

STATE:

NEBRASKA

General References:

Revised Statutes of Nebraska and  
Nebraska Administrative Code (NAC)Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcoholic liquor\* §60-6,196(1)(a)

Illegal Per Se Law (BAC/BrAC):

**≥.08**<sup>731and732</sup> §60-6,196(1)(b) and (c)  
Persons Under 21 Years Old-BAC/BrAC ≥.02 but <.08 Traffic Infraction (Civil Offense) §§60-6,211.01, 60-6,211.02(3) and 60-672

Presumption (BAC):

**None**

Types of Drugs/Drugs and Alcohol:

Under the influence of **Any Drug** §60-6,196(1)(a)

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** §§60-6,197(3) and 60-6,211.02(2) Any driver must submit to a preliminary test if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident.

Implied Consent Law:

Arrest Required (Yes/No):

**Yes**<sup>733</sup> §60-6,197(2)

Implied Consent Law Applies to

Drugs (Yes/No):

**Yes** §60-6,197(1)

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** §60-6,197(11) (Criminal Cases) and *State v. Romell*, 204 N.W.2d 573 (1973)Refusal to Submit to Chemical TestAfter valid arrest is separate crime:**Yes** A driver involved in a motor vehicle crash where there are reasonable grounds that the driver is DWI may be required to submit to a chemical test to determine if he/she has either alcohol or drugs in his/her system. Injury or death is not a prerequisite for this requirement. §60-6,197<sup>734</sup>

\* In cases involving “driving while under the influence” where both alcohol and drugs are involved, it is not necessary for the State to prove which substance, alcohol or drugs, caused the impairment. *State v. Falcon*, 615 N.W. 2d 436 (Neb. 2000).

<sup>730</sup> This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

<sup>731</sup> Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §60-6,196(1) and 60-6,211.01

<sup>732</sup> Probable cause (not an arrest) is needed prior to requesting a person under 21 years old to submit to a test for evidence related to a violation of §60-6,211.01 (driving with a BAC/BrAC ≥.02). §60-6,211.02(2)

<sup>733</sup> A surviving driver (or pedestrian) 16 years old or older who is involved in an accident where there has been a fatality shall be required to submit to a chemical test of the blood, breath or urine in order to determine the amount of alcohol or drugs in the body. The tests' results and the identity of the persons tested are considered public records and are subject to being disclosed. §§60-6,103 and 60-6,104.

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

Blood: **Yes** §60-6,197(1)  
 Urine: **Yes** §60-6,197(1)  
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No.** Pretrial diversion of DWI cases is prohibited. §29-3604  
 Anti-Plea-Bargaining Statute (Yes/No): **No**  
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.**<sup>735</sup> Alcohol screening is required for either a first or subsequent offender. §60-6,196(8)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
 Criminal Sanctions (Fine/Jail): Class V Misdemeanor: **\$100 fine**, no imprisonment §§28-106 and 60-6,197(3)  
 Administrative Licensing Action (Susp/Rev): **Yes:** immediate confiscation of license, one year revocation for refusal to take test. 90-day revocation if test failed. Revocation limited to 30 days with installation of ignition interlock §§60-498.01 and 60-498.02  
 Other: Persons Under 21 Years Old: A person under 21 years old who refuses to submit to a preliminary breath test to determine if he/she was driving with a BAC/BrAC ≥.02 may be arrested for a violation of §60-6,211.01. §60-6,211.02(2)

Refusal to Take Implied Consent Chemical Test:  
 Criminal Sanction (Fine/Jail):

First offense (Class W misdemeanor) – Not more than **\$500/60 days**; second offense within 12 years – (Class W misdemeanor) – Not more than **\$500/90 days**; third offense within 12 years – (Class W misdemeanor) – Not more than **\$600/1 year**; fourth or subsequent offense within 12 years – (Class IV felony) – Not more than **\$10,000/5 years**. §§28-105, 28-106 and 60-6,197  
**Mandatory Sanctions:**  
 I. If probation is not granted: first offense – **\$400/7 days**; second offense (within 12 years) – **\$500/30 days**; third offense (within 12 years) – **\$600/90 days**; fourth or subsequent offense (within 12 years) – **10 days** §§28-106 and 60-6,197(4)  
 II. If probation is granted: first offense – **\$400**; second offense (within 12 years) – **\$500/5 days or 240 hours of community service**; third offense (within 12 years) – **\$600/10 days or 480 hours community service**;

<sup>734</sup> "A court may order a pre-sentence investigation in any case." §29-2261 (2) and (3)

fourth or subsequent offense (within 12 years) – **\$1,000/10 days or 480 hours community service** §§28-106 and 60-6,197(4).

