

STATE:
General Reference:

WISCONSIN
Wisconsin Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an intoxicant
§346.63(1)(a) and (2)(a)(1)

Illegal Per Se Law (BAC/BrAC):

I. Illegal for them to operate a vehicle with a "prohibited alcohol concentration" $\geq .08$ $\{\geq .02$ with 3 or more prior convictions¹²⁹⁷

II. If the person has a **detectable amount of a restricted controlled substance** in his or her blood. §346.63(1)(AM)

Restricted controlled substance means a controlled substance included in schedule 1 under Ch. 961 other than tetrahydrocannabinol.

2. A controlled substance analog, as defined in Section 961.01 (4m), of a controlled substance described in subd. 1.

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta-9-tetrahydrocannabinol

§23.33 (1) (jo)

{'Defenses'- a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

§23.33 (4c) (a) 5.}

III If a person has had three or more DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration" $\geq .02$. §§34.01(46m), 343.307(1), 346.63(1)(b) and (2)(a)(2)

Persons Under 21 Years Old. Alcohol

Concentration $> .00$ but $< .08$ §346.63(2m)

{Suspension for 3 months, 6 months if there was a passenger under 16.}

Presumption (BAC):

$\geq .08$ is *prima facie* evidence of influence of an intoxicant and is *prima facie* evidence of alcohol concentration of .08 B.A.C. or more. §885.235 (1g) (c)

¹²⁹⁷ "Prohibited alcohol concentration" or "alcohol concentration" based either on "percent by weight" of alcohol in the blood or on grams of alcohol in 210 liters of breath, means one of the following:
(a) If the person has 2 or fewer prior convictions, suspensions, or revocations – an alcohol concentration of .08 or more. (c) If the person has 3 or more prior convictions, suspensions or revocations – an alcohol concentration of more than .02. §§ 34.01(46m) and 346.63(2m). {These standards also apply to the administrative per se law.}

Types of Drugs/Drugs and Alcohol: Under the influence of (1) Any Drug, (2) an Intoxicant, (3) a Controlled Substance, (4) a Combination of an Intoxicant and a Controlled Substance or (5) a Combination of an Intoxicant and Any Other Drug
 §§346.63(1)(a) and (2)(a)(1), 45.01(10) (definition of the term "drug") and 885.235(5)(b) and (c)
Persons Under 21 Years Old. Under §885.235(1)(1m), an alcohol concentration >.00 but <.08 is *prima facie* evidence under the influence of an intoxicant.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law: **Yes** §§343.303 and 343.305(3)(am) (CMV operators)

Implied Consent Law:
 Arrest Required (Yes/No): **Yes** §343.305(3)
 Implied Consent Law Applies to
 Drugs (Yes/No): **Yes** §343.305(2)

Refusal to Submit to Chemical Test
 Admitted into Evidence: **Yes** (Criminal Cases) *State v. Bolstad*, 370 N.W.2d 257 (Wis. 1985) However, if the implied consent law's provisions are not followed, a refusal cannot be admitted into evidence. *State v. Algaier*, 478 N.W.2d 292 (Wis. App. 1991)

Other Information: In a case concerned with testing a blood sample for alcohol concentration, the State Supreme Court has held that a blood sample may be obtained via force if done in a constitutional manner.¹²⁹⁸ *State v. Bolhing*, 494 N.W.2d 399 (Wis. 1993)(cert denied 510 U.S. 836, 126 L.Ed.2d 78, 114 S. Ct. 112 (1993)). .See also *State v. Krajewski*, 648 N.W.2d 385 (Wis. 2002)(cert denied 174 L. Ed. 2d 634, 123 S. Ct. 704 (2002)).

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

Blood: **Yes**
 Urine: **Yes**
 Other: **None**

¹²⁹⁸ The implied consent law (§343.305) does not specifically prohibit or authorize the taking of a blood sample by force. Under §343.305(3)(c), a law enforcement officer has the right to obtain evidence "by any lawful means."

