

STATE: **NEVADA**
 General Reference: Nevada Revised Statutes and Nevada Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §484.379(1)(a)
Illegal Per Se Law (BAC/BrAC):	I. ≥.08 ^{756and757} §§484.038 and 484.379(1)(b) and (c) II. Certain Amounts of Prohibited Substances ⁷⁵⁸ in the Blood or Urine §484.379(3)
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	I. Under the influence of (1) A Controlled Substance or (2) a Combination of Intoxicating Liquor and a Controlled Substance §484.379(2)(a) and (b) II. Any Person Who Inhales, Ingests, Applies or Otherwise Uses any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These to a degree which Renders Him Incapable of Safely Driving. §484.379(2) (c)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes ⁷⁵⁹ §484.382
Implied Consent Law:	
Arrest Required (Yes/No):	No §484.383(1)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §484.383(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases and Admin Actions) §484.389

Chemical Breath Tests for Alcohol Concentration:

⁷⁵⁵ 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. §484.038

⁷⁵⁶ Standards: "Concentration of alcohol" is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§483.045, 484.038, 484.379(1)(a) and 484.379(2)(a)

⁷⁵⁷ The "prohibited substances" and the amounts prohibited are as follows: I. An amount of prohibited substance in a person's **blood** that is equal to or greater than the following nanograms of prohibited substance per milliliter of blood: (a) amphetamine 100, (b) cocaine 50, (c) cocaine metabolite 50, (d) heroin 50, (e) heroin metabolite: (1) morphine 50 or (2) 6-monoacetyl morphine 10, (f) lysergic acid diethylamide 10, (g) marihuana 2, (h) marihuana metabolite 5, (i) methamphetamine 100 or (j) phencyclidine 10.

II. An amount of prohibited substance in a person's **urine** that is equal to or greater than the following nanograms of prohibited substance per milliliter of urine: (a) amphetamine 500, (b) cocaine 150, (c) cocaine metabolite 150, (d) heroin 2,000, (e) heroin metabolite: (1) morphine 2,000 or (2) 6-monoacetyl morphine 10, (f) lysergic acid diethylamide 25, (g) marihuana 10, (h) marihuana metabolite 15, (i) methamphetamine 500 or (j) phencyclidine 25. §484.1245 and 484.379(3)

⁷⁵⁸ A law enforcement officer only needs "reasonable grounds to believe" a drunk driving offense was committed before requesting a driver to submit to blood, breath or urine tests under the implied consent law. This same standard also applies to requests concerning preliminary breath tests.

If a person fails to submit to a test, a blood sample may be obtained without consent (i.e., via force) if there are "reasonable grounds to believe" that the driver has been driving under the influence of alcohol or a controlled substance. §484.383(7)

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

Blood:	Yes ⁷⁶⁰ §484.383(1)
Urine:	Yes-Limited ⁷⁶¹ §484.383(1)
Other:	Or other unspecified bodily substances. §484.383(1)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	Yes. A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3)

Pre-Sentencing Investigation Law (PSI) (Yes/No):	<p>Yes. I. An alcohol or drug evaluation must be administered to third or subsequent offenders and to offenders who have caused either an injury or death. §§176.135, 484.3792(1)(c) and 484.3796</p> <p>II. Either a first offender who registers a BAC/BrAC $\geq .18$, or <u>any</u> second offender (within 7 years) must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. §484.37943(1)</p> <p>III. A first offender who is <21 years old or a first or subsequent offender who is <18 years old must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. §§62.020(1), 62.2275(1) and 484.37943(2)</p> <p>Offenders must be examined by individuals who have been certified or approved to make alcohol and drug evaluations. The finding of this evaluation must be reported to the court. §484.37943(1)(a)(3)</p>
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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	If a person refuses to submit to a preliminary breath test where there are "reasonable grounds to believe"

