

STATE:

MINNESOTA

General Reference:

Minnesota Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol §169A.20, subd. 1⁶²¹
≥ **.08**^{622and623} §169A.20, subd. 1(5)

Illegal Per Se Law (BAC/BrAC):

**Any Amount of a Controlled Substance in the
Body** §169A.20,subd. 1(7)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) A Controlled Substance,
(2) A Listed Hazardous Substance or (3) a
Combination of Alcohol, a Controlled Substance or
a Listed Hazardous Substance §169A.20, subd.
1(2), (3) and (4)

Other:

An alcohol concentration ≥ **.04** is relevant evidence
that a person was under the influence of alcohol.
§169A.45, subd. 2Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes Also applies to CMV operators. §169A.41

Implied Consent Law:

No⁶²⁴

Arrest Required (Yes/No):

Applied Consent Law

Yes controlled⁶²⁵ or hazardous substances
§169A.51, subd. 1

Applies to Drugs (Yes/No):

Refusal to Submit to

Chemical Test Admitted

Yes §169A.45, subd 3, *and McConnell v. Com'r of
Public Safety*, 473 N.W.2d 848 (Minn. 1988)

into Evidence:

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): 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/UrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for the presence of alcohol. 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 not less than 10 years (10 years mand). A CMV operator is placed “out-of-service” for 24 hrs if any alcohol is in the system. A person commits a drunk driving offense if they operate a CMV with a BAC/BrAC/UrAC ≥ .04; the sanctions for this offense are the same as for any drunk driving offense. §§169.01, subs. 50 and 75; 169A.03, subd. 4; 169A.54, subd. 7(c); 169A.20, sub. (1)(6); 169A.51, subs.

⁶²¹ AIDING AND ABETTING – Every person who aids or abets in the commission of any act declared in this chapter to be an offense, whether individually or in connection with one or more persons, or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this chapter is likewise guilty of that offense. §169A.78

⁶²² This State’s illegal per se provisions also make it an offense to operate a motor vehicle with either a breath or a urine alcohol concentration at or above this level.

⁶²³Standards: 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. §169A.20, subd. 2

⁶²⁴ A test can be requested if one of the following exists: (1) A person has been lawfully placed under arrest under §169A.20; (2) a person has refused to take PBT; (3) a person submit to a PBT and the result indicated a BrAC ≥ .10 { .08 on or after 8/1/2005}; or, (4) a person is involved in an accident resulting in property damage, personal injury, or death. §169A.51, subd. 1(b)

⁶²⁵ Applies to controlled substances listed in Schedules I and II except marijuana or tetrahydrocannabinols. §169 A.20, subd 1(7) It is an affirmative defense to a violation of this provision if the defendant can show that the controlled substance was being used according to the terms of a valid prescription. §§169A.46, subd. 2 and 609.21 subd. 4a

1(c); 169A.52, subsds. 3(b) and 4; 169A.54, subd. 1, 7; 171.01, subd. 22; 171.165, subsds. 1, 2, 3(1) and 3(2); and 609.03

Other Information:

- I. A driver is required to submit to a chemical test if there is probable cause to believe that the person violated criminal vehicular homicide or injury laws. §§169A.51, sub. 2(3) and 169A.52, subd 1
- II. In addition to the above statutory provision, a person may be administered a blood test without consent if there is “probable cause” that the person committed an offense where blood test results could be used as evidence of a crime. *State v. Lee*, 585 N.W.2d 378 (Minn. 1998)
- III. See **Conditional Release** below.

