

STATE: **OREGON**  
 General Reference: Oregon Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense: Under the influence of intoxicating liquor<sup>995</sup>  
 §813.010(1)(b)  
 Illegal Per Se Law (BAC): **≥.08**<sup>996</sup> §813.010(1)(a)  
 Presumption (BAC): **None**  
 Types of Drugs/Drugs and Alcohol: Under the influence of (1) A Controlled Substance (2) an  
 Inhalant<sup>997</sup> or (3) Any Combination of Intoxicating Liquor,  
 an Inhalant and a Controlled Substance §813.010(1)(b)  
 and (c)  
 Other: A BAC of not less than **.08** constitutes being under the  
 influence of intoxicating liquor. §813.300(2)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law: **No**  
 Implied Consent Law: **Yes** §§813.100 and 813.131  
 Arrest Required (Yes/No): **Yes** §813.100 and 813.131  
 Implied Consent Law Applies to  
 Drugs (Yes/No): **Yes**§813.131  
 Refusal to Submit to Chemical Test  
 Admitted into Evidence: **Yes**<sup>998</sup> (Criminal and Civil Cases) §813.310  
 Other Information: I. There is also an implied consent law on field sobriety  
 testing. §813.135  
 II. The Oregon Supreme Court has indirectly indicated that  
 law enforcement officers are not authorized via statute to  
 obtain a blood sample via force for BAC testing in DWI  
cases. However, such a sample may be forcefully obtained

<sup>995</sup> A person commits a DWI offense by driving "while under the influence of intoxicants." This offense is defined as illegal per se at a BAC ≥.08 or driving while under the influence of intoxicating liquor, a controlled substances or an inhalant. §813.010(1). The Oregon Supreme Court has held that §813.010 is one offense, namely that of driving while under the influence of intoxicants. This offense may be proven by showing that a person operated a motor vehicle either (1) with a BAC ≥.08 or (2) while under the influence of alcohol or a controlled substance. *State v. King*, 852 P.2d 190 (Or. 1993), and *State v. Miller*, 788 P.2d 974 (Or. 1990). Note: The term "intoxicating liquor" has been judicially defined to include beer, wine or any other substance that contains alcohol. *State v. Miles*, 492 P.2d 497 (Or. App. 1972)

<sup>996</sup> Standard: "Percent by weight" of alcohol in the blood. §813.010(1)(a). However, under §813.300(4), "percent by weight" of alcohol in the blood is to be based on grams of alcohol per 100 cubic centimeters of blood.

<sup>997</sup> An inhalant "means any glue, paint, cement or other substance that is capable of causing intoxication and that contains one or more of the following chemical compounds: (1) Acetone; (2) amyl acetate; (3) benzol or benzene; (4) butane; (5) butyl acetate; (6) butyl alcohol; (7) carbon tetrachloride; (8) chloroform; (9) cyclohexanone; (10) difluoroethane; (11) ethanol or ethyl alcohol; (12) ethyl acetate; (13) hexane; (14) isopropanol or isopropyl alcohol; (15) isopropyl acetate; (16) methyl cellosolve acetate; (17) methyl ethyl ketone; (18) methyl isobutyl ketone; (19) nitrous oxide; (20) toluol or toluene; (21) trichloroethylene; (22) tricresyl phosphate; (23) xylol or xylene; (24) or any other solvent, material, substance, chemical or combination thereof having the property or releasing toxic vapors or fumes." §801.317. Note: A person is prohibited from either (1) possessing an inhalant with intent to or (2) using an inhalant to intoxicate an individual; sanctions-fine of not more than \$300 (minors, treatment/counseling in lieu of a fine). §167.808

<sup>998</sup> The State Supreme Court has indirectly abrogated a statutory provision, §813.136, which provides that if a person either fails or refuses to submit to field sobriety testing, this fact may be admitted into evidence in any criminal or civil action arising out of the allegation that the person was DWI. The court has held that such an admission violates the State's constitutional provision against self-incrimination. *State v. Fish*, 893 P.2d 1023 (Or. 1995) and *State v. Rohrs*, 970 P.2d 262 (Or. App. 1998)

and tested for BAC (and possible drug content) for other criminal offenses related to motor vehicle operation (e.g., criminally negligent homicide or manslaughter).  
 §§813.140, 813.320 and *State v. Milligan*, 748 P.2d 130 (Or. 1988)

