

STATE: IDAHO
 General Reference: Idaho Code (General Laws of Idaho Annotated)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol* §18-8004(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥ .08 ^{335and336} §18-8004(1)(a)
Presumption (BAC):	None
	<u>Persons Under 21 Years Old</u> ≥ .02 but < .08 §18-8004(1)(d)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) Intoxicating Substance (3) Any Narcotic Drug, (4) a Combination of Any Drug and Alcohol ³³⁷ §§18-8004(1)(a) and 18-8004(5)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No ³³⁸ The implied consent law, §18-8002, applies to CMV DWI offenses committed under §18-8004(1)(b) and (c).
Implied Consent Law Applies to Drugs (Yes/No):	Yes §18-8002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	Yes (Criminal Cases) <i>State v. Bock</i> , 328 P.2d 1065 (1958) criticized under other grounds in <i>State v. Cliett</i> 534 P.2d 476 (Id. 1975) and <i>State v. Curtis</i> 680 P.2d 1383 (Id. App. 1984)
Other Information:	Under §18-8002(6)(b), a law enforcement officer may order a “qualified person” to

*Under separate provisions of law, it is a misdemeanor to operate either a snowmobile or all-terrain vehicle on either a public roadway or highway while under the influence of either alcohol, drugs or any other intoxicating substance. The sanctions for this offense are a jail term for not more than 6 months and/or a fine of not more than \$300. §§18-113 and 67-7114

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/Alcohol Concentration in a “Bodily Substance” ≥ .04, (2) is under the influence of alcohol or a controlled substance (not all drugs) or (3) refuses to submit to a chemical test for an alcohol concentration (not 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 (mand). II. A person, who operates a CMV with an alcohol concentration ≥ .04 but < .08 or while under the influence of alcohol/any drug/intoxicating substances, commits a DWI offense and is subject to same criminal

³³⁵ This State’s illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of .08 or more or (2) a urine alcohol concentration of .08 or more.
³³⁶ Standards: Grams of alcohol per 100 cubic centimeters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §18-8004(4)
³³⁷ Under §37-2732C, it is a misdemeanor to be under the influence of a controlled substance on either a public roadway, a public conveyance, public property or private property. See the cited section for details.
³³⁸ The police need only “reasonable grounds” of a DWI offense before the implied consent law is applicable. §18-8002(1) However, §18-8002(4)(b) appears to indicate that “probable cause” is needed.

sanctions as other DWI offenders. III. Under separate provisions, a person who operates a CMV with an alcohol concentration $\geq .08$ or while under the influence of alcohol/any drug/intoxicating substances commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. IV. For II or III, the administrative (licensing) sanctions for a first DWI offense do not apply but they do apply for subsequent ones.

Comment: It would appear that a CMV operator who is a first offender and who is only charged with a CMV DWI offense under either II or III (§§18-8004(1)(b) and 18-8004(1)(c) respectively), (not a DWI offense applicable to all drivers) is not subject to licensing actions against their “regular” driving privileges. Of course, the CDL “disqualification” provided for in I would still apply. During period of disqualification, restricted driving privileges will not be granted. V. In addition, a CMV operator who has any “detectable” amount of alcohol in the system must be placed “out-of-service” for 24 hours. §§49-104(9), 49-105(7), 49-123(2)(c), 49-335 (Reference is made to 49 CFR part 383.), 18-8002(3)(a), 18-8004(1)(b), (1)(c) and (6), 18-8004(4) and 18-8005(2), (3), (4), and (12)

Chemical Breath Tests for Alcohol Concentration: (continued)

withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed either a DWI aggravated or homicide offense. **Comment:** This provision appears to allow law enforcement officers to obtain a blood sample via force. See *State v. Worthington* 2002 Id. App. LEXIS 112 (Id. App 2002)

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

Blood:	Yes §§18-8002(1) and 18-8004
Urine:	Yes §§18-8002(1) and 18-8004
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Evaluation Required) §§18-8004A(1)(d), (2)(e) and (3)(e) and 18-8005(9)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	First Refusal – 180 days suspended (mand); second Refusal (within 5 years) – 1 year suspended (mand) §18-8002(3)(c), (4)(b) and (4)(c)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

