

REFERENCE TITLE: **DUI; license suspension; records**

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

SB 1453

Introduced by
Senator Carroll

AN ACT

AMENDING SECTIONS 28-1321, 28-1385, 28-1387, 28-1401, 28-3004 AND 28-3319,
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 or if the results show
38 there is any drug defined in section 13-3401 or its metabolite in the
39 person's body and the person does not possess a valid prescription for the
40 drug, the violator's license or permit to drive will be suspended or
41 denied for not less than ninety consecutive days.

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

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2 rendering the person incapable of refusal is deemed not to have withdrawn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

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

9 1. The test shall not be given, except as provided in section
10 28-1388, subsection E or pursuant to a search warrant.

11 2. The law enforcement officer directing the administration of the
12 test shall:

13 (a) File a certified report of the refusal with the department
14 **WITHIN THIRTY DAYS AFTER THE DATE OF THE ARREST. IF A CERTIFIED REPORT IS**
15 **NOT FORWARDED TO THE DEPARTMENT AS PRESCRIBED BY THIS SUBDIVISION, THE**
16 **DEPARTMENT SHALL NOT ENTER AN ORDER OF SUSPENSION ON ITS RECORDS UNLESS**
17 **THE VIOLATION LISTED IN SUBSECTION A OF THIS SECTION RESULTED IN DEATH OR**
18 **SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 13-105.**

19 (b) On behalf of the department, **DO ONE OF THE FOLLOWING:**

20 (i) Serve an order of suspension on the person that is effective
21 thirty days after the date the order is served.

22 (ii) **ADVISE THE PERSON THAT THE CERTIFIED REPORT WILL BE SUBMITTED**
23 **TO THE DEPARTMENT AND THAT THE DEPARTMENT WILL NOTIFY THE PERSON IN**
24 **WRITING IF AN ORDER OF SUSPENSION IS ENTERED. THE LAW ENFORCEMENT OFFICER**
25 **SHALL DIRECT THE PERSON TO ENSURE THE PERSON'S ADDRESS IS UPDATED WITH THE**
26 **DEPARTMENT PURSUANT TO SECTION 28-448.**

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

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

34 (ii) Forward the driver license or permit to the department within
35 ~~five~~ **THIRTY** days after the issuance of the notice of suspension.

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

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

40 (f) Forward the certified report of refusal, a copy of the
41 completed notice of suspension and a copy of any completed temporary
42 permit to the department within ~~five~~ **THIRTY** days after the issuance of the
43 notice of suspension.

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

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

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

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

10 2. The manner in which the person refused to submit to the test or
11 tests.

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

13 F. On receipt of the certified report of refusal and a copy of the
14 order of suspension ~~and on the effective date stated on the order~~, the
15 department shall enter the order of suspension on its records. **THE ORDER**
16 **OF SUSPENSION IS EFFECTIVE THIRTY DAYS AFTER THE DATE THAT THE ORDER WAS**
17 **SERVED** unless a ~~written or online~~ **TIMELY** request for a hearing as provided
18 in this section ~~has been~~ **IS** filed by the accused person. If the
19 department receives only the certified report of refusal, the department
20 shall notify the person named in the report in writing sent by mail that:

21 1. Thirty days after the date of issuance of the notice the
22 department will suspend the person's license or permit, driving privilege
23 or nonresident driving privilege.

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

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

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

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

33 3. The affected person's license or permit to drive or right to
34 apply for a license or permit or any nonresident operating privilege will
35 be suspended for twelve months from that date or for two years from that
36 date for a second or subsequent refusal within a period of eighty-four
37 months.

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

42 H. The order for suspension shall:

43 1. Be accompanied by printed forms that are ready to mail to the
44 department, that may be filled out and signed by the person to indicate

1 the person's desire for a hearing and that advise the person that the
2 person may alternatively submit an online request for a hearing.

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

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

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

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

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

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

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

36 2. The person was placed under arrest.