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

|        |  |
|--------|--|
| Blood: | <b>Yes Limited</b> <sup>999and1000</sup> |
| Urine: | <b>Yes Limited</b> <sup>1001</sup>       |
| Other: | <b>None</b>                              |

Adjudication of DWI Charges:

|  |   |
|--|---|
| Mandatory Adjudication Law (Yes/No):             | <b>No</b>   |
| Anti-Plea-Bargaining Statute (Yes/No):           | <b>Yes</b> §813.170. There is a diversion program for offenders who have not been convicted of a DWI offense within 10 years and who meet other eligibility requirements. §§813.215 and 813.200 et seq. |
| Pre-Sentencing Investigation Law (PSI) (Yes/No): | <b>Yes</b> Alcohol screening is required. §§813.020(1)(b) and 813.021   |

Sanctions for Refusal to Submit to a Chemical Test:

|  |            |
|--|------------|
| Refusal to Take a <u>Preliminary Breath Test</u> : |            |
| Criminal Sanctions (Fine/Jail):                    | <b>N/A</b> |
| Administrative Licensing Action (Susp/Rev):        | <b>N/A</b> |
| Other:   | <b>N/A</b> |

|  |  |
|--|--|
| Refusal to Take <u>Implied Consent Chemical Test</u> : |  |
| Criminal Sanction (Fine/Jail):                         | <b>None</b>  |
| Administrative Licensing Action (Susp/Rev):            | <b>1. Suspension – 1 year</b> if no previous suspensions for either a test refusal or a DWI offense (90 days are |

<sup>999</sup> Implied consent to submit to a chemical test via a blood sample applies only if the driver is "receiving medical care in a health facility immediately after a motor vehicle accident." §813.100(1)

<sup>1000</sup> A law enforcement officer may obtain either a blood or urine sample for testing to determine either an alcohol concentration or drug content. Such samples may be obtained only (1) if the driver "expressly consents" to the taking of the sample or (2) is unconscious (or otherwise in a condition rendering them incapable of expressly consenting) and there is probable cause to believe the person was violating the DWI law. §813.140 Note: A person can "expressly consent" by physical actions as well as by verbal communication. *State v. Doran*, 893 P.2d 569 (Or. App. 1995)

<sup>1001</sup> A law enforcement officer may request a person to submit to a chemical test of urine to determine the presence of a controlled substance. However, this requirement only applies if (1) a breath test disclosed an alcohol concentration <.08 or (2) the person was involved in an accident that resulted in either a personal injury or property damage. Nevertheless, in the case of either injury or property-related accidents, a law enforcement officer may request a urine test following a breath test regardless of the results of the breath test. §813.131

Sanctions for Refusal to Submit to a Chemical Test (con't)

Other:

mandatory).<sup>1002</sup> 2. **Suspension – 3 years** for either a previous test refusal or a previous DWI offense/admin per se violation based license suspension within 5 years (1 year mand). §§813.100, 813.130, 813.131, 813.132, 813.410, 813.420, 813.430 and 813.520  
Consecutive license suspensions for refusals to submit to both breath and urine tests. §813.132

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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

I. First, second or third offense – Class A Misdemeanor – Not more than **1 year** §§813.010(4) and 161.615(1)  
II. Fourth offense (with 3 prior offenses within 10 years) – Class C Felony – Not more than **5 years** §§813.010(5) and 161.605(3)

Mandatory Minimum Term:

**All offenses – 48 consecutive hours**<sup>1003</sup> §813.020(2)

Fine:

Amount (\$ Range):

I. First, second or third offense – Class A Misdemeanor – Not more than **\$5,000** §161.635(1)(a)  
II. Fourth offense (with 3 prior offenses within 10 years) – Class C felony – Not more than **\$100,000** §§813.010(5) and 161.625(1)(c)