Administrative Licensing Action  
(Susp/Rev):

I. The following revocations are mandatory if probation is not granted:<sup>736</sup> first offense – **Revocation 90 days (limited license available after 30 days)** ; second offense – **Revocation 1 year**; third and subsequent offense – **Revocation 15 years**<sup>737</sup> §§28-106 and 60-6,197

II. If probation is granted, the following revocations must be imposed: first offense – **Revocation 90 days**, with ignition interlock license possible after 30 days; second offense – **Revocation 1 year**; third and subsequent offense – **Revocation 1 year**<sup>738</sup>: §§28-106 and 60-6,197 and 60-498.02

III. Administrative action<sup>739</sup>: first and subsequent refusals- **Revocation 1 year** (mand). A person is not eligible to operate a motor vehicle equipped with an **ignition interlock** device until this revocation period is completed. §60-6,206

Other:

Persons Under 21 Years Old: A person under 21 years old who refuses to submit to a chemical test to determine if he/she has BAC/BrAC  $\geq .02$  but  $< .08$  commits a Traffic Infraction. Sanctions: Jail – None; fine – first offense – Not more than **\$100**, second offense (within 1 yr) – not more than **\$200**, third and subsequent offense (within 1 yr) – not more than **\$300**. Admin. Action. For either a first or subsequent offense – **90 days** license "impoundment" Restricted driving privileges for employment are available. §§60-672, 60-689, 60-6,211.02 and 60-6,211.03. The driver licensing record for this administrative action must be expunged after 120 days. §60-6,211.06(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years): First offense (Class W misdemeanor) Not more than **60 days (minimum- 7 days)** ; second offense within 12 years – (Class W misdemeanor) – Not more than six months (30 day minimum); third offense within 12 years –

<sup>735</sup> These revocations are based upon a conviction under §60-6,197.

<sup>736</sup> Reduced to 7 years provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for any other reason. §60-6,209

<sup>737</sup> The license is suspended for this period of time. §60-6,197(2) (c) and (d)

<sup>738</sup> This action by the licensing agency is independent of any licensing action that may be taken by the courts. A person who is subject to this administrative action is not eligible for employment (hardship) driving privileges under §60-4,130.

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(Class W misdemeanor) – Not more than **1 year (90-day minimum)**; fourth and subsequent offenses within 12 years – (Class IV felony) – Not more than **5 years** §§28-105,

28-106 and 60-6,196 DWI with serious bodily injury – (Class IIIA felony) – Not more than **5 years** §§28-105 and 60-6,198

Persons <21 Years Old (≥.02 but <.08) – **None**

Mandatory Minimum Term:

I. If probation is not granted: first offense – **7 days**<sup>740</sup>; second offense (within 12 years) – **30 days**; third offense(within 12 years) – **90 days**; fourth or subsequent offense (within 12 years) – **10 days** §§28-106 and 60-6,196(2)

II. If probation is granted: first offense – **None**; second offense (within 12 years) – **5 days** Third or subsequent offense(within 12 years) – **10 days** §§28-106 and 60-6,196(2) DWI with serious bodily injury – **None**

Fine:

Amount (\$ Range):

First offense – **\$400- 500**; second offense(within 12 years) – **\$500**; third offense (within 12 years) – **\$600**; fourth and subsequent offenses (within 12 years) – **\$10,000**; DWI w/serious bodily injury-(Class IIIA felony) – Not more than **\$10,000** §§28-105 and 60-6,198

Persons Under 21 Years Old (≥.02 but <.08) – first offense – Not more than **\$100**; second offense (within 1 yr) – Not more than **\$200**; third and subsequent offense (within 1 yr) – Not more than **\$300**. §60-689

Mandatory Min. Fine (\$):

I. If probation is not granted: first offense – **\$400**; second offense (within 12 years) – **\$500**; third offense (within 12 years) – **\$600**; fourth or subsequent offense (within 12 years) – **None**. §§28-106 and 60-6,196

II. If probation is granted: first offense – **\$400**; second offense – **\$500**; third offense – **\$600**; fourth or subsequent offense – **\$1,000**. §§28-106 and 60-6,196(2)

DWI w/serious bodily injury – **None**.

