

Regulation 47-603. Assessment of Penalties

A. When making a determination regarding the type of penalty to impose for a violation of the Colorado Liquor Code and Rules the State Licensing Authority, or a local licensing authority, shall consider the severity of the violation(s) based on the categories set forth in subsections B through E of this Regulation 47-603, and any aggravating or mitigating factors.

B. Level One Violations.

1. This category of violations is the least severe and may include, but is not limited to, compliance check failures; licensing infractions that do not directly affect the health, safety, and welfare of the public at large; failure to report changes; product registration and/or labeling violations that do not affect public health, safety, and welfare; mandatory posting violations; trade name violations; minor books and record keeping violations; and minor advertising violations.
2. The range of penalties for this category of violation may include license suspension, license suspension held in abeyance, a fine per individual violation, and/or a fine in lieu of suspension. In lieu of imposing a penalty for this category of violation, a licensing authority may, but is not required to, issue a warning or accept an assurance of voluntary compliance pursuant to regulation 47-601.
3. Any fine assessed for a violation of this category of offenses, including a fine in lieu of suspension, shall not exceed five thousand dollars (\$5,000.00) for a first violation. Fines for second and subsequent violations in this category shall not exceed fifteen thousand dollars (\$15,000.00), per violation.
4. "First violation" as used in this section, means the first occurrence of a violation within a twelve month time period.

C. Level Two Violations.

1. This category of violations may include, but is not limited to, marketing and minor trade practice violations that do not directly affect the health, safety, and welfare of the public at large; sales to minors that are not a part of compliance check, that are a first violation and that do not result in substantial bodily injury or death; sales to intoxicated persons that are a first violation and that do not result in substantial bodily injury or death; minor delivery or shipping violations; improper storage of alcohol beverages; sale of non-permitted items; allowing the removal of alcohol beverages from an on-premises licensed premises; allowing an open container on an off-

premises licensed premises; minor sanitation control violations; minor conduct of establishment violations; allowing minor gambling activities on the licensed premises; minor refilling violations; minor improper source violations; operating with an expired license; minor tasting violations; and sale to non-members for a club license.

2. The range of penalties for this category of violation may include license suspension, license suspension held in abeyance, license revocation, a fine per individual violation, and/or a fine in lieu of suspension. In lieu of imposing a penalty for this category of violation, a licensing authority may, but is not required to, issue a warning or accept an assurance of voluntary compliance pursuant to regulation 47-601.

3. Any fine assessed for a violation of this category of offenses, including a fine in lieu of suspension, shall not exceed twenty-five thousand dollars (\$25,000.00), per violation.

D. Level Three Violations.

1. This category of violations may include, but is not limited to; substantial delivery or shipping violations; food requirement violations; substantial refilling violations; substantial improper source violations; exercising the privilege of a license other than that which the licensee holds, or permitting another to exercise the rights of a license they hold; allowing substantial gambling activities on the licensed premises; substantial tasting violations; unlawful financial interests; substantial sanitation control violations; employee age violations; and hours of operation violations.

2. The range of penalties for this category of violation may include license suspension, license suspension held in abeyance, license revocation, a fine per individual violation, and/or a fine in lieu of suspension. In lieu of imposing a penalty for this category of violation, a licensing authority may, but is not required to, accept an assurance of voluntary compliance pursuant to regulation 47-601.

3. Any fine assessed for a violation of this category of offenses, including a fine in lieu of suspension, shall not exceed seventy-five thousand dollars (\$75,000.00), per violation.

E. Level Four Violations.

1. This category of violations is the most severe and includes violations that may directly affect the health, safety, and welfare of the public at large; sales to minors that are not a part of compliance check and that are a second or subsequent violation or that result in substantial bodily injury or death;

sales to intoxicated persons that are a second or subsequent violation or that result in substantial bodily injury or death; substantial trade practice violations; substantial conduct of establishment violations; and permitting the consumption of marijuana or marijuana products on the licensed premises.

2. The range of penalties for this category of violation may include license suspension, license suspension held in abeyance, license revocation, a fine per individual violation, and/or a fine in lieu of suspension.

3. Any fine assessed for a violation of this category of offenses, including a fine in lieu of suspension, shall not exceed one-hundred thousand dollars (\$100,000.00), per violation.

F. Calculation of Fines.

1. Except as provided under section 44-3-601(8), C.R.S., any fine assessed for a single violation may be no less than five hundred dollars (\$500.00) and no more than one-hundred thousand dollars (\$100,000.00), per violation.

