

STATE:
General Reference:

UTAH
Utah Code Annotated

Basis for a DWI Charge:

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| <p>Standard DWI Offense: Illegal Per Se Law (BAC/BrAC):</p> | <p>Under the influence of alcohol §41-6-44(2)(a)(ii) $\geq .08$¹¹⁶³and¹¹⁶⁴ §41-6-44(2)(a)(i) $\geq .05$ if offender is 21 years of age or older, has a passenger under 16 years of age and has a prior DUI conviction within 10 years. §41-6-44(2)(iv) – Class B misdemeanor, or a Class A misdemeanor if the person has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; §41-6-44(3)(c) or a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner. §41-6-44(3)(b) Any Measurable Controlled Substance in the Body¹¹⁶⁵ §41-6-44.6 None</p> |
| <p>Presumption (BAC): Types of Drugs/Drugs and Alcohol:</p> | <p>Under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol §41-6-44(2)(a)(ii)</p> |

Chemical Breath Tests for Alcohol Concentration:

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| <p>Preliminary Breath Test Law: Implied Consent Law: Arrest Required (Yes/No): Implied Consent Law Applies to Drugs (Yes/No): Refusal to Submit to Chemical Test Admitted into Evidence: Other Information:</p> | <p>No Yes §41-6-44.10(2) Yes §41-6-44.10(1) Yes (Criminal and Civil Cases) §41-6-44.10(8) It may be possible to obtain a blood sample without the driver's consent. Both the DWI law's evidence admissibility provisions and the automobile homicide law provide that "[e]vidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution." §§41-6-44.5(b) and 76-5-207(6)</p> |
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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

¹¹⁶³ This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

¹¹⁶⁴ Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §41-6-44(2)(c)

¹¹⁶⁵ Unless the driver was using the controlled substance via a valid prescription or involuntarily digested the substance.

Blood: **Yes** §41-6-44.10 (1)(a)
 Breath **Yes** §41-6-44.10 (1)(a)
 Urine: **Yes** §41-6-44.10 (1)(a)
 Oral fluids: **Yes** §41-6-44.10 (1)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No** – But a Magistrate may not grant diversion in a DWI case. §77-2-9
 Anti-Plea-Bargaining Statute (Yes/No): **Yes – under specified circumstances:** If the defendant pleads guilty or *nolo contendere* to reckless driving as a substitute for a DWI charge, the prosecution must state for the record whether alcohol or drugs were related to the pleaded offense. §41-6-44(10)
 If the defendant has a prior conviction within the previous 10 years for alcohol, any drug, any combination of alcohol and any drug, reckless driving, vehicle homicide, or causing serious bodily injury, a plea held in abeyance for any of the above crimes may only be accepted if approved by one of the following: district attorney, deputy district attorney, county attorney, deputy county attorney, attorney general, or assistant attorney general. Whichever official approves the plea in abeyance must have felony jurisdiction over the case. §41-6-43.8(3)(b)
 Beginning on July 1, 2006, pleas in abeyance for driving under the influence violations may not be granted. §63-55b-177

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes:** Substance abuse assessment is required, including screening, assessment, education series and subsequent substance abuse treatment. §§ 17-43-201(4)(m), 41-6-44(1)(c), (4)(c)(i), (5)(c)(i), (6)(c) and (8)(a) and 53-3-231(10)(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail): **N/A**
 Administrative Licensing Action (Susp/Rev): **N/A**

Refusal to Take Implied Consent Chemical Test:
 Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action Designated an “alcohol-restricted driver” – 5- or 10-year prohibition of driving {depending on the person's prior driving history} with any measurable or detectable amount of alcohol in the person's body §41-6a-524 (3) and (4).

