

STATE:

VIRGINIA

General Reference:
Admin. Code (VAC)

Code of Virginia Annotated and Virginia

Basis for a DWI Charge^{1208:}

Standard DWI Offense:
Illegal Per Se Law:

Under the influence of alcohol §18.2-266
≥**.08**^{1209and1210} (BAC/BrAC) 18.2-266 or
Driving after ingesting any amount of illegally
possessed Schedule I and Schedule II drugs is a
violation of the DUI statute. § 18.2-266

Persons Under 21 Years Old: ≥**.02 but <.08**¹²¹¹
§18.2-266.1(A)

Presumption (BAC/BrAC):

.05 BAC or less – Presumed not under influence
of alcoholic intoxicants
>.05 BAC - < .08 BAC – No presumption, but
fact may be considered with other evidence.
≥.08 BAC – Presumed under the influence of
alcoholic intoxicants. §18.2-269

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, (2) Any
Narcotic Drug, (3) any Self-Administered
Intoxicant or Drug of Whatsoever Nature or (4)
a Combined Influence of Alcohol and any Drug
or Drugs or (5) any of the following substances
≥ (a) .02 milligrams of cocaine per liter of
blood, (b) 0.1 milligrams of methamphetamine
per liter of blood, (c) .01 milligrams of
phencyclidine per liter of blood, or (d) 0.1
milligrams of 3,4-
methylenedioxymethamphetamine per liter of
blood. § 18.2-266 (v) §18.2-266.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §18.2-267(a) For CMV operators, see
§46.2-341.25.

Implied Consent Law:

Yes §18.2-268.2

Arrest Required (Yes/No):

Implied Consent Law Applies to

Yes §18.2-268.2

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes Evidence of an “unreasonable refusal” may
be admitted to explain the absence of a chemical
test result but not as evidence of guilt.¹²¹²
§18.2-268. 10(C)

¹²⁰⁸ DUI article applies to all motor vehicles, including mopeds. § 18.2-266.

¹²⁰⁹ 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.

¹²¹⁰ Standards: For blood, “percent by weight” by volume; for breath, grams of alcohol per 210 liters of breath. §§18.2-266, 18.2-266.1(A), 18.2-269(A)(3) and 46.2-391.2

¹²¹¹ The law makes it an offense for a person under 21 years old to operate a motor vehicle after “illegally consuming alcohol” and provides that, if such a person has a BAC/BrAC ≥.02 but <.08 while driving, that person has committed such an offense. §18.2-266.1(A)

Other Information:

Incoherence or unconsciousness does not constitute a refusal. *Goodman v. Commonwealth* 558 S.E.2d 555 (Va. App. 2002)

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

Blood: **Yes** § 18.2-268.2(A)
 Urine: **No**
 Other: **No**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**¹²¹³
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** An alcohol/drug screening/assessment mandatory via the Alcohol Safety Action Program prior to any treatment. §§18.2-271.1(A) and 19.2-299.2(A)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev): **None**
 Refusal to Take Implied Consent Chemical Test¹²¹⁴:
 Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev): **First refusal {civil violation} – suspension – 1 year**¹²¹⁵ This suspension appears to be mandatory. §18.2-268.4 There is also a mandatory 7-day suspension under §46.2-391.2. **Second refusal** (within 10 years – criminal violation – Class 2 misdemeanor) - **Suspension – 3 years; third refusal** (within 10 years – criminal violation – Class 1 misdemeanor) - **Suspension – 3 years**¹²¹⁶ §18.2-268.3.

¹²¹² The Virginia Court of Appeals has held, in an *en banc* decision, that it is constitutional under both the Federal and State constitutions to admit evidence of a person’s refusal to submit to “field sobriety tests.” *Farmer v. Com.*, 404 S.E.2d 371 (Va. App. 1991)

¹²¹³ A person who has been charged with either a first or second drunk-driving offense may enter an Alcohol Safety Action Program prior to trial. §18.2-271.1(A) The law is not specific as to whether this acts as probation before judgment {where the completion of the probation requirements leads to dismissal of the criminal charge}.

