

STATE:

GEORGIA

General Reference:

Code of Georgia Annotated (Code of 1981)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol §40-6-391(a)(1) $\geq .08^{287\text{and}288}$ **or Any Amount of a Controlled Substance or Marijuana** (in the blood or urine)²⁸⁹ §§40-1-1(1), 40-6-391 (a)(5) and (6) and 40-6-392(c)(.1)

Illegal Per Se Law (BAC/BrAC):

Persons Under 21 Years Old- $\geq .02^{290}$ §§40-6-391(k)(1) and 40-6-392(c)(3).

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

(1) Under the influence of **Any Drug**, (2) under the intentional influence of **Any Glue, Aerosol, or Other Toxic Vapor** or (3) under the combined influence of alcohol and/or any of the previous substances §40-6-391(a)(2), (3) and (4)²⁹¹

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No²⁹²

Implied Consent Law:

Yes²⁹³ §40-5-55(a)

Arrest Required (Yes/No):

Yes §40-5-55(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes^{294and295} (Criminal Cases) §40-6-392(d) *Allen v. State*, 494 S.E.2d 229 (Ga. App. 1997), and

²⁸⁷ This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 (.02 for persons under 21 years old) or more.

²⁸⁸ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §40-1-1(1)

²⁸⁹ The law making it illegal to operate a motor vehicle with any amount of a controlled substance or marijuana in the blood or urine where there is no evidence of impairment by drugs has been held to be constitutional on "rational basis" grounds as a legitimate exercise of legislative authority to protect the public safety. However, the exemption to this offense, allowing persons to operate motor vehicles in situations where they were legally entitled to use a controlled substance(s)/marijuana, was held unconstitutional; the court concluded that there was no "rational basis" to exclude these persons. §40-6-391(a)(6), *Stevenson v. State*, 453 S.E.2d 18 (Ga. 1995), and *Love v. State*, 517 S.E.2d 53 (Ga. 1999) See also *State v. Kachwalla* 561 S.E.2d 403 (2002) discussing 3(a)(2) of the statute.

²⁹⁰ Except as noted, the sanctions for this offense are the same as for any other drunk-driving offense.

²⁹¹ The courts have held that §40-6-391 establishes one offense namely that of "driving under the influence." Subsection (a)(1), the standard DWI offense, and subsequent section (a)(5), the .08 illegal per se offense, represent two different methods of proving this "one" offense. *Kuptz v. State*, 345 S.E.2d 670 (Ga. App. 1986), and *French v. State*, 401 S.E.2d 67 (Ga. App. 1990) (affirmed by the Georgia Supreme Court, 405 S.E.2d 35 (Ga. 1991)) The State Supreme Court also has held that §40-6-391(k), which makes it illegal for a person under 21 years old to operate a motor vehicle with an alcohol concentration $\geq .02$, does not violate such person's right to equal protection of the laws under either the State or Federal constitutions. *Barnett v. State*, 510 S.E.2d 527 (Ga. 1999)

²⁹² Law enforcement officers are using preliminary breath testing devices without express legislative authorization. Such use has not been subject to court challenge. However, the Georgia Supreme Court has noted such use. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993) See also *White v. State*, 503 S.E.2d 891 (Ga. App. 1998), and *State v. Stansbury*, 505 S.E.2d 564 (Ga. App. 1998).

²⁹³ It appears that an arrest is not required if there are "reasonable grounds" to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death. §40-5-55(a)

²⁹⁴ Refusal to submit to a PBT also may be admitted into evidence at a DWI trial. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993)

²⁹⁵ If proper warnings are not given, evidence of refusal may not be admissible. *State v. Leviner*, 443 S.E.2d 688 (Ga.

(continued)

Brinson v. State, 503 S.E.2d 599 (Ga. App. 1998)

Other Information:

Refusal to submit to alco-sensor (PBT), Horizontal Gaze Nystagmus and field sobriety tests can be admitted into evidence. *Turner v. State*, 504 S.E.2d 229 (Ga. App. 1998)

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

Blood:	Yes ²⁹⁶ §40-5-55(a)
Urine:	Yes §40-5-55(a)
Other:	“Other Bodily Substance” §40-5-55(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ²⁹⁷
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes <u>first offense</u> (discretionary); <u>second or subsequent offense</u> (mand) §§40-5-1(9), 40-5-63.1 and 40-6-391(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Suspension 1 year (mand) §40-5-67.1(d)

