

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Honorable S. Phillip Lenski, Administrative Law Judge

Case No. 16-ALJ-17-0221-CC
Case No. 17-ALJ-17-0113-CC
Appellate Case No. 2017-002568

South Carolina Department of RevenueAppellant,

v.

Bi-Lo, LLC, d/b/a Bi-Lo #5612Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,

Petitioner,

vs.

BI-LO, LLC, d/b/a BI-LO Store #5612,

Respondent.

Docket No. 16-ALJ-17-0221-CC
Docket No. 17-ALJ-17-0113-CC

FILED
FINAL ORDER AND DECISION
NOV 21 2017

SC ADMIN. LAW COURT

APPEARANCES: For the Petitioner: Elisabeth W. Shields, Esquire
For the Respondent: Zoe Sanders, Esquire

STATEMENT OF THE CASE

The two above cited cases are before the Administrative Law Court (ALC or court) pursuant to requests for contested case hearings filed on behalf of BI-LO, LLC, d/b/a BI-LO #5612 (Respondent or BI-LO), on June 30, 2016 for the violation at issue in Docket No. 16-ALJ-17-0221-CC (February Violation), and on April 24, 2017 for the violation at issue in Docket No. 17-ALJ-17-0113-CC (August Violation). Although these cases were not consolidated, the court finds that it is appropriate to issue this joint Final Order and Decision governing both docket numbers.

The Respondent contests separate determinations of the South Carolina Department of Revenue (Petitioner or Department) that the Respondent committed violations of South Carolina Code Section 61-6-1500(A)(1)(c) by selling or permitting the sale of alcoholic liquor to a person under the age of twenty-one on its licensed premises. The Department asserts that the proper penalty for Docket Number 16-ALJ-17-0221-CC is a forty-five (45) day suspension, and that the proper penalty for Docket Number 17-ALJ-17-0113-CC is a revocation of the store's permit to sell beer and wine. The court has jurisdiction over these contested cases pursuant to South Carolina Code §§ 61-2-260 and 12-60-460. A hearing on the merits for both cases was held November 2, 2017, at the ALC in Columbia, South Carolina. After carefully weighing the evidence, the court finds that there was a violation of § 61-6-1500(A)(1)(c) by the Respondent in each case.

FINDINGS OF FACT

Pursuant to ALC Rule 25(C), the Parties stipulated to the following facts prior to the hearing in this matter:

The February Violation

1. BI-LO, LLC, d/b/a BI-LO #5612, located at 1103 N. Main Street, Fountain Inn, South Carolina, is the holder of a seven-day off-premises beer and wine permit (32023029-P7B) issued by the South Carolina Department of Revenue (Department). The Respondent held the permit at all times relevant to both cases.
2. On February 5, 2016, at approximately 6:44 p.m., State Law Enforcement Division (SLED) Special Agent Kevin Tyner and Dena Metzler and the Fountain Inn Police Department conducted an undercover investigation utilizing an Underage Cooperating Individual (UCI) at the Licensed Premises.
3. The UCI entered the Licensed Premises in an undercover capacity to purchase beer, carrying \$15.00 in State funds and her State of South Carolina issued driver's license.
4. The UCI picked up one (1) twenty-five fluid ounce can of Bud Light Lime-A-Rita (beer) and approached the clerk, Angela Cynthia Pyles (also referred to, herein, as the "employee"), to purchase the beer. Ms. Pyles asked the UCI to see her identification, checked it, handed it back to her and sold the beer to the UCI without asking the UCI her age or whether she was over the age of twenty-one (21). The UCI was nineteen (19) years of age at the time of the above-referenced sale.
5. After the UCI purchased the beer, Agents Tyner and Metzler entered the Licensed Premises and identified themselves to Ms. Pyles. They informed Ms. Pyles that she sold beer to a minor, and then Agent Tyner issued the Respondent an administrative violation at the Licensed Premises, pursuant to Regulation 7-200.4 for permitting the sale of beer to a person under the age of twenty-one. Officer Peden of the Fountain Inn Police Department also issued a criminal citation to Ms. Pyles for violating S.C. Code Ann. § 61-4-50 (2009) for the sale of beer to a person under the age of twenty-one (21).
6. Ms. Pyles' employment was terminated by the Respondent after the incident.
7. The Respondent previously violated Regulation 7-200.4 on February 26, 2014 and December 22, 2015, making the February 2016 violation the Respondent's third violation on its seven-day off-premises beer and wine permit within a three (3) year period.
8. On March 4, 2016, the Department issued the Respondent a Notice of Intent to Suspend (Notice) for the February Violation. The Notice informed the Respondent that the

Department intended to suspend the seven-day off-premises beer and wine permit for forty-five (45) days.

9. The Respondent protested the Notice by letter received on May 27, 2016.
10. On June 6, 2016, the Department issued its Determination in this matter.
11. On June 30, 2016, this court received the Respondent's request for a contested case hearing. This case received Docket Number 16-ALJ-0221-CC.

The August Violation

12. Regarding the same BI-LO location (#5612) described in paragraph 1 above, on August 26, 2016, at approximately 12:59 p.m., State Law Enforcement Division (SLED) Special Agents Kevin Tyner and Dena Metzler and the Fountain Inn Police Department conducted an undercover investigation utilizing an Underage Cooperating Individual (UCI) at the Licensed Premises.
13. The UCI entered the Licensed Premises in an undercover capacity to purchase beer, carrying only her State of South Carolina issued driver's license and \$10.00 in State funds.
14. The UCI picked up one (1) twenty-five fl. oz. can of Bud Light Straw-Ber-Rita (beer) and approached the clerk, Lisa Hopper (also referred to, herein, as the "employee"), to cash out. Ms. Hopper asked the UCI to see her identification, she entered the information from the identification into the register. The register then requested an override at which time Ms. Hopper requested assistance from a manager. A service center associate named Collin Banks came to the register and entered an override code, and at that point Ms. Hopper sold the beer to the UCI without asking the UCI her age or whether she was over the age of twenty-one (21). The UCI was nineteen (19) years of age at the time of the above-referenced sale.
15. A witness for the Respondent testified that the Service Center Associate (Associate) position at BI-LO is an intermediary position, in which Associates have some managerial powers but not to the extent of store managers. One of the managerial powers vested in the Associates is the ability to override the cashier terminals, which lock up when an underage birth date is entered or scanned into the system for the purchase of alcohol.
16. After the UCI purchased the beer, Agents and Officers entered the Licensed Premises and identified themselves to Ms. Hopper. After informing Ms. Hopper that she sold beer to a minor, Agent Metzler issued the Permittee an administrative violation at the Licensed

Premises, pursuant to Regulation 7-200.4 for permitting the sale of beer to a person under the age of twenty-one. Officer Peden of the Fountain Inn Police Department also issued a criminal citation to Ms. Hopper for violating S.C. Code Ann. § 61-4-50 (2009) for the sale of beer to a person under the age of twenty-one (21).

17. The Service Center Associate who entered the override code on Ms. Hopper's terminal was fired by the Respondent following this incident for violating company policy. Another employee of the Respondent was also terminated about this violation for breaking with company policy.
18. The Respondent had three prior violations of Regulation 7-200.4 (referred to earlier in the Final Order and Decision) at the time of this alleged violation, making this the Respondent's fourth violation on its seven-day off-premises beer and wine permit within a 3-year period.
19. On November 15, 2016, the Department issued the Respondent a Notice of Intent to Revoke (Notice) for the August Violation. The Notice informed the Respondent that the Department intended to revoke the seven-day off-premises beer and wine permit.
20. The Respondent protested the Notice by letter received on January 18, 2017.
21. On April 6, 2017, the Department issued its Determination in this matter.
22. On April 24, 2017, this court received the Respondent's request for a contested case hearing. This case received Docket Number 17-ALJ-0113-CC.

Additionally, this court makes following Findings of Fact by a preponderance of the evidence:

23. The Respondent stipulates, and this court finds that in each case, an employee of the Respondent sold alcohol to an underage individual in violation of Section 61-6-1500(A)(1)(c), and Regulation of 7-200.4.
24. The Respondent offered evidence that, prior to beginning work, all BI-LO employees are required to watch an interactive training video that explains when they are permitted to sell age restricted products, including alcohol, and when it is forbidden under the law or company policy. Further, throughout their employment at BI-LO, employees are supposed to continually watch training videos that are updated daily. Likewise, all new BI-LO employees participate in several days of on-the-job training after they begin working.
25. The Respondent additionally offered testimony that each employee is given a copy of the BI-LO company policies, within which is BI-LO's age restricted beer and wine policy.

- The consequence for violating company policy is termination. Managers, of which there are one or two on duty at any given time, are responsible for ensuring compliance with these policies. Compliance with these policies is also monitored by district managers, who can move managers around, change positions, and order more training for store employees.
26. The Respondent's witness and Chief of Police of Fountain Inn testified that the Fountain Inn BI-LO always voluntarily participates in the Fountain Inn Police's yearly compliance training program.
 27. Based on testimony from the Respondent's witnesses, the Fountain Inn BI-LO instituted some equipment changes to the store's registers approximately two years ago that no longer permit cashiers to override the requirement to enter a customer's birth date for an age restricted sale. However, the instant violations occurred after these changes were implemented.
 28. No evidence was introduced establishing that the Respondent has made any policy, equipment, or training procedure changes to better ensure compliance with the law following the instant violations. However, the Respondent's witnesses offered testimony that some unspecified training reinforcement has been offered at the Fountain Inn BI-LO to its employees following these incidents.
 29. Beyond just alcohol sales, basket sales¹ account for a significant portion of the revenue for the Fountain Inn BI-LO, and would be harmed if the store were to lose its beer and wine permit.
 30. The Fountain Inn BI-LO employs approximately fifty-eight (58) people.
 31. The Fountain Inn BI-LO is the only traditional grocery store in the surrounding community.
 32. BI-LO, is generally regarded as having a good reputation in South Carolina. The Respondent also offered evidence suggesting that the Fountain Inn BI-LO hosts community outreach events and performs some level of community service.
 33. The Fountain Inn BI-LO would lose a significant portion of its revenue if its alcohol permit is revoked. The loss of revenue could result in some store employees having their work hours reduced, or some employees being terminated. Likewise, a permit revocation would create some degree of risk that the store would face closure.

¹ Basket sales, as described by the Respondent's District Manager responsible for the Fountain Inn BI-LO store, refer to the sale of additional goods to customers who went to the store initially just to purchase alcohol.

34. Employees at the Fountain Inn BI-LO would be harmed by any reduction in their work schedules, by termination, or by closure of the store.
35. The surrounding community would be harmed by the closure of the Fountain Inn BI-LO.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the court concludes the following as a matter of law:

1. South Carolina Code Section 1-23-600 grants jurisdiction to this court to hear contested cases under the Administrative Procedures Act. Specifically, South Carolina Code Section 61-2-260 grants the ALC the authority to hold contested case hearings in matters governing alcoholic beverages, beer, and wine.
2. South Carolina Code Section 61-6-1500(A)(1)(c) forbids the sale of alcoholic liquors to a person under twenty-one years of age. The statute does not make any distinction between intentional and unintentional sales nor contain any requirement that the sale be knowing or willful. *Compare* S.C. Code Ann. § 61-6-1500(A)(1)(c) (Supp. 2015) (stating only that a retail dealer “may not” make a sale to a person under twenty-one years of age) *with* S.C. Code Ann. § 61-6-1500(B) (Supp. 2015) (containing a “knowingly and willfully” requirement for tampering with a bottle of liquor). While South Carolina Code Section 61-6-50 generally provides that a violation of a rule under the Alcohol Beverage Control Act must be willful, Section 61-6-1500(A)(1)(c) is the law that specifically applies in this case. *Compare* S.C. Code Ann. § 61-6-50 (2009) (last amended in 2006) *with* S.C. Code Ann. § 61-6-1500(A)(1)(c) (Supp. 2015) (last amended in 2014). The rules of statutory construction dictate that the more recent and specific statute prevails. *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (citations omitted). Therefore, although the sale of liquor to an underage individual may be inadvertent, the law does not excuse the violation.
3. Permits and licenses issued by this State for the sale of liquor, beer, and wine are privileges to be used and enjoyed only so long as the holder complies with the restrictions and conditions governing them. *See Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 26 S.E.2d 22 (1943).
4. South Carolina Code Section 61-2-20 charges the Department with the responsibility of administering and enforcing the laws governing the sale of alcohol. To this end, the

Department has issued South Carolina Revenue Procedure #13-2, which establishes Alcoholic Beverage Licensing violation guidelines. The procedure provides that the penalty for a first offense against a retail store liquor license is a Five Hundred Dollar (\$500) fine, the penalty for a second offense is a One Thousand Dollar (\$1,000) fine, the penalty for a third offense is a forty-five (45) day suspension of the store's license, and the penalty for the fourth offense is permit revocation. The Department's South Carolina Revenue Procedure #13-2 states that, in calculating the number of previous violations at the licensed location, the Department will look back three (3) years from the date of the most recent violation.

5. In this contested case, the court sits as fact-finder and has the discretion to impose an appropriate penalty based on the facts presented. *S.C. Dept. of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 279–80, 731 S.E.2d 330, 337 (Ct. App. 2012) (quoting *Walker v. S.C. Alcoholic Beverage Control Comm'n*, 305 S.C. 209, 210, 407 S.E.2d 633, 634 (1991)). Here, this is the Respondent's fourth alcohol sale to a UCI in a three-year period and the Respondent failed to advance evidence showing it had made any substantive training procedure, store policy, or equipment changes to help better ensure compliance since the occurrence of the two violations at issue. The Respondent's witness testimony and defense was largely based on the premise that these violations were simply the result of an employee mistake that could happen again.² The court is deeply concerned with the Respondent's underwhelming response to these repeated violations, and flatly rejects the argument that these violations are simply the result of unavoidable human error.
6. In *S.C. Dep't of Revenue v. Ingles Mkts., Inc.*, the Respondent was contesting the Department's determination that it had committed its third permit violation and that its permit should be suspended for forty-five (45) days. *S.C. Dep't of Revenue v. Ingles Mkts., Inc.*, Docket No. 13-ALJ-17-0283-CC (Dec. 11, 2013). The President of Ingles Markets, Inc. appeared at the hearing and testified about the extensive and costly improvements that the store made to further prevent any compliance problems following the violation at issue in that case. *Id* at 2-3. Among these improvements were: 1) an entirely new cash register system; 2) installation of new software for the terminals that locks the terminal for manager

² The Respondent's witness testified that "We've made mistakes, and we're admitting we made mistakes, and I'm not going to say we're not ever going to make them again, because we're all human."

approval each time an alcoholic beverage is scanned, even when multiple alcoholic beverages are purchased by a single customer; 3) additional training for all employees; 4) the hiring of additional managers to accommodate the increased workload. *Id.* The estimated cost of implementing these changes, again, made in response to Ingles Markets' third violation, was between \$75,000 and \$100,000 a year. *Id.* at 3. Considering the actions taken by Ingles managers after its third alcoholic beverage related violation, the court was both alarmed and surprised at the Respondent's less than vigorous remedial measures to correct its third and fourth violations of the same law.

7. Moreover, while the Respondent put forth evidence showing it has partnered with the University of South Carolina Athletics Department (USC Athletics), the court finds this evidence unpersuasive and unresponsive. Prevention of underage drinking is not an aspect of the USC Athletics partnership.³
8. However, the court acknowledges the beneficial impact of the Fountain Inn BI-LO. The court finds that as the only traditional grocery store in the immediate community, and as the employer of approximately fifty-eight (58) employees, the Respondent's store is an asset to the surrounding community. The court is also convinced that the revenue loss to the store caused by a revocation of its beer and wine permit could place the store in jeopardy of closing altogether. As such, this court is inclined to accept that a permit revocation is not an appropriate penalty for the violations presently before the court. *See Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002); S.C. Revenue Procedure #04-4 (It is within the court's discretion to apply a certain set of facts as a mitigating circumstance and reduce the penalty imposed on a permit holder by the Department).⁴
9. In this case, the court finds that the above referenced matters constitute mitigating factors that, in these cases, weigh against imposition of the penalties the Department proposes.

³ The court rejects the off-hand anecdotal testimony of the Fountain Inn Chief of Police who speculated that the Respondent was somehow being treated more harshly than other permitted locations he had seen with respect to permit violations. The Respondent offered no specific evidence that it is being treated dissimilarly from any other licensed or permitted location.

⁴ The court's sympathetic attitude towards the Respondent's employees and the surrounding Fountain Inn community is not without limits. The repeated violations of the alcoholic beverage laws by the Respondent cannot be countenanced forever. As such, this court encourages the Respondent to reconsider its business practices and implement policies and procedures above and beyond what is called for in this Final Order and Decision to ensure no future violations of the State's alcohol beverage laws are committed at this location.

Accordingly, the court finds that circumstances exist to support a finding that the penalty against the Respondent should be reduced.

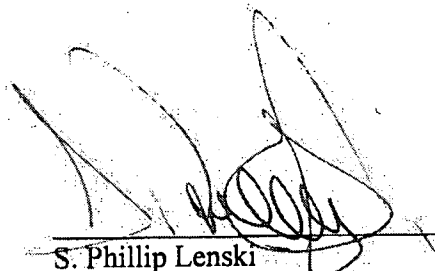
ORDER

Based upon the above Findings of Fact and Conclusions of Law, the court finds that the Department has met its burden of proof and that the Department's Determination that the violations were committed should be upheld.

IT IS THEREFORE ORDERED, that for Docket Number 16-ALJ-17-0221 (the February violation), the penalty assessed to the Respondent shall be a one-thousand-dollar (\$1,000) fine, and a Seven (7) day suspension of the Respondent's beer and wine permit.

IT IS FURTHER ORDERED, that for Docket Number 17-ALJ-17-0113 (the August violation), the penalty assessed to the Respondent is a two-thousand-dollar (\$2,000) fine, and a ten (10) day suspension of the Respondent's beer and wine permit.⁵ Additionally, the Respondent must change its policy that permits Service Center Associates to override register terminals to permit alcohol sales. The Respondent must require that any overriding of register terminals for alcohol sales must be done by a Store Manager, and this duty may not be delegated. Furthermore, the location must, within ninety (90) days of this Final Order and Decision, implement a new mandatory alcoholic sales training program for all existing and new employees. The training program implemented must be from the programs approved by the Department and listed on the Department's website. The Respondent should confer with the Department to ensure that the new program it selects is among the programs approved by the Department.

AND IT IS SO ORDERED.



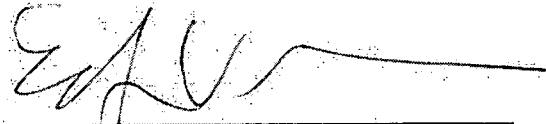
S. Phillip Lenski
S.C Administrative Law Court

November 21, 2017
Columbia, South Carolina

⁵ The two periods of suspension (7 day and 10 day) should be imposed together (back-to-back) so that the Respondent's beer and wine permit is suspended for a continuous period of seventeen (17) days.

