

STATE

PENNSYLVANIA

General Reference:

Pennsylvania Consolidated Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Driving After Imbibing Alcohol or Utilizing Drugs-  
General impairment: Imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving. **75 Pa. § 3802(a)(1).**

**Illegal Per Se Law<sup>1021</sup> (BAC): ≥.08<sup>1022</sup> 75 Pa. § 3802(a)(2); High rate of alcohol-> .01< .16 § 3802(b); Highest rate of alcohol > .16 § 3802(c);**

Persons Under 21 Years Old. **≥.02<sup>1023</sup> § 3802(e); Commercial vehicles – ≥ .04; (≥ .02 for school buses. § 3802(f);**

Type of Drugs/Drugs and Alcohol:

(1) Any amount of a **Controlled Substance\*** or its **metabolite** (2) Under the **influence of a drug** or drugs;(3) or **alcohol and a drug** or combination of drugs; (4)or of a **solvent or noxious substance**. **75 Pa. § 3802(d)**

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** 75 §1547(k)

Implied Consent Law:

**No**

Arrest Required (Yes/No):

Implied Consent Law Applies to  
Drugs (Yes/No):

**Yes** 75 §1547(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal Cases) 75 §1547(e)

Other Information:

A person has a right to refuse to submit to a chemical test. A "forced" test cannot be administered if this right is exercised. 75 §1547(b)(1) and *Com. v. Eisenhart*, 611 A.2d 681 (Pa. 1992)<sup>1024and1025</sup>

<sup>1021</sup> Basic rule: as measured within 2 hours after the individual operated the vehicle, but measurement after 2 hours acceptable if the Commonwealth can show 'good cause' why the chemical test sample could not be obtained within 2 hours. 3802(g)1

<sup>1022</sup> Standard: "Percent by weight" of alcohol in the blood. { 75 §3802} "Percent by weight" of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. *Com. v. Karch*, 502 A.2d 1359 (Pa. Super. 1986)

<sup>1023</sup> Only "reasonable grounds," not an actual arrest, is all that is needed. *Com. v. Urbanski*, 627 A.2d 789 (Pa. Super. 1993)(appeal denied 634 A.2d 221 (Pa. 1993)

<sup>1024</sup> **Special Note:** Under 75 §1547(a)(2), a person implicitly consents to a chemical test if he/she was driving a vehicle that was involved in an accident that resulted in either a death or an injury that required treatment at a medical facility. The Pennsylvania Supreme Court has held that this provision is unconstitutional because it does not require law enforcement officers to have "probable cause" of a crime prior to conducting a chemical test. The court considered such test to be a search. *Com. v. Kohl*, 615 A.2d 308 (Pa. 1992)

<sup>1025</sup> The results of a chemical test (obtained via a warrantless search) showing an alcohol concentration are admissible into evidence at a DWI trial, where the test was conducted on a blood sample that was withdrawn from an injured driver by medical personal at a hospital for treatment purposes but where such withdrawal was without the driver's consent. Of course, there must have been probable cause of a drunk-driving offense before such evidence is admissible. *Com. v. Riedel*, 651 A.2d 135 (Pa. 1995)

**Exception to two-hour rule.** – where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the

**\*"Controlled substance."** Any substance so defined or classified under:

- (1) The act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.
- (2) of the Controlled Substance Act (Public Law 91-513,).
- (3) Schedules I through V of 21 CFR Part 1308.
- (4) Any revisions to paragraphs (2) or (3) which are published by the Department of Transportation as notices in the Pennsylvania Bulletin.

