

STATE:

MISSOURI

General Reference:

Vernon's Annotated Missouri Statutes

Basis for a DWI Charge:

Standard DWI Offense:

Driving while intoxicated (while in an intoxicated or drugged condition)⁶⁷³ §577.010

Illegal Per Se Law (BAC/BrAC):

≥.08⁶⁷⁴ §577.012

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Drugged Condition §577.010

Other:

A BAC/BrAC ≥.08 is *prima facie* evidence of intoxication. §577.037Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §577.021 and *Justice v. Director of Revenue*, 890 S.W.2d 728 (Mo. App. 1995)

Implied Consent Law:

Arrest Required (Yes/No):

Yes §577.020.1(1). For persons under 21: reasonable cause is sufficient. §577.020.1 (2), (3), (4)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §577.020.1

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes §577.041.1 (Criminal and Possibly Civil Cases), *State v. Berry*, 803 S.W.2d 37 (Mo. App. 1990), *State v. McCarty*, 875 S.W.2d 622 (Mo. App. S.D. 1994), and *State v. Myers*, 940 S.W.2d 64 (Mo. App. S.D. 1997)

Other Information:

Under "exigent circumstances", a blood sample may be withdrawn from a driver without their consent but prior to a DWI arrest if there is "probable cause" of such offense. *State v. LeRette*, 858 S.W.2d 816 (Mo. App. W.D. 1993)Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §577.020.1

Urine:

Yes §577.020.1

Other:

Saliva §577.020.1Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes For all offenses as part of the alcohol and drug education and rehabilitation programs §§577.001.4 and 577.049.1

⁶⁷³ The term "intoxicated condition" means "under the influence of alcohol, a controlled substance, or drug, or any combination thereof." §577.001.2

⁶⁷⁴ The illegal per se law provides that no one shall operate a motor vehicle with a .08 or more "percent by weight" of alcohol in the blood. "Percent by weight" of alcohol is defined as grams of alcohol per either 100 milliliters of blood or 210 liters of breath. §577.012.1 and 2. See §577.037 which concerns the admissibility of chemical test evidence to prove either an intoxicated or illegal per se offense and also defines "percent by weight of alcohol in the blood" to mean grams of alcohol per either 100 milliliters of blood or 210 liters of breath.

Sanctions for Refusal to Submit to a Chemical Test:Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A

Administrative Licensing Action

(Susp/Rev): N/A

Other: N/A

Refusal to Take Implied ConsentChemical Test:

Criminal Sanction (Fine/Jail): None

Administrative Licensing Action

(Susp/Rev):

First Refusal – Revocation – 1 year (90 days mand) (A limited hardship license may be issued by the court after the 90-day period.); second or subsequent refusal (within 5 years) – **Revocation – 1 year** (Mand) §§302.309.3(5)(e) and (f), and 577.041
A person must complete a substance abuse program before the license can be reinstated. For cause, the court may modify or waive this requirement unless the offender's BAC was $\geq .15$. §577.041.7

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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

Intoxicated/illegal per se offense, first offense – Class B Misdemeanor – not more than **6 months**;
Intoxicated/illegal per se offenses; "prior offender"⁶⁷⁵ – Class A Misdemeanor – not more than **1 year**; "persistent offender"⁶⁷⁶ – Class D felony – Not more than **5 years** §§577.010, 577.012, 577.023, 558.011, 56.011 and 56.016

Mandatory Minimum Term:

"Prior" Intoxicated/illegal per se offenses – **5 days**;
"Persistent" Intoxicated/illegal per se offenses – **10 days**⁶⁷⁷; "Aggravated"⁶⁷⁸ – minimum of sixty days
"Chronic"⁶⁷⁹ – minimum of two years imprisonment. §577.023.

Fine:

Amount (\$ Range):

Intoxicated offense, first offense – Not more than **\$500**; Intoxicated/illegal per se offense, "prior

⁶⁷⁵ A "prior offender" is a person who has had one previous alcohol related driving offense conviction within 5 years of the presently charged offense. §577.023

⁶⁷⁶ A "persistent offender" is a person who has had two or more previous alcohol-related driving offense convictions within 10 years of the presently charged offense. §577.023

⁶⁷⁷ For a "prior," or "persistent" offender, except for community service, the offender is not eligible for either parole or probation until serving these mandatory sentences. §577.023.

