

STATE:

ARIZONA

General Reference:

Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor  
§28-1381(A)(1)

Illegal Per Se Law (BAC/BrAC):

I. **≥.08**<sup>40and41</sup> and **any drug listed in §13-3401 or its metabolite in a Person's Body**<sup>42and43</sup> §28-1381(A)(2) and (3)II. **≥.15**<sup>44</sup> §28-1382(A)Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituos Liquor" in the body. §§4-244(33) and 4-246(B)

Presumption (BAC/BrAC):

**≥.08** §28-1381(G)(3)

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, a vapor-releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor-releasing substance if the person is impaired to the slightest degree. §28-1381(A)(1)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** §28-1322 Based on reasonable suspicion of a DWI offense.

Implied Consent Law:

Arrest Required (Yes/No):

**Yes**<sup>45</sup> §28-1321(A)Implied Consent Law Applies to  
Drugs (Yes/No):**Yes** §28-1321(A)Refusal to Submit to Chemical Test  
Admitted into Evidence:**Yes** (Criminal and Civil Cases) §28-1388(D)

Other Information:

I. Persons (e.g., medical facility personnel) who collect blood, urine or other bodily substances from drivers may be requested by law enforcement

<sup>40</sup> This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

<sup>41</sup> Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28-101(2)

<sup>42</sup> A person is not guilty of violating the drug per se statute, §28-1381(A)(3), while using a drug prescribed by a medical practitioner. §28-1381(D) Nevertheless, it is still illegal under §28-2881(A)(1) for such a person to operate a motor vehicle while under the influence of such substances. §28-1381(B)

<sup>43</sup> The illegal per se provision (previously codified as §28-692(A)(3)) that prohibits the operation of a motor vehicle with a controlled substance in the body was held to be constitutional. *State v. Phillips*, 873 P.2d 706 (Ariz. App. 1994), and *State v. Hammonds*, 968 P.2d 601 (Ariz. App. 1998) (Review denied by the Arizona Supreme Court, 1998 Ariz. LEXIS 615); cf. *State v. Boyd*, 31 P. 3d 130 (Ariz. App. 2001).

<sup>44</sup> Driving at or above this level is considered to be driving "while under extreme influence of intoxicating liquor." §28-1382(A)

<sup>45</sup> Under a **separate implied consent law**, a law enforcement officer can request a driver to submit to a chemical test for either alcohol concentration or drug content if the driver is involved in an accident that caused either a death or a serious physical injury and either (1) there is "probable cause to believe" that the driver caused the accident or (2) the driver was issued a citation for a traffic offense (e.g., a drunk-driving offense, racing on the highway, reckless driving, or other "moving traffic violation"). The sanctions for refusing to submit to this test are the same as for refusing to submit to test under the regular implied consent law (§28-1321). §28-673

Chemical Breath Tests for Alcohol Concentration:  
(con't)

authorities to supply samples of such substances to them for testing. §28-1388(E)  
II. Blood or urine samples can also be obtained via search warrants. §28-1321(D)(1)

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

Blood: **Yes** §28-1321  
Urine: **Yes** §28-1321  
Other: **"Other bodily substances"** §28-1321

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**  
Anti-Plea-Bargaining Statute (Yes/No): **Yes** §28-1387(H)<sup>46</sup>  
Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Alcohol Screening Required §28-1387(B)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): **None**  
Administrative Licensing Action (Susp/Rev): **None**  
Refusal to Take Implied Consent Chemical Test:  
Criminal Sanction (Fine/Jail): **None**  
Administrative Licensing Action (Susp/Rev): First refusal – 12-month suspension (mand); subsequent refusal (within 84 months) – **2-year suspension** (mand) §28-1321(G)(3) and (L) <sup>47</sup>  
Other: A person under 21 years old who has been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in the body) is subject to the implied consent law. §28-1321(A)(1)

<sup>46</sup> "Except for another violation of this article [the drunk-driving law provisions], the State shall not dismiss a charge of violating any provision of this article unless there is an insufficient legal or factual basis to pursue that charge." §28-1387(H)

