

STATE: MICHIGAN
 General Reference: Michigan Compiled Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:	1) Operating while intoxicated- Under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance. §257.625(1)(a)
Illegal Per Se Law (BAC/BrAC):	2) 'Visibly impaired' by intoxicating liquor §257.625(3) $\geq .08$ ^{593and594} §257.625(1)(b) <u>Persons Under 21 Years Old: Any Bodily Alcohol Content</u> ⁵⁹⁵ – meaning either (1) a BAC/BrAC/UrAC of $\geq .02$ but $\leq .08$, or “any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor”, (except) “as part of a generally recognized religious service or ceremony.” §257.625(6)(a) and (b)§257.625(6)
Presumption (BAC/BrAC):	A BAC/BrAC/UrAC $>.07$ but $<.08$ is a presumption of impairment. A BAC/BrAC/UrAC $\geq .08$ is a presumption of driving while under the influence. §257.625a
Types of Drugs/Drugs and Alcohol:	Under the influence of or visibly impaired by (1) A Controlled Substance or (2) a Combination of Liquor and a Controlled Substance. §§257.625(1)(a) and (3)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes §257.625a(2) For CMV operators, see §§257.319d and 257.625a(4).
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §257.625c(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §257.625c(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes
Other Information:	Following a refusal to submit to a chemical test under the implied consent law, a test (for alcohol concentration or controlled drugs) can be required via a court order. §§257.625a(6)(b)(iv), 257.625d(1) and <i>People v. Wurm</i> , 404 N.W.2d 235 (Mich. App. 1987)

⁵⁹³ This State's illegal per se law makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of .08 or more. Note: the standard reverts to .10 BAC on 9/1/13.

⁵⁹⁴ 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. §§257.625(1)(b) and (6)(a), 257.625a(9)(b) and (c) and 257.625g(4)

⁵⁹⁵ The term "any bodily alcohol content" means either (1) a BAC/BrAC/UrAC of $\geq .02$ but $\leq .08$ (the standard reverts to .10 BAC on 9/1/13), or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony." §257.625(6)(a) and (b)

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

Blood: **Yes** §257.625c(1)
 Urine: **Yes** §257.625c(1)
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **Limited** A person under 21 years old who is charged with driving while under the influence, driving while visibly impaired or illegal per se offenses under §257.625(1) and (3), cannot enter a plea of either guilty or *nolo contendere* to driving with "any bodily alcohol content" under §257.625(6). §257.625(15)
 Pre-Sentencing Investigation Law (PSI) **Yes**⁵⁹⁶ Alcohol and Drug (Screening and Assessment Required) §257.625b(5)

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.** However, if a person <21 years old refuses to submit to a PBT, 2 points are assigned to the driving record. §257.320a.
 Other: Civil infraction-Fine not more than **\$100** plus court costs. §§257.625a(2)(d), 257.741 et seq. and 257.907 It is a misdemeanor for a CMV operator to refuse to submit to a PBT. §§257.319d and 257.625a(4)

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev): **First refusal – 1 year suspension** A restricted/hardship license may be issued.
Second and subsequent refusals (within 7 years) – 1 year mandatory suspension §§257.323c and 257.625f(1)and(4)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
 Imprisonment:
 Term (Day, Month, Years, Etc.): 1) Driving while visibly impaired or driving while under the influence/Illegal per se: (misdemeanor) – **first offense** punishable by 1 or more of the following: Not more than **93 days or community service for not more than 360 hours**

⁵⁹⁶ For offenses where a defendant may be sentenced to prison for more than 1 year or where an offense is a felony, a victim has a right to submit a statement and have it made a part of the pre-sentence investigation report. §§780.763 and 780.764

or a fine of not less than **\$10.00** or more than **\$50.00**; second offense (misdemeanor) within 7 years, a fine of not less than **\$20.00** or more than **\$1,000.00** and 1 or more of the following:

5 days to 1 year, with at least 48 hours served consecutively or community service for not less than **30 days** or more than **90 days**. Third or subsequent offense within 10 years (felony) – punishable by a fine of not less than **\$50.00** or more than **\$5,000.00** and either of the following: **1 to 5 years**⁵⁹⁷ or probation with imprisonment in the county jail for not less than **30 days** or more than **1 year** and community service for not less than **60 days** or more than **180 days**, with at least 48 hours served consecutively. Terms of imprisonment imposed upon repeat violators shall not be suspended. .§257.625(9)

Any DWI offense where there is a "serious impairment of a body function"⁵⁹⁸-felony – not more than **5 years**.⁵⁹⁹
§257.625(5)

Persons Under 21 Years Old. Any Bodily Alcohol Content – first offense – **none**; second or subsequent offense (within 7 years) (misdemeanor) – **93 days**
§257.625(11)

Minimum Term:

1) **Driving while visibly impaired**: first offense – **None**; second offense (within 7 years) – **5 days (with 48 consecutive hours)**⁶⁰⁰; third or subsequent offense (within 10 years) – **if probation is granted, 30 days to 1 year with 48 consecutive hours**⁶⁰¹ §257.625(10)

2) **Driving while under the influence/Illegal per se**: first offense – **None**; second offense (within 7 years) – **5 days (with 48 consecutive hours)**; third or subsequent offense (within 10 years) – **if probation is granted, 30 days to 1 year with 48 consecutive hours** §257.625(8)

3) **Any DWI offense where there is a "serious impairment of a body function"**- imprisonment for not more than **5 years** or a fine of not less than **\$1,000.00** or more than **\$5,000.00**, or both.

⁵⁹⁷ A person who commits a second felony offense is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 1½ times the longest term prescribed for a first felony off. §769.10(1)(a) and *People v. Bewersdorf*, 475 N.W.2d 231 (Mich. 1991) For the purpose of sanction enhancement, a "prior offense" includes a prior conviction for any drunk driving offense and for a previous conviction for either negligent homicide, manslaughter or murder related to any drunk driving offense. §257.625(23)

⁵⁹⁸ A "serious impairment of a body function" includes, but is not limited to, (1) the loss or use of a limb, eye, or ear, (2) loss or substantial impairment of a bodily function, (3) serious disfigurement, (4) a comatose state for more than 3 days, (5) brain damage, (6) skull or other serious bone fracture or (7) subdural hemorrhage or hematoma. §257.625(5)

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⁶⁰⁰ The law appears to authorize a sentence of community service in addition to or in lieu of imprisonment. §257.625(8)(b) and (10)(b)

⁶⁰¹ This sanction appears mandatory. The law provides that a term of imprisonment for this offense cannot be suspended. I.e., an offender cannot be sentenced to community service in lieu of imprisonment. §257.625(8)(d) and (10)(d)

4) Persons Under 21 Years Old. Any Bodily Alcohol Content – None

Fine:

Amount (\$ Range):

1) **Driving while visibly impaired** – first offense – **\$100 to \$300**; second offense (within 7 years) – **\$200 to \$1,000**; third or subsequent offense (within 10 years) – **\$500 to \$5,000**. §257.625(10)

2) **Driving while under the influence/illegal per se**: first offense – **\$100 to \$300**; second offense (within 7 years) – **\$200 to \$1,000**; third or subsequent offense (within a 10-years) – **\$500 to \$5,000**. §257.625(8)

3) **Any DWI offense where there is a "serious impairment of a body function"** – **\$1,000 to \$5,000**. §257.625(5)

4) Any DWI offense that **causes the death** of another person is guilty of a felony punishable by imprisonment for not more than **15 years** or a fine of not less than **\$2,500.00** or more than **\$10,000.00**, or both. If the DUI offense causes the death of a police officer, firefighter, or other emergency response personnel, the person is guilty of a felony punishable by imprisonment for not more than **20 years** or a fine of not less than **\$2,500.00** or more than **\$10,000.00**, or both §257.625(4)