⁶⁷⁸ An "aggravated offender" is a person who has been found guilty of three or more intoxication-related traffic offenses; or a person who has been found guilty of involuntary manslaughter or assault of a law enforcement officer {in the second degree} and one other intoxicated-related traffic offense. §577.023. 1 (1) {An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter, assault of a law enforcement officer {in the second degree} or driving under the influence of alcohol or drugs. §577.023. 1 (3)}

⁶⁷⁹ A "chronic offender" is: a person who has been found guilty of four or more intoxication-related traffic offenses; or a person who has been found guilty on two or more separate occasions of involuntary manslaughter or a person who has been found guilty of involuntary manslaughter or assault of a law enforcement officer {in the second degree} AND in addition, two or more intoxication-related traffic offenses. §577.023. 1(2)

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<p>Mandatory Min. Fine (\$):</p> <p>Other Penalties:</p> <p style="padding-left: 40px;">Community Service:</p> <p style="padding-left: 40px;">Restitution (e.g., Victim's Fund)</p> <p>Other:</p> <p style="padding-left: 40px;">Administrative Licensing Actions:</p> <p style="padding-left: 40px;"><u>Pre-DWI Conviction Licensing Action:</u></p> <p style="padding-left: 40px;">Administrative Per Se Law:</p>	<p>offender" – Not more than \$1,000; "persistent offender" – Not more than \$5,000</p> <p>None</p> <p>In lieu of imprisonment, "Prior" Intoxicated/illegal per se offenses – 30 days; "Persistent" Intoxicated/Illegal per se offenses – 60 days. §577.023.4</p> <p>(1) Victim's compensation fund. §§595.010 et seq. (2) The court may also order direct compensation by defendants to victims. §595.200</p> <p>For a first intoxicated offense, the sentence may be suspended provided the defendant is placed on probation for a minimum of 2 years. §577.010.2</p> <p>Assault: A person who injures another while driving either while intoxicated or illegal per se, commits assault in the second degree that is a Class C felony. The sanctions for this offense are imprisonment for not more than 7 years and a fine of not more than \$5,000. §§558.011, 56.011 and 565.060</p> <p>Yes ≥.08 BAC/BrAC⁶⁸⁰ For Persons Under 21 Years Old ≥.02 BAC/BrAC §§302.309.3(5)(i) and 302.500 et seq. First Violation– suspension – 30 mandatory days^{681and682} with a limited license for an additional 60 days provided there has been no prior "alcohol related enforcement contact"⁶⁸³ within 5 years. §§302.309.3(5)(h) and 302.525.2(1); Subsequent Violation Revocation – 1 mandatory year⁶⁸⁴ (if there has been an "alcohol-related enforcement contact" within 5 years.) Restricted driving privileges may be granted pending the</p>
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⁶⁸⁰ Standard: "Percent by weight" of alcohol in the blood. This concentration is defined to mean grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§302.500(1), 302.505.1 and 577.037.2

⁶⁸¹ Any period of admin per se license suspension/revocation shall be credited against any period of time a person's license is suspended/revoked for a DWI offense conviction (§§577.010 and 577.012 offenses). The total license suspension/revocation period shall not exceed the longer of the two periods. §302.525.4

⁶⁸² Barnes v. Director of Revenue, 856 S.W.2d 108 (Mo. App. W.D. 1993), Richard v. Director of Revenue, 869 S.W.2d 913 (Mo. App. E.D. 1994), State Ex Rel. Dir. of Revenue v. McHenry, 861 S.W.2d 562 (Mo. banc 1993), and Director of Revenue v. Pennoyer, 944 S.W.2d 265 (Mo. App. E.D. 1997)

⁶⁸³ The term "alcohol-related enforcement contact" means either (1) an admin per se action, (2) a refusal to submit to a chemical test under the implied consent law, or (3) a conviction for the offense of driving with an excessive alcohol concentration. The term may not include the offense of driving while intoxicated (§577.010 offenses). §302.525.3