18 months¹¹⁶⁶ revocation mandatory. If the driver has had a previous refusal, admin per se action or DWI offense conviction within the past 10 years. – **24-month revocation** mandatory §41-6-44.10(2)(e), (f) and (h)and (I)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:¹¹⁶⁷

Imprisonment:

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

First and second offense (within 6 years) – Class B misdemeanor – not more than **6 months**; third offense (within 10 years) – third degree felony¹¹⁶⁸ – not more than **5 years** §41-6-44(3), (6) and (7)

First or second DWI offense – where there (1) is an injury related to negligent action or (2) a passenger is under 16 years old (**child endangerment**) or (3) the driver ≥21 years old driving with a passenger <18 years old – Class A misdemeanor- not more than **1 year** §§41-6-44, 76-3-203(3) and 76-3-204

Any Measurable Controlled Substance in the Body– Class B misdemeanor – not more than **6 months** §§41-6-44.6 and 76-3-204

Mandatory Minimum Term:

First offense – **48 consecutive hours¹¹⁶⁹**; second offense (within 6 years) – **240 consecutive hours**; third offense (within 10 years) – **Important:**

¹¹⁶⁶ This sanction also applies to persons under 21 who refuse to submit to a chemical test to determine if they have violated §53-3-231(2). Sec. 53-3-231 provides for administrative licensing actions against such persons who drive a vehicle with any amount of alcohol in their bodies.

¹¹⁶⁷ A vehicle homicide offense is a prior DWI offense. §41-6-44(1)(a)(iv)

¹¹⁶⁸ **Third Degree Felony Offenses:** A person commits a third degree felony by committing (1) a third drunk-driving offense within 10 years or (2) any drunk-driving offense after having been convicted of vehicle homicide (§76-5-207), or any felony offense under §41-6-44. §41-6-44(6)(a).

¹¹⁶⁹ These minimum mandatory sanctions apply also to DWI offenses related to injury and child endangerment.

Special Note: In third degree felony situations, if the court suspends the execution of sentence and places the defendant on probation, it **must** (1) impose a fine of not less than \$1,500, (2) impose a jail sentence of not less than 1,500 hours and (3) order the person to participate in an alcohol or drug dependency program which provides intensive care, inpatient treatment and long-term care. §41-6-44(6)(b) and (c) and (7). As an additional sanction, the court may require a person to participate in the electronic home monitoring program which could include an alcohol use restriction. §41-6-44(6)(d) and (13). If a third degree felony offender is not placed on probation, the offender is eligible for a parole hearing after serving a minimum of 90 days of incarceration. Utah Admin. Code R671-201-1.

Comment: The Utah Code establishes two distinct drunk-driving offenses. The standard categories of drunk-driving offenses are contained in §41-6-44. However, the offense of driving with any measurable controlled substance in the body is contained in §41-6-44.6. A conviction under §41-6-44.6 is considered a prior offense for sanction enhancement purposes following a conviction under §41-6-44.

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. Arbon*, 909 P.2d 1270 (Utah App. 1996) (cert denied 916 P.2d 909 (Utah 1996)), and *City of Odem v. Crandall*, 760 P.2d 920 (Utah App. 1988)

