

STATE: **ARKANSAS**
 General Reference: Arkansas Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated ⁷⁰ §§5-65-102(1) and 5-65-103(a) <u>For Persons Under 21 Years Old-Under the Influence</u> §5-65-303(a)
Illegal Per Se Law (BAC/BrAC):	≥.08 ⁷¹ §§5-65-103(b) and 5-65-204(a) <u>For Persons Under 21 Years Old-≥.02 but <.08</u> ⁷² §5-65-303(b)
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Any Intoxicant ⁷³ or Controlled Substance §§5-65-102(1) and 5-65-103(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No ⁷⁴ §§5-65-202 and 5-65-309(a)
Implied Consent Law Applies to	
Drugs (Yes/No):	Yes §5-65-202
Refusal to Submit to Chemical Test	
Admitted into Evidence:	Yes (Criminal Cases) <i>Weaver v. City of Fort Smith</i> , 777 S.W.2d 867 (Ark. App. 1989), <i>Spicer v. State</i> , 799 S.W.2d 562 (Ark. App. 1990), and <i>Medlock v.</i> <i>State</i> , 964 S.W.2d 196 (Ark. 1998)

Other Information: Based upon probable cause of DWI offense related to an accident involving either a death or where there is reason to believe that a death may occur, a driver may be compelled to submit to a

⁷⁰ The term “intoxicated” means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof. §5-65-102(1) The term “influence” means being controlled or affected by an alcoholic beverage or similar intoxicant or a combination thereof to a such a degree that a person's driving ability is altered or diminished even to the slightest degree. §5-65-302(1). The term “controlled substance” means a drug, substance, or immediate precursor in Schedules I-IV. 35-65-102(2)

⁷¹ 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. Under the chemical analysis provisions of the implied consent law, alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§5-65-103(b), 5-65-104, 5-65-303(b) and 5-65-204(a)(1)

⁷² Under §5-65-311(a), the sanctions for this offense are in addition to any other sanctions that may be applicable under other provisions of law. To complement this provision, §5-65-311(d) provides that a person under 21 years old may be prosecuted for a regular DWI offense if having a BAC > .04 but < .08.

⁷³ The Arkansas Supreme Court has held that the term “any intoxicant” is not constitutionally void for vagueness. *Thornton v. State*, 883 S.W.2d 453 (Ark. 1994)

⁷⁴ A law enforcement officer can request a driver to submit to a chemical test (1) if the driver has been arrested for a DWI offense, (2) if the driver has been involved in an accident or (3) if, at the time of a DWI arrest, there is “reasonable cause to believe” that the driver is intoxicated or has a BAC ≥ .08. §5-65-202(a) A law enforcement officer can request a driver who is under 21 years old to submit to a chemical test (1) if the underage person has been arrested for any offense arising out of driving while under the influence or with a BAC ≥ .02 but < .08, (2) if the underage person has been involved in an accident or (3) if a law enforcement officer has stopped the underage person based upon “reasonable cause to believe” that the underage person has been driving while under the influence or with a BAC ≥ .02 but < .08. §5-65-309(a)

(continued)

test of their blood, breath or urine for alcohol or drug presence and concentration. §5-65-208(a)

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

Blood:	Yes ⁷⁵
Urine:	Yes
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes ⁷⁶
Anti-Plea-Bargaining Statute (Yes/No):	Yes
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §5-65-109 The report must include the offender’s driving record, an alcohol problem assessment, and a victim impact statement (if applicable). ⁷⁷

Sanction 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):

Persons Under 21 Years Old.⁷⁸ First offense – \$100 to \$500 (and possible community service); second offense – \$200 to \$1,000 and not less than 30 days (mand) community service; third or subsequent offense – \$500 to \$2,000 and not less than 60 days (mand) community service §§5-65-305(a), 5-65-306 {The minimum fines appear to be mandatory.}

Administrative Licensing Action (Susp/Rev):

First refusal – Suspension – **180 days (mand) or 90 days (mand) followed by 90 days of restricted**