Mandatory Min. Fine (\$):

**All offenses – first offense – \$1,000; second offense – \$1,500; third offense – \$2,000 (only if the person is not sentenced to a term of imprisonment.** §813.010(6)

Other Penalties:

Community Service:

All offenses – Not less than **80 hours** nor more than **250 hours** (as an alternative to imprisonment) §§813.020(2) and 137.129(4)

Restitution

(e.g., Victim's Fund)

**Yes** Direct compensation to victims by the defendant (§§137.106, 107 and 109) and also via a victims' compensation fund (§147.005 et seq.)

Other:

I. A **\$130 fee** is charged in addition to any fine imposed. The fee is used to pay for diagnostic assessment, for intoxicated driver programs and for other purposes per §137.295. The court may waive this fee in whole or in part for indigent defendants. §§813.020(1)(a) and 813.030  
II. **All offenses – A Unitary Assessment of \$95.** §137.290(1)(c)

<sup>1002</sup> A restricted hardship license may be issued after this mandatory period. §813.520(1) and (3). This mandatory period is reduced by any mandatory suspension period that may be imposed for either a second or subsequent DWI offense conviction (within 5 years) based on the same occurrence. §813.520

<sup>1003</sup> This term must be served unless justice requires otherwise. The court must state the reasons why the mandatory imprisonment term cannot be served consecutively. §813.020(2)(b) For the purpose of the minimum period of incarceration, imprisonment includes either a jail, minimum security facility or inpatient rehabilitation or treatment center. §813.020(2)(a) and *State v. Oary*, 829 P.2d 90 (Or.App. 1992).

III. **All offenses – A County Assessment** which is in addition to and which is based on the amount of fine they have to pay. The assessments vary in amount but are not more than **\$59**. §137.309

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

**Yes ≥.08 (Any BAC for persons under 21 years old)** 1. A **90-day suspension (30 days are mandatory)**<sup>1004</sup> if there has been no previous suspension for a chemical test refusal, an admin per se violation, or a DWI offense.  
 2. A **1-year suspension (mandatory)**<sup>1005</sup> if there has been a previous suspension for a chemical test refusal, an admin per se violation, or a DWI offense.  
 §§813.100(4), 813.130, 813.300(2) and (3), 813.410, 813.420, 813.430 and 813.520.

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

First offense – Suspension; second and third offenses (within 5 years) – Suspension; fourth offense (with 3 prior offenses within 10 years) – Revocation.  
 See **Ignition Interlock** below.

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

First offense – 1 year; second and third offenses (within 5 years) – 3 years; fourth offense (with 3 prior offenses within 10 years) – Permanent. §§809.420(2) and 813.400(2)  
 Under §§809.260 and 809.280(7), a person under 17 but not younger than 13 who is convicted of a DWI offense is subject to the following licensing action: first offense – Suspension for 1 year or until the person reaches 17 whichever is the longer suspension period; second or subsequent offense – suspension for 1 year or until the person reaches 18 whichever is the longer suspension period.  
**Persons Under 18 Years Old:** Under §809.405(4), persons under 18 who have been convicted of a DWI offense must have their licenses suspended until they are 18 or are otherwise eligible for license reinstatement.

Mandatory Minimum Term of  
 Withdrawal:

First offense– See Footnote No. <sup>1006</sup>; second offense (within 5 years) – 90 days<sup>1007</sup>; third or subsequent offenses

<sup>1004</sup> A restricted hardship license may be issued after this mandatory period. §813.520(2)

<sup>1005</sup> This mandatory suspension is reduced by any mandatory suspension imposed for either a second or subsequent DWI offense (within 5 years) if based on the same occurrence. §813.520 **Special Note:** A Class C felony DWI offense is a Category 6 Crime under the rules of the Oregon Criminal Justice Commission. §813.012(1)

**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. Phillips*, 909 P.2d 882 (Or.. App. 1996)(review denied 913 P.2d 1384 (Or. 1996)).