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

Blood:	<b>Yes</b> 75 §1547
Urine:	<b>Yes</b> 75 §1547
Other:	<b>None</b>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	<b>No</b>
Anti-Plea-Bargaining Statute (Yes/No):	<b>Yes Limited</b> The original DWI charge cannot be reduced at a preliminary hearing or arraignment.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>Yes</b> Alcohol or drug screening is required. 75 § 3814 (1). Full assessment for alcohol and drug addiction if any of the following subparagraphs apply: <u>second or subsequent DUI violation</u> : the evaluation under paragraph (1) indicates there is a need for counseling or treatment: or the defendant's blood alcohol content at the time of the offense was at least .16 percent. 3814 (2).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>None</b>
Other:	<b>None</b>
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	<b>None</b>

---

individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

- (1) where the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours; and (2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained. § 3802 (g)

Sanctions for Refusal to Submit to a Chemical Test:

(con't)

Administrative Licensing Action  
(Susp/Rev):

**Suspension 12 months** (Mand) An occupational or probationary license is not available. 75 §§1547(b)(1), 1553(d)(7) and 1554(f)(9)

Other:

**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions-

Three classes of impaired driving:

First offense – probation not to exceed **six months**, a **fine of \$300**, attendance at highway safety school, and compliance with all drug and alcohol treatment requirements.

§ 3804(a)(1)

Second offense – imprisonment for at least **five days nor more than six months**, a fine at least **\$300** nor more than **\$2,500**, attendance at highway safety school, and compliance with all drug and alcohol treatment requirements. § 3804(a)(2)

Third or subsequent offenses – imprisonment for at least 10 days nor more than two years, fine of at least \$500 nor more than \$5,000, and compliance with all drug and alcohol treatment requirements. § 3804(a)(3)  
**(b)High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents**

Except as set forth in subsection (c) immediately below, DUI violations where there was an accident resulting in bodily injury, serious bodily injury or death of any person, or damage to a vehicle or other property, or where the violator has a **BAC of .16**, or **{.02 BAC if a minor}**, or **{.04 BAC if CMV driver}** or **(.02 if school bus driver)**, shall be sentenced as follows:

First offense -imprisonment of not less than **48 consecutive hours** nor more than **six months**, a fine of not less than **\$500** nor more than **\$5,000**, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Second offense – imprisonment of not less than **30 days** nor more than **six months**, a fine of not less than **\$750** nor more than **\$5,000**, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Third offense – imprisonment of not less than **90 days** nor more than **five years**, a fine of not less than **\$1,500** nor more than **\$10,000**, and compliance with all drug and alcohol treatment requirements.

Fourth or subsequent offenses – imprisonment of not less than **one year** nor more than **five years**, a fine of not less than **\$1,500** nor more than **\$10,000**, and

compliance with all drug and alcohol treatment requirements.

**(c) Incapacity; highest blood alcohol; controlled substances.**--Refused testing of blood or breath, BAC .16 or higher, presence of any controlled substances:

First offense – imprisonment of not less than **72 consecutive hours** nor more than **six months**; a fine of not less than **\$1,000** nor more than **\$5,000**, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Second offense – imprisonment of not less than **90 days** nor more than **five years**, a fine of not less than **\$1,500**, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Third or subsequent offense – imprisonment of not less than **one year** nor more than **five years**, a fine of not less than **\$2,500**, and compliance with all drug and alcohol treatment requirements.

75 Pa. C.S.A. § 3804. Penalties

**(d) Extended supervision of court --**

If after the initial drug and alcohol assessment, a violator is determined to be in need of additional treatment, the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison.

In addition to any other penalty imposed under law, the court may sentence a person who violates to any other requirement or condition consistent with the treatment needs of the person, the restoration of the victim to pre-offense status or the protection of the public. 75 § 3804(j)

Mandatory \$100 cost (\$200 if BAC > .16) for Substance Abuse Education and Demand Reduction Fund. § 7508.1 (b).

Persons convicted three times of DUI within a five-year period may not transfer or purchase firearms.

Accelerated Rehabilitation Disposition (ARD): A first-time DWI offender may be placed in ARD.

Acceptance into and satisfactory completion of the program may lead to dismissal of the DWI charge.

2). Acceptance is determined by judge after hearing relevant facts of prosecutor, defendant and any victims. Judge also announces terms of ARD.

