

DRAFT #3

**AZ Game and Fish Commission Legislation
OUI/Clean up**

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-321.01, Arizona Revised Statutes, is
3 amended to read:

4 5-321.01. Staggered watercraft registration; rules

5 A. The commission shall establish a system of staggered
6 registration on a monthly basis in order to distribute the work of
7 registering watercraft as uniformly as practicable throughout the
8 twelve months of the calendar year.

9 B. All watercraft registrations provided for in this article
10 expire in accordance with the schedules established by the
11 commission. The commission may set the number of renewal periods
12 within a month from one each month to one each day depending on
13 which system is most economical and best accommodates the public.

14 C. The commission, in order to initiate the staggered
15 registration system, may register a watercraft for a period of
16 greater or less than twelve months up to a period of ~~eighteen~~
17 ~~THIRTY-SIX~~ months. If a registration period is set for a period
18 other than twelve months the commission may prorate the
19 registration fee.

20 D. The commission shall adopt rules necessary to accomplish
21 the purposes of this section.

22 Sec 2. Section 5-349, Arizona Revised Statutes, is amended to
23 read:

24 5-349. Watercraft casualties; violation; classification

25 A. The operator of a watercraft involved in a collision,
26 accident or other casualty shall, to the extent the operator can do
27 so without serious danger to the operator's own watercraft or
28 persons aboard, ~~IMMEDIATELY STOP THE WATERCRAFT AT THE SCENE OF THE~~
29 ~~ACCIDENT OR AS CLOSE TO THE ACCIDENT SCENE AS POSSIBLE BUT SHALL~~
30 ~~IMMEDIATELY RETURN TO THE ACCIDENT SCENE, AND SHALL~~ render all
31 practical and necessary assistance to persons affected to save them
32 from danger caused by the collision, accident or casualty ~~AND SHALL~~
33 ~~REMAIN ON SCENE OF THE ACCIDENT UNTIL THE OPERATOR HAS FULFILLED~~
34 ~~THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION.~~

35 B. The operator of a watercraft involved in a collision,
36 accident or other casualty shall give the operator's name and
37 address and the identification of the operator's watercraft to any
38 person injured and to the owners of any property damaged.

39 C. Whenever death or injury results from any watercraft
40 collision, accident or other casualty, a written report shall be
41 submitted within forty-eight hours. For every other collision,
42 accident or other casualty involving property damage exceeding five
43 hundred dollars, a report shall be submitted within five days after
44 the incident by the operator or owner of the watercraft involved.

1 Written reports shall be submitted directly to the department for
2 use in statistical studies for casualty prevention. Reports shall
3 not be used as evidence in any trial, civil or criminal, arising
4 from any collision, accident or other casualty. Upon request, a
5 report shall be forwarded to the United States coast guard or other
6 authorized federal agency to be used in statistical studies for
7 casualty prevention.

8 D. To maintain uniformity, watercraft casualty reports shall
9 be on a form approved by the commission.

10 E. Every peace officer who, in the regular course of duty,
11 investigates any watercraft collision, accident or other casualty
12 involving death or personal injury or involving property damage
13 exceeding five hundred dollars shall prepare and transmit a report
14 to the department pursuant to subsection C of this section.

15 F. If the operator of a watercraft is involved in a collision
16 or accident that results in death or serious physical injury, as
17 defined in section 13-105, and the operator fails to stop or comply
18 with the requirements of subsection A of this section, the operator
19 is guilty of a class 5 felony. If the operator of a watercraft is
20 involved in a collision or accident that results in injury other
21 than death or serious physical injury and the operator fails to
22 stop and comply with the requirements of subsection A of this
23 section, the operator is guilty of a class 6 felony. If the
24 operator of a watercraft is involved in a collision or accident
25 that results only in damage to another watercraft that is operated
26 or attended by another person, and the operator fails to stop and
27 comply with the requirements of subsection B of this section, the
28 operator is guilty of a class 3 misdemeanor.

29 Sec 3. Section 5-391, Arizona Revised Statutes, is amended to
30 read:

31 5-391. Enforcement; violation; classification

32 A. Any person who violates any provision of this chapter,
33 except section 5-341, subsection A, B, C or D, section 5-349,
34 section 5-350, subsection C, section 5-393, 5-395, 5-396 or 5-397
35 and subsection ~~C, F~~ or G of this section or any rule issued
36 thereunder, is guilty of a petty offense. Any person who violates
37 section 5-350, subsection C ~~or subsection C of this section is~~
38 guilty of a class 2 misdemeanor.

39 B. All peace officers of the state, counties and cities shall
40 enforce the provisions of this chapter and all laws and rules
41 relating to the operation of watercraft.

42 C. In the enforcement of this chapter, the operator of the
43 watercraft upon being hailed by any peace officer shall stop
44 immediately and lay to, or maneuver in such a way as to permit the
45 peace officer to come aboard or alongside. The operator may be
46 ordered ashore to correct any unlawful condition, issued a written
47 warning or written repair order, or issued a citation for any
48 violation of this chapter.