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Edye U. Moran
Judicial Law Clerk

November 21, 2017
Columbia, South Carolina

DEPARTMENT DETERMINATION

Permittee:

BI-LO, LLC
d/b/a BI-LO #5612
1103 N. Main St.
Fountain Inn, SC 29644

Permit No.:

32023029- P7B

SLED Case No.:

54-16-0341

Date of Violation:

February 5, 2016

Matters in Dispute:

1. On February 5, 2016, did an employee or agent of the Permittee violate S.C. Code Ann. Regs. 7-200.4 by permitting or knowingly allowing the sale of beer to a person under the age of twenty-one on the Licensed Premises?
2. Is a forty-five (45) day suspension of the Permittee's seven-day off-premises beer and wine permit an appropriate penalty for the Permittee's violation of Regulation 7-200.4?

Determinations:

1. The Permittee knowingly allowed or permitted the sale of beer to a person under the age of twenty-one on February 5, 2016, on the Licensed Premises in violation of Regulation 7-200.4.
2. A forty-five (45) day suspension of the Permittee's seven-day off-premises beer and wine permit is the appropriate penalty for the Permittee's violation of Regulation 7-200.4.

Relevant Facts:

1. The Permittee holds a seven-day off-premises beer and wine permit at 1103 North Main Street, Fountain Inn, South Carolina (the "Licensed Premises"). The Permittee held the permit on February 5, 2016.
2. On February 5, 2016, at approximately 6:44 p.m., SLED Special Agents Kevin Tyner and Dena Metzler and the Fountain Inn Police Department conducted an undercover investigation utilizing an Underage Cooperating Individual ("UCI") at the Licensed Premises.
3. The UCI entered the Licensed Premises in an undercover capacity to purchase beer, carrying \$15.00 in State funds and her State of South Carolina issued driver's license. The UCI picked up one (1) twenty-five fl. oz. can of Bud Light Lime-A-Rita (the "Beer") and approached the clerk, Angela Cynthia Pyles (also referred to, herein, as the "Permittee's employee"), to cash out. Ms. Pyles asked the UCI to see her identification, checked it, handed it back to her and sold the Beer to the UCI without asking the UCI her age or whether she was over the age of twenty-one.
4. The UCI was nineteen years of age at the time of the above-referenced sale.
5. After the UCI purchased the Beer, Agents Tyner and Metzler entered the Licensed Premises and identified themselves to Ms. Pyles. After informing Ms. Pyles that she sold beer to a minor, Agent Tyner issued the Permittee an administrative violation at the Licensed Premises, pursuant to Regulation 7-200.4 for permitting the sale of beer to a person under the age of twenty-one (the "Violation"). Officer Peden of the Fountain Inn Police Department also issued a criminal citation to Ms. Pyles for violation of S.C. Code Ann. § 61-4-50 (2009) for the sale of beer to a person under the age of twenty-one.
6. On March 4, 2016, the South Carolina Department of Revenue (the "Department") issued a Notice of Intent to Suspend for the Violation (the "Notice"). The Notice informed the Permittee that the Department intended to suspend the Permittee's seven-day off-premises beer and wine permit for forty-five (45) days.
7. The Department received the Permittee's written protest to the Notice on May 27, 2016.
8. The Violation constitutes the Permittee's third administrative violation within a three-year period on its beer and wine permit. On February 26, 2014 and December 22, 2015, the Permittee violated Regulation 7-200.4 by knowingly selling or permitting the sale of beer to a person under the age of twenty-one.

Analysis:

I. The Permittee, Through Its Employee/Agent, Permitted Or Knowingly Allowed An Individual Under The Age Of Twenty-One To Purchase Beer On The Licensed Premises.

Regulation 7-200.4 provides:

To permit or knowingly allow a person under twenty-one year [sic] of age to purchase or possess or consume alcoholic liquors, beer or wine in or on a licensed place of business which holds a license or permit issued by the Department is prohibited and constitutes a violation against the license or permit.

A review of the Department's records indicates that BI-LO, LLC, d/b/a BI-LO #5612, holds a seven-day off-premises beer and wine permit for the Licensed Premises.

To sustain a violation, the Department must show that (1) the Permittee or its employee (2) permitted or knowingly allowed (3) a person under the age of twenty-one to purchase or possess beer (4) on the licensed premises.

With regard to the first element, a permittee may be held liable for violations of statutes and regulations committed by its agent while pursuing the ordinary business entrusted to him. The permittee is liable even though the violations are committed in his absence and without his knowledge, consent, or authority. See 48 C.J.S. Intoxicating Liquors § 276 (1981). Here, Ms. Pyles, the Permittee's employee and agent, sold the Beer to the UCI while pursuing the ordinary business entrusted to her. Ms. Pyles' act as agent of the Permittee renders the Permittee liable, despite the fact that the Permittee did not sell the Beer to the UCI herself. Accordingly, the first element to sustain a violation is satisfied.

With regard to the second element, the Permittee's employee permitted or knowingly allowed the sale of beer to a person under the age of twenty-one. "Knowingly" includes not only actual knowledge of a fact, but also situations where a person has such information, or the circumstances are such, as would lead a prudent person to form a belief as to the fact, and if followed by inquiry, would have disclosed its character.¹ The circumstances in this case, including the UCI's youthful appearance and casual dress, put Ms. Pyles on notice of the UCI's young age. Additionally, any prudent inquiry, including properly inspecting the UCI's driver's license, would have confirmed the

¹See S.C. Dep't of Revenue v. Odom, Docket No. 97-ALJ-17-0368-CC, 1997 WL 807860 (Nov. 1, 1997) (citing State v. Thompkins, 263 S.C. 472, 211 S.E.2d 549 (1975); Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943); and Daley v. Ward, 303 S.C. 81, 399 S.E.2d 13 (Ct. App. 1990).

UCI's age and the fact that the UCI was under the age of twenty-one. Accordingly, these facts satisfy the second element.

In the present matter and with regard to the third element, Ms. Pyles' failure to properly inspect the UCI's identification resulted in the unlawful sale of beer to an underage person. The UCI's driver's license clearly indicated that she was nineteen years old at the time of the sale. Ms. Pyles would have been able to easily and properly determine that fact had she properly inspected the UCI's identification. Furthermore, the circumstances in this case, including the UCI's youthful appearance and casual dress, put Ms. Pyles on notice of the UCI's young age. Thus, these facts satisfy the third element.

Finally, the fourth element is satisfied as well. The facts of this case clearly indicate that the Permittee's employee sold the Beer to the UCI on the Licensed Premises. Both Officer Peden and SLED Agent Tyner issued criminal and administrative violations, respectively, at 1103 North Main Street, Fountain Inn, South Carolina. Because this is the address of the Permittee's establishment and because the Violation occurred at the same location, it is clear that the sale of beer to the UCI by the Permittee's employee occurred on the Licensed Premises, satisfying the fourth and final element.

The facts in this matter establish that the Permittee's employee permitted or knowingly allowed a person under the age of twenty-one to purchase or possess beer on the Licensed Premises. Therefore, the Permittee violated Regulation 7-200.4 by selling beer to a person under the age of twenty-one on the premises licensed to sell beer or wine.

II. A Forty-Five (45) Day Suspension of the Permittee's Off-Premises Beer and Wine Permit Is The Appropriate Penalty For the Violation.

The Department is charged with the responsibility of administering the statutes and regulations governing alcoholic beverages, beer, and wine. S.C. Code Ann. § 61-2-20 (2009). Pursuant to S.C. Rev. Proc. #13-2, the penalties for offenses related to beer and wine are \$500.00 for the first offense, \$1,000.00 for the second offense, forty-five day suspension for the third offense, and revocation for the fourth offense.

In the three (3) years preceding the Violation, the Permittee committed two (2) previous violations on its seven-day off-premises beer and wine permit. Therefore, the Violation constitutes the third violation on the Permittee's beer and wine permit within a three-year period, which results in a forty-five (45) day suspension of such permit.

Conclusion:

If you agree with this Department Determination, you must surrender the permit to begin the service of the forty-five (45) day suspension within thirty days of the date of this Determination to the South Carolina Department of Revenue, P.O. Box 12265, Columbia, SC 29211-9979. By returning the permit to the Department, you are consenting to the suspension.

Please notify the Department at least ten (10) days prior to when you plan to remit the permit so that your suspension may be processed. If the Department receives the permit without prior notice, you may be without the permit for more than forty-five days.

If you disagree, you may appeal the Determination by requesting a contested case hearing before the Administrative Law Court as set forth in the cover letter attached to this Determination. If you do not request a contested case hearing or surrender the permit, the Department, with the assistance of SLED, will take possession of the permit to enforce the suspension.

June 6, 2016

DEPARTMENT DETERMINATION

Permittee:

BI-LO, LLC
d/b/a BI-LO #5612
PO Box 2209
Jacksonville, FL 32203

Licensed Premises:

BI-LO #5612
1103 N. Main St.
Fountain Inn, SC 29644

Permit No.:

32023029- P7B

SLED Case No.:

54-16-2041

Date of Violation:

August 26, 2016

Matters in Dispute:

1. On August 26, 2016, did an employee or agent of the Permittee violate S.C. Code Ann. Regs. 7-200.4 by permitting or knowingly allowing the sale of beer to a person under the age of twenty-one on the Licensed Premises?
2. Is revocation of the Permittee's seven day off-premises beer and wine permit an appropriate penalty for the Permittee's violation of Regulation 7-200.4?

Determinations:

1. The Permittee knowingly allowed or permitted the sale of beer to a person under the age of twenty-one on August 26, 2016, on the Licensed Premises in violation of Regulation 7-200.4.
2. Revocation of the Permittee's seven day off-premises beer and wine permit is the appropriate penalty for the Permittee's violation of Regulation 7-200.4.

Relevant Facts:

1. The Permittee holds a seven day off-premises beer and wine permit at 1103 North Main Street, Fountain Inn, South Carolina (the "Licensed Premises"). The Permittee held the permit on August 26, 2016.
2. On August 26, 2016, at approximately 12:59 p.m., SLED Special Agents Kevin Tyner and Dena Metzler, along with Fountain Inn Police Department Officers Atwood and Peden conducted an undercover investigation utilizing an Underage Cooperating Individual ("UCI") at the Licensed Premises.
3. The UCI entered the Licensed Premises in an undercover capacity to purchase beer, carrying \$10.00 in State funds and her State of South Carolina issued driver's license. The UCI picked up one (1) twenty-five fl. oz. can of Bud Light Straw-Ber-Rita (the "Beer") and approached the clerk, Lisa Hopper (also referred to, herein, as the "Permittee's employee"), to cash out. Ms. Hopper asked the UCI to see her identification, then entered the information from the identification into the register. The register then requested an override at which time Ms. Hopper requested assistance from a manager. A manager came to the register and entered an override code and at that point Ms. Hopper sold the Beer to the UCI without asking the UCI her age or whether she was over the age of twenty-one.
4. The UCI was nineteen years of age at the time of the above-referenced sale as her birthday is October 24, 1997.
5. After the UCI purchased the Beer, the Agents and Officers entered the Licensed Premises and identified themselves to Ms. Hopper. After informing Ms. Hopper that she sold beer to a minor, Agent Metzler issued the Permittee an administrative violation at the Licensed Premises, pursuant to Regulation 7-200.4 for permitting the sale of beer to a person under the age of twenty-one (the "Violation"). Officer Peden issued a criminal citation to Ms. Hopper for violation of S.C. Code Ann. § 61-4-50 (2009) for the sale of beer to a person under the age of twenty-one.
6. On November 15, 2016, the South Carolina Department of Revenue (the "Department") issued a Notice of Intent to Revoke (the "Notice"). The Notice informed the Permittee that the Department intended to revoke the Permittee's seven day off-premises beer and wine permit.
7. The Department received the Permittee's written protest to the Notice on January 18, 2017.
8. The Violation constitutes the Permittee's fourth administrative violation within a three-year period on its beer and wine permit. On February 26, 2014, December 22, 2015, and February 5, 2016 the Permittee violated Regulation 7-200.4 by knowingly selling or permitting the sale of beer to a person under the age of twenty-one.

Analysis:

I. The Permittee, Through Its Employee/Agent, Permitted Or Knowingly Allowed An Individual Under The Age Of Twenty-One To Purchase Beer On The Licensed Premises.

Regulation 7-200.4 provides:

To permit or knowingly allow a person under twenty-one year [sic] of age to purchase or possess or consume alcoholic liquors, beer or wine in or on a licensed place of business which holds a license or permit issued by the Department is prohibited and constitutes a violation against the license or permit.

A review of the Department's records indicates that BI-LO, LLC, d/b/a BI-LO #5612, holds a seven day off-premises beer and wine permit for the Licensed Premises.

To sustain a violation, the Department must show that (1) the Permittee or its employee (2) permitted or knowingly allowed (3) a person under the age of twenty-one to purchase or possess beer (4) on the licensed premises.

With regard to the first element, a permittee may be held liable for violations of statutes and regulations committed by its agent while pursuing the ordinary business entrusted to him. The permittee is liable even though the violations are committed in his absence and without his knowledge, consent, or authority. See 48 C.J.S. Intoxicating Liquors § 276 (1981). Here, Ms. Hopper, the Permittee's employee and agent, sold the Beer to the UCI while pursuing the ordinary business entrusted to her. Ms. Hopper's act as agent of the Permittee renders the Permittee liable, despite the fact that the Permittee did not sell the Beer to the UCI herself. Accordingly, the first element to sustain a violation is satisfied.

With regard to the second element, the Permittee's employee permitted or knowingly allowed the sale of beer to a person under the age of twenty-one. "Knowingly" includes not only actual knowledge of a fact, but also situations where a person has such information, or the circumstances are such, as would lead a prudent person to form a belief as to the fact, and if followed by inquiry, would have disclosed its character.¹ The circumstances in this case, including the UCI's youthful appearance and casual dress, put Ms. Hopper on notice of the UCI's young age. Additionally, any prudent inquiry, including properly inspecting the UCI's driver's license, would have confirmed the UCI's age and the fact that the UCI was under the age of twenty-one. Accordingly, these facts satisfy the second element.

¹See S.C. Dep't of Revenue v. Odom, Docket No. 97-ALJ-17-0368-CC, 1997 WL 807860 (Nov. 1, 1997) (citing State v. Thompkins, 263 S.C. 472, 211 S.E.2d 549 (1975); Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943); and Daley v. Ward, 303 S.C. 81, 399 S.E.2d 13 (Ct. App. 1990).

In the present matter and with regard to the third element, Ms. Hopper's failure to properly inspect the UCI's identification resulted in the unlawful sale of beer to an underage person. The UCI's driver's license clearly indicated that she was nineteen years old at the time of the sale. Ms. Hopper would have been able to easily and properly determine that fact had she properly inspected the UCI's identification. Furthermore, the circumstances in this case, including the UCI's youthful appearance and casual dress, combined with the register refusing the sale without a manager override put Ms. Hopper on notice of the UCI's young age. Thus, these facts satisfy the third element.

Finally, the fourth element is satisfied as well. The facts of this case clearly indicate that the Permittee's employee sold the Beer to the UCI on the Licensed Premises. Both Officer Peden and SLED Agent Metzler issued criminal and administrative violations, respectively, at 1103 North Main Street, Fountain Inn, South Carolina. Because this is the address of the Permittee's establishment and because the Violation occurred at the same location, it is clear that the sale of beer to the UCI by the Permittee's employee occurred on the Licensed Premises, satisfying the fourth and final element.

The facts in this matter establish that the Permittee's employee permitted or knowingly allowed a person under the age of twenty-one to purchase or possess beer on the Licensed Premises. Therefore, the Permittee violated Regulation 7-200.4 by selling beer to a person under the age of twenty-one on the premises licensed to sell beer or wine.

II. Revocation of the Permittee's Seven Day Off-Premises Beer and Wine Permit Is The Appropriate Penalty For the Violation.

The Department is charged with the responsibility of administering the statutes and regulations governing alcoholic beverages, beer, and wine. S.C. Code Ann. § 61-2-20 (2009). Pursuant to S.C. Rev. Proc. # 13-2, the penalties for offenses related to beer and wine are \$500.00 for the first offense, \$1,000.00 for the second offense, forty-five day suspension for the third offense, and revocation for the fourth offense.

In the three (3) years preceding the Violation, the Permittee committed three (3) previous violations on its seven day off-premises beer and wine permit. Therefore, the Violation constitutes the fourth violation on the Permittee's beer and wine permit within a three-year period, which results in a revocation of such permit.

Conclusion:

If you agree with this Department Determination, you must surrender your Seven Day Off Premises Beer and Wine Permit by returning it to the South Carolina Department of Revenue, PO Box 12265, Columbia, SC 29211-9979, within thirty days of the date of this Determination. By returning the permit to the Department, you are consenting to the revocation.

If you disagree, please appeal the Department Determination within the thirty day period noted in the attached cover letter.

If you do not request a contested case hearing or surrender your permit, the Department, with assistance from SLED, will take possession of your permit in order to enforce the revocation. By returning your permit you are consenting to the revocation.

April 6, 2017

APPEARANCES

Elizabeth W. Shields, Esquire
Lauren Acquaviva, Esquire
South Carolina Department of Revenue
300-A Outlet Point Boulevard
Columbia, South Carolina 29211
Attorneys for South Carolina Department of Revenue

Zoe C. Sanders, Esquire
The Sanders Law Firm of South Carolina, LLC
1513 Hampton Street
Columbia, South Carolina 29201
Attorney for Bi-Lo, d/b/a Bi-Lo #5612

Also Present:
Edie Moran, Judicial Law Clerk
Mike Grizzle, Bi-Lo store manager
Tommy Brown, Bi-Lo district manager
Keith Morton, Fountain Inn Chief of Police

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(The original Exhibits were retained by The Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 CALL TO ORDER:

2 **THE COURT:** Good afternoon, everyone. I'm Phil
3 Lenski, the Administrative Law Judge to oversee
4 this -- these two cases and these are the cases
5 of South Carolina Department of Revenue,
6 Petitioner versus Bi-Lo, LLC d/b/a Bi-Lo number
7 5612, Respondent. Docket numbers 17-ALJ-17-
8 113-CC and 16-ALJ-17-0221-CC. And it's the 2nd
9 of November 2017. On behalf of the Department
10 today we have Ms. Shields and Ms. Acquaviva, is
11 that right?

12 **MS. SHIELDS:** Yes.

13 **THE COURT:** How are you?

14 **MS. SHIELDS:** Good, how are you? Good morning ---

15 **THE COURT:** Good.

16 **MS. SHIELDS:** --- or good afternoon.

17 **THE COURT:** That's right.

18 **MS. SHIELDS:** Yeah.

19 **THE COURT:** And then Ms. Sanders for Respondent.

20 How are you?

21 **MS. SANDERS:** Nice to see you.

