

STATE:
General Reference:

NEW HAMPSHIRE
New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of intoxicating liquor^{1&5} §§265:82, I(a)
≥ **0.08**^{2,3&5} §265:82, I(b)
Persons Under 21 Years Old-≥ **0.02**^{3,4&5} §265:82, I(b)

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

None
Under the influence of (1) **Any Controlled Drug** and (2) any
Combination of Intoxicating Liquor and Controlled Drugs
§265:82(I)(a)

Other:

I. An alcohol concentration ≥ **0.08**³ is *prima facie* evidence of
intoxication. §265:89
II. **Aggravated Driving While Intoxicated Offense.** (1) Either
driving while under the influence of intoxicating liquor or any
controlled drug or any combination of intoxicating liquor and a
controlled drug or with a BAC/BrAC ≥ 0.08 and one of the
following: Exceeding the *prima facie* speed limit by more than 30
MPH; causing a collision that results in a serious bodily injury to
another person; or, attempting to elude a law enforcement officer.
(2) Driving with a BAC/BrAC ≥ 0.16. §265:82-a
III. For Commercial Motor Vehicle Operators, see p. 3-315.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes §§215-A:11 & 265:92-a

Yes §265:84

Yes §265:84

Yes (Criminal & Civil Cases) §265:88-a & *State v. Parker*, 902
A.2d 306 (N.H. 1997)

Other Information:

I. If there is probable cause of DWI, a driver, involved in a
collision resulting in a death or serious injury, shall be tested for
evidence of alcohol or controlled drugs. §265:93
II. Under the implied consent law (§265:84), in addition to
chemical tests, a person is deemed to have consented to "physical
tests and examinations". A person, who refuses to submit to these
tests or examinations, is subject to the same licensing action as for
a refusal to submit to a chemical test.

¹The term "intoxicating liquor" is defined to include all alcohol beverages containing more than one per cent alcohol by volume. §21:33

²This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or a urine alcohol concentration of 0.08 or more. §259:3-b

³The term "alcohol concentration" is defined as 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. §259:3-b

⁴The sanctions for this offense (criminal and administrative) are the same as for any other drunk driving offense.

⁵Under §265:89, it is *prima facie* evidence that a person was not driving while under the influence of intoxicating liquor per §265:82, I(a) if their BAC was 0.03 or less. As a result, a driver <21 yrs old, who is charged with driving while under the intoxicating liquor, is entitled to use §265:89 as defense against this charge, if their BAC is 0.03 or less, even though other provisions of the law, §265:82, I(b), make it illegal per se for them to operate a motor vehicle with a BAC ≥ 0.02. It should be noted that in the case cited, the court specifically stated that the *prima facie* defense only applies to the §265:82, I(a) offense. *State v. Clyde*, 766 A.2d 250 (N.H. 2001)

NEW HAMPSHIRE

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

Blood: Yes §265:84
Urine: Yes §265:840
Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No
Anti-Plea Bargaining Statute (Yes/No): No Note: The law requires the filing of reports on plea bargaining agreements. Since these reports are public records, they are available for public inspection. §265:82-c
Pre-Sentencing Investigation Law (PSI) (Yes/No): Yes (Limited) 3rd and sub offs (w/n 10 yrs) §265:82-b, II(b)(2)
Note: Under §651:4, a pre-sentence investigation is not normally required in misdemeanor cases.

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): 1st refusal where there has been no previous DWI off-Susp for 180 dys (mand); 2nd refusal or a 1st refusal where there has been a previous DWI off-Susp for 2 yrs (mand) §§265:91-a, II(a) & 265:92 These revocations are not to run concurrently with any other suspension or revocation. §265:92, II
Other: See Footnote No. 1.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment: See Gainful Employment & Home Confinement on p. 3-313.
Term (Day, Month, Years, Etc.): 1st off-Violation-Not a Crime §629:9, II(b)-None; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses) Misd²-Not more than 1 yr; 2nd off³ (including Aggravated DWI non-injury offs) (w/n 10 yrs)-Misd²-Not more than 1 yr; 3rd off³ (including Aggravated DWI non-injury offs) (w/n 10 yrs)-Misd²-Not more than 1 yr; 4th or sub offs³ (including Aggravated DWI non-injury offs) (w/n 10 yrs)-Felony-See the Comment on p. 3-313.

