

STATE:

MAINE

General Reference:

Maine Revised Statutes Annotated (MRSA) and Code of Maine Rules (CMR)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicants⁵²⁸ 29-A MRSA §2411(1)(A)

Illegal Per Se Law (BAC):

≥ .08⁵²⁹ 29-A MRSA §2411(1)(B)

Presumption (BAC):

No⁵³⁰

Types of Drugs/Drugs and Alcohol:

Under the influence of **intoxicants** 29-A MRSA §2411(1)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No statutory law but a PBT may be conducted by law enforcement officers without legislative authority. *State v. Pinkham*, 536 A.2d 730 (Me. 1991)

Implied Consent Law:

Arrest Required (Yes/No):

No An actual “arrest” is not required. However, the police must still have “probable cause” before a suspected drunk driver has to submit to a chemical test. 29-A MRSA §2521(1)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes 29-A MRSA §2521(1)

Refusal to Submit Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) 29-A MRSA §2521(3)(B) and *State v. Allen*, 485 A.2d 953 (Me. 1984), *State v. Bavouset* 784 A.2d 27 (Me. 2001), (cert. denied 122S.ct 1542 (US 2002)

Other Information:

I. A person shall be required to submit to a chemical test if they are involved in an accident that results or may result in death to any other person. 29-A MRSA §2522 and *State v. Roche*, 681 A.2d 472 (Me. 1996)
 II. There is case law that appears to hold that a “forced” test may be administered as a warrantless search if there is probable cause to believe that a driver has committed a DWI offense and he/she has refused to submit to a chemical test. *State v. Baker*, 502 A.2d 489 (Me. 1985)

⁵²⁸ “Under the influence of intoxicants” means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs. The term “drugs” refers to either “scheduled drugs” (i.e., controlled substances) or to “any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.” 17-A MRSA §1101 and 29-A MRSA §2401(4) and (13)

⁵²⁹ “Blood alcohol level” (blood alcohol concentration) is stated as “percent by weight” of alcohol in the blood. However, the law further defines this to mean grams of alcohol per 100 milliliters of blood. 29-A MRSA §2401(2)

⁵³⁰ For purposes of evidence in proceedings other than those arising under 29-A MRSA §2411 (DWI offenses), it shall be presumed that a person was under the influence of intoxicants when he/she has a blood alcohol level ≥ .08. 29-A MRSA §2432(3)

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

Blood:	Yes 29-AMRSA §2521(1) ⁵³¹
Urine:	Yes 29-A MRSA §2521(1)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
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 <u>Preliminary Breath Test</u> :	
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):	
Administrative Licensing Action (Susp/Rev):	I. <u>First refusal – Suspension – 90 days</u> ; <u>second refusal – Suspension – 18 months</u> (mandatory); <u>third refusal – Suspension – 4 years</u> (mandatory); <u>fourth refusal – Suspension – 6 years</u> (mandatory) 29-A MRSA §2521(6)

If there is probable cause to believe that death has occurred or will occur as a result of crash, DUI chemical test mandatory. Failure to submit to mandatory chemical test results in suspension for one year. 29-A MRSA §2522

Child Endangerment. First or subsequent refusal, an additional 275 days suspension if the driver was carrying a passenger under 21 years old. This additional suspension appears to be mandatory. 29-A

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL): Via regulations, a person’s CDL is suspended if that person operates a CMV and (1) has a BAC ≥ .04 or (2) are under the influence of a controlled substance. If the person has neither a prior DWI offense conviction nor administrative license adjudication (e.g., driving with BAC ≥ .04) related to CMV operations, their CDL is suspended for 1 mandatory year (3 years if transporting hazardous materials). If that person has either a prior DWI offense conviction or administrative license adjudication (e.g., driving with BAC ≥ .04) related to CMV operations, the CDL is permanently suspended (mand). Under statutory provisions, if a person refuses to submit to a chemical test to determine either alcohol level or drug concentration where there is probable cause to believe that they were operating a CMV with a BAC ≥ .04 or while under the influence of drugs, their privilege to operate a CMV is suspended for 1 mandatory year (3 years if transporting hazardous materials) for a first refusal and permanently for a second or subsequent refusal. 29-A MRSA §§101(17), 1253, 2458(2)(M) and 2523 and CMR 29-250-006 (§§3 and 4) MRSA §2451(5)