⁷⁵⁹ A person may be directed to submit to a blood test for controlled substances. §484.383(5). In addition, a law enforcement officer may "direct" a person to submit to blood test if there is "reasonable grounds to believe" the person, while operating a vehicle, either (1) caused either death or serious injury while under the influence intoxicating liquor or a controlled substance or (2) has been stopped for a subsequent drunk driving offense within 7 years. §484.383(4)(c)

⁷⁶⁰ A urine test can only be requested under two conditions: (1) a driver arrested for an alcohol driving offense has hemophilia or a heart condition which would exempt him/her from a blood test, or (2) a driver has been stopped for driving under the influence of a controlled substance. §484.383(3), (5) and (6)

that person has committed a drunk driving offense, the law enforcement officer requesting such a test must seize the person's license, arrest that person, and take the person to a convenient place for the administration of a test pursuant to §484.383. §484.382(2)

Refusal to Take <u>Implied Consent</u> <u>Chemical Test:</u>	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None
<u>Sanctions Following a Conviction for a DWI Offense:</u>	
Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	First and second DWI offenses are misdemeanors; third DWI or subsequent offenses are Category B felonies. §§193.120 and 484.3792. Special Note: If there is substantial bodily harm related to a DWI offense, the sanctions imposed are the same as for DWI vehicle homicide. §484.3795. <u>First offense – 2 days to 6 months</u> ; second offense (within 7 years) – 10 days to 6 months (or residential confinement with electronic monitoring in a treatment facility- 10 days to 6 months); third and subsequent offense (within 7 years) – 1 to 6 years (State prison) §§484.379 and 484.3792
Mandatory Minimum Term:	<u>First offense – 2 days. Second offense</u> (within 7 years) – 10 days (with at least 48 con hrs §484.3792(4)) <u>Third and subsequent offense</u> (within 7 years) – 1 year (with at least 48 con hours §484.3792(4))
Fine:	
Mandatory Min. Fine (\$):	
Amount (\$ Range):	<u>First offense – \$400 to \$1,000</u> ; second offense (within 7 years) – \$750 to \$1,000 ; third and subsequent offense (within 7 years) – \$2,000 to \$5,000 Special Note: first offense and second offense (within 7 years) – If rehabilitation is taken, the fine can be no more than the minimum fine indicated.
First offense – \$400; second offense – \$750	<u>Third and subsequent offense – \$2,000</u> §§484.3792(1) (a) (3), (1) (b)(2) and (1)(c)
Community Service:	<u>First offense – 48 (mand) to 96 hours</u> (alternative to imprisonment) or, if rehabilitation is taken, 48 hours §§484.3792(1)(a)(2) and 484.3794(1)(c)(1); <u>second offense</u> (within 7 years) – Unless extenuating circumstances exist, 100 (mand) to 200 hours (in addition to imprisonment) or, if rehabilitation is taken, 50 (mand) to 100 hours §§484.3792(1)(b)(3) and 484.3794(1)(c)(2) <u>Important:</u> See Special Note below. Offenders <18 years old may be required to perform community service. §62.2275(3)(c)(2)
Restitution (e.g., Victim's Fund)	Yes. (1) As a condition for a suspended sentence, the court may order a defendant to pay compensation to a

victim §§4.373 and 5.055 and (2) via a victims' compensation fund §217.010 et seq.

Other:

Residential Confinement: The court may order that the defendant be confined to home for a conviction of a misdemeanor offense. This sentence may be supervised by means of electronic devices. §§4.3762 and 5.076

A **Civil Fine** of **\$35** must be imposed. This fine is paid into a victims' compensation fund. §484.3791

Chemical Test Fee: In addition to any fine, a defendant must pay a fee of **\$60** for any chemical analysis that was performed to determine alcohol concentration or the presence of a controlled substance in the blood, breath or urine. §484.3798

Administrative Assessment: DWI misdemeanor offenders are subject to administrative assessments in addition to any fine that is imposed. These assessments may range from **\$15 to \$105** depending upon the size of the fine that is imposed. §176.059(1)