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

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

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

1 shall deny to the person the issuance of a license or permit for a period
2 of twelve months after the order of suspension becomes effective or for a
3 period of two years after the order of suspension becomes effective for a
4 second or subsequent refusal within a period of eighty-four months, and
5 may reinstate the person's driving privilege, license, permit, right to
6 apply for a license or permit or nonresident operating privilege following
7 the period of suspension only if the person completes alcohol or other
8 drug screening.

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

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

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

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

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

1 contesting the administrative action against the person's license pursuant
2 to this section or section 28-1385.

3 Sec. 2. Section 28-1385, Arizona Revised Statutes, is amended to
4 read:

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

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

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

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

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

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

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

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

34 1. Information that adequately identifies the arrested person.

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

40 3. A statement that the person was arrested for a violation of
41 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section
42 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
43 13-1204 involving a motor vehicle.

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

1 ~~C. If a breath test is administered, a law enforcement agency shall~~
2 ~~forward the certified report that is required by subsection A of this~~
3 ~~section to the department within thirty days after the arrest occurs. If~~
4 ~~a sample of blood, urine or other bodily substance is obtained, the law~~
5 ~~enforcement agency shall forward the certified report that is required by~~
6 ~~subsection A of this section to the department within thirty days after~~
7 ~~the date the report of the analysis is provided to the law enforcement~~
8 ~~agency. If a report is not forwarded to the department within the time~~
9 ~~limit prescribed by this subsection, the report is inadmissible in a~~
10 ~~hearing held pursuant to this section unless the violation listed in~~
11 ~~subsection A of this section resulted in death or serious physical injury.~~
12 ~~For the purposes of this subsection, "serious physical injury" has the~~
13 ~~same meaning prescribed in section 13-105.~~

14 C. THE LAW ENFORCEMENT OFFICER DIRECTING THE ADMINISTRATION OF THE
15 TEST SHALL:

16 1. FILE A CERTIFIED REPORT THAT IS REQUIRED BY SUBSECTION A OF THIS
17 SECTION WITH THE DEPARTMENT WITHIN THIRTY DAYS AFTER THE DATE OF THE
18 ARREST. IF A CERTIFIED REPORT IS NOT FORWARDED TO THE DEPARTMENT AS
19 PRESCRIBED BY THIS PARAGRAPH, THE DEPARTMENT MAY NOT ENTER AN ORDER OF
20 SUSPENSION ON ITS RECORDS UNLESS THE VIOLATION LISTED IN SUBSECTION A OF
21 THIS SECTION RESULTED IN DEATH OR SERIOUS PHYSICAL INJURY AS DEFINED IN
22 SECTION 13-105.

23 2. ON BEHALF OF THE DEPARTMENT, DO ONE OF THE FOLLOWING:

24 (a) SERVE AN ORDER OF SUSPENSION ON THE PERSON THAT IS EFFECTIVE
25 THIRTY DAYS AFTER THE DATE THAT THE ORDER IS SERVED.

26 (b) ADVISE THE PERSON THAT THE CERTIFIED REPORT WILL BE SUBMITTED
27 TO THE DEPARTMENT AND THAT THE DEPARTMENT WILL NOTIFY THE PERSON IN
28 WRITING IF AN ORDER OF SUSPENSION IS ENTERED. THE LAW ENFORCEMENT OFFICER
29 SHALL DIRECT THE PERSON TO ENSURE THE PERSON'S ADDRESS IS UPDATED WITH THE
30 DEPARTMENT PURSUANT TO SECTION 28-448.

31 D. IF the officer ~~shall also serve~~ SERVES an order of suspension on
32 the person ~~on behalf of the department.~~ the order of suspension:

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

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

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

40 4. Shall be accompanied by printed forms that are ready to mail to
41 the department, that the person may fill out and sign to indicate the
42 person's desire for a hearing or summary review and that advise the person
43 that the person may alternatively submit an online request for a hearing
44 or summary review.

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

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

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

11 E. If the blood test result is unavailable at the time the test is
12 administered, the result shall be forwarded to the department before the
13 hearing held pursuant to this section in a form prescribed by the
14 director.

