

STATE:

LOUISIANA

General Reference:

West's Louisiana Statutes Annotated: Revised Statutes
 Note: Citations are to the Revised Statutes unless otherwise stated

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC):
 Presumption (BAC):

Under the influence of alcoholic beverages⁴⁹⁹

§14:98(A)(1)(a)

≥ **.08**⁵⁰⁰ §14:98(A)(1)(b)For Persons Under 21 Years Old. ≥ **.02**⁵⁰¹§14:98.1(A)⁵⁰²≥ **.08** §32:662(A)(1)(c)For Persons Under 21 Years Old. ≥ **.02**

§32:662(A)(1)(d)

Types of Drugs/Drugs and
 Alcohol:
 Other:

Under the influence of **Any Drug** §§14:98(A) and
 40:964

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law

Applies to Drugs (Yes/No):

Refusal to Submit to Chemical

Test Admitted into Evidence:

Other Information:

No**Yes** §32:661**Yes** §32:661(A)**Yes**⁵⁰³ (Criminal and civil cases) §§32:666(A)(3),
13:3714(B)

Under §32:666(A), if there is probable cause that any drunk driving offense occurred and a driver has been involved in a traffic fatality or accident resulting in a serious bodily injury, the driver may not refuse to submit to a chemical test. A law enforcement officer may direct that a chemical test be performed (i.e., that a blood sample be obtained). Such a test (or sample) may be performed (or obtained) even without the consent of the driver. *State v. Hebert*, 559 So.2d 821 (La. App. 3 Cir. 1990) (interpreting an earlier version of the law requiring arrest).

⁴⁹⁹ All DWI offenses are classified as the crime of operating a vehicle while intoxicated. Note: The drunk driving law does not apply to persons operating bicycles while under the influence of alcoholic beverages. *State v. Carr*, 761 So.2d 1271 (La. 2000)

⁵⁰⁰ Standard: "Percent by weight" based on grams of alcohol per 100 cubic centimeters of blood. §§14:98(A)(1)(b), 14:98.1(A) and 32:662(A)(2)

⁵⁰¹ This offense is defined as "[t]he crime of operating a motor while intoxicated is operating a motor vehicle... when the operator's blood alcohol concentration is .02 percent or more by weight..." §14:98.1(A) Note: If the person's alcohol concentration is ≥ .08, they must be charged under the regular illegal per se law. §14:98.1(B)

⁵⁰² This law, that makes it a criminal offense for a person under 21 years old to operate a motor vehicle with a BAC of ≥ .02, was held not to violate the State's constitutional provision that prohibits arbitrary discrimination based on age (art. I, §3). *State v. Ferris*, 762 So.2d 601 (La. 2000)

⁵⁰³ Refusal to submit to a field sobriety test can also be admitted into evidence at a drunk driving offense trial. *State v. Washington*, 498 So.2d 136 (La. App. 5 Cir. 1986)

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

Blood:	Yes §32:661
Urine:	Yes §32:661
Other:	Other bodily substance §32:661

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ⁵⁰⁴
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Required for third and subsequent offenses. §14:98(D), (E) and (G) Persons <21 years old charged with driving with an alcohol concentration ≥ .02. §14:98.1(E)

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:	
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None, except if arrested for driving while intoxicated after refusing to submit to such test on two previous occasions {R.S.14:98.2} ⁵⁰⁵

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL): A person is “disqualified” from (i.e., their CDL is suspended, revoked or cancelled for) operating a CMV for minimum period of 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04 (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine.), (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand). It is a criminal offense (1) to operate a CMV with BAC/BrAC/UrAC ≥ .04 or while under the influence of alcohol/controlled substance or (2) to refuse to submit to a chemical test. The sanctions for this offense are a jail term of not more than 6 months and a fine of \$10 to

⁵⁰⁴ Code of Criminal Procedure Article 892.1(C) and (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program within 2 years. However, drunk driving offenses are placed in Title 14 which is the criminal law. As a result, it would appear that dismissal of a DWI charge is not authorized under this criminal procedure provision.

⁵⁰⁵ [1]B.(1) Penalty: fined not less than \$300 nor more than \$1,000, and shall be imprisoned for not less than 10 days nor more than 6 months.

