

STATE:

FLORIDA

General Reference:

Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages ²⁵⁴ §316.193(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥.08 ²⁵⁵ §§316.193(1)(b) and (c); Persons under 21 ≥.02 §322.2616(i)(a)3
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of a Controlled Substance or Chemical Substance listed respectively in chapter 893 and §877.111
Other	§§316.193(1)(a) A BAC/BrAC ≥.08 ²⁵⁶ is <i>prima facie</i> evidence of driving under the influence. ²⁵⁷ §316.1934(2)(c) See the Special Note below. A DWI offender cannot be released from custody until (1) he/she is no longer under the influence of alcohol or other chemical substance, (2) their BAC/BrAC is <.05 or (3) eight hours have elapsed from the time of their arrest. §316.193(9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes §§316.1932(4)(a) and 322.2616(17)
Implied Consent Law:	Yes §§316.1932(1)(a) and 322.2616(1)(b) ²⁵⁸
Arrest Required (Yes/No):	Under§316.1932(1)(c), an arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. <i>Kenson v. State</i> , 577 So.2d 694 (Fla. App. 3 Dist. 1991)

Special Note: A jury instruction that was based in part on a verbatim reading of §316.1934(2)(c) was held to be unconstitutional in that it created a mandatory “irrebuttable” presumption that shifted the burden of proof to the DWI offense to the defendant. *Wilhelm v. State*, 568 So.2d 1 (Fla. 1990). Notwithstanding this case, the statutory language was held constitutional in a prior decision. *State v. Rolle*, 560 So.2d 1154 (Fla. 1990) and see *Register v. State* 582 So.2d 762 (Fla. App. 1 Dist. 1991) and *Cardenas v. State* 816 So.2d 724 (Fla. App. 1 Dist. 2002) that held that a similar instruction merely created a permission inference that the jury was free to accept or reject. It appears that the law on this subject remains in conflict. Note: A Federal court has held, in similar circumstances, that there was no constitutional infirmity. However, the Federal court did express its concern that a jury could be confused with the term “*prima facie*”. Despite this concern, the court felt that no

²⁵⁴ The offense of “driving under the influence” includes (1) driving under the influence of alcoholic beverages or (2) driving with a blood or breath level of .08 or more. §316.193(1)(a) and (b) and *State v. Rolle*, 560 So.2d 1154 (Fla. 1990)

²⁵⁵ 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.

²⁵⁶ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liter of breath. §§316.193(1)(b) and (c), 316.1932(b)1 and 316.1934(2)(c)

²⁵⁷ If the implied consent law’s test procedures are not followed, the State can still introduce alcohol concentration, obtained via a blood sample, into evidence via common law. However, if this is done, the statutory “presumptions” cannot be used as they are based on alcohol concentrations obtained via the implied consent law. *State v. Miles*, 775 So.2d 950 (Fla. 2000)

²⁵⁸ Under §322.2616(1)(b), a person under 21 years old may be lawfully detained and requested to submit to a chemical test if a there is probable cause to believe that they were driving while under the influence of alcohol or with any alcohol level.

unconstitutional mandatory presumption had been created when this instruction was viewed in conjunction with the other jury instructions that were given. *Santiago Sanchez Defuentes v. Dugger*, 923 F.2d 801 (11th Cir. 1991)

Chemical Breath Tests for Alcohol Concentration:

(con't)

Implied Consent Law

Applies to Drugs (Yes/No):

Yes §316.1932(1)(a) Limited to the testing of urine.

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes²⁵⁹ (Criminal Cases) §§316.1932(1)(a) and 316.1932(1)(b)

A driver may be compelled to provide a blood sample for testing only if he/she has been involved in an accident resulting in either death or serious bodily injury to another. §316.1933(1)²⁶⁰, or there is reasonable cause to believe a DUI occurred, the driver is at a hospital for treatment and a breath or urine test is impractical or the person is unconscious or otherwise unable to refuse. 316.1932 (1)(c) and *State v. Kliphouse* 771 So.2d 16 (2000) (Fla. App. 1 Dist. 2002).