22 **THE COURT:** Good to see you too. And we're gonna
23 just -- my understanding is we're just gonna
24 kind of hear both of them just kind of
25 together. I realize that we're dealing with



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1 two -- two cases, but they're ---

2 MS. SANDERS: Yes, Your Honor. I think it'll be
3 pretty easy.

4 THE COURT: Okay. All right. Do we have any
5 preliminary matters we need to take up or are
6 we ready to go?

7 MS. SHIELDS: I think we're ready to move forward,
8 Your Honor.

9 THE COURT: Okay. All right. Opening statements?

10 OPENING STATEMENTS BY MS. SHIELDS:

11 MS. SHIELDS: Yes, Your Honor. Thank you, may it
12 please the Court, Your Honor. Your Honor, as
13 you had already stated we're here today on two
14 separate occasions. Specifically, on February
15 5th, 2016 and on August 26th, 2016 two
16 different employees of the Respondent, Bi-Lo in
17 Fountain Inn, sold alcohol to an underage
18 person on the licensed premises in violation of
19 Regulation 700 -- I'm sorry, 7-200.4, and the
20 parties have stipulated to the facts of the two
21 separate violations and I believe the Court has
22 those. They were mailed to the Court
23 previously. Would the Court ---

24 THE COURT: I have -- I have both of those ---

25 MS. SHIELDS: Okay.



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1 THE COURT: --- stipulations.

2 MS. SHIELDS: Would you like us to read those into
3 the record?

4 THE COURT: If -- let's just have those made a part
5 of the record unless there's a ---

6 MS. SANDERS: No objection.

7 THE COURT: Okay. There being no objection to that,
8 let's just go ahead and have those ---

9 MS. SHIELDS: Thank you, Your Honor.

10 THE COURT: --- made a part of the record without
11 having to read it.

12 MS. SHIELDS: Thank you. So, Your Honor, the sole
13 issue to be decided today is the appropriate
14 penalty for these two violation. And as you're
15 aware, the Department has penalty guidelines
16 that we have put in place regarding these
17 violations for sale to minors and other
18 violations under our regulations.
19 Specifically, for to sale to minor violations
20 our guidelines state that a fourth violation of
21 a sale to minor results in a 45 day suspension
22 and a fourth violation of a sale to minor
23 results in a revocation of the license or
24 permit. And as we've stipulated in our facts
25 there was a first violation for a sale to minor



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1 on February 26th, 2014 and a second violation
2 for a sale to minor on March 4th, 2016. And
3 again, these guidelines for accounting purposes
4 are all within that three year period so all of
5 these violations have occurred within three
6 years. So, Your Honor, pursuant to these
7 guidelines we issued DDs requesting a 45 day
8 suspension for the third violation and
9 revocation for the fourth violation. So, Your
10 Honor, it's the Department's position that we
11 would request that you uphold the Department
12 determinations. Thank you.

13 **THE COURT:** Thank you.

14 **OPENING STATEMENTS BY MS. SANDERS:**

15 **MS. SANDERS:** May it please the Court.

16 **THE COURT:** Yes.

17 **MS. SANDERS:** My colleague has acc- -- has
18 accurately stated what we have stipulated to.
19 This case is about what would be a just penalty
20 for these third and fourth violations. We will
21 show that a 45 suspension or a revocation would
22 have a drastic monetary impact on Bi-Lo. We
23 will also show that Bi-Lo has taken strong
24 steps of training, enforcement of training,
25 cash register systems that are extremely



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1 expensive and it has done everything possible
2 to prevent these violations from happening, but
3 with -- even though with all the technology the
4 people running that technology are human and
5 often they are young. Bi-Lo is an employer in
6 Fountain Inn, a small town, and it makes a
7 difference in the community, it makes a
8 difference in the State. What you will see
9 when my witnesses take the stand at a 45 day
10 suspension or a rev- -- revocation would not
11 only harm Bi-Lo as corporation, but will
12 actually harm the employees and the community
13 of Fountain Inn.

14 **THE COURT:** Thank you. All right. Ms. Shields?

15 **MS. SHIELDS:** Your Honor, the Department doesn't
16 have any witnesses.

17 **THE COURT:** Okay. So this -- basically the
18 stipulation represents the Department's case,
19 is that ---

20 **MS. SHIELDS:** Correct, Your Honor.

21 **THE COURT:** --- correct? All right.

22 **MS. SHIELDS:** Thank you.

23 **THE COURT:** Okay. Ms. Sanders?

24 **MS. SANDERS:** Yes, thank you. I'll call my first --
25 well, let me first introduce everybody, which



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1 I meant to do in my opening statement. These
2 -- these are all my witnesses from Bi-Lo. Mike
3 Grizzle, who was the Store Manager at the time
4 ---

5 **THE COURT:** Hello, sir.

6 **MS. SANDERS:** --- at the store in Fountain Inn and
7 then we have Tommy Brown, who's the District
8 Manager from Bi-Lo ---

9 **THE COURT:** Hello, sir.

10 **MS. SANDERS:** --- and separate from Bi-Lo we have
11 the Chief of Police from Fountain Inn and his
12 name is Keith Morton.

13 **THE COURT:** All right. Hello, sir.

14 **MS. SANDERS:** So my first witness is Mr. Grizzle.
15 You can take the stand, sir.

16 **THE COURT:** Raise your right hand to be sworn in by
17 the court reporter before you be seated, sir.

18 **MIKE GRIZZLE,** having been duly sworn, testifies as
19 follows:

20 **THE COURT:** Please be seated, sir.

21 **MR. GRIZZLE - DIRECT EXAMINATION BY MS. SANDERS:**

22 **Q:** Mr. Grizzle, where do you live?

23 **A:** I live in Seneca, South Carolina.

24 **Q:** And what's your educational background?

25 **A:** Graduated from Dorman High School in



1 Spartanburg and then went two years to USC
2 Spartanburg.

3 Q: And what's your occupation?

4 A: I'm a store director -- a store manager with
5 Bi-Lo.

6 Q: And what are your duties as a store manager at
7 Bi-Lo?

8 A: I am over all the sales, profits, losses, all
9 the -- and my -- all my teammates, employees,
10 all their training, just the general operation
11 of the store.

12 Q: Okay. And were you the store manager when the
13 violations took place that we are hearing about
14 today?

15 A: Yes, ma'am, I was.

16 Q: Okay. And as part of your duties you mentioned
17 sales?

18 A: Correct.

19 Q: As part of your overseeing sales does that
20 include that sale of beer and wine?

21 A: Yes, ma'am, it does.

22 Q: Okay. How many years have you been with Bi- --
23 with Bi-Lo?

24 A: 18.

25 Q: Okay. And are you familiar with the day-to-day



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- 1 operations of Bi-Lo in Fountain Inn?
- 2 A: Yes, ma'am.
- 3 Q: Okay. Are you a -- does Bi-Lo have a policy
4 related to beer and wine?
- 5 A: Yes, ma'am.
- 6 Q: Is that policy written down?
- 7 A: Yes, ma'am.
- 8 Q: I'd like to introduce as Exhibit 1, the policy
9 if you could -- if I could show you this.
- 10 MS. SANDERS: And I believe I've already given this
11 Department of Revenue ---
- 12 MS. SHIELDS: I've got it.
- 13 MS. SANDERS: You have a copy?
- 14 MS. SHIELDS: Uh-huh.
- 15 MS. SANDERS: Okay.
- 16 MS. SHIELDS: Let me -- well, let me just ---
- 17 Q: What is -- what is that document?
- 18 A: This is our policy on age restricted sales.
- 19 Q: I'm sorry, say that again.
- 20 A: This is our policy on age restricted sales.
- 21 Q: Okay. And -- all right, is this policy given
22 to all employees at Bi-Lo?
- 23 A: Yeah -- yes, ma'am. Or especially anyone that
24 runs the cash register.
- 25 Q: Okay. And I'd like to mark as Exhibit 1 and



1 admit into evidence the Age Restricted Sales
2 Policy.

3 (Respondent's Exhibit Number 1 was marked for
4 identification purposes.)

5 MS. SANDERS: Your Honor, I didn't give you a copy.

6 THE COURT: That'd be nice, thank you very much.

7 And you have moved this into evidence?

8 MS. SANDERS: Yes, sir.

9 THE COURT: Any objection?

10 MS. SHIELDS: No objection.

11 THE COURT: All right. There being no objections,
12 it's Exhibit 1, right?

13 (Respondent's Exhibit Number 1 was admitted into
14 evidence.)

15 Q: Just for the record, I'd like you to read so we
16 can get a little bit of a taste of this policy,
17 if you could just read the beginning paragraph.

18 A: Okay. Southeast Grocers, Bi-Lo, prohibits the
19 sale of age restricted products to persons
20 under the age permitted by applicable laws and
21 regulations. The manager on duty or service
22 area manager is responsible for monitoring the
23 sale of age restricted products at front end.
24 The store director must ensure that all
25 associates who operate a point of sale terminal



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1 have completed the appropriate cashier training
2 before being scheduled to work on a point of
3 sale terminal. For purchase that include age
4 restricted terms it is the company policy to
5 request ID from customers that appear under the
6 -- appear to be under the age of 40.

7 Q: And does that document go into just further
8 details about age restricted sales?

9 A: Yes, ma'am.

10 Q: Okay.

11 MS. SANDERS: I think the Court can see it for
12 itself. No need to read any further, Your
13 Honor. Would that be correct?

14 THE COURT: That -- there would be no need for ---

15 MS. SANDERS: No, thank you.

16 THE COURT: --- the witness to do that. Thank you.

17 MS. SANDERS: Thank you.

18 Q: And what's the consequences to an employee of
19 violating this policy?

20 A: Termination.

21 Q: Okay. And I believe you referenced a terminal,
22 is there another word for that?

23 A: It's just a cash register.

24 Q: Okay.

25 A: Yeah. A POS, Point of Sale.



1 Q: Okay. Can you tell me how employees are
2 trained at Bi-Lo?

3 A: We have a computer based training, the new hire
4 training on -- is computer based, that they
5 have to complete before they actually start
6 work.

7 Q: Okay. That's the computer based training, is
8 there other -- any other form of training
9 besides the computer system?

10 A: Yes, ma'am. Once they do the computer training
11 we actually put them with an experienced
12 cashier and they do on the job training.
13 That's a couple of days, two or three days
14 before we actually put anyone by theirself.

15 Q: So you have the computer based training, you
16 have the on the job, so to speak, training and
17 is there a visual aid that Bi-Lo uses?

18 A: Yes, ma'am. We have a computer based ongoing
19 training that is a -- that is refreshed
20 periodically. Each associate is supposed to
21 take it every day. They carry -- it comes with
22 a variety of operational procedures in our
23 store, in our company.

24 MS. SANDERS: Okay. Your Honor, I would mark as
25 Exhibit 2 this visual presentation that states



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1 what the training is that Bi-Lo employees are
2 shown. If I may show it now, pursuant the
3 Department's objection?

4 MS. SHIELDS: I've already reviewed the video and I
5 don't have any objections.

6 THE COURT: No objections.

7 MS. SANDERS: Okay. Thank you, Your Honor.

8 (Respondent's Exhibit Number 2 was marked for
9 identification purposes.)

10 THE COURT: Go ahead.

11 (Video was played at this time.)

12 Q: Mr. Grizzle, I wanna make one thing clear right
13 now -- oops, sorry.

14 (Video continues playing.)

15 Q: One thing, Mr. Grizzle, I wanna make clear, did
16 I produce this video as -- for litigation?

17 A: No, ma'am. That is -- that is our training.

18 Q: Okay. And then next you mentioned the computer
19 training.

20 A: Yes, ma'am.

21 Q: A test you do, like, to -- this would be
22 Exhibit 3.

23 (Respondent's Exhibit Number 3 was marked for
24 identification purposes.)

25 MS. SANDERS: May I approach, Your Honor?



- 1 THE COURT: Absolutely. Thank you.
- 2 Q: Would you please identify this document for the
3 Court?
- 4 A: This is our ongoing computer based training.
5 Every associate in the store should do it every
6 day that they work and if -- the subject matter
7 will be all pertaining to what job you're
8 actually in. This pertains to underage alcohol
9 or under the age restricted sales because this
10 would show up on a cashier.
- 11 Q: And tell me about -- so they initially, the --
12 the cashiers initially see this video, is that
13 correct?
- 14 A: That's correct. Yes, ma'am.
- 15 Q: And then they take a test?
- 16 A: Correct.
- 17 Q: Okay. And is that test represented on the
18 document that I just handed you which is
19 Exhibit 3?
- 20 A: Yes, ma'am, it is.
- 21 Q: So that's a photo based -- or it's ---
- 22 A: Yeah. This is just a printed ---
- 23 Q: --- it's a printed ---
- 24 A: --- out copy, but it's -- all- ---
- 25 Q: --- it's a printed ---



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1 A: --- all of our training is computer based.

2 Q: Okay. So is it a printout of what would appear
3 on the screen ---

4 A: Yes, ma'am ---

5 Q: --- when they were taking ---

6 A: --- it is.

7 Q: --- the test?

8 A: Yes, ma'am.

9 MS. SANDERS: Okay... Okay. Now, I wanna talk about
10 if you would allow, Your Honor, the facts
11 specific to the violations at issue. First,
12 I'm gonna start with the third violation.

13 Q: All right. Mr. Grizzle, are you familiar with
14 what happened in the third violation?

15 A: Yes, ma'am.

16 Q: Okay. What happened?

17 A: The -- that was Lisa Hopper. And Lisa Hopper
18 scanned the alcohol ---

19 Q: No, no, no. That's the fourth.

20 A: The fourth.

21 Q: The third violation is Angela Pilas.

22 A: Angela Pilas. Angela Pilas scanned the -- the
23 alcohol. The register always prompts for a
24 date of birth, the date of birth came up and
25 she keyed in the wrong date of birth. She just



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037

1 keyed in the wrong date of birth.

2 Q: And then what happened?

3 A: Then of course it was a, what we call an
4 alcohol screen. The Fountain Inn Police
5 Department came in or SLED came in and told us
6 that we had a teammate sell alcohol to a -- to
7 a minor and ---

8 Q: And what -- I'm sorry.

9 A: --- oh, I'm sorry, so of course we -- we called
10 the teammate into the office and told them that
11 they were terminated for violation of company
12 policy.

13 Q: Okay. Okay. If we could talk about the fourth
14 violation.

15 A: The fourth viol- ---

16 Q: Can you tell the Court what happened with
17 regard to the fourth violation?

18 A: The fourth violation, Lisa Hopper scanned the
19 alcohol. Again, it came up for the ID, she
20 either keyed in or scanned the date of birth,
21 I'm not sure which one she actually did. The
22 register came up and said not for sale, which
23 showed it it was for a minor or she had
24 actually made a mistake keying in the date of
25 birth, which she hadn't, she'd keyed in the



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1 correct date of birth, it came up not for sale.
2 When it does that either a manager or a service
3 center supervisor has to come out and -- and
4 clear it. You're supposed to -- they should
5 have clear it out and told him that they can't
6 sell it because they're underage. This young
7 man Collin Banks did not look at the ID, he did
8 not ---

9 Q: Now, who is Collin Banks?

10 A: Collin Banks was the service center associate
11 at the time, which it would -- a service center
12 associates have the authority to override
13 issues at the cash register.

14 Q: Now, how did -- did Ange -- not -- did Lisa
15 Hopper -- how did it make the leap from the
16 cash register showing you couldn't make a sale
17 to Collin Banks doing something? I mean, how
18 did Collin Banks end up going over to that
19 cash register?

20 A: Because once -- once it comes up not for sale

21 ---

22 Q: Uh-huh.

23 A: --- someone has to come out and find out what
24 the problem is, you can't go any further in a
25 transaction until ---



- 1 Q: Okay. Did Lisa Hopper do anything to cause
2 Collin Banks to -- to be aware of the
3 situation?
- 4 A: Yeah. She called him to -- she called him over
5 there and showed him the not for sale on the
6 terminal.
- 7 Q: Okay. And was that what ---
- 8 A: And she had the driver's license in her hand.
- 9 Q: Okay. Did that comply with Bi-Lo policy for
10 her to call a manager when she didn't know
11 what to do?
- 12 A: Yes, ma'am. She did exactly what she should
13 have done.
- 14 Q: Okay. Now, what did Collin Banks do?
- 15 A: He overrode it.
- 16 Q: Okay. Was that a violation of Bi-Lo policy?
- 17 A: Yes, ma'am.
- 18 Q: Okay. What happened to Collin Banks as a
19 result of him overriding the system?
- 20 A: He -- his -- his employment was terminated.
- 21 Q: Okay. Now, was Lisa Hopper terminated?
- 22 A: No, ma'am.
- 23 Q: And why not?
- 24 A: Lisa followed our policy, she didn't do
25 anything wrong. She -- she did exactly what



1 she should have done. She didn't -- she didn't
2 violate a policy.

3 MS. SANDERS: May I beg the Court's indulgence for a
4 minute?

5 THE COURT: Absolutely.

6 MS. SANDERS: Okay. At this time, Your Honor, I
7 want to submit into evidence Exhibit 4.

8 (Respondent's Exhibit Number 4 was marked for
9 identification purposes.)

10 MS. SANDERS: I apologize, Your Honor, I'm just
11 trying to get these straight. Okay. This is
12 a -- well, I'm not gonna state what they are.
13 I'm gonna let -- these are all the same
14 exhibit. I have a broken foot, Your Honor, I
15 apologize for the balance issue. May I
16 approach, Your Honor?

17 THE COURT: Please.

18 Q: This is Exhibit 4. Could you tell --- not been
19 admitted yet, but I'm proposing to be admitted.
20 Can you tell the Court what those documents
21 are, if you could look at each of the four
22 pages? Do you need your glasses?

23 A: I do. Yes, ma'am.

24 Q: Do you have your gla- -- here they are.

25 A: Sorry.



- 1 THE COURT: That's all right. I've got mine here if
2 you need mine.
- 3 Q: Is that your -- is this your glasses?
4 A: It is.
- 5 Q: They have no -- okay.
- 6 A: Yep, they have no ears.
- 7 Q: That's good for people that don't have any
8 ears.
- 9 A: This is -- this is an employee record showing
10 the reason for their termination. This is
11 their actual termination showing on Angela
12 Pilas, it's showing the reason why she was
13 terminated.
- 14 Q: Okay. So the first employee was Angela Pilas?
15 A: Correct.
- 16 Q: Okay. And who's the second docu- -- who is the
17 second documentation of termination about?
18 A: Collin Banks.
- 19 Q: Okay. And who's the third documentation?
20 A: Brittney Major.
- 21 Q: And who's Brittney Major?
22 A: Brittney Major was a young lady that committed
23 another violation of age restricted sales.
- 24 Q: So is that leading up to -- is she one of the
25 ones that lead up to the ones at issue today,



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042

1 being a third ---

2 A: Yes, ma'am.

3 Q: --- and a fourth?

4 A: She is, yes, ma'am.

5 Q: Was she the second one or the first one or do
6 you not know?

7 A: The second one.

8 Q: Second one. And what is the last document?

9 A: Trayvis Densmore.

10 Q: And how is Trayvis Moore (sic) related to ---

11 A: Pardon me?

12 Q: How is Trayvis Moore's (sic) documentation of
13 termination related to what we're discussing
14 today in the courtroom?

