

STATE: **DELAWARE**  
 General Reference: Delaware Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 21 §4177(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥.08 <sup>206</sup> and <sup>207</sup> 21 §4177(a)(4)
Presumption (BAC):	<b>None</b>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) any Drug or (2) a Combination of Alcohol and any Illicit Drug <sup>208</sup> or recreational drug. 21 §4177(a)(2) and (3)
	<b>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor</b> <sup>209</sup> 21 §4177L(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> <sup>210</sup> 21 §2741
Implied Consent Law:	
Arrest Required (Yes/No):	<b>No.</b> Probable cause is sufficient 21 §§2740 and 2742(e)
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> 21 §2740
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal and Civil Cases) 21 §2749
Other Information:	A person <u>may</u> be required to submit to a chemical test if there is probable cause of a DWI offense. However, if a person is <u>informed</u> of their statutory right to refuse to submit to a test and he/she exercises this right, a test <u>cannot</u> be administered by involuntary means. 21 §§2740, 2741(b) and 2742(a), <i>McCann v. State</i> , 588 A.2d 1100 (Del. 1991), and <i>Seth v. State</i> , 592 A.2d 436 (Del. 1991) A person <u>must</u> submit to a chemical test if there is probable cause to believe that person committed a DWI offense related to an accident in which there was a death. 21 §2740 {In death-related DWI situations, it appears that a driver <u>cannot</u> refuse to submit to a test. Therefore, “forced” taking of blood samples for testing purposes may now be possible under these circumstances.}

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

<sup>206</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>207</sup> Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 21 §§4177(c)(1) and 4177L(b)

<sup>208</sup> The term “drug” includes (1) those drugs defined in Titles 11 and 16 (e.g., see schedule of controlled substances in Ch. 47 of Title 16) and (2) any substance or preparation which releases intoxicating vapors or fumes. 21 §4177(c)(7)

<sup>209</sup> An alcohol concentration ≥.02 is “per se evidence” of having consumed alcoholic liquor. 21 §4177L(b)

<sup>210</sup> The law appears to only indirectly authorize PBT use.

**DWI Bicycle.** Separate provisions of law make it illegal to ride a bicycle while under the influence of either an intoxicating liquor or narcotic drugs. The sanctions for this offense are as follows: first offense – a fine of \$150 to \$1,150; subsequent offense (within 2 years of a prior offense) – an imprisonment term of 10 to 30 days and/or a fine of \$400 to \$1,500. {A violation of this law is not entered on an offender’s driver licensing record. 21 §4198K}.

Blood: **Yes** 21 §2740  
 Urine: **Yes** 21 §2740  
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**<sup>211</sup>  
 Anti-Plea-Bargaining Statute (Yes/No): **No**  
 Pre-Sentencing Investigation Law (PSI)  
 (Yes/No): **No**

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 – Revocation 1 year** (6 months mand);  
**second refusal**<sup>212</sup> (within 5 years) – **Revocation 18**  
**months** (mand); **third or subsequent refusals** (within  
 5 years) – **Revocation 24 months** (mand) 21  
 §§2742(b)(1) and 2743(a)

Sanctions Following a Conviction for a DWI Offense<sup>213</sup>:

Criminal Sanctions:  
 Imprisonment: **First offense** (Unclassified Misd 11 §4202(b)) – **60**  
**days to 6 months**; **second offense**<sup>214</sup> (within 5 years)  
 (Unclassified Misd 11 §4202(b)) – **60 days to 18**  
**months**; **third offense** (within 5 years) (Class G  
 felony) – **1 to 2 years**; **fourth and subsequent**  
**offense**<sup>215</sup> (Class E felony) – **2 to 5 years** 21  
 §§4177(d) and 4177B(e)(2) Vehicle Assault –  
 second degree– Class B misdemeanor.

Sanctions Following a Conviction for a DWI Offense:

<sup>211</sup> A first offender cannot substitute the probation before judgment program for the one under 21 §4177B. 11 §4218(b)(4) An offender is not eligible for the probation before judgment program if that person has participated in it within a 5-year period or has other violation “enhancements” such as elevated BAC 21 §4177B(a) 11 §4218(d)  
<sup>212</sup> For the purpose of license sanction enhancement for refusing to submit to a chemical test, a prior DWI offense/admin. per se violation is considered the same as a prior refusal. 21 §2742(b)  
<sup>213</sup> In ‘exceptional circumstances’, the State may ask the Court in sentencing first “felony driving under the influence” offenses, to apply a lower level of penalty.  
<sup>214</sup> For sentencing purposes, all prior drunk-driving offenses are considered. 21 §4177B(e)(1)  
<sup>215</sup> Any bail granted pursuant to a felony DWI offense shall include a no-driving condition.  
 Title 11, Chapter 2,1 § 2108.