Chemical Tests of Other Substances for

Alcohol Concentration Which Are

Authorized Under the Implied Consent Law:

Blood:

Yes, Limited A blood test, for the purposes of implied consent, may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. §316.1932(1)(b)

Urine:

Yes, Limited Under §316.1932(1)(a), there is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Yes Applies to (1) DWI, (2) manslaughter resulting from the operation of a motor vehicle and (3) vehicle homicide offenses. §316.656(1)

Anti-Plea-Bargaining Statute (Yes/No):

Yes Applies to (1) DWI where the alcohol concentration is 0.20 or more, (2) to DWI where there has been property damage, (3) to manslaughter related to the operation of a motor vehicle and (4) to vehicle homicide. §316.656(2)

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No However, all drunk driving offenders must undergo a “psychosocial evaluation”. §316.193(5)

²⁵⁹ A refusal to submit to field sobriety testing is admissible into evidence at a DWI trial. §316.1932(4)(b), *State v. Taylor*, 648 So.2d 701 (Fla. 1995), *State v. Cook*, 659 So.2d 473 (Fla. App. 2 Dist. 1995), and *State v. Burns*, 661 So.2d 842 (Fla. App. 5 Dist. 1995)

²⁶⁰ *State v. Slaney*, 653 So.2d 422 (Fla. App. 3 Dist. 1995), *Robertson v. State*, 604 So.2d 783 (Fla. 1992), *Carbone v. State*, 564 So.2d 1253 (Fla. App. 4 Dist. 1990), and *State v. Perez*, 531 So.2d 961 (Fla. 1988)

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**

Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**

Administrative Licensing Action

(Susp/Rev):

First refusal – Suspension for **1 year** (90 days mand. A hardship license is available after this mandatory period.);

Subsequent refusals– suspension for **18 months**

(Mandatory)²⁶¹ §§316.1932(a)(1), 322.2615(8)(a) and (10) and 322.271(2)(a)

Persons Under 21 Years Old. First refusal – Suspension for **1 year** (30 days mand)²⁶²; Subsequent refusals– suspension for

18 months (30 days mand) §322.2616(2), (9) and (11)

Under §322.291, an implied consent law violator is required to complete a driver-training course.

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Footnote Nos. ²⁶³ and ²⁶⁴.

Imprisonment:

First offense (misdemeanor) – **Not more than 6 months**;

second offense (misdemeanor) – **Not more than 9 months**;

third offense within 10 years (third degree felony) third offense >10 years (misdemeanor) – **Not more than 12 months**;

fourth or sub. offense (third degree felony) – **Not more than 5 years** §§316.193 and 775.08(2)

second offense – 10 days (w/48 con hrs) if second offense was within 5 years of a previous DWI conviction §316.

193(6); third or sub. offense – 30 days (w/48 con hrs) if third or sub. offense was within 10 years of a previous DWI offense. 316.193(6)

Fine:

²⁶¹ The “actual” suspension period appears to be only 17 months. The law provides that a person be issued a 30-day temporary license at the time of arrest. However, the law now provides that the suspension “commences” at the time of arrest or issuance of the notice of suspension, “whichever is later” the person may be only denied driving privileges for 17 months. §322.2615(b)(1a), (2) and (4) Unlike the mandatory suspension associated with a first refusal, the law does not provide that the mandatory suspension period start after the expiration of the 30-day temporary license.

²⁶² The law provides that the suspension “commences” at the time notice is given. This is usually after the person has been stopped by a law enforcement officer. However, the 30-day mandatory period begins after the temporary permit, issued at the time of the stop, expires. A hardship license is available after this mandatory period. §322.2616(9) and (11)

²⁶³ For “under the influence” offenses involving: (1) Property damage or personal injury-Misdemeanor of the first degree – **Not more than 1 year** in jail, a fine of not more than **\$1,000**; (2) serious bodily injury-third degree felony – **Not more than 5 years** in prison, a fine of not more than **\$5,000**; or, (3) a BAC/BrAC ≥0.20 or a passenger under 18 years old (**child endangerment**): first offense – **Not more than 9 months** in jail, a fine of **\$500 to \$1,000**; second offense – **Not more than 12 months** in jail, a fine of **\$1,000 to \$2,000**; third offense – **Not more than 12 months** in jail, a fine of **\$2,000 to \$5,000** The minimum mandatory sanctions for “regular” DWI offense convictions also apply to these offenses. §§316.193(3) and (4), 775.082, 775.083 and 775.084

²⁶⁴ The court at its discretion may require a defendant to serve all or any part of a sentence of imprisonment for a DWI offense in either an alcohol or a drug residential treatment program. §316.193(6)(k)