1 D. AN OPERATOR WHO WILFULLY FLEES OR ATTEMPTS TO ELUDE A
2 PURSUING LAW ENFORCEMENT OFFICER PURSUANT TO SUBSECTION C OF THIS
3 SECTION IS GUILTY OF A CLASS 5 FELONY. THE LAW ENFORCEMENT
4 WATERCRAFT SHALL BE APPROPRIATELY MARKED TO SHOW THAT IT IS AN
5 OFFICIAL LAW ENFORCEMENT WATERCRAFT.

6 DE. In the enforcement of this chapter, the provisions of
7 sections 13-2506 and 13-3903 shall apply.

8 EF. Each failure to obey an order or to comply with a warning
9 order issued under the provisions of subsection C of this section
10 shall constitute a separate offense punishable as a separate
11 violation of this chapter.

12 FG. A person is guilty of a class 6 felony who knowingly
13 removes, defaces, obliterates, changes, alters or causes to be
14 removed, defaced, obliterated, changed or altered a factory,
15 engine, serial, outdrive, lower unit, power trim or hull
16 identification number or mark on a watercraft.

17 GH. A person is guilty of a class 2 misdemeanor who:

18 1. Knowingly displays or has in his possession a fictitious,
19 stolen, revoked or altered certificate of number, department issued
20 number or annual decal.

21 2. Lends to or knowingly permits the use of his certificate of
22 number, department issued number or annual decal on a watercraft
23 for which those items have not been issued.

24 HI. Upon receipt of notice of conviction of a person under
25 subsection FG or GH of this section, the department may revoke the
26 numbers and decals issued to the watercraft which was involved in
27 the violation and any other watercraft owned by the person
28 convicted.

29 Sec 4. Section 5-395, Arizona Revised Statutes, is amended to
30 read:

31 5-395. Operating or in actual physical control of a motorized
32 watercraft while intoxicated; violation; classification; definition

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

36 1. While under the influence of intoxicating liquor, any drug,
37 a vapor releasing substance containing a toxic substance or any
38 combination of liquor, drugs or vapor releasing substances if the
39 person is impaired to the slightest degree.

40 2. If the person has an alcohol concentration of 0.08 or more
41 within two hours of operating or being in actual physical control
42 of the motorized watercraft and the alcohol concentration results
43 from alcohol consumed either before or while operating or being in
44 actual physical control of the motorized watercraft.

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

47 4. If the motorized watercraft is a commercial motorized
48 watercraft and the person has an alcohol concentration of 0.04 or
49 more.

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

4 C. A person using a drug prescribed by a medical practitioner
5 licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not
6 guilty of violating subsection A, paragraph 3 of this section.

7 ~~E~~D. The state shall not dismiss a charge of violating this
8 section for either of the following:

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

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

15 ~~D~~E. In any prosecution for a violation of this section the
16 state, for the purpose of classification and sentencing pursuant to
17 section 5-395.01 or 5-396, shall allege all prior convictions of
18 violating this section occurring within the past thirty-six months,
19 unless there is clearly an insufficient legal or factual basis to
20 do so.

21 E. In ~~any~~ trial, action or proceeding for a violation of this
22 section or section 5-396 other than a trial, action or proceeding
23 involving operating or being in actual physical control of a
24 commercial motorized watercraft, the defendant's alcohol
25 concentration within two hours of the time of operating or being in
26 actual physical control as shown by analysis of the defendant's
27 blood, breath or other bodily substance gives rise to the following
28 presumptions:

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

33 2. If there was at that time in excess of 0.05 but less than
34 0.08 alcohol concentration in the defendant's blood, breath or
35 other bodily substance, such fact shall not give rise to any
36 presumption that the defendant was or was not under the influence
37 of intoxicating liquor, but such fact may be considered with other
38 competent evidence in determining the guilt or innocence of the
39 defendant.

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

44 F. Paragraph 1, 2 or 3 of this subsection shall not be
45 construed as limiting the introduction of any other competent
46 evidence bearing on the question of whether or not the defendant
47 was under the influence of intoxicating liquor.

48 ~~F~~G. If a blood test is administered, only a physician, a
49 registered nurse or another qualified person may withdraw blood for

1 the purpose of determining the alcohol concentration or drug
2 content. The qualifications of the individual withdrawing the blood
3 and the method used to withdraw the blood are not foundational
4 prerequisites for the admissibility of any blood alcohol content
5 determination made pursuant to this subsection.

6 **GH.** If a law enforcement officer administers a duplicate
7 breath test and the person tested is given a reasonable opportunity
8 to arrange for an additional test pursuant to subsection **HI** of this
9 section, a sample of the person's breath does not have to be
10 collected or preserved.

11 **HI.** The person tested shall be given a reasonable opportunity
12 to arrange for any physician, registered nurse or other qualified
13 person of the tested person's own choosing to administer a test or
14 tests in addition to any administered at the direction of a law
15 enforcement officer. The failure or inability to obtain an
16 additional test by a person does not preclude the admission of
17 evidence relating to the test or tests taken at the direction of a
18 law enforcement officer.

19 **IJ.** If a person under arrest refuses to submit to a test or
20 tests under section 5-395.03, whether or not a sample was collected
21 pursuant to subsection J of this section or a search warrant,
22 evidence of refusal is admissible in any civil or criminal action
23 or other proceeding. The issue of refusal shall be an issue of fact
24 to be determined by the trier of fact in all cases.