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ¹²⁹⁹
Anti-Plea-Bargaining Statute (Yes/No):	No However, the court must approve dismissals of or amendments to DWI charges. §967.055
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Limited) Alcohol Assessment I. Discretionary alcohol assessment for two or more DWI offenses within 1 year. II. Mandatory alcohol assessment where there has been an injury-related DWI offense. III. The licensing agency may require an applicant for a driver's license to submit to an alcohol assessment. §§343.16(5)(a) and 343.30(1q)(c)1

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:	None
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	First refusal ¹³⁰⁰ – 1-year revocation ; after 30 days of the revocation period, the driver is eligible for an occupational license; second refusal (within 10 years) – 2-year revocation ; after 90 days of the revocation period, the driver is eligible for occupational license (if 2 or more refusals occur within 5 years, occupational license is available after 1 year); third and subsequent refusal – 3-year revocation ; after one year of revocation period, the driver is eligible for an occupational license. Previous DWI convictions and admin per se actions are considered to be prior refusals. §§343.10, 343.305(9) and (10) and 343.307(2)

¹²⁹⁹ Deferred prosecution for DWI offenders is generally prohibited. §§967.055(3) and 971.39. {Deferred prosecution is only available in counties having a population of less than 100,000. §971.39.}

¹³⁰⁰ **Child Endangerment:** If the driver was transporting a person <16 years old at the time of the drunk-driving arrest and refusal, the minimum and maximum license revocation periods are doubled. §343.305(10)(b)(4m)

Other:

I. If a person under 21 years old has been arrested for a violation of §346.63(2m), driving with an alcohol concentration >.00 but <.08, and refuses to submit to a chemical test, the license is revoked for six months.
Child Endangerment: 12-month revocation if the driver was transporting a person <16 years old). After the first 15 days of this revocation period have passed, an occupational license can be issued.

I. A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. §§343.305(10)(em) and 346.63(2m)

II. (1) For a second or subsequent refusal (within 5 years), a person's vehicle must be immobilized, forfeited or equipped with an ignition interlock device. These actions are for not less than 1 year or more than the maximum period of license revocation. Immobilization begins on the day the revocation starts whereas ignition interlock usage starts 1 year after the revocation period. {Immobilization is prohibited in hardship situations.}
 (2) For a third or subsequent refusal, as an alternative to immobilization or ignition interlock usage, an offender's vehicle may be subject to forfeiture. However, such action is prohibited in hardship situation. §§343.301(1) and (2), 343.305(10m) and 346.65(6)

III. A person is required to submit to an alcohol assessment and comply with a driver safety plan. §343.305(10)(d)

Sanctions Following a Conviction for a DWI Offense:

Imprisonment:

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

Non-injury-related DWI offense: first offense – None¹³⁰¹; second offense¹³⁰² – 5 days to 6 months; third offense – 30 days to 1 year; fourth offense – 60 days to 1 year; fifth and subsequent offenses – 6 months to 5 years.

¹³⁰¹ A first DWI conviction is a "civil conviction." *Racine County v. Smith*, 362 N.W.2d 439 (Wis. App. 1984), *State v. Lawton*, 482 N.W.2d 142 (Wis. App. 1992) and *U.S. v. Devenport*, 131 F.3d 604 (7th Cir. 1997) (an Assimilative Crimes Act, 18 USC §13, case)

¹³⁰² As a pilot program in Winnebago County, for second and third offenses within 10 years, the length of imprisonment shall be reduced to: (five days-second offense, 10 days – third offense) if the person successfully completes probation that includes alcohol and other drug programs. This program may be utilized only once. §§346.65(2j)(bm), 346.65(2j)(cm)

Mandatory Minimum Term:	<p><u>Injury-related DWI offenses</u>, Without great bodily harm – 30 days to 1 year; With great bodily harm (including great bodily harm to an unborn child) (Class F felony) – Not more than 12 years (Not more than 20 years if transporting a person <16 years old or an unborn child). §§346.63(1) and (2), 346.65(2), 346.65(3m), 939.50 and 940.25</p> <p>Non-injury-related DWI offense: <u>first offense</u> – None; <u>second offense</u> – 5 days¹³⁰³; <u>third offense</u> – 30 days; <u>fourth offense</u> – 60 days; <u>fifth and subsequent offenses</u> – 6 months;</p> <p>Injury-Related DWI offense (without great bodily harm) – 30 days.¹³⁰⁴</p>
Fine: Amount (\$ Range):	<p><u>Non-injury-related DWI offenses</u>: <u>first offense</u> – \$150 to \$300; <u>second DWI offense</u> – \$350 to \$1,100; <u>third offense</u> – \$600 to \$2,000; <u>fourth offense</u> – \$600 to \$2,000; <u>fifth and subsequent offenses</u> – \$600 to \$2,000. <u>Injury-related DWI offenses</u>, Without great bodily harm – \$300 to \$2,000; With great bodily harm (Class F felony) – Not more than \$25,000 (Not more than \$20,000 if transporting a person <16 years old or an unborn child). Note: if conviction for >.08 - ‘driver improvement surcharge’ – \$355, in addition to other penalties.</p> <p>Increased Fines for higher BAC: I. If an offender’s alcohol concentration was .17 to .199, the minimum and maximum fines are doubled.</p> <p>II. If an offender’s alcohol concentration was 0.20 to 0.249, the minimum and maximum fines are tripled.</p>

