

## **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

**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 <sup>nd</sup> violation of Section 25658 within 36 months	25 day suspension
3 <sup>rd</sup> 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 <sup>nd</sup> violation of 25602 within 3 years	25 day suspension
3 <sup>rd</sup> 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

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	30 day suspension
Records – 25616 B&P	30 days and indefinite until records produced
Alcoholic Beverage Not Permitted By License – 25607 & 23355 B&P:	
Sale	15 day suspension
Possession	10 day suspension
Gambling – 24200(a) B&P and 330 PC:	
Organized (bookmaking, football cards, etc.)	30 day suspension
Local (cards, dice, football & baseball pools, etc.)	10 day suspension
Electronic/video games (slot machines, Poker, 21, etc.) – possession	15 day suspension
Electronic/video with payoffs	30 day suspension, with 15 days stayed for 2 years
Disorderly House, Prostitution, Lewd Conduct – 25601 B&P:	
Occasional or isolated offenses	30 day suspension
Recurring/aggravated offenses	Revocation
Nude Entertainers, etc. – Rule 143.2 & .3	30 day suspension to revocation
Narcotics – B&P 24200.5 and H&S Violations:	
Transactions on licensed premises	Revocation
Paraphernalia, possession for sale	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	10 day suspension
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)

**Title 4 California Code of Regulations,  
Section 144. Penalty Guidelines**

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, et seq.), and the Administrative Procedures Act (Govt. Code Sections 11400, et seq.), the Department shall consider the disciplinary guidelines entitled “Penalty Guidelines” (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation – such as where facts in aggravation or mitigation exist.

**Note**

Authority cited: Section 25750, Business and Professions Code; and Section 22, Article XX, California Constitution. Reference: Section 23001, Business and Professions Code; and Section 11425.50(e), Government Code.

**History**

1. New section filed 4-13-2004 as an emergency; operative 4-13-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-11-2004 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 68, No. 46.
2. Certificate of Compliance as to 4-13-2004 order transmitted to OAL 8-11-2004; disapproved by OAL and order of repeal and deletion filed 9-23-2004 (Register 2004, No. 39).
3. New section filed 9-23-2004 as an emergency; operative 9-23-2004 (Register 2004, No. 39). A Certificate of Compliance must be transmitted to OAL by 1-21-2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9-23-2004 order, including amendment of section, transmitted to OAL 11-18-2004 and filed 12-16-2004 (Register 2004, No. 51).