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Comments Due by: **February 12, 2024**

SC REVENUE PROCEDURE #24-x [PUBLIC DRAFT 1/22/2024]

SUBJECT: Penalty Guidelines for ABL Violations
(ABC Laws)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedure #13-2 and all previous documents and any oral directives in conflict herewith.

REFERENCE: Title 61 (2009 and Supp. 2018)

AUTHORITY: S.C. Code Ann. § 12-4-320 (2014)
S.C. Code Ann. § 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

This advisory opinion provides guidelines of the State’s alcohol laws for the Department to use in assessing penalties for violations of the statutes and regulations governing the sale, distribution, or possession of beer, wine, and alcoholic liquors. The General Assembly established varying penalty ranges for violations depending on the law that was violated, as well as the type of license(s) authorizing the sale of beer, wine, or alcoholic liquors held by the person or entity committing the violation(s).¹

The overall purpose of this procedure is to promote uniform penalty application, to provide a broader range of progressive penalties, and to provide for penalties that are more stringent for some violations while updating the circumstances in which the Department will seek to revoke a license. The Department may be flexible in situations that are particularly egregious or that fall outside the

¹ In some cases, the term “license” is used in connection with liquor, while the term “permit” is used in connection with beer and wine. However, in this document the terms (and their derivatives) are interchangeable.

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specific situations described in the guidelines. These guidelines do not restrict the Department's authority to impose any sanction within the statutory authority granted by the General Assembly.²

These are guidelines only. This advisory opinion does not establish a binding norm. There will likely be circumstances presented that call for either a more severe or less severe sanction. As a general rule, the Department will consider, although it may not accept, any claim of mitigating circumstances from a license holder and any claim of aggravating circumstances from law enforcement or other sources.

Additionally, this advisory opinion establishes the usual procedure that the Department will employ when it seeks to suspend a license on an emergency basis and sets forth some guidance about the situations that may warrant an emergency suspension.

PROCEDURE:

Ensuring compliance with the law, not punishment, is the primary goal for administrative penalties. Accordingly, except for the most serious offenses (*see* “Emergency Suspension” below), the Department adopts a progressive response to assessing penalties. The penalties listed below provide a monetary sanction, a license suspension, a license revocation, or some combination thereof.

In some cases the severity of penalties listed below depends on the number of previous violations at the licensed location. In counting the number of previous violations at the licensed location, the Department will look back three (3) years from the date of the most recent violation. To determine which of the progressive penalties applies to a particular violation, the Department will look at the total number of violations committed during the lookback period, not just the number of a specific type of violation. For example, if a licensee refills a bottle of liquor and within three (3) years sells liquor to a minor, the sale to a minor will be penalized as a second offense against the license. At the Department’s discretion, and for purposes of counting the number of violations in the look back period only, multiple violations occurring on the same date may be counted as one violation, even though separate penalties were assessed for each violation.

Specifically for the purpose of assessing penalties for sales to underage persons, the Department may reduce any suggested penalty established in this advisory opinion when the following mitigating circumstances exist:

1. The employee committing the violation has completed a training program recognized by the Department.³ This training must have taken place within a reasonable period of

² *See, e.g.*, S.C. Code Ann. §§ 61-4-250 and 61-4-270.

³ As used in this document, a “training program recognized by the Department” means a training program specified in SC Information Letter #23-13. (Note: SC Information Letter #23-13 is subject to real time updates as training programs are approved. The most recently updated

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time prior to the offense and must include training covering the prevention of underage sales. The person claiming mitigating circumstances under this item must provide the Department verification that the employee attended and completed the training and an outline of the training conducted.

2. Documented in-house training given to the offending employee on a regular and frequent basis. This in-house training must contain instruction relevant to the prevention of underage sales. The licensee must provide a copy of the materials used in the training.
3. Documentation that an internal check (*e.g.*, visit to the offending store by a mystery shopper) designed to ensure compliance occurred within a reasonable period of time prior to the offense. This internal check must be relevant to the prevention of underage sales.
4. Use of an automated age verification program designed to prevent underage sales.

If recognized mitigating circumstances are present, suspensions may be reduced in duration, and a revocation may be reduced to a suspension with monetary penalties. Monetary penalties also may be reduced. A licensee may offer other mitigating circumstances, but in every case the determination as to whether mitigating circumstances warrant a reduction in penalties is within the sole discretion of the Department. *See* SC Revenue Procedure #20-3. The Department does not consider the adverse financial impact that a penalty will have on a licensee or permit holder to be a mitigating circumstance.