25 **JK.** Notwithstanding any other law, if a law enforcement
26 officer has probable cause to believe that a person has violated
27 this section and a sample of blood, urine or any other bodily
28 substance is taken from that person for any reason a portion of
29 that sample sufficient for analysis shall be provided to a law
30 enforcement officer if requested for law enforcement purposes. A
31 person who fails to comply with this subsection is guilty of a
32 class 1 misdemeanor.

33 **KL.** A person who collects blood, urine or any other bodily
34 substance under this section or any hospital, laboratory or clinic
35 employing or utilizing the services of the person does not incur
36 any civil liability as a result of this activity if requested by a
37 law enforcement officer to collect blood, urine or any other bodily
38 substances unless the person, while performing the activity, acts
39 with gross negligence.

40 **LM.** A statement by the defendant that the defendant was
41 operating a motorized watercraft that was underway and that was
42 involved in an accident resulting in injury to or death of any
43 person is admissible in any criminal proceeding without further
44 proof of corpus delicti if it is otherwise admissible.

45 **MN.** At the arraignment, the court shall inform the defendant
46 that the defendant may request a trial by jury and that the
47 request, if made, shall be granted.

1 NO. In this section, "alcohol concentration" means grams of
2 alcohol per one hundred milliliters of blood or grams of alcohol
3 per two hundred ten liters of breath.

4 Sec. 5. Section 5-395.01, Arizona Revised Statutes, is
5 amended to read:

6 5-395.01. Operating or in actual physical control of a
7 motorized watercraft while intoxicated; classification; penalties

8 A. A person who is convicted of a violation of section 5-395
9 ~~is guilty of a class 1 misdemeanor.:~~

10 1. SHALL BE SENTENCED TO SERVE NOT LESS THAN TEN CONSECUTIVE
11 DAYS IN JAIL AND IS NOT ELIGIBLE FOR PROBATION OR SUSPENSION OF
12 EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE IS SERVED.

13 2. ~~The person~~ Shall pay a fine of not less than two hundred
14 fifty dollars.

15 3. ~~In addition to any other penalties under this section, the~~
16 ~~judge shall order the person~~ MAY BE ORDERED BY A COURT TO PERFORM
17 COMMUNITY RESTITUTION to complete alcohol or other drug screening
18 that is provided by a facility approved by the department of health
19 services or a probation department. ~~If a judge determines that the~~
20 ~~person requires further alcohol or other drug education or~~
21 ~~treatment, the person may be required pursuant to court order to~~
22 ~~obtain alcohol or other drug education or treatment under the~~
23 ~~court's supervision from an approved facility. The judge may review~~
24 ~~an education or treatment determination at the request of the state~~
25 ~~or the defendant or on the judge's initiative. The person shall pay~~
26 ~~the costs of the screening, education or treatment unless the court~~
27 ~~waives part or all of the costs.~~

28 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS
29 TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION
30 AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
31 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
32 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
33 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE
34 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT
35 THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
36 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
37 TREASURER.

38 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS
39 TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND.
40 THIS ASSESMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
41 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
42 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE
43 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT
44 THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
45 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
46 TREASURER.

47 B. Except as provided in section 5-398.01, NOTWITHSTANDING
48 SUBSECTION A, PARAGRAPH 1 OF THIS SECTION, the ~~court~~ JUDGE may
49 suspend ~~any imposed sentence for a first violation of section 5-395~~

1 ALL BUT TWENTY-FOUR CONSECUTIVE HOURS OF THE SENTENCE if the person
2 completes a court ordered alcohol or other drug screening,
3 education or treatment program. If the person fails to complete the
4 court ordered alcohol or other drug screening, education or
5 treatment program and has not been placed on probation, the court
6 shall issue an order to show cause to the defendant as to why the
7 remaining jail sentence should not be served.

8 ~~C. A court may order a person sentenced pursuant to this~~
9 ~~section to perform community restitution.~~

10 ~~DC. Notwithstanding subsection B of this section,~~ If within a
11 period of ~~sixty~~ EIGHTY-FOUR months a person is convicted of a
12 second violation of section 5-395 or is convicted of a violation of
13 section 5-395 and has previously been convicted of an act in
14 another ~~state~~ JURISDICTION that if committed in this state would be
15 a violation of section 5-395, the person:

16 1. Shall be sentenced to serve not less than ninety days in
17 jail, thirty days of which shall be served consecutively, and ~~the~~
18 ~~person~~ is not eligible for probation or suspension of execution of
19 sentence unless the entire sentence has been served, ~~except that~~
20 ~~the judge may suspend at the time of sentencing all but thirty days~~
21 ~~of the sentence if the person completes a court ordered alcohol or~~
22 ~~other drug screening, education or treatment program. If the person~~
23 ~~fails to complete the court ordered alcohol or other drug~~
24 ~~screening, education or treatment program and has not been placed~~
25 ~~on probation, the court shall issue an order to show cause as to~~
26 ~~why the remaining jail sentence should not be served. The judge~~

27 2. Shall ~~order the person to~~ pay a fine of not less than five
28 hundred dollars.