(2) Imposition or execution of sentence shall not be suspended unless one of the following circumstances occurs: The offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program. The offender is placed on probation with a minimum condition that he perform four 8-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. R.S. § 14:98.2

\$5,000; there is also a civil penalty of not more than \$2,500. In addition, a CMV operator, who has (1) any “measured amount of alcohol concentration” or (2) a “detected presence” of either alcohol or controlled substance their system, must be placed “out-of-service” for 24 hours. §§32:401(4) and (5), 32:414.2 and 32:427(A)(2)

Administrative Licensing Action
(Susp/Rev):

First refusal – Suspension 90 days (30 days mand in situations where the use of an ignition interlock device has been authorized.⁵⁰⁶ Otherwise, a hardship license may be issued after the 90 days mand period.); second or subsequent refusal (within 5 years) or any refusal related to either a fatality or serious bodily injury– suspension **545 days** (mand except in situations where the use of an ignition interlock device has been authorized.

§§32:667(B)(2) and (4), 32:668(B)(1), (2), and (3) and 32:378.2(A)(2)(a)(iii) and *Dixon v. Department of Public Safety and Corrections*, 570 So.2d 130 (La. App. 3 Cir. 1990) cert denied 570 So.2d 1119 (La. 1991) *Schott v. Dept. of Public Safety*, 556 So.2d 999 (La. App. 3 Cir. 1990), and *Chalker v. Dept. of Public Safety and Corr.*, 593 So.2d 948 (La. App. 4 Cir. 1992)

Refusal by Persons Under 21 Years Old. Suspension for 180 days (90 days mand) §§32:667(B)(2) and 32:668(B)(1)(b) A person may be issued restricted driving privileges for **all** of the suspension period if their motor vehicles are equipped with “ignition interlock” devices. §32:378.2(A)(2)(a)(iii)

Sanctions Following Conviction for DWI Offense:

Criminal Sanctions:

Imprisonment:

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

First offense: Fined not less than \$300 nor more than \$1,000, and shall be imprisoned for not less than 10 days nor more than 6 months. Imposition or execution of sentence shall not be suspended unless:
(a) The offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program or
(b) The offender is placed on probation with a minimum condition that he perform four 8-hour days of court-appointed community service activities, at least half of which shall consist of participation in a litter abatement or collection program participate in a court-approved substance abuse program , and participate in a court-approved driver improvement program . R.S. §14:98(1).

Blood alcohol concentration of .15 percent – at

⁵⁰⁶ This exception **only** applies if the driver has been arrested for either a first or second drunk driving offense. §32:378.2(A)(2)(iii)

least 48 hours of the sentence shall be served without benefit of parole, probation or suspension of sentence. R.S. §14:98 (2)(a)

Second offense – Fined not less than \$750, nor more than \$1,000\$1,000, and shall be imprisoned for not less than 30 days nor

more than 6 months, with at least 48 hours of the sentence imposed shall be served without benefit of parole, probation or suspension of sentence. § 14:98 C. (1)

Blood alcohol concentration of 0.20 percent – fined \$1,000\$1,000 and at least 96 hours of the sentence shall be served without the benefit of parole, probation or suspension of sentence.

§14:98 (2)(b)

Second offense when the first offense was for the crime of vehicular homicide or first degree vehicular negligent injuring: imprisoned with or without hard labor for not less than 1 year nor more than 5 years, and fined \$2,000. At least 6 months of the sentence of imprisonment imposed shall be without benefit of parole, probation or suspension of sentence. §14:98 (b)(3)

Third offense: Fined \$2,000 and imprisoned with or without hard labor for not less than 1 year nor more than 5 years, with at least 30 days of the sentence imposed without benefit of parole, probation or suspension of sentence, but the remainder of the imprisonment may be suspended if the offender is required to undergo an evaluation of the offender's substance abuse disorder. §14:98 D (1)(a)

Following the evaluation, offender to be sentenced to an inpatient substance abuse facility for a period of not less than 4 weeks nor more than 6 weeks. §14:98D(1)(b) and may be sentenced to additional outpatient substance abuse treatment for up to 12 months. §14:98D(1)(c). Upon successful completion of the inpatient substance abuse treatment the offender shall be sentenced to home incarceration for not less than the period of time remaining on the offender's suspended sentence. R.S. § 14:98(D)(1)(d), 14:98(D)(1)(b), (c) and (d) and (E)(1)(a)

In addition, the vehicle being driven by the offender shall be impounded and sold at auction. §14:98 (D)(2)(a) unless it was stolen, or the driver at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. §14:98 D(2)(b) In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder. §14:98 D(2)(c)

Fourth or subsequent offense: Imprisoned with or without hard labor for not less than 10 years nor

