

SC REVENUE PROCEDURE #13-2

SUBJECT: Penalty Guidelines for ABL Violations
(ABC Laws)

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

SUPERSEDES: SC Revenue Procedure #04-4 and all previous documents and any oral directives in conflict herewith.

REFERENCE: Title 61 (2009 and Supp. 2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000 and Supp. 2012)
S.C. Code Ann. Section 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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 to be used by Department employees in assessing penalties for violations of the statutes and regulations governing the sale, distribution, or possession of beer, wine, and distilled spirits. It has been revised for the primary purpose of stating the Department's practices with respect to violations concerning the possession of illegal gambling/gaming machines on the licensed premises.¹ As with previous versions, the overall purpose of this procedure is to promote uniform penalty application. Flexibility is allowed in situations that do not fall exactly within the guidelines.

The General Assembly established varying maximum penalties for the different types of licenses authorizing the sale of beer, wine, or distilled spirits. This procedure recognizes that the General Assembly found there was a difference between the different types of licenses.²

¹ S.C. Code Ann. §61-4-580, as amended by S.C. Act No. 5 (2013).

² 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 may be used interchangeably.

PROCEDURE:

The Department recognizes that insuring compliance with the law, not punishment, is the reason for administrative penalties. Accordingly, except for the most serious offenses, the Department adopts a progressive response to assessing penalties. The penalties listed below provide a monetary amount, a license suspension period, license revocation, or some combination thereof.

The severity of some 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 3 years from the date of the most recent violation. At the Department's discretion, and for purposes of counting the number of previous violations only, previous violations written on the same date may be counted as one violation, even though separate penalties were assessed for each violation.

These are guidelines only, and this advisory opinion does not establish a binding norm. There will often be circumstances present that call for either more severe or less severe sanctions for an offense. These guidelines do not restrict the Department's authority to impose any sanction within the statutory authority granted by the General Assembly.³

For example, the Department will consider mitigating circumstances when assessing penalties for sales to underage persons, and may reduce any penalty outlined in this advisory opinion when mitigating circumstances exist. Mitigating circumstances include, but are not limited to:

1. The employee committing the violation has completed a training program recognized by the Department.⁴ This training must have taken place within a reasonable period of time prior to the offense and must include training covering the violation at hand. The person claiming mitigating circumstances under this item must also provide the Department verification that the employee attended 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 type of violation at issue.
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 type of violation at issue.

³ See, *e.g.*, Code Section 61-4-270.

⁴ As used in this document, a "training program recognized by the Department" means a training program specified in SC Information Letter #13-7. (Note: SC Information Letter #13-7 is subject to real time updates as training programs are approved. The most recently updated information letter will be published on the Department's website at www.sctax.org.) Trade associations and other organizations seeking to have a training program recognized by the Department should send the request along with a detailed description of the training program to: SC Department of Revenue, Regulatory Administrator, P.O. Box 125, Columbia, SC 29214.

4. Automated age verification programs if the violation deals with age.
5. The volume of sales of beer, wine or liquor at a location. For example, a location with a large number of clerks and a high volume of beer sales is more likely to have a problem with violations than a location with a small volume of beer sales.

If recognized mitigating circumstances are present, suspensions may be reduced in duration, and revocations may be reduced to suspensions with monetary penalties. Monetary penalties may be reduced. In every case, the determination as to whether mitigating circumstances warrant a reduction in penalties is within the sole discretion of the Department.

If aggravating circumstances are present, the Department may impose a harsher penalty than that set forth in this advisory opinion. In every case, the Department has sole discretion to determine whether to depart from these guidelines and impose another sanction within the statutory authority granted by the General Assembly.

OFFENSES AND PENALTY GUIDELINES:

The penalties listed below provide a monetary amount, a license suspension period, license revocation, or some combination thereof. In counting the previous number of previous violations at the licensed location, the Department will look back 3 years from the date of the most recent violation. At the Department’s discretion, and for purposes of counting the number of previous violations only, previous violations written on the same date may be counted as one violation, even though separate penalties were assessed for each violation.

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). An example of more than one license at the same location: 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. An example of a license at a location within close proximity: a 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.

Beer and Wine (Retail)

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

1st offense	- \$500
2nd offense	- \$1,000
3rd offense	- 45 Days Suspension
4th offense	- Revocation

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

3. Permittee/employee not of good moral character (61-2-100 and 61-4-520(1)): - Revocation
4. Permitting any act that constitutes a crime under the laws of South Carolina (61-4-580(5)) (see note below): - Revocation
5. Permitting gambling (61-4-580(3)): - Revocation
6. Permitting games of chance except certain game promotions (61-4-580(3)) (see note below): - Revocation
7. Permitting any act that tends to create a public nuisance (61-4-580(5)): - Revocation
8. Permitting lewd entertainment (61-4-580(4)): - Revocation
9. 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): - \$50
10. Dishonored payments to beer and wine wholesalers (61-4-30 and 61-4-40): - See SC Rev. Proc. #12-1

Note: As a general rule, the Department will not issue a Notice of Intent to Revoke a beer or wine license 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 act resulted in conviction.

However, the Department may issue a Notice of Intent to Revoke under Code 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 Code Section 12-21-2712. No criminal citation or conviction will be required. The South Carolina Supreme Court has specifically stated that, under Code Section 12-21-2712, it is the magistrate's court that determines the legality of those 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).

Alcoholic Liquor by the Drink - Retail Sale and Consumption

1. All offenses except as specified below or as otherwise specified by statute:
 - 1st offense - \$400
 - 2nd offense - \$500
 - 3rd offense - \$500 and Revocation
2. Failure to be primarily engaged in the preparation and serving of meals (61-6-1820): - Revocation
3. Hindering/delaying inspection (61-6-4190): - 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): - \$200

Liquor (Retail)

1. All offenses except as specified below or as otherwise specified by statute:
 - 1st offense - \$500
 - 2nd offense - \$1,000
 - 3rd offense - 45 Days Suspension
 - 4th offense - Revocation
2. Interest in more than 3 retail stores (61-6-140): - Revocation
3. Hindering/delaying inspection (61-6-4190): - Revocation
4. License holder, or person having actual control, not of good repute or moral character (61-2-100 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
6. Dishonored payments to liquor wholesalers (61-6-1300(5) and Reg. 7-300.3): - See SC Rev. Proc. #12-2

Wholesale Beer and Wine and Wholesale Liquor

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

- 1st offense - \$500
- 2nd offense - \$1,500
- 3rd offense - 45 Days Suspension
- 4th offense - Revocation

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

3. Hindering/delaying inspection (61-4-4190): - 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 61-6-130): - Revocation

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume Jr.

William M. Blume Jr., Director

April 16, 2013
Columbia, South Carolina