**Other Information:** The following licensing sanctions apply to persons < 21 years old who refuse to submit to chemical test after having been arrested for a violation of 21 §4177L(a) which prohibits these persons from driving while either consuming or after consuming alcoholic beverages. I. Refusal – **Revocation – 2 months** (mandatory) II. Refusal where the person has had one previous violation of 21 §4177L(a) – **Revocation – 6 months** (mandatory) III. Refusal where the person has had two previous violations of 21 §4177L(a) – **Revocation -12 months** ( mandatory) 21 §2742(b)(2)

Mandatory Minimum Term:	<p>A DWI-related injury where there has been negligent driving – Not more than <b>6 months</b>.          11 §§628 and 4206  <u>Vehicle Assault</u> – first degree– Class F felony-A DWI- related serious injury where there has been negligent driving – <b>Not more than 3 years</b>          §§629 and 4205(b)(6)  <u>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor</u> – <b>None</b>  <u>First offense</u> – <b>None</b> Imprisonment sanctions may be suspended. 21 §4177 (e) <u>second offense</u> (within 5 years) – <b>60 days</b>; <u>third offense</u> (within 5 years) – <b>3 consecutive months</b><sup>216</sup>; <u>fourth and subsequent offense</u> – <b>6 consecutive months</b> 21 §4177(d) <b>“House arrest”</b> may be possible in lieu of incarceration despite the fact that, under 21 §4177(d), a person convicted of a second or subsequent DWI offense may not receive a suspended sentence.</p>
Fine: Amount (\$ Range):	<p><b>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor- first offense</b> – <b>\$230 to \$1,150</b><sup>217</sup>; <u>second offense</u> (within 5 years) – <b>\$575 to \$2,300</b>; <u>third offense</u>(within 5 years) – <b>\$1,000 to \$3,000</b>; <u>fourth and subsequent offense</u> – <b>\$2,000 to \$6,000</b> 21 §4177(d); (1) <b>Vehicle Assault</b> – second degree– Class B misdemeanor – <b>Not more than \$1,150</b> 11 §4206 (2) <b>Vehicle Assault</b>-first degree– Class F felony-The court may impose a fine as it deems appropriate 11 §4205 (k)  <b>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor</b> – <b>None</b><sup>218</sup>  <u>First offense</u> – <b>\$230</b>; <u>second offense</u> (within 5 years) – <b>\$575</b>; <u>third offense</u> (within 5 years) – <b>\$1,000</b>; <u>fourth and subsequent offense</u> – <b>\$2,000</b> {These fines appear to be mandatory via 21 §4177(d) which provides that a DWI offender’s sentence is not to be suspended.}</p>
Mandatory Minimum Fine (\$):	<p><b>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-N/A</b></p>
Other Penalties: Community Service:	<p><b>Yes</b><sup>219</sup> Discretionary 11 §4332A</p>

<sup>216</sup> This mandatory imprisonment sanction appears to be consecutive as early release, furlough and suspended sentence are prohibited.

<sup>217</sup> **Child Endangerment.** A person who commits a drunk-driving offense while transporting an individual < 17 years old is subject to the following sanctions which are in addition to any other sanctions authorized by law: first offense – An additional fine of \$230 to \$1,150 and 40 hours of community service benefiting children; subsequent offense – An additional fine of \$575 to \$2,300 and 80 hours of community service benefiting children. 21 §4177(d)(5) These sanctions do not apply to first offenders who are participating in the probation for judgment program. 21 §4177B

<sup>218</sup> If the offender does not have a license, first offense – \$200; subsequent offense – \$400 to \$1,000 21 §4177L(a)

<sup>219</sup> The total number of community service hours that may be imposed cannot exceed the maximum term of incarceration for the offense, or if no incarceration is provided by law, the maximum number of community service hours shall not exceed 100. 11 §4332A(b)

Restitution (e.g., Victim’s Fund)

**Yes** (1) The court may order the defendant to pay compensation to a victim. 11 §4204(c)(9) (2) Also, a victim of a DWI offense is eligible for compensation from the State’s Violent Crime Compensation Board.11 §9002(3)(f).

