

STATE:

ARIZONA

General Reference:

Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor §28-1381(A)(1)

Illegal Per Se Law (BAC/BrAC):

I. **≥.08**^{40and41} and **any drug listed in §13-3401 or its metabolite in a Person's Body**^{42and43} §28-1381(A)(2) and (3)II. **≥.15**⁴⁴ §28-1382(A)Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituos Liquor" in the body. §4-244(33) and 4-246(B)

Presumption (BAC/BrAC):

≥.08 §28-1381(G)(3)

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, a vapor releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree. §28-1381(A)(1)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §28-1322 Based on reasonable suspicion of a DWI offense.

Implied Consent Law:

Arrest Required (Yes/No):

Yes⁴⁵ §28-1321(A)Implied Consent Law Applies to
Drugs (Yes/No):**Yes** §28-1321(A)Refusal to Submit to Chemical Test
Admitted into Evidence:**Yes** (Criminal and Civil Cases) §28-1388(D)

Other Information:

I. Persons (e.g., medical facility personnel), who collect blood, urine or other bodily substances from drivers, may be requested by law enforcement

Chemical Breath Tests for Alcohol Concentration:

⁷⁵ 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.

⁷⁶ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28-101(2)

⁷⁷ A person is not guilty of violating the drug per se statute, §28-1381(A)(3), while using a drug prescribed by a medical practitioner. §28-1381(D) Nevertheless, it is still illegal under §28-2881(A)(1) for such a person to operate a motor vehicle while under the influence of such substances. §28-1381(B)

⁷⁸ The illegal per se provision (previously codified as §28-692(A)(3)), that prohibits the operation of a motor vehicle with a controlled substance in the body, was held to be constitutional. *State v. Phillips*, 873 P.2d 706 (Ariz. App. 1994), and *State v. Hammonds*, 968 P.2d 601 (Ariz. App. 1998) (Review denied by the Arizona Supreme Court, 1998 Ariz. LEXIS 615); cf. *State v. Boyd*, 31 P. 3d 130 (Ariz. App. 2001).

⁷⁹ Driving at or above this level is considered to be driving "while under extreme influence of intoxicating liquor." §28-1382(A)

⁸⁰ Under a **separate implied consent law**, a law enforcement office can request a driver to submit to a chemical test for either alcohol concentration or drug content if the driver is involved in an accident that caused either a death or a serious physical injury and either (1) there is "probable cause to believe" that the driver caused the accident or (2) the driver was issued a citation for a traffic offense (e.g., a drunk driving offense, racing on the highway, reckless driving, or other "moving traffic violation"). The sanctions for refusing to submit to this test are the same as for refusing to submit to test under the regular implied consent law (§28-1321). §28-673

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authorities to supply samples of such substances to them for testing. §28-1388(E)
 II. Blood or urine samples can also be obtained via search warrants. §28-1321(D)(1)

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

Blood: **Yes** §28-1321
 Urine: **Yes** §28-1321
 Other: **"Other bodily substances"** §28-1321

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **Yes** §28-1387(H)⁴⁶
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Alcohol Screening Required §28-1387(B)

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 Test:
 Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev):
First refusal – 12-month suspension (mand); subsequent refusal (within 60 months) – 2-year suspension (mand) §28-1321(G)(3) and (L)⁴⁷
 A person under 21 years old who has been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in the body) is subject to the implied consent law. §28-1321(A)(1)

Other:

⁸¹ "Except for another violation of this article [the drunk driving law provisions], the State shall not dismiss a charge of violating any provision of this article unless there is an insufficient legal or factual basis to pursue that charge." §28-1387(H)

⁴⁷ Effective February 1, 2006, after completing not less than ninety consecutive days of the period of suspension and serving the minimum period of incarceration, a person whose driving privileges have been suspended for refusal to submit (implied consent) to a BAC test or revoked for extreme and aggravated DUI may apply to MVD for a special ignition interlock (IID) restricted driver license that allows a person to operate a motor vehicle with an IID during the period of suspension or revocation, under the following circumstances:

- a. between the person's residence and employment during specified periods of time while at employment.
- b. between the person's residence, employment and secondary or postsecondary school according to the person's work and school schedule.
- c. between the person's residence and a treatment or screening facility for scheduled appointments.
- d. between the person's residence and the office of the person's probation officer for scheduled appointments.
- e. between the person's residence and the office of a physician or other health care professional.
- f. between the person's residence and a certified IID service facility. § § 28-1401, 28-1402, 28-1321P

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment/Fine/Term:

I. First offense – Class 1 misdemeanor – **Not more than 6 months** (with 10 con days), **Not more than \$2,500, plus additional \$500 mandatory assessment**; second offense⁴⁸(within 60 months) – Class 1 misdemeanor – **Not more than 6 months** (with 90 days), **not more than \$2,500, plus additional \$1,250 mandatory assessment.**

II. .15 Offense – first offense – Class 1 misdemeanor – **Not more than 6 months** (with 30 con days), **Not more than \$2,500, plus additional \$1,000 mandatory assessment**; second offense (within 60 months) – Class 1 misdemeanor – **Not more than 6 months** (with 120 days), **not more than \$2,500, plus additional \$1,250 mandatory assessment.**

III. **Aggravated DWI***– Class 4 felony-**2½ to 12 years**⁴⁹, **not more than \$150,000.** §§13-604, 13-701, 13-707, 13-801, 13-802, 28-1381, 28-1382 and 28-1383

Persons Under 21 Years Old: Operating a motor vehicle with any "Spirituous Liquor" in the body. Class 1 misdemeanor – **Not more than 6 months/not more than \$2,500.** §§4-244(33) and 4-246(B), 13-701, 13-707, 13-801 and 13-802

Mandatory Minimum Term:

I. First offense – **24 consecutive hours**⁵⁰ §28-1381(J) Second offense⁵¹ (within 60 months) – **30 consecutive days** §28-1381(L)

II. .15 Offense – first offense – **10 consecutive days** §28-1382(E); second offense (within 60 months) – **60 consecutive days** §28-1382(G)

III. Aggravated DWI*-third offense (within 60 months) – **4 months**⁵² §28-1383(D); fourth and subsequent offense (within 60 months) – **8 months** §28-1383(E)

⁸³ For sentence enhancement purposes, a prior offense includes any previous drunk driving offense.

Child Endangerment: A person commits a Class 6 felony (Aggravated DWI), if he/she violates the drunk driving laws while transporting a passenger who is <15 years old. Sanctions: Imprisonment – first Offense – 1 year; with one prior felony conviction – 1 to 2.5 years; with two or more prior felony convictions-3 to 4.5 years; fine – \$150,000. Minimum Sanctions: For first and second offenses the minimum sanctions for drunk driving offenses apply, plus additional \$1,500 mandatory assessment. The minimum applicable sanction will depend on whether the offender was convicted under §28-1381 or §13-1382 (.15 offense); and, for third or subsequent offenses, the minimum sanctions are the same as for multiple offenses under the Aggravated DWI law. §§13-604(A), (C) and (U)(1)(a), 13-701(C), 13-801, and 28-1383(A)(3), (F), (G) and (L)(2) **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. Nichols*, 819 P.2d 995 (Ariz. App. 1991), and *Snow v. Superior Court of Arizona*, 903 P.2d 628 (Ariz. App. 1995), see also *Martzolf v. Superior Court*, 913 P. 2d 1373 (Ariz. App. 1995)

⁸⁴ Imprisonment sanctions for Class 4 felony: first Off – 2½ to 3 years; with one prior felony conviction – 3 to 6 years; with two or more prior felony convictions – 8 to 12 years. §§13-604(A), (C) and (U)(1)(a)

⁸⁵ Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

⁸⁶ For sentence enhancement purposes, a prior offense includes any previous drunk driving offense.

