

# Penalty Schedule Review

December/January 2017

## Participating in the review

Please read this document and provide comments on the proposed model by 19 January, 2018. For comparison and or legislative references you can find the current legislation [here](#). Please state whether you support the model or not and reasons for your opinion. To submit your responses, or if you have any questions about this document or the consultation process please contact [lclb.lclb@gov.bc.ca](mailto:lclb.lclb@gov.bc.ca).

Please send any comments you may have on the below proposed changes to [lclb.lclb@gov.bc.ca](mailto:lclb.lclb@gov.bc.ca) by Friday, 19 January, 2018, using "Penalty Schedule Review" as the subject line.

## Background

The penalty schedule is a table in the Liquor Control and Licensing Regulation that identifies suspension and monetary penalty amounts for specific contraventions of the Act, Regulation, and Terms and Conditions. The penalty schedule's purpose is to set a sanction amount that is sufficient enough to gain voluntary compliance. It affects all licensees and permittees.

This review builds upon the 2014 penalty schedule consultation conducted with both industry and the public and on the subsequent analysis of the responses. During the consultation a number of issues were raised by stakeholders including, a desire for increased collaboration between the branch and licensees, penalties for a first contravention being too high, and an ability to choose either a suspension or monetary penalty.

The proposed model updates the penalty schedule to reflect stakeholders' expectations and aligns the branch's enforcement strategy to more of a progressive enforcement framework.

## Goals & Strategies

A set of goals were developed to guide the creation of the revised penalty schedule. These goals were informed by suggestions provided by branch staff and stakeholders, jurisdictional review, and a need to encourage voluntary compliance. The goals for this review and the mechanisms to achieve these goals are:

1. To ensure penalties and enforcement actions are certain, immediate, and undesirable.
  - a. By creating escalated amounts for monetary penalties
  - b. By realigning contraventions in bands
  
2. To acknowledge the impact of penalties on licensees and their staff:
  - a. By lowering penalty amounts
  - b. By allowing licensees choice between monetary penalty and suspension

3. To create a framework where progressive enforcement (escalating penalties) are used.
  - a. By lowering second contravention amounts
  - b. By moving the contravention threshold for escalated penalties from a 12-month period to a 24-month period
  - c. By instituting a midpoint penalty recommendation with rationale
  - d. By ensuring licensee compliance is checked after enforcement action is taken
  
4. To reorganize the penalty schedule with reader ease and usability in mind
  - a. By setting a consistent standard of equivalency between monetary penalties and suspensions (\$1000 = 1 day suspension)
  - b. By shifting from a range of penalties set out in the regulation, into 4 bands that consolidate similar levels of severity and associated penalties.
  - c. By consolidating all of the penalties in the lower range into band 1, thus shortening the Penalty Schedule by 10 items

CURRENT BASE LEVEL		
Band	Monetary	Suspension
1	\$1,000 - \$3,000	1 – 3 days
2	\$5,000 - \$7,000	4 – 7 days
3	\$7,500 - \$10,000	10 – 15 days
4	N/A	15 – 90 days

**Proposed Model**  
 Highlighting denotes changes

PROPOSED BASE LEVEL		
Band	Monetary	Suspension
1	\$1,000 - \$3,000	1 – 3 days
2	\$3,000 - \$7,000	3 – 7 days
3	\$7,000 - \$11,000	7 – 11 days
4	\$15,000-\$25,000	15 – 90 days

Band 1 – midpoint = \$2,000      Band 1 – midpoint = 2 days  
 Band 2 – midpoint = \$5,000      Band 2 – midpoint = 5 days  
 Band 3 – midpoint = \$9,000      Band 3 – midpoint = 9 days

**Rationale:**

- Responds to stakeholder requests by lowering the penalty for band 2 and 3 for both monetary penalties and suspensions.
- Lower penalties will also bring BC closer to the average among other provinces.
- The lower amounts will be offset by a progressive enforcement practice which includes following up on licensees who have contravened previously to ensure they are now in compliance. **To facilitate this, it is proposed that the second and subsequent contraventions move from a 12 month period to a 24 month period.**