<sup>1006</sup> A restricted hardship permit may be issued. §§807.240 and 813.520 Note: A 30-day suspension is mandatory if the defendant within the previous year has been convicted of a “traffic crime.” §813.520(9)

<sup>1007</sup> A restricted hardship license may be issued after this mandatory period. §813.520(4) and (5). Note: This mandatory period is reduced by any mandatory suspension period imposed for an implied consent law test refusal or an

(within 5 years) – permanent revocation of driving privileges, although a petition for restoration of the driving privilege may be filed with District Court **10 years** after release on parole or post-prison supervision. § 809.235.  
 (1)(b) For persons under 17 but not younger than 13, first offense – 90 days; second or subsequent offense – 1 year

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

**Yes**

**Yes I.** An intoxicated offender must complete an appropriate treatment program for alcoholism or drug dependency. This requirement impacts an offender’s eligibility for a hardship permit. This could include an alcohol/drug education program. §§813.020(1)(b), 813.021 and 813.500 {Screening fee for driving while under the influence of intoxicants diversion program – **\$150** §813.240 (2) }  
**II.** Second or subsequent offenders may be issued a restricted hardship license only on the condition that they complete an alcohol/drug assessment and, if required, enroll in an alcohol/drug rehabilitation program. However, if an assessment indicates that they are not required to participate in a rehabilitation program, they must enter an alcohol/drug information program as a condition for obtaining restricted hardship driving privileges. §813.500

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**I. Forfeiture (Discretionary):**<sup>1008</sup> A vehicle used in a drunk-driving offense may be forfeited if within 3 years the offender had a prior drunk-driving offense or has been convicted of murder, manslaughter, criminally negligent homicide or assault related to the operation of a motor vehicle. §809.730. Note: This law does not preempt similar forfeiture ordinances in either cities with a population >400,000 or counties with a population >500,000. §809.735

**II. Discretionary Impoundment/Immobilization:** second or subsequent DWI offenses or Driving While Suspended/Revoked – Not more than **1 year**.<sup>1009</sup> Applies to a vehicle by or used by the offender.

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admin per se law violation if based on the same occurrence. §813.520

**Ignition Interlock:** Persons convicted of DWI offenses shall have an “ignition interlock” device installed in their vehicles prior to being issued a hardship license. Offenders must operate motor vehicles equipped with ignition interlock devices for 6 months after the end of the license suspension or revocation period. The court may require the use of an ignition interlock device as part of a diversion agreement. Note: There is an employment exception to the above requirements. §§813.602(1)(a), (1)(b) and (2) and 813.606.

<sup>1008</sup> The City of Portland has an ordinance that provides for vehicle forfeiture if a person is operating a motor vehicle while driving privileges have been suspended for a DWI offense.

<sup>1009</sup> An offender’s vehicle’s registration must be suspended for not more than 120 days. §809.010

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's CDL privilege is suspended if while operating a CMV, such person (1) is convicted of a DWI offense (§813.010 offense), (2)

Terms Upon Which Vehicle  
Will Be Released:

Applies to vehicles (1) either owned and used by the offender or (2) owned by an offender but not used in the offense. §809.700

The offender must pay the costs of removing, storing or immobilizing the vehicle. §809.700(1)(a), (2) and (6)

**Special Note No. 1:** Under §807.220, persons may be issued an emergency driver's licenses if they are at least 14 years old. Except for restrictions that may be placed on the emergency license such as when and where a vehicle may be operated, it appears that such a license could be issued for any emergency situation regardless of whether the person being issued this license has had the regular one suspended or revoked for (1) an implied consent law refusal, (2) an administrative per se law violation, (3) a DWI conviction, or (4) convictions for other traffic law offenses. This section further provides that for persons 17 years old or younger, an emergency includes the situation where the person has to use a vehicle to travel to and from school.