Defendants are not eligible for ARD if any of the following is true:

Additional conditions –

Other Penalties:

Sanctions Following a Conviction for a DWI Offense:

(i) The defendant has been found guilty of DUI or accepted Accelerated Rehabilitative Disposition of a charge brought within 10 years of the date of the current offense;

(ii) An accident occurred in connection with the events surrounding the current offense and an individual other than the defendant was killed or suffered serious bodily injury as a result of the accident.

(iii) If there was a passenger under 14 years of age in the motor vehicle the defendant was operating, the following conditions must be imposed on ARD defendants: costs for alcohol evaluation, education, treatment, or any other costs of ARD {including a full assessment for alcohol and drug addiction if initial evaluation indicates the likelihood that defendant is addicted to alcohol or other drugs, or defendant's BAC was at least .16 percent. § 3807 (b) (2)} restitution but no license suspension if defendant's BAC was <.10; for 30 days if the defendant's blood alcohol concentration at the time of testing was at least .10 percent but less than .16 percent; and for 60 days if:

(i) the defendant's blood alcohol concentration at the time of testing was .16 percent or higher;

(ii) the defendant's blood alcohol concentration is not known; or

(iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with events surrounding the current offense.

Restitution is paid by defendant to victim. 18 §1106 {Restitution is required under ARD. 75 § 3807.

If the defendant is found by the judge to have violated ARD terms, the ARD program will be terminated and the prosecutor may proceed with the DWI charge(s.)

The current **Crime Victims Act** (18 §11.101 et seq.) now specifically includes victims of DWI in the definition of a crime. 18§11.103.

**Important:** ARD applies only to a first offense and acceptance of ARD is considered a first conviction for purposes of computing any subsequent violations. 75 Pa. C.S.A. § 3807

**Other Penalties:** mandatory \$100 cost (\$200 if > .16) for Substance Abuse Education and Demand Reduction Fund. § 7508.1 (b).

In addition to other penalties, the sentencing judge may impose up to 150 hours of community service, and order attendance by the defendant at a victim impact panel. § 3804 (f)

**Laboratory Costs:** A defendant may be required to pay a laboratory user fee that includes the costs associated with (1) laboratory services for BAC testing and (2) any court appearances by laboratory technicians. 42 §1725.3

Persons convicted three times of DUI within five-year period may not transfer or purchase firearms.

**Ignition Interlock:** All vehicles owned by offenders may for a first offense and must for a subsequent one be equipped with ignition interlock devices for at least 1 year following license reinstatement. 42 §7002 {"Ignition interlock system" defined as a system approved by the department which prevents a vehicle from being started or operated unless the operator first provides a breath sample indicating that the operator has an alcohol level less than .025 percent.

(§ 3801. Definitions)}

**Special Note:** The DWI law would appear to mandate minimum imprisonment sentences for second and subsequent offenders. Prior to the enactment of these alternatives, the Pennsylvania Supreme Court held that electronic home monitoring could not be used as a substitute for mandatory incarceration because it was not the equivalent of imprisonment. *Com. v. Kriston*, 588 A.2d 898 (Pa. 1991)

Administrative Licensing Actions

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

**None**

**None**

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):

See Habitual Traffic Offender Law.

**Suspension** 75 §§1532(b)(3) and 3731(e)(6)(ii)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if that person is convicted of driving a CMV: (1) with a BAC  $\geq .04$  (amount of alcohol in the blood, or (2) while under the influence of alcohol or a controlled substance. For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above-listed items, the "disqualification" is for life (10 years mand). Title 75 §3802(f) makes it illegal to operate a CMV with a BAC  $\geq .04$ ; a person who violates this provision is subject to the same criminal sanctions as for any other DWI offense. A person is "disqualified" from operating a CMV for 1 year if, while operating a CMV, that person refuses to submit a chemical test for either an alcohol concentration or the presence of controlled substances. In addition, a CMV operator must be placed "out-of-service" for 24 hours if he/she has any amount of alcohol in the system. A person who operates a CMV with any amount of alcohol in the system commits a summary offense and is subject to a fine of \$100. School bus operators are assessed a \$250 minimum fine.