⁷⁵ The implied consent laws only apply to a test to determine the alcohol or controlled substances content of a person’s blood. §5-65-202(a) and 5-65-309(a)

⁷⁶ Persons charged with a DWI offense must be tried on such charges or plead to such charges and no such charges shall be reduced. §5-65-107 For persons who are either convicted of or who have either pleaded guilty to or *non-contendere* to a first DWI offense, the court is prohibited from placing such persons on probation and later discharging the accused without adjudication after the probation period has been served. §5-65-108 For persons under 21 years old who have either pleaded guilty to or *nolo contendere* to a first offense of “driving while under the influence” or with a BAC of “≥ .02 but <.08,” the court is prohibited from placing such persons on probation prior to adjudication and discharging the accused without an adjudication of guilt and expunging the record. §5-65-308

⁷⁷ A previous offense also includes either a prior drunk-driving conviction or a refusal under the regular implied consent law.

⁷⁸ The fine is **doubled** if the offense is committed in a **Highway Work Zone**. §27-50-4

driving privileges⁷⁹ with the use of an ignition interlock device; second refusal⁸⁰ (within 5 years) – Suspension – 2 years (mand); third refusal (within 5 years) – Revocation-3 years (mand); fourth or subsequent refusal (within 5 years) – revocation-For Life (mand) §§5-65-104, 5-65-118, 5-65-205(a) and 5-65-402

**For Persons Under 21 Years Old. Licensing action for refusing to submit to a chemical test under §5-65-310 {The special implied consent law applies only to persons under 21 years old. 08(b)(1)(A)} First refusal – Suspension – 90 days; second refusal – Suspension – 1 year (mand); third or subsequent refusal – Revocation until the person reaches 21 or for 3 years whichever is longer (mand) §§5-65-120(b), 5-65-310(b) and 5-65-402
None**

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment

Term/Fine:

First offense – 24 hours to 1 year/\$150 to \$1,000; second offense (within 5 years) – 7 days – 1 year/\$400 to \$3,000; third offense (within 5 years) – 90 days to 1 year/\$900 to \$5,000; fourth offense (within 5 years)(felony) – 1 to 6 years/\$900 to \$5,000; fifth and subsequent offenses (within 5 years)(felony) – 2 to 10 years/\$900 to \$5,000
§§5-65-111 and 5-65-112

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. 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 $\geq .04$, (2) is intoxicated, or (3) refuses to submit to a chemical test for an alcohol concentration. (The CMV implied consent provision, §27-23-115(a), applies to a test for both a blood alcohol concentration and drugs; however, the disqualification provision, §27-23-112, applies only to a refusal to submit to a test for an alcohol concentration.) 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). II. It is a Class B Misdemeanor to operate a CMV while intoxicated or with a BAC/BrAC $\geq .04$; sanctions: Jail – not more than 90 days; fine – not more than \$500 (§§5-4-201(b)(2) and 5-4-401(b)(2)). For a second offense, mandatory community service for not less than 30 days in lieu of jail and for a third or subsequent offense, mandatory community service for not less than 60 days in lieu of jail. §27-23-114(g) A person who is convicted of this offense must undergo an alcohol abuse assessment. §27-23-114(f) in. III. In addition, persons who have any alcohol in the system must be placed

⁷⁹ A person is eligible for a restricted license based upon extreme and unusual hardship that the person must use a vehicle (1) to go to and from a place of employment, (2) in the course of employment, (3) to and from an educational institution, (4) to and from an Alcohol Safety Education and Treatment Course, or (5) to and from either a hospital or a clinic for medical treatment. §5-65-120(a)

⁸⁰ However, §5-65-205(d) provides that the Office of Driver Services consider DWI conviction as well as refusal to submit to a chemical test as countable previous offenses in determining length of suspension or revocation.

