

House Engrossed

DUI; administrative suspension; license revocation

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HOUSE BILL 2187

AN ACT

AMENDING SECTIONS 28-1385 AND 28-3304, 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 28-1385, Arizona Revised Statutes, is amended to
3 read:

4 28-1385. Administrative license suspension for driving under
5 the influence or for homicide or assault involving
6 a motor vehicle; report; hearing; summary review;
7 ignition interlock device requirement

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

12 1. The officer arrests a person for a violation of section 4-244,
13 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a
14 violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving
15 a motor vehicle.

16 2. The person submits to a blood or breath alcohol test permitted
17 by section 28-1321 or any other law or a sample of blood is obtained
18 pursuant to section 28-1388 and the results are either not available or
19 the results indicate any of the following:

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

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

25 (c) Any drug defined in section 13-3401 or its metabolite is in the
26 person's body except if the person possesses a valid prescription for the
27 drug.

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

32 1. Information that adequately identifies the arrested person.

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

38 3. A statement that the person was arrested for a violation of
39 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
40 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
41 13-1204 involving a motor vehicle.

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

44 C. The officer shall also serve an order of suspension on the
45 person on behalf of the department. The order of suspension:

- 1 1. Is effective fifteen days after the date it is served.
- 2 2. Shall require the immediate surrender of any license or permit
- 3 to drive that is issued by this state and that is in the possession or
- 4 control of the person.
- 5 3. Shall contain information concerning the right to a summary
- 6 review and hearing, including information concerning the hearing as
- 7 required by section 28-1321, subsections G and H.
- 8 4. Shall be accompanied by printed forms that are ready to mail to
- 9 the department, that the person may fill out and sign to indicate the
- 10 person's desire for a hearing OR SUMMARY REVIEW and that advise the person
- 11 that the person may alternatively submit an online request for a hearing
- 12 OR SUMMARY REVIEW.
- 13 5. Shall be entered on the department's records on receipt of the
- 14 report by the officer and a copy of the order of suspension.
- 15 6. Shall inform the person that the person's driving privilege,
- 16 license, permit, right to apply for a license or permit or nonresident
- 17 operating privilege may be issued or reinstated following the period of
- 18 suspension only if the person completes alcohol or other drug screening.
- 19 7. Shall contain information on alcohol or other drug education and
- 20 treatment programs that are provided by a facility approved by the
- 21 department of health services.
- 22 D. If the blood test result is unavailable at the time the test is
- 23 administered, the result shall be forwarded to the department before the
- 24 hearing held pursuant to this section in a form prescribed by the
- 25 director.
- 26 E. If the license or permit is not surrendered pursuant to
- 27 subsection C of this section, the officer shall state the reason for the
- 28 nonsurrender. If a valid license or permit is surrendered, the officer
- 29 shall issue a temporary driving permit that is valid for fifteen days.
- 30 The officer shall forward a copy of the completed order of suspension and
- 31 a copy of any completed temporary permit to the department within five
- 32 days after the issuance of the order of suspension along with the report.
- 33 The law enforcement agency may do either of the following with a valid
- 34 license or permit that is surrendered pursuant to this section:
- 35 1. In compliance with sections 41-151.15 and 41-151.19, destroy the
- 36 license or permit.
- 37 2. Forward the license or permit to the department within five days
- 38 after the issuance of the notice of suspension.
- 39 F. The department shall suspend the affected person's license or
- 40 permit to drive or right to apply for a license or permit or any
- 41 nonresident operating privilege for not less than ninety consecutive days
- 42 from that date. If the person is otherwise qualified, the department may
- 43 reinstate the person's driving privilege, license, permit, right to apply
- 44 for a license or permit or nonresident operating privilege following the

1 period of suspension only if the violator completes alcohol or other drug
2 screening.