75 §§1603, 1611, 1612, 1613

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

**12 months**<sup>1026</sup> (first offenders in ARD program- no license suspension if defendant's BAC was < .10 75 Pa. C.S.A. §3804 (e) (2)

Mandatory Minimum Term of  
Withdrawal:

**Persons Under 18 Years Old:**<sup>1027</sup> For person under 18 years old, 6-month license suspension provided the offender is placed under "home supervision via a "consent decree". 42 §6340 and 75 §1532(b)(3)

Other:  
Rehabilitation:

12 months for first offenders; if accepted into ARD program, no suspension is possible.

Alcohol Education:  
Alcohol Treatment:  
Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Authority:

**Yes**<sup>1028and1029</sup>  
**Yes**

**Yes (Discretionary).** A vehicle used in a DWI offense is subject to forfeiture under the "common law". *Commonwealth v. Crosby*, 568 A.2d 233 (Pa. Super. 1990) See 75§3742.1 (DWI accidents w/ injury).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes**<sup>1030</sup> 18 §§1101, 1103, and 1104 and 75 §§3732 and 3735.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Felony third degree (non-alcohol related death 75 §3732) – Not more than **7 years** (5 years will be added if the accident is in a work zone. 75§3732(B)(1)). 18 §1104(1); felony second degree (alcohol-related death 75 §3735) – Not more than **10 years**. 18 §1103(2)

<sup>1026</sup> If a second or subsequent offender does not apply for "ignition interlock" usage, that person is not eligible for license reinstatement for an additional 1-year period (i.e., the total suspension is 2 years.) 42 §7003(5).

<sup>1027</sup> If a court orders a person to attend a treatment program, the person must successfully complete such a program before his/her license can be restored. 75 §1541(d). A person will not be eligible for driving privileges even after the suspension period has expired until he/she completes the treatment program. Second and subsequent offenders are required to attend a treatment program via court order. 75 §1548(b) and (d).

<sup>1028</sup> **Junior Drivers:** Under separate provisions of law, a "junior driver" (a licensee 16 or 17 years old) is subject to a suspension of driving privileges until 18 years old or for a period not to exceed 90 days if convicted of **any** violation of Title 75. This licensing action is in addition to any other licensing action. 75 §1503(c)(3)

<sup>1029</sup> 1) Every convicted person must take and pass an approved alcohol highway safety class. 2) The court may order participation (successful) in an individual or group outpatient intervention program to treat substance abuse. Participation may be ordered for up to 2 years. 3) If a convicted person is found to be a "chronic" abuser who represents a "demonstrated and serious" threat, he/she may be ordered (committed) into treatment at a DOH approved facility. 75 §1548

<sup>1030</sup> I. The State must prove either recklessness or criminal negligence and not ordinary negligence in order to sustain a conviction for vehicle homicide. *Com. v. Heck*, 535 A.2d 575 (Pa. 1987) and *Com. V. Samuels*, 778 A.2d 638 (Pa. 2001). II. A person can also be charged with involuntary manslaughter in situations where he/she has caused a death related to a drunk-driving offense. *Com. v. Huckleberry*, 631 A.2d 1329 (Pa. Super. 1993)