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more than 30 years and fined \$5,000. Sixty days of the imprisonment shall be imposed without benefit of parole, probation or suspension of sentence; the remainder shall be suspended and the offender required to undergo an evaluation to determine the nature and extent of the offender’s substance abuse disorder. §14:98E(1)(a) But if the offender has previously been required to participate in substance abuse treatment and home incarceration, the offender shall not be sentenced to substance abuse treatment and home incarceration for a fourth and subsequent offense, but shall be imprisoned at hard labor for not less than 10 nor more than 30 years, and at least 3 years of the sentence shall be imposed without benefit of probation, parole or suspension of sentence. §14:98E(4)(a)

Driver’s license suspension and/or ignition interlock requirement:

First offense with a BAC of 0.20 or more:

suspended for at least 2 years. But a restricted license may be granted during the entire period of suspension with ignition interlock. §14:98K(1)

Second offense: Ignition interlock for at least 6

months and during any period of suspension or additional period as determined by the court. §14:98 K(2)(a)

Second offense with a BAC of 0.20 or more:

suspension for 4 years; restricted license allowed with ignition interlock during the first 3 years of the 4-year period of the suspension. §14:98 K(2)(b)

Third or subsequent offense: ignition interlock until completion of substance abuse treatment and home incarceration. §14:98 K(3)(a)

Special Note: For the purpose of sanction enhancement, a prior drunk driving offense includes drunk driving related injury and homicide offenses. §14:98(F) The time periods used to determine whether enhanced sanctions will be imposed on second or subsequent offenders are not the same for criminal sanctions (jail or fine) and for administrative ones (license suspensions). In order to impose enhanced criminal sanctions based on prior DWI offenses, the prior offenses all must have occurred within 10 years of the present offense. In order to impose enhanced administrative sanctions based on prior DWI offenses, the prior offenses all must have occurred within 5 years of the present offense. Enhanced licensing sanctions for subsequent administrative per se violations are also based whether the prior violations occurred within 5 years of the present violation.

DWI Related Injury. I. A person is guilty of “vehicular negligent injuring” by injuring another, while operating motor vehicle either while under the influence of alcoholic beverages/drugs or with an alcohol concentration .08 or more. The sanctions for this offense are imprisonment for not more than 6 months and/or a fine of not more than \$1,000. §14:39.1 II. A person is guilty of “first degree vehicular negligent injuring” if they seriously injure another, while operating motor vehicle either while under the influence of alcoholic beverages/drugs or with an alcohol concentration \geq .08. The sanctions for this offense are imprisonment (with or without hard labor) for not more than 5 years and/or a fine of not more than \$2,000. §14:39.2

Double Jeopardy. Based upon the same factual situation, a person who has been subjected to licensing action under the admin. 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. *Butler v.*

Department of Pub. Safety and Corrections, 609 So.2d 790 (La. 1992), and *State v. Sonnier*, 679 So.2d 1011 (La. App. 3 Cir. 1996)

Criminal Sanctions:

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Restitution

(e.g. Victim's Fund)

An offender must pay restitution to a victim where there is "actual pecuniary loss";⁵⁰⁷ or where the victim has incurred costs in connection with a criminal prosecution. Code of Crim. Proc. Art. 883.2

Other:

Chemical Test Fee. A DWI offender must pay a fee of \$75 for the purpose of covering the costs of administering a BAC chemical test. They also must pay a fee of \$50 to defray the expenses of administering any conditions of probation or incarceration. Code of Criminal Procedure §887(C) and (D)

Child Endangerment. A DWI offender is subject to the following mandatory sanctions if a child 12 years old or younger was a passenger in a vehicle driven by the offender at the time of the offense: first offense – **10 days jail/\$125 fine**; second offense – **30 days jail/\$300 fine**; third offense – **30 days jail**; fourth and subsequent offense – **2 years jail** §14:98(J)

Substance Abuse Programs Costs. Offender pays the cost of participation unless unable to do so. 14:98(I)

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

Yes BAC \geq .08 (\geq .02 For Persons under 21 Years Old) BAC is based upon the amount of alcohol in the blood. First Offense – Suspension for **90 days** (30 days mandatory⁵⁰⁸ followed by 60 days of restricted driving privileges.⁵⁰⁹ If the use of an ignition interlock device has been authorized, a restricted license may be issued

⁵⁰⁷ A victim of a motor vehicle accident is not eligible for State compensation unless the crime, which caused either the injury or the death, was intentional. §46:1805(B)

⁵⁰⁸ Thirty days mandatory except as per the *Noustens* case cited in Footnote No. 11. *Corley v. Dept. of Public Safety and Corr.*, 648 So.2d 936 (La. App. 1 Cir. 1995)

