

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1217

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 5-395, Arizona Revised Statutes, is amended to
3 read:

4 5-395. Operating or in actual physical control of a motorized
5 watercraft while under the influence; violation;
6 classification; definition

7 A. It is unlawful for any person to operate or be in actual physical
8 control of a motorized watercraft that is underway within this state under
9 any of the following circumstances:

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

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

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

21 4. If the motorized watercraft is a commercial motorized watercraft
22 and the person has an alcohol concentration of 0.04 or more.

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

26 C. A person using a drug prescribed by a medical practitioner licensed
27 pursuant to title 32, ~~chapter 7, 11, 13 or 17~~ AND WHO IS AUTHORIZED TO

1 **PRESCRIBE THE DRUG**, is not guilty of violating subsection A, paragraph 3 of
2 this section.

3 D. The state shall not dismiss a charge of violating this section for
4 either of the following:

5 1. In return for a plea of guilty or no contest to any other offense
6 by the person charged with the violation of this section.

7 2. For the purpose of pursuing any other misdemeanor or a petty
8 offense, including those arising out of the same event or course of conduct,
9 unless there is clearly an insufficient legal or factual basis to pursue the
10 charge of violating this section.

11 E. In any prosecution for a violation of this section the state, for
12 the purpose of classification and sentencing pursuant to section 5-395.01 or
13 5-396, shall allege all prior convictions of violating this section occurring
14 within the past eighty-four months, unless there is clearly an insufficient
15 legal or factual basis to do so.

16 F. In a trial, action or proceeding for a violation of this section or
17 section 5-396 other than a trial, action or proceeding involving operating or
18 being in actual physical control of a commercial motorized watercraft, the
19 defendant's alcohol concentration within two hours of the time of operating
20 or being in actual physical control as shown by analysis of the defendant's
21 blood, breath or other bodily substance gives rise to the following
22 presumptions:

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

26 2. If there was at that time in excess of 0.05 but less than 0.08
27 alcohol concentration in the defendant's blood, breath or other bodily
28 substance, such fact shall not give rise to any presumption that the
29 defendant was or was not under the influence of intoxicating liquor, but such
30 fact may be considered with other competent evidence in determining the guilt
31 or innocence of the defendant.

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

4 G. Subsection F of this section shall not be construed as limiting the
5 introduction of any other competent evidence bearing on the question of
6 whether or not the defendant was under the influence of intoxicating liquor.

7 H. If a blood test is administered, only a physician, a registered
8 nurse or another qualified person may withdraw blood for the purpose of
9 determining the alcohol concentration or drug content. The qualifications of
10 the individual withdrawing the blood and the method used to withdraw the
11 blood are not foundational prerequisites for the admissibility of any blood
12 alcohol content determination made pursuant to this subsection.

13 I. If a law enforcement officer administers a duplicate breath test
14 and the person tested is given a reasonable opportunity to arrange for an
15 additional test pursuant to subsection J of this section, a sample of the
16 person's breath does not have to be collected or preserved.

17 J. The person tested shall be given a reasonable opportunity to
18 arrange for any physician, registered nurse or other qualified person of the
19 tested person's own choosing to administer a test or tests in addition to any
20 administered at the direction of a law enforcement officer. The failure or
21 inability to obtain an additional test by a person does not preclude the
22 admission of evidence relating to the test or tests taken at the direction of
23 a law enforcement officer.

24 K. If a person under arrest refuses to submit to a test or tests under
25 section 5-395.03, whether or not a sample was collected pursuant to
26 subsection L of this section or a search warrant, evidence of refusal is
27 admissible in any civil or criminal action or other proceeding. The issue of
28 refusal shall be an issue of fact to be determined by the trier of fact in
29 all cases.

30 L. Notwithstanding any other law, if a law enforcement officer has
31 probable cause to believe that a person has violated this section and a
32 sample of blood, urine or any other bodily substance is taken from that

1 person for any reason a portion of that sample sufficient for analysis shall
2 be provided to a law enforcement officer if requested for law enforcement
3 purposes. A person who fails to comply with this subsection is guilty of a
4 class 1 misdemeanor.