15 A: Because he also violated the policy and was
16 terminated for that.

17 Q: Okay. And what violation was he?

18 A: The first one.

19 Q: Okay. The first?

20 A: Yes, ma'am.

21 Q: So Trayvis Densmore was the first, is that
22 correct?

23 A: Correct.

24 Q: And Brittany Major was the second?

25 A: Correct.



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043

1 Q: And Collin Banks was the third?

2 A: Collin and Lisa Hopper, a combination.

3 Q: And Lisa Hopper?

4 A: Yes, ma'am.

5 Q: Okay. And who's the fourth? No, I'm sorry, I
6 got it all ---

7 A: Collin Banks and Lisa Hopper was the fourth,
8 Angela Pilas was the third.

9 MS. SANDERS: We propose, Your Honor, this, these
10 documents being admitted to evidence and I've
11 sent -- shown the Department of Revenue a copy
12 and there's your copy.

13 THE COURT: All right. Any objection from the
14 Department?

15 MS. SHIELDS: I don't have an objection, Your Honor.
16 I just don't have a copy of one for Trayvis
17 Moore.

18 MS. SANDERS: Oh, sorry. Okay.

19 THE COURT: All right. So without objection Exhibit
20 4 is admitted and you've got your copy, is that
21 right?

22 MS. SHIELDS: Correct, Your Honor. Thank you.

23 THE COURT: Okay. Excellent.

24 (Respondent's Exhibit Number 4 was admitted into
25 evidence.)



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044

1 Q: Okay. Why isn't there a termination for Lisa
2 Hopper?

3 A: Again, Lisa, we felt, the company -- she didn't
4 violate any company policy.

5 Q: And why is that?

6 A: Because when she scanned the alcohol it came up
7 not for sale. She did the appropriate thing,
8 she called someone that had the authority to
9 decline or override it to find out what the
10 problem was and get it corrected and the young
11 man, Collin Banks, just made the wrong
12 decision, but Lisa Hopper didn't do anything
13 wrong.

14 Q: Is there anything you wanna tell the Court in
15 additionally to what I've asked you?

16 A: Yes, Your Honor. We -- we -- we've always
17 tried to follow and Bi-Lo has always tried to
18 be a good member of the community. I mean, we
19 -- we never had any intention of doing any kind
20 of under age sale of anything to anyone. I
21 mean, we have children, we've got good
22 relationship with the police department, with
23 the community and -- and we feel like we do
24 everything that we can to -- to prohibit that
25 from happening, but you're dealing with 16, 17,



1 18 year old kids that are just gonna make
2 mistakes sometimes and that's what -- that's
3 what they did, they made mistakes.

4 Q: Mr. Grizzle, I'm finished with your testimony
5 and of course the Department of Revenue want's
6 to ask you some questions now.

7 **MR. GRIZZLE - CROSS-EXAMINATION BY MS. SHIELDS:**

8 Q: Thank you. You've been with Bi-Lo for 18 years
9 you said?

10 A: Yes, ma'am.

11 Q: Okay. And you already said that you were the
12 store manager at the time of both of these
13 violations?

14 A: Yes, ma'am.

15 Q: Okay. Now the third violation with -- who was
16 that, Angela Pilas, you said that she typed in
17 the wrong date of birth ---

18 A: Correct.

19 Q: --- is that right? But you also said that --
20 let me try and get a time line of how that
21 happened. So the violation occurred, SLED came
22 in and informed you of the violation?

23 A: I wasn't there.

24 Q: Okay.

25 A: My -- the manager on duty at the time called me.



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046

1 and I went there and met the -- met the police
2 officer there.

3 Q: Okay. So you came to the store?

4 A: Yes, ma'am.

5 Q: And then is that when you took Ms. Pilas into
6 the office and terminated her?

7 A: Yes, ma'am.

8 Q: Okay. How did you know that she typed in the
9 wrong date of birth?

10 A: Because it -- it cleared the sale.

11 Q: Okay. But she didn't tell you that she typed
12 in the wrong date of birth?

13 A: Well, that's the only thing she could have done
14 because it ---

15 Q: Do you know ---

16 A: --- no one -- no one overrode it.

17 Q: --- do you know what date of birth she used?

18 A: No, I do not.

19 Q: Do you know if she tried to scan the card, the
20 ID first?

21 A: No, ma'am.

22 Q: Okay.

23 A: No, I know she didn't. I know she -- she
24 handed it to her and she didn't try to swipe
25 the card.



- 1 Q: How do you know that?
- 2 A: Because it was on video.
- 3 Q: On video. Okay. And Colin Banks, he was a --
- 4 you said he was service center associate?
- 5 A: Yes, ma'am.
- 6 Q: Is that the same as a manager, do they have the
- 7 same duties?
- 8 A: Kind of, I mean, he's like the -- again, he had
- 9 the authority to do overrides and -- and take
- 10 care of our front-end or -- or everyday process
- 11 if a manager's off or something else or walking
- 12 the store or helping another customer. I mean,
- 13 he has the authority to go out, he has keys
- 14 where he can override register problems.
- 15 Q: He, as in a service center manager ---
- 16 A: Yes, ma'am.
- 17 Q: --- not just Collin ---
- 18 A: Not just Collin, any service center associate.
- 19 Q: Okay.
- 20 A: Yeah.
- 21 Q: Okay. So do -- do they help in training other
- 22 cashiers on age restricted sales?
- 23 A: Yes, ma'am.
- 24 Q: Okay. How long had Collin Banks been working
- 25 at Bi-Lo?



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048

- 1 A: A couple of years.
- 2 Q: Couple of years?
- 3 A: Yes, ma'am.
- 4 Q: Okay. And so after a couple of years it was --
- 5 well, after a couple of years of working he
- 6 obviously had overridden this sale and allowed
- 7 a sale to a minor, isn't that correct?
- 8 A: Previous?
- 9 Q: No. Like, this is --- after a couple of years
- 10 working this violation happened?
- 11 A: Yes, ma'am.
- 12 Q: On his watch?
- 13 A: Yes, ma'am.
- 14 Q: Okay. And during those two years he was also
- 15 in charge of -- well, helping assist in
- 16 training in age restricted sales?
- 17 A: Yeah, not the whole time. He -- he had not ---
- 18 Q: Not the whole time?
- 19 A: --- the whole time, no.
- 20 Q: But there was a portion of his employment where
- 21 he did?
- 22 A: Yes, ma'am.
- 23 Q: Okay. Now, the video that we watched it says
- 24 that your employees aren't allowed to ask a
- 25 customer their date of birth, is that right?



- 1 A: Correct.
- 2 Q: Why is that?
- 3 A: Because you can be told any date of birth ---
- 4 Q: Right.
- 5 A: --- and if a teenager comes up and -- and he's
- 6 trying to buy alcohol and he says I was born
- 7 3/1/1957 and he's 18 years old.
- 8 Q: But that's why you also have the IDs right?
- 9 A: Yes, ma'am.
- 10 Q: And so asking a date of birth will also, would
- 11 just be a further verification if you had an ID
- 12 and you asked ---
- 13 A: We don't -- we don't ask for date of birth at
- 14 all of customers.
- 15 Q: Not even as further verification ---
- 16 A: No, ma'am.
- 17 Q: --- of their date of birth?
- 18 A: No, ma'am.
- 19 Q: Okay. Now, the cash register, do you have --
- 20 now, that's a scan, you can either scan it or
- 21 then plug in the date of birth?
- 22 A: Correct.
- 23 Q: Okay.
- 24 A: And can -- can I add one thing to the driver's
- 25 license thing?



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1 Q: Okay.

2 A: At the time of the first two violations South
3 Carolina had an issue with their driver's
4 license bar code on the back would not scan,
5 some of them would, 99 percent of them was --
6 wouldn't scan. So if we'd of had that fixed at
7 the time that may not have happened 'cause we
8 could have just zapped the back of it. But at
9 the time South Carolina Driver's license would
10 not scan.

11 Q: Well let's talk about those two violations or
12 the first two violations. So after the first
13 and that was -- let me find that date, that was
14 February 26th, 2014 and you were the manager
15 then?

16 A: Correct.

17 Q: Okay. So after that one, what policies or
18 procedures did you have in place or put in
19 place after that violation?

20 A: Ma'am, we already had polices and procedures.
21 We don't -- we didn't put anything different in
22 place, we just reinforced it to everybody.

23 Q: Uh-huh.

24 A: You know, you've got to check -- you've got to
25 check ID. You can't -- you've got to be



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1 careful when you enter the date of birth. We
2 got -- the policies and procedures are there.

3 Q: Uh-huh.

4 A: We just reenforce them.

5 Q: So after the second violation did you put any
6 new policies or procedures in place after the
7 second?

8 A: No, ma'am.

9 Q: Okay. After the third?

10 A: No, ma'am.

11 Q: What about after this fourth one, have you put
12 any new policies or procedures in place?

13 A: No, ma'am.

14 Q: Okay. So the register, there's -- there's
15 obviously a way to bypass the register, right?

16 A: Not on our register, no, ma'am.

17 Q: Not on your ---

18 A: Oh, yeah. I'm -- you have to a -- you have to
19 have a -- I'm sorry, I'm -- you have to have a
20 supervisor key, which only a manager or a
21 service center associate has. You have to come
22 in and physically put the key in, turn it, put
23 in whatever is our employee number, plus we
24 have an override number so that we can track
25 who overrides and does transactions of the



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1 register. So you have to physically put a key
2 in, turn it, put your employee ID and password
3 in.

4 MR. SHIELDS: Okay. So I'm just gonna plug in the
5 iPad. Would you mind if I use that?

6 MS. SANDERS: Okay. What do you wanna do?

7 MS. SHIELDS: I'm just gonna point to something in
8 your Exhibit 2 ---

9 MS. SANDERS: I don't have that on my tablet.

10 MS. SHIELDS: No, I was gonna ask if you can move it
11 so I could ---

12 MS. SANDERS: Oh, move it, yes. I'm sorry.

13 MS. SHIELDS: Just real quick. Thank you. Okay.
14 I'm -- and this is a good bit -- 1, the age
15 restricted policy?

16 MS. SANDERS: Yes.

17 THE COURT: That -- that's Exhibit 1.

18 MS. SHIELDS: Okay. Thank you, Your Honor.

19 Q: So I'm putting up here what's been marked as
20 Respondent's Exhibit 1 and I'm on the second
21 page here so if you could -- are you able to
22 see this?

23 A: I -- I got it.

24 Q: Oh okay, great. So I'm on the top of the
25 second page, age restricted sales to customers



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053

1 over 40. If you could just read that first
2 line for me.

3 A: If the customer appears to be 40 years of age
4 or older associates may bypass the age
5 verification process.

6 Q: Now, when it says associates, are those the
7 managers or the people with the keys that you
8 were just describing or is that anybody?

9 A: Just managers with -- with the -- managers have
10 that descriptions.

11 Q: So the cashier -- the cashier thinks that
12 someone is over the age of 40 ---

13 A: They can't override it.

14 Q: So what do they do?

15 A: They have to call a manager.

16 Q: Okay.

17 A: Or refuse the sale.

18 Q: Or refuse the sale?

19 A: Yes, ma'am.

20 Q: Okay. So I think -- I think this is probably
21 common sense, I think we all know what a Bi-Lo
22 is, it's a grocery store, right?

23 A: Yeah, correct, yes, ma'am.

24 Q: So you sell beer and wine?

25 A: Correct.



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054

- 1 Q: But you also sell canned goods, frozen goods,
2 chips. Some type, I mean some stores sell
3 cigarettes, I -- I believe.
- 4 A: Yes, ma'am.
- 5 Q: Eggs and dairy products, household items, a
6 variety of things, correct?
- 7 A: Correct.
- 8 Q: Okay. Anything I'm missing?
- 9 A: We sell lottery tickets. Some of our stores
10 have pharmacies.
- 11 Q: Okay. Do y'all have -- do y'all have a bakery?
- 12 A: Yes, ma'am.
- 13 Q: Do y'all have a deli?
- 14 A: Yes, ma'am.
- 15 Q: Okay. Do you know about -- maybe we'll go
16 monthly, what are your monthly sales in alcohol
17 compared to your monthly sales in everything
18 else in the store?
- 19 A: At -- at the Fountain Inn location?
- 20 Q: Uh-huh.
- 21 A: Monthly sale would be about, in alcohol, around
22 \$48,000.
- 23 Q: Okay. What about everything else?
- 24 A: The store averages about \$230,000 a week so
25 that'd be what, 520 -- four weeks?



1 Q: Say that weekly number again.

2 A: \$230,000.

3 Q: And the 48,000 in alcohol is ---

4 A: Is that four week -- you said four weeks,
5 correct?

6 Q: So that's a month?

7 A: That's a month, yes, ma'am.

8 Q: Okay. Your Honor, I don't have anymore
9 questions. Thank you, sir.

10 THE COURT: All right.

11 MS. SANDERS: No re-direct Your Honor.

12 CLARIFICATION BY THE COURT:

13 THE COURT: I had a quick question. Sir, if you
14 could help me out. I'm just trying to
15 understand the position that Mr. Banks held.
16 Did you say his title was a service center
17 associate?

18 A: Yes, sir.

19 THE COURT: Okay. And would it be -- am I correct
20 in assuming that or thinking that that
21 position's somewhere between an associate and -
22 -- and a manager?

23 A: Yes, sir.

24 THE COURT: He's sort of above your average
25 associate ---



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056

1 A: Yes, sir.

2 THE COURT: --- but -- but not quite the manager?

3 A: Yes, that would be correct.

4 THE COURT: And in your store, sir, the one in
5 Fountain Inn, on any shift, how -- how many
6 managers are working there, as a manager not
7 service center associates, but managers?

8 A: I mean, it all depends on what day and what
9 time of day it is.

10 THE COURT: Okay. So it -- so it varies?

11 A: Typically it -- typically during the day you'll
12 only have two.

13 THE COURT: Okay.

14 A: But usually in the evening after 5:00 or 6:00
15 you only have one ---

16 THE COURT: Okay.

17 A: --- and you'll have one and that's why we have
18 a service center associates. They -- we have
19 a service desk where we sell all of our lottery
20 and do Western Unions and stuff such as that
21 and that's what they do and actually help the
22 manager out, again, with overrides and -- and
23 any cash register problems we have, customer --
24 customer issues stuff such as that.

25 THE COURT: Thank you for clarifying that for me.



1 A: Yes, sir.

2 THE COURT: So from that do either parties have
3 questions?

4 MS. SANDERS: No, Your Honor.

5 THE COURT: Okay.

6 MS. SHIELDS: No, Your Honor.

7 THE COURT: Okay. Thank you. Sir, you may return
8 to your seat. Thank you very much.

9 MS. SANDERS: I would now like to call to the stand
10 Tommy Brown. Mr. Brown.

11 THE COURT: Mr. Brown, before you sit down if you
12 could just be sworn in by the court reporter,
13 please.

14 TOMMY BROWN, having been duly sworn, testifies as
15 follows:

16 THE COURT: Thank you, sir. Please be seated.

17 MR. BROWN - DIRECT EXAMINATION BY MS. SANDERS:

18 Q: Mr. Brown, where are you from?

19 A: I am from Greenville, South Carolina.

20 Q: And what is your educational background?

21 A: Some technical college and a little bit of
22 Cornell University.

23 Q: And what's -- what's your occupation?

24 A: Retail.

25 Q: And where do you work?



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- 1 A: I work for Bi-Lo.
- 2 Q: What is your position at Bi-Lo?
- 3 A: District manager.
- 4 Q: Now, as a district manager what are your
5 duties?
- 6 A: Oh, we have duties of the -- I actually direct
7 17 stores. My duties are number one, to make
8 sure we're selling and serving our customers
9 safely, that's in a facets and of course take
10 care of our associates and accounting assets.
- 11 Q: And how many years have you been with Bi-Lo?
- 12 A: 38 years.
- 13 Q: Do you know where Bi-Lo was first incorporated?
- 14 A: Yeah, that's in Maudlin, South Carolina.
- 15 Q: Okay. So it's a local corporation?
- 16 A: Yes, ma'am.
- 17 Q: Okay. Of course it has since been -- since
18 been bought, but it was -- is that true?
- 19 A: That is correct. Several times.
- 20 Q: Okay. How many employees does Bi-Lo have in
21 the State of South Carolina and I realize it
22 could change ---
- 23 A: In the State of South Carolina there -- there's
24 approximately, you know, we operate now in
25 three states which is Georgia, North Carolina,



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1 South Carolina. And so approximately total, I
2 don't exactly know the number for South
3 Carolina, but we employee about 10,300 and some
4 few associates in those three states.

5 Q: Okay. And how many people in the Fountain Inn
6 store are employed?

7 A: Approximately 58.

8 Q: Okay. Does Bi-Lo pay minimum wage?

9 A: Or above, yes.

10 Q: Okay. Does Bi-Lo offer healthcare and
11 retirement of benefits for employees?

12 A: We offer healthcare to full-time and part-time
13 teammates, employees I should say, and we do --
14 we don't have a retirement plan, we do have a
15 401k match.

16 Q: Okay. What is, and I believe Department of
17 Revenue asked these questions, but I'd like to
18 go over again about the amount of profit and
19 sales at the store, of alcohol. So what's the
20 amount of sales of beer and wine in the
21 Fountain Inn store gross?

22 A: It's -- it's about ---

23 Q: A week?

24 A: --- it's about five percent a week, which is
25 really approximately about \$12,000 in just



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1 alcohol sales. About -- we got I think -- I
2 think, you know, it's -- it's around 620 people
3 that buy alcohol in our store weekly.

4 Q: Say that again, 600 ---

5 A: It's about 620 people that buy alcohol in our
6 store weekly.

7 Q: Okay. And what's the profit per week?

8 A: I can tell you I operate more on every four
9 weeks, 28 days and I ---

10 Q: Okay.

11 A: --- can tell you it's about \$19,000 profit ---

12 Q: Okay.

13 A: --- for a 28 period, day period.

14 Q: All right. Now, are you aware of what the
15 Department of Revenue is asking for a penalty?

16 A: Absolutely.

17 Q: Okay. And if the Department of Revenue got
18 it's wish and Bi-Lo's, this store's, beer and
19 wine permit was suspended for 45 days what
20 would the loss profits be?

21 A: I can tell you sales loss is gonna be somewhere
22 around \$250,000, which is -- which is an impact
23 to us and profitability wise I -- I'd have to
24 go do that math. I don't exactly have it on
25 the top of my head, that's a concern, but



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1 that's not my largest concern.

2 Q: Okay. And what about -- well, I gave you 45
3 days based on -- and this is some math, you've
4 done it and think about your answer. You can
5 take some look at your notes, but how 'bout if
6 it was two weeks suspended, what would the lost
7 profit be?

8 A: Well, it's gonna be close to \$10,000.

9 Q: How much?

10 A: About \$10,000.

11 Q: Okay. How 'bout three weeks?

12 A: Three weeks you're gonna be about 15 grand.

13 Q: Okay. And four weeks?

14 A: Right at 20 grand.

15 Q: Okay. Now, are you aware of the penalty the
16 Department is requesting for the fourth
17 violation, which is also at issue in this
18 hearing today?