Other Penalties:

Community Service:

**Yes**. I. As an alternative to incarceration if probation is granted, an offender is required to perform the following periods of community service:

<sup>739</sup> If an offender is not placed on probation, the mandatory minimum period of incarceration would be "straight" or consecutive jail time. There is no statutory authority for the court to order "intermittent incarceration." However, if the offender is placed on probation, the court does have the statutory authority to grant intermittent sentences. Thus, the minimum mandatory sentence under probation may not have to be served consecutively. *State v. Salyers*, 480 N.W.2d 173 (Neb. 1992), *State v. Peters*, 435 N.W.2d 675 (Neb. 1989), and *State v. Texel*, 433 N.W.2d 541 (Neb. 1989)

**Comment:** The court does not have to exercise its discretion to suspend a sentence and grant probation in either DWI or implied consent refusal criminal cases. If the court does not exercise this discretion, it must impose the minimum mandatory sanctions in §28-106. Of course, if this discretion is exercised, §28-106 mandatory sanctions do not have to be imposed. However, the court is required to impose the minimum mandatory sanctions associated with the granting of probation in §§60-6,196 and 60-6,197. *State v. Soe*, 366 N.W.2d 439 (Neb. 1985), *State v. Schulz*, 378 N.W. 165 (Neb. 1985), and *State v. Stastny*, 395 N.W.2d 492 (Neb. 1986)

Second offense (within 12 years) – Not less than **240 hours** (mand); third or subsequent offense (within 12 years) – Not less than **480 hours** (mand) §60-196(2); DWI w/serious bodily injury – not less than **400** nor more than **6000** hours. §29-2279(4).

II. A criminal law violator may be sentenced to perform community service. However, community service cannot be used either as a substitute for mandatory jail or fine or in cases where there is serious bodily injury. §29-2278. See §29-2279 for the length of community service.

One or two prior convictions and .16 BAC as part of current violation: **Minimum 30-day sentence**, license revocation – 1 to 15 years, vehicles ignition interlocked for at least six months after license revocation., one-thousand-dollar fine and either 10 days jail or not less than 480 hours of community service.

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

I. A defendant may be ordered to pay restitution to a victim. §29-2280.

Other:

II. Victims' compensation fund. §81-1801 et seq. **Driver Education Program:** Offenders who have accumulated 12 or more points within 2 years must attend and successfully complete a driver's education program of at least 8 hours duration before any license may be reinstated. §60-4,183

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

**Yes ≥.08** (BAC/BrAC §§60-6,197(4), 60-6,205 and 60-6,206 first violation – Revocation **90 days** (30 days mand) A person is eligible for employment (hardship) driving privileges after the 30-day mandatory period (but not for the operation of a CMV). Subsequent violation (within 12 years) – Revocation for **1 year**<sup>741</sup> (mand) 247 NAC §026<sup>742</sup>

<sup>740</sup> Following the 30-day mandatory revocation period, either employment driving privileges may be granted or driving privileges may be granted with the condition that the offender only operate motor vehicles that are equipped with an "ignition interlock" device. For subsequent violators, the entire 1-year revocation period is mandatory. §§60-4,118.06 and 60-6,206(2)

<sup>741</sup> Regulation 247 NAC §026 provides that subsequent violators are ineligible for a restricted (hardship) license. **Double Jeopardy:** Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hansen*, 542 N.W.2d 424 (Neb. 1996) cert denied 527 U.S. 1249, 135 L.Ed. 2d 198, 116 S.Ct. 2509 (1996) and *State v. Young*, 530 N.W.2d 269 (Neb.App. 1995)

**Constitutionality:** I. The administrative license revocation (ALR) law “does not create an unconstitutional classification between those who submit to urine tests and those who submit to blood and breath tests.... Therefore, [the ALR law] does not violate the prohibition on special legislation found in Neb. Const. art. III, §18.” *Kalisek v. Abramson*, 599 N.W.2d 834 (Neb. 1999). II. The administrative per se law does not violate the constitutional principles of equal protection of the laws and cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 593 N.W.2d 295 (Neb. 1999)

If DWI charges are not filed or if the driver is found not guilty of such charges, the administrative per se proceeding is either dismissed or if the proceeding has resulted in revocation, the revocation is canceled and the license is reinstated. §60-6,206(4)

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

**Revocation**<sup>743</sup> §§60-498 and 60-6,196 Persons Under 21 Years Old ≥.02 but <.08-Impoundment §60-6,211.02(3)

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

First offense – **6 months (60 days with probation)**; second offense (within 12 years) – **1 year**; third and subsequent offense (within 12 years) – **15 years**<sup>744</sup>(with probation – 1 year) §60-6,196 DWI w/serious bodily injury– Class. IIIA felony–**15 years** §60-6,198(1) Persons Under 21 Years Old ≥.02 but <.08-30 days<sup>745</sup> (Driving privileges are available for employment.) §§60-6,211.02(3) and 60-6,211.03(2)

