

STATE:

IOWA

General Reference:

Iowa Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an alcoholic beverage⁴³⁶

§321J.2(1)(a)

Illegal Per Se Law (BAC/BrAC):

≥ **.08**^{437and438} or Any Amount of a Controlled Substance in the Blood or Urine⁴³⁹ §§321J.1(1) and 321J.2(1)(b) and (c). Persons under 21 – .02 BAC 321J.2A

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug or (2) Any Combination of Drugs Including an Alcoholic Beverage §321J.2(1)(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Yes ⁴⁴⁰ §321J.5

Arrest Required (Yes/No):

No⁴⁴¹ §3211.6(1)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §3211.6

Refusal to Submit a Chemical Test

Admitted into Evidence:

Yes (Criminal and Civil Cases) §321J. 16

A person may be required to submit to a chemical test via a search warrant issued pursuant to an investigation of involuntary manslaughter (§707.5) where a traffic accident has resulted in a death or in a personal injury likely to cause death and there is evidence of a DWI offense. §321J.10

⁴³⁶ A drunk-driving offense is described as “operating while intoxicated.” However, “operating while intoxicated” is defined as operating a vehicle while under the influence of an alcoholic beverage or illegal per se. Note: Under §321J.1(2), “[a]lcoholic beverage includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.”

⁴³⁷ This state’s illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of .08 or more or (2) a urine alcohol concentration of .08 or more.

⁴³⁸ Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §§ 321.1(1) and 321J.1(1)

⁴³⁹ There is an “affirmative defense” if the controlled substance was present because of a valid prescription and there is no evidence of alcohol consumption and no direction to refrain from operating a vehicle. §321 J.2 (7)

⁴⁴⁰ Physicians, physician assistants or advanced registered nurse practitioners may certify a person’s unconscious state or other incapacitated condition rendering that person incapable of consent or refusal, for purposes of implying consent for chemical testing of a person suspected of driving while intoxicated. {§ 321J.7 DEAD OR UNCONSCIOUS PERSONS}

⁴⁴¹ A request to submit to a test is based either on (1) reasonable grounds of either a drunk-driving offense or a violation of §321J.2A (persons under 21 years old driving with a BAC/BrAC ≥ .02) and any one of the following: (a) an arrest; (b) an accident resulting in injury or death; (c) a PBT refusal; or, (d) a PBT BAC/BrAC reading of ≥ .08 (for CMV operators, PBT BAC/BrAC reading of ≥ .04.) §§321.1(1) and 321J.1(1); and for persons under 21 years old PBT BAC/BrAC reading of ≥ .02) or (2) reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol but a PBT BAC/BrAC reading is < .08. §321J.6(1)

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

Blood: **Yes** §3211.6(2)
 Urine: **Yes** §321J.6(2)
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**⁴⁴²
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** An offender must, at their own expense, submit to a substance abuse evaluation. §§321J.2(3)(b), 321J.3 and 321J.17 Also, the court may order an evaluation if it thinks that the defendant “regularly abuses alcohol or other controlled substances”. §901.4A

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**
 Other: **None**
 Refusal to Take Implied Consent Chemical Test:
 Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev): **Revocation** First refusal – **1 year** (90 days mand); second or subsequent refusal⁴⁴³ – **2 years** (1 year mand) §§321J.9 If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL): A person is “disqualified” from operating a CMV for one mandatory year (3 years mand if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04; (2) is under the influence of alcohol, other drugs or a controlled substance or (3) refuses to submit to a chemical test for alcohol or drug concentrations. 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 violated 49 CFR 392.5 (e.g., consumed any alcohol within 4 hours of operating a CMV) must be

⁴⁴² First offenders who have BAC <.15 who have not refused to consent and where there has been no bodily injury are eligible for deferred judgment. §907.3 However, such persons are subject to a license revocation from 30 (mand) to 90 days. A 90-day revocation is mandatory if the offender refused to submit to a chemical test. §321J.4(3)