19 A: Yes.

20 Q: Okay. What is that penalty they're seeking?

21 A: I thought it was 45 total?

22 Q: Nope, no. It's revocation of the beer and wine
23 license.

24 A: So we ---

25 Q: For the fourth -- for the fourth ---



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- 1 A: Four ---
- 2 Q: --- violation the Department of Revenue is
3 seeking revocation of the beer and wine
4 license.
- 5 A: Okay.
- 6 Q: Okay. And if the beer and wine license is
7 revoked, what would be the consequences of
8 that?
- 9 A: Well, based on impact of sales and profits it
10 could actually close the store down.
- 11 Q: Okay. And if it's just suspended for a period
12 of days, the beer and -- if the beer and wine
13 license was just suspended for a period of days
14 would anything happen to the employees of the
15 store?
- 16 A: Absolutely. I mean, when you'd lose those type
17 of sales it's gonna cost you somewhere in the
18 neighborhood of 110, 105, 110 hours a week
19 which is 2 1/2 full-time associates so that
20 would particularly dig into their -- their
21 weekly income which they depend on.
- 22 Q: Okay. So is correct to say that because of the
23 loss of profits some employees would not be
24 able to work as many hours?
- 25 A: That's correct.



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1 Q: Okay. And that would cause them to lose
2 income?

3 A: That's correct.

4 Q: Okay. Now, even if the store wasn't closed is
5 it possible that you'd have to terminate some
6 employees if there was a suspension?

7 A: Yes.

8 Q: Okay. Now, what is a -- any other -- what are
9 other -- what is another impact on the store if
10 they're not allowed to sell beer and wine for
11 any period of time? I mean we've talked about
12 what happens to the employees, generally as a
13 store what happens?

14 A: Well, it over a period of time if you do the
15 math like I said we do about five percent in
16 alcohol sales and then you contribute that
17 12,000 in sales to the basket size, the average
18 basket size for people who purchase alcohol is
19 about \$40, which is about another \$24,000 with
20 the impact to the store sales which turns into
21 about a \$30,000, \$36,000 a week impact. So
22 you're definitely gonna lose -- lose average
23 for associates and, you know, it's gonna be an
24 inconvenience to all consumers in Fountain Inn.

25 Q: Okay. But what -- if a customer can't buy



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1 alcohol at your store because the license is
2 suspended ---

3 A: Uh-huh.

4 Q: --- is, does Bi-Lo have any idea what happens
5 to that customer?

6 A: Oh, yeah. They'll go to our nearest competitor
7 which will be Wal-Mart.

8 Q: And how -- and how does that impact the store?

9 A: Well ---

10 Q: A customer going -- excuse me, a customer going
11 to Wal-Mart?

12 A: Oh, it's gonna impact your sales. I mean, like
13 I said to you it's -- it's -- the average sales
14 is \$12,000, but you average a basket size for
15 someone who purchases alcohol is \$40 and so
16 you're figuring there's an additional \$24,000
17 right off the top by losing those 600 and
18 something few customers that are purchasing
19 alcohol in the store so, you know, when you
20 lose them it impacts your sales immediately and
21 then there's a real good chance you don't ever
22 get them back.

23 Q: Are you familiar with an outreach program that
24 involves coordination between Bi-Lo and the
25 University of South Carolina Athletic



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1 Department?

2 A: Yes.

3 Q: Okay. And can you please tell us what that
4 program is where Bi-Lo and the University of
5 South Carolina, the Athletic Department
6 coordinate?

7 A: Well, I don't do it personally, but we have a
8 team that works with the University of South
9 Carolina, we reach out to actually get the
10 University to come out like we did recently
11 with the -- the University of South Carolina
12 Championship Ladies Basketball team, they come
13 to the stores and we put on -- what we really
14 do we'll -- we'll cook out, we'll get the
15 trophies there, people can -- with the team
16 there, cheerleaders there, and it kind of gets
17 the community involvement so people can get
18 the, get an opportunity to meet Dawn, get the
19 opportunity to meet the players, get an
20 opportunity to take pictures with the trophy
21 and just be a part of the community and we do
22 that with all colleges in the operating area.

23 Q: Do you know who Dawn Staley is?

24 A: She's the Head Coach of the Women's Basketball
25 Team at the University of South Carolina.



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1 Q: Okay. Is that the same coach that coached the
2 Carolina wom- -- the Women's Carolina
3 Basketball Team that won the National
4 Championship?

5 A: Absolutely.

6 Q: Okay. And Bi-Lo couldn't have this program if
7 the University of South Carolina's Athletic
8 Department didn't agree to have it?

9 A: That's correct.

10 Q: Okay. And I think you've already said, as part
11 of the program, Dawn Staley actually comes to
12 the stores?

13 A: That's correct.

14 Q: And what's the purpose of having this
15 coordination between the USC Athletic
16 Department and Bi-Lo?

17 A: Well, it's just a marketing thing for sure.
18 You got a lot of fans and it does, as I said
19 earlier, it gives the fans an opportunity to
20 meet the players and the coaches and to be a
21 part of the celebration that they would
22 normally be a part of.

23 Q: Okay. Does this program evidence a respect for
24 Bi-Lo that the US- -- University of South
25 Carolina Athletic Department has?



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1 A: Yes.

2 Q: Okay. Is there documentation of this program?

3 A: I don't have it, but I'm sure they've got it.

4 Q: Okay. Is there some sort of visual aid that
5 shows this program and ---

6 A: Yes.

7 Q: --- working?

8 A: Yes.

9 Q: Okay. I'd like to introduce into evidence now
10 the video that he was just discussing which
11 would be --- Madam Court Reporter, I'm sorry,
12 I've forgotten the Exhibit it would be, is it
13 5, Exhibit 5?

14 MS. SHIELDS: Your Honor, I believe he's already
15 testified to Dawn Staley and her involvement
16 with Bi-Lo and USC's involvement and so I think
17 the video at this point would be cumulative and
18 so I would object as it's cumulative evidence
19 at this point.

20 THE COURT: Okay and thank you. I'm gonna go ahead
21 and allow it though.

22 MS. SHIELDS: Thank you, Your Honor.

23 (Respondent's Exhibit Number 5 was marked for
24 identification purposes.)

25 MS. SANDERS: Sorry. I beg the Court's indulgence.



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1 THE COURT: Certainly.

2 (Video Was Played At This Time)

3 Q: Who is -- who is that person that's leading the
4 conversation in the video?

5 A: That's Dawn Staley.

6 (Video Was Played At This Time)

7 Q: Okay. Where, what store is this?

8 A: I'm not a hundred percent sure, I think it's
9 2982 in Columbia. I don't have that territory
10 so I don't know a hundred percent.

11 Q: Okay. What's the name of the store?

12 A: Bi-Lo.

13 (Video Was Played At This Time)

14 Q: As Dawn Staley was leaving the store could you
15 see anything over the door? Oh, that's my
16 Facebook page. Could you see ---

17 A: I didn't -- you'll have to pull it back up I
18 really wasn't ---

19 Q: Okay.

20 A: --- paying attention to it.

21 (Video Was Played At This Time)

22 A: You see our name, Bi-Lo.

23 Q: I'm sorry, what?

24 A: You see our name, Bi-Lo.

25 Q: Thank you. Is there anything else you would



1 like the Court to know related to these
2 violations?

3 A: Yeah. I've been -- like I said, I've been with
4 Bi-Lo for 38 years and I've serving -- selling
5 in the communities for a long time and in the
6 State of South Carolina and actually was over
7 several districts down in the Midlands and I
8 also had North Carolina area for quite a while
9 and, you know, our biggest thing that we look
10 at for, I know we -- we're a retain business,
11 but the main thing we try to do is operate to
12 serve our community and make sure we're serving
13 safe products and that we're abiding by the
14 laws, we always have. Unfortunately some
15 situations things like this do take place and
16 I don't think it's because of lack of training.
17 You know, I've dealt with young -- young folks
18 all my life, I have children that make bad
19 decisions and a lot of people make bad
20 decisions, it doesn't make them bad people, and
21 it doesn't make them -- make you feel like or
22 they're doing are wrong things. They're trying
23 to do the right things, just make bad decisions
24 in life and -- and I hate to penalize, like, I
25 done in my stores, I've got 17 stores that I



1 spoke about and you know, I have managers to
2 make bad decisions in some of my store and when
3 they do make those bad decisions we fix them in
4 the store, we fix them one on one and we don't
5 punish the entire community or the store
6 directly or anyone. And my -- my fear of this
7 is is that if -- again, yes, we made a mistakes
8 and we admittedly make mistakes and -- and I'm
9 not gonna say we're not gonna make them again
10 because we're all human. But, you know, I
11 don't wanna punish the community and I really
12 don't wanna punish -- because a lot of the
13 people that work for us in all follow up our
14 stores, you know, with any profit business, you
15 know, that a lot of our cashiers and our
16 baggers and our clerks they -- they, some live
17 in poverty, you'll -- you'll go into some our
18 stores and you'll see quite a few older folks
19 who work in our stores and it's not because
20 they want to. Some yes, some it's because they
21 need the income to help supplement they're
22 lives and that's our biggest fear is our -- is
23 -- is our employees because this could be a
24 major impact on them. It -- because
25 unfortunately yes, some of them you could, I



1 know you could say we could transfer them and
2 then -- but, you know, the biggest case is --
3 but they don't have the transportation to be
4 transferred and my fear is I just, you know, us
5 as a business as a total business will we
6 survive, yes we would, but this goes deeper
7 than a business, this goes -- thinking about
8 the -- the teammates and the families that this
9 could affect because we've had someone make a
10 bad decision.

11 Q: Please answer any questions the Department of
12 Revenue has.

13 A: Okay.

14 **MR. BROWN - CROSS-EXAMINATION BY MS. SHIELDS:**

15 Q: Thank you. So you just said that this would be
16 -- in either of these vio -- penalties whether
17 it's a 45 days suspension or revocation would
18 have an impact on your employees, is that
19 right?

20 A: Yes, ma'am.

21 Q: And whether it's lesser pay, lesser hours or
22 just straight termination, right?

23 A: That is correct.

24 Q: What's the average age of your employees?

25 A: With all the kids up front I'm gonna say,



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- 1 you're gonna be -- you'll get an average age is
2 gonna be mid 30s.
- 3 Q: Okay. So mid 30s and that's for cashiers as
4 well?
- 5 A: That's -- you asked for the entire store ---
- 6 Q: Okay.
- 7 A: --- that would be all ---
- 8 Q: What's the average age of your cashiers?
- 9 A: 16 to probably 50. We have some older -- older
10 ladies who work in the morning.
- 11 Q: Okay. What about stock people?
- 12 A: Stock people average ago ---
- 13 Q: And forgive me if I don't know the exact ---
- 14 A: That's quite all right.
- 15 Q: --- terminology. So stock people?
- 16 A: Average age is probably gonna be 18 to 25.
- 17 Q: Okay. And managers?
- 18 A: Managers, in this particular unit?
- 19 Q: The 17 stores that you run.
- 20 A: Oh, the average age of the managers is gonna be
21 from 25 to 60.
- 22 Q: Okay. Are these younger people, are they in
23 school, like, the 16 to 18 they're in school?
- 24 A: Yes.
- 25 Q: And the early to mid twenties, are they in



1 college maybe?

2 A: Some.

3 Q: Okay. Now, you also said that this would have
4 an impact and maybe the customers would see
5 that you can no longer sell alcohol so they may
6 go to your nearest competitor which is Wal-
7 mart, is that right?

8 A: That is true.

9 Q: Okay. Does Bi -- does this Bi-Lo in Fountain
10 Inn do they sell tires?

11 A: No.

12 Q: Do they sell clothes?

13 A: Some.

14 Q: Some clothes. Do they have a large variety of
15 girl's, boy's ---

16 A: No.

17 Q: --- women's, men's?

18 A: No.

19 Q: Do they have a toy section?

20 A: Seasonal.

21 Q: Seasonal?

22 A: And you asked -- yes, we do have a toy section,
23 yes.

24 Q: Okay. Is it as vast as Wal-Mart's toy section?

25 A: No.



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1 Q: Okay. So there are customers who do already go
2 to Wal-Mart for other things, right?

3 A: That's possible, sure.

4 Q: So why don't you sell those items and keep them
5 from going to Wal-Mart for those things?

6 A: It's not our business.

7 MS. SHIELDS: Okay. I don't have anything else,
8 Your Honor.

9 MS. SANDERS: I have a little re-direct.

10 MR. BROWN - RE-DIRECT EXAMINATION BY MS. SANDERS:

11 Q: Okay. She asked you about the age of the
12 cashiers, the younger -- the younger cashiers
13 and you said 16, some in school, does Bi-Lo
14 take any action with regard to helping those
15 younger cashiers? Do they take any action with
16 regard to training them specifically with
17 regard to selling alcohol?

18 A: Yes.

19 Q: Or beer and wine?

20 A: Yes. We ---

21 Q: And what are those?

22 A: --- we do it with alcohol and we do it with
23 tobacco. Of course you've seen their training
24 or the training we go through, but we do
25 constantly. I -- I challenge all my guys and



1 I think all my store managers challenge their
2 customer service managers and all of their --
3 their co-managers. We understand the impact of
4 these kids and what these kids go through and
5 because we deal with them, we talk to them and
6 we're -- we've become their parents in a lot of
7 situations and we talk to them, try to on daily
8 basis if more towards the holiday and
9 especially getting out of school about peer
10 pressure. They get a lot of peer pressure in
11 school, kids come in and say hey, remember me
12 from school, you better sell me this, you
13 better sell me that. And we -- we talk to them
14 daily about hey, you get in a situation, if you
15 get in a place where you're uncomfortable and
16 somebody's putting pressure on you we actually
17 go to them -- we -- we tell them, you know what
18 take yourself out of that situation, call
19 customer service as the young, as the lady did
20 when she called the customer service clerk over
21 to take yourself out of that situation. Let us
22 make that decision, let's put you in place
23 where you don't have any issues outside or
24 inside the business. And -- and we've been
25 that way -- like I said, I've been there 38



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1 years. I started as a bagger, never run a cash
2 register, they probably didn't trust me, but I
3 never run a cash register. I just worked my
4 way up and -- and that's been a policy of ours
5 all -- all the way through is first and
6 foremost is the kids and the teammates. And
7 again, you know, we get, we do get it. We have
8 kids ourself, we don't wanna sell to kids, we
9 don't wanna sell to anybody that's underage and
10 take the chance of anybody getting hurt. I've
11 seen it. My child's been in an accident that
12 was involving alcohol. We get it and again,
13 it's a -- it's a daily process and if you have
14 children or -- and I apologize 'cause I don't
15 need to say, if you ever worked in the public
16 and you deal with the public on a daily basis
17 which I'm sure you do and you see it all, it's
18 a constant reminder. It's not even just for a
19 16, 17, 18 it's a constant reminder with all of
20 our teammates, let us make those decisions,
21 take yourself out of the equation.

22 Q: Please answer any questions the Department of
23 Revenue has.

24 MR. BROWN - RECROSS-EXAMINATION BY MS. SHIELDS:

25 Q: Just a couple of re-cross, Your Honor. Do you



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1 recall how old Angela Pilas was when she was
2 terminated?

3 A: I do not. I don't think I was the District
4 Director when she -- that took place on that
5 one.

6 Q: Okay. What about -- let me see who these
7 others were, Trayvis Densmore, do you recall
8 how old he was when he was terminated?

9 A: I do not.

10 Q: Do you recall how old Brittany Major was when
11 she was terminated?

12 A: I do not.

13 Q: Okay.

14 A: I don't do those terminations.

15 Q: Okay. No other questions, Your Honor.

16 MS. SANDERS: No, Your Honor.

17 **CLARIFICATION BY THE COURT:**

18 THE COURT: I have -- I have a question Mr. Brown.
19 You're a -- you're a manager of 17 Bi-Lo
20 Stores, right?

21 A: Yes, sir.

22 THE COURT: Okay. And this is, this store's fourth
23 violation ---

24 A: That's correct.

25 THE COURT: --- in three years or within a three



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1 year period of time and this last violation,
2 and I see the record here, involved a clerk who
3 apparently did her job to the -- to the letter
4 of law, she checked the ID, she put the correct
5 information in about the person's birth date.
6 The register indicated that the sale couldn't
7 be made because the person was under age and
8 then it was a higher level employee, not a
9 manager, but a associate person that came over
10 there and override, overrode that and allowed
11 the sale to go through. So your, so as a
12 manager of this facility you know that your --
13 your fail-safe or your check that you had on
14 the -- on the clerks selling the alcohol at the
15 register that there's a problem there and I
16 heard testimony from the manager of the store
17 that since this time noth -- no changes have
18 been made to the store. My concern is, you
19 know, if I'm inclined to decide that the Bi-Lo
20 should keep it's license in some form or
21 fashion, you know, what -- what else can you do
22 to ensure that there will not be further sale
23 to --- to underage persons? I mean four in
24 three years is, you know, by law that's
25 excessive so what more could the store do?



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1 Here with your vast experience, your many years
2 coming up through the ranks of the -- of the
3 store managing 17 stores, you've a got gigantic
4 business in three states with 10,000 employees,
5 God knows how many stores you have, 100s
6 probably. Is there -- is there a thought here
7 from -- from upper level management of how this
8 particular facility could -- could improve it's
9 checks and balances in terms of the sale of
10 underage, sale of products underage persons?

11 A: Yes, sir. I think -- I think when Mike was
12 asked the question it was our policy, have we
13 changed our policies. And he answered correct,
14 we have not changed our policies. We have put
15 systems into place in the registers where there
16 register will not move forward, in the past the
17 register would move forward. She could punch
18 in, they could punch it in and the -- and the
19 actual cashier's could override it, that's been
20 years past, we have -- we have since put it in
21 the system to where that is she, if a person
22 punches in or scans it will shut down. I think
23 you'll recall back where he -- his testimony
24 about the one young lady punched it in and
25 allowed it to go through, she can't do that.



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1 any more. You have to scan it and then if it
2 does not scan properly it will shut it down and
3 that prompts us to go. When I say us it is a
4 member of management or a member and we
5 consider it's, what we call them is service
6 center supervisors. And they work they're way
7 through the system as a cashiers boom, boom,
8 boom and a bookkeeper to where we put them
9 there and we feel comfortable that they can
10 help us run our service center, help us service
11 our customers. And of course, it's again as a
12 human and he can make that error, but we have
13 put procedures in place and I have had, in the
14 last three years I've had beaucoup checks and
15 I think I've lost three teammates for making a
16 bad decision, not repetitive in those stores.
17 Unfortunately this one was, this store maybe --
18 and we do do other things and to improve -- to
19 that is we do say hey, you know, what, you had
20 this situation more than once, you know, it's
21 time for us to retrain our managers and
22 possibly move some managers around or take the
23 people out of position that we don't feel like
24 it's getting through and taking care of our
25 teammates and train them properly.



1 THE COURT: Thank you very much for clarifying that
2 for me, sir. From that do either of the
3 parties have questions of the witness?