¹A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC ≥ 0.03 and who refuses to take a chemical test shall have their license suspended for 90 days. §263:14-a(III). See Misc. Sanctions on p. 3-316.

²The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

³For sentencing purposes, a prior offense includes a prior motor vehicle homicide offense related to drunk driving and an Aggravated Driving While Intoxicated offense relate to serious bodily injury. §265:82-b, II

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	<p>Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-Cl B Felony-Not more than 7 yrs¹ §§265:9, IV(A); 265:82; 265:82-a; 265:82-b, I(b) & II and 651:2, I(c)</p> <p>Special Note: In order for a defendant to receive enhanced sanctions for a subsequent DWI offense conviction, the DWI complaint must allege the prior convictions. §265:82-b, I(b)(1) <u>2nd and sub. off</u> (all offenses including Aggravated (DWI)(w/n 10 yrs)-Misd-10 cons dys The 10 con dys are to be served as follows: 3 con 24 hour periods in the county house of corrections and 7 con 24 hour periods in a State operated 7-dy multiple DWI offender intervention detention center. <u>Important.</u> See Special Sanctions for Certain Multiple Offenders on p. 3-314. §265:82-b, II(a)(3), (b), (c) & (d) Aggravated DWI-Serious Bodily Injury-None</p>
Fine: Amount (\$ Range):	<p><u>1st off</u>-\$350 to \$1,000; <u>1st off</u>-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-\$500 to \$2,000; <u>2nd off</u>² (w/n 10 yrs)-\$500 to \$2,000; <u>3rd off</u>² (w/n 10 yrs)-\$500 to \$2,000; <u>4th or sub offs</u>² (w/n 10 yrs)-\$500 to \$4,000 Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-\$1,000 to \$4,000 §§265:82-b, I & II and 651:2, VI(a)</p>
Mandatory Min. Fine (\$):	<p><u>1st off</u>-\$350; <u>1st off</u>-Aggravated DWI-\$500; <u>2nd off</u>² (w/n 10 yrs)-\$500; <u>3rd off</u>² (w/n 10 yrs)-\$500; <u>4th or sub offs</u>² (w/n 10 yrs)-\$500 Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-\$1,000 §265:82-b, I & II</p>
Other Penalties: Community Service:	<p>Yes For a felony or class A misd, a defendant may receive conditional discharge which may include not more than 50 hrs of community service. §651:2, VI</p>

¹A defendant may receive an extended term of imprisonment of from 10 to 30 yrs if they have committed an Aggravated DWI involving serious bodily injury and either (1) they have been convicted of either a prior like offense "or any crime in any other jurisdiction involving driving a motor vehicle under the influence of controlled drugs or intoxicating liquors" or (2) they have been convicted two prior drunk driving offenses in either New Hampshire or any other jurisdiction. §651:6, I(l) & (m) and II

²All offenses including non-injury Aggravated DWI.

³The offender may be ordered to pay restitution to the victims' compensation fund. Such payments are used to reimburse the fund for any amounts that were awarded to victims of the offense. §21-M:8-1

Gainful Employment & Home Confinement. Offenders not confined to the State prison may be released for purposes of "gainful employment" or allowed to serve their sentence under home confinement. If home confined is allowed, the offender must first serve either 8 consecutive weekends or 14 consecutive dys in jail. §651:19