Evaluation Assessment Fee: An offender who has been ordered to submit to alcohol or drug evaluation must pay a fee of not more than **\$100**. 484.37943(6)

Impact Meeting: An offender shall be ordered to attend a meeting (if available) with victims of DWI offenses in order to discuss the impact of the offense on such victims. §484.3797

Special Note: Either a first or second offender (within 7 years) who has been classified as an alcohol/drug abuser may have the sentence suspended by agreeing to participate in an alcohol or drug treatment program. A first offender must be placed in this program for 6 months and must serve 1 day in jail or perform 48 hours of community service. A second offender (within 7 years) must be placed in the program for 1 year and must serve 5 days in jail and perform not less than 50 (mand) nor more than 100 hours of community service. In addition, offenders must agree to pay any treatment program costs. A person is not eligible for this program if convicted of a drunk driving offense related either to injury or death. §§484.37937 and 484.3794.

Sanctions Following a Conviction for a DWI Offense:

(con't)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes $\geq .08$ (BAC/BrAC)⁷⁶² or a Detectable Amount of a Prohibited Substance in the Blood or Urine (Amphetamine, cocaine, cocaine metabolite, heroin or heroin metabolite (morphine/6-monoacetyl morphine), lysergic acid diethylamide, marihuana, marihuana metabolite or methamphetamine) – **Revocation 90 days** (45 days mand)⁷⁶³ §§484.383, 484.384, 484.385 and 484.1245

⁷⁶¹ An admin per se licensing action can be based either on the result of an implied consent test or a preliminary breath test. §484.384(1)

⁷⁶² Sec. 484.385 authorizes admin licensing action via a revocation against a person who operates a motor vehicle with a BAC/BrAC $\geq .08$ or a detectable amount of a "prohibited substance" his/her blood or urine. However, this section does not provide for a specific revocation period. Sec. 484.384(1) provides for a 90-day revocation if the driver has a

Other:	<p><u>Persons Under 21 Years Old $\geq .02$ but $< .08$</u> <u>(BAC/BrAC) Suspension 90 days</u> (45 days mand. A restricted license may be issued after this mandatory period.) §§483.461, 483.462 and 483.464 Under §§483.470, a person's license may be suspended if that person has "committed" an offense that usually requires license revocation (e.g., DWI). Such action may be taken <u>without</u> a preliminary hearing. The length of the revocation period is unclear.</p>
<u>Post DWI Conviction Licensing Action:</u> Type of Licensing Action (Susp/Rev):	<u>First offense – Revocation</u> ; <u>second offense</u> (within 7 years) – Revocation ; <u>third and subsequent offenses</u> (within 7 years) – Revocation . §483.460.
Term of License Withdrawal (Days, Months, Years, etc.):	<u>First offense – 90 days</u> (45 days mand.) ⁷⁶⁴ ; <u>second offense</u> (within 7 years) – 1 year ; <u>third and subsequent offense</u> (within 7 years) – 3 years (For a third or subsequent offense, the license revocation period does not "run" while the offender is under jail or residential confinement.) §483.460
Mandatory Minimum Term of Withdrawal:	<u>First offense – 45 days</u> ; <u>second offense</u> (within 7 years) – 1 year ; <u>third and subsequent offenses</u> (within 7 years) – 1 1/2 years (After a 1 year mandatory revocation, a restricted license may be issued if the person is allowed to use an ignition interlock.)
<u>First offense – 3 to 6 months</u> (discretionary); <u>second offense</u> – (no requirement); and, <u>third and subsequent offense</u> – 12 to 36 months (mandatory).	<p>Ignition Interlock: I The court may or must require a defendant to install this device as a condition for restricted driving privileges as follows: §484.3943(1) II. The court may require a defendant to install this device as a condition for the reinstatement of driving privileges. The period of use is determined by the court. §484.3943(2)</p>
Rehabilitation: Alcohol Education:	<p>Yes. First offense – Course on alcohol/drug abuse unless treatment is required or authorized. §484.3792(1)(a)(1). A temporary alcohol education program may be established. §5 of Ch. 583 of the laws of 1987</p>
Alcohol Treatment:	<p>Yes⁷⁶⁵ <u>first offense</u>– Possible but mandatory if BAC/BrAC is $\geq .18$; <u>second offense</u> – 1 year treatment mandatory for non-death/non-injury related offenses⁷⁶⁶</p>

BAC/BrAC $\geq .08$ but it does not provide for a revocation period if the driver has a detectable amount of a "prohibited substance."