Any Measurable Controlled Substance in the Body – None

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| <p>Fine: Amount (\$ Range):</p> | <p><u>First and second offense</u> (within 6 years) – Class B misdemeanor – not more than \$1,000; <u>third offense</u> (within 10 years) – third degree felony not more than \$5,000 §76-3-301 <u>A first or second DWI offense</u> – where there (1) is an injury related to negligent action or (2) is a passenger under 16 years old (child endangerment) or (3) is a driver ≥ 21 years old who is driving with a passenger < 18 years old – Class A misdemeanor- not more than \$2,500¹¹⁷⁰ §§41-6-44 and 76-3-301 <u>Any Measurable Controlled Substance in the Body</u>– Class B misdemeanor – \$700 to not more than \$1,000 §§41-6-44.6 and 76-3-301</p> |
| <p>Mandatory Min. Fine (\$):</p> | <p><u>First offense</u> – \$700; <u>second offense</u> (within 6 years) – \$800; <u>third offense</u> (within 10 years) – <u>Any Measurable Controlled Substance in the Body</u> – None</p> |
| <p>Other Penalties:^{1171and1172} Community Service:</p> | <p><u>First offense</u> – Not less than 24 hours in lieu of imprisonment (24 hours mandatory); <u>second offense</u> (within 6 years) – Not less than 240 hours in lieu of imprisonment (240 hours are mandatory); <u>third offense</u> (within 10 years) – None §41-6-44(4), (5) and (6)</p> |
| <p>Restitution (e.g. Victim's Fund):</p> | <p>Yes. Either via a Victims' Compensation Fund (§63-25a-401 et. seq.) or via direct payment by the defendant to the victim (§76-3-201 and §77-38a-301).</p> |
| <p>Other:</p> | <p>Ignition Interlock: I. In addition to any other sanctions that may be imposed for a DWI <u>alcohol</u> offense, an offender may be required, as a condition of probation, only to operate motor vehicles that are equipped with ignition interlock devices.¹¹⁷³ This requirement is <u>mandatory</u> if the offender is under 21 years old. §41-6-44.7(2)(a) and (b) If the defendant had a BAC of .16 or higher, the court shall order the following {or describe on record why the order or orders are not appropriate}: Treatment and one or both of the following: ignition interlock system</p> |

¹¹⁷⁰ The provisions of the drunk-driving law may have limited this fine to \$1,000. §41-6-44

¹¹⁷¹ In addition to the above fines, under §62A-15-502, the Court may impose other assessments that fully compensate agencies for the costs of treating DWI defendants.

¹¹⁷² Under §63-63a-1, an 85 percent surcharge is levied on all fines. The funds collected from this surcharge are used to fund the Crime Victim Reparation Trust Fund. §63-63a-4(2) In addition, a mandatory “traffic mitigation surcharge” of **\$10** is imposed on all offenders. §63-63b-101

¹¹⁷³ The court must give reasons on the record if this sanction is not imposed and the offender had a **BAC ≥.16**. §41-6-44

as a condition of probation, and home confinement through the use of electronic monitoring. §41-6-44(15).

II. The court **must** require a person who has been convicted of a subsequent drunk-driving offense (a §41-6-44 offense-within 10 years), to install an ignition interlock device on all of the vehicles registered in the offender's name and/or operated by that person for 3 years from the date of conviction. §41-6-44.7(2)(c):
 III. There is an exemption from ignition interlock usage for employer owned vehicles. §41-6-44.7(8).

Other:

Electronic Home Monitoring¹¹⁷⁴: As an alternative to either imprisonment or community service for either a first or subsequent offense, a person may be allowed to participate in a home confinement electronic monitoring program. The court may impose a restriction on the consumption of alcoholic beverages by the offender as part of this program. §41-6-44(4)(b)(ii), (5)(b)(ii), 6(b)(ii)(A)(ii) and (13)(d)(ii)

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

Yes.¹¹⁷⁵ I. (1) **BAC/BrAC ≥.08**, or (2) **Any Measurable Amount of a Controlled Substance in the Body**, or (3) Based on reasonable grounds that a person has violated the DWI law (§41-6-44) (e.g., driving while under the influence of alcohol or drugs) – First admin. action – **Mandatory Suspension for 90 days; second and subsequent admin actions- Mandatory Suspension for one year.** §§53-3-222 and 53-3-223

II. Admin Actions-Persons Under 21 Years Old: A person under 21 years old who operates a vehicle with **any measurable or detectable amount** of alcohol in the body is subject to the following admin licensing actions- first violation- "Denial"- **90 days; second or subsequent violation (within 3 years) – Suspension – **1 year.** §53-3-231**

III. For the administrative per se actions in I and II above, a person's license cannot be reinstated until that person has completed any required alcohol or drug

¹¹⁷⁴ The court must give reasons on the record if this sanction is not imposed and the offender had a BAC ≥.16. §41-6-44(14).

¹¹⁷⁵ The admin per se law appears to also cover situations where a person was operating a motor vehicle with a measurable amount of a controlled substance in the body.

