

STATE:

MISSISSIPPI

General Reference:

Mississippi Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor  
§63-11-30(1)

Illegal Per Se Law (BAC/BrAC):

≥ .08<sup>648and649</sup> §63-11-30(1)(c)

Presumption (BAC):

Persons Under 21 Years Old ≥ .02 §63-11-30(1)(c)  
**None**

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Substance which has impaired driving ability §63-11-30(1)(b) or (2) Any Drug or Controlled Substance the possession of which is illegal §63-11-30(1)(d)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** §63-11-5

Implied Consent Law:

Arrest Required (Yes/No):

**No** However, a request to submit to a test is based on reasonable grounds and probable cause of DWI. §63-11-5(1)

Implied Consent Law Applies to

Drugs (Yes/No):

**No** §63-11-5

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal Cases) §63-11-41; *Ricks v. State* 611 So.2d 212 (Miss. 1992)

Other Information:

If a driver has been legally arrested for an offense where BAC evidence is relevant, a blood sample may be obtained in order to determine such BAC without the consent of the driver<sup>650</sup> *Gregg v. State*, 374 So.2d 1301 (Miss. 1979)Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

**Yes** §63-11-5

Urine:

**Yes** §63-11-5

Other:

**None**Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

**No**<sup>651</sup>

Anti-Plea-Bargaining Statute (Yes/No):

**Yes** A DWI charge cannot be reduced §63-11-39 For subsequent offenses, mandatory sanctions cannot be suspended or reduced via a plea agreement. §63-11-30(2)(b) and (c)

<sup>648</sup> This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath or alcohol concentration of .08 (.02 for persons < 21 years old) or more.

<sup>649</sup> Standard: Alcohol concentration is expressed as "percent" which is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§63-11-3(e), 63-11-23(2) and 63-11-30(1)

<sup>650</sup> A statute, §63-11-8, that mandated blood tests for alcohol/drug content if the driver was involved in an accident resulting in a death, was held unconstitutional in that it provided for a search without probable cause of a crime. *McDuff v. State*, 763 So.2d 850 (Miss. 2000) Despite *McDuff* the Miss Ct of Appeals has upheld the admissibility of such blood tests where probable cause was found to be present by the trial court. *Halloman v. State*, 820 So.2d 52 (Miss. App. 2002)

<sup>651</sup> However, a drunk-driving offense cannot be dismissed upon the completion of court imposed conditions. §99-15-26(1) and A.G. Op. #93-0889, January 12, 1994, 1994 Miss. AC LEXIS 56

Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**Yes** Mandatory for subsequent offenses §63-11-30(2)(d) and (e)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take

Implied Consent Chemical Test:

**None**

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

**None**

Administrative Licensing Action

(Susp/Rev):

**None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

**None**

Administrative Licensing Action

(Susp/Rev):

**Suspension for 90 days** (mand) if there has been no previous conviction for a DWI offense. (§63-11-30).

**Suspension for 1 year** (mand) if there has been a previous conviction for a DWI offense. (§63-11-30) §§63-11-5 and 63-11-23. These suspensions are additional to any others ordered. §63-11-30(4)

Other:

A *de novo* court trial may be held following administrative hearings on these suspensions. §63-11-25

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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

DWI offense – Misdemeanor (third and subsequent offense – felony) first offense – Not more than **48 hours**<sup>652</sup> (See Victim Impact Panel); second offense (within 5 years) – **5 days**<sup>653</sup> – 1 year; third and Subsequent offense (within 5 years) – **1 to 5 years** (felony – State penitentiary) Conviction for a DWI offense where there has been negligence resulting in disfigurement, disability, etc., (felony) – **5 to 25 years** §63-11-30(2)(a), (b) and (c) and (5), §47-5-3

**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.

*Keyes v. State*, 708 So.2d 540 (Miss. 1998)

For persons < 21 years old, the sanctions for a normal drunk driving offenses apply if the BAC/BrAC ≥ .08. However, different sanctions apply if the BAC/BrAC is ≥ .02 but < .08; §63-11-30(3)(a)

**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 a BAC/BrAC/UrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical (breath) test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “suspension” is for life (or a lesser period as established by Federal law). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in the system must be placed “out-of-service” for 24