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

Blood:

Yes §169A.51, subd. 1⁶²⁶

Urine:

Yes §169A.51, subd. 1 May be requested for the presence of either a controlled or hazardous substance. §169A.51, subd. 4

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

Pre-Sentencing Investigation Law (PS1) (Yes/No):

Yes⁶²⁷ §§169A.70, subd. 2 and 169A.70, subd. 3
Alcohol assessment required

⁶²⁶ A blood or urine test may be requested after a breath test if there is probable cause to believe that there is impairment by a controlled or hazardous substance. “Action may be taken against a person who refuses to take a blood test ...only if a urine test was offered and action may be taken against a person who refuses to take a urine test only if a blood test was offered.” §169A.51, subsds. 3 and 4

⁶²⁷ If a person has had two or more implied consent tests showing an alcohol concentration $\geq .07$ within 2 years, the licensing agency may require such person to submit to an alcohol/drug assessment with appropriate treatment. If the person refuses to undergo assessment/treatment, the driving license may be denied for not more than 90 days. §169A.54, subd. 11

School or Head Start Bus Operators: It is a misdemeanor to operate a school or head start bus with any alcohol in the body-Sanction: jail for not more than 90 days and/or a fine of not more than \$1,000. The offense is a gross misdemeanor if it occurred within 5 years of a prior drunk driving offense or the offense occurred while the driver was transporting a child < 16 years old who was 36 months younger than the driver; the sanctions for this offense is jail for not more than 1 year and/or a fine of not more than \$3,000. §§169A.31 and 609.03 A PBT result may be admitted into evidence to prove this offense. §169A.41, subd. 1 There are severe administrative penalties. §169A.54, subd. 9, §171.3215

Conditional Release. I. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense where the offender: (1) has had 2 or more such convictions within 10 years; (2) was < 19 years old and this is the second or subsequent charge for either a drunk driving offense or implied consent law violation; or (3) has been charged with driving with an alcohol concentration ≥ 0.20 . The offender can be released from detention only by agreeing to abstain from alcohol use and to submit to daily monitoring of alcohol levels. §169A.44(a) and (b) II. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense where the offender had 3 or more prior offense convictions within 10 years can only be released under the following conditions: (1) The impoundment of the registration plates of the vehicle used in offense; (2) the person must report weekly to a probation officer; and, (3) the person must abstain from the use of alcohol or controlled substances and subsequently submit to weekly random testing for alcohol/drugs. §169A.44(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):
 Administrative Licensing Action (Susp/Rev):

See Footnote No. ⁶²⁸

Other:

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

It is a crime to refuse to submit to a chemical test under the implied consent law. §169A.20, subd. 2
 A refusal to submit to a chemical test is a drunk driving offense.

Administrative Licensing Action (Susp/Rev):

Admin. Revocations. Revocation 1 year §169A.52, subd. 3(a) However, for a first refusal criminal offense conviction, the licensing revocation of 90 days applies instead of this action. §169A.54, subds. 1(2) and 6

First offense – 15 days mandatory – For persons < 18 years old-90 days mandatory subsequent Refusal (within 10 years) or a refusal where the person has had a prior drunk driving or admin. per se violation (within 10 years) – **180 days** mandatory For persons < 18 years old-**360 days** mandatory §171.30, subds. 2a and 2b

After these mandatory periods, a person is eligible for limited driving privileges. §171.30

Other:

This licensing action is imposed even if a test is obtained without consent following a refusal. §169A.52, subd. 3(a)

In any civil or criminal hearing or trial, the results of a breath test, when performed by a person who has been fully trained in the use of an infrared or other approved breath-testing instrument ... are admissible in evidence without antecedent expert testimony that an infrared or other approved breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Fourth Degree Drunk Driving Offense

No Aggravating Factors- Misdemeanor §169A.27

Third Degree Drunk Driving Offense

One Aggravating Factor-Gross Misdemeanor

§169A.26

Second Degree Drunk Driving Offense

⁶²⁸ A refusal to submit to a PBT will subject a person to the provisions of the implied consent law (§169A.51). §169A.41, subd. 4 Historical Note: Under a previous PBT law, which used similar language, the State Supreme Court held that a refusal to submit to a PBT would not result in licensing action. Only a refusal to submit to the implied consent would be grounds for such action. *State, Department of Public Safety v. Grovum*, 209 N.W.2d 788 (Minn. 1973) Comment: It appears reasonable to assume that this holding would also preclude the imposition

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A drunk driving offense with **two** Aggravating