Mandatory Minimum Term:	<u>Felony third degree</u> (non-alcohol-related death) – <b>None</b> ; <u>Felony second degree</u> (Alcohol-related death) – <b>3 years.</b> 75 §3735(a) and (b) and 42 §9721(a.1)
Fine (\$ Range):	<u>Felony third degree</u> (Non-alcohol-Related Death) – Not more than <b>\$15,000</b> 18 §1101(3); <u>felony second degree</u> (Alcohol-related death) – Not more than <b>\$25,000.</b> 18 §1101(1)
Mandatory Minimum Fine:	<b>None</b>
Type of Licensing Action Authorized :	<u>Felony third degree</u> (Non-Alcohol-Related Death) – <b>Revocation</b> ; <u>felony second degree</u> (Alcohol-Related Death) – <b>Revocation</b> 75 §1532(a)(2) and (3)
Length of Term of Licensing Withdrawal:	<u>Felony third degree</u> (Non-Alcohol-Related Death) – <b>1 year</b> ; <u>felony second degree</u> (Alcohol-Related Death) – <b>1 year</b> 75 §1532(a)(2) and (3)
Mandatory Action--Minimum Length of License Withdrawal:	<u>Felony third degree</u> (Non-Alcohol-Related Death) – <b>1 year</b> ; <u>felony second degree</u> (Alcohol-Related Death) – <b>1 year.</b> An occupational or probationary license is not available. 75 §§1532(a)(2) and (3), 1553(a)(2) and 1554(f)(11)
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	
Sanction:	
Criminal:	
Imprisonment (Term):	Summary Offense – Not less than <b>90 days</b> <sup>1031and1032</sup> 75 §1543(b)
Mandatory Minimum Term of Imprisonment:	<b>90 days</b> 75 §§1543(b) and 42 §9721(A.1)
Fine (\$ Range):	<b>\$1,000</b> <sup>1033</sup> 75 §1543(b)
Mandatory Minimum Fine:	<b>\$1,000</b> 75 §§1543(b) <sup>1034</sup>

<sup>1031</sup> These sanctions also apply if a person drives in violation of either a suspension or revocation imposed either as a condition of ARD or as a result of a refusal to submit to a chemical test under the implied consent law.

<sup>1032</sup> For a subsequent offense, there is a jail term of not more than 6 months and/or a fine of \$200 to \$1,000. A 6th or subsequent offense mandates a \$1000 fine and at least 30 days in prison. 75 §6503.

<sup>1033</sup> For a subsequent offense, there is a jail term of not more than 6 months and/or a fine of \$200 to \$1,000. 75 §6503

<sup>1034</sup> *Com. v. Hill*, 549 A.2d 583 (Pa. Super. 1988), and *Com. v. Hoover*, 494 A.2d 1131 (Pa. Super. 1985) **CMV Note:** It is a summary offense either (1) to operate a CMV while under a CDL out-of-service order based on driving with alcohol in the body- a fine of \$1,000, (2) to operate a CMV during an alcohol-related disqualification- a fine of \$500 for a first offense and a fine of \$500 to \$1,500 for a subsequent offense, or (3) to operate a CMV during an alcohol-hazardous materials-related disqualification- an imprisonment term of 6 months and/or a fine of \$1,000. 75 §1606(c) and (d)

**Injury or Death:** I. A driver who causes an accident which results in injury to another person while his/her license is either suspended, revoked or canceled commits a second degree misdemeanor and is subject to an imprisonment term of not more than 2 years and/or a fine of not more than \$5,000. II. A driver who causes an accident which results in either serious injury or death to another person while his/her license is either suspended, revoked or canceled commits a third degree felony and is subject to an imprisonment term of not more than 7 years and/or a fine of not more than \$15,000. A "serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." For either offense, the vehicle used therein may be forfeited. 18 §§1101(2) and (4), 1103(3), 1104(2) and 75 §3742.1.



Administrative Licensing Actions:  
 Type of Licensing Action  
 (Susp/Rev):  
 Length of Term of License  
 Withdrawal Action:

**Revocation/Suspension** 75 §1543(c)

If based on a suspension, original suspension extended an additional period of **1 year**. If based on a revocation, original revocation extended an additional period of **2 years**. 75 §1543(c)

Mandatory Term of License  
 Withdrawal Action:

Same as above. An occupational or probationary license is not available. 75 §§1553(d)(15) and 1554(f)(12)

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

**Yes**

Three convictions of any one or more of the following violations within a 5-year period:

(1) Any violation of Subchapter B of Chapter 37 (relating to serious traffic offenses).