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. *Tench v. Com.*, 462 S.E.2d 922 (Va. App. 1995), and *Jones v. City of Lynchburg* 474 S.E.2d 863 (Va. App. 1996)

¹²¹⁴ First violation of the refusal statute: civil offense; but subsequent violations are criminal offenses. Law-enforcement officers only have to read the refusal form to persons who refuse to take a blood or breath test. 18.2-268.3.

¹²¹⁵ The court may dismiss a refusal suspension action if the defendant pleads guilty to a DWI offense. §18.2-268.4

¹²¹⁶ In addition, the violator also considered a repeat violator if within 10 years he/she was guilty of any of the following: a violation of this section, a violation of Section 18.2-266, or a violation of any offense listed in subsection E of Section 18.2-270. This suspension period is in addition to the suspension period provided under

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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

First offense (Class 1 Misdemeanor) – Not more than **12 months**¹²¹⁷; second offense (within 5 years - <.15 BAC - Class 1 Misdemeanor) – **1 month to 1 year (20 days mandatory** – §18.2-270 B 1); third and subsequent offense (within 10 years - Class 6 felony) – **1 to 5 years imprisonment (minimum 90 days confinement) or not more than 12 months in jail**; fourth or subsequent offense (within 10 years) – **minimum 1 year.** §§18.2-10(f), 18.2-11(a) and 18.2-270

Offense for Persons Under 21 Years (≥.02 but <.08): **None**

Mandatory Minimum Term:

First offense – **None**¹²¹⁸; second offense (within 10 years) – **10 days**; second offense (within 5 years) – **20 days**; third offense (within 10 years) – **90 days**; third offense (within 5 years) – **minimum 6 months**; fourth and subsequent offense (within 10 years) – **minimum 1 year**

Fine:

Amount (\$ Range):

First offense – **\$250 minimum** – not more than **\$2,500**¹²¹⁹; second offense (within 10 years) – not less than **\$500**; third and subsequent offense (within 10 years) – **\$1000 minimum** – not more than **\$2,500**

Offense for Persons Under 21 Years (≥.02 but <.08): Not more than **\$500** §18.2-266.1(B)

Section 46.2-391.2.

¹²¹⁷ A court may place a defendant on probation, grant a restricted license (with installation of an ignition interlock system for six months if a second offense within five years), and allow any period of imprisonment to be served via electronic home monitoring. §§53.1-131.2 and 18.2-271.1(A)

¹²¹⁸ First offense: (1) BAC ≥.15 but <0.20-mandatory jail for 5 days; (2) BAC >0.20-mandatory jail for 10 days second offense within 10 years: (1)BAC ≥.15 but <0.20-mandatory jail for additional 10 days; (2) BAC >0.20-mandatory jail for an additional 20 days; third offense within 5 years – minimum 6 months; fourth offense within 10 years – minimum 1 year. §18.2-270(A) and (B)(3)

DWI Injury Offenses. It is a Class 6 felony to unintentionally cause serious bodily injury while in violation of the drunk-driving laws where there is evidence of reckless disregard for human life. §18.2-51.4(A) Criminal Sanctions: Imprisonment from **1 to 5 years** and/or a fine of not more than **\$2,500**. §18.2-10(f) Licensing Sanctions: **10-year revocation.** However, after 3 years, a restricted license for employment purposes may be issued. The offender is required to undergo evaluation via the Va. Alcohol Safety Action Program and may be required to operate only motor vehicles equipped with **ignition interlock** devices. After 5 years upon a showing of “good cause,” the offender may obtain “full” driving privileges. §§18.2-51.4(A) and 46.2-391(B) and (C)

DWI While Suspended or Revoked. Driving while DWI and while license is suspended/revoked for a DWI offense is a felony. The sanction for this offense is either 1 to 5 years imprisonment or 12 months in jail. Mandatory confinement for 1 year except for a first offense where driving was necessary to save life or limb, §46.2-391(D) and (E). No fine is specified for this offense.