⁴⁴³ I. A prior drunk-driving offense conviction or a prior admin. per se violation is considered the same as a previous refusal for license sanction enhancement purposes. §321J.9(1) Note: These offenses stay on a person’s driving record for 12 years. §321.12(4)

II For either a first or subsequent refusal, a restricted license may be issued by the licensing agency provided the minimum period of license revocation has expired. A restricted license may only be used for education, treatment or employment purposes. §321J.20(1) However, a person must install an “ignition interlock” system on the vehicle(s) they operate as a condition for obtaining a restricted license. §§321J.9(2)(b) and 321J.20(6)

III The court is prohibited from issuing a temporary restricted license for employment purposes to persons who refuse to submit to a chemical test and who are <21 years old. §321J.4(9)

placed “out-of-service” for 24 hours, and any driver driving in violation of an “out-of-service” order is subject to a fine of \$100. §§321.1(1) and (11), 321.208, 321.208A, 321J.6 and 321J.8(3)

Sanctions Following a Conviction

for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

First offense (Serious misdemeanor) – **Not more than 1 year**; second offense (within 12 years) (aggravated misdemeanor) – **Not more than 2 years**; third and subsequent offense (within 12 years) (Class D felony) – **Not more than 5 years** (or up to 1 year in the county jail §902.9); serious injury related to a drunk-driving offense (Class D felony) – **Not more than 5 years** (or up to 1 year in the county jail) §321J.2(2) and (3), 707.6A(3), 902.9, 903.1 and 907.3(3)

Mandatory Minimum Term:

First offense (Serious misdemeanor) – **48 hours** (Limited Application)⁴⁴⁴; second offense (within 12 years - aggravated misdemeanor) – **7 consecutive days**^{445and446}; third and subsequent offenses (within 12 years - Class D felony) – **30 consecutive days** (limited)⁴⁴⁷; serious injury related to a drunk-driving offense (Class D felony) – **None**

Fine:

Amount (\$ Range):

First offense (Serious misdemeanor) – **\$500/\$1,000**⁴⁴⁸; second offense (within 12 years - Aggravated misdemeanor) – **\$1,500 to \$5,000**; third and subsequent offenses (within 12 years- Class D felony) – **\$2,500 to \$7,500**; serious injury related to a drunk-driving offense (Class D felony) – **\$750 to \$7,500**.

Mandatory Min. Fine (\$):

First offense (serious misdemeanor) – **\$500/\$1,000** (Limited Application); second offense (Aggravated misdemeanor) – **\$1,500**; third and subsequent offenses (Class D felony) – **\$2,500**; serious injury – (Class D felony) – **\$750**

⁴⁴⁴ For a first offense, there is a mandatory imprisonment sentence of 48 hours and fine as indicated if the offender (1) had a BAC/BrAC > .15, (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk-driving offense that injured another person. §§321J.2(3)(a) and 907.3(2)

⁴⁴⁵ This sentence may not be deferred or suspended. §321J.2(3)(a)

⁴⁴⁶ For second and subsequent offenders the 7-day and 30-day jail sanctions respectively must be served consecutively. §321J.2(3)(d) However, if consecutive minimum jail terms would cause a hardship on the defendant or if there is insufficient jail space, the minimum terms may be served in segments of at least 48 hours. In that case, the defendant must perform community service, with the period of community service decided by the court – as it “deem(s) appropriate.” §321J.2(3)(d)

⁴⁴⁷ An offender is subject to a 30-consecutive-day mandatory minimum incarceration sanction only if the court sentences them to county jail. However, if they are sentenced to the State Department of Corrections, there is no mandatory minimum incarceration sentence. *State v. Dist. Court for Mahaska County*, 620 N.W.2d 271 (Iowa 2000)

⁴⁴⁸ If there is no personal injury or property damage, the fine may be reduced to not less than \$500 provided the offender presents to the court a temporary restricted license at the end of the minimum period of ineligibility. §321J.2(2)(a)(2)

Sanctions Following a Conviction
for a DWI Offense:

Other Penalties:

Community Service:

First offense (serious misdemeanor) – Community service in lieu of part of or the entire fine.