First offense – Misdemeanor – Not more than **6 months**; first offense with BAC/BrAC \geq 0.20- Misdemeanor – Not more than **1 year**; second offense (within 5 years) Misdemeanor-**10 days to 1 year**; second or subsequent offense with a BAC/BrAC \geq 0.20 where there has been a previous offense at or above 0.20 within 5 years – felony – Not more than **5 years**; third and subsequent offense (within 5 years) or fourth or subsequent offense (within 10 years) felony – Not more than **5 years** Aggravated DWI offense where there is bodily harm or disfigurement felony – Not more than **10 years** §§18-8004C(1)(a) and (2)(a), 18-8005 and 18-8006 Persons Under 21 Years Old (.02 Offense) – first offense Misdemeanor – None; second offense Misdemeanor – Not more than **30 days**; third and subsequent offense Misdemeanor – Not more than **6 months** §18-8004A(2)(a) and (3)(a)

First offense – None; first offense with BAC/BrAC \geq 0.20-**10 days** (must serve 48 con hrs)³³⁹; second offense (within 5 years) – **10 days** (must serve 48 con hrs w/5 days in jail)^{340,341and342}; second or subsequent offense with a BAC/BrAC \geq

Mandatory Minimum Term:

Special Note: If a person is convicted of a DWI offense and he/she has had within the past 10 years a prior conviction for (1) a DWI felony offense, (2) Aggravated DWI or (3) DWI Vehicle Homicide, he/she is guilty of a felony. The sanctions for this offense are as follows: Jail – not more than 5 years; fine – not more than \$5,000; and license suspension from 1 to 5 years after release from imprisonment (a 1-year license suspension after release from imprisonment is mandatory). §18-8005(5) and (7)

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. Talavera*, 905 P.2d 633 (Idaho 1995), and *State v. Reichenberg*, 915 P.2d 14 (Idaho 1996) The result is the

³³⁹ **Historical Note:** Under Art. 5, §13 of the State’s constitution, the legislature may provide for mandatory minimum sanctions. This constitutional provision indirectly abrogated the Idaho Supreme Court’s decision in *State v. McCoy*, 486 P.2d 247 (Idaho 1971), that had voided a statute requiring mandatory sanctions. *State v. Pena-Reyes* 962 P.2d 1040 (Idaho 1998).

³⁴⁰ The court may assign an offender to a work detail program within the custody of the county sheriff during the period of incarceration. §18-8005(4)(a)

³⁴¹ **Comment on Mandatory Jail for Drunk Driving Offenses:** I. Although not clear, the law appears to provide for a 10-day mandatory jail sentence even if the offender is sentenced to the State penitentiary. §18-8005(5)(a) II. In addition, for persons sentenced to State prison, Idaho administrative rules imply that there is a minimum imprisonment term since parole hearings can only be held after a person has been incarcerated for certain fixed time periods (e.g., for a 5 to 7 year sentence, the first hearing is 15 months from the date of incarceration). IDAPA 5.01.01.25.02

³⁴² Idaho law provides that the 5 and 10-day mandatory jail sentences for second and subsequent offenders respectively are as required by 23 USC §164. The Federal regulations to this U.S. Code provision provide that such sentence for repeat DWI law offenders must be served in either “a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring inpatient rehabilitation or treatment center or other facility, provided the individual under confinement is in fact being detained.” 23 CFR 1275.3(h)

same where the administrative action coming after the DUI criminal convictions. *Marshall v. Idaho DOT* 48 P.3d 666 (Idaho App. 2002)

(continued)