(1.1) Any violation of Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs) except for section 3808 (a) (1) and (b) (relating to illegally operating a motor vehicle not equipped with ignition interlock), and 3809 (relating to restriction on alcoholic beverages).

(1.2) Any violation of section 1543 (b) (1.1) {relating to driving while operating privilege is suspended or revoked}.

(2) Any violation of section 3367 (relating to racing on highways).

(3) Any violation of section 3742 (relating to accidents involving death or personal injury).

(3.1) Any violation of section 3742.1 (relating to accidents involving death or personal injury while not properly licensed).

(4) Any violation of section 3743 (relating to accidents involving damage to attended vehicle or property). 75 §1542

Term of License Rev While  
 Under Habitual Offender Status:

**5 years;** for another offense committed within 5 years, an additional revocation period of 2 years. 75 §1542

Type of Criminal Offense if  
 Convicted on Charges of  
 Driving While on Habitual  
 Offender Status

**Second Degree Misdemeanor** 75 §6503.1

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

Not more than **2 years** 18 §1104(2)

**None**

Not more than **\$5,000** 18 §1101(5)

Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	
<u>Other State Laws Related To Alcohol Use</u> <u>Laws Requiring BAC Chemical Tests on</u> <u>Persons Killed in Traffic Accidents:</u> State Has Such a Law (Yes/No):	<b>Yes</b> 75 §3749 Blood or urine samples shall be taken.
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	<b>Yes</b> If >15 years old and died within 4 hours of accident.
Vehicle Passengers:	<b>Yes</b> But only if the driver of the vehicle cannot be determined.
Pedestrian:	<b>Yes</b> If >15 years old and died within 4 hours of accident. § 3749 (b)
<u>Laws Establishing the Minimum Ages</u> <u>Concerning Alcoholic Beverages:</u> Minimum Age (Years) Sale/Purchase:	<b>21</b> 1 §1991, 18 §6308 and 47 §4-493(1)
Minimum Age (Years) Possession:	<b>21</b> 18 §6308
Minimum Age (Years) Consumption:	<b>21</b> 18 §6308
<u>Dram Shop Laws and Related Legal Actions:</u> State Has a Dram Shop Law (Yes/No):	<b>Yes</b> 47 §4-497 <sup>1035and1036</sup>
"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>Jardine v. Upper Darby Lodge No. 1973 Inc.</i> , 198 A.2d 550 (Pa. 1964), <i>Matthews v. Konieczny</i> , 527 A.2d 508 (Pa. 1987), and <i>Johnson v. Harris</i> , 615 A.2d 771 (Pa. Super. 1992) <sup>1037</sup>
Dram Shop Actions-Social Hosts:	<b>Yes Limited</b> <i>Congini v. Porterville Valve Co.</i> , 470 A.2d 515 (Pa. 1983) This case limited liability of social hosts to the actions of intoxicated minor guests. <sup>1038</sup> See also <i>Klein v. Raysinger</i> , 470 A.2d 507 (Pa. 1983) <sup>1039</sup> , where the court found no social host liability for the actions of adult guests <sup>1040and1041</sup>

<sup>1035</sup> The law applies to either licensees or their employees and if the "customers" are "visibly intoxicated." *Detwiler v. Brumbaugh*, 656 A.2d 944 (Pa. Super 1995)

<sup>1036</sup> The term "customer" does not include minors. A licensee can be held liable under the "common law" (not the dram shop act) for the injuries caused by an "inebriated" minor who has been sold alcoholic beverages even though such minor does not appear to be "visibly intoxicated." In fact, in the *Matthews* case, a licensee was held liable for the actions of inebriated minors notwithstanding the fact the licensee did not sell them alcoholic beverages; liability occurred even though the injury-causing minor received the alcoholic beverage from another minor who had purchased such beverages illegally from the licensee.