§321J.2(2)(a)

Under separate provisions, the court may order either a first or subsequent offender to perform community service equivalent in value to any fine imposed. The value of the community service performed based on the Federal minimum wage. §909.3A

Restitution

(e.g., Victim’s Fund)

Yes For any intoxicated offense, the court may order the defendant to make restitution for any damages resulting from the offense. §321J.2(9)(a) Court-ordered restitution is possible under §910.1 et seq. and 915.100. II. In addition, a victim is eligible for compensation from the State’s crime victim reparation fund. §915.80 et seq.

Other:

Deferred judgment is allowed for some first DWI offenses. During such deferment their license is revoked 30 to 90 days. The same mandatory license revocation periods and temporary restricted license provisions apply as for DWI. §§321J.4(2) and 907.3 **Surcharges.** A surcharge of 30 percent of the fine actually imposed is assessed against anyone convicted of a State criminal offense and a drug abuse resistance education surcharge of \$10 must also be paid §911.2

Civil Penalty. An additional civil penalty of \$200 is assessed against a person who has had the license revoked as a result of either a DWI conviction, admin. per se violation or implied consent law refusal. Part of the money collected from this penalty is placed in a victim reparation fund. This penalty must be paid before restricted driving privileges can be granted. §321.218A, §321J.17(1)

Emergency Response Costs. The court may order an offender to pay the costs of an emergency response resulting from a drunk-driving offense. The cost cannot exceed \$500 for each public agency for each response. §321J.2(9)(6)

Double Jeopardy. Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Kocher*, 542 N.W.2d 556 (Iowa 1996), and *State v. Krebs*, 562 N.W.2d 423 (Iowa 1997).

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

Yes first violation – Revocation 180 days (90 days mand;.); **second or subsequent violation**⁴⁴⁹ (within 12 years) – **Revocation 1 year** (mand)
Persons Under 21 Years Old -> .02 but < .08 (BAC/BrAC/UrAC) **first violation – Revocation 60 days**; **second or subsequent violation** (within 12 years) – **Revocation 90 days** (mand) §§321J.2A and 321J.12(5) DWI defendants under 21 years old are not eligible for restricted driving privileges. §§321J.4(9) and 321J.20(2) If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18, whichever is the longer revocation period. §321J.4(6)
 Under §§321.210 and 321.212, a person’s license may be suspended for not more than 1 year if that person “committed” an offense usually requiring license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.

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

First offense – Revocation; **second offense** (within 12 years) **Revocation**; **third and subsequent offenses** (within 12 years) – **Revocation**; any DWI offense where there has been a serious injury – **Revocation** §§321.12, 321J.2(2)(a) and (3) and 321J.4

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

First offense – 180 days – 1 year; **second offense** (within 12 years)⁴⁵⁰ – **2 years**; **third and subsequent offenses** (within 12 years.) – **6 years** **DWI offense involving serious injury – 1 year**⁴⁵¹ §§321J.2(2)(a) and 321J.4 **DWI offense involving death – 6 years – first offenders with deferred judgments – 30 – 90 days.**

Post DWI Conviction
 Mandatory Minimum
 Term of Withdrawal:

First offense -30 days (60 days if the offender was < 21 years old) **90 days** if there was a chemical test refusal; **second offense – 1 year**; **third and subsequent offenses – 1 year** §§321J.4 and 321J.20

⁴⁴⁹ A first offender may participate in a substance abuse awareness program, §321J.25(4)

⁴⁵⁰ A previous offense includes either an admin. per se action or an implied consent law violation. §321J.4(1)