- The new ranges create a natural midpoint which will allow hearing delegates to adjust penalties lower if mitigating factors are present and will allow flexibility for providing a discount for signing a waiver early.
- Lowers suspension days to the same level as monetary penalties – this may help to mitigate the anecdotal accounts of suspensions being considered the ‘harsher’ penalty option.
- Creates monetary penalty amounts for band 4 contraventions – this ensures there is a prescribed monetary penalty if a permittee obstructs a peace officer/inspector.
- The penalty progression through 1<sup>st</sup>, 2<sup>nd</sup>, and subsequent contraventions are linked and make logical sense; for instance, the penalty for a 2<sup>nd</sup> contravention in band 1 is the same amount as the penalty for a 1<sup>st</sup> contravention in band 2. This logic is continued through bands 1-3.

## Band 1<sup>1</sup>

CURRENT PENALTY PROGRESSION – BAND 1			
Suspension			Monetary Penalty
First	Second	Subsequent	
1-3 days	3-6 days	6-9 days	\$1,000 - \$3,000

	PROPOSED PENALTY PROGRESSION – BAND 1					
	Suspension			Monetary Penalty		
	First	Second	Subsequent	First	Second	Subsequent
	1-3 days	3-7 days	7-11 days	\$1,000 - \$3,000	\$3,000 - \$7,000	\$7,000 - \$11,000
Mid-Point	2 days	5 days	9 days	\$2,000	\$5,000	\$9,000

## Band 2

CURRENT PENALTY PROGRESSION – BAND 2			
Suspension			Monetary Penalty
First	Second	Subsequent	
4-7 days	10-14 days	18-20 days	\$5,000 - \$7,000

	PROPOSED PENALTY PROGRESSION – BAND 2					
	Suspension			Monetary Penalty		
	First	Second	Subsequent	First	Second	Subsequent
	3-7 days	7-11 days	11-15 days	\$3,000 - \$7,000	\$7,000 - \$11,000	\$11,000 - \$15,000
Mid-Point	5 days	9 days	13 days	\$5,000	\$9,000	\$13,000

<sup>1</sup> The band concept is taken from our current framework and altered slightly to better align with the branch’s vision of progressive enforcement through multiple contraventions (most are lowered). When the penalty schedule was originally developed certain contraventions were deemed more severe than others (i.e. selling to a minor vs failing to keep a register of liquor purchases); therefore a band system was created and contraventions were each slotted into different ranges based on the perceived egregiousness of the event. The development was an iterative process with industry and stakeholders and was partly based on a reasonableness test. The band system is something that is prescriptive enough to allow for consistent enforcement while giving some flexibility within each band to allow for mitigating or aggravating circumstances.

### Band 3

CURRENT PENALTY PROGRESSION – BAND 3			
Suspension			Monetary Penalty
First	Second	Subsequent	
10-15 days	20-30 days	30-60 days	\$7,500 - \$10,000

	PROPOSED PENALTY PROGRESSION – BAND 3					
	Suspension			Monetary Penalty		
	First	Second	Subsequent	First	Second	Subsequent
	7-11 days	11-21 days	21-41 days	\$7,000 - \$11,000	\$11,000 - \$15,000	\$15,000 - \$25,000
Mid-Point	9 days	16 days	31 days	\$9,000	\$13,000	\$20,000

### Band 4

CURRENT PENALTY PROGRESSION – BAND 4			
Suspension			Monetary Penalty
First	Second	Subsequent	
15-90 days	15-90 days	15-90 days	N/A

PROPOSED PENALTY PROGRESSION – BAND 4					
Suspension			Monetary Penalty		
First	Second	Subsequent	First	Second	Subsequent
15-90 days	15-90 days	15-90 days	\$15,000 - \$25,000	\$15,000 - \$25,000	\$15,000 - \$25,000

- Creates a monetary penalty scheme to account for SEPs which cannot be suspended and a monetary penalty option within the prescribed schedule for the branch.
- This would include item 52 and 53.

Note: The Branch may still assign a maximum monetary penalty of \$50,000 for egregious contravention.