

STATE

WEST VIRGINIA

General Reference:

West Virginia Code

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol

§17C-5-2

Illegal Per Se Law (BAC/BrAC):

≥.08<sup>1283</sup> §17C-5-2

Persons Under 21 Years Old ≥.02 but <.08 §17C-5-2(h)

Presumption (BAC/BrAC):

≥.08 §17C-5-8

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, (2) Controlled Substance or (3) a Combination of Alcohol and Any Other Controlled Substance or Any Other Drug §17C-5-2 Habitual users of narcotic drugs, amphetamine or any derivative thereof §17C-5-2

Other:

An alcohol concentration ≥.08<sup>1</sup> is also *prima facie* evidence of driving under the influence of alcohol. §17C-5-8  
An alcohol concentration >.05 but <.08 is "relevant evidence" (but not *prima facie* evidence) of driving while under the influence of alcohol. §17C-5-8

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
5-6a(a)

**Yes** §§17C-5-4 (b), 17C-5-5 and 17C-

Implied Consent Law:

Arrest Required (Yes/No):

**Yes** §§17C-5-4 and 17C-5-6a(b)

Implied Consent Law Applies to

Drugs (Yes/No):

**No**

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal Cases) *State v. Cozart*, 352 S.E.2d 152 (W.Va. 1986)

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

Blood:

**Yes** §§17C-5-4 and 17C-5-6a(c)

<sup>1303</sup> The standard for alcohol concentration is "percent by weight" of alcohol in the blood. §§17C-5-2, 17C-5-8 and 17C-5A-1. However, this standard is based upon a formula of (1) grams of alcohol per 100 cubic centimeters of blood, (2) grams of alcohol per 210 liters of breath, (3) grams of alcohol per 67 milliliter of urine, and (4) grams of alcohol per 86 milliliters of serum. §17C-5-8.

Urine: **Yes** §§17C-5-4 and 17C-5-6a(c)  
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**  
 Anti-Plea-Bargaining Statute (Yes/No): **No**

Pre-Sentencing Investigation Law (PSI)  
 (Yes/No): **No**

Sanctions for Refusal to Submit to a  
 Chemical Test:

Refusal to Take a Preliminary Breath Test:  
 Criminal Sanctions (Fine/Jail): **None**  
 Administrative Licensing Action  
 (Susp/Rev): **None**  
 Other: **None**

Refusal to Take Implied Consent  
 Chemical Test:

Criminal Sanction (Fine/Jail): **None**  
 Administrative Licensing Action  
 (Susp/Rev): **First Refusal – 30 days revocation plus  
 additional 9 months of mandatory  
 ignition interlock; second refusal<sup>1284</sup> -9  
 months revocation plus 18 months  
 mandatory ignition interlock; third  
 refusal – 18 months revocation plus 2  
 years mandatory ignition interlock.**  
 Other: **Under §17C-5-6a(c), a child (a person  
 under 18 years old per §§49-5 – 1 and  
 49-5-8) may be taken into custody if a  
 law enforcement officer has reasonable  
 grounds to believe that person has been  
 operating a motor vehicle with any  
 amount of alcohol in their body. The  
 law requires the child be warned that a  
 refusal to submit to the implied consent  
 test could result in a license suspension.**

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** Persons are "disqualified" from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration  $\geq .04$  (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine.), (2) are under the

<sup>1304</sup> A previous admin per se violation is also considered a prior refusal for licensing sanction enhancement purposes. §17C-5-7(b).

Note: Certain subsequent violators are not eligible for Ignition Interlock program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program."

influence of either alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (The CMV implied consent provision, §17E-1-15(a), applies to the testing of both alcohol and drugs; however, the disqualification provision, §17E-1-13(a)(5), applies only to refusal to submit to a test for an 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 (10 years mand). In addition, a CMV operator who either (1) refuses to take a PBT or (2) has any measurable (or detectable) amount of alcohol in the system must be placed "out-of-service" for 24 hours. Unless the law provides for another sanction, it is a misdemeanor to violate any of the provisions of the CMV/CDL law: jail – not more than 6 months; fine – \$100 to \$1,000. However, there are special criminal sanctions in two circumstances: (1) a person who operates a CMV with any measurable amount of alcohol in the system is subject to the following sanctions: first offense – jail-none; fine not more than \$100; second offense – jail – not more than 30 days; fine- \$100 to \$300; third and subsequent offense – jail – 24 hours to 30 days; fine – \$500 to \$1,000; and (2) a person who operates a CMV with any a BAC/BrAC/UrAC ≥.04 is subject to the following sanctions: first offense – jail – 24 hours to 6 months; fine – \$100 to \$500; second and subsequent offense (misdemeanor) – jail-6 months to 1 year; fine – \$1,000 to \$3,000. §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 and 17E-1-25.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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

