstate the person's
12 driver license or driving privilege. The person who operates a motor
13 vehicle with a certified ignition interlock device under this paragraph
14 shall comply with article 5 of this chapter.

15 5. Shall pay an additional assessment of \$1,250 to be deposited by
16 the state treasurer in the prison construction and operations fund
17 established by section 41-1651. This assessment is not subject to any
18 surcharge. If the conviction occurred in the superior court or a justice
19 court, the court shall transmit the assessed monies to the county
20 treasurer. If the conviction occurred in a municipal court, the court
21 shall transmit the assessed monies to the city treasurer. The city or
22 county treasurer shall transmit the monies received to the state
23 treasurer.

24 6. Shall pay an additional assessment of \$1,250 to be deposited by
25 the state treasurer in the public safety equipment fund established by
26 section 41-1723. This assessment is not subject to any surcharge. If the
27 conviction occurred in the superior court or a justice court, the court
28 shall transmit the assessed monies to the county treasurer. If the
29 conviction occurred in a municipal court, the court shall transmit the
30 assessed monies to the city treasurer. The city or county treasurer shall
31 transmit the monies received to the state treasurer.

32 7. Shall be required by the department to attend and successfully
33 complete an approved traffic survival school course.

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

42 M. In applying the eighty-four month provision of subsection K of
43 this section, the dates of the commission of the offense shall be the

1 determining factor, irrespective of the sequence in which the offenses
2 were committed.

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

6 O. After completing forty-five days of the revocation period
7 prescribed by subsection K of this section, a person whose driving
8 privilege is revoked for a violation of this section and who is sentenced
9 pursuant to subsection K of this section is eligible for a special
10 ignition interlock restricted driver license pursuant to section 28-1401.

11 P. The court may order a person who is convicted of a violation of
12 this section that does not involve intoxicating liquor to equip any motor
13 vehicle the person operates with a certified ignition interlock device
14 pursuant to section 28-3319. On receipt of the report of conviction and
15 certified ignition interlock device requirement, the department shall
16 require the person to equip any motor vehicle the person operates with a
17 certified ignition interlock device pursuant to section 28-3319. In
18 addition, the court may order the person to equip any motor vehicle the
19 person operates with a certified ignition interlock device for more than
20 twelve months beginning on the date the person successfully completes the
21 alcohol or other drug screening, education or treatment program
22 requirements of this title and the person is otherwise eligible to
23 reinstate the person's driver license or driving privilege. The person
24 who operates a motor vehicle with a certified ignition interlock device
25 under this subsection shall comply with article 5 of this chapter.

26 Q. A prosecution for a violation of this section involving a
27 collision that resulted in serious physical injury or death as identified
28 in a written accident report completed pursuant to section 28-667 must be
29 commenced within two years after actual discovery of the offense by the
30 state or the political subdivision having jurisdiction or discovery by the
31 state or the political subdivision that should have occurred with the
32 exercise of reasonable diligence, whichever first occurs.

33 Sec. 3. Section 28-1385, Arizona Revised Statutes, is amended to
34 read:

35 28-1385. Administrative license suspension for driving under
36 the influence or for homicide or assault involving
37 a motor vehicle; report; hearing; summary review;
38 ignition interlock device requirement

39 A. A law enforcement officer shall forward to the department a
40 certified report as prescribed in subsection B of this section, subject to
41 the penalty for perjury prescribed by section 28-1561, if both of the
42 following occur:

43 1. The officer arrests a person for a violation of section 4-244,
44 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a

1 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving
2 a motor vehicle.

3 2. The person submits to a test of the person's blood, breath,
4 urine or other bodily substance that is allowed by section 28-1321 or any
5 other law or a sample of blood is obtained pursuant to section 28-1388 and
6 the results are either not available or the results indicate any of the
7 following:

8 (a) 0.08 or more alcohol concentration in the person's blood or
9 breath.

10 (b) 0.04 or more alcohol concentration in the person's blood or
11 breath if the person was driving or in actual physical control of a
12 commercial motor vehicle.

13 (c) 0.04 OR MORE ALCOHOL CONCENTRATION IN THE PERSON'S BLOOD OR
14 BREATH IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A
15 VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501 OR WHILE PROVIDING
16 TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION 28-9551 AS A
17 TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN SECTION 28-9551.

18 (d) Any drug defined in section 13-3401 or its metabolite is in the
19 person's body except if the person possesses a valid prescription for the
20 drug.

21 B. The officer shall make the certified report required by
22 subsection A of this section on forms supplied or approved by the
23 department. The report shall state information that is relevant to the
24 enforcement action, including:

25 1. Information that adequately identifies the arrested person.

26 2. A statement of the officer's grounds for belief that the person
27 was driving or in actual physical control of a motor vehicle in violation
28 of section 4-244, paragraph 34, section 28-1381, section 28-1382 or
29 section 28-1383 or committed a violation of title 13, chapter 11 or
30 section 13-1201 or 13-1204 involving a motor vehicle.