⁵³¹ A breath test is administered unless it is unreasonable to give such test. 29-A MRSA §2521(2)

II. Persons Under 21 Years Old. A person under 21 years old who refuses to submit to a chemical test where there is probable cause that they were driving with “any amount of alcohol in the blood” is subject to the following licensing action: first refusal – Suspension – 18 months⁵³²; subsequent refusal – mandatory 30-month suspension (29-A MRSA §2472 (4))

First or subsequent refusal - an additional 180-day suspension if the driver under 21 was carrying a passenger under 21 years old. This additional suspension appears to be mandatory. 29-A MRSA §2472(4)

Other:

A person can have their vehicle’s registration /certificate of title suspended for a refusal. The law provides that the State has this authority if a person is subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Aggravated Punishment below

Imprisonment:

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

First offense – **No**, unless defendant: (1) had a BAC ≥ .15, (2) was driving 30 MPH over the speed limit, (3) was eluding a police officer or (4) was operating a vehicle with a passenger under 21 years old (**child endangerment**)

Mandatory Minimum Term:

Not less than 48 hours^{533and534}, **96 hours** if the person refused to submit to a chemical test; second offense (within 10 years– Class D crime) – **7 days** or **12 days** if the person refused to submit to a chemical test; third offense (within 10 years- Class C Crime) – **30 days** or **40 days** if the person refused to submit to a chemical test; fourth or subsequent offense (within 10 years– Class C crime) or **6 months** or **6 months**

⁵³² If negligence was involved in the related death as well as alcohol or drugs, the suspension for refusal is 3 consecutive years (mandatory) and is in addition to any other suspension that may be imposed for refusal to submit to a chemical test. 29-A MRSA §2456

⁵³³ This mandatory jail sanction applies only when at least one of the following conditions is satisfied. The defendant either (1) had a BAC ≥ .15, (2) was driving 30 MPH over the speed limit, (3) was eluding a police officer or (4) was operating a vehicle with a passenger under 21 years old (**child endangerment**).

⁵³⁴ Not consecutive. A county jail term of imprisonment may be served intermittently. 17-A MRSA §1252(3-A)

Aggravated Punishment Category (Class C Crime). Three types: (1) a DWI offense with serious bodily injury; (2) a DWI offense that is a subsequent Class C Crime DWI offense; or, (3) a DWI offense where there has been a prior DWI-related vehicle homicide offense. Sanctions: Jail – not more than 5 years; fine – not more than \$5,000; and, license suspension – 6 years. The following mandatory sanctions apply: (1) Jail for 6 months; (2) a \$2,000 fine; and, (3) 6 years license suspension. 17-A MRSA §§1252 and 1301 and 29-A MRSA §2411(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. Savard*, 659 A.2d 1265 (Me. 1995), and *Allen v. Attorney General of State of Maine*, 80 F.3d 569 (first Cir. 1996)