<sup>47</sup> Effective February 1, 2006, after completing not less than ninety consecutive days of the period of suspension and serving the minimum period of incarceration, a person whose driving privileges have been suspended for refusal to submit (implied consent) to a BAC test or revoked for extreme and aggravated DUI may apply to MVD for a special ignition interlock (IID) restricted driver license that allows a person to operate a motor vehicle with an IID during the period of suspension or revocation, under the following circumstances:

- a. between the person's residence and employment during specified periods of time while at employment.
- b. between the person's residence, employment and secondary or postsecondary school according to the person's work and school schedule.
- c. between the person's residence and a treatment or screening facility for scheduled appointments.
- d. between the person's residence and the office of the person's probation officer for scheduled appointments.
- e. between the person's residence and the office of a physician or other health care professional.
- f. between the person's residence and a certified IID service facility. § 28-1401, 28-1402, 28-1321P

Sanctions Following a Conviction for a DWI Offense:

## Criminal Sanctions:

## Imprisonment/Fine/Term:

I. First offense – Class 1 misdemeanor – **Not more than 6 months** (with 10 consecutive days), **Not more than \$2,500**, plus additional \$500 mandatory assessment; second offense<sup>48</sup> (within 84 months) – Class 1 misdemeanor – **Not more than 6 months** (with 90 days), **not more than \$2,500**, plus at least 30 hours of community service and an additional \$1,250 mandatory assessment.

II. .15 Offense – first offense – Class 1 misdemeanor – **Not more than 6 months** (with 30 consecutive days), **Not more than \$2,500**, plus additional \$1,000 mandatory assessment; second offense (within 60 months) – Class 1 misdemeanor – **Not more than 6 months** (with 120 days), **not more than \$2,500**, plus additional \$1,250 mandatory assessment.

III. **Aggravated DWI\*** – Class 4 felony – **2½ to 12 years**<sup>49</sup>, **not more than \$150,000**. §§13-604, 13-701, 13-707, 13-801, 13-802, 28-1381, 28-1382 and 28-1383

Persons Under 21 Years Old: Operating a motor vehicle with any "Spirituos Liquor" in the body. Class 1 misdemeanor – **Not more than 6 months/not more than \$2,500**. §§4-244(33) and 4-246(B), 13-701, 13-707, 13-801 and 13-802

## Mandatory Minimum Term:

I. First offense – **24 consecutive hours**<sup>50</sup> §28-1381(J)  
Second offense<sup>51</sup> (within 84 months) – **30 consecutive days** §28-1381(L)

II. .15 Offense – first offense – **10 consecutive days** §28-1382(E); second offense (within 84 months) – **60 consecutive days** §28-1382(G)

III. **Aggravated DWI\*** – third offense (within 84 months) – **4 months**<sup>52</sup> §28-1383(D); fourth and

<sup>48</sup> For sentence enhancement purposes, a prior offense includes any previous drunk-driving offense.

**Child Endangerment:** A person commits a Class 6 felony (Aggravated DWI) if that person violates the drunk-driving laws while transporting a passenger who is <15 years old. Sanctions: Imprisonment – First Offense – 1 year; with one prior felony conviction – 1 to 2.5 years; with two or more prior felony convictions – 3 to 4.5 years; fine – \$150,000.

Minimum Sanctions: For first and second offenses the minimum sanctions for drunk-driving offenses apply, plus additional \$1,500 mandatory assessment. The minimum applicable sanction will depend on whether the offender was convicted under §28-1381 or §13-1382 (.15 offense); and, for third or subsequent offenses, the minimum sanctions are the same as for multiple offenses under the Aggravated DWI law. §§13-604(A), (C) and (U)(1)(a), 13-701(C), 13-801, and 28-1383(A)(3), (F), (G) and (L)(2) **Double Jeopardy:** Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Nichols*, 819 P.2d 995 (Ariz. App. 1991), and *Snow v. Superior Court of Arizona*, 903 P.2d 628 (Ariz. App. 1995), see also *Martzolf v. Superior Court*, 913 P. 2d 1373 (Ariz. App. 1995)

<sup>49</sup> Imprisonment sanctions for Class 4 felony: First offense – 2½ to 3 years; with one prior felony conviction – 3 to 6 years; with two or more prior felony convictions – 8 to 12 years. §§13-604(A), (C) and (U)(1)(a)

<sup>50</sup> Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

<sup>51</sup> For sentence enhancement purposes, a prior offense includes any previous drunk-driving offense.

