

TITLE 4. BUSINESS REGULATIONS
DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ARTICLE 22. SUSPENSION OR REVOCATION OF LICENSES
AMEND SECTION 144. DISCIPLINARY GUIDELINES

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Documents incorporated by reference are often difficult for members of the public to find. While our previously incorporated Penalty Guidelines has been available on our web site for years, those researching the actual California Code of Regulations could not see it. In addition, the schedule needed to be updated to reflect current law and agency experience.

BENEFITS

Having the schedule directly in the Code of Regulations will assist those researching directly. Adding new sections will provide clarity to the public, licensees, and the administrative law judges writing decisions regarding the level of discipline to be imposed when certain violations are found.

The regulation will further provide transparency by stating the levels of discipline within the CCR.

NECESSITY

As authorized by Business and Professions Code Section 25750, this regulation is necessary and proper to the enforcement of the Alcoholic Beverage Control Act.

PURPOSE

To revise the current disciplinary schedule according to law and agency experience.

In 2004, the Department of Alcoholic Beverage Control (ABC) adopted a one-paragraph regulation which incorporated by reference a 2003 Penalty Guidelines document (attached for the reader's convenience). The amendments to this regulation place the text of that incorporated document into the regulation itself, making the contents more accessible for those who search the California Code of Regulations.

Instead of the word "penalty," the change of name and text reflects that "discipline" is imposed for the protection of the public and not punitive "penalties." In subsection (a), the Administrative Procedure Act reference is corrected to reflect the actual name of the statute, pursuant to Government Code 11370.

Previously, the incorporated document had separate lists for aggravation and mitigation. This proposal merges the lists in subsection (c), as a factor's presence or absence could be seen either as aggravating or mitigating. This amendment clarifies that prior disciplinary history includes all violations, not just similar acts, which shows the Department's ability to aggravate a penalty for multiple violations when a licensee is

showing a disregard for the rules. For instance, prior disciplinary actions regarding service to obviously intoxicated individuals or violations of conditions placed on the premises should be considered in a new accusation regarding a disorderly house. Reviewing prior actions, especially those close in time, gives an overall feel for the licensee's ability to follow the laws required for licensure. Similarly, prior warning letters would include letters from local law enforcement, state health inspector or tax agency, etc. as notice to a licensee of a problem.

Added "harm to public" as factor in subsection (c)(2). As with many state agencies charged to protect the public, this will allow the Department to address instances where the violation results in public harm such as a death, significant injury to property, a scheme against the public, etc. The level of harm may be judged either as an aggravating or mitigating factor. Similarly, preventative, corrective, or cooperative elements may be used as aggravation or mitigation of discipline.

These spelled-out factors should assist licensees in understanding the Department's focus on protection of the public, and help them in presenting their case, should they choose to contest a disciplinary action.

Subsection (d), the Schedule of Discipline has been re-ordered and numbered, to make it easier to cite and find items. The order is now based numerically on statute and then regulation, with some cross references added. Most of the discipline is the same as the previously incorporated document, with the following exceptions:

- (1): B&P 125.6¹, Unlawful discrimination by Licensee has been added.

¹ Cal Bus & Prof Code § 125.6. Unlawful discrimination by licensees

(a)

(1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b)

(1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a

- (7): Customer-Operated Checkout Stands have been added, as B&P 23394.7 was added to the Code in 2011 (AB 183).
- (8): Purchase from unauthorized source was previously a 15 day suspension, and is being lowered to a standard 10 day suspension.
- (10): Sale of beer and wine in conjunction with motor vehicle fuel has been added.
- (11): Condition violation discipline is changed from a standard of 15 day suspension with 5 days stayed to a straight 10 day suspension.
- (17)(D): Electronic Video Gambling discipline is changed from a standard of 30 day suspension with 15 days stayed for 2 years to a straight 30 day suspension for consistency with the rest of the gambling discipline schedule.
- (18): Sale or possession of counterfeit items has been added.
- (21): "Narcotics" is being renamed to "Controlled Substances" to more closely match Business & Professions Code 24200.5. Additional discipline schedules for possession for sale and unauthorized possession of pharmaceuticals on the premises have been added.
- (29/30): Sale or consumption after hours – Previously, this single section distinguished between the public, employees, and "friends" with discipline ranging from 5 to 15 days of suspension. The revised two sections make no such arbitrary distinction but split the suspension by whether it is sale (15 days) or consumption (10 day suspension imposed).
- (38): Battery by a licensee upon their employees has been added.
- (42): Sale or possession for sale of dangerous weapons has been added.
- (43): Sale or possession of untaxed cigarettes has been added.
- (45): Premises Altered has been added.
- (47): Free Goods has been added.