<p>Fine:</p> <p>Amount (\$ Range):</p> <p>Mandatory Min. Fine (\$):</p> <p>Other Penalties:</p> <p>Community Service:</p> <p>Restitution: (e.g., Victim’s Fund)</p> <p>Other:</p> <p>Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:</p>	<p>and 20 days if the person refused to submit to a chemical test 29-A MRSA §2411 (5) <u>First offense</u> – \$400 or \$500 if the person refused to submit to a chemical test; <u>second offense</u> (within 10 years– Class D crime) – \$600 or \$800 if the person refused to submit to a chemical test and <u>third offense</u> (within 10 years– Class C Crime) – \$1,100 or \$1,400 if the person refused to submit to a chemical test; <u>fourth or subsequent offense</u> (within 10 years) – \$2,000 or \$2,400 if the person refused to submit to a chemical test 29-A MRSA §2411(5) <u>First offense</u> – \$400 or \$500 if the person refused to submit to a chemical test; <u>second offense</u> (within 10 years) – \$600 or \$800 if the person refused to submit to a chemical test; <u>third or subsequent offense</u> (within 10 years –Class C Crime) – \$1,100 or \$1,400 if the person refused to submit to a chemical test; <u>fourth or subsequent offense</u> (within 10 years) – \$2,000 or \$2,400 if the person refused to submit to a chemical test 29-A MRSA §2411(5)</p> <p>Yes as a condition of probation 17-A MRSA §1204(2-A)(L) Yes I. Compensation by the defendant to a victim either as a condition of probation or as part of the incarceration sanction. 17-A MRSA §§1204(2-A)(B), 1252(3) and 1321 et seq. II. A victims’ compensation fund. Claims cannot exceed \$5,000. 5 MRSA §3360 et seq. Surcharges. I. A \$30 (\$125 if DWI drugs/alcohol and drugs) surcharge must be imposed and paid into the Highway Fund to cover the administration and analysis costs of chemical tests. 29-A MRSA §2411(7) II. A 12 percent surcharge must be imposed on any fine for the respective purposes of funding jail/criminal operations and the Community Policing Institute. 4 MRSA §§1057 and 1057-A.. 4 MRSA §1057-A(4)</p> <p>Yes BAC ≥ .08⁵³⁵and⁵³⁶ The periods of license</p>
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⁵³⁵ **Persons Under 21 Years Old.** Under 29-A MRSA §2472(3), (3-A) and (6), a person under 21 years old (a provisional licensee) who operates a motor vehicle either while in violation of the regular DWI law or with “any amount of alcohol in the blood” has his/her license suspended as follows: first offense – **1 year**; and, second offense – **2-years** (mand). For first offenders, (1) if the suspension is based on operating a motor vehicle with “any amount of alcohol in the blood,” (2) there is no other alternative means of transportation and (3) the person does not have a previous DWI offense (within 10 years), a restricted license may be issued for either employment or educational purposes without a waiting period. 29-A MRSA §2503 First offenders are also eligible for license reinstatement after 6 months if they complete an alcohol and drug program. However, subsequent offenders are only eligible for license reinstatement after the completion of the full suspension period and the completion of an alcohol and drug program. For **child endangerment**, there is an additional suspension of **180 days** (mand) if the driver was carrying a passenger under 21 years old. 29-A MRSA §2472(3-A) and (6) These licensing actions may not be mandatory in all situations.

⁵³⁶ The licensing agency may administratively suspend a driver’s license for 3 years if the driver negligently causes a

Other:	suspension and conditions for reinstatement for first and subsequent offenses are the same as Post DWI Conviction Licensing Actions (below). However, unlike a first DWI offense conviction, there is no mandatory suspension for a first <u>admin. per se</u> violation; a work-restricted license is available. ⁵³⁷ 29-A MRSA §§2453 and 2503
Post DWI Conviction Licensing Action:	Under 29-A MRSA §2458(2)(A), a person’s license (or certificate of registration/title) may be revoked/suspended if he/she has “committed” an offense that usually requires license/registration suspension or revocation (e.g., DWI). Such action may be taken <u>without</u> a preliminary hearing. The time period for this revocation/suspension is not specified ⁵³⁸ .
Type of Licensing Action (Susp/Rev):	See Footnote ⁵³⁹ , Aggravated Punishment Category, and Assault-Related Revocations.
Term of License Withdrawal (Days, Months, Years, etc.):	For all offenses – Suspensions <u>First offense -90 days</u> ⁵⁴⁰ ; <u>second offense</u> (within 10 years– Class D crime) – 18 months ; <u>third offense</u> (within 10 years– Class C crime) – 4 years ; <u>fourth or subsequent offense</u> (within 10 years) – 6 years 29-A MRSA §§2411(5) and 2451
Mandatory Minimum Term of Withdrawal:	<u>First offense</u> – 90 days ^{541, 542} and <u>second offense</u> – months ⁵⁴³ ; <u>third offense</u> – 4 years ;