Other:

**Assessment.** An additional amount equal to 18 percent of any fine (whether the fine is suspended or not) is assessed against the defendant. The assessment is deposited in the Victim compensation fund. 11 §9012 **Drunk-Driving Offense While in Violation of Ignition Interlock Order.** A person convicted of a drunk-driving offense while driving in violation of an order requiring them to only operate motor vehicles equipped with ignition interlock devices is subject to additional imprisonment term of **60 days** and an additional fine of **\$2,000**. 21 §4177(e)

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

**Yes** Based on probable cause of DWI (alcohol or drugs)<sup>220</sup> first offense – **Revocation-3 months** (mand); second offense – **Revocation-1 year** (mand); third or subsequent offenses – **Revocation - 18 months** (mand)<sup>221</sup> 21 §§2742(c)(l) and 2743(b) **Persons Under 21 Years Old** – Vehicle Operation While or After Consuming Alcoholic Liquor<sup>222</sup> first offense – **Revocation-2 months** (appears mand); subsequent offense – **Revocation-6 to 12 months** (6 months appears mandatory) 21 §2742(c)(2)

Other:

A license may be suspended for not more than 1 year if a person has “committed” an offense requiring license revocation (e.g., DWI). Such action may be taken without a preliminary hearing. 21 §§2733(a)(l) and (e)

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

First offense – **Revocation**; second offense (within 5 years) – **Revocation**; third or subsequent offense (within 5 years) – **Revocation** 21 §4177A Vehicle Assault (first and second degrees) – **Revocation** 21 §2732(a)(2).

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor – Revocation 21 §4177L(a)

<sup>220</sup> Under 21 §2742(f)(2) with reference only to an admin. per se violation, an alcohol concentration  $\geq 0.08$  or a “positive indication of drugs” is conclusive evidence of a DWI (21 §4177) offense.

<sup>221</sup> For the purpose of license sanction enhancement, prior DWI offense/IMPLIED consent test refusal is considered the same as a prior admin. per se violation. 21 §2742(c)

<sup>222</sup> For persons < 21 years old, an alcohol concentration  $\geq .02$  is “conclusive evidence” of vehicle operation while or after consuming alcoholic liquor. 21 §2742(f)(3)

Sanctions Following a Conviction for a DWI Offense:

Term of License Withdrawal  
(Days, Months, Years, etc.):

First offense – **12 months**; second offense (within 5 years) **18 months**<sup>223</sup>; third or subsequent offense (within 5 years) – **24 months**  
Vehicle Assault (second degree) – **1 year**; Vehicle Assault (first degree) – **2 years**  
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor – first offense – **2 months**; subsequent offense – **6 to 12 months**

Mandatory Minimum Term of Withdrawal:

First offense – **90 days**<sup>224</sup> A conditional license may be issued after the first 90 days of the revocation period 21 §§4177B, 4177C and 4177E. Second offense -**18 months** A person may be permitted to apply for a driver’s license after **18 months** provided he/she has satisfactorily completed the Subsequent Offense **Ignition Interlock** program. Third or subsequent offense – **24 months** must have elapsed and the driver must have completed the **Ignition Interlock** program. 21 §§4177C(b)(3) Vehicle Assault (second degree) – **1 year**; Vehicle Assault (first degree) – **2 years**  
Persons Under 21 Years Old-Operation of Vehicle While or After the Consuming Alcoholic Liquor – first offense – **2 months**; subsequent offense – **6 months** These actions appear to be mandatory.

Other:

Rehabilitation:

Alcohol Education:

**Yes**<sup>225</sup> 21 §4177(d) and 4177D

<sup>223</sup>For subsequent offenders, higher BACs will increase time of revocation. 21 §4177A(a)(2)(3).

For **persons under 18 years old**, license suspension/revocation until they are 21 (6 months mand). After the mandatory period, a restricted license may be issued provided (1) there is a “critical need” for such a license and (2) the minor is attending an alcohol program. 1 §302(2) and (12) and 10 §§927(a)(6) and 1009(f) Also, under 21 §2707(b)(9), the licensing agency is not supposed to issue a license for 2 years or until the person is 18 whichever is longer to anyone under 21 who has been convicted of either a DWI or any drug offense {i.e., the minimum period of 2 years appears to be mandatory.}

