

§37.60. Standard Penalty Chart.

(a) Agents, compliance officers or other specifically designated commission personnel may offer settlements to persons charged with violating the provisions of the Alcoholic Beverage Code or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart.

HEALTH, SAFETY AND WELFARE VIOLATIONS

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|--|---------------|----------------------|---------------|
| Minor Related Offenses | | | |
| Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code. | 5-7 | 10-12 | 30-Cancel |
| Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code. | 7-15 | 10-90 Per §106.13 | 60-Cancel |
| Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code. | 7-20 | 10-90 Per §106.13 | 60-Cancel |
| Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §§22.12 and 28.11, Alcoholic Beverage Code. | 10-15 | 15-20 | 30-Cancel |
| Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code. | 45-Cancel | 60-Cancel | Cancel |
| Failure to report a breach of the peace in violation of Alcoholic Beverage Code §§11.61(b)(21), 61.71(a)(31). | Warning-5 | 7-10 | 25-Cancel |
| Possession of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code. | 21-Cancel | 45-Cancel | Cancel |

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|---|---------------|---------------|---------------|
| Possession of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code. | 10-21 | 21-45 | 45-Cancel |
| The sale or delivery or permitting the sale or delivery of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code and Title 16, §35.41(27), Texas Administrative Code. | Cancel | | |
| The sale or delivery or permitting the sale or delivery of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code or Title 16, §35.41(27), Texas Administrative Code. | 30-Cancel | 60-Cancel | Cancel |
| The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the license or permit holder in violation of §104.01, Alcoholic Beverage Code. | 15-20 | 25-30 | 30-Cancel |
| The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the employee of any license or permit holder in violation of §104.01, Alcoholic Beverage Code. | 10-15 | 20-25 | 30-Cancel |
| The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code. | 10-15 | 15-30 | 30-Cancel |
| The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code. | 10-15 | 15-30 | 30-Cancel |
| Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code. | 10 | 15-20 | 30-Cancel |
| Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code. | Warning-3 | 5-7 | 15-Cancel |

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|--|---------------|---------------|---------------|
| Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §61.71(a)(18) or §105.06, Alcoholic Beverage Code. | 5 | 7-10 | 25-Cancel |
| Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code. | 7 | 20-30 | 60-Cancel |
| The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses. Examples (not limited to the following offenses): Possession of any gambling paraphernalia or device; Gambling on a licensed premises; Keeping a gambling place; Bribery; Prostitution; Promotion of prostitution; Employment harmful to a minor; Obscenity; Misuse of food stamps. | 15-Cancel | | |
| Violation of city codes (relating to health, safety and welfare). | Warning-10 | 15-25 | 30-Cancel |

MAJOR REGULATORY VIOLATIONS

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|--|---------------|---------------|---------------|
| Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code. | 10 Employee | 10-15 | 45-Cancel |
| | 20 Permittee | 25-30 | 45-Cancel |
| Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code. | 5 | 7-10 | 25-Cancel |

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|---|--|---|--|
| Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. | 5 | 7-10 | 25-Cancel |
| Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code. | 3 | 5-10 | 10-25 |
| Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code. | Original suspension plus 5-10 | Original suspension plus 25-Cancel | Cancel |
| Subterfuge - Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code. | Cancel | | |
| Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code. | Warning-10 | 10-15 | Cancel |
| Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72. | Warning-5 | 15-20 | 30-Cancel |
| Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50. | 10 Employee 15 Permittee | 15-20 | 30-Cancel |
| Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code. | Cancel | Cancel | Cancel |
| Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code. | 10 | 15-45 | 60-Cancel |
| Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §§69.12 or 61.71(a)(9), Alcoholic Beverage Code. | 3 Employee 5 Permittee/ Licensee | 7-10 Employee 10-15 Permittee/ Licensee | 15-25 Employee 25-30 Permittee/ Licensee |