⁴⁵¹ For a drunk-driving offense conviction (including injury related offenses) or for an admin. per se violation, the licensing agency may issue a person a restricted license after the minimum mandatory license revocation period has expired. The restricted license may only be used for education, treatment or employment purposes. §321J.20 The court is prohibited from issuing a temporary restricted license for employment purposes to offenders or admin. per se violators who are <21 years old. §321J.4(9) Such a license is not available via the licensing agency. §321J.20(2)

DWI involving death – 2 years 321J.4(6). Deferred judgments-30 days

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes First and subsequent offenses §§321J.2(2)(a), 321J.3, 321J.17(2) and 321J.22

Yes I. Based upon a substance abuse evaluation, a court may order a DWI offender to attend a treatment program. Such a program could include inpatient treatment. The time the offender spends in this inpatient treatment program is credited towards their sentence. §321J.3

II. Under separate provisions of law, the court may commit a subsequent offender, as a condition for suspending a sentence, to an inpatient treatment program for alcoholism or drug addiction. Again, the time the offender spends in this program is credited towards their sentence. §321J.3(2)

III. In addition, under §901 .5(8), the court may order a defendant to complete a treatment program pursuant to an evaluation for alcohol or drug abuse conducted under §901.4A.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Impoundment or Immobilization. For a second or subsequent offense, the vehicle owned and used by the defendant in the offense “is subject to being either impounded or immobilized for either the period of the driver’s license revocation or for 180 days whichever is longer⁴⁵² §321J.4B(2)(a), (5)(d), (7)(a) and (7)(b)

Miscellaneous Sanctions

Not Included Elsewhere:

I. Ignition Interlock. (1) A DWI offender may be required to install ignition interlock devices on the vehicles they own. (2) A second or subsequent offender, after the mandatory license revocation period, may be granted restricted driving privileges provided they install ignition interlock devices on all of the vehicles they own. And, (3) prior to reinstating the driving privileges to a second or subsequent offender, the State shall require such person to install ignition interlock devices on all of the vehicles they own for 1 year. §§321J.17 and 321J.4

II. Persons sentenced to the county jail may be assigned “home detention” instead of incarceration. §356.26

III. (1) A second or subsequent offender is prohibited from either purchasing or registering a

⁴⁵² Law enforcement authorities seize the vehicle’s license plates (and, if the vehicle is in custody, its registration). New registration plates shall not be issued until the above period expires. However, either a non-resident co-owner or a family member (where the family has only one vehicle) may have this action rescinded provided an ignition interlock system is installed on the vehicle. §321J.4B(12)(c)

motor vehicle during impoundment, immobilization or license revocation. (2) During this period, a vehicle cannot be sold or have its title transferred. §321J.4B(11)(a)(1)(2)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes If death is unintentional and is related to State drag racing– Class D felony. If death is related to reckless driving– Class C felony. If death is related to a drunk-driving offense – Class B felony §707.6A

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Class D felony – Not more than **5 years** §902.9(4)
Class C felony – Not more than **10 years** §902.9(3)
Class B felony – Not more than **25 years** §902.9(1)
If death is related to reckless driving – **10 years**⁴⁵³
§902.12

Mandatory Minimum Term:

If death is related to drunk driving – **25 years**⁴⁵⁴
§902.12

Fine (\$ Range):

Class D felony – **\$750 to \$7,500** §902.9(4)
Class C felony – **\$1,000 to \$10,000** §902.9(3)
Class B felony – **None**

Mandatory Minimum Fine:

Class D felony – **\$750**; Class C felony – **\$1,000**

Administrative Licensing Action:

Type of Action:

Revocation §§321.209(1), 321J.4(5) and 707.6A(1)(a)

Length of Term of

Licensing Withdrawal:

Mandatory Action --Minimum Length of

License Withdrawal:

1 year §321.212(1)(a) 6 years if DWI §707.6A(1)

1 year §321.212(1)(a); **2 years** if DWI related
Restricted driving privileges are available after 2-
year revocation period.⁴⁵⁵ §§321J.4(5) and (8),
321J.20(2) and 707.6A(1)