¹³⁰³ See §346.65 (2g)(d) and *State v. Eckola*, 648 N.W.2d 903 (Wis. App. 2001).

¹³⁰⁴ I. Community service may be imposed (1) in lieu of part or all of a forfeiture or (2) in situations where an offender is unable to pay a fine or where the fine has been reduced. §346.65(2g)(a) and (ag).
 II. If a court sentences a defendant to imprisonment in the county jail, the court may provide that the defendant perform community service instead of jail. Three days of community service is considered one day in jail. Both the defendant and the organization receiving the service must agree to any community service order issued by the court. §973.03(3) The law is not clear as to whether the defendant is able to serve community service in place of any minimum mandatory period of confinement.

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. McMaster*, 543 N.W.2d 499 (Wis. App. 1995) affirmed 556 N.W.2d 673 (Wis 1996).

III. If an offender's alcohol concentration was **0.25 or above**, the minimum and maximum fines are quadrupled. §346.65(2)(g)
Persons Under 21 Years Old: Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC/BrAC >.00 but <.08. There is a forfeiture of **\$10** for a violation of this provision. (**Child Endangerment**: The forfeiture is \$20 if the driver was transporting a child <16 years old). §346.65(2q)

Mandatory Min. Fine (\$):

Non-injury-related DWI offense: first offense – **\$150**; second offense – **\$350**; third offense – **\$600**; fourth offense – **\$600**; fifth and subsequent offenses – **\$600**. Injury-Related DWI offense (without great bodily harm) – **\$300**.

Other Penalties:

Community Service:

Yes §346.65(2g)

Restitution

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

Yes Direct compensation by the defendant to a victim for some types of "pecuniary losses". §346.65(2r)(a) In addition, the State has a victims' compensation fund. §949.001 et seq. Awards are limited to \$40,000 for any one injury or death. §949.06(2)
 An adult passenger may not receive an award from this fund if that person knew the driver was intoxicated or had an illegal per se level. §949.08(2)(e)

Surcharges: Persons convicted of a DWI offense must pay a driver improvement surcharge of **\$355**, in addition to any other fine, forfeiture or assessment that may be imposed, unless BAC <0 .08. §346.655(1). In addition, under §§814.60 and 973.045, a defendant must pay a crime victim and witness assistance surcharge of \$50 for a misdemeanor conviction and \$70 for a felony conviction.

Home Detention: In lieu of imprisonment in the county jail, a defendant may be sentenced to "home detention". This detention is to be monitored by an electronic device worn by the defendant. §973.03(4)(a) Note: An appellate court has held that the law provides that home detention may be served in lieu of a minimum mandatory sentence. The court stated that it was not addressing the issue of whether home detention could be less than the mandatory

minimum sentence but did “observe” that such a minimum was probably intended by the legislature. The law only states that home detention cannot exceed the maximum incarceration period. *State v. Shipler*, 630 N.W.2d 275 (Wis. App. 2001).

Traffic Safety School: A defendant may be required to attend a "traffic safety school". §345.60(3)

Visitation Program: Offenders who have been convicted of an injury-related drunk-driving offense under §346.63(2) may be required to visit places that are concerned with the care and treatment of persons who have a substance abuse problem or who are being treated for drunk-driving-related injuries (e.g., alcoholism treatment facilities, hospital emergency rooms, etc.). This requirement may be in lieu of all or part of a forfeiture or in addition to any other sanction. §346.65(2i).