“out-of-service” for 24 hours. §§27-23-103, 27-23-111, 27-23-112. 27-23-113, 27-23-114 and 27-23-115 Under separate provisions of law, persons may have the CDL suspended for 1 year if convicted of operating a CMV while under the influence of a controlled substance. §§27-16-915(a) and (b) and 27-23-112(a)

Mandatory Minimum Term:	<p><u>For Persons Under 21 Years Old</u> who are convicted of “driving while under the influence” or with a BAC of $\geq .02$ but $< .08$ under §5-65-303: <u>first offense</u> – \$100 to \$500; <u>second offense</u>⁸¹ – \$200 to \$1,000; <u>third or subsequent offense</u> – \$500 to \$2,000 §5-65-305(a)</p> <p><u>First offense</u> – 24 hours; <u>second offense</u> (within 5 years) – 7 days; <u>third offense</u> (within 5 years) – 90 days; <u>fourth and subsequent offense</u> (within 5 years) – 1 year §5-65-111</p>
Mandatory Min. Fine (\$):	<p><u>First offense</u> – \$150; <u>second offense</u> (within 3 years) – \$400; <u>third and subsequent offense</u> (within 3 years) – \$900 §5-65-112</p> <p>See Footnote No. ⁸².</p> <p><u>For Persons Under 21 Years Old</u> who are convicted of “driving while under the influence” or with a BAC of “$\geq .02$ but $< .08$” under §5-65-303: <u>first offense</u> – \$100; <u>second offense</u> – \$200; <u>third or subsequent offense</u> – \$500 §5-65-305(a) These minimum fines appear to be mandatory.</p> <p>The sanctions may be applied against a person under 21 years old who is convicted of “driving while under the influence” or with a BAC of “$\geq .02$ but $< .08$” and are in <u>addition</u> to any other sanctions that may be applied against such an individual for any another offense committed under State law.</p> <p>§5-65-311 (a)</p>
Other penalties, treatment and community service	<p>Any person whose license is suspended or revoked shall be required to complete an alcohol education program. {Fee: up to \$125.} § 5-65-104(b)</p> <p>I. <u>First offense</u> – In lieu of imprisonment (the law does not specify the length of time a person must do community service.); <u>second offense</u> – (within 5 years) – not less than 30 mandatory days in lieu of jail; <u>third offense</u> (within 5 years) – Not less than 90 days (mand) in lieu of jail; <u>fourth offense</u> (within 5 years) – Not less than 1 year (mand) in lieu of jail; <u>fifth or subsequent offense</u> (within 5 years) – Not less than 2 years (mand) in lieu of jail §5-65-111(a) and (b)</p>

⁸¹ Note: a previous conviction also includes a conviction under the regular DWI law. §5-65-305(b);

⁸² Certain minimum sanctions for DWI offenses under §§5-4-104(e)(1)(A)(iv), 5-4-301(a)(1)(D), 5-65-111 and 5-65-112 are mandatory. §§5-65-108 and 16-90-107, *Lovell v. State*, 678 S.W.2d 318 (Ark. 1984). *Lovell v. State*, 681 S.W.2d 395 (Ark. 1984), *Harris v. State*, 686 S.W.2d 440 (Ark. 1985) and *Lawson v. State*, 746 S.W.2d 544 (Ark, 1988).

Comment: A DWI offender has a statutory right to a jury trial. In such trials, the jury affixes punishment (criminal and administrative (licensing) sanctions). *Tharp v. State*, 745S.W.2d 612 (Ark. 1988) Under §16-90-107, the jury or the court must sentence a person to the statutory minimum fine or jail/prison sanction provided by law for the offense committed.

DWI Offenses Involving Motor Vehicles Used in Commerce and Regulated Under the State's Motor Carrier Act. A person commits a misdemeanor if that person operates a motor vehicle regulated under this act while possessing, using, or under the influence of (1) intoxicating liquor, (2) a controlled substance, or (3) any substance that renders the person incapable of safely operating a motor vehicle. The sanctions for this offense are as follows: first offense – Jail – None, Fine – \$200 to \$1,000; second and subsequent offense – Jail – None, Fine – \$500 to \$1,000. §23-13-258 This law cannot abrogate or supersede the regular DWI law. i.e., a person must be charged with a violation of the DWI law in preference to this one. If a person is unable to pay a fine, that person may be given community service as an alternative sanction. §5-65-114

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II. Persons unable to pay a fine may be given community service as an alternative sanction. §5-65-114 III. For Persons Under 21 Years Old who are convicted of “driving while under the influence” or with a BAC of $\geq .02$ but $< .08$ under §5-65-303 the court shall order public service work.

