

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

§34.1 General Provisions

- (a) This rule relates to §§11.61, 11.64, 11.641 and 106.13 of the Alcoholic Beverage Code.
- (b) Agents, compliance officers or other specifically designated commission personnel have authority to settle a complaint issued by the commission against a person for a violation of the Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act).
- (c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.
- (d) A written warning may be issued for any violation if it is determined by designated commission personnel to be an effective deterrent from further violations of the Code.
- (1) A written warning may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2.
- (2) A written warning is subject to the rights and procedures of a contested case under the Administrative Procedure Act.
- (3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.
- (e) Any case alleging a sale to a minor or intoxicated person in violation of Alcoholic Beverage Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the Legal Services Division by district or regional personnel without an offer of settlement or compromise provided to the permittee/licensee. For purposes of this section, "serious bodily injury" means as defined in §1.07(a)(46) of the Texas Penal Code.
- (f) Each suspension of a permit or license shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in its discretion, allow a licensee/permittee to divide an imposed sanction between civil penalty and suspension.
- (g) A subsequent violation of the Code or rule will result in a sanction in the next higher violation level if the subsequent violation:
- (1) is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or
- (2) is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and
- (3) the person has been given written notice of the prior violation, or
- (4) the subsequent violation is issued during an undercover operation
- (h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission. A sanction for a violation of the Code or rules that is not listed in §34.2 must be approved by either the assistant administrator for field operations or a division director prior to entering into a settlement.

(i) A person authorized to enter into a settlement under this section is also authorized to recommend a deviation from sanctions in §34.2 when aggravating or mitigating circumstances are found to exist.

- (1) A recommendation to deviate from sanctions in §34.2 must be made in writing.
- (2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.

(j) This chapter does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.

Note: Original Rule Effective: August 21, 2008

Note: Amended Rule Effective: May 25, 2009

Note: Readopted Without Changes and Effective: March 27, 2018

§34.2 Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations

An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties as follows:

Figure: 16 TAC §34.2

DESCRIPTION	1 ST Violation	2 nd Violation	3 rd 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 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	48-Cancel \$300 per day
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.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death 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.	25-35 days \$300 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).	2-5 days \$300 per day	4-10 days \$300 per day	12-Cancel \$300 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	25-35 days \$300 per day	Cancel	Cancel

DESCRIPTION	1 ST Violation	2 nd Violation	3 rd Violation
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.	8-12 days \$300 per day	16-24 days \$300 per day	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.	17-25 days \$300 per day	34-50 days \$300 per day	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.	5-7 days \$300 per day	10-14 days \$300 per day	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.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a)(18) or 105.06, Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	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.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day

<p>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.</p>			
<p>Examples (not limited to the following offenses):</p>			
<p>Possession of any gambling paraphernalia or device;</p>	5-7/\$300	10-14/\$300	Cancel
<p>Gambling on a licensed premises;</p>	8-12/\$300	16-24/\$300	Cancel
<p>Keeping a gambling place;</p>	13-18/\$300	26-36/\$300	Cancel
<p>Trafficking of an adult with intent that adult engage in forced labor or services or receives a benefit including labor or services per §20A.02(1-2) of the Penal Code;</p>	Cancel	Cancel	Cancel
<p>Trafficking an adult through force, fraud, coercion, causing prostitution-related conduct, receiving a benefit, or engaging in sexual conduct with an adult per §20A.02(3-4) of the Penal Code;</p>	Cancel	Cancel	Cancel
<p>Trafficking of one child with intent that child engage in forced labor or services, or receiving a benefit of such trafficking, including labor or services per §20A.02(5-6) of the Penal Code;</p>	Cancel	Cancel	Cancel
<p>Trafficking of one child causing child to engage in, be victim of, or conduct prohibited by sexual offenses described in §20A.02(7), received benefit, or participation in sexual conduct with a child trafficked per §20A.02(7-8) of the Penal Code;</p>	Cancel	Cancel	Cancel
<p>Continuous trafficking of persons under §20A.03 of the Penal Code;</p>	Cancel	Cancel	Cancel
<p>Prostitution; Promotion of prostitution;</p>	Cancel	Cancel	Cancel

DESCRIPTION	1 ST Violation	2 nd Violation	3 rd Violation
Prohibited Activities by Persons Younger Than 18 (See AB Code 106.15, Penal Code 43.05, Penal Code 43.25 or Penal Code 43.251); Obscenity.	5-7/\$300 8-12/\$300 13-18/\$300 Cancel Cancel	10-14/\$300 16-24/\$300 26-36/\$300 Cancel Cancel	Cancel Cancel Cancel Cancel Cancel

Note: Original Rule Effective: August 21, 2008

Note: Readopted Without Changes and Effective: March 27, 2018

Note: Amended Rule Effective: October 17, 2019

§34.3 Schedule of Sanctions and Penalties for Major Regulatory Violations

An act or failure to act which results in a violation of a major regulatory provision of the code or rules will be assessed sanctions and penalties as follows:

Figure: 16 TAC §34.3

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.	8-13 days \$300 per day	16-26 days \$300 per day	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 days \$300 per day	10-14 days \$300 per day	Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
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 8-13 days \$300 per day	Original suspension plus 16-26 days \$300 per day	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.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel

DESCRIPTION	1ST Violation	2nd Violation	3rd Violation
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	8-13 days \$300 per day	16-26 days \$300 per day	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		
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	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.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
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.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
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.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
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.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel

DESCRIPTION	1ST Violation	2nd Violation	3rd Violation
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling an alcoholic beverage away from a licensed premises. §61.06	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
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 unauthorized alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code. §§11.01, 19.01, 61.01 or 62.01	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
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.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day

DESCRIPTION	1ST Violation	2nd Violation	3rd Violation
Improper record keeping in violation of agency rules §§41.49, 41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	2-4 days \$300 per day	4-8 days \$300 per day	12-24 days \$300 per day
Knowingly filed false report, application, form, or record. §§11.61, 61.71, 62.05, 64.04, or 203.09	Cancel		
Knowingly failed to keep record or file return in manner required. §§61.71, 61.74, 62.05, 64.04, 203.09, or 206.01	6-12 days \$300 per day	12-24 days \$300 per day	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.	2-5 days \$300 per day	4-10 days \$300 per day	12-30 days \$300 per day
Exceeding the authorized amount of sales to a consumer under Alcoholic Beverage Code §§ 12.052 or 62.122.	Written Warning	3 Days \$500 per day	5 Days \$1,000 per day

Note: Original Rule Effective: August 21, 2008

Note: Amended Rule Effective: January 1, 2011

Note: Readopted Without Changes and Effective: March 27, 2018

Note: Amended Rule Effective: December 16, 2019