29 3. SHALL BE ORDERED BY A COURT TO PERFORM AT LEAST THIRTY
30 HOURS OF COMMUNITY RESTITUTION.

31 4. SHALL PAY AN ADDITIONAL ASSESMENT OF ONE THOUSAND TWO
32 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE
33 PRISON CONSRTUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-
34 1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
35 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE
36 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER.
37 IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL
38 TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR
39 COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
40 TREASURER.

41 5. SHALL PAY AN ADDITIONAL ASSESMENT OF ONE THOUSAND TWO
42 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE
43 STATE GENERAL FUND. THIS ASSESMENT IS NOT SUBJECT TO ANY
44 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A
45 JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
46 COUNTRYR TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
47 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
48 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES
49 RECEIVED TO THE STATE TREASURER.

1 D. NOTWITHSTANDING SUBSECTION C, PARAGRAPH 1 OF THIS SECTION,
2 AT THE TIME OF SENTENCING, THE JUDGE MAY SUSPEND ALL BUT THIRTY
3 DAYS OF THE SENTENCE IF THE PERSON COMPLETES A COURT ORDERED
4 ALCOHOL OR OTHER DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM.
5 IF THE PERSON FAILS TO COMPLETE THE COURT ORDERED ALCOHOL OR OTHER
6 DRUG SCREENING, EDUCATION OR TREATMENT PROGRAM AND HAS NOT BEEN
7 PLACED ON PROBATION, THE COURT SHALL ISSUE AN ORDER TO SHOW CAUSE
8 AS TO WHY THE REMAINING JAIL SENTENCE SHOULD NOT BE SERVED.

9 ~~E. The dates of the commission of the offense are the~~
10 ~~determining factor~~—In applying the ~~sixty~~ EIGHTY-FOUR month
11 provision of subsection D of this section, irrespective of the
12 sequence in which the offenses were committed.

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

16 ~~F. If a person is referred to a screening or treatment~~
17 ~~facility, that facility shall report to the court whether the~~
18 ~~person has successfully completed the screening, education or~~
19 ~~treatment program.~~

20 ~~G. Any political subdivision processing or utilizing the~~
21 ~~services of a person ordered to perform community restitution~~
22 ~~pursuant to this section does not incur any civil liability to the~~
23 ~~person ordered to perform community restitution as a result of~~
24 ~~these activities unless the political subdivision or its agent or~~
25 ~~employee acts with gross negligence.~~

26 ~~H. After a person who is sentenced pursuant to subsection B of~~
27 ~~this section has served twenty four consecutive hours in jail or~~
28 ~~after a person who is sentenced pursuant to subsection D of this~~
29 ~~section has served forty eight consecutive hours in jail and after~~
30 ~~receiving confirmation that the person is employed or is a student,~~
31 ~~the court, on pronouncement of any jail sentence under this~~
32 ~~section, may provide in the sentence that the person may be~~
33 ~~permitted, if the person is employed or is a student and can~~
34 ~~continue the person's employment or studies, to continue such~~
35 ~~employment or studies for not more than twelve hours per day nor~~
36 ~~more than five days per week, and the remaining day, days or parts~~
37 ~~of days shall be spent in jail until the sentence is served. The~~
38 ~~person shall be allowed out of jail only long enough to complete~~
39 ~~the actual hours of employment or studies and no longer.~~

40 ~~I. A person who is sentenced pursuant to this section is~~
41 ~~eligible for a home detention program pursuant to the provisions of~~
42 ~~section 9 499.07, subsections M through R or section 11 459,~~
43 ~~subsections L through Q.~~

44 ~~J. The court shall allow the allegation of a prior conviction~~
45 ~~or other pending charge of a violation of section 5-395 filed~~
46 ~~twenty or more days before the date the case is actually tried and~~
47 ~~may allow the allegation of a prior conviction or other pending~~
48 ~~charge of a violation of section 5-395 filed any time before the~~
49 ~~date the case is actually tried, provided that when the allegation~~

1 ~~is filed this state must make available to the defendant a copy of~~
2 ~~any information obtained concerning the prior conviction or other~~
3 ~~pending charge. Any conviction may be used to enhance another~~
4 ~~conviction irrespective of the dates on which the offenses occurred~~
5 ~~within the sixty month provision.~~

6 ~~K. If a person is placed on probation for violating section 5-~~
7 ~~395, the probation shall be supervised unless the court finds that~~
8 ~~supervised probation is not necessary or the court does not have~~
9 ~~supervisory probation services.~~

10 ~~L. Persons who are convicted pursuant to section 5 395 shall~~
11 ~~pay an additional assessment of five hundred dollars or, if the~~
12 ~~person is convicted of a second violation pursuant to subsection D~~
13 ~~of this section, shall pay an additional assessment of one thousand~~
14 ~~two hundred fifty dollars to be deposited by the state treasurer in~~
15 ~~the prison construction and operations fund established by section~~
16 ~~41-1651. These assessments are not subject to any surcharge. If the~~
17 ~~conviction occurred in the superior court or a justice court, the~~
18 ~~court shall transmit the assessed monies to the county treasurer.~~
19 ~~If the conviction occurred in a municipal court, the court shall~~
20 ~~transmit the assessed monies to the city treasurer. The city or~~
21 ~~county treasurer shall transmit the monies received to the state~~
22 ~~treasurer.~~