<p>0.20 where there has been a previous offense at or above 0.20 within 5 years-30 days; third <u>and subsequent offense</u> (within 5 years) or <u>fourth or sub. offense</u> (within 10 years) – 30 days (must serve 48 con hrs with 10 days in jail) <u>Aggravated DWI offense</u> where there is bodily harm/ disfigurement- 30 days (must serve 48 con hrs) §§18-8004C, 18-8005 and 18-8006 <u>Persons Under 21 Years Old (.02 Offense)</u> – first offense – None; second offense – 5 days; third and subsequent offense – 10 days §18-8004A(2)(a) and (3)(a)</p>	
<p>Fine: Amount (\$ Range):</p>	<p>First <u>offense</u> – Not more than \$1,000³⁴³; first offense with BAC/BrAC ≥ 0.20 – Not more than \$2,000; second <u>offense</u> (within 5 years) – Not more than \$2,000; second <u>or subsequent offense</u> with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 within 5 years – Not more than \$5,000; third <u>and subsequent offense</u> (within 5 years) or <u>fourth or sub. offense</u> (within 10 years) – Not more than \$5,000 <u>Aggravated DWI offense</u> where there is bodily harm/disfigurement – Not more than \$5,000 §§18-8004C(1)(b) and (2)(b), 18-8005 and 18-8006 <u>Persons Under 21 Years Old (.02 Offense)</u> – first <u>offense</u> – Not more than \$1,000; second <u>offense</u> – \$500 to \$2,000; third <u>and subsequent offense</u> – \$1,000 to \$2,000 §18-8004A(1)(a), (2)(b) and (3)(b) Regular DWI offenses and Aggravated DWI – None <u>Persons Under 21 Years Old (.02 Offense)</u> – first <u>offense</u> – None; second <u>offense</u> – \$500; third <u>and subsequent offense</u> – \$1,000 Comment: The law is not clear. These fines may not be mandatory.</p>
<p>Mandatory Minimum Fine (\$):</p>	<p>Possible Although not specifically authorized by statute, community service could be a condition of probation. §19-2601</p> <p>Yes (1) Under §19-5304, a person who has been convicted of any criminal offense may be ordered to pay restitution to a victim. (2) <u>Aggravated DWI offense</u> – paid by the defendant to a victim §18-8006(1)(e) And, (3) there is also a victims’ compensation fund. §72-1001 et seq.</p>
<p>Other Penalties: Community Service:</p>	<p>Ignition Interlock. For ANY drunk driving offense, a defendant is required to only operate a</p>
<p>Restitution (e.g., Victim's Fund)</p>	
<p>Other:</p>	

³⁴³ A defendant is also assessed a special fine (not less than \$50 for any felony, not less than \$25 for any misdemeanor) that is paid into a crime victims’ compensation account. §72-1025 And, a \$15 surcharge is added to all fines for the purpose of purchasing ignition interlock and electronic monitoring devices or for alcohol or drug abuse related probation, treatment or prevention programs. §18-8010

motor vehicle equipped with an “ignition interlock” device after any licensing action. The court shall require use of this device for a period of time not in excess of the defendant’s probation period. §§18-8004A(2)(d) and (3)(e), 18-8004C(2)(e), 18-8005(4)(f) and (5)(e) and 18-8008(1) and (2)

Electronic Monitoring. The court may require the defendant to use an “electronic monitoring” device to record their movements while they are on probation to insure that they comply with curfew hours, driving privilege restrictions, or home confinement requirements. §18-8008(3)

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

Yes (1) \geq .08 (BAC/BrAC/UrAC) or (2) under the influence of alcohol, drugs, or an intoxicating substance: first violation– suspension **90 days** (30 days mand followed by 60 days restricted driving privileges); second or subsequent violation (within 5 years) – **Suspension 1 year** (mand) §18-8002A Under §49-326(1)(a) and (5), 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., vehicle homicide)³⁴⁴. Such action may be taken without a preliminary hearing.

Other:

Post DWI Conviction Licensing Action:
 Type of Licensing Action
 (Susp/Rev):

First offense – **Suspension**³⁴⁵; first offense with BAC/BrAC \geq 0.20– suspension; second offense – Suspension; second or subsequent offense with a BAC/BrAC \geq 0.20 where there has been a previous offense at or above 0.20 within 5 years– suspension; third and subsequent offense – Suspension
Aggravated DWI offense – Suspension §§18-4004C(1)(e) and (2)(e), 18-8005 and 18-8006
Persons Under 21 Years Old (.02 Offense) – first offense – Suspension; second offense – Suspension; third and subsequent offense – Suspension §18-8004A(1)(b), (2)(c) and (3)(d)

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

First offense – 30 to 150 days; first offense with BAC/BrAC \geq 0.20 – **1 year** after release from confinement; second offense – 1 year after release

³⁴⁴ These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.