Comment. The sentencing provisions of the drunk driving law provide that a 4th or subsequent offense is a felony. However, this law does not specify or classify whether this is Class A or Class B felony. §265:82-b, II(c) Furthermore, unlike the provisions concerning unclassified misdemeanor offenses in the crime classification statute, §625:9, the law does not provide for a "default" classification for felony offenses in situations where an offense is defined as a felony but is not classified. Note: The incarceration sanctions for Class A and Class B felonies are respectively not more than 15 and 7 yrs and the fine sanction for either felony is not more than \$4,000. §651:2, II & IV(a)

NEW HAMPSHIRE

Sanctions Following a Conviction for a DWI Offense:
(continued)

Restitution
(eg Victim's Fund)

I. Payment by the defendant to the victim.³ §651:62 et seq.
II. A victim may receive compensation for damages from a State fund. §21-M:8-g et seq

Other:

Penalty Assessment. An offender must pay an assessment of either \$2 or 20% of the fine imposed. This assessment is used to fund police training and victim assistance programs. §188-F:31
Liability for Response. A DWI offender may be liable to reimburse a public agency for up to \$10,000 (or up to 500 hrs of community service) of the cost incurred in responding to an incident involving the negligent use of a vehicle while under the influence of alcohol. §§151-B:17 & 151-B:22

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

Special Sanctions for Certain Multiple Offenders. Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense shall be imprisoned for 30 con. 24 hour periods. In addition, they must complete, at their own expense, either a 28 day residential treatment program or "an intensive course of substance abuse treatment" before their license can be restored. §265:82-b, II-a

Other:

Yes ≥ 0.08 BAC/BrAC/UrAC (≥ 0.02 for persons under 21 years old) See Footnote No. 3 on p. 3-311. 1st violation-Susp-6 mos (appears mand); sub. violation-Susp-2 yrs (appears mand) A subsequent admin. per se violation also includes a prior refusal or DWI offense. §265:91-a et seq.

Special Note: If a person is subject to both an admin. per se suspension and a license revocation based on a DWI conviction as a result of the same occurrence, the total license suspension/revocation time cannot exceed the longer of the two periods. §265:91-c

Under §§263:56(I)(a) & 263:56(III), a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). A preliminary hearing is required before such action can be taken. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See the Special Note above.

1st off-Rev; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-Rev; 2nd off¹ (w/n 10 yrs)-Rev; 3rd off¹ (w/n 10 yrs)-Rev; 4th or sub offs¹ (w/n 10 yrs)-Rev; 3rd or sub offs¹ (w/n 10 yrs) where there was a prior motor vehicle related negligent homicide offense-Rev

Aggravated Driving While Intoxicated Offenses with Serious Bodily Injury-Rev See Rehabilitation on p. 3-315. §§263:65, 263.66 & 265:82-b

¹All offenses including Aggravated DWI.

Sanctions Following a Conviction for a DWI Offense:
(continued)

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

See Persons Under 21 below.

1st off-90 dys to 2 yrs; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-1 to 2 yrs; 2nd off¹ (w/n 10 yrs)-Not less than 3 yrs; 3rd off¹ (w/n 10 yrs)-For at least 5 yrs; 4th or sub offs¹ (w/n 10 yrs)-**Indefinitely**; 3rd or sub offs¹ (w/n 10 yrs) where there was a prior motor vehicle related negligent homicide offense-**Indefinitely**
Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 to 2 yrs See Footnotes Nos. 2 & 3.

Mandatory Minimum Term of
Withdrawal:

1st off-90 dys; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-1 yr; 2nd off¹ (w/n 10 yrs)-3 yrs; 3rd off¹ (w/n 10 yrs)-5 yrs; 4th or sub offs¹ (w/n 10 yrs)-7 yrs; 3rd or sub offs¹ (w/n 10 yrs) where there was a prior motor vehicle related negligent homicide offense-10 yrs
Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 yr 265:82-b, II See Footnotes Nos. 1 & 2.
Child Endangerment. If the DWI offender was transporting a person under 16 yrs old at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.⁴ §265:82-b, VIII

Other:
Rehabilitation:
Alcohol Education:

Yes For any alcohol related driving off, a defendant must be complete an impaired driver intervention program before their license can be restored. §263:65a

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:

None

¹All offenses including Aggravated DWI.