4) **Persons Under 21 Years Old - Any Bodily Alcohol Content** – first offense – Not more than **\$250**; second and subsequent offense (within 7 years) – Not more than **\$500** §257.625(11)

Mandatory Min. Fine (\$):

1) **Driving while visibly impaired** – first offense – **\$100**; second offense (within 7 years) – **\$200**; third or subsequent offense (within 10 years) – **\$500**

2) **Driving while under the influence/illegal per se**: first offense – **\$100**; second offense – **\$200**; third offense – **\$500**⁶⁰²

3) **Any DWI offense** where there is a "serious impairment of a body function" – **None**

4) **Persons Under 21 Years Old: Any Bodily Alcohol Content** – **None**

Other Penalties:

Community Service:

1) **Driving while visibly impaired** – first offense (misdemeanor) – Not more than **45 days**; second offense (within 7 years) (misdemeanor) – **30 days (mand) to 90 days** in lieu of imprisonment; third or subsequent offense (within 10 years) (felony) – **60 days (mand) to 180 days** (Provided probation is granted. This sanction is in addition to the mandatory 30-day jail sentence.)⁶⁰³ §§257.625(10) and 771.3(2)(e).

2) **Driving while under the influence/ illegal per se**

⁶⁰² See *Wayne City Prosecutor v. Wayne Circuit Judge*, 397 N.W.2d 274 (Mich. App. 1986).

⁶⁰³ In cases where probation is granted for a third or subsequent offense, the law does not appear to allow for the substitution of community service for the minimum mandatory term of imprisonment.

First offense – Not more than **45 days**; second offense – **30 (mand) to 90 days** in lieu of imprisonment; third or subsequent offense – **60 days (mand) to 180 days** in addition to mandatory imprisonment (Provided probation is granted. This sanction is in addition to the mandatory 30-day jail sentence) §257.625(8)

3) **Any DWI offense** where there is a "serious impairment of a body function" – **None**

4) **Persons Under 21 Years Old - Any Bodily Alcohol Content** – first offense – Not more than **45 days**; second and subsequent offense (within 7 years) – Not more than **60 days** §257.625(11)

Restitution:
(e.g., Victim's Fund)
Other:

Yes⁶⁰⁴

Assessments; A person convicted of a crime must pay the following assessments. For a felony, the assessment is **\$60** and for a misdemeanor it is **\$50**. §780.905(1). Juveniles pay an assessment of **\$20**. §780.905(2)

Costs of Prosecution: For any drunk-driving offense listed above, an offender may be required to pay the costs of prosecution. §§257.625(12) and 769.1f(1)

EMS Costs: For any drunk-driving offense listed above, an offender may be required to pay the emergency response costs incurred by State or a local government as a result of such offense. §769.1f(1) and (3).

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

None

But under §257.625g, if a driver either refuses to submit to a chemical test or submits to such test which indicates an "unlawful alcohol content"⁶⁰⁵, the license is confiscated and destroyed by the police. A temporary license is issued and

⁶⁰⁴ The State has a victims' compensation fund and, in addition, provides for direct compensation to victims by the defendant via court ordered restitution. §§18.351 et seq., 771.3(2)(f) and 780.766 et seq.

⁶⁰⁵ An "unlawful alcohol content" means either (1) a person under 21 years old was operating motor vehicle with a BAC/BrAC/UrAC ≥.02, (2) a person with a CDL was operating a CMV with a BAC/BrAC/UrAC ≥.04 or (3) a person was operating any motor vehicle with a BAC/BrAC/UrAC ≥.08. §257.625g(4)