Mandatory Minimum Term of  
Withdrawal:

If probation is not granted: first offense – **6 months** second offense (within 12 years) – **1 year**; third and subsequent offense(within 12 years) – **7 years**<sup>15</sup>§60-6,196

If probation is granted: first offense – **60 days** second offense (within 12 years) – **1 year**; third and subsequent offense (within 12 years) – **1 year**<sup>746</sup> §60-6,196 and *State v. Matthews*, 465 N.W.2d 763 (Neb. 1991). DWI w/serious bodily injury– Class. IIIA felony – 60 days §60-6,198(1)

Any period of revocation imposed for DWI conviction shall be reduced by any revocation period imposed for an administrative per se action. §60-6,196(5)

Other:  
Rehabilitation:  
Alcohol Education:

**Yes.** In addition to any other sanction, a DWI offender may be required to attend an alcoholism or drug treatment program as a condition of probation, §60-6,196(8), and pay for it. *State v. Hynek*, 640 N.W. 2d 1 (Neb. 2002).

<sup>742</sup> License revocation under the point system: first and second DWI offense – 6 points; third DWI offense – 12 points. Twelve or more points within a 2-year period from all traffic offenses requires revocation for at least 6 months (or longer as the court may direct). A person is eligible for employment or medical hardship driving privileges for the entire revocation period. §§60-4,129, 60-4,182 and 60-4,183

<sup>743</sup> Reduced to 7 years provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for other reasons. §60-6,209

<sup>744</sup> The driver licensing record for this offense must be expunged after 90 days. §60-6,211.06(1)

<sup>745</sup> The license is suspended for this period of time. §60-6,196(c) and (d).

**Comment:** Secs. 60-6,196(5) and 60-6,206(2) give persons who have been convicted of a first DWI offense a chance to obtain employment (hardship) driving privileges. These sections provide that a person who is also a first admin per se law violator is eligible for an employment driving permit after a 30-day revocation period.

Alcohol Treatment: **Yes.**  
 Vehicle Impoundment/Confiscation:  
 Authorized by Specific  
 Statutory Authority: **No.**  
 Terms Upon Which Vehicle  
 Will Be Released:  
 Other:

**Immobilization:** A person who has been convicted of either a second or subsequent drunk driving/implied consent refusal offense (within 12 years) must have **all** of the motor vehicles that person owns “immobilized” for not less than **5 days nor more than 8 months**. However, a co-owner of the vehicle may have the vehicle released to him or her if there is either a need to use such vehicle to continue employment or for the well-being of the co-owner’s children or parents. §60-6,197.01(1)(a) and (1)(b)(i) OR  
**Ignition Interlock:**<sup>747</sup> The court may order a person who has been convicted of either a second or subsequent drunk driving/implied consent refusal offense (within 12 years), as an alternative to vehicle immobilization, to have **all** of the vehicles owned and equipped with ignition interlock devices. This requirement must last for not less than **6 months** starting at the end of any license revocation

**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, (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 alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, CMV operators who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§60-4,138, 60-4,163, 60-4,164 and 60-4,168.

Other Criminal Actions Related to DWI: (continued) period. One year of the license revocation period must be completed before any ignition interlock devices can be installed. §60-6,197.01(2)

Homicide by Vehicle<sup>748</sup>:

- <sup>747</sup> (1) A person who unintentionally causes the death of an unborn child while engaged in the operation of a motor vehicle in violation of the law commits “motor vehicle homicide of an unborn child.”
- (2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.
- (3) (a) If the proximate cause of the death of an unborn child is DUI {the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214}, motor vehicle homicide of an unborn child is a Class IV felony.
- (b) Revocation for at least sixty days and not more than fifteen years that shall not run concurrently with any jail term imposed.
- (c) If the proximate cause of the death of an unborn child is a DUI and the defendant has a prior DUI conviction, it is a Class III felony. §28-394

<sup>747</sup> A DWI or implied consent law offender placed on probation may be ordered to only operate motor vehicles that are equipped with "ignition interlock" devices. If such an order is issued, the offender is eligible for a special license that restricts driving motor vehicles equipped with these devices. A first offender is eligible for such a license after 30 days of revocation have been completed. A second or subsequent offender is not eligible for such a license until at least 1 year of revocation has been completed. §§60-6,211.05.