³⁴⁵ If the offender is a minor (a person under 18 years old), his/her license is suspended or denied for either an additional period of 1 year or until the person reaches 21 whichever period is longer following the end of any regular period of suspension or revocation. This licensing action appears to be mandatory. §§18-8005(11) and 32-101

Special Note: If an offender is subject to licensing action for both an administrative per se law and a criminal drunk driving offense conviction, the license suspension periods are to run concurrently unless the court order to the contrary. §18-8002 A(7)

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from confinement; second or subsequent offense with a BAC/BrAC \geq 0.20 where there has been a previous offense at or above 0.20 within 5 years – **1 to 5 years** after release from confinement; third and subsequent offense – **1 to 5 years** after release from confinement Aggravated DWI offense – **1 to 5 years** after release from confinement §§18-8004C(1)(e) and (2)(e), 18-8005 and 18-8006
Persons Under 21 Years Old (.02 Offense) – first offense – **1 year**; second offense – Not more than **2 years**; third and subsequent offense – **1 year** or until the person reaches 21 whichever is greater §18-8004A(1)(b), (2)(c) and (3)(d)

Mandatory Minimum
Term of Withdrawal:

First offense – **30 days**³⁴⁶; first offense with BAC/BrAC \geq 0.20 – **1 year** after release from confinement; second offense – **1 year** after release from confinement; second or subsequent offense with a BAC/BrAC \geq 0.20 where there has been a previous offense at or above 0.20 within 5 years – **1 year** after release from confinement; third and subsequent offense – **1 year** after release from confinement Aggravated DWI offense – **1 year** after release from confinement §18-8004C(1)(e) and (2)(e), 18-8005 and 18-8006
Persons Under 21 Years Old (.02 Offense) – first offense – **90 days** (restricted driving privileges may be granted after this mand period); second offense – **1 year**; third and subsequent offense – **1 year** §18-8004A(1)(b), (2)(c) and (3)(d)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

A DWI offender may be required to participate in an alcohol treatment program by the court. §§128-8004A(1)(d), (2)(e) and (3)(e) and 18-8005(12)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

None

Miscellaneous Sanctions
Not Included Elsewhere:

Surcharge. A mandatory **\$15** surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for

³⁴⁶ After the 30-day period, the license must be suspended by the court for at least 60 additional days but not more than 150 days. However, the defendant may be issued a restricted license for employment/family needs during this 60 to 150-day period. §18-8005(1)(d)

misdemeanor drunk driving offense probation programs. §18-8010

Child Endangerment. It is an offense for a person >18 years old to operate a motor vehicle in violation of the drunk driving laws while transporting a “minor.” If there is no injury or death associated with this offense, it is a misdemeanor with a jail term of not more than 6 months and/or a fine of not more than \$300. However, if the child is either injured or killed, it is a felony with imprisonment of 1 to 10 years (unless a more severe penalty is authorized by law.) §§18-113 and 18-1501(3)

Labor on Public Works. An offender may be required to perform labor on Federal, State or other governmental works. §20-617

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes There are three (3) types of vehicle manslaughter offenses. Death as a result of (1) an unlawful act not amounting to a felony where gross negligence is involved (felony), (2) a DWI offense (felony) or (3) death as a result of an unlawful act not amounting to a felony where there is no gross negligence (misdemeanor). §§18-111, 18-4006(3)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Death as a result of (1) gross negligence not more than **10 years** (2) a DWI offense – Not more than **15 years**; (3) death as a result of an unlawful act not amounting to gross negligence – Not more than **1 year** §18-4007(3)

Mandatory Minimum Term:

None

Fine (\$ Range):

Death as a result of (1) gross negligence not more than **\$10,000** or (2) a DWI offense – Not more than **\$15,000**; (3) death as a result of an unlawful act not amounting to gross negligence – Not more than **\$2,000** §18-4007(3)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Death as a result of (1) gross negligence or (2) a DWI offenses – Revocation §49-325(1)(a); (3) death as a result of an unlawful act not amounting to gross negligence – **Revocation** §49-325(1)(a)

Length of Term of

Licensing Withdrawal:

Death as a result of (1) gross negligence or (2) a DWI offense – Not less than **1 year** §49-326(5) (3) death as a result of an unlawful act not amounting to gross negligence – Not less than **1 year** §49-326(5)

Court Suspension. In addition, an offender’s license “may be suspended for a time determined by the court.” §18-4007(3)(a)

Mandatory Action--Minimum Length of License Withdrawal:

Death as a result of (1) gross negligence or (2) a DWI offense – **1 year**; (3) Death as a result of an unlawful act not amounting to gross negligence – **1 year** §§49-325(a) and 49-326(5)

Other:

Note: A temporary restricted license cannot be issued following revs based on vehicle manslaughter. §49-325(2)

Death of a Parent–If a parent of a minor was fatally injured, the offender may be required to pay child support until the minor reaches 18 years old. §18-4007(3)(d)

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

See Footnote No. ³⁴⁷.