⁴⁵³ A surcharge of 30 percent of the fine actually imposed is assessed against any person who is convicted of a State criminal offense. §911.2

⁴⁵⁴ A person is not eligible for parole or work release. However, his/her sentence may be reduced for “good conduct time.” §902.12

⁴⁵⁵ I. It is a simple misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 30 days or a fine of \$50 to \$500 and an additional disqualification period that is to equal to the original. §§321.218(5) and 903.1(1)(a) II. A person who operates a CMV while under a CDL out-of-service order is subject to a “scheduled fine” of \$100 and to a CDL disqualification. The disqualification periods are as follows: First violation – 90 days; second violation (within 10 years) – 1 year; third and subsequent violation (within 10 years) – 3 to 5 years. §§321.208, 321.208A and 805.8A

Child Endangerment: Iowa’s criminal law provides for sanctions against persons who either abuse or neglect a child under their control. The criminal law defines a child as a person < 14 years old. §702.5 I. The Iowa Supreme Court has held that a parent can be charged with child neglect (recklessly exposing his/her child to a danger), a Class C felony, if while transporting the child, the defendant operates a motor vehicle in an intoxicated condition. §726.3 and *State v. Caskey*, 539 N.W.2d 176 (Iowa 1995), *State v. Friend* 630 N.W.2d 843 (Iowa. App. 2001) II. There is the possibility that general criminal law provisions concerning child endangerment may apply as well. The child endangerment law makes it an offense to create a situation where a child is exposed to a “substantial risk.” This offense is an aggravated misdemeanor unless the child is seriously injured in which case it is a Class C felony or unless the child is less than seriously injured in which case it is a Class D felony. §726.6 However, 3 or more offenses within 12 months against the same child, where at least one of the offenses was an injury, is a Class B felony. §726.6A III. The sanctions for these offenses are as follows: Class B felony –

Other:

Civil Penalty. There is a civil penalty of \$200 (if the offender is ≤19 years old, the civil penalty is \$50). §321.218A If the death was related to drunk-driving offense, the civil penalty is \$200 (applies to all offenders regardless of age). §321J.17
 For DWI related deaths, the offender may be required to attend either alcohol education or treatment programs.
Special License Suspension. Prior to an adjudication of a person for vehicle homicide related to either reckless driving or drunk driving, the license is suspended until the completion of the judicial proceedings. If not convicted, the license is reinstated. §321.210D
 In addition to any other pecuniary damages, an offender must pay up to \$150,000 in restitution to a victim’s estate. §910.3B and *State v. Klawonn*, 609 N.W.2d 515 (Iowa 2000) §707.6A

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

| | |
|---|--|
| Sanction – Criminal: Imprisonment (Term): | Serious misdemeanor Not more than one year §§321J.21 and 903.1(1)(b) |
| Mandatory Minimum Term of Imprisonment: | None |
| Fine (\$ Range): | \$1,000 to \$1,500 §§321J.21 and 903.1(1)(b) There is also a Civil Penalty of \$200 . §321J.17 |
| Mandatory Minimum Fine: | \$1,000 §321J.21 |
| Administrative Licensing Actions: Type of Licensing Action | Suspension or revocation §321J.21 |
| Length of Term of License Withdrawal Action: | Original suspension/revocation extended an additional like period §321J.21 |
| Mandatory Term of License Withdrawal Action: | None §321J.21 |

Habitual Traffic Offender Law:

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|--|---|
| State Has Such a Law (Yes/No): | Yes 21.555 |
| Grounds for Being Declared an Habitual Offender: | Three or more serious offenses (within 6 years), or six or more minor offenses (within 2 years) 321.555 |

incarceration for not more than 50 years {Note: Normally, for a Class B felony conviction, a person is subject to an imprisonment term of not more than 25 years. However, the law specifically doubles this term in the case of multiple child endangerment convictions where there has been an injury in at least one case.}; Class C felony – incarceration for not more than 10 years and/or a fine of not more than \$10,000; and, aggravated misdemeanor -incarceration for not more than 2 years and/or a fine of not more than \$5,000 §§726.6A and 902.9

| | |
|---|---|
| Term of License Rev While Under Habitual Offender Status: | If based on serious offenses – two to six years ⁴⁵⁶ ; if based on minor offenses – one year 321.560 |
| Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status: | Aggravated misdemeanor §§321.561 and 903.1 |
| Sanctions Following a Conviction of Driving While on Habitual Offender Status: | Not more than two years 903.1 |
| Imprisonment (Term): | None |
| Mandatory Minimum Term of Imprisonment: | |
| Fine (\$ Range): | \$500 to \$5,000 ⁴⁵⁷ |
| Mandatory Minimum Fine (\$): | \$500 appears to be mandatory |
| Licensing Actions (Specify): | Same as for driving while revoked. |

Other State Laws Related To Alcohol Use:
Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic Accidents:

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|---|-----------|
| 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 §§123.3(19), 123.47, 123.49(2)(h) and 123.59 |
| Minimum Age (Years) Possession: | 21 There are exemptions for medical reasons, employment and home use with parental consent. §123.47 |
| Minimum Age (Years) Consumption: | None |

Dram Shop Laws and Related
Legal Actions: State Has a Dram
Shop Law (Yes/No):

Yes §123.92⁴⁵⁸

⁴⁵⁶ I. If habitual offender status is based only on the operation of vehicles while the license is either suspended, revoked or barred, a person is eligible for restricted driving privileges based on a showing of extreme hardship. II. If habitual offender status is based on DWI and vehicle homicide offenses and the offender is not otherwise eligible for a restricted license, that person may receive such a license provided (1) such a license is needed in order for the person to remain employed, (2) the person installs an “**ignition interlock**” system in his/her vehicle(s) and (3) the minimum period of license revocation has expired. §§321.215, 321.560 and §321J.4(98) This scheme was held constitutional. *Iowa Dept. of Transp. v. Pottawattamie Cty.*, 592 N.W.2d 41 (Iowa 1999)

⁴⁵⁷ There is a **civil penalty of \$200** (if the offender is 19 years old, the civil penalty is \$50). §321.218A

⁴⁵⁸ The dram shop law provides that alcoholic beverages be “sold and served” to a patron before a liability action can be maintained against a licensee. The term “served” has been judicially interpreted to mean immediate consumption. *Eddy v. Casey’s General Store, Inc.*, 485 N.W.2d 633 (Iowa 1992), and *Paul v. Ron Moore Oil Company*, 487 N.W.2d 337 (Iowa 1992) Note: The dram shop law abolished “common law negligence actions” against persons who furnish

“Dram Shop Law” Concept Has Been Adopted Via a Change to the Common Rule by Action of the Highest Court of Record in the State (Case Citation):

Yes *Lewis v. State*, 256 N.W. 2d 181 (Iowa 1977), and *Haafke v. Mitchell*, 347 N.W.2d 381 Law (Iowa 1984)

Yes – Limited. Liability limited to injuries caused by minors (persons under the legal drinking age) who are knowingly served alcoholic beverages by social hosts. In order to be liable, the social host must “physically” serve alcoholic beverages to the minor. §§123.49(1) and 123.92⁴⁵⁹

Dram Shop Actions-Social Hosts:

None

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

Type of Criminal Action:

Simple misdemeanor §§123.49(1), 123.50(1) and 903.1(1)(a)

Term of Imprisonment:

Not more than 30 days

Fine (\$ Range):

\$50 to \$500 (\$50 fine appears to be mandatory)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes Suspension or revocation⁴⁶⁰ §§123.39, 123.40 and 123.50(2)

Length of Term of License Withdrawal:

Suspension – not more than 1 year 123.39(1)(a)

Revocation – 2 years §123.40

Civil Penalty (Fine):

Not more than **\$1,000 per violation** §123.39(1)(a).