<sup>224</sup> **Ignition Interlock. Court Order.** Under 21 §4177(e), the court, in addition to any other penalty, may order the defendant only to operate vehicles equipped with an “ignition interlock” device. This requirement must remain in effect for not less than 1 year. Voluntary Participation in Ignition Interlock Program. First offenders who have refused to submit to a chemical test and second or subsequent offenders are eligible for a regular Class D license via the licensing agency if they agree to install and use ignition interlock devices on the vehicles they operate. (1) If the original revocation was for 12 months, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 1 month. (2) If the original revocation was for 12 months where there are no prior offenses but there is a refusal to submit to a chemical test, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 2 months. (3) If the original revocation was for 18 months, a person must agree to participate in the program for 20 months whereupon a conditional license is available after 6 months. And, (4) if the original revocation was for 24 months, a person must agree to participate in the program for 26 months whereupon a conditional license is available after 12 months. Offenders must agree to complete an alcohol education or rehabilitation program following revocation. Persons who have been convicted for drunk-driving offenses related to death or serious injury or who are under license suspension or revocation are not eligible for this voluntary program. 21 §§2702(e) and 4177F Participation in the ignition interlock program is mandatory for all subsequent offenders 21 §4177G

<sup>225</sup> I. First offenders are required to complete either a DWI education or rehabilitation program. 21 §4177(d)(1)

Alcohol Treatment: **Yes** 21 §4177(d) and 4177D  
 Vehicle Impoundment/Confiscation:  
 Authorized by Specific  
 Statutory Authority: **No**

Terms Upon Which Vehicle  
 Will Be Released:  
 Other:

**Impoundment of a vehicle or surrender of license plates/registration** (first offense – 90 days; subsequent offense – 1 year) is authorized if the vehicle operator was operating the vehicle while under license suspension or revocation for a DWI offense, implied consent refusal or other situations which require mandatory license revocation. 21 §2756(c)(1)

Miscellaneous Sanctions  
 Not Included Elsewhere:

“**House arrest**” may be used as an alternative to imprisonment. 11 §§4332, 4347(j), 4391 et seq. See especially 11 §4392(c). The court may suspend any or all misdemeanor and felony sentences that have no mandatory minimum for probation 11 §4206(d), §4205(d) and (e)

Other Criminal Actions Related To DWI:

Homicide by Vehicle:  
 State Has Such a Law:

**Yes**<sup>226</sup> first degree (death caused by criminally negligent driving while DWI) **Class E felony** 11 §630A; second degree (death caused by (1) criminally negligent driving or (2) negligent driving while DWI) **Class F felony** 11 §630

II. First offenders who elect to participate in probation before judgment program are placed on probation and required to complete either a DWI education or rehabilitation program. However, offenders (1) whose blood alcohol concentration was  $\geq 0.20$ , (2) who were driving on a suspended or revoked license, (3) who were involved in an injury-causing accident or (4) who had 3 or more moving violations (within 2 years) are not eligible for this program. 21 §4177B(a) Such persons may participate in the ignition interlock program. 21 §§4177B(g) and 4177F(d) III.

<sup>226</sup> A defendant may be required to pay restitution to a victim of a vehicle homicide offense. 11 §4202(c)(9)