Sanction:

Criminal: First offense Misdemeanor – Not less than **2 days to 6 months**; second offense Misdemeanor (within 5 years) – **20 days to 1 year**; third and subsequent offenses Misdemeanor (within 5 years) – Not more than **1 year** §18-8001

Imprisonment (Term):
Mandatory Minimum Term of Imprisonment:

First offense Misdemeanor-**2 days**³⁴⁸; second offense Misdemeanor (within 5 years) – **20 days**; third and subsequent offenses Misdemeanor (within 5 years) – **30 days**

Note: A defendant may be assigned to a work release program within the custody of the county sheriff. However, he/she is not eligible for community service in lieu of imprisonment. §18-8001(3)(a), (4)(a), (5)(a) and (8)

Fine (\$ Range):

First offense – Misdemeanor – Not more than **\$500**; second offense – Misdemeanor (within 5 years) – Not more than **\$1,000**; third and subsequent offenses Misdemeanor (within 5 years) – Not more than **\$3,000**

Mandatory Minimum Fine:

None

Administrative Licensing Actions:
Type of Licensing Action (Susp/Rev):

First offense – **Suspension**; second offense (within 5 years) – **Suspension**; third and subsequent offenses (within 5 years) – **Suspension** §18-8001

³⁴⁷ If a person is convicted of an alcohol driving offense and such person had no driving privileges at the time of arrest, the penalties imposed under §18-8001 are in addition to any penalties imposed for an alcohol driving offense conviction. §18-8001(7)

³⁴⁸ The court may assign an offender to a work detail program within the custody of the county sheriff during the period of incarceration. §18-8001(l)(a) and (4)(a)

Length of Term of License

Withdrawal Action:

First offense (misdemeanor) – License suspended for an additional **6 months**; second offense (misdemeanor) (within 5 years) – License suspended for an additional **1 year**; third and subsequent offenses (misdemeanor) (within 5 years) – License suspended for an additional **2 years** §18-8001

Mandatory Term of License

Withdrawal Action:

First offense – **None**³⁴⁹; second offense (within 5 years) – An additional suspension for **30 days** mandatory³⁵⁰; third and subsequent offenses (within 5 years) – An additional suspension for **90 days** is mandatory. §18-8001(3)(c), (4)(c) and (5)(c)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

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 §49-1314

BAC Chemical Test Is Given

³⁴⁹ Restricted licenses available for employment or education reasons or family health needs. §18-8001(3)(c)

³⁵⁰ After the mandatory suspension period, a person is eligible for a restricted license for employment or education or family health needs. §18-8001(4)(c) and (5)(c)

Special Note: I. The law (§18-8001) provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. Idaho law does not appear to make it a criminal offense to operate a CMV following a CDL out-of-service order. Notwithstanding, the law does provide for the following disqualification periods against persons “convicted of an out-of-service order”: first offense – 90 days (mand) to 1 year; second offense (within 10 years) – 1 (mand) to 5 years; third or subsequent offense (within 10 years) – 3 (mand) to 5 years. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 16 or more persons: first offense – 180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 (mand) to 5 years. §49-335(8)

to the Following Persons:	
Driver:	Yes
Vehicle Passengers:	No
Pedestrian:	Yes

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 §§23-312, 23-603, 23-615(1) and 23-1401(2)
Minimum Age (Years) Possession:	21 §23-949 There is an employment exemption for persons who are at least 19 years old. §§23-949, 23-1013, 23-1023 and 23-1334
Minimum Age (Years) Consumption:	21 §23-949 There is an exemption for the home consumption of beer and wine. §§23-1023 and 23-1334

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §23-808 This law limits liability to situations where the patron/guest was either (1) obviously intoxicated or (2) intoxicated and under the legal drinking age.
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“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):