<sup>52</sup> A limited furlough may be granted. §31-233(B)

Mandatory Minimum Fine (\$):	<p><u>subsequent offense</u> (within 84 months) – <b>8 months</b> §28-1383(E)  <u>Persons Under 21 Years Old</u>: Operating a motor vehicle with any "Spirituous Liquor" in the body.  <b>None</b>  I. <u>First offense</u> – Class 1 misdemeanor – <b>\$250</b>;  <u>second offense</u> – Class 1 misdemeanor (within 84 months) – <b>\$500</b>;  II. <u>.15 Offense</u> – Class 1 misdemeanor – <b>\$250</b> (and a \$250 assessment); <u>second offense</u> – Class 1 misdemeanor (within 84 months) – <b>\$500</b> (and a \$250 assessment)  III. <u>Aggravated DWI*</u>- Class 4 felony – <b>None</b>  <u>Persons Under 21 Years Old</u>. Operating a motor vehicle with any "Spirituous Liquor" in the body.  <b>None</b></p>
Other Penalties: Community Service:	<p><u>First and second offenses (including .15 offenses)</u> – <b>Yes</b><sup>53</sup> Discretionary with the court, except that for second or subsequent offenses within 84 months, the court must impose at least 30 hours of restitution service. §§28-1381(I)(3) and (K)(3) and 28-1382(D)(4) and (F)(4); <u>third and subsequent offense</u> – Community service cannot be assigned. §11-459(R)</p>
Restitution (e.g., Victim's Fund):	<p><b>Yes</b> A victims' compensation fund §41-2407  Where there was an economic loss to a victim, the Court may order that all or any portion of the fine be allocated as restitution. §13-804</p>
Other:	<p><b>Driver Training Course.</b> A person may be required to attend and successfully complete a driver-training course. §28-3306. This requirement is mandatory for first-time offenders under the age of 18. §28-3321  <b>Probation (Discretionary).</b> <u>First or second offense</u> (including .15 offenses) – Not more than 5 years; <u>Aggravated DWI Offenses*</u> – Not more than 10 years §13-902(B). Probation may be extended if a condition of probation, such as restitution, is not met. §13-902(c)  <b>Assessments:</b> Under §§12-116.01 and 12-116.02, the court is to levy respectively penalty assessments of 47 percent, 7 percent, 3 percent, and 13 percent of the fine imposed. These assessments may be waived if they would work a hardship on the offender or their family.  <b>Reimbursement:</b> The court shall order misdemeanants sentenced to a jail term to reimburse for costs,</p>

<sup>53</sup> First offenders are eligible for community service after having served 24 consecutive hours in jail. Second offenders are eligible for community service after they have served 15 consecutive days in jail. §§9-499.07(N) and 11-459(M)  
**\*Definition of Aggravated DWI Based on Prior Offenses.** “Within a period of sixty months commits a third or subsequent violation of section 28-1381 [regular DWI offense], section 28-1382 [.15 offense] or this section [§28-1383] or is convicted of a violation of section 28-1381, section 28-1382 or this section and has previously been convicted of any combination of convictions of section 28-1381 or 28-1382 of this section ...” §28-1383(A)(2)

§13-804.01, and the court may require reimbursement for any public costs incurred pursuant to defendant's case. §13-809.

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

**Yes. ≥.08 (≥.04 for Commercial Motor Vehicle Operators) Suspension – Not less than 90 consecutive days (30 consecutive days mandatory)**<sup>54</sup>  
 §28-1385(A) and (E)

The procedures of the *admin. per se* law also apply to persons under 21 years old who have been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in the body). The *admin per se* law does not appear to actually authorize a license suspension for a violation of §4-244(33). It may well be that the legislature intended to impose *admin. per se* license suspensions for a §4-244(33) offense but the language used in the *admin. per se* law is not clear on this point.

Other:

Under §§28-3306(A)(1) and 28-3315(A), it may be "possible" to suspend/revoke a person's license for not more than 1 year if that person has "committed" an offense that usually requires license revocation (e.g., a second DWI offense within 84 months). Such action may be taken without a preliminary hearing and could occur prior to a conviction.