⁷⁶³ After half of the revocation period has passed and the DWI offender has completed treatment in a treatment program, a restricted license may be issued. §§483.460(3) and 483.490(2). For a first offender, after 45 days a restricted license may be issued if that person has been allowed to participate in the ignition interlock program. §483.490(2)

⁷⁶⁴ **Persons Under 18 Years Old:** I. Under separate provisions of law, a drunk driving offender who is under 18 years

Taxicab Drivers: It is illegal for a person to “drive a taxicab or go on duty while under the influence of, or impaired by, any controlled substance, dangerous drug, or intoxicating liquor or drinking liquor while on duty.” §706.8849(1)(g) A person who violates this provision is subject to the following sanctions: first offense – A fine of not more than **\$100** and/or driver's license suspension from 1 to 5 days; second offense – A fine of not more than **\$300** and/or driver's license suspension from 6 to 20 days; and, third offense – A fine of not more than **\$500**. In addition to these sanctions, a driver's license may be revoked. §706.8849(2). Note: The law does not state a revocation period. §§209.425 et seq., 484.3792(1)(a)(4) and (1)(b)(4) and 484.3794. Note: Under §209.425, an alcohol treatment program is available for incarcerated DWI offenders. Persons <18 years old may also be required to participate in a treatment program. §62.2275(3)(c)

Vehicle Impoundment/Confiscation:
 Authorized by Specific
 Statutory Authority:

No

Other Criminal Actions Related to DWI:

Terms Upon Which Vehicle
 Will Be Released:
 Other:

Vehicle Registration Suspension: For a second or subsequent drunk driving (§484.379)/drunk driving related vehicle homicide (§484.3795) offense (within 7 years), the registrations of all of the vehicles owned by the offender must be **suspended for 5 days**. There is an exception in the case of a non-offender family member who needs to use a vehicle for employment purposes, medical reasons, school or other necessities. §§482.451 and 484.37975
Child Endangerment: If a child less than 15 years old was a passenger in the vehicle at the time of the offense, such fact shall be considered an aggravating factor when determining sentence. §§484.3792(7) and 484.3795(4).

Other Criminal Actions Related to DWI:

old is subject to a license revocation of 90 days. However, this licensing action is not mandatory. A restricted license is available either (1) for either going to and from or for use during employment or (2) for medical care. §§62.227 and 483.490. II. Under general provisions of the law governing juvenile offenders (offenders <18 years old), a court has the authority to suspend such a person's license for 90 days to 2 years as a sanction for most criminal acts. Restricted driving privileges are available either (1) for going to and from employment or (2) for use during employment. §§62.020(1), 62.211(1)(h) and 483.490(2) III. Such an offender must complete an alcohol/drug treatment program if an alcohol/drug evaluation indicates that such treatment is needed. §62.2275

⁷⁶⁵ An offender may be placed under "clinical supervision" for a period not to exceed 1 year. Such "supervision" may or may not include confinement in a treatment facility. §484.37945

Homicide by Vehicle:
 State Has Such a Law:

Yes – vehicular homicide is committed when a person who has previously committed at least three offenses of driving under the influence drives (during driving career), while under the influence in violation of law, proximately causes the death of another person. Category A felony – State prison for life with the possibility of parole or a definite term of 25 years, with parole eligibility after a minimum of 10 years⁷⁶⁷.

