

STATE
General Reference:

ALABAMA
Code of Alabama

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol ¹ §32-5A-191(a)(2)
Illegal Per Se Law (BAC/BrAC):	≥.08 32-5A-191 (a)(1) ≥.02 ² School Bus and Day Care Vehicle Operators §32-5A- 191 (c) <u>Persons Under 21 Years Old</u> ≥ .02 §32-5A-191(b)
Presumption (BAC/BrAC):	≥.08 32-5A-194 (b)(3) ≥.02 Presumption of driving under the influence of alcohol for School Bus Drivers and Day Care Vehicle Operators. §32-5A-194 (b)(3) ≥.02 Presumption of driving under the influence of alcohol for persons under 21. §32-5A-194 (b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Substance , (2) a Controlled Substance or (3) Alcohol and a Controlled Substance §32-5A-191(a)(3), (4) and (5)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes 32-5-192
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) 32-5A-194(c)
Other Information:	Accident Related Implied Consent Law. Under separate provisions of law, a person who is involved in an accident which resulted in a “serious physical injury”, and where there are reasonable grounds that they were driving while under the influence of alcohol, amphetamines, opiates or cannabis, shall be deemed to have given consent to a test of their blood for the purpose of determining the alcoholic

¹ In *Ex Parte Buckner*, 549 So. 2d 451 (Ala. 1989), the Alabama Supreme Court held that the term “under the influence of alcohol” means “having consumed such an amount of alcohol as to affect his ability to operate a vehicle in a safe manner” (549 So. 2d at 454).

² Standard: Percentage of alcohol by weight in the blood. However, the law defines this as grams of alcohol per 100 cubic centimeters of blood or grams of alcohol per 210 liters of breath. §32-5A-194(a)(5). This definition, therefore, establishes illegal per se based on breath.

content or the presence of the drugs listed.
§32-5-192.1(a)

Special Note: A person arrested for a DWI offense shall not be released until their BAC/BrAC is <.08 (for persons under 21, <.02). §32-5A-191(l)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood: **Yes** §32-5-192
 Urine: **Yes** §32-5-192
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** – Alcohol Evaluation Required. §32-5A-191(g)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail): **N/A**
 Administrative Licensing Action (Susp/Rev): **N/A**
 Other: **N/A**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev):

First Refusal – Suspension – 90 days (mand); Second Alcohol Or Drug-Related Enforcement Contact³ (within 5 years) – Suspension – 1 year (mand); Third or Fourth Alcohol Or Drug-Related Enforcement Contact (within 5 years) – Suspension – 3 years (mand); Fifth or Subsequent Alcohol Or Drug-Related Enforcement Contact (within 5 years) – Suspension – 5 years (mand). §§32-5A-300, 32-5A-304 and 32-5A-305.

Other: **Refusing to Submit to a Test Under the Accident Related Implied Consent Law– Suspension – 2 years.** §32-5A-192.1(a)
 This suspension appears to be mandatory.⁴

³ An “alcohol or drug-related enforcement contact” includes either a refusal, admin. per se violation or a conviction for a drunk-driving offense.

⁴ However, the Director of Public Safety may reduce the suspension period for refusal if it is determined that the driver was not at fault in causing the accident. §32-5-192.1(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: Imprisonment/Fine:	<u>First offense</u> – Not more than 1 year, \$600 to \$2,100 ⁵ ; <u>second offense</u> (within 5 years) – Not more than 1 year, \$1,100 to \$5,100 ; <u>third offense</u> (within 5 years) – 60 days to 1 year, \$2,100 to \$10,100 ; <u>fourth or subsequent offense</u> (within 5 years) (Class C felony) 1 year and 1 day to 10 years, \$4,100 to \$10,100 §32-5A-191(e), (f), (g) and (h) <u>Serious Bodily Injury related to a DWI Offense</u> (assault in the first degree– Class B felony): 2 to 20 years ⁶ , not more than \$10,000 . §§13A-5-6(a)(2), 13A-5-11(a)(2) and 13A-6-20(a)(5) and (b)
Mandatory Minimum Term:	For non-injury DWI offenses: <u>second offense</u> – 5 days ⁷ ; <u>third offense</u> – 60 days ; <u>fourth or subsequent offense</u> – 10 days in county jail ⁸
Mandatory Minimum Fine (\$):	<u>First offense</u> – \$600 ; <u>second offense (within 5 years)</u> – \$1,100 ; <u>third offense</u> – \$2,100 ; <u>fourth or subsequent offense</u> – \$4,100 .
Other Penalties: Community Service:	<u>Second offense</u> (within 5 years) – Not less than 30 days §32-5A-191(c) and (d)
Restitution (e.g., Victim's Fund)	Yes – Victims' Compensation Fund. §15-23-1 et seq. Special Note: Under 15-18-65 et seq., a defendant may be required to pay restitution to a victim (or a victim's representative) as a result of damages caused by the defendant's criminal behavior.
Other:	Court Authorized Licensing Action: In addition to any other sanction for a criminal violation of the traffic laws, the court may issue an order “forbidding” an offender from operating a motor vehicle for either a specified period of time or perpetually. §32-5-316

