

Readopt with amendment Liq 600, effective 6-14-17 (Document #12209), to read as follows:

CHAPTER Liq 600 ENFORCEMENT POLICY

PART Liq 601 PURPOSE AND EFFECT

Liq 601.01 Purpose. The purpose of these rules is to set forth the requirement of RSA 179:56, III, enforcement policy.

Liq 601.02 Effects of These Rules. Nothing contained herein shall release a natural or other person from complying with statutory law.

Liq 601.03 Definitions.

(a) "Compliance check" means an attempt by an underage individual, under the supervision of an investigator, to purchase alcohol or tobacco products in violation of statute.

(b) "Enforcement policy" means the standards, procedures, actions, and penalties taken or imposed by the commission with respect to any classification of statute, commission order, or administrative rule identified in Liq 601.04, Liq 601.05, or Liq 601.06.

(c) "Good behavior" means compliance with Title XIII, RSA 126-K, all commission rules, orders, and administrative fine payment deadlines issued under Liq 206.03.

(d) "Intoxicated individual" means an individual who is visibly intoxicated or who a reasonable and prudent person would know is intoxicated.

(e) "Licensee record" means any written or electronic document pertaining to a licensee, maintained by the commission, including violation history.

(f) "License year" means the period of time from when a license is issued until it expires or is renewed.

(g) "Security" means, as provided by RSA 178:5, a certificate from an insurance or surety company providing liquor liability coverage on behalf of a licensee of up to a limit of \$100,000 for any one person and \$300,000 for all persons per incident or a deposit by a licensee of money or securities with the commission subject to execution to be used to satisfy judgment for liquor liability.

(h) "Verbal counseling" means any verbal instruction of corrective action issued by or at the direction of an investigator to a licensee, which is reported to the commission in writing, and which does not result in a warning, fine, revocation, points, or a suspension.

(i) "Violation history" means the record of violations of a licensee.

Liq 601.04 Statutory Violations Subject to Administrative Penalty. Administrative penalty, as defined in Liq 201.01(e), shall be imposed on licensees for violation of statutes contained in Title XIII or RSA 126-K.

Liq 601.05 Administrative Rules Subject to Administrative Penalty. Administrative penalty, as defined in Liq 201.01(e), shall be imposed on licensees for violation of any administrative rule by imposing the penalty in Liq 603 or Liq 605 for the rule violated.

Liq 601.06 Commission Orders Subject to Administrative Penalty. Administrative penalty, as defined in Liq 201.01(e), shall be imposed on licensees for violation of any commission order by imposing the penalty in Liq 602.

PART Liq 602 ADMINISTRATIVE PENALTIES FOR LIQUOR VIOLATIONS

Liq 602.01 Standard Penalties.

(a) The presiding officer shall impose no less than the minimum penalties for violations of laws, rules, or statutes contained in the points and penalties matrix found in Table 600-1 below:

Table 600-1 Points and Penalties Matrix

Aggravated Violations (excluding serious bodily injury & Death)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	5	\$500.00	\$1,000.00	3 days	6 days
2nd Offense	7	\$1,000.00	\$1,500.00	6 days	9 days
3rd Offense & subsequent	9	\$1,500.00	\$2,000.00	9 days	12 days
Aggravated Violations Serious Bodily Injury & Death	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	6	See Liq 602.03	See Liq 602.03	See Liq 602.03	See Liq 602.03
2nd Offense	8	See Liq 602.03	See Liq 602.03	See Liq 602.03	See Liq 602.03
3rd Offense	REVOCAION				
RSA 179:60 Interference With Liquor Investigators.	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	5	\$500.00	\$1,000.00	3 days	6 days
2nd Offense	7	\$1,000.00	\$1,500.00	6 days	9 days
3rd Offense & subsequent	9	\$1,500.00	\$2,000.00	9 days	12 days
RSA 178:3 License Applications, Qualifications, and Renewal.	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	5	\$500.00	\$1,000.00	3 days	6 days
2nd Offense	7	\$1,000.00	\$1,500.00	6 days	9 days
3rd Offense & subsequent	9	\$1,500.00	\$2,000.00	9 days	12 days
For violations of RSA 175 by licensees	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	2	\$250.00	\$500.00	N/A	N/A
2nd OFFENSE	4	\$500.00	\$750.00	N/A	N/A
3rd OFFENSE & subsequent	6	\$750.00	\$1,000.00	N/A	N/A
For violations of RSA 180	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	2	\$250.00	\$500.00	N/A	N/A
2nd OFFENSE	4	\$500.00	\$750.00	N/A	N/A
3rd OFFENSE & subsequent	6	\$750.00	\$1,000.00	N/A	N/A
For all violations of RSA 178 & 179:15, 179:18, 179:19, 179:55 except those under RSA 178:1, 178:3 and 178:27, 178:27-a, 178:27-b	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	1	\$100.00	\$200.00	N/A	N/A
2nd OFFENSE	2	\$200.00	\$300.00	N/A	N/A
3rd OFFENSE & subsequent	3	\$300.00	\$400.00	0	5 days
For violations of RSA 178:1 & VI	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	6	\$1000.00	\$2,000.00	N/A	N/A
2nd OFFENSE	8	\$2,000.00	\$3,000.00	N/A	N/A
3rd OFFENSE & subsequent	12	\$3,000.00	\$5,000.00	N/A	N/A
Violations of Administrative Rules (Liq)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	1	\$100.00	\$200.00	N/A	N/A
2nd OFFENSE	2	\$200.00	\$300.00	N/A	N/A
3rd OFFENSE & subsequent	3	\$300.00	\$400.00	N/A	N/A
For violations of RSA 178:27 & 178:27-a 178:27-b (Fine set by statute)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	1	\$250.00	N/A	N/A	N/A
2nd OFFENSE	2	\$250.00	N/A	N/A	N/A
3rd OFFENSE & subsequent	3	\$250.00	N/A	N/A	N/A