Child Endangerment/Embryo/Miscarriages: I. For any regular drunk driving offense while carrying a passenger <16 years old. First offense (misdemeanor) – Jail-5 days (with either 48 con hours (mand) in jail or 30 (mand) to 90 days community service) to 1 year; fine – \$200 to \$1,000; and, license Suspension – 180 days (90 days mand); subsequent offense within 7 years – felony -Imprisonment – 1 to 5 years or, with probation, 30 days (48 con hours mand) to 1 year in jail and community service for 60 to 180 days; fine – \$500 to \$5,000 §257.625(7)(a) II. For a violation of the .02 law by a person <21 years while carrying a passenger <16 years old: first offense – Jail – Not more than 93 days; community service – not more than 60 days; fine – not more than \$500; and, license Suspension – 180 days (90 days mand); subsequent offense (within 7 years of a prior offense or within 10 years of 2 prior offenses) – Jail 5 days (48 con hours mand) to 1 year; community service for 30 to 90 days; fine – \$200 to \$1,000 §257.625(7)(b) III. For violations under I or II, either vehicle **forfeiture** or **immobilization** if the offense was a drunk driving offense. §§257.319(8)(e) and 257.625(7) IV. A person commits a felony by causing great bodily harm or serious or aggravated injury to an **embryo or fetus** while driving under the influence of alcohol/drugs or illegal per se. The sanctions for this offense are an imprisonment term of not more than 5 years and/or a fine of \$1,000 to \$5,000. §750.90d (b). V. A person commits a felony by causing a **miscarriage or stillbirth** while driving under the influence of alcohol/drugs or illegal per se. The sanctions for this offense are an imprisonment term of not more than 15 years and/or a fine of \$2,500 to \$10,000. §750.90d (a). VI. For IV and V, there may be a minimum jail sentence via the State's Sentencing Guidelines under

is valid until the conclusion of the DWI criminal proceedings, or if not prosecuted, for 90 days or until admin suspension, whichever comes first.

Post DWI Conviction Licensing Action:

See Footnote No.⁶⁰⁶.

Type of Licensing Action
(Susp/Rev):

1) **Driving while visibly impaired:** first offense – **Suspension**; second offense (within 7 years) – **Revocation**; third offense (within 10 years) – **Revocation**
 2) **Driving while under the influence/illegal per se:** first offense – **Suspension**; second offense (within 7 years) – **Revocation**; third offense (within 10 years) – **Revocation**
 3) **Any DWI offense** where there is a "serious impairment of a body function" – **Revocation**
 4) **Persons Under 21 Years Old: Any Bodily Alcohol Content** – first offense – **Suspension**; a violation of this prohibition where there have been 2 violations of any other drunk-driving law provision – **Revocation**; in addition, for any offense where there has been a prior revocation within 7 years – **Revocation**
Citations for the above actions: §§257.303(2) and (4) and 257.319(8)

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

1) **Driving while visibly impaired:** first offense – **90 days** (If the offense involved driving while impaired by a controlled substance or a controlled substance and alcohol – **180 days**); second offense – not less than **1 year**; any subsequent offense where there has been a prior revocation within 7 years – not less than **5 years**. §§257.303(2) and (4) and 257.319(8)

Chapter 777.