**Special Note No. 2:** In addition to the licensing sanctions in the DWI law for driving while under the influence of controlled substances, it appears under other sections, a driver's license can be suspended for six months for this offense. A hardship license cannot be issued. However, under "compelling circumstances" a court does not have to suspend a license. §§807.250(2), 809.265 and 809.280(9)

**Special Note No. 3:** The State issues special licenses to persons 14 to 17 years old for the purpose of attending educational institutions. The State can issue such licenses notwithstanding a DWI conviction and the mandatory licensing sanctions provided for such an offense if vehicle transportation is needed by the minor to attend such institutions. §§807.230, 809.420 and 813.400

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

Other:

**Impoundment Following Arrest:** If there is probable cause of a drunk-driving offense or an offense of driving while suspended or revoked, the vehicle used in such offenses may be impounded. The vehicle shall be released if the person entitled to lawful possession (1) has valid driving privileges, (2) submits proof of financial responsibility, and (3) pays any fees associated with the impoundment. §809.720

Miscellaneous Sanctions:

**Home Detention:** DWI defendants who are placed on probation may be "restricted" to their own residences. §137.540(2)(a) Note: This provision does not appear to interfere with the mandatory jail requirements of §813.020(2).

**Diversion Filing Fee:** There is a diversion filing fee of \$237. §813.240(1)

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has a BAC  $\geq .04$ , or (3) refuses to submit to a chemical test for alcohol concentration. For a first DWI conviction or a first violation of operating a CMV with a BAC  $\geq .04$ , the CDL is suspended for 1 year (mand); however, if the person was carrying hazardous materials, the suspension is for 3 years (mand). For a first refusal, the CDL is suspended for 3 years (mand); however, if the person was carrying hazardous materials, the suspension is for 5 years (mand). For a subsequent refusal, DWI conviction or violation of operating a CMV with a BAC  $\geq .04$  or a combination of these, the CDL privilege is suspended for life (mand). A CMV operator must be placed "out-of-service" for 24 hours (1) if the person has any amount of alcohol in the blood or (2) has consumed alcohol or other intoxicating beverage within 4 hours of operating a CMV. §§813.050, 813.120, 813.130, 813.403, 813.404 and 813.410

**Diagnostic Assessment Fee:** There is a diagnostic assessment fee of \$90. §§813.020(1)(b) and 813.240(2)

**Victim Impact Program:** A DWI offender may be required to attend a victim impact treatment session. The offender may be required to pay a fee of from \$5 to \$50 to offset the cost of this program. §813.020(3)

**Incarceration and Medical Costs:** A city or county may seek reimbursement from an offender for the costs of medical care and incarceration. §§169.150 and 169.151

**No Deferred Proceedings:** A person who has been found guilty of or who pleads guilty to a DWI offense cannot be placed on probation and have the judgment of guilt not entered on the record via a deferred proceeding. §137.533

**School and Work Zone:** If the offense occurred in either a school or work zone, there is a **minimum mandatory** fine which is equal to (1) **20 percent** of the maximum fine for a misdemeanor offense and (2) **2 percent** of the maximum fine for a felony offense. §§811.230 and 811.235

**Non-Economic Damages:** A person may not be able to recover non-economic damages for injuries related to the operation of a motor vehicle if in violation of the drunk-driving laws. §18.592

**Field Sobriety Tests:** The Oregon Supreme Court has issued conflicting opinions concerning whether field sobriety tests are searches. In *State v. Nagel*, 880 P.2d 451 (Or. 1994), the court held that field sobriety tests are searches which are reasonable under both the Federal and State Constitutions. The court further concluded that, given the facts in the case before it, such searches were not subject to the warrant requirement due to the fact that there existed both "probable cause" of a drunk-driving offense and "exigent circumstances" based on the rationale that a suspect's intoxication would dissipate before a warrant could be obtained. However, an equally divided State Supreme Court affirmed a decision of the Oregon Court of Appeals that had held that such tests were not searches. *State v. Lawrence*, 843 P.2d 488 (Or. App. 1992), affirmed, 880 P.2d 431 (Or. 1994). However, a later case of the Oregon Court of Appeals has cited *Nagel* for authority, *Walls v. DMV*, 960 P.2d 888 (Or. App. 1998), as have several other subsequent cases. *State v. Forrest*, 25 P.3d 392 (Or. App. 2001) and *State v. Rutherford*, 981 P.2d 386 (Or. App. 1999). Further, the *Lawrence* opinion was soundly criticized by the Oregon Supreme Court in *State v. Prickett*, 930 P.2d 221 (Or. 1997).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