15 F. If the license or permit is not surrendered pursuant to
16 subsection D of this section, the officer shall state the reason for the
17 nonsurrender. If a valid license or permit is surrendered, the officer
18 shall issue a temporary driving permit that is valid for thirty days. The
19 officer shall forward a copy of the completed order of suspension and a
20 copy of any completed temporary permit to the department within ~~five~~
21 ~~THIRTY~~ days after the issuance of the order of suspension along with the
22 report. The law enforcement agency may do either of the following with a
23 valid license or permit that is surrendered pursuant to this section:

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

26 2. Forward the license or permit to the department within ~~five~~
27 ~~THIRTY~~ days after the issuance of the notice of suspension.

28 G. ON RECEIPT OF THE CERTIFIED REPORT, THE DEPARTMENT SHALL ENTER
29 AN ORDER OF SUSPENSION ON ITS RECORDS. THE DEPARTMENT SHALL MAIL A
30 WRITTEN NOTIFICATION TO THE PERSON WHO IS NAMED IN THE CERTIFIED REPORT.
31 THE NOTIFICATION SHALL:

32 1. INCLUDE INFORMATION ON ALCOHOL OR OTHER DRUG EDUCATION AND
33 TREATMENT PROGRAMS THAT ARE PROVIDED BY A FACILITY APPROVED BY THE
34 DEPARTMENT OF HEALTH SERVICES.

35 2. DISCLOSE ALL OF THE FOLLOWING:

36 (a) THIRTY DAYS AFTER THE DATE OF ISSUANCE OF THE NOTICE, THE
37 DEPARTMENT WILL SUSPEND THE PERSON'S DRIVING PRIVILEGE OR NONRESIDENT
38 OPERATING PRIVILEGE.

39 (b) THE PERSON MAY SUBMIT A WRITTEN OR ONLINE REQUEST FOR A HEARING
40 OR SUMMARY REVIEW.

41 (c) THE REQUEST FOR A HEARING OR SUMMARY REVIEW MUST BE RECEIVED BY
42 THE DEPARTMENT WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE OR THE
43 ORDER OF SUSPENSION BECOMES FINAL.

1 (d) THE PERSON'S DRIVING PRIVILEGE OR RIGHT TO APPLY FOR A DRIVING
2 PRIVILEGE OR THE PERSON'S NONRESIDENT OPERATING PRIVILEGE WILL BE
3 SUSPENDED AS PRESCRIBED IN SUBSECTIONS H AND I OF THIS SECTION.

4 (e) THE PERSON'S DRIVING PRIVILEGE OR RIGHT TO APPLY FOR A DRIVING
5 PRIVILEGE OR THE PERSON'S NONRESIDENT OPERATING PRIVILEGE MAY BE ISSUED OR
6 REINSTATED FOLLOWING THE PERIOD OF SUSPENSION ONLY IF THE PERSON COMPLETES
7 ALCOHOL OR OTHER DRUG SCREENING.

8 (f) THE PERSON MAY APPLY FOR A SPECIAL IGNITION INTERLOCK
9 RESTRICTED DRIVER LICENSE PURSUANT TO SUBSECTIONS J AND K OF THIS SECTION.

10 ~~G~~ H. The department shall suspend the affected person's license
11 or permit to drive or right to apply for a license or permit or any
12 nonresident operating privilege for not less than ninety consecutive days
13 from that date. If the person is otherwise qualified, the department may
14 reinstate the person's driving privilege, license, permit, right to apply
15 for a license or permit or nonresident operating privilege following the
16 period of suspension only if the violator completes alcohol or other drug
17 screening.

18 ~~H~~ I. Notwithstanding subsections A, B, C, D, E, F, G and ~~G~~ H of
19 this section and except as provided in subsection ~~I~~ J of this section,
20 the department shall suspend the driving privileges of the person
21 described in subsection A of this section for at least thirty consecutive
22 days and shall restrict the person's driving privileges as prescribed in
23 section 28-144 for at least sixty consecutive additional days if the
24 person:

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

28 2. Has not been convicted of a violation of section 4-244,
29 paragraph 34, section 28-1381, section 28-1382 or section 28-1383 within
30 eighty-four months ~~of~~ AFTER the date of commission of the acts out of
31 which the current action arose. The dates of commission of the acts are
32 the determining factor in applying the eighty-four month provision.