⁸⁷ A limited furlough may be granted. §31-233(B)

Mandatory Minimum Fine (\$):	<p><u>Persons Under 21 Years Old:</u> Operating a motor vehicle with any "Spirituos Liquor" in the body. None I. <u>First offense</u> – Class 1 misdemeanor – \$250; <u>second offense</u> – Class 1 misdemeanor (within 60 months) – \$500; II. <u>.15 Offense</u> – Class 1 misdemeanor – \$250 (and a \$250 assessment); <u>second offense</u> – Class 1 misdemeanor (within 60 months) – \$500 (and a \$250 assessment) III. <u>Aggravated DWI*</u>- Class 4 felony – None <u>Persons Under 21 Years Old.</u> Operating a motor vehicle with any "Spirituos Liquor" in the body. None</p>
Other Penalties: Community Service:	<p><u>First and second offenses (including .15 offenses)</u> – Yes⁵³ Discretionary with the court. The number of hours is not specified in the law. §§28-1381(I)(3) and (K)(3) and 28-1382(D)(4) and (F)(4); <u>third and subsequent offense</u> – Community service cannot be assigned. §11-459(R)</p>
Restitution (e.g., Victim's Fund):	<p>Yes A victims' compensation fund §41-2407 Where there was an economic loss to a victim, the <u>Court may order that all or any portion of the fine be allocated as restitution.</u> §13-804</p>
Other:	<p>Driver Training Course. A person may be required to attend and successfully complete a driver-training course. §28-3306. This requirement is mandatory for first time offenders under the age of 18. §28-3321 Probation (Discretionary). <u>First or second offense</u> (including <u>.15 offenses</u>) – Not more than 5 years; <u>Aggravated DWI Offenses*</u> – Not more than 10 years §13-902(B). Probation may be extended if a condition of probation, such as restitution, is not met. §13-902(c) Assessments: Under §§12-116.01 and 12-116.02, the court is to levy respectively penalty assessments of 47 percent, 7 percent, 3 percent, and 13 percent of the fine imposed. These assessments may be waived if they would work a hardship on the offender or their family. Reimbursement: The court shall order misdemeanants sentenced to a jail term to reimburse for costs, §13-804.01, and the court may require reimbursement for any public costs incurred pursuant to defendant's case. §13-809.</p>
Administrative Licensing Actions:	

⁸⁸ first offenders are eligible for community service after having served 24 consecutive hours in jail. Second offenders are eligible for community service after they have served 15 consecutive days in jail. §§9-499.07(N) and 11-459(M)
***Definition of Aggravated DWI Based on Prior Offenses.** “Within a period of sixty months commits a third or subsequent violation of section 28-1381 [regular DWI offense], section 28-1382 [.15 offense] or this section [§28-1383] or is convicted of a violation of section 28-1381, section 28-1382 or this section and has previously been convicted of any combination of convictions of section 28-1381 or 28-1382 of this section ...” §28-1383(A)(2)

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

Yes. $\geq .08$ ($\geq .04$ for Commercial motor Vehicle Operators) **Suspension – Not less than 90 consecutive days (30 cons days mand)⁵⁴ §28-1385(A) and (E)**

The procedures of the admin. per se law also apply to persons under 21 years old who have been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in the body). The admin per se law does not appear to actually authorize a license suspension for a violation of §4-244(33). It may well be that the legislature intended to impose admin. per se license suspensions for a §4-244(33) offense but the language used in the admin. per se law is not clear on this point.