App. 1994)

²⁹⁶ The law further provides that a blood test with a “drug screen” be administered to drivers involved in accidents resulting in either a serious injury or death. This stipulation, however, is not “mandatory.” §40-5-55(a)

²⁹⁷ The court cannot accept a *nolo contendere* plea in two situations. (1) For a violation of the illegal per se provision, where the offender’s BAC or BrAC was ≥ .15 or (2) for a violation of §40-6-391(k), where a person under 21 years old was operating a motor vehicle with a BAC or BrAC ≥ .02. §§40-6-391(k)(3) and 40-6-391.1(a)

Double Jeopardy. Based upon the same factual situation, a person subjected to licensing action under the admin per se law may also be subsequently prosecuted for DWI. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Jackson v. State*, 462 S.E.2d 802 (Ga. App. 1995), *Nolen v. State*, 463 S.E.2d 504 (Ga. App. 1995), *Kirkpatrick v. State*, 464 S.E.2d 882 (Ga. App. 1995), *Walsh v. State*, 469 S.E.2d 526 (Ga. App. 1996), *Martinez v. State*, 471 S.E.2d 551 (Ga. App. 1996), and *Smith v. State*, 471 S.E.2d 591 (Ga. App. 1996)

Restitution (e.g., Victim’s Fund)

Misdemeanor) – **Not less than 30 mandatory days** §40-6-391(c)
Persons Under 21 Years Old with an alcohol concentration of < .08: first offense – **Not less than 20 mandatory hours**; second or subsequent offense – **Not less than 40 mandatory hours** §40-6-391(c)(1)(C). (c)(2)(C) and (c)(3)(C) Must be completed within 60 days of date of sentencing §40-6-391(k)(2)
Yes (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. §17-14-1 et seq. (2) A victim may also receive payment from the State’s victims’ compensation fund. §17-15-1 et seq. Awards are limited to a maximum amount of \$1000 or \$5,000 – \$25,000 in the aggregate depending on circumstances. §17-15-8(c)

Other:

Photo, Name and Address Publication. For a second or subsequent offense, a defendant’s name, address and photograph shall be published in the “legal organ of the appropriate county.” §40-6-391(j)
Special Fine for the Peace Officer’s Annuity and Benefit Fund.³⁰¹ An additional fine equal to 5 percent of the original fine is imposed and deposited into this fund. §15-21-131
Assessment. An assessment penalty of \$25 or 10 percent of the original fine whichever is less. This penalty is used to support the Crime Victims Emergency Fund. §§15-21-112 and 15-21-115
Probation. If jail is <12 months, mandatory probation for any period of time not served in confinement. §40-6-391(c)(1)(E) second and subsequent offenders on probation must install ignition interlock devices on all of the vehicles they own and only operate vehicles equipped with such devices. Such use begins when the offender is issued limited driving privileges and must last for **6 months.** §§42-8-111 and 42-8-112

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

Yes³⁰² **≥ .08 BAC/BrAC** (≥ .02 for persons under 21 years old) §§40-5-67.1(c) and 40-5-67.2(a) first action– **Suspension 1 year** (License reinstatement after 30 days and after completion of an Alcohol or Drug Use Risk Reduction Program. However,

³⁰¹ **Special Penalty for the Brain and Spinal Injury Trust Fund.** An additional fine equal to 10 percent of the original fine is imposed and deposited into this fund. §§15-21-149, 15-21-150 and Article III, §IX, VI(k) of the State Constitution.

³⁰² If a person is “acquitted” of a drunk-driving offense under §40-6-391, the implied consent refusal or administrative per se suspension is terminated. However, this suspension does not terminate in cases where a person pleaded *nolo contendere* to such an offense. §40-5-67.1(g)(4)

limited driving privileges may be granted at any time. Second action (within 5 years) – **Suspension 3 years** (License reinstatement after either (1) a 18-month suspension or (2), if on probation for a drunk-driving offense, 12-month suspension followed by 6-months use of an **ignition interlock** device with restricted driving privileges.) Before a license can be reinstated, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. Third and subsequent action (within 5 years) – **Suspension 5 years** (2 years mand) After 2 years, a person may be issued a “probationary” driver’s license. During the first six months of probation, the offender may only operate vehicles equipped with **ignition interlock** devices. Before a license can be reinstated or a probationary license issued, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. §§40-5-64(a)(1) and (e), 40-5-67.1, 40-5-67.2 and 42-8-112