Special Note: The licensing actions listed under Post DWI Conviction are those taken by the licensing agency. In addition to these actions, the court is authorized (but is not required) to either suspend or revoke a DWI offender's license for 90 days, 180 days or 1 year. The court may take this action in order to "remove from the highways those persons who have shown they are safety hazards." §41-6-44(12)

education or treatment program. §§41-6-44(8)(b) and 53-3-231(11)(b)(i)

Other:

Under §53-3-221(1)(a) and (8)(a), a person's license may be suspended for not more than 1 year if that

person has committed an offense usually requiring license revocation (e.g., second or subsequent DWI). Such action may be taken without a preliminary hearing and may occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

First offense (for either injury or non-injury-related offenses) – **Suspension**; subsequent DWI offense (within 10 years for either injury or non-injury-related offenses) – **Revocation** §§41-6-44(11), 53-3-220 and 53-3-221

Any Measurable Controlled Substance in the Body – First offense – **Suspension**; subsequent DWI offense (within 6 years) – **Revocation** §41-6-44.6(6)

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

First offense for either injury or non-injury-related offenses – **90 days**¹¹⁷⁶; subsequent offense¹¹⁷⁷ (within 10 years for either injury or non-injury-related offenses) – **1 year** §41-6-44(11)(a)

Any Measurable Controlled Substance in the Body – first offense – **90 days**; subsequent offense (within 6 years) – **1 year** §41-6-44.6(6)

Mandatory Minimum Term of
Withdrawal:

First offense for either injury or non-injury-related offenses – **90 days**; subsequent offense (within 10 years) – either injury or non-injury-related offenses – **1 year** §41-6-44(11)(a) No hardship license may be issued. §53-3-220(4)(a)(ii)

Any Measurable Controlled Substance in the Body – first offense – **90 days**; subsequent offense (within 6 years) – **1 year** §41-6-44.6(6) No hardship license may be issued. §53-3-220(4)(a)(ii)

Other:

Rehabilitation:

Alcohol Education and Treatment :

Yes: Substance abuse assessment is required, including screening, assessment, education series and subsequent substance abuse treatment.¹¹⁷⁸ §§ 17-43-201(4)(m), 41-6-44(1)(c), (4)(c)(i), (5)(c)(i), (6)(c) and (8)(a)

¹¹⁷⁶ The suspension or revocation period for a drunk-driving conviction under either §41-6-44 or §41-6-44.6 is reduced by any suspension period received under the administrative per se law. §§41-6-44(11)(b) and 41-6-44.6(6)(c)

¹¹⁷⁷ The court must give reasons on the record if this sanction is not imposed and the offender had a BAC ≥.16. §41-6-44

¹¹⁷⁸ An offender's driving privileges cannot be restored until that person has (1) satisfactorily completed alcohol or drug assessment, education, treatment or rehabilitation program that has been ordered and (2) paid any fines or fees, including restitution fees, and rehabilitation costs. §§41-6-44(7)(b) and 41-6-44.6(7).

and 53-3-231(10)(a)

Note: The above programs are also required for persons who have been convicted of driving with “any measurable controlled substance in the body” under §41-6-44.6. §41-6-44(8)(a)(i) and (ii)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes. §41-6-44.30

Terms Upon Which Vehicle

Will Be Released:

Other:

A vehicle used in a drunk-driving offense will be released to the registered owner under certain circumstances. §41-6-44.30(2)

Miscellaneous Sanctions

Not Included Elsewhere:

Assessments for Treatment: Following a conviction under either §41-6-44 or 41-6-44.6, the court may assess a defendant an amount sufficient to "fully compensate agencies" for the cost of any treatment provided to such offender. §§62A-8-302 and 62A-8-303

Court-Ordered Licensing Action: In order to remove from the highways those individuals who have shown they are safety hazards, the court may suspend or revoke a person's license for 90 days, 180 days or 1 year following a conviction under §41-6-44. §41-6-44(12)