<sup>652</sup> An offender may attend a victim impact panel in lieu of 48 hours of incarceration. §63-11-30(2)(a)

<sup>653</sup> See Community Service.

hours. A person commits a drunk driving offense by operating a CMV with a BAC/BrAC  $\geq$  .04. §§63-1-75(b), 63-1-82(3), 63-1-83, 63-1-84 and 63-11-30(1)(e)

Mandatory Minimum Term:	<u>First offense – None; second offense – 5 days; subsequent offense – 1 year</u> §63-11-30(2)(b) and (c)
Fine: Amount (\$ Range):	<u>First offense – \$250 to \$1,000; second offense (within 5 years) – \$600 to \$1,500; third and subsequent offense (within 5 years) – \$2,000 to \$5,000</u> Conviction for a DWI offense where there has been negligence resulting in disfigurement, disability, etc. (felony) – Not more than <b>\$10,000</b> §63-11-30(2)(a), (b) and (c) and 99-19-32
Mandatory Min. Fine (\$):	<u>First offense – \$250; second offense (within 5 years) – \$600; third and subsequent offense (within 5 years) – \$2,000</u> §§63-11-30(2)(b) and (c) and 99-19-25
Other Penalties:	
Community Service:	<b>Yes</b> <u>Second offense</u> – Community service from 10 days (mand) to 1 year <u>in addition</u> to imprisonment. §63-11-30(2)(b)
Restitution (e.g., Victim’s Fund)	<b>Yes</b> <sup>654</sup> I. A defendant may be ordered by the court to make direct restitution to a victim. §99-37-3 II. A victim may also obtain limited compensation from the State Crimes Victims’ Compensation Fund. §99-41-1 et seq.
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action:	
Administrative Per Se Law:	<b>Yes</b> This law encourages DWI offenders who have a BAC/BrAC $\geq$ .08 (for persons <21 years old $\geq$ .02), to request a trial within 30 days after arrest. If the chemical test indicates one of the above BAC/BrAC levels, the driver’s license is seized by the police and sent to the licensing agency. The driver is issued a receipt for such license. This receipt may be used as a temporary permit for 30 days. However, driving privileges are extended if a trial is requested by the driver but not commenced within 30 days. §63-11-23(2) <b>Important:</b> If temporary driving privileges expire without a trial having been requested by the offender, the license suspension periods for implied consent violations apply. §63-11-23(2)
Other:	A person’s license may be suspended if he/she has “committed” an offense that usually requires license

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<sup>654</sup> Some victims of criminal activity may receive compensation from a special crime victims’ escrow account. Funds for this account are provided via monies received by accused or convicted persons from the news, publicity or entertainment media for the purpose of reenacting the criminal event. A victim, however, must first have a money judgment against a defendant for the injury caused by a criminal action before receiving funds from the escrow account. §99-38-1 et seq.

revocation (e.g., vehicle homicide)<sup>655</sup>. Such action may be taken without a preliminary hearing. The time period for this suspension is not specified. §63-1-53(2)(a) Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):  
Term of License Withdrawal  
(Days, Months, Years, etc.):

**Suspension – All offenses** §63-11-30

First offense – 90 days to 1 year<sup>656and657</sup>; second offense (within 5 years) – **2 years**; third or subsequent offense (within 5 years) – **5 years**

Mandatory Minimum Term  
of Withdrawal:

First offense – 30 days<sup>658</sup>; second offense (within 5 years) – **1 year**<sup>659</sup>; third and subsequent offense (within 5 years) – **3 years**<sup>660and661</sup>.