⁵⁰⁹ When a person has been convicted of a first DWI offense and is subject to the admin. per se law, a district court may issue a restricted hardship license for the entire 90-day period under §32:415.1 notwithstanding the provisions of the admin. per se law that require a 30-day mandatory suspension period. *Noustens v. State*, 524 So.2d 235 (La. App. 5 Cir. 1988) (cert./review denied by the Louisiana Supreme Court, 531 So.2d 476 (La. 1988)) This case has been severely criticized and several circuits have explicitly chosen to not follow it. *Chalker v. Dept. of Public Safety and Corr.* 648 So.2d 936 (La. App. 4 Cir 1992) and *Corley v. Dept. of Public Safety and Corr.* 648 So.2d 936 (La. App. 1 Cir 1994); *Schott v. Dept. of Public Safety and Corr.* 556 So.2d 999 (La. App. 3 Cir 1990); and *Allen v. Dept. of Public Safety* 554 So.2d 207 (La. App. 2 Cir 1989). However, with the exception of the use of an **ignition interlock device**, a person with 2 admin. per se violations within 5 years is generally ineligible for restricted driving privileges. *Hauck v. Dept. of Public Safety and Corr.*, 597 So.2d 493 (La. App. 1 Cir. 1992), and *McLean v. Dept. of Public Safety and Corr.*, 572 So.2d 1066 (La. App. 5 Cir. 1990)

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without the mand period.); second and subsequent offenses (within 5 years) – **Suspension for 365 days** (mand except for second offense where the use of an ignition interlock device has been authorized)⁵¹⁰ §§32:667(B)(1) and (3), 32:668(B)(1)(c) and (3) and 32:378.2(2)(a)

The exceptions noted above **only** apply to offenders who have been convicted of either a first or second drunk driving offense. §32:378.2(A)(2)(a)(iv) Persons Under 21 Years Old (BAC ≥ **.02**). Suspension for **180 days** (30 days mand) §§32:667(B)(1)and(3) and 32:668(B)(1)(b),(1)(c)and (3)

Other:

Under §32:414(E)(1) and (F)(2), a person’s license may be suspended, canceled or revoked for not more than 1 year if he/she has “committed” an offense that usually requires license revocation (e.g., second offense DWI). The law does not specifically state that licensing action can be taken without a preliminary hearing. However, other provisions would seem to indicate that a preliminary hearing is not required.

Post DWI Conviction Licensing :

Type of Licensing Action (Susp/Rev): First and subsequent offenses – **Suspension**⁵¹¹ §§32:401(18), 32:414 and 32:430

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

First offense⁵¹² – **90 days** (hardship driving privileges are available) For Persons under 21 Years Old – **180 days** (hardship driving privileges are available); second offense (within 5 years) – **12 months**; third and or subsequent offenses (within 5 years) – **24 months** §§32:414, 32:415 and 32:415.1.

Mandatory Minimum

⁵¹⁰ See *Murphy v. State Through DPS*, 640 So.2d 546 (La. App. 3 Cir. 1994).

Special Note: The administrative per se law does not violate a person’s constitutional right to due process of law. *Butler v. Department of Pub. Safety and Corrections*, 609 So.2d 790 (La. 1992)

⁵¹¹ I. Sec. 32:430(A)(1) and (C) provides for the following licensing actions for persons who are at least 13 but not more than 19 years old and who are convicted of any crime related to the possession, use or abuse of alcohol or a “controlled dangerous substance.” For a first offense, suspension from 90 days up to 1 year or until the person reaches 18 whichever is the longer suspension period; for a second or subsequent offense, revocation for 1 year or until the person reaches 19 whichever is the longer revocation period. For first offenders only, after the first 30 days of the suspension period, restricted hardship driving privileges are available. §32:430(E), (F) and (G)

II. Sec. 32:430(A)(2) and (E) provides for the following licensing actions for persons who are 19 years old and who are convicted of any crime related to the possession, use or abuse of a “controlled dangerous substance” must have their licenses suspended from 90 days to 1 year. Again, as above, for first offenders only, after the first 30 days of the suspension. period, restricted hardship driving privileges are available. §32:430(E), (F) and (G)

Sec. 32:401(20) defines “drug offense” to include driving while under the influence of a controlled substance.

Comment: The issuance of hardship driving privileges under this section appears to conflict with §32:415.1 which provides for no 30 day waiting period.

⁵¹² Includes vehicular negligent injuring under §14:32.1.