Other:

Under §§28-3306(A)(1) and 28-3315(A), it may be "possible" to suspend/revoke a person's license for not more than 1 year if he/she has "committed" an offense that usually requires license revocation (e.g., a second DWI offense). Such action may be taken without a preliminary hearing and could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev) and Term
of License Withdrawal:

I. Except as noted in II, first offense (including .15 offenses) – **Suspension – not less than 90 consecutive days nor more than 1 year**⁵⁵; second offense (including .15 offenses) – **Revocation – 1 year**; Aggravated DWI offenses* – **Revocation-3 years**
II. Driving under the influence of a controlled substance or with any amount of a controlled substance in the body: first offense or second offense (within 60 months) – **Revocation – 1 year**; Aggravated DWI offenses* – **Revocation-3 years**
§§28-1381(K)(4), 28-1382(F)(5), 28-1383(J)(1), 28-1387(D), 28-3304(A)(2), (8) and (9) and 28-3315
Persons Under 18 Years Old: A person <18 years old convicted of either a DWI offense (under §28-1381 or §28-1382 [.15 offense]) or driving with any "spirituous liquor in the body" (under §4-244(33)) is subject to a **suspension for 2 years**. However, if he/she is convicted of an Aggravated DWI offense (§28-1383), he/she is subject to a **suspension for 3 years**. This licensing action is in addition to any other sanctions

⁸⁹ For an admin. per se violation where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction within 60 months or (3) a refusal to submit to a chemical test within 60 months, the license suspension period is not less than 30 consecutive days (mandatory) and a restricted license for not less than 60 consecutive days. §§28-1385(F) and 28-1387(E)

⁹⁰ This licensing action does not apply to first and second offenders who have been suspended pursuant to either the implied consent or the admin. per se laws. §28-1387(D)

*See the Definition of Aggravated DWI Based on Prior Offenses.

that may be imposed. This action is not mandatory. Restricted driving privileges are available. §28-3320 Persons ≥18 but <21 Years Old. There appears to be no licensing sanction against a person who is ≥18 but <21 years old who operates a motor vehicle with any "spirituous liquor" in the body. §§4-244(34) and 4-246(B).

Mandatory Minimum Term of Withdrawal:

ALL OFFENSES: first offense – 90 consecutive days^{56and57} Second offense – 1 year Third and subsequent offense – 3 years

Other:

Rehabilitation:

Alcohol Education:

First or second offense – Yes.⁵⁸ §28-1387(B), mandatory for Aggravated DWI cases. §28-1383H First, second, third or sub. offenses – Yes. §28-1387(B)

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Forfeiture (Mandatory): The vehicle used in the offense and owned by the offender is forfeited for (1) a third or subsequent DWI offense, (2) a DWI offense while transporting a child <15 years old or (3) a DWI offense while the license is still suspended or revoked for a prior DWI offense. §28-1384(A)

Terms Upon Which Vehicle

Will Be Released:

N/A

Miscellaneous Sanctions

Not Included Elsewhere:

Home Detention (Work Release): Only first and second DWI offenders (including .15 offenders) are eligible for the "home detention" (or work release) program. However, before starting this program first offenders must complete 24 consecutive hours in jail and second offenders must complete 15 consecutive days in jail. §§9-499.07(N) and 11-459(M) and (R) **Ignition Interlock:** The court **SHALL** require persons who are convicted of the following offenses to equip vehicles operated with "ignition interlock" devices for **1 year** at the conclusion of the license suspension/revocation period or on the date of conviction whichever is later: (1) A second drunk driving offense under §28-1381; (2) a third or

⁹¹ For a drunk driving offense conviction, where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction within 60 months or (3) a refusal to submit to a chemical test within 60 months of the DWI offense, the license suspension period is not less than 30 consecutive days (mandatory) and a restricted license for not less than 60 consecutive days. §§28-1385(F) and 28-1387(E)

⁹² This suspension does not apply to first or second offenders who have been suspended pursuant to either the implied consent or admin. per se laws. §28-1387(D)

⁹³ If a defendant has been ordered to participate in either an alcohol education or treatment program, his/her license cannot be restored until they prove that he/she has completed such program. §28-3319(C)

subsequent drunk driving offense under §28-1383 (Aggravated DWI); (3) a drunk driving offense where the offender is driving on a suspended or revoked license for a prior DWI offense or a prior admin. per se violation(Aggravated DWI); (4) a first or second .15 offense; and, (5) a drunk driving **child endangerment** offense. §§28-1381(K)(4),28-1382 (D)(5)and(F)(5),28-1383(J)(1), and 28-3319 (D)and(E).