First offense – Time period is not specified; second offense – For not less than **30 days (mand)**; third or subsequent offense – For not less than **60 days (mand)** §5-65-306

Restitution
(e.g., Victim’s Fund)

Yes By the defendant (§§5-4-104(d)(4) and 5-4-205) and via crime victims’ compensation funds (§§16-90-307 and 16-90-701 et seq.). For the fund established under §16-90-701 et seq., the maximum amount that may be paid is \$10,000, §16-90-716(a) except for catastrophic injuries {maximum amount capped at \$25,000}. §16-90-716(a)(2)

Other:

A defendant may have to pay the following assessments or fees. (1) Under §16-90-307, each circuit court can establish a separate victim's restitution fund. Persons convicted of any offense may be required by the court to pay a fee, which is not to exceed the amount of the “criminal penalty fine”, into this separate fund. (2) A fee of \$50 to offset cost of alcohol education program or \$25 to offset costs of alcohol treatment program reporting requirements. §5-65-115(2)

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

Yes⁸³ **BAC/BrAC $\geq .08$** first violation (BAC/BrAC $\geq .08$ but $< .15$) – **Suspension – 120 days**⁸⁴; first violation (driving while intoxicated by a controlled substance) – **Suspension – 6 months**; first violation (BAC/BrAC $< .15$) – **Suspension – 180 days (mand) or 30 days (mand) followed by restricted driving privileges for 150 days with ignition interlock use**; second violation (BAC/BrAC $\geq .08$)

⁸³ The administrative licensing action is reversed if the licensee is acquitted of the drunk-driving charges upon which such action was based. §5-65-402(D)(2)(b)

⁸⁴ A person is eligible for a restricted license based upon extreme and unusual hardship that the person must use a vehicle either (1) to go to and from a place of employment, (2) in the course of employment, (3) to and from an educational institution, (4) to and from an Alcohol Safety Education and Treatment Course or (5) to and from either a hospital or a clinic for medical treatment. §5-65-120

(within 5 years) – **Suspension – 24 months (mand) or 1 year (mand) followed by 12 months of restricted driving privileges with ignition interlock use; third violation (BAC/BrAC ≥ .08)**
 (within 5 years) – **Revocation-30 months (mand) or 1 year (mand) followed by 18 months of restricted driving privileges with ignition interlock use; fourth or subsequent violation (BAC/BrAC ≥ .08)** (within 5 years) – **Revocation-4 years (mand)** §§5-65

104, 5-65-118, 5-65-120(b) and 5-65-402

For Persons Under 21 Years Old. “Driving while under the influence” or driving with a BAC/BrAC of “.02 but < .08” under §5-65-303: first offense – **Suspension 90 days; second offense – Suspension 1 year (mand); third or subsequent offenses – Revocation until the person reaches 21 or for 3 years whichever is longer (mand)** §§5-65-120(b), 5-65-304(a) and (b) and 5-65-402

See Footnote Nos. ⁸⁵ and ⁸⁶

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev) and Term of

License Withdrawal Action:

No specific licensing following a conviction under either §5-65-102 (regular drunk-driving offenses) or §5-65-303 (.02 offense for persons < 21 years old). Licensing action is done via the administrative per se laws.

Mandatory Minimum Term
of Withdrawal:

N/A

Other:

Rehabilitation:

Alcohol Education:

Yes §§5-65-104(h) and 5-65-115(a)⁸⁷
Persons under 21 Years Old, who either (1) are convicted of “driving while under the influence” or with a BAC ≥ .02 but < .08 under §5-65-303 or (2) have refused to submit to a chemical test under 5-65-310, must complete an alcohol and driving education program. §5-65-307(a) This program must be completed before a person's license can be reinstated. §5-65-307(b) and (e)(1)

Alcohol Treatment:

Yes §5-65-115(a)

⁸⁵ Via a separate law, a person convicted of driving while under the influence of a controlled substance must have the driving privileges suspended for 6 months. For extreme hardships, restricted driving privileges may be granted, §27-16-915(b)(1)(a).