No<sup>1010</sup>

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<sup>1010</sup> Even though this State does not have a vehicle homicide statute, it nevertheless provides for mandatory license revocation for 8 years for murder, manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle. If the offender has been incarcerated, the revocation period begins after release from confinement. §809.410(1).

Sanctions:  
Criminal Sanction:

Other Criminal Actions Related to DWI:

Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):

Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

Other:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense: See Footnote Nos. <sup>1011</sup>, <sup>1012</sup> and <sup>1013</sup>.

Sanction:

Criminal:

Imprisonment (Term): **Class A Misdemeanor** – Not more than **1 year**  
§§811.182(4)(k) and 161.615(1)

Mandatory Minimum Term  
of Imprisonment:

**None**

Fine (\$ Range):

Not more than **\$5,000** §161.635(1)(a)  
There is also a Unitary Assessment of \$65 and a County  
Assessment of between \$5 and \$59. §§137.290(1)(b)  
and 137.309

Mandatory Minimum Fine:

First offense – \$1,000; second or subsequent offense –  
**\$2,000.** §811.182(5)

Administrative Licensing Actions:

Type of Licensing Action  
(Susp/Rev):

**None**

Length of Term of License  
Withdrawal Action:

However, for murder or manslaughter in the first degree where a motor vehicle was used intentionally as a dangerous weapon, there is permanent revocation (10 years mand) after release on parole or post-prison supervision. §809.235(1) and (2). Special Note: Sec. 807.240 on hardship occupational licenses applies only to persons who have had their licenses suspended not revoked. See especially §807.240(1).

<sup>1011</sup> It is a Class B felony (imprisonment for not more than 10 years and a fine of not more than \$200,000) to operate a motor vehicle after license revocation for any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of such vehicle or felony driving while under the influence of intoxicants. §§161.605(2), 161.625(1)(b) and 811.182(3).

<sup>1012</sup> It is also a Class A misdemeanor to operate a CMV while under an out-of-service order. An offender is also subject to a civil penalty of \$1,000 to \$2,000 and additional CDL mandatory suspensions of 90 days for a first violation and 3 years for a subsequent violation (within 10 years). However, if the CMV operator was either transporting hazardous materials or operating a vehicle designed to carry 16 or more persons, the mandatory suspension periods for a violation of an out-of-service order are 1 year for a first violation and 5 years for a subsequent violation (within 10 years regardless of the type of load or vehicle involved in the first violation). §§809.410(31),(32), (33) and (34), 813.050 and 813.052.

<sup>1013</sup> It is also a Class A misdemeanor for persons to operate vehicles while their licenses are suspended either for an implied consent refusal or for an admin per se law violation (including persons <21 years old who operate a motor vehicle after administrative suspension for driving with any alcohol in their blood). §811.182(4)(c).



Mandatory Term of License  
 Withdrawal Action:  
 Other:

**School and Work Zones:** If the offense occurred in either a school or work zone, there is a **minimum mandatory** fine which is equal (1) to **20 percent** of the maximum fine for a misdemeanor offense and (2) **2 percent** of the maximum fine for felony offense. §§811.230 and 811.235.