Factors-**Gross Misdemeanor** §169A.25

First Degree Drunk Driving Offense

A drunk driving offense with **three or more**

Aggravating Factors-Felony §169A.24

Aggravating Factors. The following are considered

Aggravating Factors: (1) any prior drunk driving

offense (A prior offense includes prior refusal convictions and admin. per se violations and vehicle

homicide or injury offenses.); (2) driving with an

alcohol concentration ≥ 0.20 ; or, (3) driving with a

passenger < 16 years old if the passenger is more

than 36 months younger than the driver. §§169A.03,

subds 3, 20, 21 and 22, 169A.095, 169A.25,

169A.26 and 169A.27

Persons Under 21 Years Old. It is a misdemeanor

for persons less than 21 years old to operate a motor

vehicle while consuming alcoholic beverages, while

there is physical evidence of the consumption

present in the person's body. The sanctions for this

offense are jail for not more than 90 days, a fine of

not more than \$1,000 (mand fine of \$210 or \$50 if

there is undue hardship. See license suspension. For

a first offense, license suspension for 30 days and,

for a subsequent offense, license suspension for 180

days. These suspensions appear to be mandatory.

§§169A.33 and 609.03 Note: A PBT result may

admitted into evidence to prove this offense.

§169A.41, subd. 1

Special Note: I. In situations where a person has

caused "**bodily harm**" while operating a motor

vehicle in either (1) in a grossly negligent manner or

(2) in a negligent manner (i) while under the

influence of alcohol/a controlled substance, (ii) with

an alcohol concentration $\geq .10$ { $.08$ on or after

8/1/2005}, (iii) while knowingly under the influence

of a hazardous or (iv) with any amount of controlled

substance in the body, the following sanctions apply:

Jail – not more than 1 year; fine – not more than

\$3,000 (mand fine of \$900 or \$50 if there is undue

hardship) and 1 year mandatory license revocation.)

For persons < 18 years old, a mandatory license

revocation for 2 years. §§609.21, subd. 2b,

609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and

2b

In situations where a person has caused a "**great**

bodily injury" while operating a vehicle in either

(1) in a grossly negligent manner or (2) in a

negligent manner (i) while under the influence of

alcohol/a controlled substance, (ii) with an alcohol

concentration $\geq .10$, { $.08$ on or after 8/1/2005}, (iii)

while knowingly under the influence of a hazardous

or (iv) with any amount of controlled substance in

the body, the following sanctions apply: Jail – not

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more than 5 years; fine – not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship); and 1 year mandatory license revocation. For persons < 18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 2, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and 2b In situations where the driver has caused a “**substantial bodily injury**” while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ .10, {.08 on or after 8/1/2005}, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body , the following sanctions apply: Jail – not more than 3 years; fine – not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship); and, 1 year mandatory license revocation. For persons < 18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 2a, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and 2b

IV. In situations where the driver has caused an “**injury to an unborn child**” while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ .10, {.08 on or after 8/1/2005}, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body, the following sanctions apply: Jail – not more than 5 years; fine – not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship); and 1 year mandatory license revocation. For persons < 18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 4, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and 2b

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

See Mandatory Consecutive Sentences below.

Mandatory Minimum Term:

Misdemeanor-Up to **90 days** Gross Misdemeanor –
Not more than **1 year** §609.03

First offense – **None**
Second offense (within 10 years) – **30 days** with 48
consecutive hours⁶²⁹

⁶²⁹ Based on mitigating circumstances, the court may sentence a person without regard to the mandatory sanctions. However, any sanction that is imposed must include either 48 hours of consecutive incarceration or 80 hours of community service. §169A.275, subd. 1(d)

Third offense (within 10 years) – (1) **90 days** w/30 con days (not more than 60 days may be served on home detention or intensive probation⁶³⁰) or (2) **6 days** of incarceration followed by intensive probation.