Costs: An offender may be required to pay the costs associated their arrest and trial. Such “costs” may also include payments to non-profit crime prevention and law enforcement organizations. §973.06(1)

Administrative Per Se Law:

Yes. I. If the person has had two or fewer prior DWI offense convictions or refusals, the admin action is based on a "prohibited alcohol concentration" $\geq .08$. **Suspension 6 months** (not mand)¹³⁰⁵

If the person has had three or more previous DWI offense convictions or refusals, the administrative action is based on a "prohibited alcohol concentration" $\geq .02$. **Suspension 6 months** (not mand) §§34.01(46m) and 343.305(7) and (8)

Post DWI Conviction
Licensing Action

Type of Licensing Action (Susp/Rev): First offense – **Revocation**; second and subsequent offenses – **Revocation**. DWI injury-related offenses, with or without great bodily harm – **Revocation** §§343.10, 343.30 and 343.31

¹³⁰⁵ A restricted occupational license is available via the courts at any time. §§343.10(4), 343.30(1q)(b)(2) and 343.305(8)(d) This license is valid for the duration of the suspension or revocation period and, after such license expires, the persons may obtain a regular license. §§343.10(5) and 343.38 A person is not eligible for an occupational license if his/her license has been either suspended or revoked for another offense within one year. §343.10(2)(a)1

Persons Under 21 Years Old: BAC/BrAC >.00 but <.08 – **Suspension** §§343.30(1q) and 346.63(2m)

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

Non-injury-related DWI offenses; first offense – **Revocation 6 to 9 months**; second offense (within 10 years) – **Revocation 1 year-18 months**; subsequent offense – **Revocation 2 to 3 years** Note: A previous conviction includes refusals. Injury-related DWI offenses without great bodily harm – **Revocation – 1 to 2 years**; With great bodily harm – **Revocation – 2 years. Child Endangerment/Unborn Child: Revocation for 4 years** if the driver was transporting a person <16 years old or an unborn child. §343.31(3)(f).

Persons Under 21 Years Old: BAC/BrAC >.00 but <.08- **Suspension – 3 months. Child Endangerment:** Suspension for 6 months if the driver was transporting a person <16 years old. §§343.30(1q) and 346.63(2m).

Mandatory Minimum Term of
Withdrawal:

Non-injury-related DWI offenses; first offense – **None**; second offense (within 10 years) – **60 days**¹³⁰⁶; second offense (within 5 years) – **1 year**; subsequent offense – **90 days**; subsequent offense (within 5 years) – **1 year. Injury-related DWI offenses without great bodily harm – **60 days**; With great bodily harm – **120 days.****

Persons Under 21 Years Old: BAC/BrAC >.00 but <.08- **None** (An occupational license is available). §346.63(2m)

Rehabilitation:
Alcohol Education:

Yes. Persons who are either convicted of an injury-related DWI offense (without great bodily harm) or who refuse to submit to a chemical test under the implied consent law must submit to an alcohol assessment and comply with a driver safety plan. This plan may include a component concerning the effect that DWI offenses have had on either victim or a victim's family. There is a license suspension if a person does not comply with an

¹³⁰⁶ A restricted occupational license may be issued after this period of time. For subsequent offenses, the restricted license shall prohibit the person from operating a vehicle with any alcohol concentration (BAC/BrAC=.00). §343.10(5)(a) 2 Note: Under §343.30(1q)(h), the license suspension/revocation period for a DWI offense conviction is reduced by any suspension time imposed for a refusal (based on the same incident/occurrence). Also, license suspensions or revocations for DWI, refusal or admin per se which are based on the same incident/occurrence must run concurrently. §343.305(10)(g)