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Persons ≥ 21 Years Old³⁰³: For **all** DWI offenses: first offense – **Suspension**; second offense – **Suspension**; third offense (within 5 years) – **Revocation** (See Habitual Traffic Offender Law.) §§40-5-62(a)(1), 40-5-63, 40-5-64, 42-8-111 *and* 42-8-112 DWI-Serious Injury– **suspension** §40-5-63(d)
Persons Under 21 Years Old: For a violation §40-6-391, the same licensing actions as above. §40-5-57.1(b)(2)

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

Persons ≥ 21 Years Old: I. Alcohol and Non-controlled Substance (Drug) DWI Offenses: first offense – **12 months**³⁰⁴; second offense – **3 years**; third offense – **5 years** (See Habitual Traffic Offender Law.) DWI-Serious Injury-**3 years**
II. Controlled Substance DWI Offenses: first offense – **Not less than 180 days**; second offense – **3 years**; third offense – **5 years** §§40-5-63(a) and 40-5-75(a)
Persons Under 21 Years Old: For a violation §40-6-391, the same licensing sanctions as above. §40-5-57.1(b)(2)

³⁰³ If the vehicle operator was below the driving age (age 16) at the time of the DWI offense, the privilege to obtain a driver’s license must be “delayed” until age 17 for a first offense and until age 18 for a subsequent offense. However, the privilege may be reinstated if the person completes a DWI alcohol and drug use risk reduction program. §40-5-22.1 {Under §17-10-8, the court in felony cases where probation is allowed may condition such probation upon the defendant paying a fine of not more than \$100,000.}

³⁰⁴ For first drunk-driving offense conviction, the license suspension period may be limited to only 120 days. Under §40-5-63(a)(1), a driver’s license may be reinstated after 120 days, provided the defendant has completed a DWI alcohol or drug use risk-reduction program. The offender must have completed this program before the license can be restored.

Mandatory Minimum Term
of Withdrawal:

Persons ≥ 21 Years Old: I. Alcohol and Non-controlled Substance (Drug) DWI Offenses: first offense – **None**³⁰⁵; second offense – License reinstatement after either (1) an **18-month suspension** or (2), if on probation for a drunk-driving offense, **12-month suspension** followed by 6 months use of an **ignition interlock** device with restricted driving privileges. Third offense (within 5 years) – **2 years**. After **2 years**, a person may be issued a “probationary” driver’s license. If on probation for a drunk-driving offense, the offender can only operate vehicles equipped with **ignition interlock** devices for the first 6 months of probationary driving privileges §§40-5-63(a)(3) and 42-8-112 DWI-Serious Injury-**3 years**
 II. Controlled Substance DWI Offenses: first offense – **180 days**; second offense – **1 year**; third offense – **2 years** §§40-5-63(a) and 40-5-75(a)
Persons Under 21 Years Old: first offense – If BAC was < .08-**6 months**; if BAC was ≥ .08-**12 months**; second or subsequent offense – mandatory licensing actions as noted above. §40-5-57.1(b)(2)

Other:

Rehabilitation:
 Alcohol Education:
 Alcohol Treatment:

Yes

Yes I. For a first or second DWI conviction listed under admin. action I or II, a person’s license cannot be reinstated until completion of an alcohol or drug risk-reduction program. §40-5-63(a)(1) and(2) §40-6-391(c)(1)(d) and (2)(D)
 II. For second or third DWI offense convictions, a defendant must complete an “alcohol or drug use risk-reduction program” and, if an evaluation indicates that treatment is necessary, a substance treatment program before their license can be restored. §§40-5-62(b), 40-5-63(a)(2) and 40-5-63.1, §40-6-391(2)(E) and (3)(E)

Vehicle Impoundment/Confiscation:
 Authorized by Specific Statutory Authority:

Yes Forfeiture – A person’s vehicle is subject to forfeiture if convicted of a fourth DWI offense and such offense occurred while operating a vehicle in habitual offender status based on 3 prior DWI convictions. §40-6-391.2 In lieu of forfeiture and based on the financial hardship to the defendant’s family, the court may order that the vehicle’s title be transferred to another family member who is