¹²¹⁹ A person required to enter the Virginia Alcohol Safety Action Program under §18.2-271.1 must pay a fee of not less than \$250 but not more than \$300. §18.2-271.1(a1).

Mandatory Min. Fine (\$):	<u>First offense</u> – \$250; <u>second offense</u> – \$500; <u>third offense</u> – \$1000; §18.2-270(A)
Other Penalties:	
Community Service:	None
Restitution	
(e.g., Victim's Fund):	Yes Compensation may be obtained from two sources: (1) A victims' compensation fund (§19.2-368.1 et seq.); (2) direct compensation by a defendant to a victim. §19.2-305
	Laboratory Fee. A DWI offender is required to pay a \$100 fee for any forensic laboratory analysis that was performed by the State in connection with the prosecution of the DWI offense. §18.2-264.01. Repealed eff. July 1, 2003.
	Child Endangerment. ¹²²⁰ A person convicted of a DWI offense while carrying a person 17 years old or younger is subject to the following additional sanctions: a fine of \$500 (mand) to \$1,000 and mandatory minimum period of confinement of 5 days; <u>subsequent offense</u> – fine of \$500 (mand) to \$1,000 and community service of 80 hours (mand) benefiting children. §18.2-270(D)
	EMS/Enforcement Costs. Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to <u>any</u> DWI offense. Liability is limited to \$1,000. §15.2-1716
	Dismissal of dual charges. Whenever any person is charged with a violation of section 18.2-266 {driving under the influence of drugs or intoxicants} ... and with reckless driving {in violation of Section 46.2-852} growing out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge.
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	Yes ≥.08 BAC/BrAC .
Administrative Per Se Law:	<u>First offense:</u> Suspension -7 days (mand) §46.2-391.2; <u>second offense:</u> Suspension – 60 days; <u>third or subsequent offense:</u> Suspension “until the day and time of trial of the criminal offense charged”.
<u>Post DWI Conviction</u> Licensing Action:	See Footnote No. ¹²²¹ .

¹²²⁰ A drunk-driving law offender who operates a motor vehicle while transporting a child <18 years old may be subject to prosecution for child abuse and neglect under §18.2-371.1. See *dicta* in *Com. v. Carter*, 462 S.E.2d 582 (Va. App. 1995).

¹²²¹ For either a first offense or second offense (within 10 years), a person's license cannot be reinstated until completion of an Alcohol Safety Action Program. §§46.2-389(B) and 46.2-391(A)

Type of Licensing Action (Susp/Rev):	<p><u>First offense</u> – Revocation; <u>second offense</u> (within 10 years) – Revocation; <u>third or subsequent offense</u> Revocation §§18.2-271, 46.2-389 and 46.2-391 <u>Offense for Persons Under 21 Years (≥.02 but <.08)</u>: Suspension §18.2-266.1(B)</p>
Term of License Withdrawal (Days, Months, Years, etc.):	<p><u>First offense</u> – 1 year; <u>second offense</u> (within 10 years) – 3 years; <u>third or subsequent offense</u> (within 10 years) – 10 years <u>Offense for Persons Under 21 Years (≥.02 but <.08)</u>: 6 months (A restricted license may be issued.) §18.2-266.1(B) <u>Persons under 18 years old</u>¹²²²: If a DWI charge is deferred, the following licensing action must be taken – <u>first offense</u> – 1 year denial or until the person reaches 17 whichever is the longer suspension period (90 days mand); <u>second and subsequent offense</u> – 1 year denial until the person reaches 18 whichever is the longer suspension period (1 year is mandatory). A restricted hardship license may be issued to a first offender after 90 days. §16.1-278.9 <u>First offense</u> – None¹²²³; <u>second offense</u> (within 5 years) – 1 year¹²²⁴; <u>second offense</u> (within 10 years) – 4 months; <u>third or subsequent offense</u> (within 10 years) – 3 years¹²²⁵ <u>Offense for Persons Under 21 Years (≥.02 but <.08)</u>: None</p>
Mandatory Minimum Term of Withdrawal:	<p><u>First offense</u> – None¹²²³; <u>second offense</u> (within 5 years) – 1 year¹²²⁴; <u>second offense</u> (within 10 years) – 4 months; <u>third or subsequent offense</u> (within 10 years) – 3 years¹²²⁵ <u>Offense for Persons Under 21 Years (≥.02 but <.08)</u>: None</p>
Rehabilitation: Alcohol Education:	<p><u>First offense</u> – Yes¹²²⁶; <u>second offense</u> (within 10 years) – Yes; <u>third and subsequent offense</u> –</p>

¹²²² These actions also apply to persons under 18 years old who have refused to submit to a chemical test under the implied consent law.