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death while operating a motor vehicle either (1) while under the influence of intoxicants, (2) with a BAC ≥ .08 or fails to comply with the implied consent law (29-A MRSA §2521). For a failure to comply with the implied consent law, this suspension is consecutive to a refusal suspension. Also, any period of suspension served is “deducted” from any revocation period imposed under §§ 29-A MRSA 2454 and 29-A MRSA §2456.

⁵³⁷ If there is no alternative means of transportation, a work-restricted license may be issued provided that person has not (1) been convicted of a DWI offense (within 10 years) or (2) had a previous admin. per se suspension (within 10 years). 29-A MRSA §2503

⁵³⁸ A person may be denied CDL privileges without a preliminary hearing if they were operating a operating CMV with a BAC ≥ .04 or were in violation of Federal law or regulation concerning CMV operations. 29-A MRSA §§1253(5) and 2458(2)(M)

⁵³⁹ A person’s endorsement to operate a school bus is permanently revoked if they drive such a vehicle while DWI. A person who has a school bus endorsement and who commits a DWI offense while operating another type of vehicle has his/her school bus endorsement suspended for 3 years (1 year mand) for a first offense and for 6 years (mand) for a second or subsequent offense (within 10 years). 29-A MRSA §2452

⁵⁴⁰ A license suspension period for a drunk-driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

⁵⁴¹ A license suspension period for a drunk-driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

⁵⁴² For first offenders, after 2/3 of license suspension period has passed, a restricted license may be issued provided the offender has completed an alcohol education/treatment program. The licensee is restricted to operating motor vehicle only for the purpose of going either to and from employment or to and from an alcohol or drug program for a minimum of 90 days after the original suspension date. 29-A MRSA §2501(1) and (2)

⁵⁴³ This licensing action is not mandatory in all situations.

Assault Related Revocations: If a person operates a motor vehicle in a manner which (1) causes bodily or serious bodily injury to another individual, (2) creates a substantial risk of serious bodily injury to another individual, or (3) places another individual in fear of imminent bodily injury and he/she is convicted of **ANY** criminal offense related to

Sanctions Following a Conviction for a DWI Offense: (continued)

fourth or subsequent offense – 6 years These suspensions may be reduced if the offender participates in the “ignition interlock” program; see Ignition Interlock . These suspensions run consecutively to any suspension for failure to submit to a test. 29-A §2451(4)

Child Endangerment. A person who violates the drunk-driving law while transporting a passenger under 21 year old must have their license suspended for an additional 275 days. 29-A MRSA §§2411(5)(G) and 2451(5)

The licensing agency has the authority to suspend a driver’s license for a longer period of time than indicated above for either an admin. per se violation or a drunk-driving offense conviction. 29-A MRSA §§2451(3) and 2453(6)(D)

Conditional License. Under 29-A MRSA §§2504 and 2506, upon issuing a license to a person who has either been convicted of a DWI offense or found to have violated the admin. per se law, the following conditions may be placed on the license: first conviction/admin. per se action-for a period of 1 year from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol; and, second and subsequent convictions/admin per se actions (within 10 years) – for a period of 10 years from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol. Under 29-A MRSA §2457, unless longer periods are authorized by law, the following special licensing sanctions apply to persons who operate a motor vehicle in violation of the above conditions: (1) Revocation for a minimum period of 1 year if they either (a) are convicted a DWI offense or (b) have operated a motor vehicle with any amount of alcohol in the blood.