There may also be aggravating circumstances present in an underage sale. If aggravating circumstances are present, the Department may impose a harsher penalty than that set forth in this advisory opinion. In every case, the determination as to whether aggravating circumstances warrant an escalation in penalties is within the sole discretion of the Department, although the Department will not impose a sanction outside of the statutory authority granted by the General Assembly. Examples of aggravating circumstances include, but are not limited to, the following:

1. The licensee's prior violations, if any, are predominately or exclusively for sales to underage individuals.
2. The entity which holds the license has committed more than five (5) offenses under S.C. Code Ann. § 61-4-580 within three (3) years of the most recent offense, regardless of whether some violations were consolidated for administrative purposes as described on page 2 of this Revenue Procedure.

information letter will be published on the Department's website at www.dor.sc.gov.) Trade associations and other organizations seeking to have a training program recognized by the Department should follow the instructions provided in SC Information Letter #23-13 and on the Department's website.

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3. The licensee or its agent or employee who committed the offense did so by knowingly bypassing or overriding the licensee's age verification system. This includes, but is not limited to, the use of an override feature in the system or the knowing input of false information into the system in order to facilitate the sale.
4. The licensee or its agent or employee who committed the offense failed to request personal identification during the sale of alcoholic liquors, beer, or wine.
5. Evidence demonstrating the license holder's disregard for complying with the alcohol laws of this state, including, but not limited to, evidence which indicates a lack of effort on the part of the license holder to mitigate any future offenses occurring within its licensed premises.
6. Input from law enforcement regarding the nature of the licensee's business operations.
7. Evidence demonstrating that the license holder has failed to comply with the alcohol laws of this state at other licensed locations owned or controlled (in whole or in part) by the license holder.

OFFENSES AND PENALTY GUIDELINES:

Unless otherwise stated (i.e., "permanent revocation" as opposed to "revocation"), the revocation of a permit or license is not a permanent revocation, but is in effect for a fixed period of time. *See* S.C. Code Ann. § 61-2-140(E) ("A person whose license or permit has been suspended or revoked for a particular premises is not eligible to receive an additional new license or permit at another location *during the period the . . . revocation is in effect . . .*"). An applicant is ineligible for a permit under Chapter 4, Title 61 if the applicant has had a permit revoked within two (2) years from the date of the new application. *See* S.C. Code Ann. § 61-4-520(3). Further, an applicant is ineligible for a license under Articles 3 or 7, Chapter 6, Title 61 if the applicant has had "a license under this or another statute regulating the manufacture or sale of alcoholic liquors which has been revoked within five years preceding the filing of the application." S.C. Code Ann. § 61-6-110(4). Accordingly, unless specifically stated as a "permanent revocation," any offense listed resulting in a "revocation" will either result in a two (2) year or five (5) year revocation period depending on the type of permit or license under which the violation occurred. Furthermore, "[n]o person within the second degree of kinship to a person whose license or permit is suspended or revoked may be issued a license or permit for the premises concerned for a period of one year after the date of suspension or revocation." S.C. Code Ann. § 61-2-140(D).

Generally, when the Department seeks suspension or revocation of a license it will also seek suspension or revocation, respectively, of any other license issued to the same license holder at the same location or at a location within close proximity. S.C. Code Ann. § 61-2-140(E). For example, a license holder operating a restaurant with both a license to sell beer and wine and a license to sell liquor by the drink on the restaurant premises holds multiple licenses for the same location. A

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license holder operating separate, side-by-side retail stores for off-premises consumption, one under a license to sell liquor at retail and the other under a license to sell beer and wine, maintains licenses at locations that are in close proximity.

Beer and Wine (Retail Sale and On-Premise Consumption) (Chapter 4)

1. All offenses except as specified below or as otherwise specified by statute*:

1st offense	- \$750
2nd offense	- \$1,000 + 2 day suspension
3rd offense	- \$1,000 + 20 day suspension
4th offense	- \$1,000 + 45 day suspension
5th offense	- Revocation

*To determine which of the progressive penalties applies to a particular violation, the Department will look at the total number of violations committed under the license/permit during the three (3) year lookback period. Therefore, if the licensee committed a violation within the lookback period under a separate statute or regulation than the current violation, it will still count toward the licensee's total number of violations within the lookback period.