⁸⁶ In addition to any other sanctions provided by law, a person under 18 years old who is convicted of a DWI offense (including driving while under the influence of a controlled substance) must have the license suspended for either 12 months or until reaching 18 whichever is the longer suspension period. However, a restricted hardship driving permit is available for employment/educational purposes. §§5-64-710, 5-65-116 and 27-16-914

⁸⁷ An alcohol education/treatment program must be completed before a suspended/revoked license can be reinstated. §5-65-115(b) In addition a reinstatement fee of \$100 must be paid. §27-16-508

Alcohol education or treatment is mandatory and is in addition to any other sanction. *Harris v. State*, 686 S.W.2d 440 (Ark: 1985)

Vehicle Impoundment/Confiscation:
 Authorized by Specific
 Statutory Authority:

Forfeiture. For a fourth DWI offense (within 3 years), a court may order the defendant’s motor vehicle forfeited. §5-65-117(a)

Terms Upon Which Vehicle
 Will Be Released:
 Other:

N/A

I. License Plate Impoundment. License plates shall be impounded for **90 days** if a driver has been arrested for driving while suspended/revoked where such suspension/revocation was based on an alcohol offense conviction.⁸⁸ §5-65-106

II. Motor Vehicle Registration Suspension. A person who either has had the license suspended or revoked for **ANY** drunk-driving offense (§§5-65-103 or 5-65-303) or the CDL disqualified for driving a CMV in violation of the drunk-driving provisions of §27-23-114 must have the registration of **ALL** of the vehicles owned by them suspended for the same period of time as the licensing action or for 1 year whichever is longer.⁸⁹ §§5-65-401(3) and 5-65-403

Miscellaneous Sanctions
 Not Included Elsewhere:

Ignition Interlock. In addition to any other sanction for a DWI offense, the court (1) **may** for a first or second offense and (2) **must**, for a third or subsequent offense, if the offender can afford it, require only operating a motor vehicle equipped with an ignition interlock device. This requirement continues for up to 1 year after the person's license is no longer suspended or revoked. However, if restricted licenses have been issued (for either a refusal or an admin. per se violation), the required use of an ignition interlock device “shall be for at least the remaining time period of the original suspension” period. §5-65-118

Highway Work Zone⁹⁰ The fine is **doubled** if the offense is committed in a Highway Work Zone. §27-50-408(b)(1)(A)

Other Criminal Actions Related to DWI:
Homicide by Vehicle:

⁸⁸ However, a temporary license plate may be issued if the court determines that it is in the best interests of the dependents of the offender.

⁸⁹ If either a family member or a co-owner of a vehicle subject to registration suspension is completely dependent upon the use of such vehicle for the “necessities of life,” a restricted registration may be issued allowing such dependent person to operate the vehicle. §5-65-403(j)

⁹⁰ An additional fine equal to all of the other fines is imposed for committing a “moving traffic violation” in a highway work zone when construction personnel are present. A “moving traffic violation” includes (1) driving while intoxicated, (2) under age driving while the influence and (3) refusal to submit to a chemical test. §27-50-408(b)(1)(A) and (e)

State Has Such a Law:	I. Death caused by driving in a reckless or wanton manner in disregard of the safety of others (negligent homicide) – Class A Misdemeanor/Class C felony ⁹¹ §27-50-307 II. Death caused by driving while intoxicated or with a BAC ≥.08 (negligent homicide) – Class C felony §5-10-105(a) ⁹²
Sanctions:	
Criminal Sanction: Imprisonment (Term):	Class A Misdemeanor – Not more than 1 year §5-4-401 (b)(1) Class C felony – 3 to 10 years §5-4-401(a)(4)
Mandatory Minimum Term:	None
Fine (\$ Range):	Class A Misdemeanor – Not more than \$1,000 §5-4-201(b)(1) Class C felony – Not more than \$10,000 §5-4-201(a)(2)
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Revocation (mandatory) §§27-16-905(1) and 27-50-307(b)
Length of Term of Licensing Withdrawal:	1 year §27-16-912
Mandatory Action-Minimum Length of License Withdrawal:	1 year §§27-16-905(1) and 27-16-912
Other:	