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State Has Such a Law:

**Yes.** (1) Class I Misdemeanor (unintentional death caused while operating a motor vehicle in violation of law) (2) Class IIIA felony (if homicide was the result of DWI, reckless driving or willful reckless driving); (3) Class III felony (death as a result of DWI where the defendant has had a prior DWI offense conviction) §§28-105, 28-106, and 28-306

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Class I Misdemeanor – not more than **1 year**; Class IIIA felony – not more than **5 years**; Class III felony – not more than **20 years**

Mandatory Minimum Term:

Class III felony – 1 year

Fine (\$ Range):

Class I Misdemeanor – not more than **\$1,000**; Class IIIA felony – not more than **\$10,000**; Class III felony – not more than **\$25,000**

Mandatory Minimum Fine:

**None**

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Class I Misdemeanor – Revocation<sup>749</sup>; Class IIIA Felony – Revocation; Class III felony – Revocation (A person must also attend and successfully complete a driver's education course of at least 8 hours duration. §60-4,183). §§28-306(3)(b) and (c), 60-424, 60-4,182 and 60-4,183

Length of Term of

Licensing Withdrawal:

(1) Class I Misdemeanor Offense – **6 months** from the date of revocation or after the date of release from confinement whichever is later. (2) Class IIIA felony Offense – **60 days -15 years** The revocation shall not run concurrently with any jail term. (3) Class III felony Offense – **60 days to 15 years**. The rev. shall not run concurrently with any jail term.

Mandatory Action--Minimum

Length of License

Withdrawal:

(1) Class I Misdemeanor Offense – **None**. An employment driving permit may be issued. §§60-4,129 and 60-4,183 (2). Class IIIA felony Offense – **60 days**. §28-306(3)(b) (3) Class III felony Offense – **60 days**. §28-306(3)(c)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense\*:

See Footnotes <sup>750</sup> and <sup>751</sup> and the Comment below.

<sup>748</sup> This revocation period is via the point system. A vehicle homicide offense results in an assessment of 12 points. An accumulation of 12 or more points within a 2-year period results in a 6-month revocation. §§60-4,182 and 60-4,183

<sup>749</sup> A person commits a felony by operating a motor vehicle while the license is revoked if the basis for the revocation was three or more DWI or implied consent offense convictions. First offense (Class IIIA felony) – Imprisonment for not more than 5 years and/or a fine of not more than \$10,000. Subsequent offense (Class III felony) – Imprisonment for not more than 20 years (1 year minimum) and/or a fine of not more than \$25,000. §§28-105, 60-6,196(6) and 60-197(7)

<sup>750</sup> Sanctions for driving while revoked under the point system: Criminal sanctions– Class III Misdemeanor: Jail – not more than 3 months; fine of not more than \$500. Admin Actions: (1) The license revocation as given under the point system must remain in effect for 1 year. (2) However, if the license revocation as given under the point system was a person's second revocation under such system within a 5-year period, such revocation must remain in effect for 3 years. But these revocation periods are not mandatory. A person is eligible for employment driving privileges. §§28-106,

Sanction: Criminal: Imprisonment (Term):	Driving While Suspended: first <u>and subsequent offenses</u> – Class III Misdemeanor – Not more than <b>3 months</b> Driving While Revoked: first <u>and subsequent offenses</u> – Class II Misdemeanor- Not more than <b>6 months</b> . §§28-106, 60-557, 60-4,108 and 60-4,109
Mandatory Minimum Term of Imprisonment: Fine (\$ Range):	<b>None</b> Driving While Suspended: first <u>and subsequent offenses</u> – Class III Misdemeanor – Not more than <b>\$500</b> Driving While Revoked: first <u>and subsequent offenses</u> – Class II Misdemeanor- Not more than <b>\$1,000</b> . §28-106
Mandatory Minimum Fine: Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	<b>None</b>  First <u>and subsequent offenses</u> – Driver ordered not to operate a vehicle. §60-4,108
Vehicle Confiscation/Impoundment:	Under §60-4,110, a motor vehicle operated by <u>any</u> person whose license has either been revoked or suspended for <u>any</u> drunk driving or <u>any</u> implied consent conviction <u>must</u> be impounded for not less than 10 or more than 30 days.
Length of Term of License Withdrawal Action:	Driving While Suspended: first <u>and subsequent offenses</u> – <b>1 year</b> Driving While Revoked: first offense – <u>1 year</u> <sup>752</sup> ; subsequent offense – <b>2 years</b> §60-4,108
Mandatory Term of License Withdrawal Action:	Driving While Suspended: first offense – <b>1 year</b> Driving While Revoked: first offense – <u>1 year</u> , <sup>753</sup> subsequent offense – <b>2 years</b> §60-4,108
<u>Habitual Traffic Offender Law</u> : State Has Such a Law (Yes/No): Grounds for Being Declared an	<b>No</b>

60-4,129 and 60-4,186

\*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.