DWI not related to death or bodily injury, first offense – 24 hours to 6 months; second offense – 6 months to 1 year; third and subsequent offenses<sup>1285-1</sup> to 3 years; DWI resulting in death where there is reckless disregard of the safety of others – 1 to 10 years. DWI resulting in death where there is an illegal act or a failure to perform a legal duty, first offense – 90 days to 1 year; second offense – 6 months to 1 year; third and subsequent offenses – 1 to 3 years. DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, first offense – 1 day<sup>1286</sup> to 1 year; second offense – 6 months to 1 year; third and subsequent offenses – 1 to 3 years. §17C-5-2.

Mandatory Minimum Term:

The minimum jail sentences are mandatory.

Fine:

Amount (\$ Range):

DWI not related to death or bodily injury, first offense – \$100 to \$500; second offense – \$1,000 to \$3,000; third and subsequent offenses – \$3,000 to \$5,000. DWI resulting in death where

<sup>1305</sup> Felony

<sup>1306</sup> Actual confinement of not less than 24 hours

there is reckless disregard of the safety of others – \$1,000 to \$3,000; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, first offense – \$500 to \$1,000; second offense – \$1,000 to \$3,000; third and subsequent offenses – \$3,000 to \$5,00. DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, first offense – \$200 to \$1,000; second offense – \$1,000 to \$3,000; third and subsequent offense – \$3,000 to \$5,000. §17C-5-2

Mandatory Min. Fine (\$):

The above minimum fine sentences are mandatory. §17C-5-2(p)

Other Penalties:

Community Service:

**Yes** Alternative Sentences: In lieu of either a fine or incarceration sanction (except mandatory incarceration via statute), a court may impose one of the following sentences: either (1) a weekend jail program where the offender spends weekends or “other days normally off from work” in confinement; (2) one or two days in confinement, followed by work assignments either within the jail or on other public works projects outside of the jail; or, (3) a community service program with either government entities, or charitable or other nonprofit organizations which have been approved by the court. §62-11A-1a(a) and (c)(1).62-11A-1a (a)(3).  
1287and1288

<sup>1307</sup> It is a misdemeanor for a person to drive a vehicle if an habitual user of narcotic drugs, an amphetamine or any derivative thereof. The sanctions for this offense are as follows: imprisonment from 1 day to 6 months with actual confinement of not less than 24 hours and/or a fine of from \$100 to \$500. §17C-5-2(e).

<sup>1308</sup> Sec. 17C-5-2(p) provides that the DWI sanctions are mandatory and are not subject to either suspension or probation; i.e., the minimum imprisonment sanction, it appears, must be served. However, this section does provide that, for jail sentences of one year or less (misdemeanors), the provisions of either §62-11A-1 et seq. or §62-11B-1 et seq. may be applied by the court. In brief, §62-11A-1 et seq. provide for a defendant's temporary release from confinement for employment, educational, medical, or family needs or reasons. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990) And, §§17C-5-2(p) and 62-11B-1 et seq. provide for electronically monitored "**home incarceration**" for certain drunk driving law offenders in lieu of confinement in either a jail or the State penitentiary. *State v. Yoak*, 504 S.E.2d 158 (W.Va. 1998). Likewise, §§17C-5-2(p) and 62-11B-1 et seq. provide for participation in a "**community corrections program**" for certain drunk driving law offenders in lieu of confinement in wither a jail or the State penitentiary.

**Child Endangerment:** A person who violates the drunk driving law while transporting a child <16 years old, commits a misdemeanor and is subject to a jail term of 2 days to 12 months (with 48 hours of actual

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

**Yes.** Victims' Compensation Fund. §14-2A-1 et seq. Direct compensation by the defendant to the victim via court order is also possible. §14-2A-3(b)(1). **Home Confinement:** Under §62-11B-4 et seq., the court has the authority to order the use of "electronically monitored home confinement" in lieu of incarceration for a drunk driving offense. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990), and *State v. Yoak*, 504 S.E.2d 158 (W.Va. 1998). **Assessments:** A fee of 20 percent of the fine imposed is assessed against each DWI offender. Felony offenders are also assessed a fee of \$75. These assessments are deposited into the Crime Victims Compensation Fund. §§14-2A-4 and 62-5-10.