No-Alcohol Conditional License: A person who has been convicted of any drunk-driving offense within 10 years (including a violation of the no-alcohol driving condition), or who has refused to submit to chemical test under the implied consent law can only have the license reinstated with a “no-alcohol condition”. This condition prohibits such a person from driving with **any amount of alcohol** in the body. For a first violation, this requirement lasts for **2 years**; for a second or subsequent violation, it lasts for **10 years**. §53-3-232(2) A person who violates this condition commits a Class B Misdemeanor (jail for not more than **6 months** and/or a fine of not more than **\$1,000**)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Persons are "disqualified" from operating a CMV for one mandatory year. (three mandatory years if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration $\geq .04$ (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine.), (2) are under the influence of either alcohol, drugs or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above-listed items, the "disqualification" is for life (10 years mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in his/her system must be placed "out-of-service" for 24 hours. §§53-3-102(5)(a), 53-3-102(9), 53-3-402(2), 53-3-402(5), 53-3-402(10), 53-3-402(11), 53-3-402(14), 53-3-414, 53-3-417 and 53-3-418.

and is subject to a mandatory license revocation of **1 year**. §§53-3-220(1)(a)(xiv), 53-3-225(1)(a), 53-3-232, 76-3-204(2) and 76-3-301(1)(d)

Serious Bodily Injury DWI Offenses: A person commits a third degree felony by causing serious bodily injury¹¹⁷⁹ related to a DWI offense. The sanctions for this offense are an imprisonment term of not more than **5 years** and/or a fine of not more than **\$5,000**. If the court suspends sentence and grants probation, it must still impose the following mandatory sanctions: Jail for 1,500 hours; a fine of \$1,500; and, alcohol or drug treatment (with substance abuse screening). §§41-6-44(3)(b) and (6)(c), 76-3-203(3) and 76-3-301(1)(b) Note: The licensing sanctions for this offense are the same as for a regular DWI offense. §41-6-44(2), (3)(b) and (11).

Probation with BAC ≥ .16: An offender with a BAC ≥ .16 must be placed on probation. §41-6-44(e)(II).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes. Automobile Homicide Two Types: "Simple" Negligent Homicide: Death caused by operating a motor vehicle in a negligent manner while DWI or with an alcohol concentration ≥.08 – third degree felony §76-5-207(1) and (3)

"Criminal" Negligent Homicide: Death caused by operating a motor vehicle in a criminally negligent manner (as defined by §76-2-103(4)) while DWI or with an alcohol concentration ≥.08 – second degree felony §76-5-207(2) and (3)

Criminal Sanction:
Imprisonment (Term):

Simple Negligent Homicide – Not more than **5 years**. §76-3-203(3)

Criminally Negligent Homicide – **1 to 15 years**. §76-3-203(2)

Mandatory Minimum Term:
Fine (\$ Range):

None
Simple Negligent Homicide – Not more than **\$5,000**. §76-3-301(1)(b)

Criminal Negligent Homicide – Not more than **\$10,000**. §76-3-301(1)(a)

Mandatory Minimum Fine:

None

Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:

For both offenses – **Revocation** §53-3-220(1)(a)

For both offenses – **1 year**. §53-3-225

¹¹⁷⁹ A “serious bodily injury” is defined as a “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” §41-6-44(1)(b)

Mandatory Action--Minimum Length of License Withdrawal: For both offenses – 1 year. No hardship license may be issued. §53-3-220(4)(a)(i)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): Class B Misdemeanor¹¹⁸⁰ **Not more than 6 months** §§41-6-44, 53-3-227(3)(a) and 76-3-204(2)

Mandatory Minimum Term of Imprisonment:

None

Fine (\$ Range):

Not more than \$1,000. §76-3-301(1)(d)

Mandatory Minimum Fine:

\$750¹¹⁸¹

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

For driving while suspended because of an alcohol-related violation – **Suspension**; For driving while revoked – **Revocation** §53-3-220(2) Actions taken immediately-53-3-227 (4)(a)(i)(B)

Length of Term of License

Withdrawal Action:

An additional like period of suspension or revocation of one year for each subsequent occurrence. §53-3-220(2)(b)

Mandatory Term of License

Withdrawal Action:

The above licensing action is mandatory (i.e., no "limited" employment license can be issued) if the

¹¹⁸⁰ It is a Class B misdemeanor to operate CMV during a CDL disqualification which was based either (1) on driving such a vehicle while either under the influence of alcohol or drugs or with an alcohol concentration $\geq .04$ or (2) on a refusal to submit to a chemical test. The sanctions for this offense are an imprisonment term of not more than 6 months and/or a fine of not more than \$1,000 (with mandatory minimum of \$750). It is a Class C misdemeanor to operate a CMV during either a CDL disqualification which is not DWI-related or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 90 days and/or a fine of not more than \$750. In addition, the following licensing actions apply: If the offender was driving a CMV while disqualified, the disqualification period is extended for a like period. An offender driving a CMV while under a CDL out-of-service order is subject to the following CDL disqualification periods: (1) For a first violation, 90 days to 1 year; (2) for a second violation (within 10 years), 1 to 5 years; and, (3) for a third or subsequent violation (within 10 years), 3 to 5 years. If the out-of-service order violation involved either (1) the transportation of hazardous materials or (2) the operation of a vehicle designed to carry 16 or more passengers, the offender is subject to the following disqualification periods: (1) For a first violation, 180 days to 2 years; and, (2) for a second or subsequent violation (within 10 years), 3 to 5 years. The minimum periods of disqualification appear to be mandatory. §§53-1-116, 53-3-220(2)(a), 53-3-227(1), (2) and (3), 53-3-404, 53-3-414(7), 76-3-204(2) and (3) and 76-3-301(1)(d) and (e).

¹¹⁸¹ The fine shall be in an amount not less than the maximum fine for a Class C misdemeanor, §§ 53-3-227(3)(b) and 76-3-301(1)(e)

Other penalties: original revocation/suspension was for a DWI offense or for vehicle homicide. §53-3-220(4)(a)(iii)
 Jail for not less than 48 consecutive hours, compensatory service work program for not less than 48 hours, and a fine of not less than \$750 {Class B misdemeanor} §53-3-227(4)

Habitual Traffic Offender Law:
 State Has Such a Law (Yes/No): **No**

Grounds for Being Declared an Habitual Offender:
 Term of License Rev While Under Habitual Offender Status:
 Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status
 Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Other Criminal Actions Related to DWI:

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): **Yes** §26-1-30(2)(q)
 BAC Chemical Test Is Given to the the Following Persons:
 Driver: **Yes**
 Vehicle Passengers: **No**
 Pedestrian: **Yes** (Adults only)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§32A-12-203(1) and 32A-12-209 There is an exception for medicinal purposes for parents, physicians, or dentists. §32A-12-203(3).
 Minimum Age (Years) Possession: **21** §32A-12-209
 Minimum Age (Years) Consumption: **21** §32A-12-209

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes.** §32A-14a-102(1)(a)¹¹⁸² Damages are limited to \$500,000 per person and \$1,000,000 per occurrence¹¹⁸³. §32A-14a-102(6)

Important: The Dram Shop Law does not apply to either general food stores or other businesses that are licensed to sell "beer" at retail for off-premises consumption. §32A-14a-102(9)

"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. *Adkins v. Uncle Bart's Club*, 1 P.3d 528 (Utah 2000)(cert denied 531 U.S. 1011, 148 L.Ed.2d 485, 12 S. Ct. 566 (2000)).

Dram Shop Actions-Social Hosts:

Yes (Limited) under the Dram Shop Law.¹¹⁸⁴ §32A-14a-102(2)(b) Also possible under common law.¹¹⁸⁵

Other:

None

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

Type of Criminal Action:

Class B **Misdemeanor** §§32A-4-106(10), 32A-12-104, 32A-12-204, 76-3-204(2), 76-3-301(1)(d) and 76-3-302(3)

Term of Imprisonment:

Not more than **6 months**

Fine (\$ Range):

Not more than **\$1,000** for individuals and not more than **\$5,000** for corporations, associations, partnerships or governmental instrumentalities.