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

I. Except as noted in II, first offense (including .15 offenses) – **Suspension – not less than 90 consecutive days nor more than 1 year**<sup>55</sup>; second offense (including .15 offenses) – **Revocation – 1 year**; Aggravated DWI offenses\* – **Revocation-3 years**

II. Driving under the influence of a controlled substance or with any amount of a controlled substance in the body: first or second offense (within 84 months) – **Revocation – 1 year**; Aggravated DWI offenses\* – **Revocation-3 years**

§§28-1381(K)(4), 28-1382(F)(5), 28-1383(J)(1), 28-1387(D), 28-3304(A)(2), (8) and (9) and 28-3315  
Persons Under 18 Years Old: A person <18 years old convicted of either a DWI offense (under §28-1381 or §28-1382 [.15 offense]) or driving with any "spirituous liquor in the body" (under §4-244(33)) is subject to a

<sup>54</sup> For an *admin. per se* violation where there has not been (1) serious physical injury, (2) a prior drunk-driving offense conviction within 60 months or (3) a refusal to submit to a chemical test within 60 months, the license suspension period is not less than 30 consecutive days (mandatory) and a restricted license for not less than 60 consecutive days. §§28-1385(F) and 28-1387(E)

<sup>55</sup> This licensing action does not apply to first and second offenders who have been suspended pursuant to either the implied consent or the *admin. per se* laws. §28-1387(D)

\*See the Definition of Aggravated DWI Based on Prior Offenses.

**suspension for 2 years.** However, if that person is convicted of an Aggravated DWI offense (§28-1383), he/she is subject to a **suspension for 3 years.** This licensing action is in addition to any other sanctions that may be imposed. This action is not mandatory. Restricted driving privileges are available. §28-3320 Persons ≥18 but <21 Years Old. There appears to be no licensing sanction against a person who is ≥18 but <21 years old who operates a motor vehicle with any "spirituous liquor" in the body. §§4-244(34) and 4-246(B).

Mandatory Minimum Term of  
Withdrawal:

ALL OFFENSES: First offense – 90 consecutive days<sup>56and57</sup>; second offense – 1 year; third and subsequent offense – 3 years

Other:

Rehabilitation:

Alcohol Education:

First or second offense – Yes.<sup>58</sup> §28-1387(B), mandatory for Aggravated DWI cases. §28-1383H  
First, second, third or subsequent offenses – Yes.  
§28-1387(B)

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Forfeiture (Mandatory):** The vehicle used in the offense and owned by the offender is forfeited for (1) a third or subsequent DWI offense, (2) a DWI offense while transporting a child <15 years old or (3) a DWI offense while the license is still suspended or revoked for a prior DWI offense. §28-1384(A)

Terms Upon Which Vehicle

Will Be Released:

N/A

Miscellaneous Sanctions

Not Included Elsewhere:

**Home Detention (Work Release):** Only first and second DWI offenders (including .15 offenders) are eligible for the "home detention" (or work release) program. However, before starting this program first offenders must complete 24 consecutive hours in jail and second offenders must complete 15 consecutive days in jail. §§9-499.07(N) and 11-459(M) and (R)

<sup>56</sup> For a drunk-driving offense conviction where there has not been (1) serious physical injury, (2) a prior drunk-driving offense conviction within 60 months or (3) a refusal to submit to a chemical test within 60 months of the DWI offense, the license suspension period is not less than 30 consecutive days (mandatory) and a restricted license for not less than 60 consecutive days. §§28-1385(F) and 28-1387(E)

<sup>57</sup> This suspension does not apply to first or second offenders who have been suspended pursuant to either the implied consent or *admin. per se* laws. §28-1387(D)

<sup>58</sup> If a defendant has been ordered to participate in either an alcohol education or treatment program, the license cannot be restored until they prove completion of such program. §28-3319(C)

**Ignition Interlock:** The court **SHALL** require persons who are convicted of the following offenses to equip vehicles operated with “ignition interlock” devices for **1 year** at the conclusion of the license suspension/revocation period or on the date of conviction whichever is later: (1) A second drunk-driving offense within 84 months under §28-1381; (2) a third or subsequent drunk-driving offense under §28-1383 (Aggravated driving under the influence - AGDUI); (3) a drunk-driving offense where the offender is driving on a suspended or revoked license for a prior DWI offense or a prior *admin. per se* violation(AGDWI); (4) a first or second .15 offense; and, (5) a drunk-driving **child endangerment** offense. If already subject to interlock agreement, DUI or refusal of B.A.C. test, is AGDUI. (Class 4 felony-minimum four months prison.) §§28-1381(K)(4), 28-1382 (D)(5)and(F)(5),28-1383(J)(1), and 28-3319 (D)and(E).