4 MS. SANDERS: No, Your Honor.

5 THE COURT: Thank you.

6 MS. SHIELDS: A few follow-up's, Your Honor.

7 THE COURT: Please.

8 MR. BROWN - RECROSS-EXAMINATION BY MS. SHIELDS:

9 Q: This new register system that you were just
10 describing, when was that implemented at the
11 Fountain Inn store?

12 A: It's probably been two years ago.

13 Q: Two years ago? And the retraining that you
14 were just describing, the current manager's at
15 the Fountain Inn store, when did they get this
16 retraining, do you remember?

17 A: I do not. Now, I -- well, no, let me back up
18 for a minute. They actually, they get a
19 refreshers daily on our -- on our system, on
20 the systematic training that they get. We --
21 when -- when the cashier and all of us
22 including myself, I do the this systematic
23 training daily myself and it gives me
24 refreshers on our safety, it gives me
25 refreshers on what do you do. Now, I had to



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1 stop sometimes and really think 'cause I don't
2 run a register a lot. So it's not like it's
3 just a one time deal where they go through this
4 systematic training, they have a refresher
5 course that they have to take everyday and it
6 might be different stuff. Everyday might not
7 be about alcohol and tobacco sales to minors,
8 but it will be there somewhere every 10 or 15
9 days that they get those refreshers as they
10 give refreshers about what do you have -- the
11 -- what -- what item is this, what's the POU's,
12 blah, blah, blah, what our policies are. So
13 there's refreshers continuously through all of
14 our teammates.

15 Q: Have the managers received any other
16 specialized training specifically for the --
17 for the managers as a result of these
18 violations?

19 A: Yes. And I know -- I can't -- I apologize for
20 not knowing the name of it, but I know that all
21 of our CSM's which is our Customer Service
22 Managers have went through training through
23 with the, I believe it was through the Law
24 Enforcement that did the training, I'm not a
25 hundred percent sure, Mike ---



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- 1 MR. GRIZZLE: I can't answer, I'm sorry.
- 2 A: Sorry. I'm just -- it's just habit. But no --
- 3 no, I can't get you the name. Our customer
- 4 service manager's have it. They've been
- 5 certified.
- 6 Q: And when was that, do you recall?
- 7 A: I'd have to ask my secretary, I'm not a hundred
- 8 percent sure.
- 9 Q: I don't have anything else, Your Honor.
- 10 MS. SANDERS: No questions, Your Honor.
- 11 THE COURT: Mr. Brown, thank you so much and you
- 12 can return to your seat.
- 13 MS. SANDERS: As Bi-Lo's last witness we call Chief
- 14 of Police for Fountain Inn. Chief Keith
- 15 Morton, will you please come forward?
- 16 CHIEF KEITH MORTON, having been duly sworn, testifies
- 17 as follows:
- 18 THE COURT: Make yourself comfortable.
- 19 CHIEF KEITH MORTON - DIRECT EXAMINATION BY MS.
- 20 SANDERS:
- 21 Q: Sir, what is your occupation?
- 22 A: I am the lowly Police Chief in Fountain Inn,
- 23 South Carolina.
- 24 Q: How long have you been in Law Enforcement?
- 25 A: 42 years.



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1 Q: How long have you been the Chief of Police for
2 Fountain Inn?

3 A: For -- for Fountain Inn I've been the Police
4 Chief yesterday was my 25th anniversary so 25
5 years and a day.

6 Q: Are you familiar with the Bi-Lo's store in
7 Fountain Inn?

8 A: Yes, ma'am.

9 Q: Could you describe what kind of law enforcement
10 you, as a Chief of Police have done with regard
11 to Bi-Lo and investigating sales of beer and
12 wine to minors?

13 A: Several years ago we started receiving a grant
14 through the State to do purely audit checks on
15 all of the businesses in South -- in Fountain
16 Inn that sell either on premise consumption of
17 alcohol or to go alcohol. And we do the
18 compliance checks for the last several years at
19 least once a quarter and then we'll send
20 someone in with SLED working in concert with
21 them, we will send them in to all those places
22 to see if they will sell to a minor. Our goal
23 is compliance, but we have also offered
24 training to managerial staff and all those
25 businesses as well as point-of-sale staff in



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1 all those businesses. And I can honestly say
2 that Bi-Lo has always participated in those, we
3 have some restaurants and the convenience
4 stores that do not take advantage of that
5 training and have substantially been caught
6 selling to minors. But our goal is the safety
7 of the community and education we feel like is
8 a way to step toward that, not just with a
9 stick, but also with a carrot and try to get a
10 compliance, that's -- that's our goal.

11 Q: Have you ever had an inspection where you sent
12 in an underage person to Bi-Lo and there not a
13 violation, there's not been a violation?

14 A: Yes. As a matter of fact like I said, we do
15 that every quarter and I read every report
16 every morning. I've done that for 25 years and
17 a day to see if -- if we're having repeat
18 offenders, offenses and -- and we have had
19 other places that have the same clerk sell more
20 than one time.

21 Q: When you say other places do you mean Bi-Lo
22 other places or do you mean -- what are you
23 talking about?

24 A: No, I mean other places beside Bi-Lo. We've
25 actually had convenience stores, you know, that



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- 1 don't actually go the steps that Bi-Lo do with
2 termination. We have some I guess that are
3 owned or family works there or whatever we've
4 actually had some locations the same clerk
5 would sell more than one time.
- 6 Q: And in those situations -- so you're saying
7 that -- well, is the -- is the law enforcement
8 so to speak the -- the same as it is with Bi-Lo
9 and some of the bars and on-premises ---
- 10 A: I -- I don't understand what you mean.
- 11 Q: So you're saying that some of the on-premises
12 like a bar ---
- 13 A: Uh-huh.
- 14 Q: --- have repeat violations from the same clerk,
15 is that correct?
- 16 A: That's right.
- 17 Q: Okay. And has that happened with Bi-Lo?
- 18 A: No, because they terminate them.
- 19 Q: Okay.
- 20 A: Understand, we -- we've never had the same
21 person charged more than once at Bi-Lo.
- 22 Q: Okay. And so, let me ask you a question again
23 so just a finite answer to make sure the Court
24 understands, has law enforcement with the City
25 Police in the store in Fountain Inn, sent in



1 undercover minors to Bi-Lo when there has --
2 and it has not resulted in a violation?

3 A: Sure.

4 Q: Okay. So how long have you lived in Fountain
5 Inn?

6 A: I've lived there for 24 years.

7 Q: Okay. And what is your view of Bi-Lo as a
8 corporate citizen of Fountain Inn?

9 A: You know, Bi-Lo has always participated in
10 community related events. I know National
11 Night Out the first several times that we did
12 that I remember, before Mike was transferred
13 from that store and he was down there helping
14 us cook, you know, hamburgers and hot dogs and
15 we try to provide that to -- to build that
16 relationship between members of the community
17 and the -- and the police department. But Bi-
18 Lo was always participating in those things.

19 Q: Okay. Has the atmosphere around the outside of
20 Bi-Lo been one that is a nuisance, are there --
21 are there bad things happening in the parking
22 lot or is it dirty, or?

23 A: No. I mean I -- I don't think so at all I mean
24 we -- we have occasion to go up up there
25 because some of their customers become our



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1 clients. That I know just a couple weeks ago
2 we had some people walk out with alcohol which
3 they shoplifting that we took into custody.
4 But no, I mean they -- they are a good
5 neighbor, they've just made some mistakes.

6 Q: Do you have any opinion based on your 25 years
7 in law enforcement in Fountain Inn and how long
8 did you say lived there?

9 A: I've lived there, I moved there just a couple
10 of months after I was appointed Chief, 24 years
11 and some change.

12 Q: Okay. Would you consider Bi-Lo an asset to the
13 community or a negative to the community?

14 A: Well, that's the only grocery store in Fountain
15 Inn so I think that it's an asset that way and
16 I know that they employ a bunch of kids. You
17 know, we do a lot of things with -- with
18 children and we've seen some that we've -- go
19 through our summer camp for at risk kids that
20 end up working at Bi-Lo and I never go in there
21 that I don't see somebody I -- I know because
22 my wife tends to go because it takes me too long
23 to go in there get milk because everybody wants
24 to stop and talk. But that's the kind of
25 environment that we -- that we hope that we



1 encourage in Fountain Inn, not just with Bi-Lo,
2 but with every store. But we've always had a
3 -- had a pretty good relationship with them.

4 Q: Do you think Bi-Lo's license should be
5 suspended for these violations?

6 A: Well, I mean, you know, that's the Court's
7 decision obviously, but I -- I know that we've
8 had other places that have had multiple
9 offenses that we considered a potential issue
10 with the community and -- and we are concerned
11 about those. But for some reason nothing
12 really happened with those, I don't know if
13 they don't fit the criteria or what because the
14 administrative action and it's pretty much
15 handled through SLED, but the -- the citations
16 they are issued to the people that conduct the
17 point-of-sale for the -- the underage person
18 are prosecuted in municipal court. But I guess
19 it's an administrative action that we really
20 don't have much of a say in and, you know, I
21 was subpoenaed to be here by you today to talk
22 about this and there's some that we have
23 concern with, Bi-Lo's not one of those, but
24 there are some other ones that seem curious to
25 me that they can stay in the business with the



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1 sort of the reputation that they have in the
2 community, but ---

3 MS. SANDERS: Well let me -- under -- under and Your
4 Honor, I defer to you, under Rule 704 of South
5 Carolina Rules of Evidence a lay person which
6 you're not, but I'm not moving him in as an
7 expert, I will if the Court so desires.

8 Q: But under Rule 704 you are permitted to give
9 your opinion about the ultimate decision that
10 you think should happen in this case and of
11 course we must defer (sic) -- defer to the
12 Court, but I am asking pursuant to Rule 704 if
13 you think Bi-Lo's license should be suspended?

14 A: I think it would potentially be devastating to
15 the community because like I say, I see a lot
16 of folks up there and ---

17 Q: So is the answer to your question yes or no?

18 A: My -- you're asking should it be revoked?

19 Q: Yes or no?

20 A: No.

21 Q: Okay. Do you think it should be -- okay. Can
22 you tell me as a member of the Fountain Inn
23 community what it would be like and what impact
24 what it would have if Bi-Lo closed? I believe
25 you just said it'd be devastating, can you talk



1 a little bit more about that?

2 A: That -- well, I mean there -- there's nothing
3 closer to buy groceries except the Wal-Mart in
4 Simpsonville. That's a pretty good drive from
5 where we are. I would hate to have to drive
6 there all the time and I don't know I -- for 42
7 years I guess the first 20 years or so, Judge,
8 I thought that, well, not 20 years. But the
9 first several years I thought everybody should
10 get 30 days in the electric chair, you know,
11 for everybody that violated the law without
12 exception I thought we just didn't have enough
13 prisons. But since then I hope that I've
14 become a bit more understanding and understand
15 that even writing traffic tickets I -- I tell
16 them that writing a warning ticket has the same
17 impact on the people going down the road as --
18 as somebody getting at ticket because people
19 driving by don't know what's going on and I
20 believe that prosecution -- and it's an unusual
21 role that I'm playing today because I believe
22 in prosecution, I do. But I don't believe in
23 persecution and I know that whoever wrote these
24 law are probably a lot smarter than I am, but
25 it -- it would -- it would hurt our community.



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1 And that's really what I'm interested in is --
2 is taking care of the community and making sure
3 everybody's safe and seeing that these kids
4 have a place to work and that some of the --
5 that my biggest passion and I don't like this
6 to get out it hurts my street cred, is with
7 senior adults and with children. And -- and I
8 know that we have occasion to go to Bi-Lo and
9 -- and they help us with our summer camp for at
10 risk kids, you know, feeding those kids for
11 five days and now we have three weeks of that,
12 you know. And our senior citizens they've
13 always helped us with that and that's some
14 people that live by themselves and they depend
15 on that store to go and do shopping. Quite
16 frankly some of them make me nervous driving
17 that far, but I can't imagine what would happen
18 if they had to drive on up and get on Harrison
19 Bridge Road and cross 385. So I'm trying to --
20 I'm trying to figure out what's best for the
21 most people.

22 Q: Thank you. Please answer any questions that
23 the Department of Revenue has.

24 CHIEF KEITH MORTON - CROSS-EXAMINATION BY MS.
25 SHIELDS:



1 Q: Is it Chief Morton?

2 A: You can call me Keith, I've ---

3 Q: Oh.

4 A: --- been Keith longer than Chief.

5 Q: Okay. Well, Keith are you still gonna go to
6 Bi-Lo and buy other things?

7 A: I'm -- I'm sorry?

8 Q: Are you still gonna go to the Bi-Lo in Fountain
9 Inn if they lose their alcohol license?

10 A: I don't drink so of course I would, but I can
11 see how perhaps some people wouldn't, but ---

12 Q: And your wife would still go get ---

13 A: --- I wouldn't.

14 Q: --- milk?

15 A: Yeah. I've got to go get some today.

16 Q: When you were talking earlier about, you know,
17 there's some situations where -- and please
18 correct me if I'm wrong, I don't wanna misstate
19 your testimony, but that there's some places
20 that do sell to minors and that perhaps a
21 suspension or a revocation is more appropriate
22 for those places, is that right?

23 A: Yes.

24 Q: Okay. What makes a sale -- a fourth violation
25 of a sale to minor at this Fountain Inn Bi-Lo



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1 any less serious than a fourth sale to minor at
2 any other location? It's the same violation.

3 A: Well, yeah it -- it is, except that it is
4 except that it's, it doesn't seem like that
5 they take as much precaution as Bi-Lo has taken
6 because I mean the officer that works for me
7 knows that when they go there and if there's a
8 violation made that person is done. I mean
9 they've worked their last minute there, but
10 it's more frustrating for me as an officer, I
11 like to give everybody the benefit of the
12 doubt. But if -- if it's the same place and
13 the same person doing it to me that smacks as
14 like they really don't care and that's the way
15 it appears to me so yeah. I think it --
16 somebody that has the same place and the same
17 people doing it is more concerning than these
18 kids at Bi-Lo that made a mistake, I do.

19 Q: Okay. And you've live in Fountain Inn for how
20 long again?

21 A: 24 years and some change.

22 Q: Okay. I don't have more questions, Your Honor.

23 MS. SANDERS: A little bit of re-direct, Your Honor
24 if I may.

25 THE COURT: Certainly.



1 CHIEF KEITH MORTON - RE-DIRECT EXAMINATION BY MS.

2 SANDERS:

3 Q: The Department of Revenue just asked you again
4 about other locations besides Bi-Lo, or other
5 businesses I should say as opposed to Bi-Lo.
6 Now, have you seen those other businesses
7 whether they're on-premises, that bar or
8 restaurant or off-premises convenient store,
9 have you seen those businesses have repeat
10 violations with the same clerk and have them
11 not suspended or not revoked?

12 A: Yes.

13 Q: Okay. No further questions.

14 MS. SHIELDS: Nothing else, Your Honor.

15 THE COURT: Okay. Chief Morton, thank you so much.

16 MR. MORTON: Thank you.

17 THE COURT: You can return to your seat, sir.

18 MR. MORTON: Thank you, Your Honor.

19 MS. SANDERS: Ready for closing, Your Honor.

20 THE COURT: All right.

21 MS. SANDERS: Unless somebody needs to take a break.

22 THE COURT: Pardon me?

23 MS. SANDERS: Unless you would like to take a break
24 we're ready for closing.

25 THE COURT: Do -- do the parties need a break or are



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1 we good? Do you have anything you wanna ---

2 MS. SHIELDS: No, Your Honor. I'm ready for closing

3 ---

4 THE COURT: Okay.

5 MS. SHIELDS: --- I don't need a break.

6 THE COURT: Okay. Then we're ready, go ahead.

7 MS. SHIELDS: May it please the court, Your Honor.

8 THE COURT: Please.

9 CLOSING STATEMENT - MS. SHIELDS:

10 MS. SHIELDS: Your Honor, the Department is not here

11 -- as it states in our penalty guidelines the

12 Department is not trying to implement these

13 penalties for punishment purposes. As -- as

14 Keith or officer, the officer spoke earlier,

15 just like SLED where these officer's we're here

16 to ensure compliance with the law. We're not

17 here to punish, we're certainly not here to

18 punish community. We're here to ensure

19 compliance with the law and, Your Honor, the

20 fact of the matter is this Bi-Lo in Fountain

21 Inn has failed to comply with the law within

22 the last three years and has for four occasions

23 had a sale to minors. And there's, Your Honor,

24 been proved today that the systems that have

25 been implemented in Bi-Lo can be bypassed and



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1 they have been bypassed not only by a cashier,
2 but by a manager, a manager who was employed
3 with Bi-Lo for two years and during a portion
4 of that two years, not the whole two years, but
5 during a portion of that two years was likely
6 in charge of training other employees on how
7 to, on these age restricted sales and, Your
8 Honor, that's -- that's scary. There's, you
9 know, the new cash registers that the District
10 Manager testified about he testified were
11 implemented about two -- two years ago so
12 around 2015, we're, oh man, already at the end
13 of 2017. But so that was about 2015, there's
14 been three violations since then at this
15 location. And other than that, Your Honor,
16 they -- they haven't given any testimony about
17 implementing any DOR approved training, any
18 secret shopper programs. There's -- there's
19 been no evidence that they've taken an active
20 push after all these violations to change their
21 policies and procedures, that they've relied on
22 the old policies and procedures. The District
23 Manager also testified about the loss in gross
24 income that would happen if they were to have
25 to serve a suspension or a revocation. Your



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1 Honor, I just wanted to show a little
2 inconsistencies in the testimony provided
3 today. I believe the Store Manager testified
4 that there's about 48 -- 48,000 sales in
5 alcohol in a month, but that the District
6 Manager said if they had to serve a 40, just a
7 45 day suspension that they would lose \$250,000
8 in alcohol sales. Well, the math just doesn't
9 add up, 45 days that -- that, where's my math,
10 and of course, Your Honor, I'm so sorry, I'm
11 terrible at math so I had this written down.
12 It would be about \$84,000. And, Your Honor,
13 \$84,000 compared to a gross sales of \$230,000
14 a week, Your Honor, Bi-Lo is a well known store
15 and it's I believe it's nation wide, you know,
16 don't quote me on that, but I've seen it in
17 other states and they -- they sell a variety of
18 other things. So, Your Honor, we would simply
19 ask -- again, we're not here to punish, we're
20 here to ensure compliance with the law and that
21 just hasn't happened in this case. That hasn't
22 happened with Bi-Lo. So we would ask that this
23 court uphold the Department determinations in
24 this matter which again, for the third -- for
25 the third violation we were seeking a 45 day



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1 suspension of the off-premises beer and wine
2 permit and fourth violation a revocation of the
3 beer and wine permit. Thank you, Your Honor.