23 ~~M. Persons convicted pursuant to section 5 395 shall pay an~~
24 ~~additional assessment of five hundred dollars or for a second~~
25 ~~violation pursuant to subsection D of this section shall pay an~~
26 ~~additional assessment of one thousand two hundred fifty dollars to~~
27 ~~be deposited by the state treasurer in the state general fund.~~
28 ~~These assessments are not subject to any surcharge. If the~~
29 ~~conviction occurred in the superior court or a justice court, the~~
30 ~~court shall transmit the assessed monies to the county treasurer.~~
31 ~~If the conviction occurred in a municipal court, the court shall~~
32 ~~transmit the assessed monies to the city treasurer. The city or~~
33 ~~county treasurer shall transmit the monies received to the state~~
34 ~~treasurer.~~

35 Sec. 6. Section 5-395.02, Arizona Revised Statutes, is
36 amended to read:

37 5-395.02. Admissibility of breath test or other records

38 A. The results of a breath test administered for the purpose
39 of determining a person's alcohol concentration as defined in
40 section 5-395 are admissible as evidence in any trial, action or
41 proceeding on establishing the following foundational requirements:

42 1. The test was performed using a quantitative breath testing
43 device approved by the ~~department of health services or the~~
44 department of public safety. A properly authenticated certification
45 by the ~~department of health services or the~~ department of public
46 safety or judicial notice of ~~department of health services or~~
47 department of public safety rules is sufficient to establish this
48 requirement.

1 2. The operator who conducted the test possessed a valid
2 permit issued by the department of health services or the
3 department of public safety to operate the device used to conduct
4 the test.

5 3. Duplicate tests were administered and the test results were
6 within 0.02 alcohol concentration of each other ~~or~~ AND an operator
7 observed the person charged with the violation for ~~twenty~~ FIFTEEN
8 minutes immediately preceding the administration of the test.

9 4. The operator who conducted the test followed an operational
10 checklist approved by the ~~department of health services or the~~
11 department of public safety for the operation of the device used to
12 conduct the test. The testimony of the operator is sufficient to
13 establish this requirement.

14 5. The device used to conduct the test was in proper operating
15 condition. Records of periodic maintenance that show that the
16 device was in proper operating condition are admissible in any
17 proceeding as prima facie evidence that the device was in proper
18 operating condition at the time of the test. Calibration checks
19 with a standard alcohol concentration solution bracketing each
20 person's duplicate breath test are one type of records of periodic
21 maintenance that satisfies the requirements of this section. The
22 records are public records.

23 B. Compliance with subsection A of this section is the only
24 requirement for the admission in evidence of a breath test result.

25 C. The inability of any person to obtain manufacturer's
26 schematics and software for a quantitative breath testing device
27 that is approved as prescribed in subsection A of this section
28 shall not affect the admissibility of the results of a breath test
29 pursuant to this section.

30 D. Records that may be obtained or are otherwise maintained
31 pursuant to section 28-1327 are admissible as evidence in any
32 trial, action or proceeding.

33 Sec. 7. Section 5-395.03, Arizona Revised Statutes, is
34 amended to read:

35 5-395.03. Test for alcohol concentration or drug content;
36 refusal; civil penalty

37 A. Any person who operates a motorized watercraft that is
38 underway within this state ~~shall submit~~ GIVES THEIR CONSENT,
39 subject to section 4-244, paragraph 34, section 5-395 or section 5-
40 396, to a test or tests of the person's blood, breath, urine or
41 other bodily substance for the purpose of determining alcohol
42 concentration or drug content if the person is arrested for any
43 offense arising out of acts alleged to have been committed in
44 violation of this chapter or section 4-244, paragraph 34 while the
45 person was operating or in actual physical control of a motorized
46 watercraft that was underway while under the influence of
47 intoxicating liquor or drugs. The test or tests chosen by the law
48 enforcement agency shall be administered at the direction of a law
49 enforcement officer having reasonable grounds to believe the person

1 to have been operating or in actual physical control of a motorized
2 watercraft that is underway within this state while under the
3 influence of intoxicating liquor or drugs, or if the person is
4 under twenty-one years of age, with spirituous liquor in the
5 person's body.

6 B. Following an arrest a violator shall be requested to submit
7 to and successfully complete any test or tests prescribed by
8 subsection A of this section, and if the violator refuses the
9 violator shall be informed that the violator is subject to a civil
10 penalty.

11 C. A person who refuses any test or tests prescribed by
12 subsection A of this section is subject to a civil penalty of ~~seven~~
13 ~~hundred fifty~~ ~~THREE THOUSAND~~ dollars and shall pay an additional
14 civil penalty of ~~five hundred~~ ~~ONE THOUSAND~~ dollars to be deposited
15 by the state treasurer in the prison construction and operations
16 fund established by section 41-1651. The additional civil penalty
17 of ~~five hundred~~ ~~ONE THOUSAND~~ dollars is not subject to any
18 surcharge. If the additional civil penalty is imposed by the
19 superior court or a justice court, the court shall transmit the
20 amount collected for the additional civil penalty to the county
21 treasurer. If the additional civil penalty is imposed by a
22 municipal court, the court shall transmit the amount collected for
23 the additional civil penalty to the city treasurer. The city or
24 county treasurer shall transmit the monies received pursuant to
25 this subsection to the state treasurer.