(1) Death caused by reckless driving or by a DWI where there is wanton disregard for the safety of others causing the death or substantial bodily harm to another person, regardless of whether the person has previously been convicted of driving under the influence. -Category B felony; §§484.377 and 484.3795

Reckless Driving – **1 to 6 years**;
 DWI related offenses⁷⁶⁸ -**2 to 20 years**⁷⁶⁹. §§484.377 and 484.3795

For a DWI-related death – **2 years**⁷⁷⁰
 Reckless Driving – Not more than **\$5,000**;
 DWI related offenses – **\$2,000 to \$5,000**
 For a DWI-related death – **\$2,000**

Mandatory Minimum Term:
 Fine (\$ Range):

Mandatory Minimum Fine:

Length of Term of
 Licensing Withdrawal:

For a DWI related death, **3 years**. The license revocation period does not "run" while the offender is under jail or residential confinement. §483.460(1)(a)(3) Note: For any non-alcohol related death or other manslaughter offense not noted above caused by vehicle operations, the driver's license is revoked for **1 year**. §483.460(1)(b)(1)

Mandatory Action--Minimum
 Length of License
 Withdrawal:

1½ years (Death-related DWI offenses.); **6 months** (Non-alcohol related death offenses.) §§483.460(1) and 483.490(1) and (2)

Repeat DWI felony offenders:

If a person has been convicted of a felony for operating vehicle while under the influence of alcohol or a controlled substance, any subsequent violation is treated as felony. § 484.3792

Other:

1) A person who has been convicted of DWI-related vehicle homicide may be required to serve a 10-year period of probation.

⁷⁶⁷ A person imprisoned under felony DWI, insofar as practicable, must be segregated from offenders whose crimes were violent and assigned to an institution or facility of minimum security. §484.3795

⁷⁶⁷ For DWI related vehicle homicide, the prosecuting attorney may not dismiss that charge unless it cannot be supported by probable cause or proved at the time of trial. §484.3795(2)

⁷⁶⁸ This sanction also applies to a person who causes substantial bodily harm as a result of a DWI offense. §484.3795(1)

⁷⁷⁰ This minimum sanction may not be suspended nor may probation be granted. §484.3795(2)

2) A person must be evaluated for an alcohol or drug abuse problem. If a person has such a problem, that person is assigned to a treatment program. §§484.3796 and 209.425 et seq.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Misdemeanor 30 days to 6 months⁷⁷¹ §483.560(2)

Mandatory Minimum Term

of Imprisonment:

30 days⁷⁷²

Fine (\$ Range):

\$500 to \$1,000

Mandatory Minimum Fine:

\$500

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

For driving on a suspended license– suspension. For driving on a revoked license – Revocation. §483.560(5).

Length of Term of License

Withdrawal Action:

The original suspension period is extended for a like period. The original revocation is extended 1 year §483.560(5)

Mandatory Term of License

Withdrawal Action:

See above. Note: The restricted license provisions of §483.490(2) may apply.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Special Note: The CMV law prohibits the operation of a CMV during either a CDL disqualification or a CDL out-of-service order. However, this law does not appear to provide specified sanctions for this prohibition. §483.924(2). It is not clear whether the law that prohibits the illegal use of a license applies. If it does, the following sanctions could be imposed: Imprisonment for not more than 6 months and/or a fine of

⁷⁷⁰ **Alternative Sanctions:** Residential confinement from 60 days (mand) to not more than 6 months and a fine of \$500 (mand) to not more than \$1,000. §483.560(2)

⁷⁷¹ Under §483.560(3), any segment of imprisonment must consist of at least 24 hours.

not more than \$1,000. Community service may be imposed in lieu of these sanctions. §§193.150, 483.530(7) and 483.620.