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Amount (\$ Range):	First <u>offense</u> – \$250 to \$500 ; second <u>offense</u> – \$500 to \$1,000 ; third <u>offense</u> >10 years – \$1,000 to \$2,500 ; <u>fourth or sub. offense</u> (third degree felony) – \$1,000 to \$5,000
Mandatory Minimum Fine (\$):	First <u>offense</u> – \$250 ; second <u>offense</u> – \$500 ; third <u>or subsequent offense</u> – \$1,000
Other Penalties:	Anyone suspended for DUI must obtain a 6-month vehicle registration as a condition of reinstating the license, subject to renewal during the 3-year period that financial responsibility requirements apply. § 32.055(b) In addition, that person shall maintain non-cancelable liability coverage for each motor vehicle registered for 3 years. § 324.131
Community Service:	<u>First offense</u> – 50 hours or if the court thinks it in the best interests of the State, a \$10 fine for each hour of community work otherwise required notwithstanding other sanctions. This sanction for first offenders is part of mandatory probation which is not to exceed 1 year . §316.193(6)(a) Also, under §775.091, the court may order a defendant (a first or sub. offender) to perform specified public service.
Restitution (e.g., Victim’s Fund)	(1) The court may order a defendant to pay restitution to a victim. §775.089. (2) In addition, the State has a victim’s compensation fund. A victim of DWI offense is eligible to receive payments from this fund. §96.01 et seq.
Other:	Mandatory Probation. First offenders must be placed on probation for 1 year. §316.193(6)(a) Crimes Compensation Trust Fund. The following surcharges, costs and fines are paid into the Crimes Compensation Trust Fund: (1) A surcharge which is 5 percent of the fine; (2) a special cost of \$50 ; and, (3) if injury or death resulted from the offense, a special fine of not more than \$10,000 . {This fine is contingent on the offender’s ability to pay.} §§960.25, 775.0835(1) and 938.03 Special Court Cost. A court cost of \$135 is added to any fine and is distributed as follows: \$25 is deposited into the EMS Trust Fund; \$50 is deposited into the Criminal Justice Standards and Training Trust Fund; and, \$60 is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. §938.07 Alcohol/Drug Assessment. In addition to any other fine, a defendant may be assessed an amount not to exceed the maximum fine authorized for the offense. This assessment is used to finance alcohol and drug programs. §§893.13 and 893.165 Reinstatement Fee. In addition to any other license reinstatement fee, a person, who has been either convicted of a DWI offense or found in violation of the admin. per se law, must pay a special fee of \$105 . This fee is paid into the Highway Safety Operating Trust Fund. §322.12(2) Under §322.291, a defendant is required to complete a driver-training course.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes \geq .08 BAC/BrAC §§316.193 and 322.2615(1)(a) A violation– suspension **6 months** (30 days mand. A restricted hardship license may be issued after this mandatory period.) A violation where there has been two or more DWI offenses – **Suspension 1 year** (mand)²⁶⁵ §§316.193, 322.2615(1)(a), (1)(b), (8)(b) and (10) and 322.271(2)(a) Persons Under 21 Years Old. \geq .02 BAC/BrAC first violation– suspension **6 months** (30 days mand); Subsequent violations– suspension **1 year** (30 days mand) If BAC/BrAC is \geq .05, the suspension remains in effect until the driver completes a substance abuse course. §322.2616(1)(a), (2), (9) and (11) Under §§322.27(a)(1) and 322.28(1), a person’s license may be suspended for not more than 1 year if he/she has “committed” an offense that usually requires license revocation (e.g., DWI). 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):

First offense²⁶⁶and²⁶⁷ – Revocation; second offense (within 5 years) – **Revocation**; third offense (within 10 years) – **Revocation**; fourth offense – **Revocation** §322.28 Revocation is permanent if there is an alcohol offense in connection with a vehicle manslaughter/homicide offense. §§322.26 and 322.28(2)(e)

Term of License Withdrawal

(Days, Months, Years, etc.):

First offense – **180 days – 1 year**; second offense (within 5 years) – Not less than **5 years**; third offense (within 10 years) – Not less than **10 years**; and fourth offense – **Permanent** §322.28

Mandatory Minimum Term of

Withdrawal:

First offense – **180 days**; second offense (within 5 years) – **5 years**²⁶⁸and²⁶⁹ Third offense (within 10 years) – **10 years**; fourth offense – **Permanent** §§322.271(2)(b) and 322.28

Other:

Rehabilitation:

²⁶⁵ The “actual” suspension period appears to be only 11 months. The law provides that a person be issued a 30-day temporary license at the time of arrest. However, since the law also provides that the suspension “commences” at the time of arrest or issuance of the notice, “whichever is later” the person may only be denied driving privileges for 11 months. §322.2615(b)(1.b), (2) and (4) Unlike the mandatory suspension associated with an admin. per se violation where there has not been a prior drunk driving offense, the law does not provide that the mandatory suspension period start after the expiration of the 30 day temporary license.