Term of Withdrawal:	First <u>offense</u> – None ⁵¹³ (hardship/restricted driving privileges are available); second <u>offenses</u> (within 5 years) – 12 months (mand <u>except</u> in situations where the use of an ignition interlock device has been authorized); third <u>and subsequent offenses</u> (within 5 years) – 24 months (12 months mandatory in situations where the use of an ignition interlock device has been authorized ⁵¹⁴)
Other: Rehabilitation: (C)(1)(a) Alcohol Education: issued to	Yes First and second offenses §14:98(B)(1)(a) and For a first offense, a restricted license may be facilitate attendance at driver improvement schools. §32:415.1(A)(2) Yes First and subsequent offenses §14:98(B), (C),
Alcohol Treatment: (D) and (E)	Yes First and subsequent offenses §14:98(B), (C),
Vehicle Impoundment/ Confiscation: Authorized by Specific Statutory Authority:	Forfeiture. For a third <u>or subsequent offense</u> , the vehicle used by the offender shall be forfeited. §14:98(D)(2) and (E)(2) unless the owner was not the offender and the owner didn't know the offender was operating the vehicle while intoxicated. 14:98(B)(2)(6), 14:98(E)(2)(b)
Terms Upon Which Vehicle Will Be Released:	
Miscellaneous Sanctions Not Included Elsewhere:	Home Incarceration. Provisions relating to the sentencing of criminal law offenders either to community rehabilitation centers or “home incarceration” apply to persons convicted of DWI offenses. §14:98(D)(3); 14:98(E)(3); §15:1133 and Code of Criminal Procedure Art. 894.2(J) Ignition Interlock. I. Probation. For a first offense, the court may and, for a <u>second offense</u> , the court shall require an offender who has been placed on probation to operate only motor vehicles (except employer’s vehicles) that are equipped with ignition interlock devices during the period of probation. §§15:306 and 32:378.2(A)(1) II. <u>Without Probation.</u> For a <u>second offense</u> , an offender shall be required to operate motor vehicles (except employer’s vehicles) that are equipped with ignition interlock

⁵¹³ For either a first or second drunk driving offense conviction, notwithstanding other provisions of law, restricted driving privileges are available at any time if the offender is operating motor vehicles equipped with **ignition interlock** devices. §§15:306(A), 32:378.2 and 32:414(A)(1)(b) and (B)(2)(b)

⁵¹⁴ See §32:414(D)(1)(b).

Persons Under 21 Years Old. It is illegal for a person < 21 years old to operate a motor vehicle with an alcohol concentration ≥ .02. The sanctions for this are as follows: first offense – A fine of **\$100 to \$250** and participation in a substance abuse and driver improvement program; and second or subsequent offense – Imprisonment for **10 days to 3 months** and a fine of **\$150 to \$500**. The sanctions for a second or subsequent offender may be suspended if they (1) serve either 48 hours in jail or perform community service for 10 8 hr days and (2) participate in a substance and driver improvement program. §14:98.1(C) and (D) Note: There is no licensing sanction for a violation of this provision. However, licensing action is taken via the admin. per se.

devices for at least 6 months. For a third or subsequent offense, an offender shall be required to operate motor vehicles (except employer's vehicles) that are equipped with ignition interlock devices (1) until the completion of treatment/home incarceration and (2) for not less than 6 months following the issuance of a restricted license. §14:98(K)

Incarceration Costs. An offender may be required to pay the costs of their incarcerations. Ten percent of what is collected shall go to the Crime Victims' Reparation Fund. §15:705 and Code of Criminal Procedure Art. 890.2

Civil Liability. A person who is operating a motor vehicle in violation of the drunk driving laws at the time of an accident caused by another driver cannot recover damages for any injuries they sustain if they are more than 25 percent negligent in causing such accident. §9:2798.4

School Bus Operators. A person, who either tests positive for the presence of marijuana, opioids, amphetamines, phencyclidine or other controlled dangerous substance per §40:961(7) or has an alcohol concentration $\geq .08$, must be prohibited by public education authorities from operating a school bus. §17:491.2(A)

"Driving is a Privilege" Law. Authorizes suspension of drivers' licenses of students expelled from school for 10 or more consecutive school days for infractions involving the sale or possession of drugs, alcohol or any other illegal substance, the possession of a firearm, or an infraction involving assault or battery on a member of the school faculty or staff. (Such students may still receive provisional driving privileges in order to drive to and from school, work, a drug or alcohol treatment counseling program, or a mental health treatment program, when no other transportation is available.)