Other:

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

**Yes.**  $\geq .08$  (BAC/BrAC/UrAC or Driving While Under the Influence of Alcohol<sup>1289</sup>, a Controlled Substance or Other Drugs: Admin actions where there is neither a death nor a bodily injury: first action – 6 months revocation (30 days mand, then ignition interlock for 5 months); second action within 10 years – 10 years revocation (Nine months mandatory if the person participates in the ignition interlock); subsequent action within 10 years – Revocation for life (Eighteen months mandatory if the person participates in the ignition interlock program)<sup>1290</sup>.

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confinement mandatory) and/or a fine of \$200 (mand) to \$1,000. §17C-5-2(i).

**Persons Under 21 Years Old:** Persons under 21 years old who operate a motor vehicle with an alcohol concentration  $\geq .02$  but  $< .08$ , are subject to the following sanctions: first offense (misdemeanor) – jail – None; fine – **\$25 (mand) to \$100**. A first offender may have the charges dismissed and record expunged if that person successfully completes an alcohol safety/treatment and interlock program. subsequent offense (misdemeanor) – jail – 24 hours (mand); fine – **\$100 (mand) to \$500**. A person charged with a regular DWI offense cannot be charged with this offense for the same occurrence. §17C-5-2(h).

<sup>1309</sup> An alcohol concentration  $> .05$  but  $< .08$  is "relevant evidence" of driving while under the influence of alcohol. §17C-5-8. Note: The State can revoke a person's license administratively for driving while under the influence of alcohol without the necessity of establishing an alcohol concentration. Constitutional principles of due process of law do not require that a person be administered a test for blood alcohol concentration before driving privileges can be withdrawn administratively for driving while under the influence of alcohol. *Albrecht v. State*, 314 S.E.2d 859 (W.Va. 1984), and *Dean v. W.Va. Dept. of Motor Vehicles*, 464 S.E.2d 589 (W.Va. 1995).

<sup>1310</sup> §17C-5A-3a(c)(4). Although the ignition interlock law does not provide for it, the regulations that

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Admin actions where there is a death and the driver has acted in reckless disregard for the safety of others: first action – 10 years revocation (5 years mand), subsequent action within 10 years – Revocation for life (10 years mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: first action – 5 years revocation (2 1/2 years mand); subsequent action within 10 years – Revocation for life (10 years mand). Admin actions where there is bodily injury: first action – 2 years' revocation (1 year mand); second action within 10 years – Revocation (5 years mand) subsequent action within 10 years – Revocation for life (10 years mand). §§17C-5A-1, 17C-5A-2 and 17C-5A-3

I. Vehicle operation by a habitual user of a narcotic drug, an amphetamine or any derivative thereof: first action – Revocation 6 months; second action – Revocation 10 years; subsequent action – Revocation for life. §17C-5A-2(i).

II. A previous implied consent refusal is also considered a prior admin per se action for licensing sanction enhancement purposes.  
§17C-5A-2(n)(3)

III. For an admin per se action based on driving while under the influence of alcohol where there was no alcohol concentration evidence, see *W.Va. Div. of Motor Vehicles v. Cline*, 423 S.E.2d 882 (W.Va. 1992).

IV. For cases upholding mandatory admin per se action revocations, see *Wagoner v. Sidropolis*, 399 S.E.2d 183 (W.Va. 1990), and *Dept. of Motor Vehicles v. Sanders*, 399 S.E.2d 455 (W.Va. 1990).

The minimum mandatory license revocation periods above apply only if the person is participating in an alcohol/drug treatment program. Otherwise, the person has driving

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implement the ignition interlock program provide that if a person has had more than 3 admin per se or drunk driving offense related revocations, the license must be revoked for an additional 6 months "for each offense greater than three" before becoming eligible to participate in this program. §91-9-3.4.5 (regulation).

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privileges revoked for the entire revocation period. §17C-5A-3.