3 G. Notwithstanding subsections A through F of this section, the
4 department shall suspend the driving privileges of the person described in
5 subsection A of this section for ~~not less than~~ AT LEAST thirty consecutive
6 days and shall restrict the PERSON'S driving privileges ~~of the person AS~~
7 ~~PRESCRIBED IN SECTION 28-144~~ for ~~not less than~~ AT LEAST sixty consecutive
8 additional days ~~to travel between the person's place of employment and~~
9 ~~residence and during specified periods of time while at employment, to~~
10 ~~travel between the person's place of residence and the person's secondary~~
11 ~~or postsecondary school, according to the person's employment or~~
12 ~~educational schedule, to travel between the person's place of residence~~
13 ~~and the office of the person's probation officer for scheduled~~
14 ~~appointments or to travel between the person's place of residence and a~~
15 ~~screening, education or treatment facility for scheduled appointments~~ if
16 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. Has not had the person's privilege to drive suspended pursuant
26 to this section or section 28-1321 within eighty-four months of the date
27 of commission of the acts out of which the current action arose.

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

33 H. If the officer does not serve an order of suspension pursuant to
34 subsection C of this section and if the department does not receive the
35 report of the results of the blood or breath alcohol test pursuant to
36 subsection B, paragraph 4 of this section, but subsequently receives the
37 results and the results indicate 0.08 or more alcohol concentration in the
38 person's blood or breath, a blood or breath alcohol concentration of 0.04
39 or more and the person was driving or in actual physical control of a
40 commercial motor vehicle or any drug defined in section 13-3401 or its
41 metabolite in the person's body and the person does not possess a valid
42 prescription for the drug, the department shall notify the person named in
43 the report in writing sent by mail that fifteen days after the date of
44 issuance of the notice the department will suspend the person's license or
45 permit, driving privilege or nonresident driving privilege. The notice

1 shall also state that the department will provide an opportunity for a
2 hearing and ~~administrative~~ SUMMARY review if the person requests a hearing
3 or review in writing and the request is received by the department within
4 fifteen days after the notice is sent.

5 I. A timely request for a hearing stays the suspension until a
6 hearing is held, except that the department shall not return any
7 surrendered license or permit to the person but may issue temporary
8 permits to drive that expire no later than when the department has made
9 its final decision. If the person is a resident without a license or
10 permit or has an expired license or permit, the department may allow the
11 person to apply for a restricted license or permit. If the department
12 determines the person is otherwise entitled to the restricted license or
13 permit, the department shall issue, but retain, the license or permit,
14 subject to this section. All hearings requested under this section shall
15 be conducted in the same manner and under the same conditions as provided
16 in section 28-3306.

17 J. For the purposes of this section, the scope of the hearing shall
18 include only the following issues:

19 1. Whether the officer had reasonable grounds to believe the person
20 was driving or was in actual physical control of a motor vehicle while
21 under the influence of intoxicating liquor or drugs.

22 2. Whether the person was placed under arrest for a violation of
23 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
24 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
25 13-1204 involving a motor vehicle.

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

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

30 (i) 0.08 or more.

31 (ii) 0.04 or more if the person was driving or in actual physical
32 control of a commercial motor vehicle.

33 (b) Any drug defined in section 13-3401 or its metabolite in the
34 person's body except if the person possesses a valid prescription for the
35 drug.

36 4. Whether the testing method used was valid and reliable.

37 5. Whether the test results were accurately evaluated.

38 K. The results of the blood or breath alcohol test shall be
39 admitted on establishing the requirements in section 28-1323 or 28-1326.

40 L. If the department determines at the hearing to suspend the
41 affected person's privilege to operate a motor vehicle, the suspension
42 provided in this section is effective fifteen days after giving written
43 notice of the suspension, except that the department may issue or extend a
44 temporary license that expires on the effective date of the suspension.
45 If the person is a resident without a license or permit or has an expired

1 license or permit to operate a motor vehicle in this state, the department
2 shall deny the issuance of a license or permit to the person for not less
3 than ninety consecutive days. The department may reinstate the person's
4 driving privilege, license, permit, right to apply for a license or permit
5 or nonresident operating privilege following the period of suspension only
6 if the violator completes alcohol or other drug screening.