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:

Sanction:	§5-65-105; §27-16-303(a)(1) See Footnote No. ⁹³ .
Criminal:	

⁹¹ Under §27-50-307, a person commits “negligent homicide” if causing the death of another while operating a motor vehicle in a reckless or wanton manner in disregard of the safety of others and provides that this offense “shall be included in and be a lesser degree of involuntary manslaughter.” However, a “negligent homicide” offense, not related to drunk driving, is a Class A Misdemeanor (§5-10-105(b)) whereas, if such an offense is considered manslaughter, it would be a Class C felony (§5-10-104(c)).

⁹² The negligent homicide statute does not preclude a prosecutor from charging a homicide by vehicle as manslaughter. §5-10-105 expressly allows for murder or manslaughter charges to arise from a homicide involving the operation of an automobile. *Simmerson v. State* 25 S.W.3d 439 (2000).

⁹³ I. It is a Class C misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term ≤30 days or a fine ≤\$100. §§5-4-201(a)(3), 5-4-401(b)(3) and 27-23-107(b) and (c) II. In addition, a person who has been convicted of violating an out-of-service order is subject to a civil penalty of from \$1,000 to \$2,500. §27-23-113(c) The law also provides for the following disqualification periods against a person who has been convicted of an out-of-service order: first offense – 90 days (mand) to 1 year; second offense (within 10 years) – 1 (mand) to 5 years; third or subsequent offense (within 10 years) – 3 (mand) to 5 years. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or more than 15 persons: first offense-180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 (mand) to 5 years. §27-23-112(g)

*The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked, unless otherwise noted.

Imprisonment (Term): Mandatory Minimum Term of Imprisonment:	Misdemeanor- 2 days to 6 months. §237-16-303.
Fine (\$ Range):	10 days if suspension or revocation is based on a DWI charge. §5-65-105 Not more than \$500 §27-16-303 Not more than \$1,000 if suspension or revocation is based on a DWI charge. §5-65-105
Mandatory Minimum Fine:	None
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	If based on suspension – Suspension. If based on revocation – Revocation. §27-16-303
Length of Term of License Withdrawal Action:	Original suspension period is extended a like period. Original period of revocation is extended 1 year. §27-16-303 In addition, the court may order issuance of an ignition interlock restricted license for 1 year prior to reinstatement eligibility when license has been suspended or revoked for DUI-based violation. §5-65-104(5)(B)
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
<u>Other State Laws Related To Alcohol Use:</u>	
<u>Laws Requiring BAC</u> <u>Chemical Tests on Persons</u> <u>Killed in Traffic Accidents:</u> State Has Such a Law (Yes/No): BAC Chemical Test Is Given to the Following Persons:	Yes §5-65-208(a); §5-65-202(b)
Driver:	Yes ⁹⁴
Vehicle Passengers:	Possible
Pedestrian:	Possible
<u>Laws Establishing the Minimum</u> <u>Ages Concerning Alcoholic Beverages:</u> Minimum Age (Years) Sale/Purchase:	21 ⁹⁵ Fine: \$100 to \$500; in addition, suspension §§3-3-202 and 3-3-203 of driver’s license: first offense: 60 days; second offense: 120 days; third/subsequent offense: 1 year. ⁹⁶
Minimum Age (Years) Possession:	21 §§3-3-203 There is an employment exemption for persons over 18. §3-3-204

⁹⁴ Based upon probable cause of DWI offense related to an accident involving either a death or where there is reason to believe that a death may occur, a deceased driver may be administered a test of his/her blood, breath or urine for alcohol or drug presence and concentration. §5-65-280(a); §5-65-309(b); §5-65-202(b)

⁹⁵ There is an exemption for either serving alcoholic beverages to one's family or using wine for religious purposes. §3-3-202

⁹⁶ In addition, the trial judge or magistrate may impose the following penalty or penalties or any combination thereof:
(1) Requiring persons under the age of twenty-one (21) years to write themes or essays on intoxicating liquors, wine, or beer; or
(2) Placement of a person under the age of twenty-one (21) years under probationary conditions as determined by the court in its reasonable discretion designed as a reasonable and suitable preventive and educational safeguard to prevent future violations of this section by the person.