Persons under 18 years old who have violated the admin per se law must have their license revoked until they are 18 or for the applicable statutory period whichever is longer; {§17C-5A-2(r)} except there is only a 1-year mandatory revocation if the person under 21 years old participates in the ignition interlock program. §17C-5A-3a(c)(3) and §91-9-3.4.5 (Regulation 91 CSR 9)

Under §§17B-3-6 and 17B-3-8, license suspension for not more than 1 year if a person has "committed" an offense that requires mandatory license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.

Admin per se actions taken against persons under 21 years old who operate a vehicle with an alcohol concentration  $\geq .02$  but  $< .08$  (BAC/BrAC/UrAC first action – 60 days suspension (mand), 30 days (mand) if the person participates in the ignition interlock program. For persons under 18 years old, suspension for 60 days (mand) or until they reach 18, whichever is the longer suspension period. Subsequent action – 1-year revocation (mand) or revocation until the person's 21st birthday whichever is the longer revocation period.

Admin actions where there is a death and the driver has also acted in reckless disregard for the safety of others: first violation – 10 years revocation (5 years mand); subsequent action within 10 years – Revocation for life (10 years mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: first action – 5 years revocation (2 1/2 years mand); subsequent action within 10 years – Revocation for life (10 years mand).

Admin actions where there is bodily injury: first action – 2 years revocation (1 year mand); second action within 10 years – 10 years revocation (5 years mand); subsequent action within 10 years – Revocation for life (10 years mand). §§17C-5-2(h), 17C-5A-1, 17C-5A-2 and 17C-5A-3.

**Child Endangerment:** A person who violates the admin per se law while transporting a child <16 years old is subject to a 1-year revocation (mand). If the person has had a previous admin per se license suspension or revocation (within 10 years), the revocation period is 10 years (mand). If the person has more than one previous admin per se license suspension or revocation (within 10 years), the revocation period is for life (mand). §17C-5A-2(m).

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

The same licensing sanctions as for an admin per se violation. §17C-5A-1a

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

Mandatory Minimum Term of  
Withdrawal:

Other:

Rehabilitation:

Alcohol Education:

**Yes.**<sup>1291</sup> After (1) the period of mandatory revocation has elapsed and (2) the driver has successfully completed an approved program of either alcohol/drug education or alcohol/drug treatment, a defendant's license may be reissued with or without conditions. §17C-5A-3. Also, a person who participates in the "Ignition Interlock Program" must complete a safety and treatment program. §17C-5A-3a(b)(1)

Alcohol Treatment:

**Yes**

Vehicle Impoundment/Confiscation:

Authorized by Specific

**No**

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

**None**

Miscellaneous Sanctions

Not Included Elsewhere:

**None**

<sup>1311</sup> A person who has refused to submit to a chemical test must successfully complete an alcohol education or treatment program before the license can be reinstated. §17C-5A-3.

**Ignition Interlock Program** (Available Only to Persons ≥18 Years Old): The driver licensing agency may reduce the mandatory and regular revocation periods of certain implied consent, admin per se and DWI law offenders if they agree to operate motor vehicles equipped with ignition interlock devices. A person must either be participating in or have successfully completed a safety and treatment program to be eligible to participate in the ignition interlock program. However, a person is not eligible for this program if involved in either death- related admin per se or DWI law violation. The law stipulates that only offenders who have committed a death-related drunk driving offense are ineligible for this program. However, under the regulations that implement the program, offenders who committed an injury- related admin per se or drunk driving offense are also excluded from the program. §91-3-3.6 (regulation).

If the person has been involved in a violation of the implied consent, admin per se or DWI laws while participating in the program, or has previously been in the program. First admin per se violation/DWI offense: The ignition interlock must be used for 5 months. First refusal: The ignition interlock must be used for 9 months. Second admin per se violation or DWI offense: The ignition interlock must be used for 18 months. Subsequent admin per se violation or DWI offense and second or subsequent refusal: The ignition interlock must be used for 2 years. {Although the ignition interlock law does not provide for it, the regulations that implement the ignition interlock program provide that, if a person has had more than three admin per se, refusal, or drunk driving offense related revocations, that person must use an ignition interlock for an additional 1 year "for each offense greater than three." §91-9-3.4.5 (regulation)}.

Post DWI Conviction Licensing Action:  
(con't)

Persons <21 years old-vehicle operation with an alcohol concentration ≥.02 but <.08: The law appears to require that the ignition interlock be used for six months. First time participants have their driver licensing records expunged. §17C-5A-3a(c),(e) and (f) and §91-9-3 (Regulation 91 CSR 9).