5 M. A person who collects blood, urine or any other bodily substance
6 under this section or any hospital, laboratory or clinic employing or
7 utilizing the services of the person does not incur any civil liability as a
8 result of this activity if requested by a law enforcement officer to collect
9 blood, urine or any other bodily substances unless the person, while
10 performing the activity, acts with gross negligence.

11 N. A statement by the defendant that the defendant was operating a
12 motorized watercraft that was underway and that was involved in an accident
13 resulting in injury to or death of any person is admissible in any criminal
14 proceeding without further proof of corpus delicti if it is otherwise
15 admissible.

16 O. At the arraignment, the court shall inform the defendant that the
17 defendant may request a trial by jury and that the request, if made, shall be
18 granted.

19 P. For the purposes of this section, "alcohol concentration" means
20 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
21 two hundred ten liters of breath.

22 Sec. 2. Section 28-1381, Arizona Revised Statutes, is amended to read:
23 28-1381. Driving or actual physical control while under the
24 influence; trial by jury; presumptions; admissible
25 evidence; sentencing; classification

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

28 1. While under the influence of intoxicating liquor, any drug, a vapor
29 releasing substance containing a toxic substance or any combination of
30 liquor, drugs or vapor releasing substances if the person is impaired to the
31 slightest degree.

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

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

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

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

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

15 D. A person using a drug as prescribed by a medical practitioner
16 licensed pursuant to title 32, ~~chapter 7, 11, 13 or 17~~ AND WHO IS AUTHORIZED
17 TO PRESCRIBE THE DRUG, is not guilty of violating subsection A, paragraph 3
18 of this section.

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

24 F. At the arraignment, the court shall inform the defendant that the
25 defendant may request a trial by jury and that the request, if made, shall be
26 granted.

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

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

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

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

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

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

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

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

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

22 4. Shall pay an additional assessment of five hundred dollars to be
23 deposited by the state treasurer in the prison construction and operations
24 fund established by section 41-1651. This assessment is not subject to any
25 surcharge. If the conviction occurred in the superior court or a justice
26 court, the court shall transmit the assessed monies to the county treasurer.
27 If the conviction occurred in a municipal court, the court shall transmit the
28 assessed monies to the city treasurer. The city or county treasurer shall
29 transmit the monies received to the state treasurer.

30 5. Shall pay an additional assessment of five hundred dollars to be
31 deposited by the state treasurer in the public safety equipment fund
32 established by section 41-1723. This assessment is not subject to any

1 surcharge. If the conviction occurred in the superior court or a justice
2 court, the court shall transmit the assessed monies to the county treasurer.
3 If the conviction occurred in a municipal court, the court shall transmit the
4 assessed monies to the city treasurer. The city or county treasurer shall
5 transmit the monies received to the state treasurer.

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

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

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

30 1. Shall be sentenced to serve not less than ninety days in jail,
31 thirty days of which shall be served consecutively, and is not eligible for

1 probation or suspension of execution of sentence unless the entire sentence
2 has been served.

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

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

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

18 5. Shall pay an additional assessment of one thousand two hundred
19 fifty dollars to be deposited by the state treasurer in the prison
20 construction and operations fund established by section 41-1651. This
21 assessment is not subject to any surcharge. If the conviction occurred in
22 the superior court or a justice court, the court shall transmit the assessed
23 monies to the county treasurer. If the conviction occurred in a municipal
24 court, the court shall transmit the assessed monies to the city treasurer.
25 The city or county treasurer shall transmit the monies received to the state
26 treasurer.

27 6. Shall pay an additional assessment of one thousand two hundred
28 fifty dollars to be deposited by the state treasurer in the public safety
29 equipment fund established by section 41-1723. This assessment is not
30 subject to any surcharge. If the conviction occurred in the superior court
31 or a justice court, the court shall transmit the assessed monies to the
32 county treasurer. If the conviction occurred in a municipal court, the court

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

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

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

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

16 O. After completing forty-five days of the revocation period
17 prescribed by subsection K of this section, a person whose driving privilege
18 is revoked for a violation of this section and who is sentenced pursuant to
19 subsection K of this section is eligible for a special ignition interlock
20 restricted driver license pursuant to section 28-1401.”

21 Amend title to conform

ADAM DRIGGS

2/17/15
1:53 PM
S: JA/ljs