**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  $\geq .04$  (2) is under the influence of alcohol, a controlled substance or any drug or (3) refuses to submit to a chemical test for an alcohol concentration. A person is not eligible for an occupational CDL if “disqualified.” The disqualification provision, 21 §2612(a)(5), only applies to a refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, 21 §2614, applies to tests for either an alcohol concentration or 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 mandatory). In addition, a CMV operator who has any measurable amount of alcohol (defined as having BAC/BrAC  $\geq .02$  but  $< .04$ ) in his/her system must be placed “out-of-service” for 24 hours. A CMV operator is also subject to the following criminal sanctions for violating driving while in violation of either the “disqualification” or “any measurable amount” provisions of the CMV/CDL statute: first offense: Fine – \$200 to \$2,500; subsequent offense: Fine – \$500 to \$5,000, jail – not more than 90 days. 21 §§2603(2), (6), (7), (9), (18) and (21), 2607, 2612(a), (b) and (c), 2613, 2614(a) and (b) and 2622 Separate provisions of law also make it an offense to operate a CMV with a BAC/BrAC  $\geq .04$  or while impaired by any drug or controlled substance. A person who violates this law is subject to the “disqualifications” noted above and the following criminal sanctions. For a first offense they are subject to a fine of \$25 to \$115. For a subsequent offense, they are subject to an imprisonment term of 10 to 30 days and/or a fine of \$57.50 to \$230. However, a second offense must occur within 12 months of a first. Prosecution under this law does not preclude prosecution under other provisions of law. 21 §§4177J and 4205(a)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	<u>First degree</u> – Not more than <b>5 years</b> ; <u>second degree</u> – Not more than <b>3 years</b> 11§4205
Mandatory Minimum Term:	<u>First degree</u> – <b>2 years</b> ; <u>second degree</u> – <b>1 year</b> 11 §§630 and 630A
Fine (\$ Range):	<u>First and second degrees</u> -As deemed appropriate by the court 11 §4205(k)
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<u>First degree</u> – <b>Revocation</b> ; <u>second degree</u> – <b>Revocation</b> 21 §2732
Length of Term of Licensing Withdrawal:	<u>First degree</u> - <b>4 years</b> ; <u>second degree</u> - <b>3 years</b>
Mandatory Action--Minimum Length of License Withdrawal:	<u>First degree</u> - <b>4 years</b> ; <u>second degree</u> - <b>3 years</b>
Other:	<b>None</b>
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked.
Sanction:	
Criminal:	
Imprisonment (Term):	<b>Misdemeanor</b> (Unclassified) <u>first offense</u> – <b>30 days to 6 months</b> ; <u>subsequent offense</u> (within 3 years) – <b>60 days to 1 year</b> 11 §§233(c) and 4202(b) and 21 §2756
Mandatory Minimum Term of Imprisonment:	<u>First offense</u> – <b>None</b> <sup>227</sup> ; <u>subsequent offense</u> (within 3 years) – <b>60 days</b> 21 §2756
Fine (\$ Range):	<u>First offense</u> – <b>\$500 to \$1,000</b> ; <u>subsequent offense</u> (within 3 years) – <b>\$1,000 to \$4,000</b> 21 §2756
Mandatory Minimum Fine:	<u>First offense</u> – <b>\$500</b> <sup>228</sup> ; <u>subsequent offense</u> (within 3 years) – <b>\$1,000</b> 21 §2756
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>None</b>
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	

<sup>227</sup> If the offense involved operating a motor vehicle while revoked where the revocation was based on a drunk-driving offense related to either a death or an injury, there is a mandatory **30-day** period of imprisonment and a mandatory fine of **\$2,000**.

<sup>228</sup> If the original revocation was based on a drunk-driving offense, the minimum mandatory fine is \$600. 21 §2756(a)

<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	<b>Yes</b> 21 §2801 et seq. See Footnote No. <sup>229</sup> 21 §2612(h)(1). (2) and (3)
Grounds for Being Declared an Habitual Offender:	3 or more serious violations within a 5-year period, or 10 or more minor moving violations in a 3-year period. 21 §2802
Term of License Rev While Under Habitual Offender Status:	<b>Revocation for 5 years</b> if based on serious offenses or for <b>3 years</b> if based on minor moving violations. 21§2809
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	<b>Misdemeanor</b> (Unclassified) 11 §§233(c) and 4202(b)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	<u>First offense – 90 days to 30 months<sup>230</sup></u> ; <u>subsequent offense – 180 days to 5 years</u> 21 §2810
Mandatory Minimum Term of Imprisonment:	<u>First offense – 90 days</u> ; <u>subsequent offense – 180 days</u> 21 §2810
Fine (\$ Range):	<u>First offense – not more than \$1,150</u> ; <u>subsequent offense – not more than \$2,300</u> 21 §2810
Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	<b>None</b>

**Special Note:** I. It is an unclassified misdemeanor to operate a CMV while either disqualified or under a CDL out-of-service order. For a first offense, a person is subject to a fine of from \$200 to \$2,500; for a subsequent offense, a person is subject to an imprisonment term of not more than 90 days and/or a fine of from \$500 to \$5,000, 11 §§233(c) and 4202(b) and 21 §§2607(b) and 2622 II. Under separate provisions of law, the following sanctions may be imposed for a violation of an “out-of-service” order. Fine: A fine of \$1,000 to \$2,500. 21 §2612(h)(4) Disqualification: first violation-90 days (mandatory) to 1 year; second violation (within 10 years) – 1 to 5 years (1 year mandatory); and, third or subsequent violation (within 10 years) – 3 to 5 years (3 years mand). If the driver was either transporting hazardous materials or driving a vehicle designed to transport > 15 persons, the following disqualification periods apply: first violation – 180 days (mandatory) to 2 years; second violation (within 10 years) – 3 to 5 years (3 years mandatory); and, third or subsequent violation (within 10 years) – 3 to 5 years (3 years) .