4 THE COURT: Thank you.

5 CLOSING STATEMENT - MS. SANDERS:

6 MS. SANDERS: May it please the Court. I understand
7 the Department says it doesn't wish to penalize
8 Bi-Lo. There's been ample evidence that
9 there's an unintended consequence apparently.
10 The Department doesn't intend to penalize, but
11 it will be a terrible penalty, it's a
12 possibility the store could close if the
13 license is suspended. It's a possibility if
14 license or suspended or revoked because of the
15 profit center that alcohol is, people come to
16 buy alcohol, if they can't get it there they'll
17 go to other stores. I think there's been ample
18 evidence that shows the damages that would be
19 cause -- caused. The Department of Revenue
20 suggests or says there's been no training after
21 these violations, there's testimony that there
22 was. They changed -- they changed the cash
23 register system and our District Manager
24 testified to that. Now, she also talked about
25 the sales per week, I respect my colleague, but



1 I think she's mixed up, what Bi-Lo testified to
2 was the 230,000, that number was sales for the
3 whole store. What they also testified to,
4 which is critical, is that any suspension will
5 be thousands and thousands of dollars.
6 Obviously revocation, very likely be closing,
7 which would put a lot of people out of work.
8 Bi-Lo is not a convenience store. they are a
9 solid South Carolina corporation. I think
10 there's only one other local corporation which
11 is Sunoco, out of Hartsville. BMW is not
12 local, Boeing is not local. We have two South
13 Carolina corporations that actually grew up
14 here, and I don't think the State of South
15 Carolina, including the Department of Revenue,
16 should hurt those ability to employ South
17 Carolinians. As the Chief of Police stated,
18 other convenience store are getting violation
19 after violation with the same employee, they're
20 not getting suspended. Department of Revenue
21 and SLED are not going after them, and I don't
22 know why, but it's wrong. It's disparage
23 treatment. And I know that -- I'm not
24 suggesting it's a 1983 violation or anything
25 like that, but I think it's very clear based on



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1 the testimony that any suspension is too great
2 of a penalty. If the -- if the beer and wine
3 license is suspended, my understanding is they
4 have to move the alcohol out of the store. I
5 see my colleague saying no, we've had --
6 apparently Bi-Lo's had to do that in the past,
7 so if we don't have to do that, we'll -- we'd
8 appreciate that. Excuse me.

9 (Off the record discussion.)

10 MS. SANDERS: We do -- we -- my -- I'm sorry, there
11 will be -- it will have to be moved out of the
12 store because of the dates on beer. Beer gets
13 old, you can't sell it's when it's -- when it
14 gets past an expiration date. So if the Court
15 feels it must penalize Bi-Lo, then we would ask
16 for a monetary fine, which this corporation can
17 withstand, and not a suspension that would harm
18 the other employees in the store with less
19 hours and less ability to earn money which they
20 need to live and to eat. We had testimony
21 before that Bi-Lo is a responsible citizen, not
22 only in the -- in the community, but how it
23 actually treats its employee -- its employees.
24 Above minimum wage, healthcare benefits. It is
25 -- it is absolutely not in the interest in the



1 State of South Carolina, despite what the
2 Department of Revenue says, or Fountain Inn to
3 have this license suspended. Thank you, Your
4 Honor.

5 **THE COURT:** Thank you. I have a quick question for
6 the depart- -- to the Department. What -- and
7 I'm not going to hold you to this, but -- and
8 because I'm just kind of hitting you with this.
9 Regarding training that the Department offers
10 on this issue of sales of alcoholic beverages
11 to -- the distribution and proper sale of
12 alcoholic beverages. What kind of training
13 does the Department offer?

14 **MS. SHIELDS:** Well, Your Honor, in our -- we do have
15 a revenue -- we have a South Carolina
16 information letter number 14-6 that lays out
17 recognized training programs. They're not
18 offered but they are recognized and approved as
19 appropriate training programs by the
20 Department.

21 **THE COURT:** And that's up to date. Is that
22 information accessible through your website?

23 **MS. SHIELDS:** It is, Your Honor.

24 **THE COURT:** And so it's a list of programs that
25 exist that the Department has reviewed that



1 meet the department -- the department
2 satisfaction's deeming adequate?

3 MS. SHIELDS: Correct, Your Honor. And, Your Honor
4 if I may? DAODAS has also -- we do that in
5 conjunction with DOADAS.

6 THE COURT: It's with DAODAS, okay?

7 MS. SHIELDS: They would know a lot more about that
8 than the Department of Revenue. So they are
9 those are the ones that DOADAS approved.

10 THE COURT: I understand, okay. Thank you.

11 MS. SHIELDS: Thank you, Your Honor.

12 MS. SANDERS: Your Honor, may I call a witness that
13 can testify to this now that she's -- that you
14 brought up the certified training, if I could?

15 MS. SHIELDS: Your Honor, we've already had closing
16 arguments. She rests -- she -- her ---

17 THE COURT: We did. And then I asked this question.
18 What's this wit- -- I'm just. What's the
19 purpose of the witness?

20 MS. SANDERS: Well, I -- you know, I asked about the
21 certified training, which we do know about and
22 pardon my failure for not asking it, but please
23 don't hold it against my client.

24 THE COURT: I'm -- that wasn't the purpose of the
25 question.



1 MS. SANDERS: Oh.

2 THE COURT: The purpose of the question was just in
3 exploring what, you know, I might do in this
4 situation. I just wanted to know what program
5 -- that's not to hold this against your client.
6 That wasn't the purpose of that question.
7 Wasn't that -- I would have ask that question
8 if that -- if I was trying to discover whether
9 your -- whether there was impunity, negligence
10 to client or anything like that for not looking
11 -- that wasn't the reason why I was asking
12 that. I was trying to see if there were
13 programs out there that department had in light
14 of what I may be considering to do on this
15 matter.

16 MS. SANDERS: Well, I can put up a witness that will
17 -- also knows about those programs as they
18 specifically relate to Bi-Lo.

19 MS. SHIELDS: Your Honor, I believe that testimony
20 could have been offered. I believe I did ask
21 about any new training or procedures that have
22 been implemented and I believe that would have
23 been an appropriate time to say if they had
24 implemented it or used any DOR training.

25 THE COURT: It -- it -- let -- and I understand what



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1 you're saying and that may be true. I did ask
2 this question. The purpose for my asking this
3 question was simply if I am inclined to explore
4 other possible options other revocation of
5 their license, then one aspect might be
6 training issues. And my purpose in asking the
7 question was just simply to determine whether
8 the Department had available certain training
9 that might be -- that one could have helped.
10 And so I thought -- if you think that you need
11 to put a witness to talk about that, that would
12 be -- that was the only purpose in my asking
13 this question was -- was to educate myself as
14 to an option that I might have or use to come
15 to a conclusion -- in reaching a decision on
16 this matter. But -- but not in any way to
17 impugn that your client was negligent and not
18 being aware of training or not having training.
19 I understand that the program that -- that Bi-
20 Lo has a training program. I've seen that
21 program and that -- and that you have your
22 employees and managerial staff go through go
23 that training and that it's reoccurring. I
24 have all notes about all that and that was
25 presented so I -- I do understand.



1 MS. SANDERS: And also that actual law enforcement
2 testified that Bi-Lo did ---

3 THE COURT: Yeah.

4 MS. SANDERS: -- training with the South Carolina --

5

6 THE COURT: Yeah, yes. I got it.

7 MS. SANDERS: And that -- and that. And
8 interestingly, and I -- this issue has come up
9 before, the Department of Revenue lists certain
10 training, approved training courses, and one of
11 them is -- is that they do not include South
12 Carolina law, which is nonsensical. The best
13 training would be law enforcement. Now, I
14 understand that the Department of Revenue has
15 been involved in trying to make what SLED
16 offers or other places approved training, but
17 I can tell you that Bi-Lo has done the approved
18 -- some of the approved -- one of the list of
19 approved training that's in the footnote on the
20 Revenue ruling that she's done. But I can also
21 tell you that it's mightily confusing for
22 businesses in this state that law enforcement
23 is not listed and not footnoted as one of the
24 proper trainings by the looks of it.

25 THE COURT: And I understand ---



1 MS. SANDERS: I understand. I apologize.

2 THE COURT: And that's an issue that can be explored
3 at a later time. For purposes of this, I have
4 not made a decision as to what I'm going to do
5 in this matter, but if I decide to not revoke
6 the license of the -- or to -- or to pull the
7 Department's determination the license should
8 be revoked in this matter, if I direct a
9 different course, I'm inclined to think that
10 some form of training needs to be implemented
11 other than what's going on and that was the
12 purpose in my asking this question. So that I
13 would -- so that I would know that were able to
14 determine whether the Department had a list
15 somewhere of training that could be used by Bi-
16 Lo to hopefully improve the education of their
17 employees. So that was all the question was
18 about. And, as to all these other things ---

19 MS. SANDERS: And, Your Honor ---

20 THE COURT: And I guess if you really feel like you
21 need to put that on because I asked that
22 question I'll let you do that and I do
23 understand your Department's objection to that.
24 And perhaps there was a time that during the
25 interval we could've ---



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1 MS. SHIELDS: Your Honor, at this point I would
2 object simply because she's already testified
3 to that in her statement just now.

4 MS. SANDERS: Well, the Court can move -- I don't
5 have a problem with the Court moving to strike
6 that statement, but what I will say is Bi-Lo --
7 it is much more reasonable to require Bi-Lo to
8 do more training than this to suspend to the
9 store. It -- it just has no -- no impact
10 suspend the store or revoke the license. It's
11 a non sequitur to what the Department is trying
12 to do. They are penalizing ---

13 THE COURT: And Ms. Sanders ---

14 MS. SANDERS: -- employees. They are penalizing the
15 town. They -- and, you know, as we know from
16 the newspaper there are corporations looking at
17 South Carolina to see what the environment is
18 in this state. Do we want to have employees
19 or do we want to not have employment. That's
20 -- thank you, Your Honor.

21 THE COURT: Ms. Sanders, you have made it abundantly
22 clear to the Court and I thank you. Anything
23 further from the Department?

24 MS. SHIELDS: No, Your Honor.

25 THE COURT: Okay, thank you.



1 MS. SANDERS: No, Your Honor. Thank you.

2 DECISION BY THE COURT:

3 THE COURT: Okay. Thank you very much for your
4 presentations today. I will everything into
5 consideration and I will render a decision just
6 as quickly as possible. Thank you very much.

7 MS. SANDERS: Thanks, Judge.

8 MS. SHIELDS: Thank you, Your Honor.

9 THE COURT: I hope everyone has a safe trip back to
10 the upstate.

11 (There being nothing further, the administrative
12 hearing concluded at 3:32 p.m.)

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CERTIFICATE

This is to certify that the within hearing consisting of ninety (90) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 28, 2018.

Amber Scarborough

Amber Scarborough

Notary Public for South Carolina
My Commission Expires: May 30, 2023

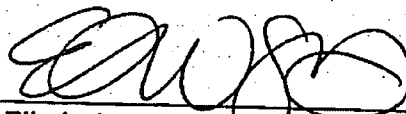


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6. The Respondent previously violated Regulation 7-200.4 on February 26, 2014 and December 22, 2015, making this the Respondent's third violation on its seven-day off-premises beer and wine permit.
7. On March 4, 2016, the Department issued the Respondent a Notice of Intent to Suspend for the violation (Notice). The Notice informed the Respondent that the Department intended to suspend the seven-day off-premises beer and wine permit for forty-five (45) days.
8. The Respondent protested the Notice by letter received on May 27, 2016.
9. On June 6, 2016, the Department issued its Determination in this matter.
10. On June 30, 2016, the Administrative Law Court (ALC) received the Respondent's request for a contested case hearing.
11. The Respondent stipulates that a violation of Regulation of 7-200.4 occurred on the licensed premises on February 5, 2016.

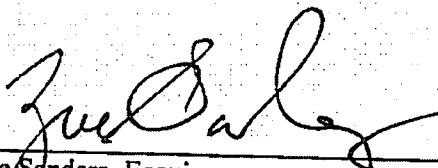
The Parties so stipulate.

{Signatures on following page}



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October 18, 2017
Columbia, South Carolina



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Attorney for Respondent

October 16, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
BI-LO, LLC, d/b/a BI-LO #5612,)
)
Respondent.)

Docket No. 17-ALJ-17-0113-CC

STIPULATIONS OF FACT

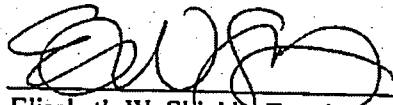
Pursuant to ALC Rule 25(C), the Parties do hereby stipulate to the following:

1. Bi-Lo, LLC, d/b/a Bi-Lo #5612 (Respondent), located at 1103 N. Main Street, Fountain Inn, South Carolina (licensed premises), is the holder of a seven-day off-premises beer and wine permit (32023029-P7B) issued by the South Carolina Department of Revenue (Department). The Respondent held the permit on August 26, 2016.
2. On August 26, 2016, at approximately 12:59 p.m., SLED Special Agents Kevin Tyner and Dena Metzler, along with Fountain Inn Police Department Officers Atwood and Peden conducted an undercover investigation utilizing an Underage Cooperating Individual ("UCI") at the Licensed Premises.
3. The UCI entered the Licensed Premises in an undercover capacity to purchase beer, carrying only her State of South Carolina issued driver's license and \$10.00 in State funds.
4. The UCI picked up one (1) twenty-five fl. oz. can of Bud Light Straw-Ber-Rita (the "Beer") and approached the clerk, Lisa Hopper (also referred to, herein, as the "Permittee's employee"), to cash out. Ms. Hopper asked the UCI to see her identification, then entered the information from the identification into the register. The register then requested an override at which time Ms. Hopper requested assistance from a manager. A manager came to the register and entered an override code and at that point Ms. Hopper sold the Beer to the UCI without asking the UCI her age or whether she was over the age of twenty-one. The UCI was nineteen years of age at the time of the above-referenced sale.
5. After the UCI purchased the Beer, the Agents and Officers entered the Licensed Premises and identified themselves to Ms. Hopper. After informing Ms. Hopper that she sold beer to a minor, Agent Metzler issued the Permittee an administrative violation at the Licensed Premises, pursuant to Regulation 7-200.4 for permitting the sale of beer to a person under the age of twenty-one (the "Violation"). Officer Peden issued a criminal citation to Ms. Hopper for violation of S.C. Code Ann. § 61-4-50 (2009) for the sale of beer to a person under the age of twenty-one.

6. The Respondent previously violated Regulation 7-200.4 on February 26, 2014, December 22, 2015, and February 5, 2016, making this the Respondent's fourth violation on its seven-day off-premises beer and wine permit within a three-year period.
7. On November 15, 2016, the Department issued the Respondent a Notice of Intent to Revoke (Notice). The Notice informed the Respondent that the Department intended to revoke the seven-day off-premises beer and wine permit.
8. The Respondent protested the Notice by letter received on January 18, 2017.
9. On April 6, 2017, the Department issued its Determination in this matter.
10. The Administrative Law Court (ALC) received the Respondent's request for a contested case hearing on April 24, 2017.
11. The Respondent stipulates that a violation of Regulation of 7-200.4 occurred on the licensed premises on August 26, 2016.

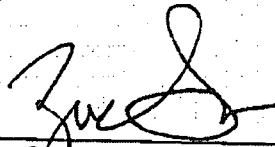
The Parties so stipulate.

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Attorney for Respondent

October 17, 2017
Columbia, South Carolina



done up
BI • LD  What's There

Age-Restricted Sales Policy

Policy

Southeastern Grocers (the "Company") prohibits the sale of age-restricted products to persons under the age permitted by applicable laws and regulations.

The Manager on Duty (MOD) or Service Area Manager (SAM) is responsible for monitoring the sale of age-restricted products on the front end.

The Store Director must ensure that all associates who operate a point of sale terminal have completed the appropriate cashier training before being scheduled to work on a point of sale terminal.

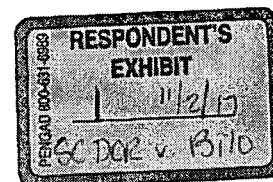
For purchases that include age-restricted item(s), it is Company policy to request ID from customers that appear under the age of 40.

Age-Restricted Sales to Customers Under 40

The point of sale terminal will prompt the associate if the purchase includes an age-restricted item. For these purchases, if a customer appears to be younger than 40 years of age, associates must:

- request a valid form of ID from the customer
 - **NOTE:** If the customer does not have his/her ID or refuses to show you the ID and still insists on purchasing the product, call the MOD or SAM. The MOD or SAM is responsible for declining the sale.
- verify that the picture on the ID matches the customer providing the ID, and
- use the point of sale terminal to determine if the customer is eligible to purchase the product, by:
 - **Scanning** the ID (using hand held scanner)
 - **Swiping** the ID (using keyboard magnetic stripe reader), or
 - **Hand Keying** the Date of birth (DOB) as it appears on the ID into the point of sale terminal:
 - **NOTE:** Stores in the State of Georgia are not required to Scan or Swipe IDs and may Hand Key all DOB entries.
 - **NOTE:** *Never enter a DOB into the system that was not printed on the ID provided by the customer. Please see the Valid Forms of ID block for a list of Company-approved forms of identification.*

Continued on next page





Age-Restricted Sales Policy, Continued

Age-Restricted Sales to Customers Over 40 If the customer appears to be 40 years of age or older, associates may bypass the age verification process.
NOTE: DO NOT ask the customer to provide identification or for his/her DOB.

Valid Forms of ID The following is a list of valid forms of ID:
 • State issued Driver's License • Military issued Identification card
 • State issued Identification card • Government issued Passport

Consequences of violations Violations of this policy will carry the consequences indicated in the table below. In addition, associates who sell age-restricted products to minors may incur criminal charges and fines.

Violation	Description	Consequence
Unlawful Sale to a Minor (failed government enforcement audit)	A sale of alcohol or tobacco to an individual under the legal age.	The Cashier is terminated upon verification that training has been provided.* After a second infraction is given to a store, the
Policy Violation (failed audit)	When an audit is conducted by our third party auditors and the associate acting as the Cashier sells alcohol to the auditor in violation of this policy. NOTE: Auditors will be between 21 and 25 years old.	Corrective Action Process is followed for the SAM. If a trend exists, the Corrective Action Process is followed for the Store Director.

* If training has not been provided to the cashier, corrective action will be initiated against the SAM/SD depending on the specific circumstances.

Continued on next page



Home of
BI-LO  Winn-Dixie

Age-Restricted Sales Policy, Continued

Consequences of violations, continued

When a member of the Store Management Team observes or otherwise becomes aware (e.g. CCTV) of an associate selling alcohol or tobacco to an individual that appears to be under the age of 40 without verifying the age of the customer, corrective action must be initiated.

NOTE: If after the sale, the age of the customer buying the alcohol or tobacco is verified as being under the legal age, it is considered an Unlawful Sale to a Minor and will be handled as such.

Louisiana Permits

Store Directors at retail stores in Louisiana must ensure that all associates who operate a point of sale terminal have a valid Louisiana Server Permit ("Permit") and/or City Bar Card, copies of which must be filed in the associate's personnel file. These associates must always have their Permit and one legal form of identification on the premises and available for inspection by agents of the Office of Alcohol and Tobacco Control.

Who Is Affected:

All associates must comply with this policy and procedures.

Contact

For more information on this policy, contact the Front End Operations Department at 904-783-5461.

Related Policies and Procedures

This policy replaces the following former policy:

- *Age Restricted Sales Management Policy and Procedures*

Category: Role Specific Training
Subject: CASH02-Cashier Training
Topic: 2.9 - Age-Restricted Sales

Question ID: 52342

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

Which of the following choices correctly describes the two main age-restricted product groups that our company sells?