**Comment:** These sanctions also apply to the operation of CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 3 months and/or a fine of not more than \$500. §§28-106 and 60-4,141.01 A person convicted of violating an out-of-service order is subject to the following disqualification periods: first offense – 90 days (mand); second offense (within 10 years) – 1 year (mand); and, third or subsequent offense (within 10 years) – 3 years (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 15 or more persons, the CDL disqualification periods are as follows: first offense – 180 days (mand); and, subsequent offense (within 10 years) – 3 years (mand). §60-4,168.01.

<sup>753</sup> The court also orders revocation for the same period of time. §§60-4,108 and 60-4,109

Habitual Offender:  
 Term of License Rev While  
 Under Habitual Offender Status:  
 Type of Criminal Offense if  
 Convicted on Charges of  
 Driving While on Habitual  
 Offender Status  
 Sanctions Following a Conviction of  
 Driving While on Habitual Offender  
 Status:  
 Imprisonment (Term):

Mandatory Minimum Term of  
 Imprisonment:  
 Fine (\$ Range):  
 Mandatory Minimum Fine (\$):  
 Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):  
 BAC Chemical Test Is Given to the  
 the Following Persons:

**Yes** §60-6,102

Driver:  
 Vehicle Passenger:  
 Pedestrian:

**Yes** If dead within 4 hours of the accident.

**No**

**Yes** If at least 16 years old and dead within 4 hours of  
 the accident.

Laws Establishing the Minimum Ages  
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
 Minimum Age (Years) Possession:

**21.** §§53-103(23), 53-180 and 53-18.01

**21.** There are exemptions for possession in a  
 "permanent place of residence", for religious  
 purposes and for certain employment purposes by  
 those ≥19 years old. §§53-103(23), 53-168.06 and  
 53-18.02

Minimum Age (Years) Consumption:

**21.** There are exemptions for consumption in a  
 "permanent place of residence" or for religious  
 purposes. §53-18.02

Dram Shop Laws and Related Legal Actions:

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

**No.** Note: For cases denying liability, see *Holmes v. Circo*, 244 N.W.2d 65 (1976), *Arant v. G.H., Inc.*, 428 N.W.2d 631 (Neb. 1988), and *Schroer v. Synowiecke*, 435 N.W.2d. 875 (Neb. 1989).

Dram Shop Actions-Social Hosts:

**No.** (No Cases)

Other: A licensee cannot be held liable for injuries sustained by an intoxicated minor patron. *Pelzek v. American Legion*, 463 N.W.2d 321 (Neb. 1990)

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

Type of Criminal Action: **Class I Misdemeanor** §§53-180, 53-18.05 and 28-106  
 Term of Imprisonment: Not more than **1 year**  
 Fine (\$ Range): Not more than **\$1,000**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes. Suspension/Revocation**<sup>754</sup> §§53-116.02 and 53-1,104  
 Length of Term of License Withdrawal: Not specified in the statute.

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: **Class I Misdemeanor** §§53-180, 53-18.05 and 28-106  
 Term of Imprisonment: Not more than **1 year**  
 Fine (\$ Range): Not more than **\$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 Suspension/Revocation**<sup>755</sup> §§53-116.02 and 53-1,104  
 Length of Term License Withdrawal: Not specified in the statute.

Anti-Happy Hour Laws/Regulations:

**Yes Regulation** 237-6.019.01U  
 This regulation does not regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price.

<sup>753</sup> In lieu of a suspension, the licensee may pay a "cash penalty" for each day of the suspension. For a first offense, the "cash penalty" is \$50 per day; for second or subsequent offense (within 4 years), the "cash penalty" is \$100 per day. §53-1, 104(2)

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

Open Container Law (Yes/No):

**Yes** Driver and passengers §60-6,211.08

Anti-Consumption Law (Yes/No):

**Yes** Driver and passengers §60-6,211.08 {See  
§53-186 where the State or a local government may  
provide for certain exceptions on public property.}