⁵ The jail and fine sanctions do not apply to first offenders who are under 21. §32-5A-191(b)
Murder: If a person causes the death of another while operating a motor vehicle while intoxicated and in an erratic manner with excessive speed, that person may be prosecuted for murder. *Tims v. State*, 711 So. 2d 1118 (Ala. Crim. App. 1997)
⁶ These sanctions apply to first offense convictions for assault in the first degree. To determine the sanctions for a 2nd or subsequent offense of this type, see §13A-5-9.
⁷ The 30-day community service sanction may be used as an alternative to the 5-day imprisonment.
⁸ After this sanction, a person may be placed on probation on the condition that he/she enroll in and successfully complete a chemical dependency program. If probation is granted, an offender may be placed on house arrest with electronic monitoring. §32-5A-191(h).

Special Note: A Class C felony conviction for a fourth drunk-driving offense is not to be considered a felony for purposes of the State's Habitual Felony Offender Law. §32-5A-191(h)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes⁹ ≥.08. First Admin Per Se Violation – **suspension – 90 days (mand); Second Alcohol Or Drug-Related Contact (within 5 years) – **Suspension – 1 year** (mand); Third or Fourth Alcohol Or Drug-Related Contact (within 5 years) – **Suspension – 3 years** (mand); Fifth or Subsequent Alcohol Or Drug-Related Contact (within 5 years) – **Suspension – 5 years** (mand). §§32-5A-300, 32-5A-304 and 32-5A-305.**

Other:

Under §32-5A-195(k)(1) and (m), a person's license may be suspended without a preliminary hearing, for not more than 1 year if "committing" an offense that usually requires license revocation (e.g., DWI). **Comment:** Such action could occur prior to conviction.

Post DWI Conviction
Licensing Action:
Type of Licensing Action
(Susp/Rev) and Term of
Withdrawal:

See the Special Note below.

First offense – **Suspension 90 days¹⁰** (First offense for School Bus and Day Care Vehicle Operators – **suspension – 1 year mandatory** and Persons under 21 – **suspension – 30 days mandatory**); second offense – **Revocation 1 year**; third offense – **Revocation 3 years**; fourth or subsequent offenses – **Revocation 5 years**
§§32-5A-191(e), (f), (g) and (h)

Mandatory Minimum Term of
Withdrawal:

First offense – **90 days^{11,12}**; second offense – **1 year**; third offense – **3 years**; fourth or subsequent offenses – **Revocation 5 years**

Other:
Rehabilitation:
Alcohol Education:

First offense – **Yes¹³**. §32-5A-191(b)

⁹If the drunk-driving criminal charges against the driver are either dismissed or *non prossed* or if the driver is found not guilty of the DWI offense, the admin per se licensing action is rescinded. §32-5A-304(c)

¹⁰ Revocation is also possible via a court order. §32-5A-195(j)(2)

¹¹ It may be possible to "modify" this suspension period. §32-5A-195(l)

¹² A person convicted of driving while under the influence either of a controlled substance or of a combination of a controlled substance and alcohol must have the driving privileges suspended for 6 months. §§13A-12-290 and 13A-12-291

¹³ At a minimum, an offender must complete a drunk-driving or substance abuse program. An offender's

Alcohol Treatment:
 Vehicle Impoundment/Confiscation:
 Authorized by Specific
 Statutory Authority:

First offense – **Yes** §32-5A-191(b)

Impoundment. For a subsequent offense within 5 years, the registrations of all vehicles owned by the offender shall be suspended for the duration of the license suspension. There is a hardship exemption for other individuals. §32-5A-191(o)

Terms Upon Which Vehicle
 Will Be Released:
 Miscellaneous Sanctions
 Not Included Elsewhere:

N/A

Child Endangerment. The minimum sentence is double the usual sanction if an offender ≥ 21 years old was operating a vehicle while transporting a passenger <14 years old at the time of the DWI offense. §32-5A-191(n)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
 State Has Such a Law:

Yes Two types of offenses (1) "Homicide by Vehicle"-Felony¹⁴ §32-5A-192 (2) "Criminally Negligent Homicide" while DWI– Class C felony §13A-6-4(a)and(c)