²If a 2nd or subsequent offense (w/n 10 yrs) is not alleged in the complaint but such is found to be the case, the defendant's license is suspended from 180 dys to 3 yrs. The minimum 180 dys appears to be mandatory. §265:82-b, III

³A 2nd or subsequent offender (w/n 10 yrs) must successfully complete a 7 dy residential intervention program before their license can be reinstated. §336:4, VI

⁴Before an offender's license can be restored, they must complete either a 7 dy State operated multiple DWI offender program or a 7 dy alcohol and drug residential intervention program. §§172-B:2-b & 265:82-b, VIII

Persons Under 21 Years Old. Offenders, who are <21 yrs old, must have their driving privileges revoked for not less than 1 yr. A 1 yr revocation appears to be mandatory. §265:82-b, I-b See Ignition Interlock on p. 3-316.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for at least 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) are under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC) ≥ 0.04 (See Footnote No. 3 on p. 3-311.) or (2) are under the influence of 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 suspension is for life (10 yrs mand). If a person refuses to submit to a chemical test under the implied consent law while operation a CMV, their CDL is "revoked" for a 1st refusal for not less than 1 yr (1 yr mand) and for a 2nd or subsequent refusal for not less than 10 yrs (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. §§259:3-b, 259:12-e, 259:14, 259:20-a, 263:94, 263:95 & 263:96

NEW HAMPSHIRE

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Vehicle Registration Revocation.¹ For either (1) a 2nd or subsequent DWI offense conviction or (2) an **Aggravated Driving While Intoxicated** offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

Miscellaneous Sanctions
Not Included Elsewhere:

At Risk Driver (Probationary License). Any person who shall apply for reissuance of their license following an drunk driving offense conviction is an "at risk" driver and their license shall be probationary for 3 yrs. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with a BAC/BrAC ≥ 0.03 . §263:14a(I) & (II) Note: This suspension may not be mandatory.

Ignition Interlock. Aggravated DWI or subsequent DWI offenders may be required to install an ignition interlock device on the vehicles the own or regularly use for 6 mos to 2 yrs following license reinstatement. Any DWI offenders <21 yrs old, may be required to use this device for 12 mos or until they reach 21 whichever is longer. §265:82-e, I & III

Liquor Forfeiture. Except for liquor intended for sale, any liquor on the defendant's person at the time the defendant is taken into custody is forfeited to the State. §179:4

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes I. Death (or serious bodily injury) caused by unlawful motor vehicle operation without intent (Vehicle Assault)-CI A misdemeanor §265:79-a

II. Death caused by negligent operation of a motor vehicle (Negligent Homicide)-CI B Felony §630:3, I

III. Death resulting from the operation of a motor vehicle while DWI (Negligent Homicide)-CI A Felony §630:3, II

IV. Death caused by the reckless operation of a motor vehicle (Manslaughter)-CI A Felony §§625:9, III(a)(1) & 630:2, I

Criminal Sanctions:
Imprisonment (Term):

I. Not more than **1 yr** §651:2, II(c)

II Not more than **7 yrs** §651:2, II(b)

III. Not more than **15 yrs**² §651:2, II(a)

IV. Not more than **30 yrs** §630:2, II

None

Mandatory Minimum Term:
Fine (\$ Range):

I. Not more than **\$2,000** §651:2, IV(a)

II & III. Not more than **\$4,000** §651:2, IV(a)

¹Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

²A defendant may receive an extended term of imprisonment of from 10 to 30 yrs if they have committed an DWI vehicle homicide and either (1) they have been convicted of either a prior like offense "or any crime in any other jurisdiction involving driving a motor vehicle under the influence of controlled drugs or intoxicating liquors" or (2) they have been convicted two prior drunk driving offenses in either New Hampshire or any other jurisdiction. §651:6, I(l) & (m) and II