²⁶⁶ Under §316.655(2), a court can suspend/revoke a driver’s license, in addition to any other sanction which may be authorized, for a violation of any law regarding motor vehicles. In considering whether to exercise this privilege, the court considers the “totality of the circumstances,” the need to protect the motoring public and the severity of the offense committed.

²⁶⁷ This revocation applies to both non-injury and injury related DWI offense convictions. §322.28(2)

²⁶⁸ A temporary restricted use license for business/employment may be issued. Generally, a person must have completed a substance abuse course prior to being issued this type of license. §322.271(2)(a)

²⁶⁹ After this period of time, a restricted occupational license may be issued. Before such restricted driving privileges are granted, the person must demonstrate that he/she has been drug-free for 12 months. §322.271(2)(b)

Alcohol Education:	Yes A substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. §§316.193(5) and 322.291 Such a course must be successfully completed by defendants who have been convicted of either two DWI offenses (within 5 years) or 3 such offenses (within 10 years) before the license can be restored. §322.03(2)
Alcohol Treatment: See Alcohol Education above.	If BAC/BrAC is; > .05, drivers < 21 years old must complete a substance abuse course. §322.2616(2)(c)
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Yes (Limited) -A DUI offender's vehicle is subject to forfeiture , if at the time of the DWI offense, that person was driving on a suspended or revoked license for a prior DUI driving offense. §§322.34(9)(a) and 932.701(2)(a)(9)
Terms Upon Which Vehicle Will Be Released:	None
Other:	Impoundment or Immobilization. First offense – 10 days²⁷⁰ ; second offense (within 5 years) – 30 days²⁷¹ Third offense (within 10 years) – 90 days §316.193(6)(a), (b), (c) and (d) Note: These actions are conditions of mandatory probation. The court may decide not to order vehicle impoundment or immobilization if the family of the vehicle owner “has no other public or private or public means of transportation.” §316.193(6)(g); <i>State v. Burdette</i> , 826 So.2d 1092 (Fla. App 2 Dist. 2002)
Miscellaneous Sanctions Not Included Elsewhere:	Medical Facility Visitation Requirement. A DWI offender under 18 years old may be ordered by the court to visit medical facilities that treat victims of traffic accidents. §322.0602 322.2715 Ignition interlock device-- Use of ignition interlock device ²⁷² is mandatory for at least 1 year upon a second conviction if driver qualifies for a permanent or restricted license §316.193(2)(a)(3), and for at least 2 years for any third conviction and for other extenuating circumstances. §316.193(2)(b) and (4)(c). If a first-time DUI offender was accompanied in the vehicle by a person younger than 18 years of age, the person shall have the ignition interlock device installed for 6 months for the first offense and for at least 2 years for a second offense. § 322.2715(3) {Ignition interlock device.} Also, a DWI defendant, who is placed on probation <u>and</u> who is otherwise “permitted” to operate a motor vehicle, shall be required to operate vehicles equipped with “ignition interlock” devices for not less than 6 months. §§

²⁷⁰ Applies only to vehicles used in the offense or to one vehicle owned by the offender. This action may not be concurrent with probation or imprisonment. §316.193(6)(a)

²⁷¹ Applies to all vehicles owned by the offender. This action may not be concurrent with probation or imprisonment but unlike first offenses must be concurrent with the driver’s license revocation. §316.193(6)(b) and (c)

²⁷² Upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

322.2715(1), 316.193 In addition, the licensing agency may require any person seeking reinstatement of their driving privileges to use an “ignition interlock” device on their vehicle. §322.271(2)(d) This requirement can apply to either occupational restricted or “regular” driving privileges. However, there is a limited exemption in situations where such a person is operating a vehicle while in the course of employment.