¹²²³ A restricted license may be issued if the defendant participates in a rehabilitation program. §18.2-271.1(E)

¹²²⁴ A restricted license may be issued after the minimum period of license withdrawal (1-year or 4-month revocation) has passed and a defendant has participated in a rehabilitation program. §18.2-271.1(E), *Turner v. Com.*, 408 S.E.2d 586 (Va. App. 1991) and *Com. v. Meadows*, 440 S.E.2d 154 (Va. App. 1994)

¹²²⁵ For a third offense, if a person at the time of the DWI conviction was dependent on alcohol, either (1) the license may be restored after 5 years or (2) a restricted license for employment purposes may be issued after 3 years provided the person has been cured of dependency and is not otherwise a threat to the public safety. In addition, before either a license is reinstated or a restricted employment license is issued, an offender may be required to undergo an alcohol evaluation. Depending upon its recommendations, driving privileges are not automatically restored after 5 years. Instead, the offender might be granted restricted driving privileges not to exceed 5 years. Offenders are given credit for any period of license revocation imposed under the habitual offender law, §46.2-391(c).

¹²²⁶ Unless “good cause” is shown, a first or second offender is required, as a condition of probation, to participate in the Va Alcohol Safety Action Program (VASAP). This program consists of driver awareness training, alcohol and drug education and, if necessary via leave of court, referral to treatment. “Such programs serve a probation, intervention function through offender monitoring and follow-up.” §§18.2-271.1 and 18.2-271.2 and 24 VAC 35-20-20 and 35-20-420 A person required to participate in VASAP must complete such program prior to license reinstatement unless the court waives such completion for good cause. §46.2-411.1(A)

Not eligible to participate in VASAP under §18.2-271.1(A). §18.2-271(C)

Alcohol Treatment:

First offense – Yes; second offense (within 10 years) – Yes; third and subsequent offense – Not eligible to participate in VASAP under §18.2-271.1(A). §18.2-271(C)
Offense for Persons Under 21 Years (≥.02 but < .08): An offender is eligible to participate in the Va Alcohol Safety Action Program (VASAP). §18.2-266.1(B)

Vehicle Impoundment/Confiscation
 Authorized by Specific Authority:

Any motor vehicle administratively impounded or immobilized {under the provisions of Section 46.2-301.1} may, in the discretion of the court, be impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for driving while the driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for a DUI-related offense. {Sections 18.2-36.1, 18.2-51.4, 18.2-266, Section 46.2-341.24 or 46.2-391.2}

A third or subsequent offense shall constitute a Class 6 felony punishable by a mandatory minimum term of jail of 90 days {If 3 DUIs within 5 years, mandatory 6-month jail.} In addition, vehicles used in felony DUI violations may be subject to seizure and forfeiture unless the vehicle is the only one for a family and forfeiture would cause substantial hardship. Sec. 46.2-301C

If the person was driving during a period of suspension or revocation not specified for a definite period of time, the court shall suspend the person's license to drive for an additional 90 days. §.46.2-301D

Terms Upon Which Vehicle
 Will Be Released:
 Other:

N/A
Registration Suspension. Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked (e.g., DWI, vehicle homicide, driving while license is either suspended or revoked), shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

Miscellaneous Sanctions
Not Included Elsewhere:

Interdiction Order. The court may issue an order prohibiting alcoholic beverage licensees from selling such beverages to a person who has been convicted of a DWI offense. §4.1-333 Generally, such a person is also prohibited from possessing alcoholic beverages. §4.1-322