Sanctions:
 Criminal Sanction:

Imprisonment (Term):

(1) "Homicide by Vehicle" – Not less than **1 year** nor more than **5 years** §32-5A-192

Special Note: The license suspensions for a drunk-driving offense conviction do not apply if a person has been subject to a license suspension for an *admin per se* violation. §32-5A- 304(c)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):

A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person(1) has a BAC/BrAC/UrAC ≥.04 (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine.), (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for an alcohol concentration, and commits a misdemeanor punishable by ≤30 days in jail and/or a fine of \$25 – \$2,000. Note: The disqualification provision, §32-6-49.11(a)(5), only applies to refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, §32-6-49.13, applies to tests either for an alcohol concentration or for drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 years mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in the system must be placed "out-of-service" for 24 hours. §§32-6-49.3(2) and (3), 32-6-49.11, 32-6-49.12, 32-6-49.13, 32-9A-2 and 32-9A-4.

license cannot be reinstated until such a program has been successfully completed. §32-5A-191(g)

¹⁴ §13A-1-2(4)

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Mandatory Minimum Term:	(2) " <u>Criminally Negligent Homicide</u> " while DWI – 1 year and 1 day to 10 years §13A-5-6(a)(3)
Fine (\$ Range):	None (1) " <u>Homicide by Vehicle</u> " – Not less than \$500 nor more than \$2,000 §32-5A-192 (2) " <u>Criminally Negligent Homicide</u> " while DWI – Not more than \$5,000 §13A-5-11(a)(3)
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Revocation ¹⁵ §32-5A-195(j)(l)
Length of Term of Licensing Withdrawal:	Revocation period is not specified in the statute. ¹⁶
Mandatory Action--Minimum Length of License Withdrawal:	None
Other:	See Court Authorized Licensing Action.
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*</u> :	See Footnote No. ¹⁷ .
Sanction:	
Criminal:	
Imprisonment (Term):	Misdemeanor – Not more than 180 days §32-6-19
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not less than \$100 nor more than \$500 §32-6-19
Mandatory Minimum Fine:	None , but there is an additional penalty of \$50 used to fund safety and training funds. This penalty appears to be mandatory. §32-6-19
Length of Term of License Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Revocation (discretionary) §32-6-19(a)
Withdrawal Action:	An additional period of 6 months §32-6-19(a)

¹⁵ Applies only to "Homicide by Vehicle" or vehicle manslaughter offenses. For DWI criminally negligent homicide offenses, licensing action would be via the regular DWI offense provisions.

¹⁶ However, a license or privilege to drive cannot be suspended for more than 1 year. §32-5A-195(m)

¹⁷ Neither the CMV law nor the general code provisions concerned with driving while suspended or revoked provide specific sanctions for operating a CMV while either disqualified or under an out-of-service order.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Mandatory Term of License

Withdrawal Action:

Other:

None

A vehicle may be forfeited to the State, if it is operated while a license is revoked or suspended for DWI, §32-5A-203, or the vehicle may be impounded. §32-6-19.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No, but the implied consent law applies to dead persons. *Lankford v. Redwing Carriers, Inc.*, 344 So.2d 515 (Ala., 1977).

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §§28-1-5 and 28-3A-25(a)(19)

Minimum Age (Years) Possession:

21. There is an employment exemption. §28-3A-25(a)(19)

Minimum Age (Years) Consumption:

21 §28-3A-25(a)(19)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §6-5-71¹⁸

¹⁸ **Comment:** Sec. 6-5-71, the Dram Shop Law provision that applies to commercial servers, refers to the selling of "liquor" ("spirituous liquor"). In Alabama, as well as other State statutes that use this term, an issue arises from time to time as to whether the terms "spirituous liquor" or "liquor" include other types of alcoholic beverages (e.g., beer and wine) or whether they should be restricted to meaning "distilled spirits" only. Under a related provision, §6-5-70, parents of children who have been injured (or killed) as a consequence of the sale of "liquor" to the minor may bring a cause of action for damages against those responsible for such sale. *Adkison v. Thompson*, 650 So.2d 859 (Ala. 1994) Note: In interpreting the term

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation): **Yes** *Buchanan v. Merger Enterprises, Inc.*, 463 So.2d 121 (1984)

Dram Shop Actions-Social Hosts: **Yes Limited** A social host can be held liable for the actions of intoxicated minors. *Martin v. Watts*, 508 So.2d 1136 (Ala. 1987)¹⁹, *Williams v. Reasoner*, 668 So. 2d 541 (Ala.1995) *DeLoach v. Mayer Electric Co.*, 378 So.2d 733 (1979), *Beeson v. Scoles Cadillac Corp.*, 506 So.2d 999 (1987)²⁰ The *DeLoach* and *Beeson* cases involved "business" social host situations. See also *Runyans v. Littrell* 2002 Ala. LEXIS 240 (Ala.2002), citing *Williams* and *Martin*.