**Incarceration Costs:** All drunk-driving law offenders must be assessed the costs of their incarceration. The costs charged are based on the offender’s financial capabilities. §§28-1444 and 13-804.01.

**EMS Costs:** A person convicted of a DWI offense who as a result of such offense has negligently caused an accident that resulted in an emergency response is liable for the expenses associated with the response, liability not to exceed \$1,000 per accident. §28-1386(A) and (B).

**Prison Furlough:** Available for third and subsequent offenders §31-233) **Under 18 Years Old: first offense – Incarceration for **24 consecutive hours**; subsequent offense (within 60 months) – Incarceration for **30 consecutive days** in a juvenile detention center or in the department of juvenile corrections. In addition, first or subsequent offenders are subject to a fine of **\$100 to \$500** plus at least 80 hours of community service. They must also undergo alcohol screening and may, depending upon the results of the screening, be required to attend an alcohol education or treatment program. §8-343(A), (B) and (D)**

#### Other Criminal Actions Related to DWI:

##### Homicide by Vehicle:

State Has Such a Law:

Sanctions:

**No**<sup>59</sup>

<sup>59</sup> I. A person who causes a death while committing certain traffic violations (failure to stop a red light, failure to yield to oncoming traffic while making a left turn and failure to stop at a stop sign) is subject to a “civil penalty” of not more than \$1,000, license suspension, community service, and must complete a Traffic Survival School. §28-672(C) and (D)  
II. It is an “aggravating circumstance” for sentencing purposes for a person to commit either aggravated assault, negligent homicide, manslaughter or second degree murder while driving with a BAC $\geq$ .15 §13-702.

## Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

## Fine (\$ Range):

Mandatory Minimum Fine:

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if while driving a CMV that person: (1) has a BAC/BrAC  $\geq .04$ ; or (2) is under the influence of intoxicating liquor or a controlled substance. For a subsequent violation, the "disqualification" is for life; however, for a second violation, the period may be reduced to 10 years. A CMV operator is subject to the normal DWI sanctions. Under the regular DWI law, it is illegal per se for a person to drive a CMV with a BAC/BrAC  $\geq .04$ . Also, a CMV operator is subject to the sanctions and procedures of the admin. per se law if operating a CMV with a BAC/BrAC  $\geq .04$ . §§28-101(2), 28-101(7), 28-1301, 28-1381(A)(4), 28-1385(A)(2)(b), and 28-3312 The State has also adopted Federal CDL disqualification (which are similar to the above actions) and out-of-service provisions via §28-5204(B). Under these provisions, a person holding a CDL must be placed "out-of-service" for 24 hours if operating a CMV with any measurable or detectable amount of alcohol in the system. 49 CFR 383.51 and 392.5

## Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Note: License revocation for 180 days pursuant to a civil penalty. §28-672

## Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense:See Footnote No. <sup>60</sup>.

Sanction:

Criminal:

Imprisonment (Term):

Class 1 Misdemeanor – Not **more than 6 months**  
Class 4 felony–Any DWI offense and driving on a suspended/revoked license for a previous DWI conviction<sup>61</sup> (Aggravated DWI) – **2½ to 12 years**<sup>62</sup>

<sup>60</sup> I. The law specifically provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. The law provides for the following sanctions for a violation of an "out-of-service" order. A civil penalty of at least \$1,000. §28-5241(B), (D)(1) and (F) In addition, a person is subject to the following CDL disqualification periods: first violation – 90 days (mand); second violation (within 10 years) – 1 year (mand); and, third or subsequent violation (within 10 years) – 3 years (mand). If the violation involved the transportation of hazardous materials, the disqualification periods are as follows: first violation-180 days (mand); and, second or subsequent violation (within 10 years) – 2 years (mand). §28-3312(B) and (C)

<sup>61</sup> See "Forfeiture" under Vehicle Impoundment/Confiscation.