⁶⁸⁴ Shelton v. Director of Revenue, 861 S.W.2d 213 (Mo. App. W.D. 1993) and Frieden v. Director of Revenue, 864 S.W.2d 27 (Mo. App. S.D. 1993)

Probable cause: For administrative licensing action against a person <21 years old who was operating a motor vehicle with a BAC/BrAC ≥.02, it must be established that the original stop by law enforcement officers was based on "probable cause" that the driver committed a drunk driving offense under either §577.010 (driving while intoxicated) or 577.012 (illegal per se BAC/BrAC ≥.08).

outcome of a trial de novo in the courts on an admin. per se action. §302.535

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

Intoxicated offense, first offense – 8 points⁶⁸⁵; Per se offense, first offense – 8 points⁶⁸⁶; Intoxicated offense where there was a prior Illegal Per Se offense or an Illegal Per Se offense where there was a prior Intoxicated offense^{687 – Revocation} (12 points); second offense (within 5 years) of violating the laws related to driving while intoxicated- **Revocation** (12 points); third and subsequent offenses of violating the laws related to driving while intoxicated/illegal per se – Revocation (12 points). §§302.302.1 (7), (8) and (9) and 302.060(9) and (10) For persons under 21 who are convicted of any DWI offense – first offense – **Suspension**; second or subsequent offense – **Revocation** §577.500 et seq.

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

Intoxicated offense, first offense – **30 days** (plus 60 days restricted driving privileges)⁶⁸⁸ §302.304.4; Per se offense, first offense – **30 days** (plus 60 days restricted driving privileges) §302.304.4; Intoxicated offense where there was a prior Illegal Per Se offense or an Illegal Per Se offense where there was a prior Intoxicated offense. – 1 year; second offense(within 5 years) of violating the laws related to driving while intoxicated⁶⁸⁹ – 5 years §302.060(10); third and subsequent offenses of violating the laws related to driving while intoxicated – 10 years / **Permanent**⁶⁹⁰ §302.060(9). For persons under 21 who are convicted of any DWI offense – first offense – **Suspension 90 days**; second or subsequent offense – **Revocation – 1 year** §§577.500.5, and 577.510

⁶⁸⁵ **Point System:** Under the point system, 8 points equals a suspension and 12 points equals a revocation. §§302.302.1 and 302.304.2, .3, .4 and .5 Under §302.304. 3 and .4, different license suspension periods apply in the case of DWI offenders as opposed to other offenders who have accumulated points under §302.302.

⁶⁸⁶ License suspension action would occur only if the defendant had at least 2 more points on the record from some other driving offense. I.e., a first illegal per se offense conviction alone would not result in a license suspension action. §§302.302, 302 and 302.304.4. However, if the defendant has accumulated sufficient points together with an illegal per se conviction, the license is suspended by the licensing agency for a mandatory 30-day period which may be followed by restricted hardship driving privileges for 60 days. §302.304.4

⁶⁸⁷ I.e., a first Intoxicated Offense where the driver has had a previous conviction for an Illegal Per Se offense or a first Illegal Per Se offense where the driver has had a previous conviction for an Intoxicated Offense.

⁶⁸⁸ Under §302.304.4, the licensing agency may grant restricted driving privileges for 60 days following the 30-day mandatory period for the purpose of employment or for attending an alcohol education/treatment program. Also, under §302.309.3(5)(a), a court or the licensing agency may grant limited driving privileges for employment, educational or medical reasons after the 30-day mandatory period.

⁶⁸⁹ Sec. 302.060(9) provides that a person who has been convicted "more than twice" of an offense "relating to driving while intoxicated" is subject to a denial of driving privileges for at least 10 years. The term "relating to driving while intoxicated" has been interpreted to include illegal per se offenses. *Wilson v. Director of Revenue*, 873 S.W.2d 328 (Mo. App. E.D. 1994)

⁶⁹⁰ *Appleby v. Director of Revenue*, 851 S.W.2d 540 (Mo. App. W.D. 1993)

Mandatory Minimum Term of
Withdrawal:

First Intoxicated offense – **30 days** First Per Se offense – **None**. Intoxicated offense where there was a prior Illegal Per Se offense or an Illegal Per Se offense where there was a prior Intoxicated offense – **1 year**. Second offense(within 5 years) of violating the laws related to driving while intoxicated – **2 years**. After 2 years, restricted driving privileges may be granted. After 5 years, driving privileges may be fully restored. Third and subsequent offense – **3 years/ 10years/ Permanent**. After 3 years, hardship driving privileges may be granted. After 10 years, a court may order the licensing agency to issue an offender a license provided the offender is no longer a threat to the public safety. Such an order can only be issued once. §§302.060(9) and (10), 302.304, sub. 6 and 302.309, sub. 3(6)

A person under 21 years old who is convicted of a DWI offense has the driver's license suspended for 90 days for a first offense and revoked for 1 year for a second or subsequent offense. A restricted license is available via §302.309. §§577.500 and 577.510 I. A limited license via either a court order or licensing agency is available for employment, educational or medical purposes. Such a license cannot be issued to a person who has been convicted of a second or subsequent Intoxicated offense. §302.309.3(5)(c)

II. No limited driving privileges of any type may be granted to a person who has been convicted of operating a motor vehicle while under the influence of either narcotic drugs or a controlled substance. §302.309.3(5)(d)

Other:
Rehabilitation:

Alcohol Education:

Intoxicated offense, first offense – **Yes**; Per se offense – first offense – **Yes**. Required for persons under 21 years old who have committed an alcohol offense. §577.525

Alcohol Treatment:

Intoxicated offense, first offense – **Yes**; Per se offense, first offense – **Yes**.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Impoundment/Forfeiture. Under §82.1000, certain cities with populations over 100,000 may enact motor vehicle impoundment or forfeiture ordinances. I. A motor vehicle is subject to such action if (1) the driver has had one or more intoxicated related traffic offense convictions (including illegal per se) and (2) is operating the vehicle while on a suspended or revoked license either for an intoxicated related traffic offense or for involuntary manslaughter related to intoxicated

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driving. II. A motor vehicle is subject to such action if the driver has had two or more intoxicated related traffic offense convictions (including illegal per se) and either has a BAC/BaAC $\geq .08$ ($\geq .02$ if <21 years old) or refuses to submit to chemical test under the implied consent law. The above actions apply to the vehicle operated by the offender irrespective of its ownership.

Miscellaneous Sanctions
Not Included Elsewhere:

DWI Enforcement Cost: A court may require a person convicted of a DWI offense to "reimburse" either the State or local governments for the costs "associated" with the person's DWI arrest.

§488.5334

Ignition Interlock: I. For either an intoxicated or illegal per se drunk driving offense, the court may, in the case of a first offender, and must, in the case of a second or subsequent offender, require such a person to only operate motor vehicles that are equipped with an ignition interlock device for not less than 1 month following license reinstatement.

II. Such a requirement is mandatory as a condition for granting limited (hardship) driving privileges under §302.309 for subsequent offenders. §577.600

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

§565.024

Yes (Class C felony) Involuntary Manslaughter where death is caused by operating a motor vehicle while in an intoxicated condition and with criminal negligence. §565.024

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **7 years** §558.011

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than **\$5,000** §56.011

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Revocation §302.060(10)

Length of Term of

Licensing Withdrawal:

5 years §302.060(10)

Mandatory Action--Minimum

Length of License

Withdrawal:

5 years §302.060(10)

Other:

Victim's compensation fund §595.010 et seq.

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

There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Sanctions: I. Second Degree Murder – A person who causes a death while committing a drunk driving offense as a “persistent offender” (a felony offense) may be charged with and convicted of second degree felony murder. *State v. Pembleton*, 978 S.W.2d 352 (Mo. App. E.D. 1998)

II. Even though the law is not clear, it would appear that if a person cannot obtain a license (full driving privileges after 10 years via court order), that person is ineligible for hardship driving privileges.

III. The Missouri Supreme Court has held that a person convicted of a felony drunk driving offense is ineligible for hardship driving privileges. Under §302.309.3(6)(a), a person may be granted such privileges unless “otherwise ineligible”. An ineligible person, under §302.309.3(5)(b), includes a person who has been convicted of a felony in which a motor vehicle was used. The court interpreted the term “felony” in §302.309.3(5)(b) to include any person who has been convicted of a felony drunk driving offense. As a result, hardship driving privileges cannot be granted to such a person.