Homicide by Vehicle:

State Has Such a Law:

**Yes. Misdemeanor:**<sup>1292</sup> Negligent homicide §17C-5-1

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **1 year** §17C-5-1(b)

Mandatory Minimum Term:

**None**

Fine (\$ Range):

**\$100 to \$1,000** §17C-5-1(b)

Mandatory Minimum Fine:

**None**

Administrative Licensing Action:

Licensing Authorized and  
Type of Action:

**Revocation** §§17B-1-1(q), 17B-3-5 and 17C-5-1(c)

Length of Term of

<sup>1312</sup> This offense is a misdemeanor via §17C-18-1(a).

Licensing Withdrawal: Mandatory Action--Minimum Length of License Withdrawal:	<b>1 year</b>
<u>*Driving While License Suspended or Revoked Where the Basis – DWI Offense:</u> <sup>1293</sup>	<b>1 year</b>
Sanction: Criminal: Imprisonment (Term):	First <u>offense</u> (misdemeanor) – 6 months <sup>1294</sup> ; second <u>offense</u> (misdemeanor) – 1 year; third <u>and subsequent offenses</u> (felony) – 1 to 3 years (penitentiary). §17B-4-3(b)
Mandatory Minimum Term of Imprisonment:	First <u>offense</u> – 6 months; second <u>offense</u> – 1 year; third <u>and subsequent offenses</u> – 1 year.
Fine (\$ Range):	First <u>offense</u> – \$100 to \$500; second <u>offense</u> – \$1,000 to \$3,000; third <u>and</u> <u>subsequent offenses</u> – \$3,000 to \$5,000. §17B-4-3(b)
Mandatory Minimum Fine:	First <u>offense</u> – \$100; second <u>offense</u> – \$1,000; third <u>and subsequent offenses</u> – \$3,000.
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev): Length of Term of License Withdrawal Action:	<b>Suspension/Revocation</b>  <b>1-year extension</b> of the original licensing action. §17B-4-3(c)
Mandatory Term of License Withdrawal Action:	<b>Same as above.</b>
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No): Grounds for Being Declared an	<b>No</b>

<sup>1313</sup> I. It is a misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. For a first offense, a person is subject to an imprisonment term for not more than 6 months and/or a fine of \$100 to \$1,000. For a second offense, a person is subject to an imprisonment term of 6 to 9 months and/or a fine of \$500 to \$2,000. For a third or subsequent offense, a person is subject to an imprisonment term of 9 months to 1 year and/or a fine of \$1,000 to \$2,500. §§17E-1-7(b) and 17E-1-25. II. A person who violates an out-of-service order is subject to the following mandatory CDL disqualifications: (1) first offense – 90 days; second offense (within 10 years) – 1 year; and, third or subsequent offense (within 10 years) – 3 years. The following mandatory CDL disqualifications apply if the CMV operator was driving on an out-of-service order while transporting hazardous materials or operating a vehicle designed to carry 16 or more persons including the driver: first offense – 180 days; and, second or subsequent offense – 3 years. §7E-1-13(f)

<sup>1314</sup> Home detention may be used as an alternative to incarceration. §17B-4-3(e)

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** §17C-5B-1

Driver:

**Yes**

Vehicle Passengers:  
 Pedestrian:

**No**  
**Yes** (Adult pedestrians)

**Special Note:** A person under 21 years old who operates a vehicle after his/her license has been either suspended or revoked for driving with an alcohol concentration  $\geq .02$  but  $< .08$  commits a misdemeanor and is subject to a jail term of 24 hours (mand) and/or a fine of \$50 (mand) to \$500. §17B-4-3-(d).  
 Comment: There appears to be no additional licensing action (suspension or revocation) for this offense.