Fourth offense (within 10 years) – (1) **180 days** with 30 consecutive days (not more than 150 days may be served on home detention or intensive probation) or (2) **6 days** of incarceration followed by intensive probation. Fifth or subsequent offense (within 10 years) – **1 year** with 60 consecutive days (the remainder of the minimum sentence may be served via on intensive probation with electronic monitoring or home detention) or (2) **6 days** of incarceration followed by intensive probation. §§169A.275

Fine:

Amount (\$ Range):

Misdemeanor – Not more than **\$1,000** §609.03

Gross Misdemeanor – Not more than **\$3,000**

§609.03

Mandatory Min. Fine (\$):

Misdemeanor Offenses – **\$300**; Gross Misdemeanor Offenses – **\$900** The law provides, that these mandatory fines may be reduced to \$50 based on undue hardship. §609.101, subs. 4 and 5 See **Felony Offenses** below.

Other Penalties:

Community Service:

First offense – 8 hours of community service for each day less than 30 of incarceration as an alternative to mandatory jail §169A.275, subd. 1(a)(2)

⁶³⁰ **Intensive Probation (Supervision) Program** (Pilot Program). Counties may receive State grants to start “intensive probation” programs for repeat drunk driving law offenders. This program provides, for (1) chemical dependency assessment, (2) a period of incarceration (or detention), (3) home detention, (4) abstinence from the use of alcohol/drugs, (5) decreased levels of program contact over the period of probation, (6) a provision that offenders continue or seek employment and (7) the costs of the program to be paid in whole or in part by the defendant. §169A.74

Mandatory Consecutive Sentences. A person is subject to mandatory consecutive incarceration sanctions under the following circumstances: (1) For violations of the drunk driving law, §169A.20, arising out of separate offenses; (2) for a violation of the drunk driving law where the person is also on probation for a prior offense; or (3) for a violation of the drunk driving law where there are five prior drunk driving or administrative per se law violations within 10 years. The court may sentence consecutively in one of the following offenses: (a) Violating vehicle insurance requirements; (2) driving while suspended or revoked; (3) driving without a valid license; or (4) driving in violation of a license restriction. §§169A.28, subd. 1,2 and 3

I. For **felony offenses**, mandatory fines are based on 30 percent of the maximum statutory fine. For either **gross misdemeanor** or **misdemeanor** offenses, mandatory fines are based either on 30 percent of the maximum statutory fine or on 30 percent the maximum fine for such offenses in the uniform fine schedule where the maximum fine in this schedule is lower than the statutory maximum. This schedule is established by the conference of chief judges by January 1 of each year. This schedule is not reported in this publication. §609.101, subd. 4(1) and (2) II. A person, who has been convicted of **any** criminal offense, **must** pay a surcharge of **\$35** §357.021, subd 6(a)

Restitution
(e.g., Victim's Fund)

Yes Victim's Fund (§§611A.51 et seq.)⁶³¹ and also direct payment by the defendant to a victim (§§609.10 and 609.125(4))⁶³²

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

Yes $\geq .10$ {.08 BAC on or after 8/1/2005} (BAC/BrAC/UrAC or **Any Amount of a Controlled Substance in the Body** first violation – Revocation **90 days**^{633,634and635} (15 days mand) For persons < 18 years old-90 days mand); second or Subsequent Violation (within 5 years) – **Revocation – 180 days** (90 days mand- For persons < 18 years old – 180 days mand) A limited license is available after the minimum mandatory revocation (or “waiting”) period. §§169A.52, subd. 4, and 171.30, subd. 2a and 2b

Other:

Under §171.18, a person's license may be suspended for not more than 1 year if that person has “committed” an offense requiring mandatory license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.