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|---|-----------------------------|---------------------------------|---------------------------------|
| Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code. | 3 Employee | 7-10 Employee | 15-30 Employee |
| | 5 Permittee/ Licensee | 10-15 Permittee/ Licensee | 20-30 Permittee/ Licensee |
| Permitting an open container on the premises of any off-premise license or permit in violation of §§71.01 or 24.09, Alcoholic Beverage Code. | 3 | 7-10 | 15-30 |
| Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code. | 3 | 7-10 | 15-30 |
| Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code. | 5 | 10-15 | 15-30 |
| Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code. | 5 | 10-15 | 15-30 |
| Selling an alcoholic beverage away from a licensed premises. | 7 | 10-15 | 15-45 |
| Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code. | 5 | 10-15 | 20-30 |
| Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code. | Cancel | | |
| Sale or delivery of alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code. | 3 | 10-15 | 25-30 |
| Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code. | Warning-5 | 10-15 | 25-30 |

| DESCRIPTION | 1st Violation | 2nd Violation | 3rd Violation |
|--|---------------|---------------|---------------|
| Improper record keeping in violation of agency rules §§41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts. | Warning-3 | 3-5 | 5-7 |
| Knowingly filed false report or record. | Cancel | | |
| Knowingly failed to keep record or file return in manner required. | 5-10 | 20-30 | 35-Cancel |
| Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32. | Warning-3 | 3 | 5-10 |
| Failed to present program curriculum as approved. §50.4(g). | Warning-3 | 5-7 | 15-Cancel |
| Program taught in ineffective manner. §50.4. | Warning-3 | 5-7 | 15-Cancel |
| Failed to use certified trainer. §50.6(a). | 10-15 | 21-Cancel | Cancel |
| Had more than 50 trainees in a session. §50.4(e). | Warning-3 | 5-10 | 21-30 |
| Failure to schedule sessions or cancel sessions in a timely manner. §50.4(a). | Warning-3 | 5-7 | 10-20 |
| Failure to properly test. §50.4(j)-(n). | Warning-3 | 5-10 | Cancel |
| Certifying a trainee who had not successfully completed a full session and/or passed the final test. §50.5(b)(2). | 15-30 | 30-Cancel | |
| Licensee/Permittee programs certifying non-employees. §50.4(d). | Warning-3 | 5-7 | 10-20 |
| Failed to distribute certificates to trainees. §50.4(r). | Warning-3 | 5-10 | 21-30 |
| Trainer taught in a language that was not authorized. §50.6(a). | Warning -3 | 5-10 | 21-30 |
| Violation of requirements for school/program approval. §50.3(a)-(h). | Cancel | | |
| Violated a provision of Section 50.5(b) (Program). §50.5(b). | Cancel | | |
| Violated a provision of Section 50.7 (Trainer). §50.7. | Cancel | | |
| Make false or misleading statements, reports, or representations to the Commission. §50.5(b)(2). | 7-14 | 21-30 | Cancel |
| Failure to timely file or properly prepare the report of seller training. §50.5(b)(4). | 3-5 | 7-10 | Cancel |
| Failure to properly prepare and issue certificates. §50.4(r). | Warning-3 | 5-10 | Cancel |

(b) Each suspension of a permit or license shall run for consecutive days. An alcoholic beverage licensee or permittee penalized by the commission may pay a civil penalty in lieu of a suspension as provided by Alcoholic Beverage Code, § 11.64, but no licensee or permittee may pay a civil penalty in lieu of a fraction of its suspension. In other words, any penalty assessed must be either a suspension or a civil penalty, but not a combination of both.

(c) A repeat violation by a licensee or permittee justifies the penalty for a second or third violation if it is a health, safety and welfare violation and occurs within 36 months of the first violation and if it is a major regulatory violation within 24 months of the first violation.

(d) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the permittee or licensee, as those terms are defined in the Texas Alcoholic Beverage Code, § 1.04(11), has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a permittee or licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the permittee or licensee.

(e) The list of violations in the standard penalty chart is not an exclusive list of violations of the Texas Alcoholic Beverage Code or rules of the commission. The administrator or his designee is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by either the chief of enforcement or the director of the regulatory division prior to its assessment.

(f) Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if aggravating or mitigating circumstances are involved. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the administrator or his designee.

(g) The standard penalty chart does not bind a hearing examiner, the administrator, or his designee as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

Note: Amendment Adopted: October 28, 2002; Effective: November 20, 2002