Hagan v. Director of Revenue, 968 S.W.2d 704 (Mo.banc 1998). Two or more revocations for failure to submit to a chemical test also render a driver ineligible for a hardship license.

§302.309.3(5)(f); *Williams v. Director* 69 S.W. 3d 919 (Mo. App 2002)

IV. For either a first or subsequent intoxicated/illegal per se conviction, the court must order a defendant to successfully complete an alcohol or drug education or rehabilitation program. §577.049

V. For persons who have violated the administrative per se law, driving privileges cannot be restored until they have successfully completed an alcohol or drug education or rehabilitation program. For cause, the court may modify or waive this requirement unless the offender’s BAC/BrAC was $\geq .15$
§302.540.1

VI. Persons <21 years old who have been convicted of any DWI offense cannot have their driving privileges restored until they successfully complete an alcohol or drug education program. §577.520.1

VII. If a driver's license has been either suspended or revoked under the point system for a drunk driving offense, such license cannot be reinstated until the driver completes a substance abuse program. For cause, the court may modify or waive this requirement unless the offender’s BAC/BrAC was $\geq .15$. §§302.304.14 and 577.041.7.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous

materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC $\geq .04$, (2) is under the influence of alcohol or drugs 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). In addition, a CMV operator who has any "measurable" amount of alcohol in the system must be placed "out-of-service" for 24 hours. Finally, it is a Class B misdemeanor to drive A CMV with either BAC/BrAC/UrAC $\geq .04$ or while under the influence of either alcohol or a controlled substance. The term "controlled substance" may not apply to all drugs. §302.780(1)(3) The sanctions for this offense are imprisonment for not more than 6 months and/or a fine of not more than \$500. §§302.309.3(5)(g), 302.700.2(2), (6), (10), (13) and (14), 302.745, 302.750, 302.755 and 302.780

See Footnote Nos. ⁶⁹¹ and ⁶⁹²

Sanction:	
Criminal:	
Imprisonment (Term):	Not more than 1 year (Class A misdemeanor) §§302.302, 302.321 and 558.011
Mandatory Minimum Term of Imprisonment:	48 consecutive hours (In lieu of imprisonment, the defendant may perform at least 10 days, with at least 40 hours of community service.) §302.321
Fine (\$ Range):	Not more than \$1,000 §56.016
Mandatory Minimum Fine:	None
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	Revocation. Under the point system-12 points §302.302.1(5)
Length of Term of License Withdrawal Action:	1 year §302.304.7
Mandatory Term of License Withdrawal Action:	None. Restricted hardship driving privileges may be granted. This privilege, however, may only be granted once in 5 years. §302.309.3(5)
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/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	

⁶⁹¹ An offender must act "with criminal negligence with respect to knowledge of the fact that his driving privilege has been canceled, suspended or revoked." §302.321.1

⁶⁹² I. It is a Class A misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 1 year, a fine of not more than \$1,000 and CDL license revocation for 2 years. An offender must serve either 48 con hours of confinement or 10 days (involving at least 40 hrs) of community service. §§302.725, 558.011.1(5) and 56.016.1(1). II. It is also a Class A misdemeanor to operate a CMV while under a CDL out-of-service order. Again, the sanctions for this offense are imprisonment for not more than 1 year, a fine of not more than \$1,000. However, a violator is also subject to a civil penalty of \$1,000 and the following CDL disqualification periods: first offense – 90 days; second offense (within 10 years) – 1 year; and third and subsequent offense (within 10 years) – 3 years. §§302.755, 302.756.1 558.011.1(5) and 56.016.1(1)

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** §§58.445 and 58.449

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **Yes**

Pedestrian: **Yes**

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§311.310, 311.325, 312.400 and 312.407

Minimum Age (Years) Possession: **21**⁶⁹³ §§311.325 and 312.407

Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**⁶⁹⁴ §537.053 This law provides that a cause of action for damages under the dram shop act may only be brought against a liquor by the drink licensee. This law further abrogates case law that had established dram shop liability based either on “ordinary” negligence or on negligence resulting