Incarceration Costs: All drunk driving law offenders must be assessed the costs of their incarceration. The costs charged are based on the offender’s financial capabilities. §§28-1444 and 13-804.01.

EMS Costs: A person convicted of a DWI offense who as a result of such offense has negligently caused an accident that resulted in an emergency response is liable for the expenses associated with the response, liability not to exceed \$1,000 per accident. §28-1386(A) and (B).

Prison Furlough: Available for third and subsequent offenders §31-233) **Under 18 Years Old:** first offense – Incarceration for **24 consecutive hours**; subsequent offense (within 60 months) – Incarceration for **30 consecutive days** in a juvenile detention center or in the dept of juvenile corrections. In addition, first or subsequent offenders are subject to a fine of **\$100 to \$500** plus at least 80 hours of community service. They must also undergo alcohol screening and may, depending upon the results of the screening, be required to attend an alcohol education or treatment program. §8-343(A), (B) and (D)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

No⁵⁹

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if while driving a CMV that person: (1) has a BAC/BrAC ≥.04; or (2) is under the influence of intoxicating liquor or a controlled substance. For a subsequent violation, the "disqualification" is for life; however, for a second violation, the period may be reduced to 10 years. A CMV operator is subject to the

⁹⁴ I. A person who causes a death while committing certain traffic violations (failure to stop a red light, failure to yield to on coming traffic while making a left turn and failure to stop at a stop sign) is subject to a “civil penalty” of not more than \$1,000, license suspension, community service, and must complete a Traffic Survival School. §28-672(C) and (D) II. It is an “aggravating circumstance” for sentencing purposes for a person to commit either aggravated assault, negligent homicide, manslaughter or second degree murder while driving with a BAC≥.15 §13-702.

normal DWI sanctions. Under the regular DWI law, it is illegal per se for a person to drive a CMV with a BAC/BrAC $\geq .04$. Also, a CMV operator is subject to the sanctions and procedures of the admin. per se law if operating a CMV with a BAC/BrAC $\geq .04$. §§28-101(2), 28-101(7), 28-1301, 28-1381(A)(4), 28-1385(A)(2)(b), and 28-3312 The State has also adopted Federal CDL disqualification (which are similar to the above actions) and out-of-service provisions via §28-5204(B). Under these provisions, a person holding a CDL must be placed “out-of-service” for 24 hrs if operating a CMV with any measurable or detectable amount of alcohol in the system. 49 CFR 383.51 and 392.5

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Note: License revocation for 180 days pursuant to a civil penalty. §28-672

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote No. ⁶⁰.

Sanction:

Criminal:

Imprisonment (Term):

Class 1 Misdemeanor – Not **more than 6 months**
Class 4 felony-Any DWI offense and driving on a suspended/revoked license for a previous DWI conviction⁶¹ (Aggravated DWI) – **2½ to 12 years**⁶²
§§13-701, 13-707, 13-801, 13-802, 28-1716, 28-1383 and 28-3473(B)

Mandatory Minimum Term

of Imprisonment:

Class 1 Misdemeanor offense – **48 consecutive hours**
§28-3473(B) Class 4 felony offense – **4 months** §28-1383(D)

⁹⁵ I. The law specifically provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. The law provides for the following sanctions for a violation of an “out-of-service” order. A civil penalty of at least \$1,000. §28-5241(B), (D)(1) and (F) In addition, a person is subject to the following CDL disqualification periods: first violation – 90 days (mand); second violation (within 10 years) – 1 year (mand); and, third or subsequent violation (within 10 years) – 3 years (mand). If the violation involved the transportation of hazardous materials, the disqualification periods are as follows: first violation-180 days (mand); and, second or subsequent violation (within 10 years) – 2 years (mand). §28-3312(B) and (C)

⁹⁶ See "Forfeiture" under Vehicle Impoundment/Confiscation.