33 3. Provides satisfactory evidence to the department of the person's
34 completion of alcohol or other drug screening that is ordered by the
35 department. If the person does not complete alcohol or other drug
36 screening, the department may impose a ninety day suspension pursuant to
37 this section.

38 ~~I~~ J. In lieu of a driving privilege suspension pursuant to
39 subsection ~~H~~ I of this section, on a person's request, the department
40 shall issue a special ignition interlock restricted driver license to the
41 person if the requirements set forth in subsection ~~H~~ I, paragraphs 1, 2
42 and 3 OF THIS SECTION are met.

43 ~~J~~ K. Notwithstanding section 28-1401, the department may issue a
44 special ignition interlock restricted driver license to a person for an
45 offense described in subsection A of this section. A person who applies

1 for and who is issued a special ignition interlock restricted driver
2 license pursuant to this subsection agrees to the administrative action
3 taken by the department against the person's license. Once the department
4 issues a special ignition interlock restricted driver license pursuant to
5 this subsection, the person waives any right to an administrative hearing
6 contesting the administrative action against the person's license pursuant
7 to this section or section 28-1321.

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

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

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

39 1. Whether the officer had reasonable grounds to believe the person
40 was driving or was in actual physical control of a motor vehicle while
41 under the influence of intoxicating liquor as prescribed in section
42 28-1381 or drugs.

43 2. Whether the person was placed under arrest for a violation of
44 section 4-244, paragraph 34, section 28-1381, section 28-1382 or section

1 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or
2 13-1204 involving a motor vehicle.

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

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

7 (i) 0.08 or more.

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

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

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

14 5. Whether the test results were accurately evaluated.

15 N. The results of the blood or breath alcohol test shall be
16 admitted on establishing the requirements in section 28-1323 or 28-1326.

17 O. If the department determines at the hearing to suspend the
18 affected person's privilege to operate a motor vehicle, the suspension
19 provided in this section is effective thirty days after giving written
20 notice of the suspension, except that the department may issue or extend a
21 temporary license that expires on the effective date of the suspension. If
22 the person is a resident without a license or permit or has an expired
23 license or permit to operate a motor vehicle in this state, the department
24 shall deny the issuance of a license or permit to the person for not less
25 than ninety consecutive days. The department may reinstate the person's
26 driving privilege, license, permit, right to apply for a license or permit
27 or nonresident operating privilege following the period of suspension only
28 if the violator completes alcohol or other drug screening.

29 P. A person may request a summary review of an order issued
30 pursuant to this section instead of a hearing at any time before the
31 effective date of the order. A timely request for summary review stays
32 the suspension until a decision is issued. The person shall submit the
33 request in writing to the department together with any written explanation
34 as to why the department should not suspend the driving privilege. The
35 department shall review all reports submitted by the officer and any
36 written explanation submitted by the person and shall determine if the
37 order of suspension should be sustained or voided. The department shall
38 not hold a hearing, and the review is not subject to title 41, chapter 6.
39 The department shall notify the person of its decision.

40 Q. If the suspension or determination that there should be a denial
41 of issuance is not sustained after a hearing or review, the ruling is not
42 admissible in and does not have any effect on any civil or criminal court
43 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.

7 Sec. 3. Section 28-1387, Arizona Revised Statutes, is amended to
8 read:

9 28-1387. Prior convictions; alcohol or other drug screening,
10 education and treatment; license suspension;
11 supervised probation; civil liability; procedures

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

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

1 28-1445 as sufficient to meet the requirements of this section or section
2 28-1381, 28-1382 or 28-1383 or may order the person to complete additional
3 alcohol or other drug screening, education or treatment programs. If a
4 person has previously been ordered to complete an alcohol or other drug
5 screening, education or treatment program pursuant to this section, the
6 judge shall order the person to complete an alcohol or other drug
7 screening, education or treatment program unless the court determines that
8 alternative sanctions are more appropriate.