Ignition Interlock. I. For a first offense, the court may require and, for a second offense, the court must require a DWI offender who has been granted either restricted driving privileges or full driving privileges on condition to operate only motor vehicles (registered in their name) that are equipped with ignition interlock devices. This usage must last at least 6 months. §§18.2-270.1, 18.2-270.2, 46.2-360 and 46.2-391

II. **Ignition Interlock Usage with VASAP.** A second or subsequent offender (within 5 years) who is required to participate in either the Va Alcohol Safety Action Program (VASAP) or a treatment program (via an assessment indicating a substance abuse problem) may obtain restricted driving privileges permitting only operation of motor vehicles equipped with ignition interlock devices.

III. **Points.** A person who has either been convicted of a drunk-driving offense or, if under 21 years old, found in violation of driving after “illegally consuming alcohol” has 6 points assigned to the driving record. §46.2-492(D)(1)

IV. **Probation.**¹²²⁷ Unless modified by the court, an offender must be placed on probation for the same period of time as the license suspension but, in no case, more than 3 years. §18.2-270

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes – Death-related DWI offense (involuntary manslaughter-death caused unintentionally via DWI) Class 5 felony §§18.2-36 and 18-2-36.1 A person can be convicted of both involuntary manslaughter and DUI even if DUI is a lesser included offense, because the legislature intended to permit multiple punishment under such circumstances. *Goodman v. Comm.* 558 S.E.2d 555 (Va. App. 2002) and *Dale v. Comm.* 554 S.E.2d 705 (Va. App. 2001) Confirmed 570 S.E.2d 840 (Va. 2002).

Sanctions:

Criminal Sanction:
Imprisonment (Term):

1 to 10 years¹²²⁸§18.2-10(e)

¹²²⁷ The law is not clear but this probation requirement appears to apply to both first and subsequent offenders.

¹²²⁸ Alternative Sentence: Jail for not more than 12 months and/or pay a fine of not more than \$2.500. §18.2-10(e)

Mandatory Minimum Term:	None ¹²²⁹
Fine (\$ Range):	None
Mandatory Minimum Fine:	N/A
Administrative Licensing Action: Licensing Authorized and Type of Action:	Revocation §§18.2-36.1(C), 46.2-389 and 46.2-391(B)
Length of Term of Licensing Withdrawal:	10 years ¹²³⁰ §§18.2-36.1(C), 46.2-389 and 46.2-391(B)
Mandatory Action--Minimum Length of License Withdrawal:	3 years §46.2-391(C)(2)
Other:	<p>I. See “Registration Suspension” under DWI Vehicle Impoundment/Confiscation.</p> <p>II. Civil Damages. Exemplary damages may be awarded in a civil action, involving either a death- or injury-related drunk-driving offense, provided either that the defendant acted with malice towards the plaintiff or that the defendant’s conduct showed a ‘willful or wanton’ disregard for the rights of others.¹²³¹ §8.01-44.5</p> <p>Manifest Injustice. In addition to the normal appeal procedures that are available in adverse licensing action decisions (§46.2-410), the law provides for special relief in cases of “manifest injustice” (administrative suspensions or revocations that resulted from an error, lack of authority/jurisdiction, or a conflict with a court order). In such cases, a court, notwithstanding any other provision of law, may order the modification of the Commissioner’s suspension or revocation order or issue a restricted license per §18.2-271.1. {This relief does not apply to CDL disqualifications. §46.2-410.1}</p>

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL): I. A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC $\geq .04$, (2) is under the influence of alcohol or any narcotic drug, self-administered intoxicant or other drug or (3) refuses to submit to a

¹²²⁹ If the defendant’s conduct indicated “reckless disregard for human life,” that person is guilty of “aggravated involuntary manslaughter” and is subject to an imprisonment term of 1 year (mand) to 20 years. §18.2-36.1(B)

¹²³⁰ After 3 years, a restricted license for employment purposes may be issued. The offender is required to undergo evaluation via the Va. Alcohol Safety Action Program and may be required to operate only motor vehicles that are equipped with **ignition interlock** devices.