³⁰⁵ For a first DWI offense conviction, a defendant may receive limited driving privileges in cases of “extreme hardship.” §40-5-64 Driving privileges may be reinstated after the offender has completed a drug treatment program if a refusal to allow such privileges would cause “extreme hardship.” §40-5-64

Terms Upon Which Vehicle Will Be Released:	licensed and who needs the vehicle for employment or other family needs. §40-6-391.2(i)
Miscellaneous Sanctions Not Included Elsewhere:	<p>None</p> <p>The court has the authority to order a defendant “to wear a fluorescent pink plastic bracelet imprinted with the words 'D.U.I. CONVICT'...” (436 S.E.2d at 794) as a condition of probation. <i>Ballenger v. State</i>, 436 S.E.2d 793 (Ga. App. 1993)</p>
<u>Other Criminal Actions Related to DWI:</u>	
<u>Homicide by Vehicle:</u> State Has Such a Law:	<p>Yes Three Types: I. Vehicle Homicide in the first degree (felony) – Death where there is no “malice aforethought” but where there is either reckless driving or a DWI offense.</p> <p>II. Vehicle Homicide in the second degree (misdemeanor) – Where the death is caused “without an intention to do so” and where there is neither reckless driving nor a DWI offense.</p> <p>III. Vehicle Homicide in the first degree (felony) – Death where the defendant is a “Habitual Violator”, the license has been revoked <u>and</u> there is no “malice aforethought”. §§16-1-3(5) (defines a felony offense) and 40-6-393</p>
Sanctions:	
Criminal Sanction: Imprisonment (Term):	<p>I. 3 to 15 years (§40-6-393); II. Not more than 12 months (§17-10-3(a)(2)); III. 5 to 20 years (§40-6-393)</p>
Mandatory Minimum Term: Fine (\$ Range):	<p>I. None; II. None; III. 1 year (§40-6-393) I. None³⁰⁶; II. Not more than \$1,000 (§17-10-3(a)(2)); III. None</p>
Mandatory Minimum Fine:	<p>None (This applies to all vehicle homicide offenses)</p>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<p>Suspension/Revocation §§40-5-54(a)(1), 40-5-58 and 40-5-63</p>
Length of Term of Licensing Withdrawal:	<p>I. Suspension – 3 years (§40-5-63(e)) Revocation – 5 years if “Habitual Violator”; II. <u>First offense – Suspension – 12 months</u>; <u>second offense</u> (within 5</p>

³⁰⁶ Under §17-10-8, the court as a condition of probation for a felony offense may require an offender to pay a fine of not more than \$100,000.

Comment: A “narrow” interpretation of §§40-5-54(a)(1) and 40-5-63(a) would indicate that the same licensing sanctions apply to both Type II and Type III in Vehicle Homicide offenses. i.e., the law “apparently” does not provide for special licensing sanctions for persons who are convicted of a Type III Vehicle Homicide Offense. However, it is more likely that a Type III Vehicle Homicide offender (first or subsequent) would be subject to another license revocation for 5 years with 2 years mandatory because the offender would have been convicted of more than three serious traffic offenses within five years and, therefore, would be subject once again to the Habitual Violator Law (§40-5-58).

Mandatory Action--Minimum Length of License Withdrawal:

years) – **Suspension – 5 years**; third offense (within 5 years) – “Habitual Violator” – **Revocation – 5 years III. Revocation – 5 years**

Other:

I. **Suspension – 3 years** (§40-5-63 (e)) **Revocation – 5 years** if “Habitual Violator” (§40-5-58(f)); II. First offense – **Suspension – None**; second offense (within 5 years) – **Suspension – 120 days**; third offense (within 5 years) – “Habitual Violator” – **Revocation – 2 years III. Revocation – 2 years None**

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

No specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.³⁰⁷

Sanction:

Criminal:

Imprisonment (Term):

First offense – **2 days to 12 months** (misdemeanor); second and subsequent offense within 5 years – (high and aggravated misdemeanor) – **10 days to 12 months** §40-5-121 (a)

Mandatory Minimum Term of Imprisonment:

First offense – **2 days**; second and subsequent offense (within 5 years) – **10 days** §40-5-121(a) Op. Atty. Gen. U92-4

Fine (\$ Range):

First offense – **\$500 to \$1,000**; second and subsequent offense (within 5 years) – **\$1,000 to \$2,500** §40-5-121 (a)

Mandatory Minimum Fine:

First offense – **\$500**; second and subsequent offense (within 5 years) – **\$1,000** §40-5-121(a)