9 C. After a person who is sentenced pursuant to section 28-1381,
10 subsection I has served twenty-four consecutive hours in jail or after a
11 person who is sentenced pursuant to section 28-1381, subsection K or
12 section 28-1382, subsection D or E has served forty-eight consecutive
13 hours in jail and after the court receives confirmation that the person is
14 employed or is a student, the court shall provide in the sentence that the
15 defendant, if the defendant is employed or is a student and can continue
16 the defendant's employment or schooling, may continue the employment or
17 schooling for not more than twelve hours a day nor more than six days a
18 week, unless the court finds good cause to not allow the release and
19 places those findings on the record. The person shall spend the remaining
20 day, days or parts of days in jail until the sentence is served and shall
21 be allowed out of jail only long enough to complete the actual hours of
22 employment or schooling.

23 D. Unless the license of a person convicted under section 28-1381
24 or 28-1382 has been or is suspended pursuant to section 28-1321 or
25 28-1385, the department on receipt of the abstract of conviction of a
26 violation of section 28-1381 or 28-1382 shall suspend the license of the
27 affected person for not less than ninety consecutive days.

28 E. When the department receives notification that the person meets
29 the criteria provided in section 28-1385, subsection ~~H~~ I, the department
30 shall suspend the driving privileges of the person for not less than
31 thirty consecutive days and shall restrict the person's driving privileges
32 as described in section 28-144 for not less than sixty consecutive
33 additional days.

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

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

1 H. The court may order alternative sanctions to community
2 restitution that is ordered pursuant to section 28-1381, subsection K or
3 section 28-1382, subsection E if the court determines that education,
4 treatment or other alternative sanctions are more appropriate.

5 Sec. 4. Section 28-1401, Arizona Revised Statutes, is amended to
6 read:

7 28-1401. Special ignition interlock restricted driver
8 licenses; application fee

9 A. A person whose class D or class G license has been suspended
10 pursuant to section 28-1385 or suspended or revoked for a first refusal
11 pursuant to section 28-1321, a second violation of section 28-1381 or
12 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3
13 may apply to the department for a special ignition interlock restricted
14 driver license that allows the person to operate a motor vehicle during
15 the period of suspension or revocation subject to the restrictions of the
16 certified ignition interlock device requirements prescribed in article 5
17 of this chapter if the person's privilege to operate a motor vehicle has
18 been restricted, suspended or revoked and the offense involved only
19 alcohol or, if the person's alcohol concentration is 0.08 or more, a
20 combination of drugs and alcohol pursuant to any of the following:

21 1. Section 28-1321, if the person meets the criteria of section
22 28-1321, subsection P.

23 2. Section 28-1381, if the person meets the criteria of section
24 28-1381, subsection O and the person presents evidence that is
25 satisfactory to the director and that shows that the person has completed
26 the requirements prescribed in section 28-1387, subsection B.

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

31 4. Section 28-1383, if the person meets the criteria of section
32 28-1383, subsection L and the person presents evidence that is
33 satisfactory to the director and that shows that the person has completed
34 the requirements prescribed in section 28-1387, subsection B.

35 5. Section 28-1385, if the person meets the criteria of section
36 28-1385, subsection ~~H~~ I.

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

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

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

4 Sec. 5. Section 28-3004, Arizona Revised Statutes, is amended to
5 read:

6 28-3004. License records

7 A. The department shall file an application for a license and shall
8 maintain suitable indexes containing, in alphabetical order:

9 1. Each application denied, with a note on each application of the
10 reason for the denial.

11 2. Each application granted.

12 3. Except as provided in subsection B of this section, the name of
13 each licensee whose license has been suspended or revoked by the
14 department, with a note after each name of the reason for the action.

15 B. Except as provided in subsection C of this section, the director
16 shall expunge from the public records maintained by the department a note
17 of a suspension or revocation made pursuant to section 28-1385 if, after
18 the suspension or revocation period, ~~either~~ ANY of the following occurs:

19 1. The licensee submits a certified copy of the court record
20 indicating either of the following:

21 (a) A dismissal of the violation on which the suspension or
22 revocation is based and submits proof that the charge was not refiled
23 within six months after the dismissal.