Requesting to pay money instead of serving a suspension has long been in statute and accepted by the Department. Subsection (e) is directly carried over from the previously

significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c)

(1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

History: Added Stats 1974 ch 1350 § 1. Amended Stats 1977 ch 293 § 1; Stats 1980 ch 191 § 1; Stats 1992 ch 913 § 2 (AB 1077); Stats 2007 ch 568 § 2 (AB 14), effective January 1, 2008.

incorporated document, with the one clarification that accepting a Petition for Officer In Compromise (POIC) is discretionary.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of this regulation.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has determined that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses and jobs, including new businesses and small businesses, because this regulatory action simply clarifies how existing law will be enforced and does not change the Department's ability to take disciplinary action on a licensee.

In conclusion, the adverse economic impact of this regulatory action, including the ability of California businesses to compete with businesses in other states, will not be significant. This regulatory action is meant to provide licensees with an idea of the type of discipline that they may receive depending on the violation. This regulation has no legal impact in the final disciplinary decision and is only meant to be used as a guideline. In the end, discipline is administered on a case-by-case basis.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

This regulatory action will have no significant statewide adverse economic impact directly affecting business because it only clarifies existing law. The goal of the proposed disciplinary guidelines is to update the existing template for how disciplinary action will be taken on licensees who are found in violation the ABC Act. Regardless of this regulatory action, the Department has the ability within the ABC Act to suspend or revoke any licensee who has violated the ABC Act.

As provided in the ABC Act, when a licensee violates the law, the Department can take disciplinary action on the licensee including by suspending or revoking their license, depending on the type of violation and the specific facts of the case. However, the Department notes that this would only be after due process was provided.

As of June 20, 2015, the Department had a total license count of 88,490² licensees. In 2014-15, the Department suspended 729 licenses and revoked 33 licenses, a very small fraction of its licensees. This regulatory action is meant to provide licensees with an idea of the type of discipline that they may receive depending on the violation; however, this regulation has no legal impact in the final disciplinary decision and is only meant to be used as a guideline.

² This number includes all of the Department's licensees which range from small family-owned businesses to large corporations, including manufacture, wholesale, and retail licensees.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to or considered by the Department.

PENALTY GUIDELINES

POLICY STATEMENT

It is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law.

PENALTY POLICY GUIDELINES

The California Constitution authorizes the Department, in its discretion, to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

Higher or lower penalties from this schedule may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances.

Aggravating factors may include, but are not limited to:

1. Prior disciplinary history
2. Prior warning letters
3. Licensee involvement
4. Premises located in high crime area
5. Lack of cooperation by licensee in investigation
6. Appearance and actual age of minor
7. Continuing course or pattern of conduct

Mitigating factors may include, but are not limited to:

1. Length of licensure at subject premises without prior discipline or problems
2. Positive action by licensee to correct problem
3. Documented training of licensee and employees
4. Cooperation by licensee in investigation

12/17/2003

PENALTY SCHEDULE

Note: For purposes of this schedule of penalties, “revocation” includes any period of stayed revocation as well as outright revocation of the license.

Sales to minors - § 25658 B&P:	
Sales of alcoholic beverages to person(s) under 21	15 day suspension
Permitting person(s) under 21 to consume	15 day suspension
Furnishing or causing to be furnished alcoholic beverages to person(s) under 21	15 day suspension
2 nd violation of Section 25658 within 36 months	25 day suspension
3 rd violation of Section 25658 within 36 months	Revocation
(Note: priors must be final – B & P § 25658.1)	
Minor(s) on public premises – 25665 B&P	10 day suspension
Employment of minor(s) – 25663 B&P	10 day suspension
Unsupervised sales by person(s) under 18 – 25663(b) B&P	10 day suspension
Sales to obviously intoxicated person(s) – 25602 B&P	15 day suspension
2 nd violation of 25602 within 3 years	25 day suspension
3 rd violation of 25602 within 3 years	45 day suspension to revocation
Sale and/or Consumption After Hours – 25631 & 25632 B&P:	
By public	15 day suspension
By employees and friends only	10 day suspension
By employees only	5 day suspension
Illegal Solicitation of Alcoholic Beverages:	
Violation of Section 24200.5(b)	Revocation
Violation of Section 25657(a)	Revocation
Violation of Section 25657(b) and Section 303a PC	30 day suspension To revocation
Employees accepting alcoholic drinks – Rule 143 CCR	15 day suspension
Refilling – 25176 & 25177 B&P Code:	
With different brand	15 day suspension
With same brand	5 day suspension
Contaminated Bottles (insects, etc.) – 347b PC	5 day suspension
Substitution of Brands – 25609 & 23614 B&P	15 day suspension