Other-Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Felony/Misdemeanor⁵¹⁵ Death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages/drugs (2) with a BAC $\geq .08$ or (3) with several combinations of drugs and/or alcohol. §14:32.1(A)

Alcohol Involvement with Hit-and-

Run Driving

Section 100C(1)(b) Whoever commits the crime of hit-and-run driving where there is no death or serious bodily injury shall be fined not more than \$500, imprisoned for not less than 10 days nor more than 6 months, or both, when(i) there is evidence

⁵¹⁵ If the defendant is imprisoned with hard labor, the conviction is considered a felony; otherwise, it is a misdemeanor. §§14:2(4) and (6), 14:32.1(B), Code of Criminal Procedure Art. 933 and *State v. Cobb*, 450 So.2d 59 (La. App. 3 Cir. 1984)

that the vehicle operator consumed alcohol or used drugs or a controlled dangerous substance prior to the accident; (ii) the consumption of alcohol, drugs or a controlled dangerous substance contributed to the accident; and (iii) the driver failed to stop, give his identity, or render aid with the knowledge that his actions could affect an actual or potential present, past or future criminal investigation or proceeding.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

2 to 20 years⁵¹⁶ §14:32.1(B)

Mandatory Minimum Term:

1 year

Fine (\$ Range):

\$2,000 to \$15,000 §14:32.1(B)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Suspension §32:414

Length of Term of

12 months.

Licensing Withdrawal:

12 months.

Mandatory Action--Minimum

Length of License Withdrawal:

I. The offender may be required to participate in a substance abuse and/or driver improvement program. §14:32.1(B)

II. Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure Art. 890.2

Other:

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

See Footnote No. ⁵¹⁷ and the CMV Note below.

⁵¹⁶ As an alternative to either jail or imprisonment, a defendant may be sentenced either to community rehabilitation (provided the defendant was sentenced to a term of imprisonment of not more than 5 years without hard labor) (§15:1133) or to “**home incarceration.**” Code of Criminal Procedure Art. 894.2

⁵¹⁷ Code of Criminal Procedure Article 892. 1(C) and (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program within 2 years. **Comment:** Since this is a Title 32 offense, it would appear that dismissal of a charge per this criminal procedure provision is possible.

CMV Note: A person is subject to the following sanctions if they operate a CMV while his/her CDL privileges have been suspended, revoked or cancelled: Imprisonment for not more than 1 year, a fine of not more than \$5,000 and/or a civil penalty of not more than \$2,500 §32:415(C)(2) and (D)(2) II. A person who operates a CMV in violation of a CDL out-of-service order is subject to a civil penalty of \$1,000 to \$2,500 and the following CDL disqualification periods. For a first violation there is a disqualification from 90 days to 1 year (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 180 days to 2 years). For a second violation (within 10 years) there is a disqualification from 1 to 5 years (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 3 to 5 years). For a third or subsequent violation within 10 years (including transporting hazardous materials or operating a vehicle with 15 or more persons) there is a disqualification from 3 to 5 years. §§32:415(B)(2) and 32:427(A)(3)

Death to Unborn Child (Third Degree Feticide – Felony/Misdemeanor) Death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages/drugs or (2) with a BAC ≥ .10 (.08 on 9/30/2003). Sanctions: Imprisonment with or without hard labor for not more than 5 years and a fine not less than \$2,000. §14:32. 8(A)(2) and (B)

Sanction:
 Criminal:
 Imprisonment (Term):

Misdemeanor Not more than **6 months**. If such violation was simultaneous with a second or subsequent DWI conviction – **7 days to 6 months**. §32:415

Mandatory Minimum Term of Imprisonment:

7 days if such violation was simultaneous with a second or subsequent DWI offense conviction. Not more than **\$500**. If such violation was simultaneous with a second or subsequent DWI conviction – **\$300 to \$500** §32:415

Fine (\$ Range):

Civil Penalty: An offender is also subject to a civil penalty of not more than **\$1,250** §32:415(D)(1)

Mandatory Minimum Fine:
 Administrative Licensing Actions:
 Type of Licensing Action (Susp/Rev):
 Length of Term of License
 Withdrawal Action:

None

Suspension/Revocation §32:415(B)

Original suspension/revocation period extended for **1 year** §32:415(B)

Mandatory Term of License
 Withdrawal Action:

For second and subsequent offenses, original suspension/revocation period extended for **1 year** (mand except in situations where the use of an ignition interlock device has been authorized⁵¹⁸)
 Note: A hardship license is available for first offenders. §32:415.1

Ignition Interlock: First or subsequent offenders are eligible for restricted driving for the **entire** suspension/revocation period, if they equip their vehicles with “ignition interlock” devices. §32:378.2(A)(2)(ii)

Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705 and Code of Criminal Procedure art. 890.2

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

Yes §32:1472 et seq.

Convictions for 10 or more traffic law offenses within 3 years. Applies to those offenses that are required to be reported to the Department of Public Safety and Corrections. §32:1472(A)

Term of License Rev While Under Habitual Offender Status:

Prohibition from operating a vehicle for **3 years** §32:1479 Note: A first time habitual offender may apply for a hardship license under §32:1477(B) and (C)(3).