24 (b) A finding of not guilty of the violation on which the
25 suspension or revocation is based.

26 2. After twelve months the licensee has not been charged with a
27 violation of section 28-1381 or 28-1382 resulting from the event on which
28 the suspension or revocation is based IF THE EVENT DOES NOT INVOLVE DEATH
29 OR SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 13-105.

30 3. AFTER TWENTY-FOUR MONTHS THE LICENSEE HAS NOT BEEN CHARGED WITH
31 A VIOLATION OF SECTION 28-1381 OR 28-1382 RESULTING FROM THE EVENT ON
32 WHICH THE SUSPENSION OR REVOCATION IS BASED IF THE EVENT INVOLVES DEATH OR
33 SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 13-105.

34 C. The director shall not expunge the record or shall rescind the
35 expungement of the record if the licensee operates a commercial motor
36 vehicle without the proper class of commercial driver license, holds a
37 commercial driver license or is convicted of or found responsible for a
38 violation of chapter 3, 4 or 5 of this title that occurred during the
39 suspension or revocation period or if the licensee's driver license or
40 permit is suspended pursuant to section 28-1321 or suspended and
41 restricted pursuant to section 28-1385 during the suspension or revocation
42 period.

1 D. The department shall file all abstracts of court records of
2 convictions and judgments it receives under the laws of this state and
3 shall maintain convenient records of the abstracts or make suitable
4 notations on the abstracts in order that an individual record of each
5 licensee showing the convictions and judgments of the licensee and the
6 traffic accidents in which the licensee has been involved is readily
7 ascertainable and available for the consideration of the department on an
8 application for renewal of a license and at other suitable times.

9 E. The department shall maintain the records pursuant to this
10 section for five years after the application, suspension, revocation or
11 abstract of a court record of conviction or judgment has become inactive.

12 Sec. 6. Section 28-3319, Arizona Revised Statutes, is amended to
13 read:

14 28-3319. Action after license suspension, revocation or
15 denial for driving under the influence or refusal
16 of test; ignition interlock device requirement;
17 definition

18 A. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383,
19 28-3320 or 28-3322, the license of a driver or the driving privilege of a
20 nonresident is suspended or revoked, the department shall not terminate
21 the suspension or revocation or issue a special ignition interlock
22 restricted driver license, if applicable, pursuant to chapter 4, article
23 3.1 of this title until the person provides proof of financial
24 responsibility pursuant to chapter 9, article 3 of this title.

25 B. If, pursuant to section 28-1321, 28-1381, 28-1382, 28-1383,
26 28-3320 or 28-3322, an unlicensed resident is denied a license or permit
27 to operate a motor vehicle, the department shall not issue a license or
28 permit until the person provides proof of financial responsibility
29 pursuant to chapter 9, article 3 of this title.

30 C. If a person whose license or driving privilege is suspended or
31 revoked pursuant to section 28-1321, 28-1381, 28-1382, 28-1383 or 28-1385
32 is ordered, pursuant to section 28-1381, 28-1382, 28-1383 or 28-1385, to
33 attend alcohol or other drug screening, education or treatment, the
34 department shall not either:

35 1. Terminate the suspension or issue a special ignition interlock
36 restricted driver license, if applicable, pursuant to chapter 4, article
37 3.1 of this title until the person or licensed treatment facility provides
38 proof that the person has completed or is participating satisfactorily in
39 alcohol or other drug screening, education or treatment.

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

1 D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, on receipt
2 of a report of conviction from a court for a violation that involved
3 intoxicating liquor or that specifically requires the installation of a
4 certified ignition interlock device, the department shall require any
5 motor vehicle the convicted person operates to be equipped with a
6 functioning certified ignition interlock device and the convicted person
7 to meet the requirements prescribed in section 28-1461 as follows:

8 1. For twelve months if:

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

13 (b) The department determines that within a period of eighty-four
14 months the person is convicted of a second or subsequent violation of
15 section 28-1381 or section 28-1382, subsection A, paragraph 1 with a prior
16 conviction of a violation of section 28-1381, 28-1382 or 28-1383 or an act
17 in another jurisdiction that if committed in this state would be a
18 violation of section 28-1381, 28-1382 or 28-1383.