Alegria v. Payonk, 619 P.2d 135 (1980)) spurring the passage of §23-808 in 1986

Dram Shop Actions-Social Hosts:
Other:

Yes §23-808
A social guest, who is under the legal drinking age and who sustains injuries as a result of the consumption of alcoholic beverages at a function given by a social host, does not have a cause of action against the such host under the dram shop act for such injuries.³⁵¹ *Coughlan v. Beta Theta Pi*, 987 P.2d 300 (Idaho 1999)

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

Type of Criminal Action:	I. State liquor dispensary employees (pkg. Sales) – Misdemeanor §§23-312 and 23-601 II. State authorized licensees (beer, wine and liquor by the drink) – Misdemeanor §§18-113, 23-605 and 23-615(2) and (3)
Term of Imprisonment:	I. State liquor dispensary employees (pkg. sales) – 3 months to 1 year; II. State authorized licensees (beer, wine and liquor by the drink) – not more than 6 months
Fine (\$ Range):	I. State liquor dispensary employees (pkg. sales) – \$300 to \$1,000; II. State authorized licensees (beer, wine and liquor by the drink) – not more than \$300

Administrative Actions Against Owners
of Establishments that Serve Alcoholic

³⁵¹ However, a social host might be liable for such injuries if it can be established that they assumed a special duty of care to protect the guest.

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

I. State authorized licensees (beer, wine and liquor by the drink) – **Suspension or Revocation**³⁵² §§23-933, 23-1037 and 23-1331

II. The court must include in its judgment of a licensee, who is convicted of a violation of the alcoholic beverage control code, Title 23, a

State Laws Related To Alcohol Use: (continued)

Length of Term of License

Withdrawal:

forfeiture of the alcoholic beverage license or permit. §23-608

For revocations for all licensees, a suspension of not more than 6 months. § 23-1037(1)

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:

I. State liquor dispensary employees (pkg. sales) – **Misdemeanor** §§23-312 and 23-601

II. State authorized licensees (beer, wine and liquor by the drink) – first offense – **Misdemeanor**; second or subsequent offense – **felony** §§18-112, 18-113, 23-603 and 23-615(1)

Term of Imprisonment:

I. State liquor dispensary employees (pkg. sales) – **3 months to 1 year**;

II. State authorized licensees (beer, wine and liquor by the drink) – first offense – Not **more than 6 months**; second or subsequent offense – Not **more than 5 years**

Fine (\$ Range):

I. State liquor dispensary employees (pkg. sales) – **\$300 to \$1,000**;

II. State authorized licensees (beer, wine and liquor by the drink) – first offense – Not **more than \$300**; second or subsequent offense – Not **more than \$50,000**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

I. State authorized licensees (beer, wine and liquor by the drink) – **Suspension or Revocation**³⁵³ §§23-603³⁵⁴, 23-933, 23-1037 and 23-1331

³⁵² As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. §§23-933(2), 23-1037(2) and 23-1331(2)

³⁵³ As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. §§23-933(2), 23-1037(2) and 23-1331(2)

II. The court must include in its judgment of a licensee, who is convicted of a violation of the alcoholic beverage control code, Title 23, a **forfeiture** of the alcoholic beverage license or permit. §23-608

Length of Term of License Withdrawal:

For revocations for all licensees, not more than 6 months §23-1037. For retail sale of alcoholic beverages (beer, wine or liquor by the drink), a suspension of not more than 6 months. § 23-603

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes §23-505³⁵⁵ and 23-1333³⁵⁶

Anti-Consumption Law (Yes/No):

Yes §§23-505

³⁵⁴ Under §23-603, the licensee is also subject to an administrative fine. The law establishes no limits for this fine.

³⁵⁵ This law has two provisions. The first prohibits a driver or passenger from either breaking open or consuming alcoholic liquor (but not beer) while such beverage is being transported. The second provision prohibits any person from drinking or possessing an open container of alcoholic liquor, beer or wine while in “actual the vehicle is on a public highway or right-of-way of a public highway.”

However, there is an exemption allowing for the consumption of these alcoholic beverages by passengers in (1) motor vehicles designed and used for compensation or (2) the living quarters of recreational vehicles. §§23-105 and 23-505

³⁵⁶ This statute prohibits either a driver or a passenger from possessing any wine in an open container while in a motor vehicle on a public highway.