⁶⁰⁶ Licensing action under the point system: vehicle manslaughter or driving while under the influence/illegal per se-6 points; driving while impaired-4 points; twelve points in two years may result in suspension/revocation. A suspension cannot be longer than one year. §§257.320(1) (d), (2) and (4) and 257.320a (1) (a), (c) and (i)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has violated the law that prohibits CMV operation with a BAC/BrAC/UrAC ≥.04, (2) has violated the provisions of the drunk driving law (§257.625(1), (3), (4), (5), (6) or (7)) or (3) has refused to submit to a chemical test for alcohol concentration or the presence of controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, a revocation for not less than 10 years. §257.625f (1) (b) and (c). Under §257.625m, a person who operates a CMV with a BAC/BrAC/UrAC ≥.04 but <.07 commits a criminal offense: first offense (misdemeanor) – Jail – Not more than 93 days and/or fine of not more than \$300 and license suspension for 90 days (a restricted license is available for all of this period); second offense (within 7 years) (misdemeanor) – Imprisonment for not more than 1 year and/or a fine of not more than \$1,000 and license revocation for 1 year (mand); and, third offense (within 10 years) (felony) – Imprisonment to 5 years or probation with county jail from 30 days to 1 year (w/48 con hrs) with 60 to 180 days of community (the minimum imprisonment and/or community service are mand) and/or a fine of \$500 to \$5,000 and license revocation for 5 years (mand). In addition, a CMV operator who has a BAC/BrAC/UrAC ≥.015 must be placed "out-of-service" for 24 hours. Finally, it is a misdemeanor for a person to refuse to submit to a preliminary breath test (PBT) while operating a CMV; the sanctions for this offense are imprisonment for not more than 93 days and/or a fine of not more than \$100, and results in a 24-hour out-of-service order. Note: The standards for BAC, BrAC and UrAC are respectively as follows: 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. §§257.1c, 257.4b, 257.7a, 257.303(2) and (4), 257.312e, 257.319(8)(f), 257.319b, 257.319d, 257.625a (4) and (5) and 257.625m

2) **Driving while under the influence/illegal per se:** first offense – 180 days; second offense – not less than 1 year; subsequent offense where there has been a prior revocation withi 7 years – not less than 5 years §§257.303(2) and (4) and 257.319(8)

3) **Any DWI offense** where there is a "serious impairment of a body function" – first offense – not less than 1 year; any subsequent offense where there has been a prior revocation within 7 years – not less than 5 years §§ 257.303(2) and (4)

4) **Persons Under 21 Years Old: Any Bodily Alcohol Content** – first offense – 30 days; subsequent offense (within 7 years) – 90 days; a violation of this prohibition where there have been 2 violations of any other drunk-driving law provisions – not less than 1 year; for any offense where there has been a prior revocation within 7 years – not less than 5 years §§257.303(2) and (4) and 257.319(8)

Mandatory Minimum Term of
Withdrawal:

1) **Driving while visibly impaired:** first offense – None. (A restricted/hardship license may be issued.); second offense – 1 year; any subsequent offense where there has been a prior revocation within 7 years) – 5 years §§257.303(2) and (4) and 257.319(8)

2) **Driving while under the influence/illegal per se:** first offense – 30 days (A restricted hardship license may be issued after this period of time); second offense – 1 year; any subsequent offense where there has been a prior revocation within 7 years – 5 years

3) **Any DWI offense** where there is a "serious impairment of a body function" – first offense – 1 year; any subsequent offense where there has been a prior revocation within 7 years – 5 years §§ 257.303(2) and (4)

4) **Persons Under 21 Years Old: Any Bodily Alcohol Content** – first offense – None (A person is eligible for restricted driving privileges); a violation of this prohibition where there have been 2 violations of any other drunk-driving law provisions – **1 year**; for any offense where there has been a prior revocation within 7 years – **5 years** §§257.303(2) and (4) and 257.319(8)

Ignition Interlock: A person who has had the license revoked for any drunk-driving offense may, after the mandatory revocation period, be issued a restricted license instead of full driving privileges. If a restricted license is issued, the driver is limited to operating motor vehicles that are equipped with an "ignition interlock" device. The initial period for the use of such device is 1 year. §257.322(6), (7), (8) and (9)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes §§257.625b(5) and 771.3(2)(i)

Yes §§257.625b(5) and 771.3(2)(g)

Vehicle Impoundment/Confiscation:
 Authorized by Specific
 Statutory Authority:

Driving While Impaired, Driving While Under the Influence or Illegal Per Se: second or subsequent offense– Forfeiture (discretionary) §257.625(8) and (10) and 257.625n

Terms Upon Which Vehicle
 Will Be Released:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
 State Has Such a Law:

See **Special Vehicle Sanctions** for DWI-related death.