2. Selling/transferring beer and/or wine to a person under 21 years of age (61-4-580(A)(1) and 7-200.4):

1st offense	- \$1,000
2nd offense	- \$1,000 + 7 day suspension
3rd offense	- \$1,000 + 30 day suspension
4th offense	- Revocation

3. Hindering/delaying inspection (61-4-230 and 61-4-250):

1st offense	- \$200 + 30 day suspension
2nd offense	- Revocation

4. Licensee or Principal (including an undisclosed Principal) not of good moral character (61-2-100(D) and 61-4-520(1)):

-Revocation

5. Permitting any act that constitutes a crime under the laws of South Carolina (61-4-580(5)) (*see note below*):

- Revocation

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6. Permitting gambling via electronic media including but not limited to “video poker” machines (61-4-580(3))**: - Revocation
7. Permitting games of chance except certain game promotions (61-4-580(3))**:
 - 1st offense - \$1000 + 10 day suspension
 - 2nd offense - Revocation
8. Permitting any act that tends to create a public nuisance (61-4-580(5)): - Revocation
9. Permitting lewd entertainment (61-4-580(4)): - Revocation
10. Failure to maintain liability insurance (61-2-145 and 61-4-250) - Indefinite Suspension
11. Failure to comply with the sign requirements, or to conspicuously post a retail permit (61-4-70, 61-4-900, and Regs. 7-200.3 and 7-200.5): - \$100 per violation
12. Dishonored payments to beer and wine wholesalers (61-4-30 and 61-4-40): - *See SC Rev. Proc. #12-1*

**As a general rule, the Department will not issue a Notice of Intent to Revoke a beer or wine permit under Code Section 61-4-580(5) for permitting an act that constitutes a crime under the laws of this State, unless the following conditions are met: (1) the underlying crime has a jail sentence as a possible penalty, (2) a criminal citation was issued to the permit holder, agent, employee or other person on the licensed premises, and (3) the criminal process ended with a result other than a nolle prosequi or an acquittal.

The possession of illegal gambling/gaming devices is unlawful and constitutes a crime under S.C. Code Ann. § 12-21-2712. Accordingly, the Department reserves the right to issue an administrative violation under section 61-4-580(5) instead of section 61-4-580(3) should a case arise where such a change in the Department’s procedure is appropriate. In those cases, the Department may issue a Notice of Intent to Revoke under section 61-4-580(5) for possession of illegal gambling/gaming machines on the licensed premises, after a magistrate has found the machines to be illegal in a civil forfeiture proceeding under section 12-21-2712. No criminal citation or conviction will be required. According to S.C. Code Ann. § 12-21-2712, it is the Magistrate Court that determines the legality of machines seized by any law enforcement officer. *See Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 621 S.E.2d 344 (2005), and *Allendale County Sheriff’s Office v. Two Chess Challenge II*, 361 S.C. 581, 606 S.E.2d 471 (2004).

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Alcoholic Liquor by the Drink (On-Premise Consumption) (Article 5, Chapter 6)

1. All offenses except as specified below or as otherwise specified by statute*:

1st offense	- \$500 ⁴
2nd offense	- \$500 + 30 day suspension
3rd offense	- \$500 and Permanent revocation

*To determine which of the progressive penalties applies to a particular violation, the Department will look at the total number of violations committed under the license/permit during the three (3) year lookback period. Therefore, if the licensee committed a violation within the lookback period under a separate statute or regulation than the current violation, it will still count toward the licensee's total number of violations within the lookback period.

2. Failure to be primarily engaged in the preparation and serving of meals (61-6-1820): - Revocation

3. Hindering/delaying inspection (61-6-4190):

1st offense	- \$200 + 30 day suspension
2nd offense	- Revocation

4. License holder or principal not of good moral Character (61-2-100): - Revocation

5. Failure to comply with the sign requirements, or to conspicuously post a retail license (61-6-1530, 61-6-1800, and Regs. 7-200.3 and 7-200.5): - \$100 per violation

6. Failure to report and remit taxes (61-6-2600(4)) - \$1,000 and Permanent revocation

7. Failure to maintain liability insurance (61-2-145) - Indefinite Suspension

Alcoholic Liquor (Retail Sale) (Article 3, Chapter 6)

1. All offenses except as specified below or as otherwise specified by statute*:

⁴ When determining penalties for certain offenses, the Department must operate within the penalty boundaries set by statute. For offenses occurring under Article 5, Chapter 6 of Title 61 (titled "Regulation of Alcoholic Liquors"), the maximum amount of a monetary penalty allowed under the statute is \$500. See S.C. Code Ann. § 61-6-2600. Furthermore, the maximum offenses allowed before the Department is mandated to seek a permanent revocation of the license is three. See S.C. Code Ann. § 61-6-2600.