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Club Licenses, Sale to Public – 23431 B&P	10 day suspension
Sale to Purchase Between Retailers – 23402 B&P	15 day suspension
Not Operating Bona Fide Eating Place – 23038 & 23396 B&P	10 day suspension indefinite until compliance
Licensee or Bartender Working In Premises While Intoxicated -24200(a) B&P	30 day suspension
Licensee or Employee Resisting Arrest or Interfering With Investigation on The Premises – 24200(a) B&P & 148 PC	35 day suspension to revocation
Licensee or Employee Not Permitting Inspection Of: Premises – 25755 B&P Records – 25616 B&P	30 day suspension 30 days and indefinite until records produced
Alcoholic Beverage Not Permitted By License – 25607 & 23355 B&P: Sale Possession	15 day suspension 10 day suspension
Gambling – 24200(a) B&P and 330 PC: Organized (bookmaking, football cards, etc.) Local (cards, dice, football & baseball pools, etc.) Electronic/video games (slot machines, Poker, 21, etc.) – possession Electronic/video with payoffs	30 day suspension 10 day suspension 15 day suspension 30 day suspension, with 15 days stayed for 2 years
Disorderly House, Prostitution, Lewd Conduct – 25601 B&P: Occasional or isolated offenses Recurring/aggravated offenses Nude Entertainers, etc. – Rule 143.2 & .3	30 day suspension Revocation 30 day suspension to revocation
Narcotics – B&P 24200.5 and H&S Violations: Transactions on licensed premises Paraphernalia, possession for sale	Revocation Revocation, stayed for 3 years and a 20 day suspension

Failure to correct objectionable conditions -24200(e) and (f) B&P	30 day suspension to revocation
Undisclosed Ownership – 23300 & 23355 B&P: Hidden owner qualified	15 day suspension Indefinite until ownership corrected
Hidden owner not qualified	Revocation
Hidden owner-priority license	Revocation
Commission of Crime Involving Moral Turpitude – 24200(a) B&P: Committed on premises	Revocation
Committed away from premises (petty theft/shoplifting)	Revocation stayed 3yrs
Committed away from premises (other than petty theft)	Revocation
Conviction of a crime involving moral turpitude – 24200(d) B&P	Revocation
Violation Of Conditions – B&P 23804	15 day suspension with 5 days stayed for one year
Rule 65 – Chapter 1, Title 4 of the CCR	Revocation stayed for 180 days to permit transfer or reactivation of license
Rule 107 – Chapter 1, Title 4 of the CCR	5 day suspension
Rule 108 – Chapter 1, Title 4 of the CCR	5 day suspension to a suspension equal to double the original suspension
Exceeding license privileges – 24200(a), 23300, 23355 B&P	5 day suspension to revocation
PC 313.1 – Harmful matter	5 day suspension
Sale of alcoholic beverages while under suspension	Double the original suspension to revocation
Receiving Stolen Property – 24200(a) and 664 & 496 PC: By license on premises	Revocation
By employee on premises	Revocation stayed for 3 years, and a 20 day suspension

Food Stamp Violations – 24200(a) B&P:	
Allowing purchases of alcoholic beverages suspension	10 day
Food stamp trafficking (i.e. purchasing stamps at discount):	
By licensee	Revocation
By employee, with premises involvement	Revocation, stayed for one year and a 20 day suspension.
Keg Registration violations	10 day suspension
Operating Condition Violations – Section 25612.5 B&P:	
Subsections (c) (3), (4), (5), (6), (7), (10)	5 day suspension
Subsections (c) (1), (2), (8), (9)	10 day suspension indefinite until compliance
Misrepresenting Material Fact on Application – 24200(c) B&P	Revocation

PETITION FOR OFFER IN COMPROMISE (“POIC”):

Business and Professions Code Section 23098 authorizes the Department may accept a Petition for Offer in Compromise (“POIC”) in lieu of the service of a suspension of 15 days or less. For purposes of determining whether the Department may accept a POIC in lieu of suspension, the total penalty imposed must be for 15 days or less, and shall not include any period of stayed suspension that would result in the potential suspension being for a period of greater than 15 days, nor can it include any period of stayed revocation. In the event that the suspension is for a period of 15 days or less with some portion thereof stayed, the POIC shall be calculated based upon the period of actual suspension (not including the stayed portion). In such cases, if the stayed period of suspension is later reimposed, the Department will generally not accept a POIC in lieu of serving the reimposed period of suspension.

Abbreviation legend:

B&P	California Business and Professions Code
PC	California Penal Code
H&S	California Health & Safety Code
CCR	California Code of Regulations
POIC	Payment of Offer in Compromise (B&P Sections 23095 & 23096)