I. Notwithstanding §63-11-30, a person who has been convicted of operating a motor vehicle while under the influence of a controlled substance must have the driving privileges forfeited for not less than 6 months. The revocation or suspension is to run consecutive to any others. 63-1-71(1)

II. If a person is convicted of a DWI offense where there has been a chemical test refusal, the licensing sanctions for the DWI conviction are in addition (i.e., consecutive) to those imposed under the implied consent law. §63-11-30(4)

Other:

Rehabilitation:

Alcohol Education:

**Yes - First offense** – Required before license can be reinstated. §§63-11-30(2)(a) and 63-11-32

Alcohol Treatment:

**Yes - second and third offenses** §63-11-30(2)(d) and(e)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Forfeiture.** For a second offense (within 5 years), the vehicle used in the offense **may** be forfeited. For third or subsequent offenses, vehicle **shall** be seized. However, the vehicle owner’s spouse may obtain possession of the vehicle by demonstrating the

<sup>655</sup> A DWI offense results in license suspension not revocation.

<sup>656</sup> Judicial review is not allowed for these suspension actions by the licensing agency. §63-11-26

<sup>657</sup> The law requires that a first offender complete an alcohol education program before having the license reinstated. However, in no event can a license suspension exceed 1 year.

<sup>658</sup> The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates a need for a license (1) to continue employment or education, (2) to obtain medical care (3) to attend driver improvement, alcohol or drug education programs or (4) to attend court ordered counseling. §63-11-30(2)(a)

<sup>659</sup> For a second conviction, the suspension period may be reduced to 1 year provided the defendant is (1) diagnosed as needing alcohol/drug abuse treatment and (2) such person successfully completes such treatment. §63-11-30(2)(d)

<sup>660</sup> For a third or subsequent conviction, a defendant’s license may be reinstated after three years upon successful completion of an alcohol/drug abuse treatment program. §63-11-30(2)(e)

<sup>661</sup> A person who commits a drunk driving offense and who is under the legal age to operate a motor vehicle is not eligible to obtain driving privileges until 18 years old. §63-11-30(9)

vehicle is the only means of transportation. §§63-11-30(2)(b), 63-11-30(2)(c) and 62-11-49.

**Impoundment/Immobilization.** For second or subsequent offenses, **all** vehicles owned by the offender must be impounded/immobilized for the length of the license suspension. §§63-11-30(2)(b), 63-11-31-(1)(a) and 63-11-49(1)

Terms Upon Which Vehicle Will Be Released:

Miscellaneous Sanctions Not Included Elsewhere:

**I. Mandatory State Traffic Violations**

**Assessment: \$51** – imposed on anyone a court fines or penalizes for a traffic violation other than vehicle parking, registration or implied consent violation. §99-19-73(1) and (7)

**II. Mandatory State Implied Consent Violation**

**Assessment: \$178** §99-19-73(2) and (7)

**III. Victim Impact Panel. First offense** –

Attendance at a victim impact panel in lieu of 48 hours in jail. §63-11-30(2)(a)

**IV. Bus Drivers and Operators of Vehicles for Hire.**

The privilege to operate a bus/vehicle for hire may be suspended/revoked if a person drives such a vehicle while intoxicated or noticeably under the influence of intoxicating liquor. §§21-27-137 and 21-27-155

**V. Community Work Center.** Unless the drunk driving offense involved either death or injury, an offender may be assigned to a community work center. §47-5-110(1)

**VI. Ignition Interlock.** (1) Where other persons must use a vehicle, the use of an ignition interlock may be required in **lieu** of impoundment or immobilization. (2) For a first or subsequent offense, the court may order the use of an ignition interlock for **6 months** on all vehicles owned by the offender following license reinstatement §§63-11-30(11) and 63-11-31(1)(a)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes Felony** Death via DWI and negligence<sup>662</sup> §63-11-30(5)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

**5 to 25 years** §63-11-30(5).

Mandatory Minimum Term:

**None**

<sup>662</sup> The DWI law provides that, for the purposes vehicle homicide, a death-related DWI offense also includes a death caused by a person < 21 years old who is operating a motor vehicle with a BAC ≥ .02. §63-11-30(1) and (5) The State supreme court has held the law does not violate constitutional provisions requiring equal protection of the laws. *Mason v. State*, 781 So.2d 99 (Miss. 2000)

**Persons Under 21 Years Old.** The following sanctions apply to persons <21 years old who drive with a BAC/BrAC ≥ .02 but < .08. First offense – A fine of **\$250**, license suspension – **90 days** (30 days mand). A hardship license may be issued after the 30-day period for purposes of employment, education or medical needs, and completion of an alcohol education program; second offense (within 5 years) – A fine of not more than **\$500** and license suspension – **1 year** (6 months mand); and, third or subsequent offense (within 5 years) – A fine of not more than **\$1,000** and license suspension until age 21 or for **2 years** – whichever is longer suspension period (6 months mand). For a second offense, driving privileges may be reinstated after 6 months if the person receives a “diagnostic assessment” and completes any needed alcohol treatment program. §63-11-30(3).