Habitual Traffic Offender Law:  
 State Has Such a Law (Yes/No):  
 Grounds for Being Declared an  
 Habitual Offender:

**Yes** §809.600 et seq.

(1) Three serious traffic offenses (within 5 years) or (2) A combination of 20 minor and serious traffic offenses (within 5 years)

Term of License Rev While  
 Under Habitual Offender Status:

**5 years** Note: One-year probationary and renewable permit is available if certain conditions are met. §§807.270 and 809.650

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:

**Class C felony** §811.182

Imprisonment (Term):  
 Mandatory Minimum Term of  
 Imprisonment:  
 Fine (\$ Range):

Not more than **5 years** §161.605

**None**

Not more than **\$100,000** §161.625

There is also a Unitary Assessment of \$105 and a County Assessment of between \$5 and \$59. §§137.290(1)(a) and 137.309

Mandatory Minimum Fine (\$):  
 Licensing Actions (Specify):

**None**

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):  
 BAC Chemical Test Is Given to the  
 the Following Persons:

**Yes** §146.113

Driver:

**Yes** If over 13 years of age and within 5 hours of accident §146.113

Vehicle Passengers:

**Yes** If over 13 years of age and within 5 hours of accident §146.113

Pedestrian:

**Yes** If over 13 years of age and within 5 hours of accident §146.113

Laws Establishing the Minimum Ages  
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
 Minimum Age (Years) Possession:

**21** §§471.410 and 471.430

**21** Exception for the possession of an alcoholic beverage in a private residence accompanied by or with the consent

of a parent or for religious purposes. §§471.410 and 471.430  
 Minimum Age (Years) Consumption: **21** Note: Under §471.430(2), "personal possession" of an alcoholic beverage by a person under 21 years old includes "consumption".

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**<sup>1014</sup> §§471.565(2) and 471.567 In order to be liable, it must be shown that the licensee provided alcoholic beverages either (1) to a "visibly intoxicated" patron<sup>1015</sup> or (2) to a minor where it can be demonstrated that a reasonable person would have requested identification.

"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):

**No**<sup>1016</sup>

Dram Shop Actions-Social Hosts:

**Yes** §§471.565(2) and 471.567. In order to be liable, it must be shown that the social host provided alcoholic beverages either (1) to a "visibly intoxicated" guest (adult or minor) or (2) to a minor guest where it can be demonstrated that a reasonable person would have requested identification.

Other:

A patron or guest who voluntarily consumes alcoholic beverages cannot bring a cause of action for injuries resulting from intoxication either via statute or common law against either a licensee or social host. This exemption from liability applies even if the patron or guest was "visibly intoxicated" at the time served alcoholic beverages. This exemption does not apply to injuries or damages resulting from "negligent or intentional acts". §471.565(1). A licensee can also be held liable for the injuries of an intoxicated patron suffering a criminal assault after being ejected from the licensee's premises while in a highly intoxicated condition. *Cunningham v. Happy Place, Inc.*, 970 P.2d 669 (Or.App. 1998) (review

<sup>1014</sup> An intoxicated passenger was injured in a traffic accident while riding with an intoxicated driver. It appears that both individuals had been socializing and drinking alcoholic beverages purchased and/or consumed at numerous licensed establishments. The Oregon Supreme Court held that the passenger could bring a third party dram shop action against various alcoholic beverage licensees to recover damages for injuries sustained in the accident. *Grady v. Cedar Side Inn, Inc.*, 997 P.2d 197 (Or. 2000) (affirming *Grady v. Cedar Side Inn, Inc.* 963 P.2d 36 (Or. App. 1998)) Note: In an earlier decision by the Oregon Court of Appeals, a minor passenger was injured in a traffic accident in which the motor vehicle he was riding in was operated by an intoxicated minor. The minor passenger assisted in the purchase of alcoholic beverages which caused the driver's intoxication, and therefore, could not recover damages from the licensee where such beverages were purchased. *Smith v. Harms*, 865 P.2d 486 (Or. App. 1993)

<sup>1015</sup> In addition, the injured third party plaintiff must also prove that he/she did not "substantially contribute" to the intoxication of the injury-causing patron or guest by either (1) providing alcoholic beverages to him/her, (2) encouraging him/her to consume or purchase such beverages, or (3) facilitating the consumption of these beverages by him/her in "any manner." §471.565(2)(b).

