

## For your information

### The Oregon Liquor Control Commission has:

Amended  
 Adopted  
 Repealed

## OAR 845-006-0500

Effective: 12/1/16

**Note:** **Bold and underlined** = new text; *strikethrough and italics* = deleted text

### **845-006-0500**

#### **Suspensions and Civil Penalties**

(1) The Commission cancels or suspends a license under its authority in:

- (a) ORS 471.315 for violations of any provision of ORS Chapter 471 or any administrative rule (chapter 845) the Commission adopts pursuant to these chapters;
- (b) ORS 459.992(4) for violations of any provision of 459A.705, 459A.710 or 459A.720 or any administrative rule the Commission adopts pursuant to these statutes;
- (c) ORS 471.315(1)(d) for public interest or necessity reasons.

(2) The Commission cancels or suspends a service permit under its authority in ORS 471.385 for violations of Chapter 471 or any administrative rule (chapter 845) the Commission adopts pursuant to these chapters.

(3) The Commission cancels or suspends an alcohol server education provider certificate under its authority in ORS 471.547.

(4) ORS 471.322 and 471.327 allow the Commission to impose a civil penalty instead of suspension. In most cases, the Commission allows the licensee or permittee the option of serving the suspension or paying the civil penalty.

(5) ORS 471.315 allows the Commission to impose either a suspension or a civil penalty or both. The Commission imposes mandatory suspensions when necessary to ensure future licensee, permittee, or patron compliance.

(6) ORS 471.322 and 471.327 limit the amount of a civil penalty the Commission may impose. To stay within these limits, the Commission usually computes civil penalties by multiplying the number of days in the suspension by \$165 for retail, manufacturer, and wholesale licensees, and by \$25 for service permittees.

(7) ~~Violation Categories:~~

~~(A)~~ The Commission ~~has~~ **uses** the following violation categories:

- ~~(A)~~ **(a)** I -- Violations that make licensee ineligible for a license;
- ~~(B)~~ **(b)** II -- Violations that create an immediate threat to public health or safety;
- ~~(C)~~ **(c)** II(a) -- Violations for unlawful drug activity;
- ~~(D)~~ **(d)** III -- Violations that create a potential threat to public health or safety OR violations of the tied house or financial assistance prohibitions;
- ~~(E)~~ **(e)** III(a) -- Violations for the sale of alcohol to a minor or failure to check identification when the retail licensee qualifies under the Responsible Vendor Program;

~~(F)~~ **(f)** IV -- Violations that create a climate conducive to abuses associated with the sale or service of alcoholic beverages;

~~(G)~~ **(g)** V -- Violations inconsistent with the orderly regulation of the sale or service of alcoholic beverages.

~~(b) Exhibit 1 lists the proposed sanctions for the first and subsequent violations within each category described in subsection (7)(a) of this rule. Exhibit 1 also gives the categories for the most common violations;~~

~~(c) These sanctions are guidelines. If the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction. Some of the reasons the Commission may mitigate a sanction are: good faith effort to prevent a violation; and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Some of the reasons the Commission may aggravate a sanction are: a prior warning about compliance problems; repeated failure to comply with laws; failure to use age verification equipment which was purchased as an offset to a previous penalty; efforts to conceal a violation; intentional violations; the violation involved more than one patron or employee; the violation involved a juvenile; and the violation resulted in injury or death. The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.~~

~~(8) The Commission increases sanctions based on successive violations in the same category within a two-year period. For example, if a licensee or permittee, who has committed one Category III violation and one Category IV violation within the past two years, commits another Category III violation, the Commission assesses the sanction at the second level for the pending Class III violation. Numerous violations within the two-year period, regardless of the type, may indicate such a disregard for the law or failure to control the premises so as to warrant cancellation of the license or permit.~~

#### **(8) Violation sanctions**

**(a) The Commission may sanction a licensee or permittee in accordance with the guidelines set forth in Exhibit 1. Exhibit 1 also gives the categories for the most common violations.**

**(b) Exhibit 1 lists the proposed sanctions for single or multiple violations that occur within a two year period for each category described in subsection (7) of this rule. The Commission may allege multiple violations in a single notice or may count violations alleged in notices issued within the previous two year period toward the total number of violations. In calculating the total number of violations, the Commission may consider a proposed violation for which the Commission has not yet issued a final order.**

**(c) The proposed sanctions in Exhibit 1 are guidelines. If the Commission finds one or more mitigating or aggravating circumstances, it may assess a lesser or greater sanction, up to and including cancellation. The Commission may decrease or increase a sanction to prevent inequity or to take account of particular circumstances in the case.**

**(d) Mitigating circumstances include, but are not limited to:**

**(A) Making a good faith effort to prevent a violation.**

**(B) Extraordinary cooperation in the violation investigation demonstrating the licensee or permittee accepts responsibility.**

**(e) Aggravating circumstances include, but are not limited to:**

- (A) Receiving a prior warning about one or more compliance problems.**
- (B) Repeated failure to comply with laws.**
- (C) Failure to use age verification equipment purchased as an offset to a previous penalty.**
- (D) Efforts by licensee or permittee to conceal a violation.**
- (E) Intentionally committing a violation.**
- (F) A violation involving more than one patron or employee.**
- (G) A violation involving a juvenile.**
- (H) A violation resulting in injury or death.**
- (I) Three or more violations within a two-year-period, regardless of the category, where the number of the proposed or final violations indicate a disregard for the law or failure to control the premises.**

(9) A licensee may not avoid the sanction for a violation or the application of the provision for successive violations by merely adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
 Stats. Implemented: ORS 471.315, 471.322 & 471.327

Exhibit 1

<b>Category</b>	<b>1 Violation in a 2-year period</b>	<b>2 Violations in a 2-year period</b>	<b>3 Violations in a 2-year period</b>	<b>4 Violations in a 2-year period</b>	<b>5 Violations in a 2-year period</b>	<b>6 Violations in a 2-year period</b>	<b>7 Violations in a 2-year period</b>
<b>I</b>	Cancel						
<b>II</b>	30 days	Cancellation					
<b>II(a)</b>	10 days	30 days	Cancel				
<b>III</b>	10 days or \$1650	30 days or \$4950	30 days	Cancel			
<b>III(a)</b>	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days or \$4950	30 days and \$4950	60 days	90 days
<b>IV</b>	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel		
<b>V</b>	3 days or \$495	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel	

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