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Fine (\$ Range):	Not more than <b>\$10,000</b> §§47-5-3 and 99-19-32
Mandatory Minimum Fine:	<b>None</b> – However, there is a mandatory State assessment of \$157 §99-19-73(2) and (7)
Administrative Licensing Action: Licensing Authorized and Type of Action:	<b>Revocation</b> §63-1-51(1)(a)
Length of Term of Licensing Withdrawal:	<b>1 year</b> §63-1-51(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	<b>1 year</b> §63-1-51(1)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

**Yes** §63-11-40<sup>663</sup>

Sanction: Criminal: Imprisonment (Term): Mandatory Minimum Term of Imprisonment:	<b>Misdemeanor- 48 hours-6 months</b> §63-11-40 <b>48 hours</b> §63-11-40
Fine (\$ Range): Mandatory Minimum Fine:	<b>\$200 to \$500</b> §63-11-40 <b>\$200</b> §99-19-25
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev): Length of Term of License Withdrawal Action:	<b>Suspension</b> <b>6-month suspension</b> added to the original suspension period §63-11-40
Mandatory Term of License Withdrawal Action:	<b>6-month suspension</b> added to the original suspension period §63-11-40

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	<b>No</b>
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	

<sup>663</sup> It is a misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are imprisonment from 1 to 6 years, a fine of \$5 to \$250 and an assessment of \$30. §§63-1-69, 63-1-77(2) and (3) and 99-19-73(1)

Sanctions Following a Conviction of  
 Driving While on Habitual Offender Status:  
 Imprisonment (Term):  
 Mandatory Minimum Term of  
 Imprisonment:  
 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):	<b>Yes</b> §63-11-7
BAC Chemical Test Is Given to the Following Persons:	
Driver:	<b>Yes</b>
Vehicle Passengers:	<b>No</b>
Pedestrian:	<b>No</b>

Laws Establishing the Minimum Ages  
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	<b>21</b> §§67-1-81, 67-3-53(b) and 67-3-70(1)
Minimum Age (Years) Possession:	<b>21</b> There is an employment exemption. §§67-1-81 and 67-3-54
Minimum Age (Years) Consumption:	<b>None</b> <sup>664</sup>

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	<b>Yes</b> <sup>665</sup> §67-3-73(2) and (4) Licensees <u>cannot</u> be held liable if they serve or sell alcoholic beverages to a person who “may lawfully purchase” such beverages.
“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):	<b>Yes</b> <i>Munford, Inc. v. Peterson</i> , 368 So.2d 213 (Miss. 1979), <i>Bryant v. Alpha Entertainment Corp.</i> , 508 So.2d 1094 (Miss. 1987), and <i>Delahoussaye v. Mary Mahoney’s Inc.</i> , 783 So.2d 666 (Miss. 2001) <sup>666</sup>
Dram Shop Actions-Social Hosts:	<b>Yes – Limited</b> A social host cannot be held liable if they provide alcoholic beverages to a person who may lawfully consume such beverages. §67-3-73 and <i>Boutwell v. Sullivan</i> , 469 So.2d 526 (Miss. 1985)

<sup>664</sup> Persons under 21 years old may consume light wine and beer in the presence of a parent or legal guardian. §67-3-54(1)

<sup>665</sup> The Dram Shop Law, §67-3-73, appears to limit but not abrogate common law.