<sup>62</sup> Imprisonment sanctions for Class 4 felony: First offense - 2½ to 3 years; with one prior felony conviction -3 to 6 years; with two or more prior felony convictions -8 to 12 years. §§13-604(A), (C) and (U)(1)(a) **Temporary Impoundment.** An offender's vehicle may be immediately impounded for 30 days if that person has been arrested for either (1) driving while revoked, revocation for any reason; (2) driving while suspended where the suspension was based on driving under the influence; (3) driving while suspended where the suspension was based on a drunk-driving offense; or (4) driving while suspended where the suspension was based on the frequency of traffic law violation convictions. §28-3511. However, the vehicle may be released prior to the end of the 30-day period if either the offender's driving



Mandatory Minimum Term of Imprisonment:	§§13-701, 13-707, 13-801, 13-802, 28-1716, 28-1383 and 28-3473(B)
Fine (\$ Range):	<u>Class 1 Misdemeanor offense – 48 consecutive hours</u> §28-3473(B) <u>Class 4 Felony offense – 4 months</u> §28-1383(D)
Mandatory Minimum Fine:	<u>Class 1 Misdemeanor offense – Not more than \$2,500.</u> §13-802 <u>Class 4 Felony offense – Not more than \$150,000.</u> §13-801 <b>Assessments.</b> An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 12-116.02 <b>None</b>
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	<u>Class 1 Misdemeanor offense – For driving while suspended– suspension.</u> For driving while revoked – <b>Revocation</b> §28-3473(D) <u>Class 4 felony – Revocation</u> §28-1383(I)
Length of Term of License Withdrawal Action:	<u>Class 1 Misdemeanor offense – Suspension</u> equal to original suspension period not to exceed one year from the date of reinstatement. <b>Revocation</b> for one additional year of revocation. §28-3473(D) <u>Class 4 Felony-3 years</u> §28-1383(I)
Mandatory Term of License Withdrawal Action:	<u>Class 1 Misdemeanor offense – Suspension</u> equal to original suspension period. <u>Other</u> not to exceed one year from the date of reinstatement. <b>Revocation</b> for one additional year §28-3473(D) <u>Class 4 Felony-3 years</u> §28-1283(I)
<u>Habitual Traffic Offender Law:</u>	
State Has Such Law (Yes/No):	<b>No</b>
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:	

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privileges have been reinstated or the offender’s spouse enters into a 5- year agreement with the State not to allow an “unlicensed driver” to operate the vehicle. §28-3512.

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): **Yes** §28-668

BAC Chemical Test Is Given to the  
the Following Persons:

Driver: **Yes** §28-668

Vehicle Passengers: **No**

Pedestrian: **No**

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§4-101(16) and 4-244(9) and (16)

Minimum Age (Years) Possession: **21** There is an exemption for religious services or  
ceremonies. §§4-101(16), 4-244(9) and 4-249

Minimum Age (Years) Consumption: **21** There is an exemption for religious services or  
ceremonies, or for a bona fide medical purpose.  
§§4-101(16), 4-226, 4-244(40) and 4-249

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §4-311. See Footnotes <sup>63</sup>, <sup>64</sup> and <sup>65</sup>

"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** *Ontiveros v. Borak, et al.*, 667 P.2d 200 (Ariz.  
1983), and *Brannigan et al. v. Raybuck*, 667 P.2d 213  
(Ariz. 1983)

<sup>63</sup> The law, §4-311, limits liability to situations where the injury-causing patron was either (1) "obviously intoxicated" or (2) "under the legal drinking age."

<sup>64</sup> Under Article 18, §6 of the Arizona Constitution, a person has the right to a full recovery for any injuries sustained. However, §4-312(B) restricts an injured person's right to a full recovery in dram shop situations by providing that §4-311 is the exclusive remedy available at law. And, as noted above, this later provision restricts liability to certain factual situations. As a result, the Arizona Court of Appeals declared §4-312(B) unconstitutional and held that an injured party in a dram shop type action has the right to full recovery via common law negligence under *Ontiveros*. Accordingly, the court determined that the plaintiff did not have to establish that the injury-causing patron was "obviously intoxicated." *Young through Young v. DFW Corp.*, 908 P.1 (Ariz. App. Div. 2 1995) (Review denied by the Arizona Supreme Court.) Note: Since the matter was not argued by the parties, the court, in *Young*, specifically stated that it would not address the issue of whether the restrictions contained in §4-311 are unconstitutional.