Probation Requirements. A court, under its general probation powers, may require a person convicted of a DWI offense (1) to place a **bumper sticker** on their vehicle that identifies them as a convicted DWI offender, who is operating a motor vehicle on a restricted license, or (2) to place, at their own expense, **an advertisement in a local newspaper** along with their photograph that identifies them as DWI offender. These probation conditions have been held to be constitutional under both the Federal and State constitutions. *Lindsay v. State*, 606 So.2d 652 (Fla. App. 4 Dist. 1992), and *Goldschmitt v. State*, 490 So.2d 123 (Fla. App. 2 Dist. 1986) Such a condition can also require a person to abstain from the use of alcohol. *Spry v. State*, 750 So.2d 123 (Fla. App. 2 Dist. 2000)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:²⁷³

State Has Such a Law:

Yes I. DWI (DUI) Manslaughter (a death related to a drunk driving offense)²⁷⁴-felony second degree
 II. Manslaughter (death related to vehicle operation where there is negligent action without lawful justification) – felony first degree III. Vehicle Homicide (death related to reckless vehicle operation) – felony second degree
 §§316.193(3)(c)(3), §782.07 and 782.071

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Felony second degree – Not more than **15 years**
 §775.082(3)(c)

Mandatory Minimum Term:

Fine (\$ Range):

None
 Felony second degree – Not more than **\$10,000**
 §775.083(1)(b)

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Revocation (All offenses) §322.28(3)(e) and (5)(a)

Length of Term of

Licensing Withdrawal:

I. DWI (DUI) Manslaughter-3 years (minimum) II.

²⁷³ Under §322.34(3), it is third degree felony for a person to carelessly or negligently cause death or serious bodily injury to another with a motor vehicle while the person’s license is either suspended or revoked and where the basis of the suspension or revocation was (1) a second DWI offense, (2) vehicular manslaughter, (3) vehicular homicide or (4) a DWI offense that requires an enhanced sanction. Sanctions: Jail – not more than 5 years (§775.082(3)(d); fine – not more than \$5,000 §775.083(1)(c).

²⁷⁴ The unlawful killing of a viable fetus by any injury to the mother of such child which would be murder if it resulted in the death of such mother shall be deemed murder in the same degree as that which would have been committed against the mother. § 782.09

Manslaughter-3 years (minimum); if related to a DWI offense conviction-**Permanent**
 III. Vehicle Homicide-3 years (minimum); if related to a DWI offense conviction-**Permanent** §322.28(2)(e) and (5)(a)

Mandatory Action—Minimum

Length of License Withdrawal:

I. DWI (DUI) Manslaughter-3 years II. Manslaughter-3 years; if related to a DWI offense conviction-**Permanent**
 III. Vehicle Homicide-3 years; if related to a DWI offense conviction-**Permanent**²⁷⁵ §322.28(2)(e) and (5)(a)

Other:

A defendant may be required to pay restitution to a victim. §775.089
 I. A defendant must complete a driver-training course. §322.291. The court may order a person to serve 120 hours of community service is either a trauma center or hospital. §782.071(4)

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

See Footnote No. ²⁷⁶ and the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

First offense (Misd second degree) – Not more than **60 days**; second offense (Misd first degree) – Not more than **1 year**; third or subsequent offense (felony third degree) – Not more than **5 years** §§322.34(2) and 775.082

Mandatory Minimum Term of Imprisonment:

None

Fine (\$ Range):

First offense – Not more than **\$500**; second offense – Not more than **\$1,000**; third and subsequent offense – Not more than **\$5,000** §775.083

Mandatory Minimum Fine:

None

Administrative Licensing Actions²⁷⁷

Type of Licensing Action

²⁷⁵ After 5 years, a person is eligible for restricted occupational driving privileges for not less than 1 year and unrestricted privileges thereafter. Before being granted these privileges, the person must demonstrate that he/she has been drug-free for 5 years and that he/she has completed a substance abuse driver-training course. Following the granting of such privileges, the person must continue to participate in a substance abuse program. §322.271(4)

²⁷⁶ A person who has had his/her driving privileges revoked for either a DWI or vehicle homicide offense and who causes either a death or a serious bodily injury while operating vehicle while still revoked for these offenses, commits a third degree felony. The sanctions for this offense are a term of incarceration of not more than 5 years and/or a fine of not more than \$5,000. §§322.34(3), 775.082 and 775.083

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked and the person knew that his/her driving privileges had been suspended or revoked. §322.34(2) If the person had no knowledge of such action and operate a motor vehicle, that person commits a moving traffic infraction. §322.34(1) The sanction for such an infraction is not more than \$500 (\$60 if the person does not request a hearing). §§318.14(5), 318.18(3)(a) and 322.34(1)