Other Criminal Actions Related to DWI: (continued)

<p>Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action:</p>	<p>IV. The law is not specific but a fine of not more than \$4,000 may be possible. §§625:9, III(a)(1), 630:2 & 651:2. (IV(a) None</p> <p>I, II, III & IV. Rev §§263:56, I(g), 630:2, II & III and 630:3, III</p>
<p>Length of Term of Licensing Withdrawal:</p>	<p>I & II. Up to 7 yrs §§263:56, III(a) & 630:3, III III. Indefinitely¹ §630:3, III IV. Indefinitely §630:2, III</p>
<p>Mandatory Action--Minimum Length of License Withdrawal:</p>	<p>I & II. None III. 7 yrs The use of an <u>ignition interlock</u> device may also be required for not more than 5 yrs following license reinstatement. §630:3, III IV. Indefinitely §630:2, III</p>
<p>Other:</p>	<p>Vehicle Registration Revocation.² For Negligent Homicide and Manslaughter offenses, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III See Penalty Assessment on p. 3-314.</p>
<p><u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u></p>	
<p>Sanction: Criminal: Imprisonment (Term):</p>	<p>See the Special Note below.</p> <p>Misd (classified as a CI A misd)- Not more than 1 yr §§625:9, IV(a)(2), 263:64 & 651:2, II(c)</p>
<p>Mandatory Minimum Term of Imprisonment: Fine (\$ Range):</p>	<p>7 con 24 hrs periods §263:64, IV Not more than \$1,000 §263:64, IV See Penalty Assessment on p. 3-314.</p>
<p>Mandatory Minimum Fine:</p>	<p>None</p>

¹**Persons Under 21 Years Old.** Offenders, who are <21 yrs old, must have their driving privileges revoked for not less than 1 yr. A 1 yr revocation appears to be mandatory. §265:82, I-b

²Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

Special Note: I. It appears to be a violation of the general provisions of the law, which prohibit the operation a motor vehicle while suspended or revoked, to operate a CMV during a CDL suspension. A person convicted of this offense is subject to probation. conditional st have their driving privileges revoked for not less than 1 yr. A 1 yr revocation appears to be mandatory. §265:82-b, or unconditional discharge or a fine of not more than \$1,000. §§263:64, I & VII and 651:2, III & IV(a)

II. A person, who operates a motor vehicle while their license is either suspended or revoked, commits a CI B felony (misd if they are <20 yrs old) if, as a result of a collision, they cause either the death or serious bodily injury to another person. "Evidence the driver violated any of the rule of the road shall be *prima facie* evidence that the driver caused or materially contributed to the collision." §263:64, V-a(a) & (b) The sanctions for a CI B felony are imprisonment for not more than 7 yrs and a fine of not more than \$4,000. The sanctions for a misdemeanor (CI A misd) are incarceration for not more than 1 yr and a fine of not more than \$1,200. §§625, IV(a)(2) and 651:2, II(b), II(c) & IV(a)

NEW HAMPSHIRE

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Rev §263:64, IV

Length of Term of License

An additional 1 yr

Withdrawal Action:

Mandatory Term of License

An additional 1 yr

Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §§259:39 & 262:18 et seq.

Grounds for Being Declared an
Habitual Offender:

3 serious offs. (w/n 5 yrs), 12 moving violations (w/n 5 yrs) or 1 serious off. and 8 moving violations (w/n 5 yrs)

Term of License Rev While

Under Habitual Offender Status:

Rev 1 to 4 yrs 262.19, III An habitual offender may have to successfully complete a "Driver Attitude Program" before their license can be reinstated. §263:56-e

Vehicle Registration Revocation. The habitual offender's vehicle's registration must be revoked for the same period of time as the driver's license revocation. §261:180, III Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

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

Note: Type of off is not specified in the statute. It is probably a Cl B felony with modifications in the penalty as provided in the habitual offender law. §625:9, III(a)(2)