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 (not less than 3 years if transporting hazardous materials) if convicted of driving a CMV (1) with a BAC/BrAC/UrAC $\geq .04$ “percent by weight” of alcohol or more in the blood, breath or urine (The usual standards for alcohol concentrations in the blood (grams of alcohol per 100 milliliters of blood), breath (grams of alcohol per 210 liters of breath) or urine (grams of alcohol per 67 milliliters of urine) are listed in the CMV law. However, since the disqualification provisions use the term “percent by weight”, there is a question as to whether such standards apply to these provisions.); (2) while under the influence of alcohol or any drug or; (3) or by refusing to submit to a chemical test for alcohol concentration. (The CMV implied consent provision, §40-5-153, applies to testing for both an alcohol concentration and for the presence of drugs; however, the disqualification provision, §40-5-151(a)(2), 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). It is a misdemeanor to operate a CMV with a BAC $\geq .04$; the only sanctions for this offense are the fines associated with DWI offense convictions. In addition, a

³⁰⁷ It is a misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a fine of not less than \$500 and a CDL suspension for 6 months. §§40-5-146(b) and 40-5-159(c) In addition, a person who violates an out-of-service order is subject to the following disqualification periods: first violation – 90 days to 1 year; second violation-1 to 5 years; and, third or subsequent violation-3 to 5 years. The minimum period of disqualification appears to be mandatory. §40-5-151(g)

CMV operator, who has any measurable amount of alcohol in their system, must be placed “out-of-service” for 24 hours. §§40-5-67.1(c), 40-5-142(2), (7), (9), (10) and (21), 40-5-151, 40-5-152, 40-5-153, 40-6-391(i) and 40-6-392(c)(2)

(continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Suspension/Revocation §40-5-121(b)(2) and (c)

Length of Term of License

Withdrawal Action:

Original suspension or revocation period is extended
6 months

Mandatory Term of License

Withdrawal Action:

Original suspension or revocation period is extended
6 months

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §40-5-58

Grounds for Being Declared an

Habitual Offender:

3 or more serious violations within 5 years

Term of License Rev While

Under Habitual Offender Status:

Revocation 5 years³⁰⁸ §40-5-62(c)(1) **See License Plates Surrendered** below.

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Felony³⁰⁹ §§16-1-3(5) and 40-5-58(c)(1) and (2)

Sanctions Following a Conviction of

Driving While on Habitual Offender Status:

Imprisonment (Term):

1 to 5 years §40-5-58(c)(1) and (2)

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

Not less than **\$750** §40-5-58(c)(1) If habitual offender status was based only on DWI offense convictions, not less than **\$1,000** §40-5-58(c)(2)

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

³⁰⁸ A 3-year probationary restricted hardship license may be issued after 2 years of the revocation period have passed. The issuance of a probationary license must be based upon “extreme hardship” which is defined as a need for transportation to go to and from employment, medical care facilities, school or college, or court-ordered alcohol or drug treatment programs. The person is also required to complete defensive driver course or an alcohol or drug risk-reduction program before this probationary license can be issued. §40-5-58(e). However, if habitual offender status is based on two or more drunk-driving offense convictions and the offender is placed on probation, the use of a probationary license is conditioned on the use of an **ignition interlock** device for 6 months after the probationary license has been issued. §42-8-112(b)(3) {A probationary license is not available if (1) the person’s regular license has been revoked for a DWI-related death (§40-5-58(f)), (2) the person has been convicted of any other motor vehicle-related death (§40-5-58(e)(1)(B)) or (3) the person has been convicted of violating either the alcoholic beverage control law or the controlled substances law. (§40-5-58(e)(1)(D).}

³⁰⁹ It is a misdemeanor (jail – not more 12 months; fine – not more than \$1,000) to operate a vehicle without a license after the 5-year revocation has passed. §§17-10-3(a) and 40-5-58(c)

License Plates Surrendered. A second or subsequent drunk-driving offender must have the **license plates** of all vehicles owned surrendered to the court. **Specially numbered plates** may be issued for such vehicles provided the offender has a limited or probationary license or some other member of the offender’s household has a valid license and there is a hardship requiring the use of a vehicle or vehicles. Such special plates shall not constitute probable cause to stop a motor vehicle. §40-2-136

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)

Possible §45-16-46 and Ops. Att. Gen. U79-10 and U80-56 Test via the coroner or medical examiner.³¹⁰

BAC Chemical Test Is Given to
the Following Persons:

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §3-3-23(a)(1) and (2)

Minimum Age (Years) Possession:

21 §3-3-23(a)(2) and (b) Exceptions: Medical purposes, religious ceremonies, and home use with parental consent, or handling pursuant to employment

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

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

Yes Limited §51-1-40(b)^{311,312and313}

“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):

No³¹⁴

³¹⁰ At the request of either a coroner or police officer, the medical examiner may take a blood sample from a person who has been killed for the purpose of determining the presence of intoxicating substances in such person.