⁹⁷ Imprisonment sanctions for Class 4 felony: first Off-2½ to 3 years; with one prior felony conviction-3 to 6 years; with two or more prior felony convictions-8 to 12 years. §§13-604(A), (C) and (U)(1)(a) **Temporary Impoundment.** An offender’s vehicle may be immediately impounded for 30 days if he/she has been arrested for either (1) driving while revoked, revocation for any reason; (2) driving while suspended where the suspension was based on driving under the influence; (3) driving while suspended where the suspension was based on a drunk driving offense; or (4) driving while suspended where the suspension was based on the frequency of traffic law violation convictions. §28-3511. However, the vehicle may be released prior to the end of the 30-day period if either the offender’s driving privileges have been reinstated or the offender’s spouse enters into a 5- year agreement with the State not to allow an “unlicensed driver” to operate the vehicle. §28-3512.

Fine (\$ Range):

Class 1 Misdemeanor offense – Not more than \$2,500. §13-802 Class 4 felony offense – Not more than \$150,000. §13-801

Assessments. An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 12-116.02

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Class 1 Misdemeanor offense – For driving while suspended– suspension. For driving while revoked – Revocation §28-3473(D) Class 4 felony – Revocation §28-1383(I)

Length of Term of License
Withdrawal Action:

Class 1 Misdemeanor offense – Suspension equal to original suspension period not to exceed one year from the date of reinstatement. **Revocation** for one additional year of revocation. §28-3473(D) Class 4 felony-3 years §28-1383(I)

Mandatory Term of License
Withdrawal Action:

Class 1 Misdemeanor offense – Suspension equal to original suspension period. Other not to exceed one year from the date of reinstatement. **Revocation** for one additional year §28-3473(D) Class 4 felony-3 years §28-1283(I)

Habitual Traffic Offender Law:

State Has Such 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:

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 §28-668

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes** §28-668
Vehicle Passengers: **No**
Pedestrian: **No**

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§4-101(16) and 4-244(9) and (16)
Minimum Age (Years) Possession: **21** There is an exemption for religious services or
ceremonies. §§4-101(16), 4-244(9) and 4-249
Minimum Age (Years) Consumption: **21** There is an exemption for religious services or
ceremonies, or for a bona fide medicinal purpose.
§§4-101(16), 4-226, 4-244(40) and 4-249

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §4-311. See Footnotes ⁶³, ⁶⁴ and ⁶⁵
"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):

Yes *Ontiveros v. Borak*, et al., 667 P.2d 200 (Ariz. 1983), and *Brannigan et al. v. Raybuck*, 667 P.2d 213 (Ariz. 1983)

Dram Shop Actions-Social Hosts:

Yes (Limited) Liability is limited to the actions of intoxicated minors. §§4-301, 4-312(B), *Estate of Hernandez v. Board of Regents*, 866 P.2d 1330 (Ariz. 1994)*, *Petolicchio v. Sanata Cruz County Fair*, 866 P.2d 1342 (Ariz. 1994), *Knoell v. Cerkvenik-Anderson Travel, Inc.*, 891 P.2d 861 (Ariz. App. 1994)**, *Bruce v. Chas Roberts Air Conditioning, Inc.*, 801 P.2d 456 (Ariz. App. 1990), and *Keckonen v. Robles*, 705 P.2d 945 (Ariz. App. 1985), and *Andrews, Ex Rel. Woodward v. Eddie's Place*, 16 P. 3d 801 (Ariz. App. Div 2, 2000).

⁹⁸ The law, §4-311, limits liability to situations where the injury causing patron was either (1) "obviously intoxicated" or (2) "under the legal drinking age."