26 D. If a person under arrest refuses to submit to the test
27 designated by the law enforcement agency as provided in subsection
28 A of this section none shall be given, except as provided in
29 section 5-395, subsection ~~JK~~ or pursuant to a search warrant.

30 Sec. 8. Section 5-395.03, Arizona Revised Statutes, is
31 amended to read:

32 5-395.04. Preliminary breath tests; authority

33 A. A law enforcement officer who has reasonable suspicion to
34 believe that a person has committed a violation of section 5-395
35 may request that the person submit to a preliminary breath test or
36 tests before an arrest.

37 B. In addition to a breath test or tests the officer may
38 require that the person submit to further testing pursuant to
39 section 5-395.03.

40 C. The director of the ~~department of health services or the~~
41 department of public safety shall adopt rules prescribing the
42 approval of quantitative preliminary breath testing devices.

43 Sec. 9. Section 5-396, Arizona Revised Statutes, is amended
44 to read:

45 5-396. Aggravated operating or actual physical control of
46 motorized watercraft while under the influence of intoxicating
47 liquor or drugs; classification

48 A. A person is guilty of aggravated operating or actual
49 physical control of a motorized watercraft that is underway while

1 under the influence of intoxicating liquor or drugs if the person
2 DOES ANY OF THE FOLLOWING:

3 1. WITHIN A PERIOD OF EIGHTY-FOUR MONTHS commits a third or
4 subsequent violation of section 5-395 or 5-397 or this section or
5 is convicted of a violation of section 5-395 or 5-397 or this
6 section and has previously been convicted of any combination of
7 convictions of section 5-395 or 5-397 or this section or acts
8 committed in another ~~state~~-JURISDICTION that if committed in this
9 state would be a violation of section 5-395 or 5-397 or this
10 section ~~within a period of sixty months~~.

11 2. WHILE A PERSON UNDER FIFTEEN YEARS OF AGE IS ABOARD THE
12 MOTORIZED WATERCRAFT, COMMITS A VIOLATION OF EITHER:

13 (a) SECTION 5-395

14 (b) SECTION 5-397

15 B. The dates of the commission of the offenses are the
16 determining factor in applying the ~~sixty~~-EIGHTY-FOUR month
17 provision provided in subsection A, PARAGRAPH 1 of this section
18 regardless of the sequence in which the offenses were committed.
19 For purposes of this section, a third or subsequent violation for
20 which a conviction occurs does not include a conviction for an
21 offense arising out of the same series of acts. THE TIME THAT A
22 PROBATIONER IS FOUND TO BE ON ABSCONDER STATUS OR THE TIME THAT A
23 PERSON IS INCARCERATED IN ANY STATE, FEDERAL, COUNTY OR CITY JAIL
24 OR CORRECTIONAL FACILITY IS EXCLUDED WHEN DETERMINING THE EIGHTY-
25 FOUR MONTH PERIOD PROVIDED IN SUBSCRTION A, PARAGRAPH 1 AND
26 SUBSECTION E OF THIS SECTION.

27 C. Aggravated operating or actual physical control of a
28 motorized watercraft that is underway while under the influence of
29 intoxicating liquor or drugs is a class 4 felony.

30 D. ~~Notwithstanding section 41-1604.06,~~ A person ~~who is~~
31 ~~convicted under subsection A of this section and who within a sixty~~
32 ~~month period has been convicted of two prior violations of section~~
33 ~~5-395 or 5-397 or this section, or acts committed in another state~~
34 ~~that if committed in this state would be a violation of section 5-~~
35 ~~395 or 5-397 or this section,~~ is not eligible for probation,
36 pardon, commutation or suspension of sentence or release on any
37 other basis until the person has served not less than four months
38 in prison IF THE PERSON IS CONVICTED UNDER SUBSECTION A, PARAGRAPH
39 1 OF THIS SECTION AND WITHIN AN EIGHTY-FOUR MONTH PERIOD HAS BEEN
40 CONVICTED OF TWO PRIOR VIOLATIONS OF SECTION 5-395, SECTION 5-397
41 OR THIS SECTION, OR ANY COMBINATION OF THOSE SECTIONS, OR ACTS IN
42 ANOTHER JURISDECTION THAT IF COMMITTED IN THIS STATE WOULD BE A
43 VIOLATION OF SECTION 5-395, SECTION 5-397 OR THIS SECTION.

44 E. ~~Notwithstanding section 41-1604.06,~~ A person who is
45 convicted under subsection A, PARAGRAPH 1 of this section and who
46 within a ~~sixty~~-EIGHTY-FOUR month period has been convicted of three
47 or more prior violations of section 5-395 or 5-397 or this section,
48 or acts committed in another state that if committed in this state
49 would be a violation of section 5-395 or 5-397 or this section, is

1 not eligible for probation, pardon, commutation or suspension of
2 sentence or release on any other basis until the person has served
3 not less than eight months in prison.