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1st offense	- \$1,000
2nd offense	- \$1,000 + 7 day suspension
3rd offense	- \$1,000 + 30 day suspension
4th offense	- Revocation

*To determine which of the progressive penalties applies to a particular violation, the Department will look at the total number of violations committed under the license/permit during the three (3) year lookback period. Therefore, if the licensee committed a violation within the lookback period under a separate statute or regulation than the current violation, it will still count toward the licensee's total number of violations within the lookback period.

2. Interest in more than 6 retail stores (61-6-141): - Revocation

3. Hindering/delaying inspection (61-6-4190):

1st offense	- \$200 + 30 day suspension
2nd offense	- Revocation

4. License holder, or person having actual control/
Principal not of good repute or moral character
(61-2-100(D) and 61-6-110): - Revocation

5. Failure to comply with the sign requirements,
or to conspicuously post a retail license
(61-6-1530, and Regs. 7-200.3 and 7-200.5): - \$100 per violation

6. Dishonored payments to liquor wholesalers
(61-6-940, 61-6-1300(5), and Reg. 7-300.3): - *See* SC Rev. Proc. #12-2

7. Refill, partially refill, or reuse a bottle of
lawfully purchased alcohol liquor, or
otherwise tamper with the contents of
the bottle (61-6-1500(B)(1) and (2))

1st offense	- \$500
2nd offense	- \$1,000
3rd offense	- \$1,000 + 30 day suspension
4th offense	- Revocation

In the event of a criminal conviction based on a violation of S.C. Code Ann. § 61-6-1500(B)(1) the Department must permanently revoke the license regardless of the number of offenses. *See* S.C. Code Ann. § 61-6-1500(B)(4).

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8. Sale of alcoholic liquors from one retail dealer to another or between locations owned by the same retail dealer (61-6-1500(A)(1)(f) and (B)(3), and Reg. 7-300.4)

1st offense	- \$500
2nd offense	- \$1,000
3rd offense	- \$1,000 + 30 day suspension
4th offense	- Revocation

9. Purchase alcoholic liquors from another retail dealer or from another retail location owned by the same retail dealer (61-6-1500(A)(5) and (B)(3), and Reg. 7-300.4)

1st offense	- 30 day suspension
2nd offense	- 30 day suspension
3rd offense	- 30 day suspension
4th offense	- Revocation

Alcoholic Liquor Manufacturers and Micro-Distilleries (Article 3, Chapter 6)

1. All offenses under S.C. Code Ann. §§ 61-6-1100, 61-6-1140, and 61-6-1150, except as otherwise specified by statute*:

1st offense	- \$250 ⁵
2nd offense	- \$500 + 30 day suspension
3rd offense	- \$500 + Permanent revocation

*To determine which of the progressive penalties applies to a particular violation, the Department will look at the total number of violations committed under the license/permit during the three (3) year lookback period. Therefore, if the licensee committed a violation within the lookback period under a separate statute or regulation than the current violation, it will still count toward the licensee's total number of violations within the lookback period.

⁵ When determining penalties for certain offenses, the Department must operate within the penalty boundaries set by statute. For offenses occurring under Subarticle 11 of Article 3, Chapter 6 of Title 61 (titled "Regulation of Manufacturers and Micro-Distilleries"), the maximum amount of a monetary penalty allowed is \$500. *See* S.C. Code Ann. § 61-6-1160. Furthermore, the maximum offenses allowed before the Department is mandated to seek a permanent revocation of the license is three. *See* S.C. Code Ann. § 61-6-1160.

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2. License holder, or person having actual control/
Principal not of good repute or good moral
character (61-2-100 and 61-6-110): - Revocation
3. Hindering/delaying inspection (61-4-230,
61-4-250, and 61-6-4190):

1st offense	- \$200 + 30 day suspension
2nd offense	- Revocation
4. Failure to report and remit excise taxes
(61-6-1160(C)) - \$1,000 and Permanent revocation

Wholesale Beer and Wine (Chapter 4) and Wholesale Alcoholic Liquor (Article 3, Chapter 6)

1. All offenses except as specified below or as otherwise specified by statute*:

- | | |
|-------------|------------------------------|
| 1st offense | - \$1,000 |
| 2nd offense | - \$1,500 + 5 day suspension |
| 3rd offense | - 30 day suspension |
| 4th offense | - Revocation |

*To determine which of the progressive penalties applies to a particular violation, the Department will look at the total number of violations committed under the license/permit during the three (3) year lookback period. Therefore, if the licensee committed a violation within the lookback period under a separate statute or regulation than the current violation, it will still count toward the licensee's total number of violations within the lookback period.