Laws Establishing the Minimum Ages  
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
 60-3-22(a)

**21** §§11-16-18(a)(3), 11 -16-19(a) and

Minimum Age (Years) Possession:  
 8-20a(a)

**21** §§11-16-19(a), 60-3A-24(A) and 60-

Minimum Age (Years) Consumption:  
 8-20a(a)

**21** §§11-16-19(a), 60-3A-24(A) and 60-

Dram Shop Laws  
 and Related Legal Actions:

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

**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):

**Yes.** *Bailey v. Black*, 394 S.E.2d 58 (W.Va. 1990), *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990), and *Walker v. Griffith*, 626 F. Supp. 350 (W.Va. 1986)

Dram Shop Actions-Social Hosts:

**No\*** *Overbaugh v. McCutcheon*, 396 S.E.2d 153 (W.Va. 1990)

Other:

A licensee may be liable for the injuries sustained by an intoxicated patron (adult or minor). *Bailey v. Black*, 394 S.E.2d 58 (W.Va. 1990), and *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990)

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

Type of Criminal Action:

Term of Imprisonment:

**Alcoholic Liquor**<sup>1295</sup>: Private Package Retail Sales<sup>1296</sup>-30 days to 1 year; Special Licensees<sup>1297</sup>-30 days to 1 year; Private Clubs<sup>1298</sup> – not more than 1 year; Wines<sup>1299</sup>-30 days to 6 months. **Non-intoxicating Beer**: Class A and B Licensees-30 days to 6 months.

\* Generally, social hosts are not liable for the actions of their intoxicated guests. This is especially true in cases where the guests serve alcoholic beverages to themselves. However, there may be extenuating circumstances where liability could result. In *Price v. Halstead*, 355 S.E.2d 380 (W.Va. 1987), 64 ALR4th 255, the court held that a passenger who was riding in a vehicle driven by a drunken driver could be held liable for the injuries sustained by a third party as a result of the driver's

<sup>1315</sup> Alcoholic Liquor-all alcoholic beverages except non-intoxicating beer; non-intoxicating beer-all cereal malt beverages and malt coolers containing at least 0.5 percent alcohol by volume but not more than 4.2 percent alcohol by weight or 6 percent by volume whichever is greater. §§11-16-3 and 60-1-5.

<sup>1316</sup> The sale of packaged alcoholic liquor is via licensed private retail outlets. Under previous law, the State had a monopoly on such sales. §60-3A-2 et seq.

<sup>1317</sup> Special Licensees: manufacturers of alcoholic liquor, wholesale and retail druggists, users of alcohol for scientific purposes, users of wine for sacramental purposes, etc. §60-4-1 et seq.

<sup>1318</sup> Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

<sup>1319</sup> Licenses may be granted for the "off premises" consumption of wine by any retailer. Licenses may be granted for the "on premises" consumption of wine to restaurants which are not open to the public. §60-8-3 et seq.

actions provided "the passenger's conduct substantially encouraged or assisted the driver's alcohol or drug impairment." 355 S.E.2d at 389, 64 ALR4th at 271.

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

Fine (\$ Range):

**Alcoholic Liquor**<sup>1300</sup>: Private Package Retail Sales – \$100 – \$5,000; Special Licensees – \$50 to \$500; Private Clubs – \$500 to \$1000; Wines – \$25 to \$500. **Non-intoxicating Beer**<sup>1301</sup>: Class A and B Licensees – \$25 to \$500.

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

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

**Yes.** Discontinued, suspended or revoked.

Length of Term of License  
Withdrawal:

Alcoholic Liquor: Private Package Retail Sales (also, a civil penalty of not more than \$1,000); Special Licensees – Revocation time period is not specified but normal licensing period is one year; Private Clubs- Revocation/Suspension – Licenses are usually revoked for up to one year (in lieu of revocation, a monetary penalty of not more than \$1,000); Wines – Revocation/suspension time period is not specified in the statute. Non-intoxicating Beer: Class A and B Licensees Revocation/Suspension – If the license is revoked, no new license shall be issued for two years; the statute does not state a specific time period for a suspension. There is also, a monetary penalty of not more than \$1,000.

Anti-Happy Hour Laws/Regulations:

**No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages

<sup>1320</sup> Alcoholic Liquor-citations: Private Package Retail Sales-§§60-3A-25, 60-3A-26 and 60-3A-27; Special Licensees-§§60-3-22, 60-4-1, 60-4-1 and 60-6-8; Private Clubs-§§60-7-12 and 60-7-13; Wines-§§60-8-18, 60-8-20 and 60-8-25

<sup>1321</sup> Non-intoxicating Beer-citations: §§11-16-9, 11-16-18, 11-16-23 and 11-16-25. Class A Licenses ("on and off premises" sales) are issued (1) to retail businesses (profit) and (2) to social, fraternal, private clubs, etc. (non-profit); Class B Licenses ("off premises" sales only) are issued to retail food stores.

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** Driver and passengers  
§60-6-9(a)(3)