4 F. A PERSON WHO IS CONVICTED UNDER SUBSECTION A PARAGRAPH 2,
5 SUBDIVISION (a) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM
6 TERM OF INCARCERATION REQUIRED PURSUANT TO SECTION 5-395.

7 G. A PERSON WHO IS CONVICTED UNDER SUBSECTION A, PARAGRAPH 2,
8 SUBDIVISION (b) OF THIS SECTION SHALL SERVE AT LEAST THE MINIMUM
9 TERM OF INCARCERATION REQUIRED PURSUANT TO SECTION 5-397.

10 FH. A person who is convicted of a violation of this section
11 and who is placed on probation shall attend and complete alcohol or
12 drug screening, counseling and education from an approved facility
13 and, if ordered by the court, treatment from an approved facility.
14 If the person fails to comply with this subsection, in addition to
15 section 13-901 the court may order that the person be incarcerated
16 as a term of probation as follows:

17 1. For a person sentenced pursuant to subsection D of this
18 section, for an individual period of not more than four months and
19 a total period of not more than one year.

20 2. For a person sentenced pursuant to subsection E of this
21 section, for an individual period of not more than eight months and
22 a total period of not more than two years.

23 GI. The time that a person spends in custody pursuant to
24 subsection ~~D, E or F-H~~ of this section shall not be counted toward
25 the sentence imposed if the person's probation is revoked and the
26 person is sentenced to prison following revocation of probation.

27 HJ. ON CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT:

28 1. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL
29 ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED
30 FIFTY DOLLARS. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR
31 A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO
32 THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
33 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
34 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES
35 RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT
36 THE MONIED RECEIVED IN THE DRIVING UNDER THE INFLUENCE FUND
37 ESTABLISHED BY SECTION 28-1304. ANY FINE IMPOSED FOR A VIOLATION
38 OF THIS SECTION AND ANY ASSESSMENTS, RESTITUTION AND INCARCERATION
39 COSTS SHALL BE PAID BEFORE THE ASSESSMENT PRESCRIBED IN THIS
40 PARAGRAPH.

41 2. ~~A SHALL ORDER THE person convicted of a violation of this~~
42 ~~section shall TO~~ pay a fine of not less than seven hundred fifty
43 dollars.

44 I3. In addition to any other penalty prescribed by law,
45 persons convicted pursuant to this section shall pay an additional
46 assessment of one thousand five hundred dollars to be deposited by
47 the state treasurer in the prison construction and operations fund
48 established by section 41-1651. This assessment is not subject to
49 any surcharge. If the conviction occurred in the superior court or

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

6 ¶4. In addition to any other penalty prescribed by law,
7 persons convicted pursuant to this section shall pay an additional
8 assessment of one thousand five hundred dollars to be deposited by
9 the state treasurer in the state general fund. This assessment is
10 not subject to any surcharge. If the conviction occurred in the
11 superior court or a justice court, the court shall transmit the
12 assessed monies to the county treasurer. If the conviction occurred
13 in a municipal court, the court shall transmit the assessed monies
14 to the city treasurer. The city or county treasurer shall transmit
15 the monies received to the state treasurer.

16 K. AGGRAVATED OPERATING OR ACTUAL PHYSICAL CONTROL OF A
17 MORORIZED WATERCRAFT THAT IS UNDERWAY WHILE UNDER THE INFLUENCE OF
18 INTOXICATING LIQUOR OR DRUGS COMMITTED UNDER:

- 19 1. SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS A CLASS 4
20 FELONY.
- 21 2. SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS A CLASS 6
22 FELONY.

23
24 Sec 10. Section 5-397, Arizona Revised Statutes, is amended
25 to read:

26 5-397. Operating or in actual physical control of a motorized
27 watercraft while under the extreme influence of intoxicating
28 liquor; trial by jury; sentencing; classification; definition

29 A. It is unlawful for a person to operate or be in actual
30 physical control of a motorized watercraft that is underway within
31 this state if the person has an alcohol concentration of 0.15 or
32 more within two hours of operating or being in actual physical
33 control of the motorized watercraft and the alcohol concentration
34 results from alcohol consumed either before or while operating or
35 being in actual physical control of the motorized watercraft.

36 B. A person who is convicted of a violation of this section is
37 guilty of operating or being in actual physical control of a
38 motorized watercraft while under the extreme influence of alcohol.

39 C. At the arraignment, the court shall inform the defendant
40 that the defendant may request a trial by jury and that the
41 request, if made, shall be granted.

42 D. A person who is convicted of a violation of this section:

- 43 1. Shall be sentenced to serve not less than thirty
44 consecutive days in jail and is not eligible for probation or
45 suspension of execution of sentence unless the entire sentence is
46 served. A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR MORE
47 SHALL BE SENTENCED TO SERVE NOT LESS THAN FORTY-FIVE CONSECURITIVE
48 DAYS IN JAIL AND IS NOT ELIGIBLE FOR PROGRATION OR SUSPENTION OF
49 EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE IS SERVED.