2. License holder, or person having actual control/
Principal not of good repute or good moral
character (61-2-100 and 61-6-110): - Revocation
3. Hindering/delaying inspection (61-4-230,
61-4-250, and 61-6-4190):

1st offense	- \$200 + 30 day suspension
2nd offense	- Revocation
4. License holder, or person acting on behalf
of the license holder, having an interest in
a retail or manufacturing business (61-4-735,61-6-930, and 61-4-940): - Revocation

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Out-Of-State Wine Shippers (S.C. Code Ann. § 61-4-747)

Title 61 provides a license for manufacturers of wine located within this State or outside this State, who hold a wine producer and blenders basic permit issued in accordance with the Federal Alcohol Administration Act, to obtain an out-of-state shipper's license. *See* S.C. Code Ann. § 61-4-747(A). This license allows license holders to ship up to twenty-four (24) bottles of wine each month directly to a resident of South Carolina who is at least twenty-one (21) years of age for such resident's personal use and not for resale. *Id.*

If the license is granted to an applicant, the license holder shall permit the Department to perform an audit of the license holder's out-of-state shipper's records upon the Department's request. *See* S.C. Code Ann. § 61-4-747(C)(5).

If an audit reveals that the holder of an out-of-state shipper's license has failed to abide by the restrictions provided in S.C. Code Ann. § 61-4-747, the Department's Alcohol and Beverage Licensing Section shall seek the following penalties:

1st offense	- 30 day suspension
2nd offense	- 90 day suspension
3rd offense	- Revocation

The license holder will have the opportunity to protest the Department's proposed suspension or revocation of the license pursuant to the Revenue Procedures Act (RPA). *See* S.C. Code Ann. § 12-60-1310. If the license holder submits a timely protest to the Department pursuant to section 12-60-1310 regarding the Department's proposed suspension or revocation of its out-of-state shipper's license, the Department, through the Department's Office of General Counsel, may accept payment of an offer in compromise in lieu of a suspension. *See* S.C. Code Ann. § 61-4-747(F).

EMERGENCY SUSPENSIONS (S.C. Code Ann. §§ 1-23-370(c) and 12-60-1340):

If the Department finds that public health, safety, or welfare imperatively requires emergency action, the Department may summarily suspend any license issued by the Department under Title 61, as provided in the South Carolina Administrative Procedures Act. *See* S.C. Code Ann. § 1-23-370. This emergency suspension departs from the Department's standard process for violations of Title 61 as detailed above. The Department will summarily suspend a license pending a determination from the Administrative Law Court (ALC) regarding whether the license should be revoked. Such emergency situations will typically involve facts and evidence indicating that (1) the license holder knowingly permits or fails to take reasonable measures to prevent acts inside of or within close proximity of the licensed premises which threaten the public health, safety or welfare, and (2) due to these acts, the license holder no longer holds a reputation for peace and good order within the community.

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Situations where the Department will summarily suspend a license pending a hearing on the revocation of the license include, but are not limited to, the following:

1. There is evidence that criminal activity associated with the licensed premises has occurred and has threatened or will likely threaten the health, safety and welfare of the public. Such criminal activity includes, but is not limited to, the discharge of a firearm, assault and battery, drive-by shootings, drug activity, gang activity, assault with a deadly weapon, manslaughter, murder, or malicious destruction to real/personal property.
2. The criminal activity associated with the licensed premises has placed a strain on law enforcement, either by repeated responses by law enforcement for calls for service at or regarding the licensed premises or by law enforcement's need to utilize other resources to monitor the licensed premises or both.

The Department will determine on a case-by-case basis whether the facts and circumstances warrant an emergency summary suspension of the license.

If, after an investigation is conducted by local law enforcement and/or South Carolina Law Enforcement Division (SLED), the Department determines that the facts and circumstances warrant an emergency summary suspension, the Department will notify the license holder by way of an administrative order that its license(s) are immediately suspended pursuant to section 1-23-370(C) and will provide the basis for the suspension. The Department will also issue a Department Determination to the license holder, expressing the Department's intent to seek a revocation of the license(s). Simultaneously, the Department will request an expedited hearing with the ALC pursuant to section 12-60-1340 seeking an order of revocation from the ALC. The Department may support its summary suspension and/or its request for an order of revocation with an affidavit(s) from local law enforcement or SLED.

All filings with the ALC will be served upon the licensee via U.S. Mail at the mailing address on file with the Department's Alcohol Beverage Licensing section.