Yes. Felony Any DWI offense – related death
 §257.625(4)⁶⁰⁷

Misdemeanor Negligent Homicide-Driving at an immoderate rate of speed, in a careless, reckless or negligent manner but not willfully or wantonly. §750.324

Special Vehicle Sanctions:

Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Death or Injury Drunk-Driving Offense or Under Age 21 Drunk-Driving Offense (driving with any alcoholic bodily content): first offense – Immobilization – Not more than **180 days** (discretionary/mand if death or serious injury offenses); **second offense** (within 7 years)–**Immobilization** (Note: If the vehicle is not forfeited for the above offenses, this sanction applies.) – **90 (mand) to 180 days; third or subsequent offense** (within 10 years) – **Immobilization** (If the vehicle is not forfeited for above offenses, this sanction applies.) – **1 year (mand) to 3 years** §§257.625(8) and (10) and 257.904d. This sanction does not apply to rental vehicles or to vehicles that are registered in another State, §257.904d(7)(b), or to a vehicle owned by local, state, or federal government. §257.904d(7)(c). **Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Under Age 21 Offense Drunk-Driving Offense (driving with any alcoholic bodily content) or A Violation of §257.625m by a CMV Operator: Third or subsequent offense** – Where the offender’s license is still suspended or revoked for these offenses – that person shall be denied the right to either **register** a vehicle or to **purchase**, lease or otherwise acquire a motor vehicle. §257.219(1)(d) and 257.233(6) A defendant who is subject to vehicle immobilization cannot purchase, lease or otherwise obtain a motor vehicle during the period of immobilization. §257.904e. When a law enforcement officer has detained a person for an offense that requires vehicle **immobilization**, the officer must (1) confiscate the vehicle’s license plate and destroy it and

⁶⁰⁷ The Michigan Supreme Court has held that §257.625(4) is constitutional. *People v. Lardie*, 551 N.W.2d 656 (Mich. 1996)

(2) issue a temporary plate. The temporary plate is valid until the charges are dismissed, there is a guilty or *nolo contendere* plea or there is a finding of guilt. §257.904c

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Felony – Not more than 15 years ⁶⁰⁸ §257.625(4) Misdemeanor – Not more than 2 years §750.324
Mandatory Minimum Term:	See Sentencing Guidelines below.
Fine (\$ Range):	Felony – \$2,500 to \$10,000 §257.625(4) Misdemeanor – Not more than \$2,000 §750.324
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Revocation §257.303(2)(d), (e), (c) and (f)
Length of Term of Licensing Withdrawal:	<u>First offense</u> – 1 year ; <u>second or subsequent offense</u> (within 7 years) – 5 years §§257.303(4)(a)(i) and (ii)
Mandatory Action--Minimum Length of License Withdrawal:	<u>First offense</u> – 1 year ; <u>second or subsequent offense</u> (within 7 years) – 5 years §§257.303(4)(a)(i) and (ii)
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*</u> :	See Footnote No. ⁶⁰⁹ below.
Sanction:	
Criminal:	
Imprisonment (Term):	I. <u>First offense</u> (misdemeanor) – Not more than 93 days ; <u>second and subsequent offenses</u> (misdemeanor) – Not more than 1 year §257.904(1) and (3) II. If the offense resulted in death of another person - Not more than 15 years . §257.904(4) III. If the offense resulted in serious impairment of a body function (felony) – Not more than 5 years . §257.904(5) Sentencing Guidelines: The State’s sentencing guidelines, Chapter 777, also provide minimum incarceration sanctions for the following driving offenses: (1) driving while under the influence/illegal per se (a) causing death/serious injury, (b) with a minor or (c) for a third offense; (2) impaired driving for a third offense; (3) driving without a license causing death/serious injury; (4) driving while under the influence/illegal per se causing either a miscarriage/stillbirth or aggravated injury to embryo/fetus; and (5) negligent vehicle homicide. These minimum sanctions are based on

⁶⁰⁸ The imprisonment term is for not more than 20 years if the homicide resulted in the death of either a law enforcement officer, firefighter or EMS personnel. §257.625(4)