If licensing action is based on operating a motor vehicle with any amount of alcohol in the blood, a restricted license for employment or educational purposes may be issued if there is no alternative means of transportation and is contingent upon completion of an alcohol treatment (rehabilitation) program. 29-A MRSA §2503 (2) For refusal to submit to a chemical test where there is probable cause to believe that the driver has any amount of

either assault, reckless conduct or threatening, his/her license is immediately and indefinitely revoked without a further hearing. The person may be issued a license after the following periods: Either (1) 3 years after discharge from incarceration for either a Class A, B or C Crime; (2) 2 years after discharge from incarceration for a Class D Crime; or, (3) 1 year after discharge from incarceration for a Class E Crime. Title 29-A, §2463

alcohol in the blood, suspension for not less than 2 years.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

I. First and subsequent offenders must participate in and complete an alcohol or drug program before their driving privileges can be restored.

29-A MRSA §2504

II. Second and subsequent offenders must participate in an alcohol and drug treatment program.

29-A MRSA §2411(5)(F) These offenders may be required to attend a 22-hour Weekend Intervention Program consisting treatment and evaluation.

5 MRSA §20073-A(3)

Special License: first offenders may be issued a special license following alcohol/drug assessment and the completion of at least 3 treatment sessions.

A first offender includes a first violator of the implied consent law, drunk-driving law, administrative per se law and, for persons under 21 years old, operating a motor vehicle with any alcohol in the system. 29-A MRSA §2502

In addition, a **temporary restricted license** may be issued to any offender for the purpose of allowing them to attend an alcohol education or treatment program notwithstanding any other provision of law.

29-A MRSA §2505

Vehicle Impoundment/Confiscation

Authorized by Specific Statutory Authority:

(1) For a subsequent offense within 10 years, a defendant's vehicle registration (including the right to register a vehicle) and plates must be **suspended** for the same length of time as the license suspension.⁵⁴⁴ 29-A MRSA §§2411(5)(B)(4), (5)(C)(4) and (5)(D)(4) and 2416.⁵⁴⁵

A sole owner's vehicle must be **forfeited** if operated in violation of the DWI laws while under suspension/revocation of a previous DWI offense.⁵⁴⁶ 29-A MRSA §2421

Temporary Impoundment. Following an arrest either (1) for a drunk-driving offense or (2) for driving while on a suspended or revoked license, based on a drunk-driving offense, the vehicle used in the offense may be seized. The vehicle may be released after 8 hours. 29-A MRSA §2422

Terms Upon Which Vehicle

⁵⁴⁴ Notwithstanding this requirement, such suspension will not be imposed if a spouse or other family member of the defendant can prove to the satisfaction of the court that a hardship will result. 29-A §2416(2), (3)

⁵⁴⁵ The State is given broad authority to suspend a person's vehicle's registration/certificate of title based on "any cause" which is deemed "sufficient." 29 MRSA §2458(1)

⁵⁴⁶ Under the law, forfeiture only applies if the vehicle is owned by one person namely the defendant. i.e., a jointly owned vehicle is not subject to forfeiture. *State v. One Blue Corvette*, 732 A.2d 856 (Me. 1999)

Will Be Released:

Other:

The State has the authority to suspend the registration/certificate of title of a person's vehicle if they are subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)

Other Criminal Actions

Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Class C Crime to cause a death while operating a vehicle in violation of the drunk-driving laws.⁵⁴⁷
29-A MRSA §2411(6).

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **5 years** 17-A MRSA §1252

Mandatory Minimum Term:

6 months 29-A MRSA §2411(6)

Fine (\$ Range):

Not more than **\$5,000** 17-A MRSA §1301

Mandatory Minimum Fine:

\$2,000 29-A MRSA §2411(6)

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Suspension⁵⁴⁸ (court ordered) 29-A MRSA §2411(6)

Length of Term of

Licensing Withdrawal:

6 years 29-A MRSA §2411 (6)

Mandatory Action--Minimum

Length of License Withdrawal:

6 years 29-A MRSA §2411(6)

Other:

I. Administrative Suspension: A person who negligently causes the death of another while driving (1) under the influence of intoxicants, (2) with a BAC \geq .08 or (3) who fails to submit to a chemical test, has their license suspended for 3 years (mand) by the licensing agency. In the case of test refusal, the suspension is consecutive to the refusal suspension. Otherwise, this suspension is deducted from the regular suspension or revocation period- 29-A MRSA §2456

II. Driver Education/Substance Abuse Program: If alcohol or drugs are involved in a criminal homicide caused by the operation of a motor vehicle, a defendant must complete a driver education program and, if needed, a substance abuse and/or a 2-year after-care program prior to license restoration. 29-A MRSA §2455(3)

⁵⁴⁷ **Manslaughter Statutes:** It is a Class A Crime to cause a death by criminal negligence or reckless conduct via a motor vehicle. The sanctions for a Class A Crime are incarceration for not more than **40 years** and/or a fine of not more than **\$50,000**. 17-A MRSA §§1252 and 1301 And, an offender's license is revoked for **5 years**. 29-A MRSA §2454(1). {The Maine Criminal Code (17-A MRSA) does not use the terms "misdemeanor" or "felony" to either describe or define crimes. The law describes the offense of vehicle homicide as a Class A crime without further defining it as either a misdemeanor or a felony. Most States would consider a Class A to be a felony.}

⁵⁴⁸ **Death Related to Intoxication:** A defendant's license is **permanently revoked** if under the influence of an intoxicant at the time of the offense. However, a first offender may have the license reinstated after 10 years. 29-A MRSA §2454(2) and (5)

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

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Causing Serious Bodily Injury or Death While License is Suspended or Revoked:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

See Footnote ⁵⁴⁹.

First, second and third offenses – Class E crime – Not more than **6 months**; subsequent offense – Class C crime – Not more than **5 years** 17-A MRSA §1252 and 29-A MRSA §2412-A.

First offense – **7 consecutive days**; second offense (within 10 years) – **30 consecutive days**⁵⁵⁰; third offense (within 10 years) – **60 consecutive days**; fourth or subsequent offense (within 10 years) – **6 months** 29-A MRSA §2412-A(3)

First, second and third offenses – Class E crime – Not more than **\$1,000**; subsequent offense – Class C crime – Not more than **\$5,000** 17-A MRSA §1301, subs. 1-A

First offense – **\$500**; second offense (within 10 years) – **\$1,000**; third offense (within 10 years) – **\$2,000**; fourth or subsequent offense (within 10 years) – **\$3,000** 29-A MRSA §2412-A(3)

Suspension 29-A MRSA §2412-A(3)

1 to 3 years Added to the original suspension or revocation.

1 year Added to the original suspension or revocation.

Mandatory license suspension for five years for injury; 10-year suspension for death. {Both added consecutively to any other license suspension or revocation.}

Yes 29-A MRSA §2551 et seq.

⁵⁴⁹ The CMV law does not provide sanctions for operating CMV during either a CDL disqualification or a CDL out-of-service order. Under 29-A MRSA §2458(2)(M), the licensing agency is authorized to suspend a CMV operators CDL if they violate Federal law or regulations (e.g., 49 USC §31301 et seq. and 49 CFR §§383.51, 383.53, 383.82, 391.15, 392.5, 392.13 and 49 CFR Part 386, Appendix A) pertaining to CMV operators. Therefore, any Federal law or regulation that makes it an offense to operate a CMV while either disqualified or under an out-of-service order, could result in a State-authorized CDL suspension.