¹²³¹ “Willful or wanton behavior” may be shown by proving either of the following: (1) when the incident occurred, the defendant’s BAC/BrAC was $\geq .15$, the person consumed alcoholic beverages intending to operate a motor vehicle, and the intoxication was the proximate cause of an injury or a death or (2) the person unreasonably refused to submit to a chemical test, the incident occurred while the driver was intoxicated and intended to operate a motor vehicle and the intoxication was the proximate cause of the injury or death. §8.01-44.5

chemical test for alcohol or drugs. 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 mandatory). II. It is a Class 3 Misdemeanor to operate a CMV with a BAC $\geq .04$; the sanction for this offense is a fine of not more than \$500. III. It is a Class 1 Misdemeanor to operate a CMV either with a BAC/BrAC $\geq .08$ or while under the influence of either alcohol or drugs. The sanctions for this offense are as follows: first offense – Jail for not more than 12 months and/or a fine sanction of not more than \$2,500; second offense (within 10 years) – Jail from 1 month to 1 year and/or a fine of \$200 to \$2,500. If the second offense was within 5 years of a previous offense, there is a mandatory jail sanction of 5 days. Third offense (within 10 years) – Jail from 2 months to 1 year and/or a fine of \$500 to \$2,500. A 30-day jail sentence is mandatory if the third or subsequent offense occurred within 5 years and a 10-day jail sentence is mandatory if the third or subsequent offense occurred within 10 but more than 5 years. IV. In addition, a person who operates a CMV with any alcohol in the system commits a traffic infraction (a fine of not more than \$200) and must be placed “out-of-service” for 24 hours. §§18.2-11(a) and (c), 18.2-271.1(I), 46.2-113, 46.2-341.4, 46.2-341.17, 46.2-341.18, 46.2-341.24, 46.2-341.25, 46.2-341.26:1 to 46.2-341.26:11, 46.2-341.27, 46.2-341.28, 46.2-341.29 and 46.2-341.31

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense: ¹²³²

Sanction:	
Criminal:	
Imprisonment (Term):	<u>First and second offense</u> (Class 1 Misdemeanor) – Not more than 12 months ; <u>third and subsequent offenses</u> (Class 6 Felony) – Not more than 12 months {minimum 90 days if within 10 years, 6 months if within 5 years.} In addition, in the discretion of the Court, a person driving his/her vehicle when the driver’s license is suspended may have that vehicle impounded for up to 90 days at the defendant’s expense. §§18.2-11,46.2-301, and 18.2-272A ¹²³³
Mandatory Minimum Term of Imprisonment:	<u>First and second offense</u> – None ; for <u>third and subsequent offense</u> – 90 days ; if BAC .15 or above, 10 additional day minimum; if BAC > .20, 20 additional day minimum.
Fine (\$ Range):	<u>First offense</u> – Not more than \$2,500 ; <u>third and subsequent offense</u> – Not more than \$2,500
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	See Footnote No. ¹²³⁴ below.

¹²³² A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Except as noted below for out-of-service violations, the fine and imprisonment sanctions for these offenses are as given above for driving while suspended or revoked. The following fine and licensing sanctions are imposed in cases concerning out-of service order violations: (1) The fine sanction is \$1,000 to \$2,500 and (2) the licensing sanctions are, for a first violation, CDL disqualification for 180 days (mand) and, for a subsequent violation (within 10 years), CDL disqualification for 3 years. §46.2-341.21

¹²³³ Suspension/revocation for 30 days or more (Under separate provisions of the State’s criminal code, it is a Class 1 Misdemeanor for a person to operate a motor vehicle if the privilege to do so has been “forfeited.” §18.2-272)

¹²³⁴ **Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person unless the person maintains proof of financial responsibility.

Other information: I. The following sanction also may be imposed if the original licensing action was for (1) a drunk-driving offense, (2) an admin. per se violation, (3) a refusal to submit to a chemical test under the implied

Type of Licensing Action
(Susp/Rev):

Revocation or Suspension §§46.2-301,
46.2-391(B) and 46.2-394

Length of Term of License
Withdrawal Action:

I. An additional suspension/revocation for the same period for which the license has been previously suspended or revoked; if the original period was not specified, then the additional suspension or revocation is not to exceed 90 days.