*There is 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. §257.904

⁶⁰⁹ A person who operates a CMV while his/her CDL privilege is suspended is subject to the sanctions given above for the offense of driving while suspended or revoked. §257.904 A person who operates a CMV while under a CDL out-of-service order commits a misdemeanor offense and is subject to an imprisonment term of not more than 90 days and/or a fine of not more than \$100. §257.319d

(1) the seriousness of the offense, (2) the blood alcohol level at the time of the offense and/or (3) the number of prior criminal offenses (felonies/misdemeanors). However, these sanctions do not replace the mandatory ones found in other provisions of the law.

Mandatory Minimum Term of Imprisonment:

Fine (\$ Range):

I. First offense – Not more than **\$500**; second and subsequent offenses – Not more than **\$1,000** §257.904(1) and (3) II. If the offense resulted in **death** of another person (felony) – **\$2,500 to \$10,000** §257.904(4) III. If the offense resulted in **serious impairment of a body function** – **\$1,000 to \$5,000** §257.904(5)

Mandatory Minimum Fine:

I. **None** II. If the offense resulted in **death** of another person (felony) – **\$2,500** (appears to be mand) §257.904(4) III. If the offense resulted in **serious impairment of a body function** – **\$1,000** (appears to be mand) §257.904(5)

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

For all of the above offenses – **Suspension or revocation**⁶¹⁰ §257.904(10)

Length of Term of License

Withdrawal Action:

The original license suspension or revocation is extended for a like period.

Mandatory Term of License

Withdrawal Action:

The original license suspension or revocation is extended a like period.

Other:

See **Sanctions** above.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of Driving

While on Habitual Offender Status

Sanctions Following a Conviction of Driving

While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of Imprisonment:

⁶¹⁰ For a first or subsequent offense, the registration plates of the vehicle involved in the offense shall also be "cancelled." §257.904(3)(a) and (b) Also, vehicle impoundment for not more than 120 days. §257.904b **Sanctions:** I. For a prior offense (within 7 years), vehicle **immobilization** for not more than 180 days. For 2 or 3 prior offenses (within 7 years), vehicle **immobilization** from 90 to 180 days (90 days mand). For 4 or more prior offenses (within 7 years), vehicle **immobilization** from 1 to 3 years (1 year mand). In addition, for any offenses related to either **death** or **serious impairment of a body function**, either vehicle **forfeiture** or **immobilization** for 180 days (mand). §§257.904(6) and 257.904d(2) II. Fourth or subsequent offense – While license is in suspension/revocation status, no right to register a motor vehicle. §257.219.(1)(d) III. Fourth or subsequent offense – While license is in suspension/revocation status, no right to purchase, lease or otherwise acquire a motor vehicle. §257.233(6)

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

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): **Yes** §257.625a(6)(f)

BAC Chemical Test Is Given to the the Following Persons:

Driver: **Yes** §257.625a(6)(f)

Vehicle Passengers: **No**

Pedestrian: **No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§436.1701(1), 436.1703(1) and 436.1801(2)

Minimum Age (Years) Possession: **21** Employment exemption §436.1703(7)

Minimum Age (Years) Consumption: **21**⁶¹¹ Exemption for religious services. §§436.1703(10) and 257.625(6)(b).

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §436.1801(3) and (10)⁶¹²

"Dram Shop Law" Concept Has Been The Dram Shop Law is the exclusive remedy against licensees.