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

All offenses – Revocation §§169A.54, subd. 1, and 171.17

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

First offense – **Not less than 30 days**⁶³⁶ (90 days for refusal to submit to a chemical test); second offense (within 10 years) – **Not less than 180 days** (1 year for refusal to submit to a chemical test) and until treatment/rehabilitation has been completed; third

⁶³¹ Payments to all claimants shall not exceed \$50,000 per victim. §611A.54

⁶³² **Assessments and Surcharges.** I. For alcohol screening, there is a surcharge of \$125 (\$130 if there has been a prior offense within 5 years). §169A.284, subd. 1

II. In addition to any other fine or assessment, a person who has been convicted of driving with an alcohol concentration ≥ 0.20 under §169A.20 may be required to pay an assessment of up to \$1,000. §169A.285, subd. 1

⁶³³For persons less than 21 years old, the revocation period is six months (12 months if alcohol concentration ≥ 0.20). §169A.52, subd. 4

⁶³⁴The admin. per se revocations do not apply if a person has been convicted of a first DWI offense related to the same incident. §169A.54, subd. 6

⁶³⁵ If the person's alcohol concentration was ≥ 0.20 , the license revocation periods are **double** the ones given. §§169A.52, subd. 4(4) and 171.30, subd. 2c

Double Jeopardy. Based upon the same factual situation, a person who had been subjected to licensing action under a prior administrative per se law could also be subsequently prosecuted for a drunk driving offense (also prior law). Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hanson*, 543 N.W.2d 84 (Minn. 1996); *State v. Nelson* 608 N.W.2d 913 (Minn App. 2000).

Under a prior administrative per se law, the court held that such law did not violate a person's constitutional right to due process of law. *Heddan v. Dirkswager*, 336 N.W.2d 54 (Minn. 1983), *Hamilton v. Comm of Public Safety*, 600 N.W.2d 720 (Minn. 1999)

⁶³⁶ A person who has been convicted of driving with an alcohol concentration ≥ 0.20 under §169A.20 must have the driving privilege **revoked for double** these periods. §§169A.54, subd. 5 and 171.30, subd. 2c Under previous law, which was similar to the present provision, these longer waiting periods in cases where the driver's BAC was ≥ 0.20 were held not to violate such person's procedural due process of law rights. *Hamilton v. Commissioner of Public Safety*, 600 N.W.2d 720 (Minn. 1999)

offense (within 10 years) – Not less than **1 year** and until rehabilitation has been established; **fourth and subsequent offenses** – Not less than **2 years** and until rehabilitation has been established.^{637and 638.}

Mandatory Minimum Term of Withdrawal:

First offense – **15 days**⁶³⁹; second or subsequent offense (where a person submits to a chemical test) – **90 days**; second or subsequent offense (where a person refuses to submit to a chemical test) – **180 days** §171.30, subd. 2a

II. For persons < 18 years old – first offense – **90 days**; second or subsequent offense (where a person submits to a chemical test) – **180 days**; second or subsequent offense (where a person refuses to submit to a chemical test) – **360 days** §171.30, subd. 2b

Other:

Rehabilitation:

Alcohol Education:

Yes §169A.275, subd 5

Alcohol Treatment:

Yes §169A.275, subd 5

Except for mandatory criminal sanctions, the court may stay imposition of fine or jail sentence but not the licensing action if defendant submits to treatment as recommend via the assessment report under §169A.70 or as otherwise determined by the court. §169A.283

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

License Plate Impoundment. Vehicle registration plates **must** be impounded^{640,641and642} (1) if the vehicle operator within 10 years has been convicted of or had a license revocation either for driving while under the influence of alcohol or a controlled substance or with an alcohol concentration ≥ .10, {.08 on or after 8/1/2005} (2) if the vehicle operator was driving with an alcohol

⁶³⁷ Ninety additional days are added to the above revocation base periods if the drunk driving offense involved either a death or an injury. §169A.54, subd.4

⁶³⁸ If the drunk driving law offender is under 21 years old, the license is revoked for 6 months or for the normal period of time for drunk driving law violators whichever is the greater period. §169A.54, subd. 2

⁶³⁹ Under §171.30, after the minimum mandatory revocation (or “waiting”) period, a limited license may be issued (1) for employment purposes, (2) for attendance at an alcohol treatment program or (3) for the needs of a homemaker in order to prevent the substantial disruption of the educational, medical or nutritional needs of the family.