1 2. Shall pay a fine of not less than two hundred fifty
2 dollars, EXCEPT THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF
3 0.20 OR MORE SHALL PAY A FINE OF NOT LESS THAN FIVE HUNDRED
4 DOLLARS. THE FINE PRESCRIBED IN THIS PARAGRAPH AND ANY
5 ASSESSMENTS, RESTITUTION AND INCARCERATION COSTS SHALL BE PAID
6 BEFORE THE ASSESSMENT PRESCRIBED IN PARAGRAPH 3 OF THIS SECTION.

7 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY
8 DOLLARS. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A
9 JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
10 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT,
11 THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
12 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
13 THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT THE MONIES
14 IN THE DRIVING UNDER THE INFLUENCE FUND ESTABLISHED BY SECTION 28-
15 1304.

16 ~~34.~~ May be ordered by a court to perform community
17 restitution.

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

28 ~~56.~~ Shall pay an additional assessment of one thousand dollars
29 to be deposited by the state treasurer in the state general fund.
30 This assessment is not subject to any surcharge. If the conviction
31 occurred in the superior court or a justice court, the court shall
32 transmit the assessed monies to the county treasurer. If the
33 conviction occurred in a municipal court, the court shall transmit
34 the assessed monies to the city treasurer. The city or county
35 treasurer shall transmit the monies received to the state
36 treasurer.

37 E. Notwithstanding subsection D, paragraph 1 of this section,
38 at the time of sentencing IF THE PERSON HAS AN ALCOHOL
39 CONCENTRATION OF LESS THAN 0.20, the judge may suspend all but ten
40 days of the sentence if the person completes a court ordered
41 alcohol or other drug screening, education or treatment program. If
42 the person fails to complete the court ordered alcohol or other
43 drug screening, education or treatment program and has not been
44 placed on probation, the court shall issue an order to show cause
45 to the defendant as to why the remaining jail sentence should not
46 be served.

47 F. If within a period of ~~sixty~~-EIGHTY-FOUR months a person is
48 convicted of a second violation of this section or is convicted of
49 a violation of this section and has previously been convicted of a

1 violation of section 5-395 or 5-396 or an act in another
2 jurisdiction that if committed in this state would be a violation
3 of this section or section 5-395 or 5-396, the person:

4 1. EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, shall be
5 sentenced to serve not less than one hundred twenty days in jail,
6 sixty days of which shall be served consecutively, and is not
7 eligible for probation or suspension of execution of sentence
8 unless the entire sentence has been served. A PERSON WHO HAS AN
9 ALCOHOL CONCENTRATION OF 0.20 OR MORE SHALL BE SENTENCED TO SERVE
10 NOT LESS THAN ONE HUNDRED EIGHTY DAYS IN JAIL, NINETY OF WHICH
11 SHALL BE SERVED CONSECUTIVELY, AND IS NOT ELIBIBLE FOR PROBATION OR
12 SUSPENSION OF EXECUTION OF SENTENCE UNLESS THE ENTIRE SENTENCE HAS
13 BEEN SERVED.

14 2. Shall pay a fine of not less than five hundred dollars,
15 EXCEPT THAT A PERSON WHO HAS AN ALCOHOL CONCENTRATION OF 0.20 OR
16 MORE SHALL PAY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS. THE
17 FINE PRESCRIBED IN THIS PARAGRAPH AND ANY ASSESSMENTS, RESTITUTION
18 AND INCARCERATION COSTS SHALL BE PAID BEFORE THE ASSESSMENT
19 PRESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION.

20 3. SHALL PAY AN ADDITIONAL ASSESSMENT OF TWO HUNDRED FIFTY
21 DOLLARS. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A
22 JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
23 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT,
24 THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
25 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
26 THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT THE MONIES
27 IN THE DRIVING UNDER THE INFLUENCE FUND ESTABLISHED BY SECTION 28-
28 1304.

29 ~~34. May~~ SHALL be ordered by a court to perform AT LEAST THIRTY
30 HOURS OF community restitution.

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

41 5. Shall pay an additional assessment of one thousand two
42 hundred fifty dollars to be deposited by the state treasurer in the
43 state general fund. This assessment is not subject to any
44 surcharge. If the conviction occurred in the superior court or a
45 justice court, the court shall transmit the assessed monies to the
46 county treasurer. If the conviction occurred in a municipal court,
47 the court shall transmit the assessed monies to the city treasurer.
48 The city or county treasurer shall transmit the monies received to
49 the state treasurer.

1 G. Notwithstanding subsection F, paragraph 1 of this section,
2 at the time of sentencing, **IF THE PERSON HAS AN ALCOHOL**
3 **CONCENTRATION OF LESS THAN 0.20**, the judge may suspend all but
4 sixty days of the sentence if the person completes a court ordered
5 alcohol or other drug screening, education or treatment program. If
6 the person fails to complete the court ordered alcohol or other
7 drug screening, education or treatment program and has not been
8 placed on probation, the court shall issue an order to show cause
9 as to why the remaining jail sentence should not be served.

10 H. In applying the ~~sixty~~**EIGHTY-FOUR** month provision of
11 subsection F of this section, the dates of the commission of the
12 offense shall be the determining factor, irrespective of the
13 sequence in which the offenses were committed.

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

17 J. A person who is convicted of a violation of this section is
18 guilty of a class 1 misdemeanor.

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