alcohol/drug assessment (DWI screening),
 education or treatment program.
 §§343.30(1q)(c) and (d) and 343.305(10)(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has an alcohol concentration $\geq .04$ (Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.), (2) is under the influence of an intoxicant (an alcohol concentration, based on percent by weight of alcohol in the blood and grams of alcohol per 210 liters of breath, $\geq .04$ is *prima facie* evidence), any drug, a controlled substance or any combination of them, (3) is under the influence of any drug which renders the person incapable of driving safely or (4) 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 an alcohol concentration $> .0$ must be placed "out-of-service" for 24 hours and pay a forfeiture of \$10. Any person who operates a CMV with an alcohol concentration of between .04 and .08 is subject to the following criminal sanctions: for non-injury offenses: first offense – forfeiture of **\$150 to \$300**; second offense (within 10 years) – **jail 5 days to 6 months, fine – \$300 to \$1,000**; third or subsequent offense – **jail 30 days to 1 year, fine – \$600 to \$2,000**. (**Child Endangerment:** If the CMV operator was transporting persons < 16 years old, the minimum and maximum incarceration, forfeiture and fine sanctions for non-injury offenses are **doubled**. §346.65(2j)(d)) For an injury offense: Jail-30 days to 1 year; fine – \$300 to \$2,000. For an offense where there has been "great bodily" injury (Class F felony): Jail – not more than 10 years; fine – not more than \$10,000 (**Child Endangerment/Unborn Child:** The maximum jail and fine sanctions are double if the offender was transporting either a person < 16 years old or an unborn child). §§34.01(1v), 34.01(8), 34.01(13m), 34.01(9r)(intro.), 343.305(2), 343.305(3)(a), 343.305(4), 343.305(7)(b), 343.31, 343.315, 346.63(5)(a), 346.63(6)(a), 346.63(7)(a), 346.65(2j), 346.65(3m), 346.65(2u)(a), 885.235(1)(d) and (5)(a), 939.50(3)(d) and 940.25.

Vehicle Impoundment/Confiscation:
 Authorized by Specific
 Statutory Authority:

Forfeiture: For a third or subsequent drunk-driving offense, a person's vehicle may be **forfeited**. However, such action prohibited in hardship situations. §§343.305(10m) and 346.65(6)¹³⁰⁷

Ignition Interlock/Immobilization: For a second or subsequent offense (within 5 years), a person's vehicles must be immobilized or equipped with an ignition interlock device for not less than 1 year nor more than the maximum period of license revocation. Immobilization begins on the day the revocation starts whereas ignition interlock

¹³⁰⁷ The forfeiture law (§346.65(6)) has been held constitutional on both double jeopardy and due process of law grounds. *State v. Konrath*, 577 N.W.2d 601 (Wis. 1998). In this case, the court emphasized that its decision was limited to vehicles that were used in the offense. 577 N.W.2d at 614. See also *State v. Michels*, 650 N.W.2d 322 (Wis. App. 2002).

usage starts 1 year after the revocation period.
 Note: Immobilization is prohibited in hardship situations. §§343.301(1) and (2) and 343.305(10m)

Child Endangerment: I. For either non-injury or injury without great bodily harm drunk-driving offenses, the maximum and minimum imprisonment, forfeiture and fine sanctions are **doubled**. §346.65(2)(f) and (3)
 II. For a drunk-driving offense related to great bodily injury, the maximum, imprisonment and fine sanctions are **doubled**. §940.25(1b) III. For either non-injury or injury (without great bodily harm) drunk-driving offenses, the maximum and minimum license revocation periods are **doubled**. §§343.30(1q)(b)(4m) and 343.31(3)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
 State Has Such a Law:

Yes. Class G felony: Where a death, including a death to an unborn child, is caused by operating a vehicle with negligence; **Class D felony:** Where a death, including a death to an unborn child, is caused by operating a vehicle while under the influence of an intoxicant or with illegal per se levels (including operating a CMV $\geq .04$). §§343.10, 343.31(1)(a), (3)(a) and (c), (3m)(a), 939.50, 94.09 and 940.10

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Class G felony – Not more than **10 years**;
Class D felony – Not more than **25 years**.
 §§343.10, 343.31, 939.50, 94.09 and 940.10
None

Mandatory Minimum Term:

Fine (\$ Range):

Class G felony – Not more than **\$25,000**;
Class D felony – Not more than **\$100,000**.
None §§343.10 and 343.31

Mandatory Minimum Fine:

Length of Term of

Licensing Withdrawal:

Class G felony – **1 year**; Class D felony – **5 years** §§343.10 and 343.31

Mandatory Action--Minimum

Length of License

Withdrawal:

Class G felony- **15 days**; Class D felony – **120 days**. A restricted occupational license may be issued after these periods. §§343.10 and 343.31

Other:

Special Note: In lieu of a continuous prison sentence, a defendant may serve a series of periods of not less than 48 hours nor more than 3 days. §969.08(10)(b) and 973.03(5)

I. Class B felony offense: For an offense where there have been two prior refusals or drunk-driving offenses – any type within 10 years, a person's vehicle may be **immobilized, forfeited or equipped with an ignition interlock device**. However, a vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person.