⁶⁴⁰ License plate impoundment does not apply either to rental vehicles or to vehicles registered in other States. §169A.60, subd. 2(b)

⁶⁴¹ If the registered owner of a vehicle was not a passenger at the time of the offense, the vehicle registration plates may be reissued. §169A.60, subd. 8

⁶⁴² **Special Plates** may be issued so that the vehicle may be operated by either a family member, who has a valid driver’s license, or by the offender if that person has a limited (restricted) license. §169A.60, subd 13 A law enforcement officer is authorized to stop a vehicle bearing these plates in order to determine if the driver is lawfully authorized to operate a motor vehicle. §168.0422 However, a recent court decision held that a vehicle cannot be stopped simply because it bears these “special plates.” Such suspicionless stops are unconstitutional. *State v. Grayeagle*, 541 N.W.2d 326 (Minn.App.) After *Grayeagle*, the legislature amended §168.0422 to specifically authorize such stops. The court in *State v. Henning*; 644 N.W.2d 500 (Minn. App. 2002) found it to be constitutional.

concentration \geq 0.20 or (3) if the vehicle operator has been convicted of any drunk driving or implied consent offense while transporting a child under 16 years old where the child was at least 36 months younger than the driver. New registration plates are issued when the driver's license revocation order is "rescinded or if the vehicle belongs to a person other than the violator and was not a passenger at the time of violation. §169A.60

Forfeiture (Administrative or Judicial).⁶⁴³ Under §169A.63, any motor vehicle used in the following offenses or violations is subject to forfeiture.

I. A third or subsequent implied consent refusal or admin. per se revocation within 10 years (a prior violation includes any drunk driving offense).

II. A person who has been convicted of a drunk driving offense while license was cancelled or restricted.

Terms Upon Which Vehicle Will Be Released:

Other:

A vehicle may be impounded following a DWI arrest. The vehicle may be released to the vehicle owner (or lien holder) upon proof of a valid driver's license and insurance. §169A.42

Miscellaneous Sanctions Not Included Elsewhere:

See Ignition Interlock Program below

Punitive Damages. In a civil action involving a motor vehicle accident, punitive damages may be awarded if the defendant (1) had an alcohol concentration \geq .10, (2) was under the influence of either a controlled or hazardous substance or (3) was under the influence of alcohol and refused to submit to a chemical test under the implied consent law. §169A.76

⁶⁴³ **Court Decisions Under Prior Law (§169.1217) Similar to Present Provisions.** I. Based upon the same factual situation, a person who has been convicted of certain drunk driving or license revocation offenses was also subject to having his/her vehicle forfeited via a civil proceeding. Such subsequent civil proceeding does not violate the constitutional prohibition against double jeopardy. *Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803 (Minn.App. 1996) (review denied by the State Supreme Court, 1999 Minn. LEXIS 304), and *City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn. App. 2001) (review denied by the State supreme court, 2001 Minn. LEXIS 225); *Miller v. 2001 Pontiac Aztek*, 655 N.W.2d 12 (Minn. App. 2002)

II. Forfeiture was held to be mandatory. *Adkins v. 1979 Midas R.V.*, 546 N.W.2d 768 (Minn. App. 1996)

III. The forfeiture of a vehicle having a value in excess of the maximum fine did not violate constitutional provisions prohibiting excessive fines. *City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn. App. 2001) (review denied by the State Supreme Court, 2001 Minn. LEXIS 225); *Miller v. 2001 Pontiac Aztek*, 655 N.W.2d 12 (Minn. App. 2002)

Ignition Interlock Program: Pursuant to §171.305 subd. 5, the commissioner may issue a limited license to a drunk driving offender who had been denied driving privileges based on good cause that the person is a threat to public safety under §171.04, subd. 1(10), if (1) at least half of the person's required alcohol abstinence period has been completed (2) the treatment program has been completed, (3) the person was currently participating in a group support abstinence program and (4) operated motor vehicles equipped with **ignition interlock** devices. §171.305

