# Compromise Process for Resolving ABC Administrative Violations Lacks Policies and Procedures, Rationale, and Transparency, Resulting in Disproportionate Penalties
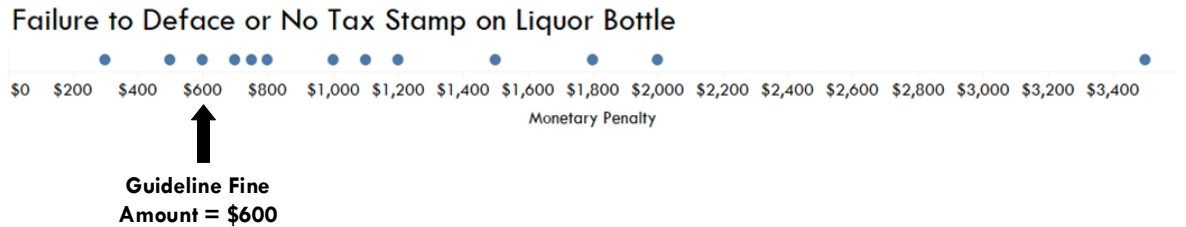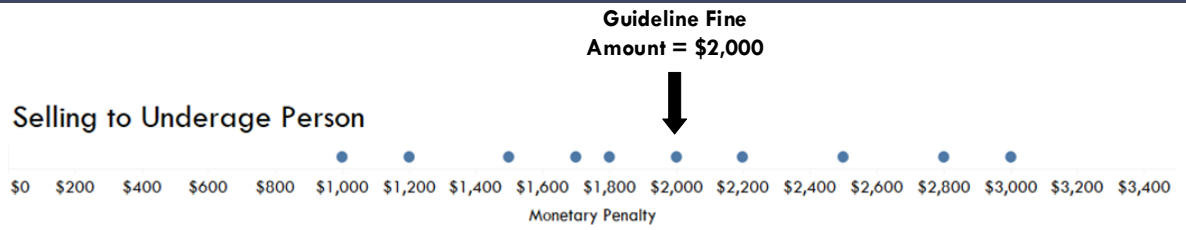
## Highlights

**IN BRIEF: The Alcoholic Beverage Control (ABC) Commission sets and enforces administrative penalties for alcohol-related violations to reduce potentially dangerous behavior and ensure compliance with state regulations. Recent changes to the administrative penalty structure and the severity of penalties provides an opportunity to examine how well the Commission is accomplishing these goals. The Program Evaluation Division found that administrative penalties are not proportional, lacking policies, procedures, and guidelines that would limit variance and subjectivity. The General Assembly should consider requiring the Commission to set guidelines that ensure penalties are proportional to offenses, increase transparency for permittees, and establish performance management criteria.**

**BACKGROUND:** Session Law 2019-182 directed the Program Evaluation Division to evaluate the proportionality and comprehensiveness of penalties for ABC administrative violations and to examine best practices in other states. States regulate the sale and distribution of alcoholic beverages by issuing regulations, granting permits for eligible activities, and imposing civil penalties on permittees for violations. In North Carolina, the ABC Commission performs these regulatory and enforcement functions. The most common administrative violation is providing alcohol to minors.

**The ABC Commission lacks an established rationale for determining the severity of administrative penalties and does not notify permittees of changes in penalty guidelines.** Penalty guidelines are subject to change based on the policy priorities of the ABC Commission, are not publicly disseminated, and lack documented rationale. The ABC Commission's penalty guidelines also raise questions about how the severity of penalties coincide with the magnitude and type of the infraction. The Commission argues it needs discretion to apply different penalties as individual circumstances merit. However, without policies and procedures to guide these considerations, the application of different penalties becomes subjective.

**Assignment of monetary fines varies for similar violations, rendering administrative penalties disproportionate.** The Program Evaluation Division found that the ABC Commission's valuation of voluntary suspension disincentivizes permittees differently and that financial penalties for identical infractions are not the same. Distribution of penalties for similar violations shows a high degree of variance and subjectivity.

# Highlights



**Guideline Fine Amount = $2,000**

Selling to Underage Person

$0  $200  $400  $600  $800  $1,000  $1,200  $1,400  $1,600  $1,800  $2,000  $2,200  $2,400  $2,600  $2,800  $3,000  $3,200  $3,400
Monetary Penalty

Failure to Deface or No Tax Stamp on Liquor Bottle

$0  $200  $400  $600  $800  $1,000  $1,200  $1,400  $1,600  $1,800  $2,000  $2,200  $2,400  $2,600  $2,800  $3,000  $3,200  $3,400
Monetary Penalty

**Guideline Fine Amount = $600**

**Recommendation:**

The General Assembly should direct the ABC Commission to develop and publicize guidelines for determining penalty structures, monetary fines, and suspension lengths, in addition to studying opportunities and challenges of adopting a throughput-based or sales-based fine structure.

**Performance metrics are not systematically collected or reported.** This evaluation represents the first effort to collect and report on the effectiveness and efficiency metrics identified throughout the report. These benchmarks help measure how well the current administrative penalty structure is achieving policy goals. To better assist future administrative penalty enforcement and oversight, these metrics could be included in the ABC Commission's ongoing reporting structure.

**Recommendation:**

The General Assembly should direct the ABC Commission to report on the effectiveness criteria developed in this report, including proportion of permittees committing a violation and repeat offense rate, in order to evaluate future efforts at deterring repeat violations. These effectiveness criteria should be included in the ABC Commission's 2020–21 annual report and any future relevant presentations to the General Assembly.