<sup>666</sup> In *Delahoussaye*, the court held that a licensee could be held liable for the negligent actions of an intoxicated minor driver even though they did not sell alcoholic beverages to such person. It was sufficient that other minors had purchased such beverages for the injury causing person to consume. The court stated that “[t]here was no requirement that the intoxicated and negligent driver actually have purchase the alcohol.” 783 So.2d at 670

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

Type of Criminal Action:	<b>Misdemeanor</b> §§67-1-83, 67-3-53(b) and 67-3-69(1)
Term of Imprisonment:	Not more than <b>6 months</b>
Fine (\$ Range):	Not more than <b>\$500</b> <sup>667</sup>

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Revocation</b> – For alcoholic beverage 4 percent or more alcohol by weight §67-1-83(4); <b>Revocation</b> For wine and beer not more than 4 percent alcohol by weight. §67-3-29
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Length of Term of License Withdrawal:	(1) For alcoholic beverage of 4 percent or more, no period of license suspension/revocation is specified. (2) For licensees holding light wine and beer permit (alc. content of not more than 4 percent <i>alcohol</i> by wgt), their permit may be revoked for 2 years for willful neglect or refusal to comply with the alcoholic beverage control laws. §67-3-29(2) Also, under §67-3-69(1), a permittee who is convicted of an offense must have the license voided at the time of the conviction. A new license cannot be issued for 1 year.
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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:	(1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: <u>first offense – Misdemeanor</u> ; <u>second and subsequent offenses – Misdemeanor</u> (2) Selling to a person under 21 years old beer and wine not more than 4 percent alcohol by weight- <b>Misdemeanor</b> §§67-1-81 and 67-3-53
Term of Imprisonment:	(1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: <u>first offense – None</u> ; <u>second and subsequent offenses – Not more than 1 year</u> (2) Selling to a person under 21 years old beer and wine not more than 4 percent alcohol by weight – Not more than <b>6 months</b> §§67-1-81, 67-3-53 and 67-3-69
Fine (\$ Range):	(1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: <u>first offense – \$500-1,000</u> <sup>668and669</sup> ; <u>second and subsequent</u>

<sup>667</sup> There is also a mandatory State assessment of \$50.50 §99-19-73(5) and (7)

<sup>668</sup> There is also a mandatory State assessment of \$71.50. §99-19-73(5) and (7)

<sup>669</sup> The following additional sanctions may also apply to licensees who sell beer and light wine (not more than 4 percent



offenses – **\$1,000-2,000** (2) Selling to a person under 21 years old beer and wine not more than 4 percent alcohol by weight – Not more than **\$500** §§67-1-81, 67-3-53 and 67-3-69

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):

(1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offense – **Revocation**<sup>670</sup> §67-1-71; second and subsequent offense – **Automatic Revocation** §67-1-81 (2) Selling to a person under 21 years old beer and wine (not more than 4 percent alcohol by weight) – **Revocation/ Suspension**

Length of Term License Withdrawal:

(1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offense – **Revocation** – length not specified §67-1-71; second and subsequent offenses – **Permanently revoked**. §67-1-81 (2) Selling to a person under 21 years old beer and wine (not more than 4 percent alcohol by weight) – **Revocation** – length not specified However, persons who have had any alcoholic beverage license revoked may not apply for a license to sell light wine and beer (not more than 4 percent alcohol by wgt.) for 2 years. §67-3-19(b)

Anti-Happy Hour Laws/Regulations:

**No**

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

Open Container Law (Yes/No):

**No**

Anti-Consumption Law (Yes/No):

**No**

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alcohol by weight) to persons under 21 years old: first offense – A fine of \$200-1,000 and license suspension for 3 months; second offense – (within 12 months) – A fine of \$200 – \$1,500 and license suspension for 6 months; and, third and Subsequent offense – (within 12 months) – A fine of \$1,000 – \$5,000 and a license suspension for 1 year. §67-3-69(3)

<sup>670</sup> A limited suspension may be imposed in lieu of revocation.

**Special Note:** Under a separate provision, the law makes it illegal to sell alcoholic beverages of 4 percent or more except as authorized by law. The sanctions for violating this provisions are as follows: first offense – 1 week to 3 months in jail and/or a fine of \$100 to \$500; second offense – 60 days to 6 months in jail and/or a fine of \$100 to \$5,000; and, third offense – 1 to 5 years in the State Penitentiary and/or a fine of \$100 to \$5,000 §67-1-9(1) and (2)