<sup>65</sup> In *Andrews*, the court noted that, within constitutional limitations, the legislature may either change or abrogate common law. However, the court went on to hold that the legislature did not specifically abrogate the holding in the *Ontiveros* decision. Thus, a person may bring a cause of action for damages either under the dram shop law or via common law negligence.

Dram Shop Actions-Social Hosts:

**Yes (Limited)** Liability is limited to the actions of intoxicated minors. §§4-301, 4-312(B), *Estate of Hernandez v. Board of Regents*, 866 P.2d 1330 (Ariz. 1994)\*, *Petolicchio v. Sanata Cruz County Fair*, 866 P.2d 1342 (Ariz. 1994), *Knoell v. Cerkvienik-Anderson Travel, Inc.*, 891 P.2d 861 (Ariz. App. 1994)\*\*, *Bruce v. Chas Roberts Air Conditioning, Inc.*, 801 P.2d 456 (Ariz. App. 1990), and *Keckonen v. Robles*, 705 P.2d 945 (Ariz. App. 1985), and *Andrews, Ex Rel. Woodward v. Eddie's Place*, 16 P. 3d 801 (Ariz. App. Div 2, 2000).

Other:

**None. See Footnote <sup>66</sup>.**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Class 1 Misdemeanor** §§4-244(14) and 4-246(B)

Term of Imprisonment:

Not more than **6 months** §13-707(A)

Fine (\$ Range):

Not more than **\$2,500** for individuals §13-802(A); not more than **\$20,000** for businesses §13-803  
**Assessments.** An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 12-116.02

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes. Suspension or revocation<sup>67</sup>** §4-210(A)(9)

Length of Term of License

Withdrawal:

Length of term not fixed

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:

**Class 1 Misdemeanor<sup>68</sup>** §§4-244(9) and 4-246(B)

Term of Imprisonment:

Not more than **6 months** §13-707(A)

<sup>66</sup> Note: Sec. 4-312(A), which abolished commercial server liability in situations involving injuries sustained either (1) by a patron due to his/her own intoxication or (2) by a patron as the result of an accompanying intoxicated patron's actions, was declared in violation of the State's constitution. *Schwab v. Matley*, 793 P.2d 1088 (Ariz. 1990)  
In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of \$200 to \$3,000. §4-21.01

\*See remanded case on appeal to the State Supreme Court for the second time, *Estate of Hernandez v. Flavio*, 930 P.2d 1309 (Ariz. 1997).

\*\* The Arizona Supreme Court reversed and vacated the Court of Appeals decision and reinstated the alcohol-related counts in *Knoell v. Cerkvienik-Anderson Travel, Inc.*, 917 P. 2d 689 (Ariz. 1996).

<sup>67</sup> In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of \$200 to \$3,000. §4-21.01

<sup>68</sup> In addition to the sanctions given under separate provisions of the law, it is a Class 2 misdemeanor to give or furnish "spirituous liquor" to a person who is under 21 years old. The sanctions for this offense are a jail term of not more than 4 months and/or a fine of not more than \$750. §§4-244(16), 4-246(A), 13-707(A) and 13-802(B)

Fine (\$ Range): Not more than **\$2,500** for individuals §13-802(A); not more than **\$20,000** for businesses §13-803  
**Assessments.** An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 12-116.02

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 or revocation** §4-210(A)(9)  
 Length of Term License  
 Withdrawal: Length of term not fixed

Anti-Happy Hour Laws/Regulations: **Yes**<sup>69</sup> §4-244(24)

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** §4-251(A)(2) Violations of the open container/anti-consumption law are Class 2 misdemeanors.

Anti-Consumption Law (Yes/No): **Yes.** Driver and passengers §4-251(A)(1)

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<sup>69</sup> The Arizona Court of Appeals has held that the Anti-Happy Hour Law applies only to the number of drinks sold. This law does not limit the alcoholic content or size of such drinks. *Callender v. Transpacific Hotel Corp.*, 880 P.2d 1103 (Ariz. App. Div. 2 1993)