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

Yes Felony I. Death as a result of operating a motor vehicle either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/controlled substance, (ii) with an alcohol concentration $\geq .10$, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body §609.21, subd. 1 II. “Death to an unborn child” while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration $\geq .10$, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body §609.21, subd. 3

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Not more than **10 years** §609.21, subds. 1 and 3**None**Not more than **\$20,000** §609.21, subds. 1 and 3**\$6,000** (\$50 if there is undue hardship) §609.101, subds. 4 and 5

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License Withdrawal:

Revocation §§169.11⁶⁴⁴ and 171.17.See Footnote No. ⁶⁴⁵**1 year** (For persons < 18 years old, 2 years)

§171.30 A limited license may be issued after the 1 (or 2) – year minimum license revocation period.

§171.30, subd. 2a and 2b

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

No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

⁶⁴⁴ A defendant may also be required to surrender his/her vehicle's registration plates during the period of license revocation. §168.041, subds. 3 and 4

⁶⁴⁵ **Injury or Death Related DWI Offenses.** The maximum revocation for these offenses is not specified by statute. However, the following provisions are applicable. (1) An offender cannot have the driving privilege restored until completion of an examination by the licensing agency. §171.29, subd. 1 And, (2) if a court has denied an offender's petition for reinstatement of the license, the offender must wait 1 year before petitioning the court again for such reinstatement. §171.19

Criminal:	
Imprisonment (Term):	Misdemeanor Not more than 90 days §§171.24 ⁶⁴⁶ and 609.03(3)
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$1,000 609.03(3)
Mandatory Minimum Fine:	\$300 (\$50 if there is undue hardship) §609.101, subds. 4 and 5 See Vehicle Forfeiture below.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Suspension Applies only to second or subsequent offenses. §168.041, subd. 2
Length of Term of License Withdrawal Action:	<u>Second or subsequent offense</u> – Not more than 1 year §168.041, subd. 2
Mandatory Term of License Withdrawal Action:	None
<u>Habitual Traffic Offender Law</u> : 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:

⁶⁴⁶ Motor vehicle registration plates impounded under §168.041, subds. 1, 2 and 4 for a violation of this provision.
 I. A person commits a misdemeanor by operating a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 90 days and/or a fine of not more than \$1,000 (mand fine of \$300 or \$50 if there is undue hardship). §§171.24, subd. 4 and 609.03 II. A person is subject to the following CDL disqualifications, if operating a CMV during an out-of-service order: first violation – 90 days (mand) to 1 year; second violation (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent violation (within 10 years) – 3 years (mand) to 5 years. §171.165. subd. 4A III. A person is subject to an administrative “penalty” of not more than \$1,000 if operating a CMV during an out-of-service order. §171.165, subd. 3(d)
Vehicle Forfeiture. A person’s vehicle is subject to mandatory forfeiture if either a drunk driving or aggravated drunk driving offense occurs after the driving privilege has been canceled by the licensing agency on the grounds that “operation of a motor vehicle on the highways ... would be inimical to public safety or welfare.” §§169A.63, subd. 1(b)(2)(I); 171.04, subd. 1(9); and, *Adkins v. 1979 Midas R.V.*, 546 N.W.2d 768 (Minn. App. 1996)

Laws Requiring BAC Chemical Tests
on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):

Yes §169.09, subd. 11

BAC Chemical Test Is Given to the
Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes age 16 or older

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21⁶⁴⁷ §340A.503, subd. 2(1) and (2)

Minimum Age (Years) Possession:

21 Exemption for home possession §340A.503,
subd. 3

Minimum Age (Years) Consumption:

21 Exemption for home consumption with parental
consent §340A.503, subd. 1(2)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes⁶⁴⁸ §340A.801

“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):

Dram Shop Actions-Social Hosts:

Yes-Limited Social hosts ≥ 21 years of age who
serve or provide alcoholic beverages that result in
the intoxication of persons <21 years old are liable
for the injuries caused by such minors. However, the
law excludes such intoxicated minors from
recovering for any of the injuries they may sustain.
§340A.90