Mandatory Term of License
Withdrawal Action:

An additional suspension/revocation for the same period for which the license has been previously suspended or revoked; if the original period was not specified, then the additional suspension or revocation is not to exceed 90 days.

Third offense (within 10 years) – **Revocation 3 years**¹²³⁵; fourth offense – **Revocation 5 years**

Habitual Traffic Offender Law:

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

No §§46.2-351 et seq. §§46.2-351-355 were repealed by acts 1999, cc. 945, 987 and procedure laid out in §§46.2-358-361. However, *Varga v. Comm.* 536 S.E.2d 711 (Va. 200), in a footnote states that while the legislature did away with the status of habitual offender as of July 1, 1999, “the status of persons declared habitual offenders prior to that date was not affected by the repeal.”

Term of License Revocation
While Under Habitual Offender Status:

10 years^{1236and1237} §46.2-356.

consent law or (4) driving after adjudication as an habitual offender (if such adjudication was based either in whole or in part on alcohol-related offenses). Any vehicle (with the exception of rented or leased vehicles) used in the offense may be impounded or immobilized for 30 days. The owner of the vehicle may obtain a release from this action based upon a showing that it is the only vehicle owned and its impoundment or immobilization would cause a substantial hardship. §46.2-301.1(A)

II. A person is not subjected to double jeopardy if prosecuted for driving on either a suspended or revoked license after the vehicle driven was impounded under §46.2-301.1. *Wilson v. Cam.*, 477 S.E.2d 765 (Va. App. 1996)

III. A person who violates §46.2-301 for a second time shall be referred to the Va. Alcohol Safety Action Program. A program representative shall inform the offender concerning the legal consequences of the action and may refer such person to a driver improvement clinic. §46.2-355.1

¹²³⁵ Restricted driving privileges are available after 3 years and full driving privileges may be granted after 5 years. Such action may be granted provided the offender is not dependent on drugs or alcohol and is no longer a threat to the public’s safety. §46.2-391(C)(1) and (2)

¹²³⁶ The license may be restored in less than 10 years under several conditions. (1) Except as provided in (3), (4) and (5) {immediately below}, after 5 years, a license may be restored (with or without restrictions) provided the offender’s driving behavior will no longer constitute a threat to the safety and welfare of themselves or others. (2) For persons over 18 years old, if the one of the offenses occurred when the driver was under 18, a license may be issued (with or without restrictions) without a waiting period. (3) If one of the offenses was a DWI and the offender was addicted to alcohol, a license may be restored (with or without restrictions) after 5 years (or after 3 years, a restricted license may be issued for the purpose of driving to and from a place of employment or in the course of employment) provided the driver is no longer alcohol dependent and would not otherwise constitute a threat to the public’s safety when operating a motor vehicle. In the computation of the 3-year and 5-year revocation periods, the offender is given credit for any period of time the license was revoked for a DWI offense. An offender may be

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

First offense: – **Misdemeanor** - if driving did not endanger life, limb or property of another.
Second or subsequent offense – **felony** If driving either (1) did endanger life, limb or property of another or (2) takes place while the offender was in violation of the DWI laws (irrespective of whether life, limb or property was endangered).
 §§18.2-8 and 46.2-357

Sanctions Following a Conviction of Driving While on Habitual Offender Status: Imprisonment (Term):

Misdemeanor – Not more than **90 days** **Felony** – **1 to 5 years** §46.2-357(B)(1) and (2)

Mandatory Minimum Term of Imprisonment:

Misdemeanor – **felony** – **1 year**¹²³⁸ §46.2-357(B)(2)

Fine (\$ Range):

Misdemeanor – Not more than **\$2,500** §46.2-357(B)(1) **felony** – **None**

Mandatory Minimum Fine (\$):

None

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):