<sup>1037</sup> Negligence per se standard for a violation of 47 §4-493(1) which prohibits the service of alcoholic beverages to intoxicated patrons.

<sup>1038</sup> *Macleary v. Hines*, 817 F.2d 1081 (third Cir. 1987), and *Orner v. Mallick*, 527 A.2d 521 (Pa. 1987)

<sup>1039</sup> *Bemis v. Gumbeski*, 534 A.2d 1099 (Pa. Super. 1987), and *Sites v. Cloonan*, 477 A.2d 547 (Pa. Super. 1994)

<sup>1040</sup> A social host cannot be held liable for the injuries caused to a third person by an intoxicated minor guest, if the host did not "knowingly furnish" alcoholic beverages to such minor guest. *Alumni Ass'n v. Sullivan*, 572 A.2d 1209 (Pa. 1990)

Other: A licensee can be held liable for the injuries or death of an intoxicated patron via a violation of 47 §4-493(1). *Fandozzi v. Kelly Hotel, Inc.*, 711 A.2d 524 (Pa. Super. 1998) (appeal denied 735 A.2d 1269 (Pa. 1999)).

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
 Term of Imprisonment:  
 Fine (\$ Range):  
 Type of Criminal Action:

**Misdemeanor** 47 §§4-493(1) and 4-494(a)  
**3 months to 1 year**  
 Not more than **\$5,000**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
 License to Serve Alcoholic Beverages  
 Withdrawn (Yes/No):

**Yes** or liquor control board may impose a fine of **\$50 to \$1,000**. Third or subsequent offense (within 4 years) – **mandatory suspension or revocation** 47 §4-471 (1 year for structure unless ownership changes hands, including immediate family) 3 years if revoked; if suspended, indeterminate 47 §4-471

Length of Term of License Withdrawal:

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

**Misdemeanor**<sup>1042</sup> 47 §§4-493(1) and 4-494(a)  
**3 months to 1 year**  
 Not more than **\$5,000**

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** or Liquor Control Board may impose a fine of **\$1,000 to \$5,000**. Third or subsequent offense (within 4 years) – **mandatory suspension/revocation** 47 §4-471

Length of Term License Withdrawal:

**3 years** if revoked (1 year for structure unless ownership changes hands, including immediate family)

<sup>1041</sup> Note: There is contrary case law as to whether a minor, a person under 21 years old, can be held liable as a social host where the injury-causing guest is also a minor. *Kapres v. Heller*, 612 A.2d 987 (Pa. Super. 1992) (held against such liability), and *Muntz v. Com., Dept. of Transp.*, 630 A.2d 524 (Pa. Cmwlth. 1993) (held in favor of such liability)

<sup>1042</sup> It is a third degree misdemeanor, to "knowingly sell" alcoholic beverages to a minor. 18 §6310.1. There are exceptions regarding private homes and religious activities. The sanctions for this offense are as follows: first offense – jail for not more than **1 year**; fine **\$1,000** (mand); second or subsequent offense – jail for not more than **1 year**; fine – **\$2,500** (mand). 18 §§1101(5), 1104(3) and 6310.1(c)

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 § 3809**

Anti-Consumption Law<sup>1043</sup> (Yes/No): **Yes Driver and Passengers § 3809**

---

<sup>1043</sup> § 3809. Restriction on alcoholic beverages

(a) General rule--Except as set forth in subsection (b), an individual who is an operator or an occupant in a motor vehicle may not be in possession of an open alcoholic beverage container or consume a controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or an alcoholic beverage in a motor vehicle while the motor vehicle is located on a highway in this Commonwealth.

(b) Exception--This section does not prohibit possession or consumption by any of the following:

(1) A passenger in the passenger area of a motor vehicle designed, maintained or used primarily for the lawful transportation of persons for compensation. This paragraph includes buses, taxis and limousines. (2) An individual in the living quarters of a house coach or house trailer.