Special Note: The following sanctions apply if a person operates a CMV during a CDL disqualification: first off (first degree misdemeanor) a jail term ≤ 1 year and/or a fine ≤ \$1,000; second or subsequent off (third degree felony) an imprisonment ≤ 5 years and/or a fine ≤ \$5,000. And, for both first and subsequent offenders, driving privileges cannot be restored for an additional 3 months. §322.28(3) and 322.34(4)

²⁷⁷ I. The vehicle used in the offense, if it is owned of the driver, is impounded by law enforcement officials. The vehicle remains impounded until the owner presents proof either (1) of insurance or (2) of sale of the vehicle to another person. §322.34(8) and (9)

II. See Vehicle Impoundment/Confiscation.

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(Susp/Rev):	First offense – Suspension/Revocation ; second and subsequent offenses – Suspension/Revocation §322.28(3)
Length of Term of License Withdrawal Action: offenses	First offense – An additional 3 months ; second and subsequent offenses – An additional 3 months §322.28(3)
Mandatory Term of License Withdrawal Action: §322.271	No A restricted hardship license may be issued.
<u>Habitual Traffic Offender Law:</u> State Has a Such Law (Yes/No):	Yes §322.264
Grounds for Being Declared an Habitual Offender:	3 serious or 15 normal moving violations within a 5-year period.
Term of License Rev While Under Habitual Offender Status:	Revocation – 5 years §322.27(5) Note: After 12 months, the offender may have the driving privileges restored. §322.271(1)(b) Under §322.291, a driver-training course must be completed.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Third degree felony §322.34(5)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 5 years §775.082
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$5,000 §775.083
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Revocation period extended an additional 3 months §322.28(3)
<u>Other State Laws Related To Alcohol Use:</u>	
<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u>	
State Has Such a Law:	Yes
BAC Chemical Test Is Given to the Following Persons:	
Driver:	Yes
Vehicle Passengers:	No
Pedestrian:	No

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21**²⁷⁸ §562.11(1)(a) and (2)
 Minimum Age (Years) Possession: **21** Except for employment purposes §562.111
 Minimum Age (Years) Consumption: **None**²⁷⁹

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes Limited** §768.125 See Footnote Nos. ²⁸⁰, ²⁸¹ and ²⁸².
 Other State Laws Related to Alcohol Use: (continued)

“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):

No²⁸³

²⁷⁸ It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to “misrepresent” his/her age in order to obtain alcoholic beverages. §562.11 (2)

²⁷⁹ Under §562.11(1)(a), it is illegal for a licensee to allow a minor to consume alcoholic beverages on his/her premises.

²⁸⁰ This law limits liability to damages caused either (1) by selling or furnishing alcoholic beverages to persons under the legal drinking or (2) by knowingly serving alcoholic beverages to persons who are habitually addicted to alcohol. *Peoples Restaurant v. Sabo*, 591 So.2d 907 (Fla. 1991) Concerning this law, several things should be kept in mind. I. For injuries caused by a minor, the injured party must prove that alcoholic beverages were “willfully and unlawfully” served to the minor by the licensee. For injuries caused by an habitual drunkard, the injured party must prove that alcoholic beverages were only “knowingly” served by the licensee. Also, service on multiple drinks on one occasion is not sufficient to establish that a patron was an habitual drunkard. However, serving multiple drinks on numerous occasions is circumstantial evidence of such behavior. *Ellis v. N.G.N. of Tampa*, 586 So.2d 1042 (Fla. 1991), and *Fleuridor v. Surf Café*, 775 So.2d 411 (Fla. App. 4 Dist. 2001) II. Also, liability does not apply in situations where injury causing habitual drunkards are sold alcoholic beverages in closed containers. Liability only occurs if such persons are served alcoholic beverages for consumption on the premises. *Persen v. Southland Corp.*, 656 So.2d 453 (Fla. 1995)

²⁸¹ A licensee may be held liable for the actions of an intoxicated minor to whom he/she has not sold alcoholic beverages. Such is the case if an underage person is allowed to purchase alcoholic beverages where the licensee is “on notice” that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. i.e., the licensee is considered to have sold or furnished alcoholic beverages to both minors. *O’Neale v. Hershoff*, 634 So.2d 644 (Fla App. 3 Dist. 1994)