2. Except as provided under section 44-3-601(8), C.R.S., any fine assessed, including a fine in lieu of suspension, shall be based on the level of violation established in subsections B through E of this Regulation 47-603, and:

a. The fine shall be the equivalent of twenty percent (20%) of the licensee's estimated gross revenues from sales of alcohol beverages for the following time frames, per violation:

i. For a Level One violation, seven (7) days;

ii. For a Level Two violation, fourteen (14) days;

iii. For a Level Three violation, at least twenty-one (21) days; and

iv. For a Level Four violation, at least twenty-eight (28) days.

b. Notwithstanding, subsection (F)(2)(a) of this Regulation 47-603, when assessing a fine in lieu of suspension, a licensing authority may, but is not required to, exclude from the calculation any days of suspension held in abeyance. The licensing authority has the discretion to determine the number of days held in abeyance, if any, based on the relevant time frames established in subsection (F)(2)(a).

c. Any fine assessed for a single violation shall be subject to the minimum and maximum fines set forth in subsection (F)(1) and shall not exceed the maximum fine established in rule for that category of violation.

3. The time frames detailed above and used for the fine calculation shall be within the same or similar month in which the violation occurred.
4. For the purpose of calculating fines, sales records must be maintained and made available to State and/or local licensing authorities upon request for the time periods set forth in Regulation 47-700. Failure to provide such records within seven (7) days of a request from the State and/or local licensing authority shall result in the presumption that the maximum fine for the offense category the violation falls under applies.
5. Notwithstanding the calculation of fines in subsection (F)(2) of this Regulation 47-603, any fine assessed for a single violation, including a fine in lieu of suspension, shall be subject to the maximum fine amounts established for the relevant category of violation in subsections (B) through (E) of this Regulation

G. Aggravating and Mitigating Factors.

1. State and local licensing authorities may take aggravating and mitigating factors into consideration when considering the imposition of a penalty. These aggravating and mitigating factors may result in the movement of a violation into a lower or higher category on a case-by-case basis. These factors may include, but are not limited to:

a. Mitigating Factors:

- i. The licensee and/or its employees maintain responsible vendor training certification;
- ii. The licensee has a substantial history of compliance with liquor laws and rules;
- iii. The violation is a first violation, as defined in subsection (B)(4) of this Regulation;
- iv. The violation was self-reported;
- v. The extent to which the licensee took prompt and effective self-initiated action to correct the violation and to prevent future violations of the same type from occurring;
- vi. The violation did not demonstrably result in harm, only the potential for harm;
- vii. The violation was negligent, not willful;

viii. The violation is not part of a pattern or practice of violations;

ix. The implicated licensee did not encourage others to participate in the same or similar violations;

x. The violation did not result in serious bodily injury or death;

xi. The owner or management personnel was not involved in the violation, and/or did not direct their employees to violate the law;

xii. The licensee did not substantially benefit, monetarily or otherwise, from committing the violation.

b. Aggravating Factors:

i. The licensee and/or its employees do not maintain responsible vendor certification when certification is required by statute or regulation;

ii. The licensee has a substantial history of non-compliance with liquor laws and rules;

iii. The violation is a second, or subsequent offense;

iv. The violation was discovered, and later substantiated through investigation, as a result of a complaint, or multiple complaints;

v. The violation demonstrably resulted in harm, not just the potential for harm;

vi. The violation was willful, not negligent;

vii. The violation is part of a pattern or practice of violations;

viii. The implicated licensee encouraged others to participate in the same, or similar violations;

ix. The violation resulted in serious bodily injury or death;

x. The owner or management personnel engaged in the violation and/or directed an employee to violate the law;

xi. The licensee substantially benefited, monetarily or otherwise, from committing the violation.

H. This penalty schedule is a framework providing guidance as to the categories of violations, available penalties, and mitigating and aggravating factors that may be considered. The circumstances surrounding any penalty

imposed will be determined on a case-by-case basis. Licensing authorities retain discretion in assessing penalties within the bounds of the law.

I. Nothing in this Regulation 47-603 shall prohibit or prevent a licensing authority from temporarily or summarily suspending a license, regardless of the level of violation set forth in this regulation, if the licensing authority makes the findings required by Regulation 47-602.

History:

43 CR 17, September 10, 2020, effective 7/30/2020

Note:

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(E), 44-3-202(2)(a)(I)(R), and 44-3-601, C.R.S. The purpose of this regulation is to establish categories of violations, by level of severity, and associated penalty ranges for those violations to be used by the State and local licensing authorities, as well as establishing aggravating and mitigating factors which may be considered in assessing penalties for violations.