⁵¹⁸ This exception **only** applies if the original licensing action was the result of either first or second drunk driving offense conviction. §32:378.2(A)(2)(ii)

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** §32:661(2)(6) A report is made by the coroner.

BAC Chemical Test Is Given
 to the Following Persons:

Driver: **Yes**
 Vehicle Passengers: **Yes**
 Pedestrian: **Yes**

Laws Establishing the
 Minimum Ages Concerning
 Alcoholic Beverages:

Minimum Age (Years)

Sale/Purchase: **21**^{519and520} §§14:93.11, 14:93.12, 26:90(A) and
 26:286(A)

Minimum Age (Years)

Possession: **21** §14:93.12

Minimum Age (Years)

Consumption: **21** §14:93. 12 The term “public possession” is
 defined to include consumption. §14:93.10(2)
 Other penalties: License suspension for 180 days may be imposed for
 an age 21 drinking violation. §§93.12 (B) (3),
 93.13(B)

Dram Shop Laws and Related

Legal Actions:

State Has a Dram Shop Law (Yes/No): **Limited** Under §9:2800.1(B)⁵²¹, a commercial server
 cannot be held liable for the actions of an intoxicated
 patron who is over the legal drinking age. *Bourgeois*
v. Puglisi, 615 So.2d 1047 (La. App. 1 Cir. 1993)
 This statute does not provide immunity to
 commercial servers with regards to the actions of

⁵¹⁹ The term “public possession” does not include the possession or consumption of alcoholic beverages either (1) for a religious purpose, (2) when the person is accompanied by a parent or legal custodian who is over 21 years old, (3) for medical purposes or (4) at a private residence. §14:93.10(2)

⁵²⁰ The Louisiana Supreme Court has held that the law, making it illegal (1) to sell alcoholic beverages to persons < 21 years or (2) for these persons to purchase such beverages does not violate the State constitutional provision which prohibits age discrimination, Art. I, §3. *Manuel v. State*, 677 So.2d 116 (La. 1996)

⁵²¹ This statute has been held constitutional. *Schulker v. Roberson*, 676 So.2d 684 (La. App. 3 Cir. 1996)

intoxicated minor patrons. *Godfrey v. Boston Old Colony Ins. Co.*, 718 So.2d 441 (La. App. 4 Cir. 1998)⁵²²

“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):

Liability Limited. I. The State Supreme court has held there is no “absolute liability” against licensees with regard to the actions of intoxicated patrons. *Thrasher v. Leggett*, 373 So.2d 494 (La. 1979) For a more recent case that follows *Thrasher* and discusses “duty risk” and “affirmative act”, see *Berg v. Zummo*, 786 So.2d 708 (La. 2001).

II. In situations involving minor patrons, a licensee is liable to either an injured third party or an injured patron only if the licensee (1) fails to act in a reasonable manner and (2) commits an “affirmative act” towards the intoxication of the patron. The mere serving of alcoholic beverages is not such an “affirmative act” that increases the danger caused by the intoxication. §9:2800.1, *Godfrey v. Boston Old Colony Ins. Co.*, 718 So.2d 441 (La. App. 4 Cir. 1998), *Edson v. Walker*, 573 So.2d 545 (La. App. 1 Cir 1991), and *Mills v. Harris*, 615 So.2d 533 (La. App. 3 Cir. 1993)

Dram Shop Actions-Social Hosts:

Limited Liability. Sec. 9:2800.1(C) prohibits liability actions against social hosts for injuries sustained by or caused by an intoxicated guest over the legal drinking age. *Hollis v. City of Baton Rouge*, 593 So.2d 388 (La. App. 1 Cir. 1991). For situations involving minors, see *Garcia on behalf of Garcia v. Jennings*, 427 So.2d 1329 (La. App. 2 Cir. 1983)⁵²³, and *Gresham v. Davenport*, 537 So.2d 1144 (La. 1989)⁵²⁴. See Footnote No. ⁵²⁵.