Other:

A licensee is not liable for the injuries sustained by
an intoxicated patron. *Line Const. Ben. Fund
(Lineco) v. Skeates*, 563 N.W.2d 757 (Minn. App.
1997), and *Empire Fire and Marine Insurance Co.
v. Williams*, 121 N.W.2d 580 (Minn. 1963)

Criminal Action Against Owner

⁶⁴⁷ A person under 21 years old may purchase alcoholic beverages if under the supervision of a person over 21 years old and the purpose of the purchase is for training, education or research purposes. The law further provides that “[p]rior notification of the licensing authority is required unless the supervised alcohol purchase attempt is for professional research conducted by post-secondary educational institutions or state, county, or local health departments.” §340A.503, subd. 2

⁶⁴⁸ I. A licensee who has a license to sell alcoholic beverages only on the premises may still be liable for the actions of patrons who procure such beverages from the licensee but consume them off the premises. *Englund v. MN CA Partners*, 555 N.W.2d 328 (Minn. App. 1996) II. A licensee may be liable under the Dram Shop Act for damages caused by a driver, who consumed alcoholic beverages at the licensee’s establishment, to vehicle passengers injured in an automobile accident while riding with the intoxicated patron. *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855 (Minn. 1998) Also, bartenders may be able to recover damages from the employer for injuries received from intoxicated patrons. *K. R. v. Sanford*, 605 N.W.2d 387 (Minn. 2000) III. A former spouse is considered an “other person” under the Dram Shop Law and can recover damages for the death of her former husband who became intoxicated at a licensed establishment and, while operating a motor vehicle, was killed in a single vehicle accident. *Skelly v. Mount*, 620 N.W.2d 566 (Minn.App. 2000) (rev denied 2001 Minn. LEXIS 115 (2001))

or Employees of Establishments
that Serve Alcoholic Beverages
to Intoxicated Patrons:

Type of Criminal Action:

Gross Misdemeanor §§340A.502, 340A.702(7)
and 609.03

Term of Imprisonment:

Up to **1 year**

Fine (\$ Range):

Not more than **\$3,000** (a mandatory fine of \$900 or \$50 if there is undue hardship §609.101, subds. 4 and 5) (An admin. fine of up to **\$2,000** may also be imposed. §340A.415)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes §340A.415

Length of Term of License

Withdrawal:

Suspended for up to **60 days** or revoked for an unspecified period of time.

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:

Gross Misdemeanor §§340A.503, subd. 2(1), and
340A.702(8) and 609.03

Term of Imprisonment:

Up to **1 year**⁶⁴⁹

Fine (\$ Range):

Not more than **\$3,000** (a mandatory fine of \$900 or \$50 if there is undue hardship §609.101, subds. 4 and 5) (An admin. fine of up to **\$2,000** may also be imposed. §340A.415)

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 §340A.415

Length of Term License Withdrawal:

Suspended for up to **60 days** or revoked for an unspecified period of time.

Anti-Happy Hour Laws/Regulations:

No

⁶⁴⁹ In *State v. Guminga*, 395 N.W.2d 344 (Minn. 1986), the Minnesota Supreme Court held criminal sanctions cannot be imposed on employers for the illegal actions of their employees who sell/serve alcoholic beverages to persons under the legal drinking age. See §340A.501 which also eliminates the possibility of such vicarious criminal liability.

It is a felony for a person who is not licensed to dispense alcoholic beverages to either sell, barter, furnish or give such beverages to a person < 21 years old “if that person becomes intoxicated and causes or suffers death or great bodily injury as a result of the intoxication.” The sanctions for this felony are a prison term of not more than 5 years and/or a fine of not more than \$10,000. However, unless an offender’s criminal history would indicate a greater sanction via the sentencing guidelines, the presumptive sentence is a stay of execution with 90 days incarceration and probation. §§340A.701, subds. 1(4) and 2 and 609.03(1)

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 §169A.35, subds. 3 and 4

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §169A.35, subd. 2