Other: **None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:
 Type of Criminal Action: See Double Jeopardy. See Regulation 20-X-6-.02 which prohibits the sale of alcoholic beverages to persons "acting in a manner as to appear to be intoxicated."²¹ It is a **misdemeanor** to violate a regulation §28-3-20.

Imprisonment: Not more than **6 months** §28-3-20²²
 Fine (\$ Range): Not more than **\$500** §28-3-20

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:
 License to Serve Alcoholic Beverages
 Withdrawn (Yes/No): **Yes Suspension/Revocation** §§28-3A-24 and 28-3A-26

"spirituous liquor" (really "liquor") in §6-5-70, the Alabama Supreme Court held that for the purpose of this section the term "spirituous liquor" includes beer, wine and other alcoholic beverages. *Espey v. Convenience Marketers*, 578 So.2d 1221 (Ala. 1991) It would seem likely this court would apply this same interpretation to §6-5-71

¹⁹ Note: This same case is also reported at 513 So.2d 958.

²⁰ The court held that the Dram Shop Act, 6-5-71, does not apply to social host situations where alcoholic beverages are not sold and are not given contrary to law (e.g., alcoholic beverages were not given to minors.). *Smoyer v. Birmingham Area Chamber of Commerce*, 517 So.2d 585 (Ala. 1987); *Runyans v. Littrell*, 2002 Ala. LEXIS 240 (Ala. 2002)

²¹ The legislature repealed the law, §28-3-260(2), that prohibited the sale of alcoholic beverages to visibly intoxicated persons. Reg. 20-X-6-.02 was promulgated as a substitute for this repealed law.

²² §28-3-19 also makes it a misdemeanor to violate alcoholic beverage control regulations. The sanctions for this offense are a fine of \$100 to \$200 and/or imprisonment for not more than 90 days.

Length of Term of License Withdrawal: First offense – suspension for not more than **1 year** or revocation for **1 year**; second or subsequent offense – revocation for **1 year** (This revocation appears to be mandatory; however, see §28-3A-24(c) which authorizes a fine up to \$1,000 in lieu of revocation.) §§28-3A-24 and 28-3A-26

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: First offense – **Misdemeanor**; second offense – **Misdemeanor**; third and subsequent offense – **Misdemeanor**
§28-3A-25(a)(3)

Term of Imprisonment: First offense – Not more than **6 months**; second offense – **3 to 6 months**; third and subsequent offense - **6 to 12 months**
§28-3A-25(b)(1)

Fine (\$ Range): First offense – **\$100 to \$1,000**; second offense – **\$100 to \$1,000**; third and subsequent offense – **\$100 to \$1,000**
§28-3A-25(b)(1)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes–Suspension/Revocation.** . 28-3A-24 and 28-3A-26

Length of Term License Withdrawal: First offense – **Suspension – Not more than 1 year**; revocation – **1 year**; second and subsequent offense – **Revocation – 1 year** (This revocation appears to be mandatory under §28-3A-26; however, see §28-3A-24(c) which authorizes a fine up to \$1,000 in lieu of revocation.) §§28-3A-24(d) and 28-3A-26. See Special Note below.

Anti-Happy Hour Laws/Regulations: **Yes-** Regulation 20-X-6-.14

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **Yes** – law applies to both the driver and passengers. Penalties: not more than **\$25** and court costs may not be assessed {violation is not a moving violation and

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shall not have any effect on the driver's license points}. § 32-5A-330

Anti-Consumption Law (Yes/No):

No

Special Note: If a licensee has been certified as a "responsible vendor," they may be exempt from either license suspension or revocation if an employee sells/serves alcoholic beverages to an under age person. In addition, such certification may be used to mitigate any administrative fine that may be imposed. §28-10-7 A "responsible vendor" is a licensee whose employees have undergone special training in how to prevent the sale or service of alcoholic beverages to under age persons. §28-10-1 et seq.

Double Jeopardy: Under certain circumstances, a person who has been prosecuted for a criminal violation of the alcoholic beverage control laws cannot be assessed a civil fine for the same offense. *Crump v. Alabama ABC Board*, 678 So. 2d 133 (Ala. Civ. App. 1995) (cert denied 678 So. 2d. 140 (Ala. 1995)).