Minimum Age (Years) Consumption:

None. Under §3-3-203(a)(2), “intoxicating liquor, wine or beer in the body of a minor shall not be deemed to be in his possession.”

Dram Shop Laws and Related

Legal Actions:

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

Yes, limited. The Arkansas Legislature has modified the holdings in the *Shannon* and *Jackson* cases noted below and has declared that, except regarding sales of alcohol to a minor or to someone who is clearly intoxicated, the consumption of, rather than the service of, alcoholic beverages, is the proximate cause of injuries or property damage caused by intoxicated persons. §§16-126-103, 16-126-104 and 16-126-105 However, the State legislature has determined that “the knowing sale of alcoholic beverages by a retailer to a minor is contrary to the public policy of the State of Arkansas.” §16-126-102

“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 Case (Case Citation):

Yes^{97and98} *Shannon v. Wilson*, 947 S.W.2d 349 (Ark. 1997), and *Jackson v. Cadillac Cowboy, Inc.*, 986 S.W.2d 410 (Ark. 1999)

Dram Shop Actions-Social Hosts:

No Social host liability is prohibited via statute. §16-126-106⁹⁹

Other:

A licensee is liable for the injuries sustained by a minor intoxicated patron. §16-126-103 **Comment:** Given the language in §16-126-104, a licensee may not be liable for the injuries that are sustained by an intoxicated adult patron.

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

Type of Criminal Action:

Misdemeanor for all offenses See Footnote No. ¹⁰⁰ for citations.

Term of Imprisonment:

Package Sales: (1) All alcoholic beverages except those noted below-first offense – none; second and

⁹⁷ I. In cases involving the sale of alcoholic beverages to minors, the law provides that a “jury may determine whether or not such knowing sale constituted the proximate cause of any injury to such minor, or to a third person, caused by such minor.” §16-126-103 II. In cases involving the sale of alcoholic beverages “to a person who was clearly intoxicated,” the law provides that a “jury may determine whether or not such sale constitutes a proximate cause of any subsequent injury to other persons.” §16-126-104

⁹⁸ For previous cases denying liability, see *Carr v. Turner*, 385 S.W. 2d 656 (Ark. 1965), *Milligan v. County Late Liquor*, 709 S.W.2d 409 (Ark. 1986). *Yancy v. Beverage House of Little Rock, Inc.*, 723 S.W.2d 826 (Ark. 1987), and *Mann v. Orrell*, 912 S.W.2d 1 (Ark. 1995).

⁹⁹ See *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 740 S.W.2d 127 (Ark. 1987) which held against social host liability.

¹⁰⁰ Citations: §§3-3-102, 3-3-103, 3-3-201, 3-3-202, 3-3-206 to 3-3-209, 3-4-301, 3-4-401 to 3-4-405, 3-4-604, 3-5-202, 3-5-203, 3-5-207, 3-5-221, 3-5-307, 3-9-301, 3-9-302, 3-9-306, 3-9-307, 3-9-236, 3-9-204, 5-4-201(a)(2) and 5-4-401(4) and (5).

Fine (\$ Range):

subsequent offenses – **6 months to 1 year**; (2) Beer and wine not in excess of 5 percent alcohol by weight-**none**. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below – **not more than 6 months**; (2) beer (all types) – **none**; (3) wine not exceeding 14 percent-**10 to 30 days**

Package Sales: (1) All alcoholic beverages except those noted below – first offense – **\$100 to \$250**; second and subsequent offense – **\$250 to \$500**; (2) Beer and wine not in excess of 5 percent alcohol by weight – **None**.