§§343.305(10m), 346.65(6) and 94.09(1d)

II. Class B felony offense: For a fourth or subsequent offense (a prior offense includes refusals and DWI offenses) – any type within 10 years, a person's vehicle shall be **forfeited**.

§§343.305(10m), 346.65(6) and 94.09(1d)

III. **Child Endangerment/Unborn Child:** If the driver was transporting a person <16 years old or an unborn child, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 years.

§§343.31(3)(c) and 94.09(1b)

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

Sanction:

Criminal:

Imprisonment (Term):

Operating While Suspended – **None**
Operating While Revoked – Not more than **1 year** §343.44(2)(b)

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

Operating While Suspended – **\$50 to \$200**
(forfeiture) §343.44(2)(a)

Operating While Revoked- Not more than **\$2,500** §343.44(2)(b)

Mandatory Minimum Fine:

None

*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.

Type of Licensing Action
(Susp/Rev):

Suspension/Revocation¹³⁰⁸ §343.30(1g)

¹³⁰⁸ These licensing actions only apply in situations where a person was driving while suspended, revoked or in violation of a CDL disqualification. §343.30(1q)(a) and (b) Out-of-Service Order: A person who drives a CMV after having received an out-of-service order is subject to the following CDL disqualifications: first violation – 90 days; second violation (within 10 years) – 1 year; and, third or

Withdrawal Action: First, second or third offense – Not more than **6 months** – (Revocation or Suspension)
Fourth or subsequent offense – **6 months** (Revocation)

Mandatory Term of License Withdrawal Action: **None**¹³⁰⁹
 Other: **Impoundment:** An offender’s vehicle may be impounded. The length of such impoundment is determined by the court. §343.44(4)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **Yes** §§351.01 to .11
 Grounds for Being Declared an Habitual Offender: Four or more serious offenses or 12 or more minor moving violations within 5 years. §351.02

Term of License Rev While Under Habitual Offender Status: **5 years** §351.025(1) A hardship license¹³¹⁰ may be issued after 2 years. §351.07

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status: **Misdemeanor**

Sanctions Following a Conviction of Driving While on Habitual Offender Status:
 Imprisonment (Term): Not more than **180 days**¹³¹¹ §351.08

Mandatory Minimum Term of Imprisonment:
 Fine (\$ Range): Not more than **\$5,000** §351.08
 Mandatory Minimum Fine (\$): See Footnote No ¹³¹².
 Licensing Actions (Specify): **None**

subsequent violation (within 10 years) – 3 years. If the violation occurred while either transporting hazardous materials or driving a vehicle designed to carry 16 or more persons including the driver, the offender is subject to the following disqualifications: first violation-180 days; and, second or subsequent violations (within 10 years) – 3 years. §343.315(2)(h) and (i)

¹³⁰⁹ For either a first, second or third offense, licensing action is discretionary with the court. However, even for a fourth or subsequent offense, the court may order a period of revocation of less than 6 months provided it “places its reasons for ordering the lesser period of revocation on the record.” §343.30(1q)(a) and (b)

¹³¹⁰ A habitual offender issued a hardship license is subject to special sanctions for committing a traffic offense while driving on such a license. For the traffic offense committed, the violator is subject to a fine that cannot exceed 200 percent of the maximum fine and/or not more than two times the maximum jail sentence for such offense. §§351.07

¹³¹¹ These sanctions are in addition to any other sanction that may be imposed for driving while license is suspended or revoked under §343.44. See also §351.11.

¹³¹² Although there is no minimum sentence, the law states that no portion of the sentence is to be suspended. §351.08 Certain work privileges may, however, be allowed pursuant to §§303.08 and 303.10.

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** §346.71(2)

BAC Chemical Test Is Given to the the Following Persons:

- Driver: **Yes**
- Vehicle Passengers: **No**
- Pedestrian: **Yes** (14 years or older)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

- Minimum Age (Years) Sale/Purchase: **21** §§125.02(8m), 125.07(1) and 125.07(4)
- Minimum Age (Years) Possession: **21** Applies to either possession or consumption in public places unless accompanied by a parent or guardian §§125.07(1) and 125.07(4)
- Minimum Age (Years) Consumption: **21** Applies to either possession or consumption in public places unless accompanied by a parent or guardian §125.07(4)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes (Limited).** §125.035^{1313and1314} Under this law, only a person who provides alcoholic beverages to minors is liable for the injuries caused by these minors to third parties. The case law noted below may have been abrogated in part. However, *Meier v. Champ’s Sports Bar*, 623 N.W.2d 94 (Wis. 2001) reconciles the statutes and the case law^{1315, 1316 and 1317}