RSA 179:5 I Prohibited Sales - INTOX	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	4	\$500.00	\$1,000.00	3 days	6 days
2nd OFFENSE	6	\$1,000.00	\$1,500.00	6 days	9 days
3rd OFFENSE & subsequent	8	\$1,500.00	\$2,000.00	9 days	12 days
RSA 179:5 I & II Prohibited Sales - MINOR	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	4	\$500.00	\$1,000.00	3 days	6 days
2nd OFFENSE	6	\$1,000.00	\$1,500.00	6 days	9 days
3rd OFFENSE & subsequent	8	\$1,500.00	\$2,000.00	9 days	12 days
RSA 179:5 I Prohibited Sales - MINORS - COMPLIANCE CHECK Training as required by Liq 602.02 (c)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	WARNING	N/A	N/A	N/A	N/A
2nd OFFENSE	1	\$500.00	N/A	3 days	N/A
3rd OFFENSE & subsequent	2	\$1,000.00	N/A	6 days	N/A
Failure to attend required training within 30 days after adjudication	4				
RSA 179:6 Sale of Cider to Persons Under 21.	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	4	\$500.00	\$1,000.00	3 days	6 days
2nd OFFENSE	6	\$1,000.00	\$1,500.00	6 days	9 days
3rd OFFENSE & subsequent	8	\$1,500.00	\$2,000.00	9 days	12 days
RSA 179:8 Statement From Purchaser as to Age & RSA 126-K:3 Proof of Age of Purchaser (No violation 179:5/126-K:3)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	1	\$100.00	\$200.00	N/A	N/A
2nd OFFENSE	2	\$200.00	\$300.00	N/A	N/A
3rd OFFENSE & subsequent	3	\$300.00	\$400.00	N/A	N/A
RSA 179:8 Statement From Purchaser as to Age & RSA 126-K:3 (with violation 179:5/126-K:4)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	2	\$250.00	\$500.00	N/A	N/A
2nd OFFENSE	4	\$500.00	\$750.00	N/A	N/A
3rd OFFENSE & subsequent	6	\$750.00	\$1,000.00	N/A	N/A
For violations of RSA 179:5-a, 179:11, 179:13, 179:14, 179:17, 179:20 179:23 through 179:35, 179:40 through 179:44, and 179:47 through 179:54	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st OFFENSE	2	\$250.00	\$500.00	N/A	N/A
2nd OFFENSE	4	\$500.00	\$750.00	N/A	N/A
3rd OFFENSE & subsequent	6	\$750.00	\$1,000.00	N/A	N/A
RSA 179:16 Adulteration (Penalty in Statute)	6				6 months
RSA 179:22 Employment Intervention; Penalty.	6	Ordered to Hearing - 603.02 Penalties			
Violation of a Commission Order	6	\$500	\$2,000	3 days	30 days
RSA 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who Have Not Attained 21 Years of Age Prohibited - COMPLIANCE CHECK - Training as required by 602.06(c)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	WARNING	N/A	N/A		
2nd Offense	1	\$100.00	\$250.00	N/A	N/A
3rd Offense	2	\$250.00	\$500.00	N/A	N/A
4th Offense	3	\$500.00	\$1,500.00	10 days	N/A
5th Offense	4	\$750.00	\$3,000	10 days	40 days
6th Offense	5	N/A	N/A	N/A	Revocation
Failure to attend required training within 30 days after adjudication	4				
RSA 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who Have Not Attained 21 Years of Age Prohibited & 126-K:5 Distribution of Free Samples & 126-K:8 Special Provisions (set by statute)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	4	\$100.00	\$250.00	N/A	N/A
2nd Offense	6	\$250.00	\$500.00	N/A	N/A
3rd Offense	8	\$500.00	\$1,500.00	10 days	30 days
4th Offense (option 1)	10	\$750.00	\$3,000	10 days	40 days
4th Offense (option 2)	10	\$0	\$0	40 days	n/a
5th Offense	N/A	N/A	N/A	N/A	Revocation
RSA 126-K:4-a Rolling Papers (set by statute)	POINTS	MIN	MAX	SUS MIN	SUS MAX
1st Offense	2	N/A	\$250.00	N/A	N/A
2nd Offense	4	N/A	\$500.00	N/A	N/A
3rd Offense & Subsequent	5	N/A	\$750.00	N/A	N/A