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

Felony 1 to 5 yrs §§262:23, I & 625:9, III A person may also be sentenced to home confinement as a condition of probation. §651:2, V(b)

Mandatory Minimum Term of
Imprisonment:

1 yr if the person has been convicted of a misd. or felony traffic offense convictions. §262:23, III As an alternative, home confinement provided the offender first serves either 8 con weekends or 14 con dys in jail. §262:23, I & III

Fine (\$ Range):

Possible fine of not more than \$4,000 No fine is stated in §262:23. However, §651:2, IV(a) provides that a person convicted of a felony may be subject to a fine of not more than \$4,000. See **Penalty Assessment** on p. 3-314.

Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

None
None

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes (Required) §§262-A:69-1 & §265:93

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ (Year Eff: 1985) §§175:1, 179:5 & 179:6

Minimum Age (Years) Possession:

21 There are employment exemptions. §§179:10 & 179:23

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

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

Yes §507-F:1 et seq.² This statute appears to have abrogated previous case law concerning dram shop liability. §507-F:8"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 The following case law appears to have been abrogated by §507-F:1 et seq. See *Burns v. Bradley*, 419 A.2d 1069 (1980), which held that New Hampshire permits a plaintiff to maintain a common law (negligence) cause of action against a liquor licensee for injuries received as a result of being served additional liquor while in an intoxicated state. See also *Ramsey v. Anctil*, 211 A.2d 900 (N.H. 1965).

Dram Shop Actions-Social Hosts:

Yes *Hickingbotham v. Burke*, 662 A.2d 297 (N.H. 1995),³ & *MacLeod v. Ball*, 663 A.2d 632 (N.H. 1995)

Other:

Under §507-F:5, a licensee may be held liable for the injuries sustained by an intoxicated patron if the serve of alcoholic beverages was reckless.

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

Type of Criminal Action:

See **Penalty Assessment** on p. 3-314.

Term of Imprisonment:

Misd⁴ (For corporations-Felony) §§179:5 & 179:58, I

Fine (\$ Range):

Not more than **1 yr** §651:2, I(c)Not more than **\$2,000** §651:2, IV(a) (For corporations-not more than \$100,000) §651:2, IV(b)¹It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §179:9(I)²New Hampshire's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.³The court based its decision on whether there was negligence based upon the reckless service of alcoholic beverages by the social host. The case concerned an injured intoxicated minor guest. **Comment:** Language in the case would seem to indicate that either an injured adult guest or a third party, who has been injured by an intoxicated guest, could also recover damages against a social host⁴The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

NEW HAMPSHIRE

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp/Rev §179:57

Time period is not specified in the statute for either susp or rev. Administrative fine of \$100 to \$5,000 in lieu of a susp/rev. §179:57

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:

Term of Imprisonment:

Fine (\$ Range):

Misd¹ (For corporations-Felony) §§179:5, 179:6 & 179:58, I Not more than 1 yr §651:2, I(c)

Not more than **\$2,000** §651:2, IV(a) (For corporations-not more than \$100,000 §651:2, IV(b)

See **Penalty Assessment** on p. 3-314.

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):

Length of Term License Withdrawal:

Yes Susp/Rev §179:57

Time period is not specified in the statute for either susp or rev. Administrative fine of \$100 to \$5,000 in lieu of a susp/rev. §179:57

Anti-Happy Hour Laws/Regulations:

No²

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):

Anti-Consumption Law (Yes/No):

Yes §§179:27-a, II & 265:81

No³

¹The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

²However, the service of "free drinks" is prohibited except for wine tasting purposes. §179:44

³However, the law does prohibit drivers and passengers from possessing alcoholic beverages within the passenger area of any motor vehicle. This prohibition does not apply to persons transporting, carrying, possessing such beverages in a chartered bus, taxi, limousine for hire, or a section of a motor vehicle designed for overnight accommodations. §265:81, II, III & IV(a)