¹³¹³ The Wisconsin Supreme Court has held that §125.035 does not violate the equal protection clauses of either the Federal or State constitutions. *Doering v. Wea Insurance Group*, 532 N.W.2d 432 (Wis. 1995)

¹³¹⁴ Under §125.035 an adult in the case considered by the court who gives alcoholic beverages to an adult is not liable for the injuries caused by the person who received and consumed such beverages while intoxicated. *Greene by Schoone v. Farnsworth*, 525 N.W.2d 107 (Wis. App. 1994)

¹³¹⁵ Under the dram shop law, a person, even a minor, can be held liable for the damages caused by another minor while in an intoxicated condition by providing money for the purchase of alcoholic beverages given to the injury-causing minor. The act of providing money for the purchase of alcoholic beverages for a minor is considered an act of procuring such beverages for minor. *Miller v. Thomack*, 563 N.W.2d 891 (Wis. 1997)

¹³¹⁶ Pursuant to §125.035, a minor who was injured after consuming alcoholic beverages has no cause of action against the provider of such beverages. *Kwiatkowski v. Capitol Indem. Corp.*, 461 N.W.2d 150 (Wis. App. 1990)

¹³¹⁷ A person who has been injured by an intoxicated minor cannot maintain a dram shop action against a licensee (who sold alcoholic beverages to the minor) as a third party if such person was also involved in procuring alcoholic beverages for the minor. *Meier Ex Rel Meier v. Champs Sprot Bar*, 623 N.W. 2d 94 (Wis. 2001). The *Meier* case presents a cohesive look at the case and statutory history of dram shop in Wisconsin.

"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: *Sorenson v. Jarvis*, 350 N.W.2d 108 (Wis. 1984). The holding in this case applied only to the actions of intoxicated minors.

Dram Shop Actions-Social Hosts:

Yes. §125.035 As noted above, under this law only a person who provides alcoholic beverages to minors is liable for the injuries caused by these minors to third parties. See also, *Koback v. Crook*, 366 N.W.2d 859 (Wis. 1985), which also limited liability to the actions of intoxicated minors.

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

Type of Criminal Action:

Misdemeanor §§125.07(2)(a) and (b) and 939.60

Term of Imprisonment:

Not more than **60 days**

Fine (\$ Range):

\$100 to \$500

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Suspension /Revocation §125.12

Length of Term of License

Withdrawal:

Suspension – Not more than **90 days**;
Revocation -at least **12 months**

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:

Civil Forfeiture/Misdemeanor¹³¹⁸
§§125.07(1)(a) and (b) and 939.60

Term of Imprisonment:

First offense (Forfeiture) – **None**; second offense (within 30 months-misdemeanor) – Not more than **30 days**; third offense (within 30 months-misdemeanor) – Not more than **90 days**; subsequent offense (within 30 months-misdemeanor) – Not more than **9 months**.

Fine (\$ Range):

First offense (Forfeiture) – Not more than **\$500**; second offense (within 30 months-misdemeanor) – Not more than **\$500**; third

¹³¹⁸ A person who sells alcoholic beverages to a minor under 18 years old where the minor either dies or suffers great bodily harm as a result of consuming such beverages is subject to the following sanctions: if death occurs – jail- not more than 10 years; fine – not more than \$25,000; if injury occurs – jail – not more than 6 years, fine – not more than \$10,000. §125.075

offense (within 30 months-misdemeanor) – Not more than **\$1,000**; subsequent offense (within 30 months-misdemeanor) – Not more than **\$10,000**.

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** for second and subsequent offenses §125.07(1)(b)

Length of Term License Withdrawal: First offense – **None**; second offense (within 12 months) – Suspension not more than **3 days**; third offense (within 12 months) – Suspension **3 to 10 days**; fourth offense (within 12 months) – Suspension **15 to 30 days**. (Also, possible **Suspension/Revocation** under §125.12; Suspension – Not more than **90 days**; Revocation-at least **12 months**).

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** (alcohol or nitrous oxide) §346.935(2) and (3)

Anti-Consumption Law (Yes/No): **Yes** Driver and passengers §346.935(1) {Does not apply to a motor bus.}