



U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
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April 2006

DOT HS 810 571

# **Digest of Impaired Driving and Selected Beverage Control Laws**



**Twenty-Third Edition  
Current as of January 1, 2006**

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## INTRODUCTION

### PURPOSE

This digest reports the status of State laws that are concerned with impaired driving offenses and alcoholic beverage control. Unless otherwise indicated, the status of the laws reported is January 1, 2006.

### STRUCTURE OF DIGEST

*The Digest of Impaired Driving and Selected Alcohol Beverage Control Laws* is designed to be an easily accessible reference to all States' current laws on alcohol and other issues of impaired driving. The digest contains a selection of the most utilized laws for each State, compiled in a consistent format to make research simpler. Each State entry includes: Basis for a DWI Offense; Chemical Breath Tests for Alcohol Concentration; Adjudication of DWI charges; Sanctions; Administrative Licensing Actions; DWI offenses and Commercial Motor Vehicles; Other Criminal Actions Related to DWI; Minimum Age Alcohol Laws, Dram Shop Laws and Related Actions, and others.

This compilation is extensively footnoted and contains comprehensive information on critical impaired driving laws for all 50 States and the District of Columbia. This volume is available in CD-ROM format, in print version, and on the Web site of the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO.org)

### DEFINITIONS

Administrative Per Se Law: An "administrative per se law" allows a State's driver licensing agency to either suspend or revoke a driver's license based either on a specific blood alcohol concentration or on some other criteria related to alcohol or drug use and driving. Such action is completely independent of any licensing action

related to a driver's conviction for an impaired driving offense. These laws usually cover both resident and nonresident drivers. However, for nonresident drivers, the action would be limited to denying driving privileges in the sanctioning State.

Commercial Motor Vehicle: For impaired driving offense purposes, most States define a "commercial motor vehicle" (CMV) as one that (1) has a gross vehicle weight  $\geq 26,001$  pounds, (2) is designed to transport 16 or more persons including the driver, or (3) transports hazardous materials.

Dram Shop Laws: Statutory or case law which provides that a person who serves alcoholic beverages to an intoxicated individual, may be liable for the damages caused by such individual. In some States, a server may also be liable for injuries sustained by the intoxicated individual.

DWI, DUI, and Impaired Driving Offense: These are generally "nonlegal" terms that refer to any criminal action related to driving a motor vehicle either (1) while "illegal per se" or (2) while either impaired by, under the influence of or intoxicated by alcohol or other drugs.

Happy Hour Laws: For the purposes of this Digest, this is either a statute or regulation that prohibits the sale of alcoholic beverages below the price per quantity normally charged for such beverages.

Vehicular Homicide: "Vehicular homicide" is the unlawful and unintentional death caused by a person while violating laws related to motor vehicle operation.

Illegal Per Se Law: A State law that makes it a criminal offense to operate a motor vehicle (1) at or above a specified alcohol concentration in either the blood, breath, or urine or (2) with any amount of a drug, usually a controlled (illegal) substance, in the body.

Implied Consent Law: This type of law provides that a person gives implied consent to submit to a test for either an alcohol or drug content in his/her body if he/she is arrested or otherwise detained for a DWI offense. If the person refuses to submit to such a test, the law usually provides that his/her driving privileges will be either suspended or revoked. The results obtained from such a test are usually admissible into evidence at a DWI trial.

Intoxicating Liquor: A number of State laws provide that it is illegal to operate a vehicle while under the influence of "intoxicating liquor" (instead of under the influence of alcohol). However, the term "intoxicating liquor" is not defined in many of the State motor vehicle codes that provide for this type of impaired driving offense. Nevertheless, such term usually refers to all types alcoholic beverages (i.e., beer, wine and distilled spirits). See the definitions of "alcoholic liquor," "intoxicating liquor" and "liquor" in Black's Law Dictionary, Sixth Edition, West Publishing Company.

Mandatory Sanctions: A "mandatory sanction" means either a criminal sanction (e.g., jail, fine or community service) or an administrative licensing action (e.g., license suspension or revocation) must be imposed by either a court or an administrative agency. That is, statutory law specifically requires that such sanction be imposed.

Preliminary Breath Test. A "preliminary breath test" (PBT) refers to a breath test given by a law enforcement officer to a suspected impaired driver prior to an arrest for an impaired driving offense. The results of this test are used along with other evidence by the officer to determine if there is "probable cause" to arrest the driver for such an offense. Usually, the results of a PBT cannot be admitted into evidence.

Pre-Sentence Investigation Law: As used in this publication, this term means a law that provides that a person who has been convicted of an impaired driving offense undergo an evaluation to determine if he/she has either an alcohol or drug abuse problem.

Presumption: The term "presumption" under "Basis for a DWI Charge" refers to a specific alcohol concentration in a driver's blood, breath, or urine at or above which it may be presumed that he/she was driving in violation of the "Standard DWI Offense".

Comments and Historical Notes: Comments and historical notes have been included to alert the reader to either situations or past events that may be of significance.

Off-Highway Vehicles: Not reported in this digest are State laws that prohibit the operation of non-highway vehicles (e.g., snowmobiles, an all-terrain vehicles (ATVs) or other off-road vehicles (ORVs) either while under the influence of alcohol or drugs or at or

above a specific blood alcohol concentration.

Sanctions: Unless otherwise stated, the sanctions are the same for all alcohol and drug driving offenses (e.g., driving while under the influence of either alcohol or drugs, illegal *per se*, et al.).

The sanctions listed in the digest for criminal offenses are those that would normally apply to adult offenders. However, it should be noted, that for juvenile offenders (persons under 18 years old), the law may limit a court's ability to assign such punishment. Such offenders also may be subject to other sanctions for a violation of criminal laws that may not be listed in this digest.

Nevertheless, this digest does report the sanctions (criminal or administrative) related to State laws that have special provisions that make it a illegal for a young person (e.g., a person under 21 years old) to operate a motor vehicle either (1) at or above a specific alcohol concentration, which is below the level used to determine adult intoxication, or (2) with any measurable amount of alcohol or drugs in his/her body. However, the digest does not generally report the sanctions (criminal or administrative) associated with State laws that prohibit a person, who is under the legal drinking age, from consuming alcoholic beverages.

Important: The fine sanctions listed in this digest do not include court costs.

## **LEGISLATIVE SUBJECT AREAS**

Basis for a DWI Charge (e.g., Under the Influence of Alcohol or Drugs, Illegal Per Se, et al.)

Chemical Breath Tests

Preliminary

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Beverages in the Passenger

### **ABBREVIATIONS and SYMBOLS**

BAC = blood alcohol concentration  
BrAC = breath alcohol concentration  
CDL = Commercial Driver's License  
CMV = Commercial Motor Vehicle  
EMS = Emergency Medical Services  
mand = mandatory  
N/A = not applicable  
n.a. = not available  
UrAC = urine alcohol concentration  
UVC = Uniform Vehicle Code  
> = greater than  
< = less than  
≥ = equal to or greater than  
≤ = equal to or less than

**Requests for future editions of or comments about the digest should be sent to:**

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