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

21 3. For twenty-four months if:

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

28 (b) The person is convicted of a violation of section 28-1383,
29 subsection A, paragraph 1, 2, 4 or 5 or paragraph 3, subdivision (b).

30 E. IF A PERSON IS REQUIRED TO EQUIP A MOTOR VEHICLE WITH A
31 CERTIFIED IGNITION INTERLOCK DEVICE PURSUANT TO SUBSECTION D OF THIS
32 SECTION AND THE PERSON HAS A MEDICAL CONDITION THAT PREVENTS THE PERSON
33 FROM USING THE CERTIFIED IGNITION INTERLOCK DEVICE DURING THE ENTIRE TIME
34 PERIOD REQUIRED BY SUBSECTION D OF THIS SECTION, THE DEPARTMENT SHALL
35 REQUIRE MONTHLY ALCOHOL AND DRUG SCREENING INSTEAD OF THE CERTIFIED
36 IGNITION INTERLOCK DEVICE FOR THE TIME PERIOD PRESCRIBED BY SUBSECTION D
37 OF THIS SECTION. THE DEPARTMENT SHALL REQUIRE EVIDENCE OF THE MEDICAL
38 CONDITION THAT IS SATISFACTORY TO THE DEPARTMENT AND IN A MANNER
39 PRESCRIBED BY THE DEPARTMENT FROM AN AUTHORIZED PHYSICIAN AS DEFINED IN
40 SECTION 28-2409 OR AN AUTHORIZED PHYSICIAN ASSISTANT AS DEFINED IN SECTION
41 28-2409. THE ALCOHOL OR DRUG SCREENING SHALL BE PROVIDED BY A FACILITY
42 APPROVED BY THE DEPARTMENT OF HEALTH SERVICES, THE UNITED STATES
43 DEPARTMENT OF VETERANS AFFAIRS, A SUBSTANCE ABUSE COUNSELOR AS DEFINED IN
44 SECTION 28-3005 OR A PROBATION DEPARTMENT.

1 ~~F.~~ F. The requirement prescribed in subsection D of this section
2 begins on the date the person successfully completes the alcohol or other
3 drug screening, education or treatment program requirements of this title
4 and the person is otherwise eligible to reinstate the person's driver
5 license or driving privilege. If the person is issued a special ignition
6 interlock restricted driver license for the violations giving rise to the
7 requirements prescribed in subsection D of this section or pursuant to
8 section 28-1321, subsection P or section 28-1385, subsection ~~F.~~ J, the
9 person shall be credited for the amount of time that a certified ignition
10 interlock device is installed on the person's motor vehicle after the
11 department authorizes the installation of the certified ignition interlock
12 device on that person's motor vehicle.

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

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

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

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

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

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

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

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

37 ~~H.~~ I. The deferment pursuant to subsection ~~G.~~ H of this section is
38 permanent, unless the person is arrested for a violation of section
39 28-1381, 28-1382 or 28-1383 that occurs during the period of the
40 deferment. If the person is arrested as described in this subsection, the
41 department shall revoke the deferment and require the person to complete
42 the remainder of the time period prescribed in subsection D, paragraph 1,
43 subdivision (a) of this section.

1 ~~†~~ J. Notwithstanding any other law, the department shall reduce
2 the length of time that a person is required to have a functioning
3 certified ignition interlock device installed in a motor vehicle pursuant
4 to subsection D of this section by the length of time that the person is
5 incarcerated in a jail or prison facility for a violation of section
6 28-1381 or 28-1383 that did not involve intoxicating liquor.

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

9 Sec. 7. Exemption from rulemaking

10 Notwithstanding any other law, for the purposes of this act, the
11 department of transportation is exempt from the rulemaking requirements of
12 title 41, chapter 6, Arizona Revised Statutes, for one year after the
13 effective date of this act.