

REFERENCE TITLE: DUI; jury trial

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2284

Introduced by
Representative Smith D

AN ACT

AMENDING SECTIONS 13-3983 AND 28-1381, 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 13-3983, Arizona Revised Statutes, is amended to
3 read:

4 13-3983. Waiver of jury by consent of parties; driving under
5 the influence jury waiver

6 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, a trial by jury
7 may be waived in criminal actions by the consent of both parties expressed in
8 open court and entered on its minutes.

9 B. IN ANY TRIAL FOR A VIOLATION OF SECTION 28-1381 OR 28-1382, A TRIAL
10 BY JURY MAY BE UNILATERALLY WAIVED BY THE DEFENDANT EXPRESSED IN OPEN COURT
11 AND ENTERED ON ITS MINUTES.

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

13 28-1381. Driving or actual physical control while under the
14 influence; trial by jury; presumptions; admissible
15 evidence; sentencing; classification

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

18 1. While under the influence of intoxicating liquor, any drug, a vapor
19 releasing substance containing a toxic substance or any combination of
20 liquor, drugs or vapor releasing substances if the person is impaired to the
21 slightest degree.

22 2. If the person has an alcohol concentration of 0.08 or more within
23 two hours of driving or being in actual physical control of the vehicle and
24 the alcohol concentration results from alcohol consumed either before or
25 while driving or being in actual physical control of the vehicle.

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

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

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

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

36 D. A person using a drug as prescribed by a medical practitioner
37 licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of
38 violating subsection A, paragraph 3 of this section.

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

1 F. At the arraignment, the court shall inform the defendant that ~~if~~
2 ~~the state alleges a prior conviction~~ the defendant may UNILATERALLY request a
3 trial by jury and that the request, if made, shall be granted.

4 G. In a trial, action or proceeding for a violation of this section or
5 section 28-1383 other than a trial, action or proceeding involving driving or
6 being in actual physical control of a commercial vehicle, the defendant's
7 alcohol concentration within two hours of the time of driving or being in
8 actual physical control as shown by analysis of the defendant's blood, breath
9 or other bodily substance gives rise to the following presumptions:

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

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

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

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

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

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

29 2. Shall pay a fine of not less than two hundred fifty dollars.

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

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

39 5. Shall pay an additional assessment of five hundred dollars to be
40 deposited by the state treasurer in the public safety equipment fund
41 established by section 41-1723. This assessment is not subject to any
42 surcharge. If the conviction occurred in the superior court or a justice
43 court, the court shall transmit the assessed monies to the county treasurer.
44 If the conviction occurred in a municipal court, the court shall transmit the

1 assessed monies to the city treasurer. The city or county treasurer shall
2 transmit the monies received to the state treasurer.

3 6. Shall be required by the department, on report of the conviction,
4 to equip any motor vehicle the person operates with a certified ignition
5 interlock device pursuant to section 28-3319. In addition, the court may
6 order the person to equip any motor vehicle the person operates with a
7 certified ignition interlock device for more than twelve months beginning on
8 the date of reinstatement of the person's driving privilege following a
9 suspension or revocation or on the date of the department's receipt of the
10 report of conviction, whichever occurs later. The person who operates a
11 motor vehicle with a certified ignition interlock device under this paragraph
12 shall comply with article 5 of this chapter.

13 J. Notwithstanding subsection I, paragraph 1 of this section, at the
14 time of sentencing the judge may suspend all but one day of the sentence if
15 the person completes a court ordered alcohol or other drug screening,
16 education or treatment program. If the person fails to complete the court
17 ordered alcohol or other drug screening, education or treatment program and
18 has not been placed on probation, the court shall issue an order to show
19 cause to the defendant as to why the remaining jail sentence should not be
20 served.

21 K. If within a period of eighty-four months a person is convicted of a
22 second violation of this section or is convicted of a violation of this
23 section and has previously been convicted of a violation of section 28-1382
24 or 28-1383 or an act in another jurisdiction that if committed in this state
25 would be a violation of this section or section 28-1382 or 28-1383, the
26 person:

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

31 2. Shall pay a fine of not less than five hundred dollars.

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

34 4. Shall have the person's driving privilege revoked for one year.
35 The court shall report the conviction to the department. On receipt of the
36 report, the department shall revoke the person's driving privilege and shall
37 require the person to equip any motor vehicle the person operates with a
38 certified ignition interlock device pursuant to section 28-3319. In
39 addition, the court may order the person to equip any motor vehicle the
40 person operates with a certified ignition interlock device for more than
41 twelve months beginning on the date of reinstatement of the person's driving
42 privilege following a suspension or revocation or on the date of the
43 department's receipt of the report of conviction, whichever occurs later.
44 The person who operates a motor vehicle with a certified ignition interlock
45 device under this paragraph shall comply with article 5 of this chapter.

1 5. Shall pay an additional assessment of one thousand two hundred
2 fifty dollars to be deposited by the state treasurer in the prison
3 construction and operations fund established by section 41-1651. This
4 assessment is not subject to any surcharge. If the conviction occurred in
5 the superior court or a justice court, the court shall transmit the assessed
6 monies to the county treasurer. If the conviction occurred in a municipal
7 court, the court shall transmit the assessed monies to the city treasurer.
8 The city or county treasurer shall transmit the monies received to the state
9 treasurer.

10 6. Shall pay an additional assessment of one thousand two hundred
11 fifty dollars to be deposited by the state treasurer in the public safety
12 equipment fund established by section 41-1723. This assessment is not
13 subject to any surcharge. If the conviction occurred in the superior court
14 or a justice court, the court shall transmit the assessed monies to the
15 county treasurer. If the conviction occurred in a municipal court, the court
16 shall transmit the assessed monies to the city treasurer. The city or county
17 treasurer shall transmit the monies received to the state treasurer.

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

25 M. In applying the eighty-four month provision of subsection K of this
26 section, the dates of the commission of the offense shall be the determining
27 factor, irrespective of the sequence in which the offenses were committed.

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

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

36 Sec. 3. Retroactivity

37 This act is effective retroactively to from and after December 31,
38 2011.