³¹¹ Also, under §51-1-18, a parent has a right to bring an action against any person who sells or furnishes alcoholic beverages to that parent’s underage child without the parent’s permission. *Eldridge v. Aronson*, 472 S.E.2d 497 (Ga. App. 1996), and *McNamee v. A.J.W.*, 519 S.E.2d 298 (Ga. App. 1999)

³¹² Sec. 51-1-40 has been held not to violate the due process clause of the U.S. Constitution. *Riley v. H and H Operations, Inc.*, 435 S.E.2d 659 (Ga. 1993)

³¹³ Action is limited to the selling, furnishing or serving of alcoholic beverages either (1) to persons under the legal drinking age (in a willful, knowing and unlawful manner) or (2) to persons who are “in a state of noticeable intoxication” and only for injuries and damages resulting from the operation of a motor vehicle “when the sale, furnishing, or serving is the proximate cause of such injury or damage.” *Perryman v. Luftran, Inc.*, 434 S.E.2d 112 (Ga. App. 1993), *Kappa Sigma Intern. Fraternity v. Toole*, 473 S.E.2d 213 (Ga. App. 1996), *Pass v. Bouwsma*, 522 S.E.2d 484 (Ga. App. 1999), *Birnbrey, Minsk and Minsk, LLC v. Yirga*, 535 S.E.2d 792 (Ga. App. 2000) and *Hulsey v. Northside Equities, Inc.* 548 S.E.2d 41 (Ga.App.2002) affirmed 567 S.E.2d 4 (Ga. 2002). A motor vehicle passenger can recover damages from a licensee for any injuries they may have sustained in an accident while riding with an intoxicated driver who had become inebriated at the licensee’s establishment. Liability applies even if the passenger also consumed alcoholic beverages with the vehicle operator at the establishment prior to the accident. A passenger is not considered a “consumer” under the dram shop law. *Griffen Motel Co. v. Strickland*, 479 S.E.2d 401 (Ga. App. 1996)

³¹⁴ The following case law, it appears, has been abrogated, at least in part, by the dram shop law (§51-1-40(b)): *Sutter v. Hutchings*, 327 S.E.2d 716 (Ga. 1985); *Bishop v. Fair Lanes Bowling, Inc.*, 623 F. Supp. 1195 (D.C. Ga. 1985) (reversed and remanded on other grounds, 803 F.2d 1548 (11th Cir. 1986)); and, *Tibbs v. Siudebaker's of Savannah*, 362 S.E.2d 377 (Ga. App. 1987).

Dram Shop Actions-Social Hosts:
Other:

Yes Limited §51-1-40(b)
A patron injured by an intoxicated patron at a social function may bring a cause of action against the social host for damages. The cause of action is based on negligence in failing to maintain a safe premises. *Borders v. Board of Trustees, VFW*, 500 S.E.2d 362 (Ga. App. 1999)

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

Type of Criminal Action:
Term of Imprisonment:
Fine (\$ Range):

Misdemeanor §§3-3-9, 3-3-22 and 17-10-3
Not more than **12 months**
Not more than **\$1,000**

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 Suspension or cancellation §3-2-3
2 years

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:

Term of Imprisonment:

Fine (\$ Range):

First offense – Misdemeanor. Subsequent offenses – Misdemeanor of a high and aggravated nature. §§3-3-9, 3-3-23, 3-3-23.1, 17-10-3 and 17-10-4
For first and subsequent offense – Not more than 12 months
First offense – Not more than \$1,000; Subsequent offense – Not more than \$5,000

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):
Length of Term License
Withdrawal:

Yes Suspension or cancellation §3-2-3
2 years

Anti-Happy Hour Laws/Regulations:

No

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 Applies to drivers and passengers §40-6-253