⁵²² The *Godfrey* decision provides a complete history of dram shop liability actions in the State of Louisiana

⁵²³ This case concerned the death of a minor who was given alcoholic beverages by adult guests in violation of a statute that prohibits adults from purchasing such beverages for minors. The adults were held liable. However, if no alcoholic beverages are provided by a social host to a minor guest, the host cannot be held liable for injuries caused by the minor guest who has procured and consumed alcoholic beverages obtained from another source. *Spears v. Bradford*, 652 So.2d 628 (La. App. 1 Cir. 1995)

⁵²⁴ In this case, a minor social host served alcoholic beverages to a minor guest who became intoxicated. The intoxicated minor guest caused an automobile accident by grabbing the steering wheel of the motor vehicle he was riding in. Passengers riding in the rear seats of the vehicle were injured in the accident. These passengers were not able to maintain a common law dram shop action against the minor social host. The court again, as in *Thrasher v. Leggett*, 373 So.2d 494 (La. 1979), rejected “absolute liability” and felt that a “duty risk” analysis should be performed to determine liability. For cases similar to *Gresham*, see *Bell v. Whitten*, 722 So.2d 1057 (La. App. 1 Cir. 1998), and *Guy v. State Farm Mutual, Inc. Co.*, 725 So.2d 39 (La. App. 3 Cir. 1998).

⁵²⁵ A motel was held liable for the injuries sustained by a minor passenger in a traffic accident while riding in a motor vehicle driven by an intoxicated minor driver. Although the motel had not supplied alcoholic beverages to the minor driver, the motel’s management had knowledge that such beverages were being consumed by the minor on the premises and ordered the minor to leave after they had become intoxicated. The court reasoned that the motel had a responsibility not to allow such a person to consume alcoholic beverages and then force them to leave in an intoxicated condition where such action could result in harm. *Kramer v. Continental Cas. Co.*, 641 So.2d 557 (La. App. 3 Cir. 1994)

Other:

Under §9:2800.1(B), a licensee is not liable for the injuries sustained by an intoxicated patron over the legal drinking age.⁵²⁶

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

Type of Criminal Action:

A. For alcoholic beverages with an alcohol content of 6 percent or above-**Misdemeanor** §§26:2(1) and 26:90(A)(2) B. For alcoholic beverages with an alcohol content of ½ of 1 percent to 6 percent-**Misdemeanor** §§26:241(1) and 26:286(A)(2)

Term of Imprisonment:

A. For alcoholic beverages with an alcohol content of 6 percent or above-**30 days-6 months** §26:171 B. For alcoholic beverages with an alcohol content of ½ of 1 percent to 6 percent-**30 days-6 months** §26:521

Fine (\$ Range):

A. For alcoholic beverages with an alcohol content of 6 percent or above – **\$100 to \$500** (and/or the following administrative fines: first offense – **\$50 to \$500**; second offense – (within 3 years) – **\$250 to \$1,000** Third offense – (within 3 years) – **\$500 to \$2,500** §26:96) B. For alcoholic beverages with an alcohol content of ½ of 1 percent to 6 percent – **\$100 to \$500** §26:521 (and/or the following administrative fines: first offense – **\$50 to \$500**; second offense (within 3 years) – **\$250 to \$1,000**; third offense – (within 3 years) – **\$500 to \$2,500** §26:292)

Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):
Length of Term of License
Withdrawal:

Yes Revocation or Suspension⁵²⁷ Not mandatory §§26:90(I) and 26:286(I)⁵²⁸

Not specified

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:

See Footnote No. ⁵²⁹.

⁵²⁶ See *Mayo v. Hyatt Corp.*, 898 F.2d 47 (5th Cir. 1990), for a Federal case applying the Dram Shop Law to this type of situation.

⁵²⁷ If a licensee has been certified as a “responsible vendor” of alcoholic beverages, his/her license is not suspended or revoked for a first offense. §26:935(B)(1)(a)

⁵²⁸ Under §§26:97 and 26:293, the liquor licensing authority may deny issuing a permit for a premises for one year if such premises were the subject of a revoked license.

⁵²⁹ In addition to the sanctions provided in the alcoholic beverage control law, the following sanctions are available in criminal law: An imprisonment term of not more than 6 months and/or a fine of not more than \$100. §§14:93.11 and 14:93.14

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Type of Criminal Action:

A. For alcoholic beverages with an alcoholic content of 6 percent or above – **Misdemeanor** §§ 26:2(1) and 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of ½ of 1 percent to 6 percent – **Misdemeanor** §§26:241(1) and26:286(A)(1)

Term of Imprisonment:

Same as for serving alcoholic beverages to an intoxicated person above.

Fine (\$ Range):

Same as for serving alcoholic beverages to an intoxicated person above.

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes Revocation or Suspension Not mandatory §§26:90(I) and 26:286(I)

Length of Term License Withdrawal:

Not specified

Anti-Happy Hour Laws/Regulations:

Yes §§26:90(A)(15) and 26:286(A)(15)
These sections prohibit the sale of alcoholic beverages “at a fixed price on an “all you can drink basis after” 10 pm.

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 Applies to drivers and passengers §32.300

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers §32.300