- (b) No portion of points shall be suspended or waived in any manner.
- (c) For any violation, a licensee may request a hearing.
- (d) For all violations, the presiding officer shall have the authority to impose conditions to maintain proper controls.
- (e) For all violations, the presiding officer shall have the authority to suspend or revoke the license.

Liq 602.02 Presiding Officer Consideration.

- (a) The presiding officer shall consider any testimony or evidence offered by the prosecutor, the licensee, and by all witnesses in determining an appropriate penalty.
- (b) The presiding officer, when hearing testimony or evidence regarding a violation of a statute, order, or an administrative rule, shall consider any aggravating factor or mitigating factor which is offered in any defense or prosecution, as required by RSA 179:56 III (a), in determining any administrative action or penalty.
- (c) Aggravating factors shall include but not be limited to:
 - (1) The failure to train employees in liquor education classes;
 - (2) The failure to have adequately trained managers;
 - (3) The failure to take advantage of education classes offered by the bureau of enforcement;
 - (4) The failure to have any training with regard to RSA Title XIII requirements for an employee;
 - (5) The failure to request identification of a person who appears younger than age 21 before sale of alcoholic beverage;
 - (6) The failure to monitor the quantity of alcohol served to a patron;
 - (7) The failure to detect poor quality identification documents as being false;
 - (8) The reckless serving of alcohol to a person under age 16 years;
 - (9) Serving a minor who is legally intoxicated;
 - (10) The active encouragement of intoxicated patrons to consume more alcohol;
 - (11) The service of alcohol to a patron that is so continuous and excessive that it creates a risk of death by alcohol poisoning;
 - (12) The active assistance of a patron into a motor vehicle when the patron is so intoxicated as to need assistance, when a person knows or should know that the intoxicated person will operate the motor vehicle;
 - (13) The failure to properly manage the premises, such as allowing overcrowding, unaccompanied minors in lounges, standees to drink, lack of effort to clear aisles, or areas of ingress or egress and blocked fire exits;
 - (14) The failure to take corrective action on previously cited violations;

(15) A culpable mental state, as defined by RSA 626:2, II, General Principles, of the New Hampshire Criminal Code shall be an aggravating factor when "purposefully" or "knowingly" is proven; and

(16) Any factor which increases the hazard to public safety due to the sale or consumption of alcohol.

(d) Mitigating factors shall include but not be limited to:

(1) Service of only one drink to a person who becomes intoxicated

(2) The completion of NHLC training by person(s) in charge, managers, security staff, servers, and clerks;

(3) The licensee admitting to problems detected and taking steps to rectify the situation;

(4) Maintaining an adequate number of trained employees to supervise the sale and consumption of alcoholic beverages on the premises to assure compliance with the liquor laws and rules;

(5) A new employee with instruction from management, but not having attended a liquor education program; and

(6) Established management policies:

a. Ensuring persons of questionable age are checked as to age before sale or service of alcohol or tobacco; and

b. Ensuring the proper operation of the establishment.

(e) The presiding officer shall decide each case after closing the hearing and all decisions shall be based upon a preponderance of the evidence.

Liq 602.03 Special Penalty For Certain Aggravated Violations.

(a) For any aggravated violation as defined in Liq 201.01 (f) which results in serious bodily injury or death the presiding officer shall impose the following penalties:

(1) For the first offense, subject to the limitations of RSA 179:57, I, a suspension of not less than 30 days provided that the suspension shall be reduced by 15 days if the person(s) in charge, managers, security staff, servers, and clerks have completed NHLC training within 24 months before the date of violation, fine of \$5000, and points as listed in Liq 602.01 (a);

(2) For the second offense, within 7 years of the first offense, 30 day suspension, fine of \$5,000, and points as listed in Liq 602.01(a); and

(3) For the third offense within 7 years of the second offense, revocation.