31 3. A statement that the person was arrested for a violation of
32 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
33 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
34 13-1204 involving a motor vehicle.

35 4. A report of the results of the blood or breath alcohol test that
36 was administered, if the results are available.

37 C. If a breath test is administered, a law enforcement agency shall
38 forward the certified report that is required by subsection A of this
39 section to the department within thirty days after the arrest occurs. If
40 a sample of blood, urine or other bodily substance is obtained, the law
41 enforcement agency shall forward the certified report that is required by
42 subsection A of this section to the department within thirty days after
43 the date the report of the analysis is provided to the law enforcement
44 agency. If a report is not forwarded to the department within the time

1 limit prescribed by this subsection, the report is inadmissible in a
2 hearing held pursuant to this section unless the violation listed in
3 subsection A of this section resulted in death or serious physical injury.
4 For the purposes of this subsection, "serious physical injury" has the
5 same meaning prescribed in section 13-105.

6 D. The officer shall also serve an order of suspension on the
7 person on behalf of the department. The order of suspension:

8 1. Is effective thirty days after the date it is served.

9 2. Shall require the immediate surrender of any license or permit
10 to drive that is issued by this state and that is in the possession or
11 control of the person.

12 3. Shall contain information concerning the right to a summary
13 review and hearing, including information concerning the hearing as
14 required by section 28-1321, subsections G and H.

15 4. Shall be accompanied by printed forms that are ready to mail to
16 the department, that the person may fill out and sign to indicate the
17 person's desire for a hearing or summary review and that advise the person
18 that the person may alternatively submit an online request for a hearing
19 or summary review.

20 5. Shall be entered on the department's records on receipt of the
21 report by the officer and a copy of the order of suspension.

22 6. Shall inform the person that the person's driving privilege,
23 license, permit, right to apply for a license or permit or nonresident
24 operating privilege may be issued or reinstated following the period of
25 suspension or issuance of a special ignition interlock restricted driver
26 license only if the person completes alcohol or other drug screening.

27 7. Shall contain information on alcohol or other drug education and
28 treatment programs that are provided by a facility approved by the
29 department of health services.

30 E. If the blood test result is unavailable at the time the test is
31 administered, the result shall be forwarded to the department before the
32 hearing held pursuant to this section in a form prescribed by the
33 director.

34 F. If the license or permit is not surrendered pursuant to
35 subsection D of this section, the officer shall state the reason for the
36 nonsurrender. If a valid license or permit is surrendered, the officer
37 shall issue a temporary driving permit that is valid for thirty days. The
38 officer shall forward a copy of the completed order of suspension and a
39 copy of any completed temporary permit to the department within five days
40 after the issuance of the order of suspension along with the report. The
41 law enforcement agency may do either of the following with a valid license
42 or permit that is surrendered pursuant to this section:

43 1. In compliance with sections 41-151.15 and 41-151.19, destroy the
44 license or permit.

1 2. Forward the license or permit to the department within five days
2 after the issuance of the notice of suspension.

3 G. The department shall suspend the affected person's license or
4 permit to drive or right to apply for a license or permit or any
5 nonresident operating privilege for not less than ninety consecutive days
6 from that date. If the person is otherwise qualified, the department may
7 reinstate the person's driving privilege, license, permit, right to apply
8 for a license or permit or nonresident operating privilege following the
9 period of suspension only if the violator completes alcohol or other drug
10 screening.

11 H. Notwithstanding subsections A, B, C, D, E, F and G of this
12 section and except as provided in subsection I of this section, the
13 department shall suspend the driving privileges of the person described in
14 subsection A of this section for at least thirty consecutive days and
15 shall restrict the person's driving privileges as prescribed in section
16 28-144 for at least sixty consecutive additional days if the person:

17 1. Did not cause death or serious physical injury as defined in
18 section 13-105 to another person during the course of conduct out of which
19 the current action arose.

20 2. Has not been convicted of a violation of section 4-244,
21 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 within
22 eighty-four months of the date of commission of the acts out of which the
23 current action arose. The dates of commission of the acts are the
24 determining factor in applying the eighty-four month provision.

25 3. Provides satisfactory evidence to the department of the person's
26 completion of alcohol or other drug screening that is ordered by the
27 department. If the person does not complete alcohol or other drug
28 screening, the department may impose a ninety day suspension pursuant to
29 this section.

30 I. In lieu of a driving privilege suspension pursuant to subsection
31 H of this section, on a person's request, the department shall issue a
32 special ignition interlock restricted driver license to the person if the
33 requirements set forth in subsection H, paragraphs 1, 2 and 3 are met.

34 J. Notwithstanding section 28-1401, the department may issue a
35 special ignition interlock restricted driver license to a person for an
36 offense described in subsection A of this section. A person who applies
37 for and who is issued a special ignition interlock restricted driver
38 license pursuant to this subsection agrees to the administrative action
39 taken by the department against the person's license. Once the department
40 issues a special ignition interlock restricted driver license pursuant to
41 this subsection, the person waives any right to an administrative hearing
42 contesting the administrative action against the person's license pursuant
43 to this section or section 28-1321.