No

BAC Chemical Test Is Given to the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §§4.1-304 and 4.1-305

required to undergo an alcohol evaluation before either license restoration or the issuance of restricted driving privileges. Depending upon the recommendations contained in the alcohol evaluation, an offender may not have unrestricted driving privileges restored after 5 years. Instead, the offender may be allowed only restricted driving privileges not to exceed 5 years. (4) Except in situations where a DWI offense was involved, if one of the offenses concerned driving while suspended or revoked related to either failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored after 3 years. If a DWI offense is involved, license restoration is via (3) above. (5) If all of the offenses are related to driving while suspended or revoked based on either a failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored at any time after those costs, fines, judgments or failures are satisfied. §§46.2-358, 46.2-359, 46.2-360 and 46.2-361 If habitual offender status is based on failure to pay uninsured motorist fees, the license may be restored if fines or other costs associated with these violations are paid and the person furnishes proof of financial responsibility.

¹²³⁷ **Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

¹²³⁸ A person who has been convicted of a felony offense may be eligible to participate in an alternative sanction program which includes probation. This alternative may include “boot camp,” detention center or diversion center incarceration programs. §46.2-357(D).

Minimum Age (Years) Possession:	21 – A special exemption to minors, for employment reasons, and at the order of a parent. §4.1-305
Minimum Age (Years) Consumption:	None
<u>Dram Shop Laws and Related Legal Actions:</u> State Has a Dram Shop Law (Yes/No):	No
“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 – For a case denying liability, see <i>Williamson v. Old Brogue, Inc.</i> 350 S.E.2d 621 (Va. 1986), and <i>Robinson v. Matt Mary Moran, Inc.</i> 525 S.E.2d 559 (Va. 2000) ¹²³⁹
Dram Shop Actions-Social Hosts:	No (No Cases) ¹²⁴⁰
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	Class 1 Misdemeanor §§4.1-304, 18.2-11(a) and 18.2-12
Term of Imprisonment:	No more than 12 months
Fine (\$ Range):	Not more than \$2,500
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Revocation or suspension ^{1241and1242} §4.1-225(1)(k)
Length of Term of License Withdrawal:	Time period is not specified in the statute.
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	

¹²³⁹For other cases denying liability under Virginia law, see *Webb v. Blackie's House of Beef, Inc.* 811 F.2d 840 (4th Cir. 1987), *Corrigan v. U.S.*, 815 F.2d 954 (4th Cir. 1987) (cert. den., 484 U.S. 926), and *Byrd v. Gate Petroleum*, 845 F.2d 86 (4th Cir. 1988).

¹²⁴⁰In discussing the liability of commercial servers in the *Williamson* case, the court mentioned that dram shop liability of either commercial servers or social hosts was a matter that should be determined by the legislature.

¹²⁴¹In lieu of either suspending a license or any portion thereof, a civil penalty may be imposed as follows: first offense – Not more than \$2,500; and, subsequent offense – not more than \$5,000. §4.1-227(B) Also, under separate provisions the Board may impose a civil penalty in lieu of license suspension or revocation. First violation: \$2,500; subsequent violations: \$5,000. §4.1-227(B) or the Board may accept an offer in compromise from the licensee to pay a civil charge of \$5,000 in lieu of revocation §4.1-227(c)

¹²⁴²This administrative action is based on ‘reasonable cause to believe’ the licensee sold alcoholic beverages to a minor or an intoxicated person. §4.1-225

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Type of Criminal Action: **Class 1 Misdemeanor** §§4.1-304, 18.2-11(a) and 18.2-12
Term of Imprisonment: Not more than **12 months**
Fine (\$ Range): Not more than **\$2,500**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Revocation or suspension** §§4.1-225(1)(k)
Length of Term License Withdrawal: Time period not specified in the statute.

Anti-Happy Hour Laws/Regulations: **Yes** 3VAC 5-50-160

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

Open Container Law (Yes/No): **No** {But the presence of an open container creates a rebuttable presumption the driver violated the anti-consumption law.} §18.2-323.1(B)
Anti-Consumption Law (Yes/No): **Yes** – Drivers only §18.2-323.1