Adopted Via a Change to the Common §436.1801(10)

Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Case Law abrogated by the Dram Shop Law

Dram Shop Actions-Social Hosts: **Yes. Limited to minors' actions.** *Longstreth v. Gensel*, 377 N.W.2d 804 (Mich. 1985) and *Trayler v. Kopusky*, 384 N.W.2d 819 (Mich. App. 1986)^{613, 614 and 615}

Other: A patron, including a minor patron, (or a relation) cannot maintain an action for damages against a licensee as a consequence of such patron's intoxication. §436.1801(9)

⁶¹¹ A person <21 years old may consume alcoholic beverages as part of a course at a post-secondary educational institution. Also, such a person may purchase, possess or consume alcoholic beverages when participating in law enforcement operations designed to enforce the alcoholic beverage control law's provisions related to minors. §436.1703(9) and (11)

⁶¹² The law applies (1) to damages/injuries caused by visibly intoxicated persons or those under 21 years old and (2) only to retail licensees not wholesalers. *Tennille v. Action Distributing*, 570 N.W.2d 130 (Mich. App. 1997). For an example of an abrogated common law case, see *Jones v. Bourrie*, 120 N.W.2d 236 (Mich. 1963).

⁶¹³ Nevertheless, a social host is not liable for the injuries caused intoxicated minor guests who commit criminal acts. The court felt that there was no "foreseeability" that such minors would commit a crime and distinguished the *Longstreth* case which involved injuries related to the use of motor vehicles by intoxicated minor guests. *Rogalski v. Tavernier*, 527 N.W.2d 73 (Mich. App. 1995)

⁶¹⁴ However, the courts have found no liability to business social hosts who have furnished alcoholic beverages to injury causing adult business guests. *Leszczynski v. Johnson*, 399 N.W.2d 70 (Mich. App. 1986) and *Kuehn v. Edward Rose and Sons*, 472 N.W.2d 59 (Mich. App. 1991)

⁶¹⁵ The "impairment defense" may be used in a social host dram shop case. *Piccalo v. Nix*, 653 N.W. 2d 447 (Mich. App. 2002)

and *Madejski v. Lotmar Limited*, 633 N.W. 2d 429
(Mich. App. 2001)

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

Type of Criminal Action: **Misdemeanor** §§436.1707, 436.1801(2), 436.1901 and
436.1909
Term of Imprisonment: Not more than **6 months**⁶¹⁶
Fine (\$ Range): Not more than **\$500**

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** §§436.1903(1) and
436.1907(3)
Length of Term of License Withdrawal: Period of license suspension is not specified in the statute;
period of license revocation is at least 2 years.
§436.1907(3). A civil fine of not more than \$300 may be
assessed in addition to or in lieu of a suspension or
revocation. §436.1903(1)

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

Type of Criminal Action: **Misdemeanor**⁶¹⁷ §§436.1701, 436.1801(2), 436.1901 and
436.1909(2)
Term of Imprisonment: Not more than **6 months**
Fine (\$ Range): Not more than **\$500**

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**⁶¹⁸ §§436.1903(1) and
436.1907(3)

⁶¹⁶ These sanctions appear to apply only to licensees but not to licensees' employees. For employees, a violation appears to be a misdemeanor with the following sanctions: Jail – not more than 90 days; fine – not more than \$100. §§436.1909 and 750.504

⁶¹⁷ The State/local police cannot charge a licensee with violating the law prohibiting the sale of alcoholic beverages to persons under 21 years old, unless these law enforcement agencies also charge the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting such persons from purchasing or attempting to purchase such beverages. §436.1701(4)

⁶¹⁸ The Liquor Control Commission cannot suspend or revoke a license or take other action against a licensee in situations where the State/local police, when enforcing the law prohibiting a licensee from selling alcoholic beverages to persons under 21 years old, have not charged the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting these persons from purchasing or attempting to purchase such beverages. §436.1905(1)

Length of Term License Withdrawal: Suspension period is not specified; revocation is 2 years
A civil fine of not more than \$1,000 may be assessed in
addition to or in lieu of suspension/revocation.

Anti-Happy Hour Laws/Regulations: Yes R 436.1438 (regulation)

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 Driver and passengers §257.624a {Does not apply to
passengers in a chartered vehicle.}

Anti-Consumption Law (Yes/No): Yes Driver and passengers §436.1915(1) The law states
that "[a]lcoholic liquor shall not be consumed on the public
highways."