<sup>1016</sup> Previous case law that established common law negligence actions appears to have been abrogated by the dram shop statute. Ref: *Cambell v. Carpenter*, 566 P.2d 893 (Or. 1977); *Chartrand v. Coos Bay Tavern, Inc.*, 696 P.2d 513 (Or. 1985); *Davis v. Billy's Con-Teena, Inc.*, 587 P.2d 75 (Or. 1978); and, *Solberg v. Johnson*, 760 P.2d 867 (Or. 1988).

denied 987 P.2d 510 (Or. 1999)). Note: This law indirectly abrogated the holding in *Fulmer v. Timber Inn Restaurant and Lounge, Inc.*, 9 P.3d 710 (Or. 2000). In this case, the court held that, under common law negligence, a licensee may be liable for injuries sustained by intoxicated patrons.

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

Type of Criminal Action: **Class A Misdemeanor**<sup>1017</sup> §471.410(1) and (4)  
 Term of Imprisonment: Not more than **1 year** §161.615  
 Fine (\$ Range): Not more than **\$5,000** §§161.635 and 161.655  
 There is also a Unitary Assessment of \$65 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) and 137.309

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

License to Serve Alcoholic Beverages  
 Withdrawn (Yes/No): **Yes Canceled/Suspended** §§471.315(licenses) and 471.385 (server permits)  
 Length of Term of License Withdrawal: The length of any cancellation/suspension is not specified in the statute<sup>1018</sup>

Criminal Action Against Owner 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: **Class A Misdemeanor** §471.410(2) and (4)  
 Term of Imprisonment: Not more than **1 year**<sup>1019</sup> §161.615  
 Fine (\$ Range): Not more than **\$5,000** §§161.635 and 161.655  
 There is also a Unitary Assessment of \$65 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) and 137.309

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

License to Serve Alcoholic Beverages  
 Withdrawn (Yes/No): **Yes. Server Permit Canceled/Suspended**<sup>1020</sup> §§471.315

<sup>1017</sup> It is a Class A Misdemeanor for a licensee to knowingly allow a patron to consume or to continue to consume alcoholic beverages if visibly intoxicated. §§161.555(3), 471.412 and 471.990. However, for the first 3 violations within 2 years, the only sanction is a letter of reprimand. §471.412(4)

<sup>1018</sup> A licensee who is subject to a suspension ≤30 days may also have an administrative monetary penalty imposed in addition to or in lieu of such suspension. The monetary penalty is from \$100 to \$5,000. For persons holding a server permit, the penalty is from \$25 to \$500. §471.322.

<sup>1019</sup> The following mandatory sanctions to persons who sell or serve alcoholic beverages to minors: first offense – a \$350 fine; second offense – a \$1,000 fine; and, third or subsequent offense – a jail sentence of 30 days and a fine of \$1,000. Note: These mandatory sanctions do not apply to licensees. §471.410(4), (5) and (6)

<sup>1020</sup> I. In lieu of a civil penalty or license cancellation/suspension, a licensee may be allowed “to acquire and use equipment designed to prevent the sales of alcoholic beverages to minors.” §471.342

II. A license shall not be cancelled/suspended if an employee sells alcoholic beverages to a minor provided the licensee

(licenses) and 471.385

Length of Term of License Withdrawal: The length of any cancellation/suspension is not specified in the statute

Anti-Happy Hour Laws/Regulations: **No**

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

Open Container Law (Yes/No): **Yes – Driver and Passengers** §811.170(1)(b) and (c)

Anti-Consumption Law (Yes/No): **Yes – Driver and Passengers** §811.170(1)(a) Excludes passengers riding in a vehicle used to carry persons for hire.

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participates in a responsible vendor program. §471.344(2)

**Employees:** Employees of “off-premises” licensees are subject to the following sanctions if they sell alcoholic beverages to minors. I. They must attend special training program (1) that concerns the importance of not selling alcoholic beverages to either minors or visibly intoxicated persons, (2) that provides guidelines for checking and recognizing false/altered identification, and (3) that recommends approaches for refusing to sell alcoholic beverages to either minors or visibly intoxicated persons. II. They are also subject to a civil penalty of not more than \$500. §471.341.