⁵⁵⁰ For second and subsequent offenses, the mandatory sanctions are imposed only if mandatory sanctions were imposed for prior offenses. 29-A MRSA §2412-A(3)

Habitual Offender:	Convictions for 3 serious traffic offenses within 5 years. (e.g. veh. homicide, DWI, reckless driving, etc.) ⁵⁵¹
Term of License Rev While Under Habitual Offender Status:	Revoked – Indefinitely However, relief from such revocation may be granted after 3 years ⁵⁵² . 29-A MRSA §§2552 and 2554
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	<u>First offense</u> – Class D crime; <u>subsequent offense</u> (within 10 years) – Class C crime 29-A MRSA §2557(2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status: Imprisonment (Term):	<u>First offense</u> – Less than 1 year ; <u>subsequent offense</u> (within 10 years) – Not more than 5 years 17-A MRSA §1252
Mandatory Minimum Term of Imprisonment: Fine (\$ Range):	None <u>First offense</u> – Not more than \$2,000 ; <u>subsequent offense</u> (within 10 years) – Not more than \$5,000 17-A MRSA §1301
Mandatory Minimum Fine (\$): Licensing Actions (Specify):	None
Operating After Habitual Offender Revocation:	<u>First offense</u> : Mandatory minimum fine \$500 , minimum imprisonment – 30 days ; <u>second offense</u> (within 10 years): minimum fine - \$1000 ; minimum imprisonment – 6 months ; <u>third offense</u> (within 10 years): minimum fine, \$100 – minimum imprisonment – 9 months ; <u>fourth or subsequent offense</u> (within 10 years): minimum fine: \$1000 , minimum imprisonment - 2 years
“Aggravated Operating After Habitual Offender Revocation”:	At time of Habitual Traffic Offender Revocation, violator commits one of the following: (1) Operating under influence (2) Driving to endanger (3) Eluding Officer (4) Passing a Roadblock

⁵⁵¹ Relief from habitual offender status shall not be granted for at least 3 years from the date the offender was convicted. 29-A MRSA §2557

⁵⁵² A **work-restricted license** is available after 18 months. 29-A MRSA §2556 However, a person is not eligible for this type of license, if (1) one of the offenses used to determine habitual offender status was homicide related to motor vehicle operations, (2) he/she is convicted of operating a motor vehicle while on habitual offender status or (3), after having his/her license restored, he/she is convicted within 5 years of an offense cited in the habitual offender law. In addition, a person is not eligible for this type of license, if one of the offenses used to determine habitual offender status was a DWI offense, until he/she completes (1) the required license suspension periods and (2) any alcohol or drug program. 29-A MRSA §2556(5)

(5) Exceeding maximum speed limit by 30 MPH or more.

Penalties: First Offense – minimum **\$500** fine and minimum **6 months** imprisonment; second offense (within 10 years) – minimum **\$1000** fine and minimum **1 year** imprisonment; third offense (within 10 years)- minimum fine **\$2000** and minimum imprisonment – **2 years**; fourth or subsequent offense (within 10 years) – minimum fine **\$3000**, minimum imprisonment – **5 years**. {None of these penalties may be suspended by the court.}

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

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:
Minimum Age (Years) Sale/Purchase:

21 28-A MRSA §§2(20) and 2051(1)(A) and citations listed under criminal actions for selling alcohol to minors below.

Minimum Age (Years) Possession:

21 Home and employment exemption 28-A MRSA §§2(20) and 2501(1)(E)

Minimum Age (Years) Consumption:

21 Except at home in the presence of either parents or legal guardians 28-A MRSA §§2(20) and 2051(1)(B)

Dram Shop Laws and Related Legal Actions:

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

Yes 28-A MRSA §2501 et seq. Note: Except for medical expenses, recovery under the dram shop act is limited to \$250,000 per single accident or occurrence. 28-A MRSA §2509⁵⁵³

“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):

No⁵⁵⁴

Dram Shop Actions-Social Hosts:

Yes Liability is limited to situations where the social host served alcoholic beverages (1) to a minor or (2) to a minor or a visibly intoxicated person in a “reckless manner”. 28-A MRSA §§2503(5), 2505(2), 2506(1) and 2507

⁵⁵³ This damage limitation provision has been held constitutional under both the Federal and State constitutions. *Peters v. Saft*, 597 A.2d 50 (Me. 1991)