On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below – **Not more than \$1,000**; (2) beer (all types) – **None**; (3) wine not exceeding 14 percent – **\$100 to \$500**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:
 License to Serve Alcoholic Beverages Withdrawn (Yes/No):
 Length of Term of License Withdrawal:

Yes Under certain conditions.
Package Sales: (1) All alcoholic beverages except those noted below-for two or more convictions – Revocation^{101and102} (and a possible administrative fine); (2) Beer and wine not in excess of 5 percent alcohol by weight-**none**. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below- **Suspension/Revocation**; (2) beer (all types) – **Suspension/Revocation**; (3) wine not exceeding 14 percent– **Suspension/Revocation**

Criminal Action 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:

Misdemeanor for all offenses. (except as noted)
 Term of Imprisonment: Package Sales: (1) All alcoholic beverages except those noted below – (a) where “knowledge” is a factor¹⁰³ – first offense (Class D felony) – **not more than 6 years**; second offense (within 5 years) (Class C felony) – **3 to 10 years**; (b) where “knowledge” is not a factor – first offense – **none**; second and subsequent offense – **not more than 1 year**; (2) beer and wine not in

¹⁰¹ Length of Revocation/Suspension is not specified in the statute.

¹⁰² The following administrative fines may be imposed on retailers (Class B Permit holders) for a violation of the Alcoholic Beverage Control Laws: first offense – \$200 to \$500; second offense (within 12 months) – \$400 to \$1,000; third offense (within 12 months) – \$600 to \$1,500 §§3-4-401, 3-4-402(a)(2) and (b) and 3-4-404(11) and (18)

¹⁰³ *State v. Jarvis*, 427 S.W.2d 531 (Ark. 1968)

<p>Fine (\$ Range):</p>	<p>excess of 5 percent alcohol by weight – not more than 1 year; <u>On-Premises Consumption Sales</u>: (1) All alcoholic beverages except those noted below – not more than 6 months; (2) beer and wine not in excess of 5 percent alcohol by weight – not more than 1 year; (3) wine not in excess of 14 percent-10 to 30 days <u>Package Sales</u>: (1) All alcoholic beverages except those noted below-(a) where “knowledge” is a factor-<u>first offense</u> – not more than \$10,000; <u>second offense</u> (within 5 years) – not more than \$10,000; (b) where “knowledge” is not a factor – <u>first offense</u> – \$200 to \$500; <u>second and subsequent offense</u> – \$500 to \$1,000; (2) beer and wine not in excess of 5 percent alcohol by weight – not more than \$500 <u>On-Premises Consumption Sales</u>: (1) All alcoholic beverages except those noted below – not more than \$1,000; (2) beer & wine not in excess of 5 percent alcohol by weight– not more than \$500; (3) wine not in excess of 14 percent-\$100-\$500</p>
<p><u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u> License to Serve Alcoholic Beverages Withdrawn (Yes/No): Length of Term License Withdrawal:</p>	<p>Yes Under certain conditions <u>Package Sales</u>: (1) All alcoholic beverages except those noted below – for two or more convictions – Revocation¹⁰⁴; (2) beer and wine not in excess of 5 percent alcohol by weight.-1 year Revocation/Suspension <u>Qn-Premises Consumption Sales</u>: (1) All alcoholic beverages except those noted below – Revocation/Suspension; (2) beer and wine not in excess of 5 percent alcohol by weight – 1 year Revocation/Suspension; (3) wine not in excess of 14 percent – Revocation/Suspension No</p>
<p><u>Anti-Happy Hour Laws/Regulations: 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:</u> Open Container Law (Yes/No):</p>	<p>No</p>
<p>Anti-Consumption Law (Yes/No):</p>	<p>Yes The law makes it an offense for a person to consume alcoholic beverages “in any public place, on any highway, or street, or upon any passenger coach, streetcar or in or upon any vehicle commonly used for the transportation of passengers....” §5-71-212(c)</p>

¹⁰⁴ Length of Revocation/Suspension is not specified in the statute.