⁶⁹³ The appellate courts have held if the State charges a minor with the offense of possessing “intoxicating liquor,” it must establish that the alcoholic content of the beverage in question satisfies the definition for this beverage. *State v. Perkins*, 773 S.W.2d 237 (Mo. App. S.D. 1989), and *State v. Christ*, 975 S.W.2d 945 (Mo. App. W.D. 1998) The courts’ reasons are based on the fact that there are two separate statutory provisions (with accompanying definitions) related to the possession of alcoholic beverages by person <21 years old. Secs. 311.325 and 312.407 respectively prohibit such persons from possessing “intoxicating liquor” and “non-intoxicating beer.” Sec. 311.020 defines “intoxicating liquor” as a beverage with an alcoholic content of >0.5 percent alcohol by volume not including “non-intoxicating beer.” Sec. 312.010(2) defines “non-intoxicating beer” as beer with an alcoholic content >0.5 percent by volume but ≤3.2 percent by weight.

⁶⁹⁴ The law, §537.053.3, had a provision that provided that a cause of action for damages under the dram shop act may only be brought against a licensee who has been convicted of the offense of selling alcoholic beverages either to a person under 21 years old or to an obviously intoxicated individual. This statutory limitation (but not the entire dram shop law) was held to be unconstitutional under “open courts” provision of the State’s constitution. *Kilmer v. Mun*, 17 S.W.3d 545 (Mo.banc 2000) The *Kilmer* case overruled *Simpson v. Kilcher*, 749 S.W.2d 386 (Mo.banc 1988), which had upheld the constitutionality of this limitation. The provision has since been repealed and replaced with language setting the standard at “clear and convincing evidence that the seller knew or should have known that intoxicating liquor was served to a person under the age of 21 years or knowingly served intoxicating liquor to a visibly intoxicated person.” 2002 Mo. H.B. 1532 enacted July 11, 2002

from a violation of a criminal statute (e.g., serving alcoholic beverages to a person under 21 years old).

"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):

No Prior case law has been abrogated via statute. §537.053

Dram Shop Actions-Social Hosts:

No *Childress v. Sams*, 736 S.W.2d 48 (Mo.banc 1987), *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547 (Mo.banc 1987), *Stottle v. Brown Group, Inc.*, 801 S.W.2d 479 (Mo. App. S.D. 1990), and *Shelter Mut. Ins. Co. v. White*, 930 S.W.2d 1 (Mo. App. W.D. 1996)

Other:

An injured intoxicated patron may bring a cause of action for damages under the dram shop act (§537.053). Of course, the same pre-condition (i.e., a licensee's conviction for a liquor law violation) applies. *Von Ruecker v. Holiday Inns, Inc.*, 775 S.W.2d 295 (Mo. App. E.D. 1989), (cert. den. 493 U.S. 1075 (1990)).

In general, a law enforcement officer who releases an intoxicated person is not liable for the injuries sustained by or the death of that person. *Deuser v. King*, 24 S.W.3d 251 (Mo. App. E.D. 2000)

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

Type of Criminal Action:

Misdemeanor §§311.310, 311.720, 311.880, 312.400, 312.500 and 312.510

Term of Imprisonment:

Not more than **1 year**

Fine (\$ Range):

\$50 to \$1,000

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Revocation §§311.720 and 312.510

Length of Term of License Withdrawal:

For licensees who sell alcoholic beverages over 3.2 percent alcohol by weight-Length of revocation is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5 percent but not more than 3.2 percent alcohol by weight) – **1 year revocation.**

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misdemeanor §§311.310, 311.880, 312.400, 312.500 and 312.510

Term of Imprisonment:

Not more than **1 year**

Fine (\$ Range): **\$50 to \$1,000**

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):

Yes – Revocation §§311.720 and 312.510

Length of Term License Withdrawal:

For licensees who sell alcoholic beverages over 3.2 percent alcohol by weight -Length of revocation is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5 percent but not more than 3.2 percent alcohol by weigh.) – **1-year revocation**

Anti-Happy Hour Law/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):

No

Anti-Consumption Law (Yes/No):

Yes Applies to persons while they are operating a vehicle. §577.017