<sup>229</sup> Under 21 §2814, a person who is convicted of a traffic offense that would make them a habitual offender is subject to the following additional sanctions: Jail-30 days to 12 months; fine – \$115 to \$1,150. No execution is taken to impose these additional sanctions until the person is finally adjudged a habitual offender.

<sup>230</sup> Under 21 §2810, the court cannot suspend an imprisonment term. This in effect makes the minimum period of incarceration mandatory.



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

BAC Chemical Test Is Given to the

Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>231</sup> 4 §904(a) and (b)

Minimum Age (Years) Possession:

21 Does not apply to alcohol use in religious services or in the home. 4 §904(f)

Minimum Age (Years) Consumption:

21 Does not apply to alcohol use in religious services or in the home. 4 §904(f). Anyone outside of religious services or the home who provides liquor to another under 21 is fined \$100 – \$500 and may be ordered to complete 40 hrs. of community service and may be imprisoned for 30 days. 4 §903(c)

Dram Shop Laws and Related Legal Actions:

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

No

“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):

No For cases denying liability, see *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981)<sup>232</sup>, *Oakes v. Megaw*, 565 A.2d 914 (Del. 1989), *Samson v. Smith*, 560 A.2d 1024 (Del. 1989), and *Acker v. Cantinas, Inc.*, 586 A.2d 1178 (Del. 1991).

Dram Shop Actions-Social Hosts:

No<sup>233</sup>

Other:

A licensee is not liable for the injuries sustained by an intoxicated patron. *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981). and *McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994)

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

<sup>231</sup> It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to make a “false statement” about his/her age in order to obtain alcoholic beverages punishable by a fine of \$100 to \$1000 for a first offense, and \$500 to \$1000 for each subsequent offense. 4 §904(b)

<sup>232</sup> The *Wright* case concerned a patron who brought a cause of action against a licensee for injuries they sustained as a result of becoming intoxicated at the licensee’s establishment. At the conclusion of its decision, the court made a general statement that, in effect, held that a licensee is not liable for the injuries caused by an intoxicated patron to a third party (437 A.2d at 559).

<sup>233</sup> A “business invitee” (employee) on the premises of a social host (employer) may have a cause of action against such social host for injuries sustained as a result of actions by an intoxicated guest. *DiOssi v. Maroney*, 548 A.2d 1361 (Del. 1988)

Type of Criminal Action: **Misdemeanor** (Unclassified) 4 §706, 4 §708 and 11 §§233(c) and 4202(b)  
 Term of Imprisonment: **No.**  
 Fine (\$ Range): Not more than **\$100** 4 §903(4)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Suspension** 4§561(b)(1)  
 Length of Term of License  
 Withdrawal: Not specified by statute

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: **Misdemeanor** (Unclassified) 4 §§708(a)(1) and 904(a) and 11 §§233(c) and 4202(b)  
 Term of Imprisonment: **No**<sup>234</sup>  
 Fine (\$ Range): Not less than **\$250** or more than **\$500**<sup>235</sup> 4 §904(a)

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** 4 §561(b)(1)  
 Length of Term License Withdrawal: Not specified by statute

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:

Open Container Law (Yes/No): **No**<sup>236</sup>  
 Anti-Consumption Law (Yes/No): **Yes** Applies only to drivers<sup>237</sup> 21 §4177J

<sup>234</sup> A person may be imprisoned for 30 days for failure to pay the fine. 4 §§903 and 904(a)

<sup>235</sup> Under 4 §902, also authorized is a fine of \$500 to \$1,000; failure to pay this fine will subject a violator to 3 to 6 months in jail.

<sup>236</sup> “No more than 1 alcoholic beverage may be sold to a person less than fifteen minutes prior to closing...” 4 §727

<sup>237</sup> Applies to persons who consume an alcoholic beverage while “operating a motor vehicle in the presence of, or in the view of, a police officer.”

Administrative Fines. I. A licensee is subject to an administrative fine which cannot exceed 10 percent of the average gross monthly sales of alcoholic liquor over the 12 month period prior to the date of a finding of guilt provided this amount exceeds \$250. There is a mandatory minimum fine of \$250. 4 §914 II. In addition, a licensee, who violates the rules of the alcoholic beverage control commission, may choose to plead guilty to the violation and pay a voluntary administrative fine of not more than \$5,000. 4 §915