7 M. A person may ~~apply for~~ REQUEST a summary review of an order
8 issued pursuant to this section instead of a hearing at any time before
9 the effective date of the order. A timely request for summary review
10 stays the suspension until a decision is issued. The person shall submit
11 the ~~application~~ REQUEST in writing to ~~any~~ THE department ~~driver license~~
12 ~~examining office~~ together with any written explanation as to why the
13 department should not suspend the driving privilege. The department shall
14 review all reports submitted by the officer and any written explanation
15 submitted by the person and shall determine if the order of suspension
16 should be sustained or ~~cancelled~~ VOIDED. The department shall not hold a
17 hearing, and the review is not subject to title 41, chapter 6. The
18 department shall notify the person of its decision.

19 N. If the suspension or determination that there should be a denial
20 of issuance is not sustained after a hearing or review, the ruling is not
21 admissible in and does not have any effect on any civil or criminal court
22 proceeding.

23 O. If it has been determined under the procedures of this section
24 that a nonresident's privilege to operate a motor vehicle in this state
25 has been suspended, the department shall give information either in
26 writing or by electronic means of the action taken to the motor vehicle
27 administrator of the state of the person's residence and of any state in
28 which the person has a license.

29 Sec. 2. Section 28-3304, Arizona Revised Statutes, is amended to
30 read:

31 28-3304. Mandatory revocation of license; definition

32 A. In addition to the grounds for mandatory revocation provided for
33 in chapters 3, 4 and 5 of this title, the department shall immediately
34 revoke the license of a driver on receipt of a record of the driver's
35 conviction of any of the following offenses if the conviction is final:

- 36 1. A homicide or aggravated assault resulting from the operation of
37 a motor vehicle.
- 38 2. A felony in the commission of which a motor vehicle is used.
- 39 3. Theft of a motor vehicle pursuant to section 13-1802.
- 40 4. Unlawful use of means of transportation pursuant to section
41 13-1803.
- 42 5. Theft of means of transportation pursuant to section 13-1814.
- 43 6. Drive by shooting pursuant to section 13-1209.

1 7. Failure to stop and render aid as required under the laws of
2 this state if a motor vehicle accident results in the death or personal
3 injury of another.

4 8. Perjury or the making of a false affidavit or statement under
5 oath to the department under this chapter or under any other law relating
6 to the ownership or operation of a motor vehicle.

7 9. Conviction or forfeiture of bail not vacated on a second or
8 subsequent charge of the following offenses that are committed within
9 eighty-four months:

10 (a) Reckless driving.

11 (b) Racing on highways.

12 (c) Any combination of a violation of section 28-1381 or 28-1382
13 and reckless driving, of a violation of section 28-1381 or 28-1382 and
14 racing on highways, or of reckless driving and racing on highways, if they
15 do not arise out of the same event.

16 10. Conviction or forfeiture of bail not vacated on a second charge
17 of violating section 28-1381 or 28-1382 within eighty-four months.

18 11. Conviction or forfeiture of bail not vacated on a third or
19 subsequent charge of violating section 28-1381, ~~OR~~ 28-1382 ~~OR~~ 28-1383
20 within eighty-four months.

21 12. Conviction or forfeiture of bail not vacated on a charge of
22 violating section 28-1381 or 28-1382 and the driver has been convicted
23 within a period of eighty-four months of an offense in another
24 jurisdiction that if committed in this state would be a violation of
25 section 28-1381 or 28-1382.

26 B. In determining the starting date for the eighty-four month
27 period prescribed in subsection A, paragraphs 9, 10, 11 and 12 of this
28 section, the department shall use the date of the commission of the
29 offense.

30 C. For the purposes of this section, "conviction" means a final
31 adjudication or judgment, including an order of a juvenile court finding
32 that a juvenile violated any provision of this title or committed a
33 delinquent act that if committed by an adult would constitute a criminal
34 offense.