Other State Laws Related To Alcohol:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):	Yes §484.394
BAC Chemical Test Is Given to the the following Persons:	
Driver:	Yes
Vehicle Passengers:	Yes
Pedestrian:	Yes

Other State Laws Related To Alcohol:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21. §§202.020 and 202.055
Minimum Age (Years) Possession:	21. Applies to possession in a public place. §202.020. There are exceptions with regard to religious purposes, employment, medical prescriptions, and possession in the presence or parents or guardians. §202.020(5).
Minimum Age (Years) Consumption:	21. Applies to any place where alcoholic beverages are sold. §202.020

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	No §41.1305 ⁷⁷³
"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. Note: For cases denying liability, see <i>Hamm v. Carson City Nugget</i> , 450 P.2d 358 (Nev. 1969), <i>Van Cleave v. Keitz-Mill Minit Mart</i> , 633 P. 2d 1220(Nev. 1981), <i>Bell v. Alpha Tau Omega</i> , 642 P.2d 161 (Nev. 1982), <i>Yoscovitch v. Wasson</i> , 645 P.2d 975 (Nev. 1982), and <i>Hinegardner v. Marcor Resorts</i> , 844 P.2d 800 (Nev. 1992).
Dram Shop Actions-Social Hosts:	No. ⁷⁷⁴ §41.1305
Other:	A minor decedent's estate has no cause of action in negligence against a licensee who served alcoholic beverages to the minor even though the consumption of such beverages was a factor in the minor's death. <i>Snyder v. Viani</i> , 885 P.2d 610 (Nev. 1994)

⁷⁷² The law provides that persons who serve or sell alcoholic beverages are not liable either (1) for the injures caused by the individuals who consumed such beverages, or (2) for the injures sustained by such individuals. Comment: The law appears to apply to both alcoholic beverage licensees and social hosts.

⁷⁷³ In *Bell v. Alpha Tau Omega Fraternity*, 642 P.2d 161 (Nev. 1982), the court held that there was no social host liability in a situation where a minor guest was injured after consuming alcoholic beverages at a party given by the host.

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

Type of Criminal Action:

No. Comment: The State grants local governments broad power to license and regulate liquor retail establishments. Therefore, local laws may have been enacted to control the sale of alcoholic beverages to intoxicated persons.

Term of Imprisonment:

N/A

Fine (\$ Range):

N/A

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

N/A

Length of Term of License Withdrawal:

N/A

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 §§193.150 and 202.055

Term of Imprisonment:

Not more than **6 months**⁷⁷⁴

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):

Note: Controlled by local law.

Length of Term License Withdrawal:

Note: Controlled by local law.

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes §484.448(2)

Anti-Consumption Law (Yes/No):

Yes. Driver only §484.448(1) Note: The law states that "it is unlawful for any person to drink an alcoholic beverage while such person is driving or is in actual physical control of a motor vehicle upon a highway."

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.

⁷⁷⁴ A person may be allowed to perform community service in lieu of all or part of the jail/fine sentence. §193.150

Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Lomas*, 955 P.2d 678 (Nev. 1998) **DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgated regulations that adopt by reference 49 CFR Parts 383 and 392. §483.908. Under 49 CFR §383.51, a person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, he/she (1) has a BAC/BrAC $\geq .04$ or (2) is under the influence of alcohol or a controlled substance. 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. Note: If there are "reasonable grounds to believe" that a CMV operator (1) is under the influence of intoxicating liquor or a controlled substance or (2) has violated any provision of the drunk driving or DWI vehicle homicide laws, a law enforcement officer must administer a blood, breath, or urine test to such driver in order to determine either the alcoholic content or the presence of a controlled substance in the operator's system.

Comment: It would appear that the law allows law enforcement officers to obtain samples of bodily substances (e.g., of blood) for testing via "force". §483.922(2). Under 49 CFR §392.5, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. It is misdemeanor to violate a State regulation. The sanctions for this offense are a jail term of not more than 6 months and/or a fine of at least \$100 (mand) but not more than \$1,000. In addition, a person, who violates a State regulation, may also be liable for a civil penalty not to exceed \$10,000. §§483.904, 483.908, 483.922, 706.173, 706.756 and 706.771, NAC §706.247 and 49 USC 31301 et seq.