(b) On the second violation of RSA 179:5 within a 24-month period, excluding any violations resulting from compliance checks, the presiding officer shall consider:

(1) The complete record of all violations at the licensed location that occurred within 7 years;

(2) The circumstances of the violations of RSA 179:5; and

(3) If the licensee shall be required to provide security under the requirements of RSA 178:5.

(c) If security for liability is required, the commission shall immediately suspend the license until such time as security is provided.

(d) Security shall consist of insurance or a deposit meeting the requirements of RSA 178:5, I (a), except If the licensee provides proof that the licensee cannot obtain either insurance or a bond, the commission shall accept \$300,000 in cash or marketable securities to be held by the state treasurer in an escrow account with any interest going into the general fund.

(e) The requirement for security of liquor liability shall be in effect:

(1) So long as the license holder maintains control of the license; or

(2) At least a calendar year.

(f) Cash or marketable securities held by the state treasurer in escrow shall be returned only after the statute of limitations for claims against the required security deposit has expired.

(g) The security required in Liq 602.03 (d) shall be in addition to any penalties imposed under Liq 602.01(2).

Liq 602.04 Revocations; Payment of Fines.

(a) Revocation shall be a permanent loss of a liquor license.

(b) No license shall be issued to or renewed for an applicant who has not paid an outstanding administrative fine issued by the commission.

Liq 602.05 Penalties For Violating Commission Orders. The presiding officer shall impose a penalty as provided in Liq 602.01(a), on any licensee who fails to comply with the requirements of a commission order.

Liq 602.06 Progressive Discipline.

(a) Except as provided in (b) and (c) below, the division shall follow a progressive discipline model for violations of Title XIII, Chapter 126-K, or commission rules or orders.

(b) Identical violations shall be addressed in the following sequence:

(1) Verbal counseling for the first violation;

(2) Warning for the second violation; and

(3) Administrative notice for subsequent violations.

(c) The following shall result in an administrative notice:

(1) Violations of RSA 179:5 other than compliance checks;

(2) Violations of RSA 126-K:4 other than compliance checks;

- (3) All aggravated violations;
- (4) Violations arising during any of the above violations;
- (5) Violations of commission orders;
- (6) Violations of RSA 178:3;
- (7) Violations of RSA 179:60; and
- (8) Violations of RSA 179:22.

(d) A violation discovered in a compliance check shall be addressed as follows:

- (1) Warning for the first violation and training required within 30 days of adjudication; and
- (2) Administrative notice and training required within 30 days of adjudication.

(e) A violation shall not be a second or higher violation unless it occurs after the previous violation has been adjudicated.

(f) Except as provided in Liq 602.08, when a single event results in multiple charges of the same violation, points shall only be applied once for that violation. Fines and suspensions shall be applied for each of the violations. Points shall remain on the license for a period of 3 years from the date of adjudication.

(g) Except as provided in Liq 602.08, when a licensee accumulates 12 points or over, the licensee shall be ordered to a hearing to determine if enhanced penalties or conditions of the license are necessary to maintain proper controls.

(h) When a licensee accumulates 25 points or over, the licensee shall be ordered to attend a hearing to determine if revocation is necessary.

Liq 602.07 Non-renewal, Denial, and Revocation.

(a) Nothing in this chapter shall prohibit the division from recommending non-renewal of a license or denial of an application based on the specification of RSA 178:3.

(b) Nothing in this chapter shall prohibit the commission from revoking a license when there is a significant risk to public safety, or the business fails to operate in strict accordance with all applicable state and federal alcoholic beverage or tobacco control laws.

Liq 602.08 Multiple Offenses Over Time.

(a) For a first offense, points and penalties shall be as listed in Liq 602.01.

(b) For the second offense within 7 years of the adjudication for the first offense, points and penalties shall be as listed in Liq 602.01.

(c) For the third offense within 7 years of the adjudication of the second offense, points and penalties shall be as listed in Liq 602.01.

(d) For subsequent offenses, points and penalties shall be as listed in Liq 602.01.

PART Liq 603 ADMINISTRATIVE PENALTIES AND FINE PROVISIONS FOR TOBACCO VIOLATIONS

Liq 603.01 Commission Compliance. The commission shall determine the level of the violation by reviewing the licensee's record and counting violations that have occurred within 3 years of the date of the violation being considered. The commission shall notify the commissioner of revenue administration prior to the effective date of any suspension or revocation.

Liq 603.02 Administrative Penalties. The penalties shall be as provided in Liq 602.01(a).

APPENDIX

RULE	STATUTE
Liq 601 – Liq 602	RSA 541-A:16, I (b) intro; RSA 178:5; RSA 179:56; RSA 179:57
Liq 603	RSA 126-K