1 K. If the officer does not serve an order of suspension pursuant to
2 subsection D of this section and if the department does not receive the
3 report of the results of the blood or breath alcohol test pursuant to
4 subsection B, paragraph 4 of this section, but subsequently receives the
5 results and the results indicate 0.08 or more alcohol concentration in the
6 person's blood or breath, a blood or breath alcohol concentration of 0.04
7 or more and the person was driving or in actual physical control of a
8 commercial motor vehicle or any drug defined in section 13-3401 or its
9 metabolite in the person's body and the person does not possess a valid
10 prescription for the drug, the department shall notify the person named in
11 the report in writing sent by mail that thirty days after the date of
12 issuance of the notice the department will suspend the person's license or
13 permit, driving privilege or nonresident driving privilege. The notice
14 shall also state that the department will provide an opportunity for a
15 hearing and summary review if the person requests a hearing or review in
16 writing and the request is received by the department within thirty days
17 after the notice is sent.

18 L. A timely request for a hearing stays the suspension until a
19 hearing is held, except that the department shall not return any
20 surrendered license or permit to the person but may issue temporary
21 permits to drive that expire not later than when the department has made
22 its final decision. If the person is a resident without a license or
23 permit or has an expired license or permit, the department may allow the
24 person to apply for a restricted license or permit. If the department
25 determines the person is otherwise entitled to the restricted license or
26 permit, the department shall issue, but retain, the license or permit,
27 subject to this section. All hearings requested under this section shall
28 be conducted in the same manner and under the same conditions as provided
29 in section 28-3306.

30 M. For the purposes of this section, the scope of the hearing shall
31 include only the following issues:

32 1. Whether the officer had reasonable grounds to believe the person
33 was driving or was in actual physical control of a motor vehicle while
34 under the influence of intoxicating liquor as prescribed in section
35 28-1381 or drugs.

36 2. Whether the person was placed under arrest for a violation of
37 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
38 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
39 13-1204 involving a motor vehicle.

40 3. Whether a test was taken, the results of which indicated any of
41 the following:

42 (a) An alcohol concentration in the person's blood or breath at the
43 time the test was administered of either:

- 1 (i) 0.08 or more.
- 2 (ii) 0.04 or more if the person was driving or in actual physical
- 3 control of a commercial motor vehicle.
- 4 (iii) 0.04 OR MORE IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL
- 5 CONTROL OF A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501 OR WHILE
- 6 PROVIDING TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION 28-9551 AS
- 7 A TRANSPORTATION NETWORK COMPANY DRIVER AS DEFINED IN SECTION 28-9551.
- 8 (b) Any drug defined in section 13-3401 or its metabolite in the
- 9 person's body except if the person possesses a valid prescription for the
- 10 drug.
- 11 4. Whether the testing method used was valid and reliable.
- 12 5. Whether the test results were accurately evaluated.
- 13 N. The results of the blood or breath alcohol test shall be
- 14 admitted on establishing the requirements in section 28-1323 or 28-1326.
- 15 O. If the department determines at the hearing to suspend the
- 16 affected person's privilege to operate a motor vehicle, the suspension
- 17 provided in this section is effective thirty days after giving written
- 18 notice of the suspension, except that the department may issue or extend a
- 19 temporary license that expires on the effective date of the
- 20 suspension. If the person is a resident without a license or permit or
- 21 has an expired license or permit to operate a motor vehicle in this state,
- 22 the department shall deny the issuance of a license or permit to the
- 23 person for not less than ninety consecutive days. The department may
- 24 reinstate the person's driving privilege, license, permit, right to apply
- 25 for a license or permit or nonresident operating privilege following the
- 26 period of suspension only if the violator completes alcohol or other drug
- 27 screening.
- 28 P. A person may request a summary review of an order issued
- 29 pursuant to this section instead of a hearing at any time before the
- 30 effective date of the order. A timely request for summary review stays
- 31 the suspension until a decision is issued. The person shall submit the
- 32 request in writing to the department together with any written explanation
- 33 as to why the department should not suspend the driving privilege. The
- 34 department shall review all reports submitted by the officer and any
- 35 written explanation submitted by the person and shall determine if the
- 36 order of suspension should be sustained or voided. The department shall
- 37 not hold a hearing, and the review is not subject to title 41, chapter 6.
- 38 The department shall notify the person of its decision.
- 39 Q. If the suspension or determination that there should be a denial
- 40 of issuance is not sustained after a hearing or review, the ruling is not
- 41 admissible in and does not have any effect on any civil or criminal court
- 42 proceeding.

1 R. If it has been determined under the procedures of this section
2 that a nonresident's privilege to operate a motor vehicle in this state
3 has been suspended, the department shall give information either in
4 writing or by electronic means of the action taken to the motor vehicle
5 administrator of the state of the person's residence and of any state in
6 which the person has a license.

APPROVED BY THE GOVERNOR APRIL 8, 2024.

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