¹¹⁸² Liability under the Dram Shop Act is subject to the principles of comparative fault under §§78-27-37 through 40. *Red Flame, Inc. v. Martinez*, 996 P.2d 540 (Utah 2000)

¹¹⁸³ In *Adkins*, the court held that the dram shop law (1) was the "exclusive remedy" for damages, (2) did not provide for punitive damages, and (3) damage limitation provisions were constitutional. Note: This case was decided under the dram shop law prior to its re-codification in 2000. However, a third party who has been injured by an intoxicated person <21 years old may have a common law negligence action against the licensee who illegally sold alcoholic beverages to such minor. *Mackay v. 7-Eleven Sales Corp.*, 995 P.2d 1233 (Utah 2000). In *Mackay*, the alcoholic beverage was beer which was sold to the minor for off-premises consumption. The court noted (Footnote No. 1, 995 P.2d at 1234) that a cause of action for injuries resulting from this type of sale is not allowed under the Dram Shop Act (§32-14-101(10){ now §32A-14a-102(9)} but that statutory preemption was not raised as an issue.

¹¹⁸⁴ A social host 21 years old or more who serves alcoholic beverages to a person under 21 years old to the extent that such person becomes intoxicated may be liable for any injuries caused by such person. §32A-14a-102(2)(b)

¹¹⁸⁵ **Comment:** A social host may be liable to a third party who has been injured by an intoxicated guest, if it can be shown that a special relationship existed that required the social host to protect such third party from injury. This relationship may be difficult to establish especially in cases where the guest is an adult. Consider the following factual situation: a 19-year-old, a legal adult, was left alone at his parents' home with instructions not to consume alcoholic beverages but did so nevertheless and became intoxicated and injured another minor. The Utah Court of Appeals held that the parents were not liable for the injuries sustained by the third party minor because the parents could not be accountable for the actions of their adult child who was not subject to their control. *Drysdale on Behalf of Stong v. Rogers*, 869 P.2d 1 (Utah App. 1994)

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

Yes. Suspension or Revocation §32A-1-119

Length of Term of License Withdrawal:

Suspension: Time period not specified in the statute.
Revocation: At least **3 years** §32A-1-119(5)(e).
Administrative Fine: An administrative fine of not more than \$25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(5)(a).

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:

Class A **Misdemeanor** §§32A-4-106(10), 32A-12-104, 32A-12-203, 76-3-204(1), 76-3-301(1)(c), and 76-3-302(2)

Term of Imprisonment:
 Fine (\$ Range):

Not more than **1 year**
 Not more than **\$2,500** for individuals and not more than **\$10,000** for corporations, associations, partnerships or governmental instrumentalities.

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.¹¹⁸⁶ **Suspension or Revocation** §32A-1-119(5).

Length of Term License Withdrawal:

Suspension: Time period not specified in the statute.
Revocation: At least **3 years** §32A-1-119(5)(e)
Administrative Fine: An administrative fine of not more than \$25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(4)(a)

Anti-Happy Hour Laws/Regulations:

(1) Liquor must be sold at prices established by the State and (2) mixed drinks and wine cannot be sold at discount prices. §32A-4-106(11)(a) and (b). The law also provides that a patron cannot have more than one alcoholic beverage at a time. A single beverage is restricted to 1 ounce primary liquor, 5 ounces of wine, or 1 liter of heavy beer.¹¹⁸⁷ §32A-4-106(2)(c), (2)(d), (12) and (13)

¹¹⁸⁶ Under §32A-1-119(6)(b), employees in violation of this law may be prohibited, via a suspension action, from serving alcoholic beverages for a period determined by the commission.

¹¹⁸⁷ "Heavy beer" is defined as a fermented alcoholic beverage containing more than 4 percent alcohol by volume. §32A-1-105(18)

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 §41-6-44.20(2)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §41-6-44.20(1)