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

Type of Criminal Action:

Simple misdemeanor (a scheduled violation) §§123.3(19), 123.47, 123.49(2)(h), 123.50(1) and 805.8(10)(a)

Term of Imprisonment:

None

Fine (\$ Range):

Licensee (Permittee) – **\$1,500** §805.8(10)(a)

Employee of Licensee (Permittee) –

\$500⁴⁶¹ §805.8(10)(a)

alcoholic beverages to minors. *Hoth v. Meisner*, 548 N.W.2d 152 (Iowa 1996)

⁴⁵⁹ In *Bauer v. Dann*, 428 N.W.2d 658 (1988), the Iowa Supreme Court held that §123.49(1) only abolished social host liability associated with the service of alcoholic beverages to intoxicated adult guests; i.e., previous case law, *Clark v. Mincks*, 364 N.W.2d 226 (Iowa 1985), establishing such liability was abrogated by this law. See also *Fullmer v. Tague*, 500 N.W.2d 432 (Iowa 1993) A business social host is not liable for the actions of an intoxicated adult employee in situations where the employer hosted an employee party where alcoholic beverages are served gratuitously. *Summerhays v. Clark*, 509 N.W.2d 748 (Iowa 1993)

⁴⁶⁰ A conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty (fine). §123.39(1)(c)

⁴⁶¹ For a first offense, the license is not suspended but the violator is assessed a “civil penalty” of \$500. If the violator does not pay this assessment, the license is suspended for 14 days. §123.50(3)(a)

Administrative Actions
Against Owners of Establishments
That Serve Alcoholic Beverages to Persons Under the
Minimum Legal Drinking Age^{462and463}:

License to Serve Alcoholic
 Beverages Withdrawn (Yes/No):

Yes First offense – **None**; second offense (within 2 years) – **Suspension**; third offense (within 3 years) – **Suspension**; fourth offense (within 3 years) – **Revocation** §§123.39⁴⁶⁴, 123.40 and 123.50(3)
First offense – **None**; second offense (within 2 years) – **30 days**; third offense (within 3 years) – **60 days**; fourth offense (within 3 years) – **2 years**
Civil Penalty - second offense (within 2 years) or third offense (within 3 years) – **\$1,500** §123.50(3)(b) and (c)
Comment: This civil penalty appears to apply only to licensees (permittees).

Length of Term License Withdrawal:

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 Drivers and passengers §§321.284 and 321.284A There is an exception in the case of passengers who are riding either in vehicles for compensation or in the living quarters of a motor home, mobile home, travel trailer or fifth-wheel travel trailer. §321.284A(2)

Anti-Consumption Law:

Yes Driver and passengers §123.46 The law states that “it is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways...or in any public place...”

⁴⁶² It appears that the following administrative or civil sanctions could be imposed via separate statutory authority. Under §123.39(1)(a), it may also be possible to suspend a license for not more than 1 year and/or impose a civil penalty of not more than **\$1,000**. Note: a conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty. §123.39(1)(c)

⁴⁶³ Section 123.91 provides for additional sanctions for persons who violate the liquor laws. For a second offense, a person commits a serious misdemeanor; the sanctions for this offense are a jail term of not more than 1 year and/or a fine of not more than \$1,000 (§903.1(1)(b)). For a subsequent offense, a person commits an aggravated misdemeanor; the sanctions for this offense are imprisonment for not more than 2 years and/or a fine of not more than \$5,000 (§903.1(2)).

⁴⁶⁴ Sec. §123.59 also makes it illegal to sell alcoholic beverages to persons under 21 years old. It is a serious misdemeanor (first offense) to violate §123.59 and the sanctions for this offense are a jail term of not more than 1 year and/or a fine of not more than \$1,000 (§903.1(1)(b)).