⁵⁵⁴ The dram shop law indirectly abrogated the holding in *Klingerman v. Sol Corporation of Maine*, 505 A.2d 474 (Me. 1986), that established dram shop liability via common law negligence actions. The dram shop law is the exclusive remedy for such actions. *Peters v. Saft*, 597 A.2d 50 (Me. 1991), and *Jackson v. Tedd-Lait Post No. 5*, 723 A.2d 1220 (Me. 1999)

Other: A licensee may be liable for the injuries sustained by an intoxicated patron. If the patron is less than 18 years old, liability may be based on negligent or reckless service of alcoholic beverages. If the patron is at least 18 years old, liability is based on reckless service of alcoholic beverages. 28-A MRSA §§2504 and 2507 and *Jackson v. Tedd-Lait Post No. 75*, 723 A.2d 1220 (Me. 1999)

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

Type of Criminal Action: Class E Crime 28-A MRSA §§1 and 354
 Term of Imprisonment: Not more than **6 months** 17-A MRSA §1252(2)(E)
 Fine (\$ Range): For a person, not more than **\$1,000**; for an organization, not more than **\$10,000** 17-A MRSA §1301(1)(C) and (3)(E)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes** Suspension or revocation 28-A MRSA §§801 and 803(5)
 Length of Term of License Withdrawal: For suspension – not specified in the statute; for revocation – **1 to 5 years**⁵⁵⁵ 28A MRSA §803(5)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverage or the Wrong Type of Alcoholic Beverage Those Persons Under the Minimum Legal Drinking Age⁵⁵⁶:

Type of Criminal Action: Class E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 and 1902
 Term of Imprisonment: Not more than **6 months**. 17-A MRSA §1252(2)(E)

⁵⁵⁵ An administrative fine of \$50 – \$1,500 may be imposed instead of or in addition to any license suspension or revocation. 28-A MRSA §803(8)

*Other provisions of the law provide for the following sanctions against individuals who sell or serve alcoholic beverages to intoxicated persons or minors. Intoxicated Persons. Class E Crime-Only a forfeiture of \$500. Minors. Class D Crime-Jail – not more than 1 year: fine – not more than \$2,000. An offender must pay a mandatory fine of \$500 if they are either (1) a first offender who has purchased alcoholic beverages for a person under 14 years old or (2) a second offender (within 6 years). A third or subsequent offender (within 6 years) must pay a mandatory fine of \$1,000. If the violation caused the death of the minor or another person, Class C Crime-Jail – not more than 5 years; fine – not more than \$5,000. 17-A MRSA §§1252(2)(C) and (D), 1301(1)(C) and (D) and 28-A MRSA §2081

⁵⁵⁶ Other provisions of the law provide for the following sanctions against individuals who sell or serve alcoholic beverages to intoxicated persons or minors. Intoxicated Persons. Class E Crime-Only a forfeiture of \$500. Minors. Class D Crime-Jail – not more than 1 year: fine – not more than \$2,000. An offender must pay a mandatory fine of \$500 if they are either (1) a first offender who has purchased alcoholic beverages for a person under 14 years old or (2) a second offender (within 6 years). A third or subsequent offender (within 6 years) must pay a mandatory fine of \$1,000. If the violation caused the death of the minor or another person, Class C Crime-Jail – not more than 5 years; fine – not more than \$5,000. 17-A MRSA §§1252(2)(C) and (D), 1301(1)(C) and (D) and 28-A MRSA §2081

Fine (\$ Range):

For a person, not more than **\$1,000**; for an organization, not more than **\$10,000** 17-A MRSA §1301(1)(C) and (3)(E)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

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

Yes Suspension or Revocation 28-A MRSA §§801 and 803(5)

Length of Term License Withdrawal:

For suspension – not specified in the statute; for revocation – **1 to 5 years**

Anti-Happy Hour Laws/Regulations:

Yes 28-A MRSA §709

Laws Prohibiting (1) the Possession of Open Containers of Alcohol Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes Applies drivers and passengers 29-A MRSA §2112-A

Anti-Consumption Law (Yes/No):

Yes Applies drivers and passengers 29-A MRSA §2112-A