⁹⁹ Under Article 18, §6 of the Arizona Constitution, a person has the right to a full recovery for any injuries sustained. However, §4-312(B) restricts an injured person's right to a full recovery in dram shop situations by providing that §4-311 is the exclusive remedy available at law. And, as noted above in Footnote No.1, this later provision restricts liability to certain factual situations. As a result, the Arizona Court of Appeals declared §4-312(B) unconstitutional and held that an injured party in a dram shop type action has the right to full recovery via common law negligence under *Ontiveros*. Accordingly, the court determined that the plaintiff did not have to establish that the injury causing patron was "obviously intoxicated." *Young through Young v. DFW Corp.*, 908 P.1 (Ariz. App. Div. 2 1995) (Review denied by the Arizona Supreme Court.) Note: Since the matter was not argued by the parties, the court, in *Young*, specifically stated that it would not address the issue of whether the restrictions contained in §4-311 are unconstitutional.

¹⁰⁰ In *Andrews*, the court noted that, within constitutional limitations, the legislature may either change or abrogate common law. However, the court went on to hold that the legislature did not specifically abrogate the holding in the *Ontiveros* decision. Thus, a person may bring a cause of action for damages either under the dram shop law or via common law negligence.

Other: **None. See Footnote ⁶⁶.**

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

Type of Criminal Action:

Class 1 Misdemeanor §§4-244(14) and 4-246(B)

Term of Imprisonment:

Not more than **6 months** §13-707(A)

Fine (\$ Range):

Not more than **\$2,500** for individuals §13-802(A); not
more than **\$20,000** for businesses §13-803

Assessments. An offender is also subject to
assessments which can be ≤60 percent of the fine
imposed. §§12-116.01 and 12-116.02

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes. Suspension or revocation⁶⁷ §4-210(A)(9)

Length of Term of License

Withdrawal:

Length of term not fixed

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 1 Misdemeanor⁶⁸ §§4-244(9) and 4-246(B)

Term of Imprisonment:

Not more than **6 months** §13-707(A)

Fine (\$ Range):

Not more than **\$2,500** for individuals §13-802(A); not
more than **\$20,000** for businesses §13-803

Assessments. An offender is also subject to
assessments which can be ≤60 percent of the fine
imposed. §§12-116.01 and 12-116.02

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. Suspension or revocation §4-210(A)(9)

Length of Term License

Withdrawal:

Length of term not fixed

¹⁰¹ Note: Sec. 4-312(A), which abolished commercial server liability in situations involving injuries sustained either (1) by a patron due to his/her own intoxication or (2) by a patron as the result of an accompanying intoxicated patron's actions, was declared in violation of the State's constitution. *Schwab v. Matley*, 793 P.2d 1088 (Ariz. 1990). In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of \$200 to \$3,000. §4-21.01

*See remanded case on appeal to the State supreme court for the second time, *Estate of Hernandez v. Flavio*, 930 P.2d 1309 (Ariz. 1997).

** The Arizona Supreme Court reversed and vacated the Court of Appeals decision and reinstated the alcohol-related counts in *Knoell v. Cerkenik-Anderson Travael, Inc.*, 917 P. 2d 689 (Ariz. 1996).

¹⁰² In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of \$200 to \$3,000. §4-21.01

¹⁰³ In addition to the sanctions given under separate provisions of the law, it is a Class 2 misdemeanor to give or furnish "spirituous liquor" to a person who is under 21 years old. The sanctions for this offense are a jail term of not more than 4 months and/or a fine of not more than \$750. §§4-244(16), 4-246(A), 13-707(A) and 13-802(B)

Anti-Happy Hour Laws/Regulations: Yes⁶⁹ §4-244(24)

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 §4-251(A)(2) Violations of the open container/anti-consumption law are Class 2 misdemeanors.

Anti-Consumption Law (Yes/No): Yes. Driver and passengers §4-251(A)(1)

¹⁰⁴ The Arizona Court of Appeals has held that the Anti-Happy Hour Law applies only to the number of drinks sold. This law does not limit the alcoholic content or size of such drinks. *Callender v. Transpacific Hotel Corp.*, 880 P.2d 1103 (Ariz. App. Div. 2 1993)