²⁸² I. A patron, who is a known “habitual drunkard,” can hold a licensee liable, under the dram shop law, for injuries they sustain as a result of becoming intoxicated at the licensee’s establishment. *Ellis v. N.G.N. of Tampa*, 586 So.2d 1042 (Fla. 1991) II. Under the dram shop law, a licensee may be liable for the injuries or death (including suicide) of an intoxicated minor patron. *Kirkman Road Sports Pub and Restaurant, Inc. v. Dempsey*, 723 So.2d 384 (Fla. App. 5 Dist. 1998) Licensees may also be liable for injuries to intoxicated minor patrons which are indirect in nature. e.g., a minor, due to his/her intoxication, was injured in a traffic accident while riding with minor driver who was also intoxicated. The court reasoned that the minor passenger’s intoxication could have obscured his judgment as to the danger of riding with a drunk driver. *Nieves v. Camacho Clothes, Inc.*, 645 So.2d 507 (Fla. App 5 Dist. 1994) In another case, the court held that a licensee may be held liable for the death of an intoxicated minor patron who was shot and killed by another person in self defense. The minor’s intoxication lead him into an altercation with an adult which resulted in the shooting. *Sipes v. Alvertson’s, Inc.*, 728 So.2d 1243 (Fla. App. 5 Dist. 1999)

²⁸³ The law limits this type of liability. It appears that previous case law has been abrogated by this statute. *Migliore v. Crown Liquors of Broward, Inc.*, 448 So.2d 978 (Fla. 1984), and *Bennett v. Godfather's Pizza, Inc.*, 570 So.2d 1351 (Fla. App. 3 Dist. 1990)

Dram Shop Actions-Social Hosts:

Limited *Bankston v. Brennan*, 507 So.2d 1385 (Fla. 1987), and *Newsome v. Haffner*, 710 So.2d 184 (Fla. App. 1 Dist. 1998)²⁸⁴, and *Trainor v. Estate of Hanson*, 740 So.2d 1201 (Fla. App. 2 Dist. 1999)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

None²⁸⁵

(continued)

Term of Imprisonment:

None

Fine (\$ Range):

None

Administrative Actions Against Owners of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

No

Length of Term of License Withdrawal:

N/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:

Misdemeanor second degree §562.11(1)(a)

Term of Imprisonment:

Not more than **60 days** §775.082

Fine (\$ Range):

Not more than **\$500** §775.083

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 revocation²⁸⁶ §561.29(1)(a) and (b)

Length of Term License Withdrawal:

Time period is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

No

²⁸⁴ I. Despite the *Bankston* decision above, an employer may be held liable, via a respondent superior, for the negligent actions of an intoxicated employee while attending a convention related to the employer's business. The court considered the employee to be "in the course and scope of his employment." *Carroll Air Systems, Inc. v. Greenbaum*, 629 So.2d 914 (Fla. App. 4 Dist. 1993)

II. In *Newsome* and *Trainer*, a social host may be held liable for a minor's injuries or death that occurred after the minor consumed alcoholic beverages at a social function given by the host. These cases are based on §856.015 that makes it a criminal offense to host an "open house party" (a general social gathering of persons) where the social host has knowledge that alcoholic beverages are being consumed by minors. The courts held that a violation of this statute, which results in either an injury or a death to a minor, creates a cause of action (negligence per se) by either the minor or the minor's estate against the social host.

²⁸⁵ It is a second degree misdemeanor (jail – not more than 60 days; fine – not more than \$500) for a licensee to sell or dispose of intoxicating liquors to an individual after the seller or dispenser has written notice that such individual is an habitual drunkard. §§562.50, 775.082 and 775.083 A licensee is also subject to license suspension under §561.29(1)(a) and (b).

²⁸⁶ Admin. sanctions may be mitigated if the licensee has been certified as a responsible vendor. Such a vendor must have provided special training to his/her employees/managers in how to sell alcoholic beverages so as not to violate the ABC laws by selling such beverages to minors. §561.701 et seq.

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

Open Container Law (Yes/No):

Yes Driver and Passengers (But this law was
modified by a July 1, 2005 amendment. §316.1936)²⁸⁷

Anti-Consumption Law (Yes/No):

Yes Driver and Passengers §316.1936

²⁸⁷ However, a bottle of wine that has been resealed and is transported pursuant to s. 564.09 is not considered an open container ... Section 564.09 provides in pertinent part: A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with and a dated receipt for the bottle of wine and full-course meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.