Alcohol and tobacco products.

correct answer

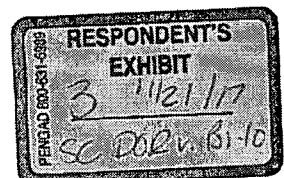
Alcohol and pharmaceutical products.

Tobacco and pharmaceutical products.

Explanation:

The following items are age-restricted:

- Alcohol (must be 21 to purchase)
- Tobacco products (must be 18 to purchase; 19 in Alabama)



Question ID: 52343

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

Which of the following forms of identification are acceptable for age-restricted purchases?

Driver's license, state ID card, passport, or military ID.

correct answer

Driver's license, passport or military ID.

Military ID, passport or state ID card.

Explanation:

If a customer is purchasing an age-restricted item and they appear to be under the age of 40, we are legally required to ask the customer to review their ID. Acceptable ID includes:

- Driver's license
- State ID card
- Passport
- Military ID

Question ID: 52344

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

After scanning an age-restricted item, what should you do?

Ask for ID to verify the customer's age and enter their birth date.

correct answer

Ask for the customer's birth date, and enter it in the register.

Hit the Bypass button to move on to the customer's remaining items.

Explanation:

After scanning an age-restricted item, ask for the customer's ID to verify their date of birth.

Question ID: 52345

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

For all customers who appear to be UNDER the age of 40, what steps do you follow?

Ask the customer for their ID, swipe the ID or use the handheld scanner, or enter the customer's birth date manually. correct answer.

Ask the customer for their ID and escort them to the Customer Service Desk for assistance.

Ask the customer for their ID, swipe the ID or use the handheld scanner, or send the customer to the Customer Service Desk if their ID will not swipe.

Explanation:

If the customer appears to be under the age of 40:

- Ask the customer for their ID.
- Swipe the ID using the ID swipe beside the touchscreen
- If the ID will not read, try to scan the ID using the handheld scanner
- If the ID will not read, use the keypad to manually enter the customer's birth date using the MM/DD/YYYY format and press Enter

Question ID: 52347

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

If it is illegal to sell alcohol in your city on Sunday and a customer comes to your register with alcohol, what should you do?

Even though you must follow your local laws regarding the sale of alcohol on Sundays always remain positive. Provide your customer with exceptional customer service but - refuse the sale. correct answer

You are permitted to sell all in-store products at any time.

You must sell the product to the customer regardless of local laws if they bring it to the register.

Explanation:

In some cities, it is illegal to sell alcohol on Sundays. Follow your local laws regarding the sale of alcohol on Sundays. Remain positive. Provide your customer with exceptional customer service but - refuse the sale.

Question ID: 52348

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

What should you do if a person who appears to be intoxicated attempts to purchase alcohol?

Respectfully refuse the sale and contact your manager on duty for assistance.

correct answer

Ask the customer for approved ID and contact your manager on duty.

Ask the customer to go to the Customer Service Desk for assistance.

Explanation:

It is illegal to sell alcohol to customers who appear intoxicated. If a customer who appears intoxicated attempts to purchase alcohol, you should remain respectful and refuse the sale. If questioned, contact your manager on duty.

Question ID: 52349

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

What is the consequence for not verifying ID for a customer who looks under 40 years old?

Disciplinary action up to and including termination.

correct answer

You will be immediately terminated.

There is no consequence for not verifying ID for a customer who looks under 40.

Explanation:

Consequences for failing to comply with age-restricted sales policies include termination of employment.

Question ID: 52350

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

What is the legal consequence of selling alcohol or tobacco to a customer below legal age?

A criminal charge and fines of up to \$1000.

correct answer

Loss of college scholarships.

Loss of your benefits.

Explanation:

Potential legal consequences for failing to comply with age-restricted sales policies include:

- A criminal charge resulting in a criminal record
- Fines of up to \$1000
- Imprisonment up to 60 days
- Community service requirements

Question ID: 52351

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

All of the following choices are legal consequences of selling alcohol or tobacco to a customer who is below the legal age EXCEPT:

A job promotion

correct answer

Fines of up to \$1000.

A criminal charge resulting in a criminal record.

Community service requirements.

Explanation:

Potential legal consequences for failing to comply with age-restricted sales policies include:

- A criminal charge resulting in a criminal record
- Fines of up to \$1000
- Imprisonment up to 60 days
- Community service requirements

Question ID: 55148

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

Which of the following forms of identification are acceptable for age-restricted purchases? (Select all that apply.)

Driver's license	correct answer
State ID	correct answer
Military ID	correct answer
Passport	correct answer

Explanation:

If a customer is purchasing an age-restricted item and they appear to be under the age of 40, we are legally required to ask the customer for their ID. In select stores required by management you must ask ALL customers for ID. Acceptable ID includes:

- Driver's license
- State ID card
- Passport
- Military ID

Question ID: 55149

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

Which of the following choices correctly describes age-restricted product groups that our company sells?

Alcohol

correct answer

Tobacco

correct answer

Meat

Hardware products

Explanation:

The following items are age-restricted:

- Alcohol (must be 21 to purchase)
- Tobacco products (must be 18 to purchase; 19 in Alabama)

Question ID: 55151

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

What should you do if the register asks you to verify the age of a customer who appears to be under the age of 40? (Select all that apply.)

Ask the customer for their ID.

correct answer

Swipe the ID using the ID swipe beside the touch screen.

correct answer

Select the Bypass button.

Ask the customer for their date of birth and enter it.

Explanation:

In select stores as required by management you must ask ALL customers for ID. Elsewhere, if the customer appears to be under the age of 40:

- Ask the customer for their ID.
- Swipe the ID using the ID swipe beside the touchscreen.
- If the ID will not read, try to scan the ID using the handheld scanner.
- If this does not work, use the key pad to manually enter the customer's birth date.

- Never ask a customer for his or her date of birth; always take the date of birth from the customer's ID.

Question ID: 55152

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

After scanning an age-restricted item, the system will ask you to verify the age of the customer by entering the customer's birth date.

selecting the total button.

phone number and address

Question ID: 55154

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

In which of the following situations should you NOT sell alcohol to the customer? (Select all that apply.)	
The customer looks under the age of 40 and cannot present acceptable ID.	correct answer
The customer appears to be intoxicated.	correct answer
The customer looks under the age of 40 but tells you their birth date.	correct answer
The customer looks over the age of 40 and cannot present acceptable ID.	

Question ID: 55155

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

Which of the following choices represent the legal consequences that a cashier would face for failing to comply with the age-restricted sales policies? (Select all that apply.)	
Criminal charges	correct answer
Fines of up to \$1000	correct answer
Imprisonment up to 60 days	correct answer
Community service requirements	correct answer

Question ID: 55163

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

If a customer who is attempting to purchase alcohol appears to be intoxicated, what should you do? (Select all that apply.)	
<input checked="" type="checkbox"/> Respectfully refuse the sale.	correct answer
<input checked="" type="checkbox"/> Contact your manager on duty.	correct answer
<input type="checkbox"/> Ask for acceptable ID.	
<input type="checkbox"/> Call the police.	
Explanation: If a customer who appears intoxicated attempts to purchase alcohol, you should respectfully refuse the sale. Stay calm and if questioned, contact your manager on duty.	

Question ID: 55164

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 2

What can you do if your customer's ID fails to swipe on the ID swipe beside the touch screen? (Select all that apply.)	
<input checked="" type="checkbox"/> Use the hand scanner.	correct answer
<input checked="" type="checkbox"/> Use the key pad to manually enter the customer's birth date.	correct answer
<input type="checkbox"/> Refuse the sale.	
<input type="checkbox"/> Hit the Bypass button.	

Question ID: 55167

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 3

Christine, a cashier, is completing a customer's transaction, which includes beer and wine. When the customer presents their ID, the ID swipe beside the register cannot read it. Christine attempts to use the hand scanner, but cannot get the ID to scan either. Since this customer appears to be under the age of 40, what should Christine do?

Use the key pad to manually enter the birth date on the ID in the format MMDDYYYY.

correct answer

Refuse the sale.

Christine can hit the Bypass button since she has verified the customer's birth date on the ID.

Explanation:

If the customer appears to be under the age of 40:

- Ask the customer for their ID.
- Swipe the ID using the ID swipe beside the touchscreen.
- If the ID will not read, try to scan the ID using the handheld scanner.
- If this does not work, use the key pad to manually enter the customer's birth date.

Question ID: 55168

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 3

Sofia, a new cashier, is assisting a customer with his order, which includes two bottles of wine. The customer is a senior, so Sofia knows that she doesn't have to ask for acceptable ID, but Sofia has concerns that the customer may be intoxicated. When she tells the customer that he cannot purchase the wine, he becomes angry and begins to yell at her. What should Sofia do?

Contact her manager on duty immediately.

correct answer

Allow the customer to take the wine since he is obviously over 40.

Call the police.

Explanation:

It is illegal to sell alcohol to customers who appear intoxicated. If a customer who appears intoxicated attempts to purchase alcohol, you should refuse the sale. If questioned, contact your manager on duty.

Question ID: 55165

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 3

Pedro is assisting a customer who presents two bottles of wine as part her purchases. Pedro asks for her ID because she looks younger than 40. The customer tells him that she left the house without her ID, but she can tell him her birth date. What could happen if Pedro accepts her birth date without seeing ID?

Pedro will receive disciplinary action up to and including termination.

correct answer

Pedro can use his judgement to decide if the customer looks to be above the minimum age for the purchase.

If Pedro violates the age-restricted sales policies, he will lose his employee benefits for six months.

Explanation:

Question ID: 55169

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 3

Mark, a new cashier in a Florida store, is assisting an older customer with her purchases. The customer's order includes several bottles of wine, along with a selection of cheese and other snacks. Mark is enjoying his conversation about the wine and cheese party she is planning but when he scans the first bottle, the system asks him to verify her age. If the customer is clearly over 40 as he believes, what should Mark do?

Select the Bypass button and continue with the transaction.

correct answer

Request an acceptable form of ID and swipe it.

Manually enter the birth date the customer provides in MMDDYYYY format.

Explanation:

After scanning an age-restricted item, if the customer appears to be 40 years of age or older you do not need to confirm their age. Simply hit the Bypass button.

Question ID: 86602

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

If a customer looks to be under the age of 40 when purchasing alcohol, you should ask for their ID.

30

Birth Certificate

Question ID: 86603

Content Hierarchy: Role Specific Training > CASH02-Cashier Training > 2.9 - Age-Restricted Sales > Level 1

What is the consequence for cashiers who fail to comply with the age-restricted sale policy?

Disciplinary action up to and including termination

correct answer.

Promotion

Demotion

Work Location | Job Information | Job Labor | Payroll | Salary Plan

COLLIN BANKS
Employee

Empl ID 00000658290
Empl Record 0

Work Location

Find: First 1 of 1 Last
Go To Row

Effective Date 08/27/2016
Effective Sequence 0
HR Status Inactive
Payroll Status Terminated
Action Termination
Reason Violation Age Restricted Sales
Job Indicator Primary Job

Current

Position Number 56120136
Customer Service Associate
Override Position Data

Position Entry Date 01/25/2016
Position Management Record

Regulatory Region USA United States
Company BIL BI-LO, LLC
Business Unit BLRET BI-LO Retail Stores
Department 0020 Retail - Customer Service

Department Entry Date 01/28/2016
Location 5612 LOCATION#5612
Establishment ID 5612 LOCATION#5612

Date Created 08/27/2016

Last Start Date 01/25/2016
Expected Job End Date
Termination Date 08/26/2016
End Job Automatically
Override Last Date Worked

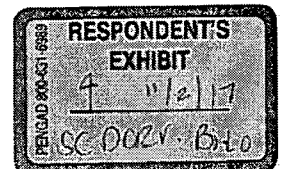
Last Date Worked 08/26/2016

Job Data Employment Data Earnings Distribution Benefits Program Participation

Save Return to Search Notify Refresh

Update/Display Include History

Work Location | Job Information | Job Labor | Payroll | Salary Plan



Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

ANGELA PYLES

Empl ID 00000759986

Employee

Empl Record 0

Work Location

Find First 1 of 1 Last

Effective Date 02/10/2016

Go To Row

Effective Sequence 0

Action Termination

HR Status Inactive

Reason Violation Age Restricted Sales

Payroll Status Terminated

Job Indicator Primary Job

Current

Position Number 56120101

Cashier Associate

Override Position Data

Position Entry Date 08/24/2015

Position Management Record

Regulatory Region USA

United States

Company BIL

BI-LO, LLC

Business Unit BLRET

BI-LO Retail Stores

Department 0020

Retail - Customer Service

Department Entry Date 08/24/2015

Location 5612

LOCATION#5612

Establishment ID 5612

LOCATION#5612

Date Created 02/10/2016

Last Start Date 08/24/2015

Termination Date 02/06/2016

Expected Job End Date

End Job Automatically

Override Last Date Worked

Last Data Worked 02/09/2016

Job Data

Employment Data

Earnings Distribution

Benefits Program Participation

Save

Return to Search

Notify

Refresh

Update/Display

Include History

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

BRITNEY MAJOR
Employee

Empl ID 00000759833
Empl Record 0

Find First 1 of 1 Last
Go To Row

Work Location: 12

Effective Date 12/24/2015
Effective Sequence 0
HR Status Inactive
Payroll Status Terminated
Action Termination
Reason Violation Age Restricted Sales
Job Indicator Primary Job
Current

Position Number 56120101 Cashier Associate
Override Position Data

Position Entry Date 08/20/2015
 Position Management Record

Regulatory Region USA United States
Company - BIL BI-LO, LLC
Business Unit BLRET BI-LO Retail Stores
Department 0020 Retail - Customer Service

Department Entry Date 08/20/2015
Location 5612 LOCATION#5612
Establishment ID 5612 LOCATION#5612
Date Created 12/24/2015

Last Start Date 08/20/2015
Expected Job End Date
Termination Date 12/23/2015
 End Job Automatically
 Override Last Date Worked

Last Date Worked 12/23/2015
Job Data Employment Data Earnings Distribution Benefits Program Participation

Save Return to Search Notify Refresh

Update/Display Include History

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

TRAYVIS DENSMORE

Empl ID 0000658676

Employee

Empl Record 0

Work Location :

Find First: 1 of 1 Last

Effective Date 11/07/2013

Go To Row

Effective Sequence 0

Action Termination

HR Status Inactive

Reason Violation of Policy/Other

Payroll Status Terminated

Job Indicator Primary Job

Current

Position Number: 56120016

CASHIER PT.

Override Position Data

Position Entry Date : 09/19/2013

Position Management Record

Regulatory Region USA

United States

Company FTH

BI-LO Foothills

Business Unit BLFTH

BI-LO Foothills

Department 0020

Retail ; Customer Service

Department Entry Date : 09/19/2013

Location : 5612

ARMSTRONG PLAZA - 5612

Establishment ID : 5612

Armstrong Plaza - 5612

Date Created 11/07/2013

Last Start Date 09/19/2013

Termination Date 11/06/2013

Expected Job End Date

End Job Automatically

Override Last Date Worked

Last Date Worked : 11/06/2013

Job Data

Employment Data

Earnings Distribution

Benefits Program Participation

Save

Return to Search

Previous in List

Next in List

Notify

Refresh

Update/Display

Include History

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

SC REVENUE PROCEDURE #13-2

SUBJECT: Penalty Guidelines for ABL Violations
(ABC Laws)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedure #04-4 and all previous documents and any oral directives in conflict herewith.

REFERENCE: Title 61 (2009 and Supp. 2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000 and Supp. 2012)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

This advisory opinion provides guidelines to be used by Department employees in assessing penalties for violations of the statutes and regulations governing the sale, distribution, or possession of beer, wine, and distilled spirits. It has been revised for the primary purpose of stating the Department's practices with respect to violations concerning the possession of illegal gambling/gaming machines on the licensed premises.¹ As with previous versions, the overall purpose of this procedure is to promote uniform penalty application. Flexibility is allowed in situations that do not fall exactly within the guidelines.

The General Assembly established varying maximum penalties for the different types of licenses authorizing the sale of beer, wine, or distilled spirits. This procedure recognizes that the General Assembly found there was a difference between the different types of licenses.²

¹ S.C. Code Ann. §61-4-580, as amended by S.C. Act No. 5 (2013).

² In some cases, the term "license" is used in connection with liquor, while the term "permit" is used in connection with beer and wine. However, in this document the terms may be used interchangeably.

PROCEDURE:

The Department recognizes that insuring compliance with the law, not punishment, is the reason for administrative penalties. Accordingly, except for the most serious offenses, the Department adopts a progressive response to assessing penalties. The penalties listed below provide a monetary amount, a license suspension period, license revocation, or some combination thereof.

The severity of some penalties listed below depends on the number of previous violations at the licensed location. In counting the number of previous violations at the licensed location, the Department will look back 3 years from the date of the most recent violation. At the Department's discretion, and for purposes of counting the number of previous violations only, previous violations written on the same date may be counted as one violation, even though separate penalties were assessed for each violation.

These are guidelines only, and this advisory opinion does not establish a binding norm. There will often be circumstances present that call for either more severe or less severe sanctions for an offense. These guidelines do not restrict the Department's authority to impose any sanction within the statutory authority granted by the General Assembly.³

For example, the Department will consider mitigating circumstances when assessing penalties for sales to underage persons, and may reduce any penalty outlined in this advisory opinion when mitigating circumstances exist. Mitigating circumstances include, but are not limited to:

1. The employee committing the violation has completed a training program recognized by the Department.⁴ This training must have taken place within a reasonable period of time prior to the offense and must include training covering the violation at hand. The person claiming mitigating circumstances under this item must also provide the Department verification that the employee attended the training and an outline of the training conducted.
2. Documented in-house training given to the offending employee on a regular and frequent basis. This in-house training must contain instruction relevant to the type of violation at issue.
3. Documentation that an internal check (e.g., visit to the offending store by a mystery shopper) designed to ensure compliance occurred within a reasonable period of time prior to the offense. This internal check must be relevant to the type of violation at issue.

³ See, e.g., Code Section 61-4-270.

⁴ As used in this document, a "training program recognized by the Department" means a training program specified in SC Information Letter #13-7. (Note: SC Information Letter #13-7 is subject to real time updates as training programs are approved. The most recently updated information letter will be published on the Department's website at www.sctax.org.) Trade associations and other organizations seeking to have a training program recognized by the Department should send the request along with a detailed description of the training program to: SC Department of Revenue, Regulatory Administrator, P.O. Box 125, Columbia, SC 29214.

4. Automated age verification programs if the violation deals with age.
5. The volume of sales of beer, wine or liquor at a location. For example, a location with a large number of clerks and a high volume of beer sales is more likely to have a problem with violations than a location with a small volume of beer sales.

If recognized mitigating circumstances are present, suspensions may be reduced in duration, and revocations may be reduced to suspensions with monetary penalties. Monetary penalties may be reduced. In every case, the determination as to whether mitigating circumstances warrant a reduction in penalties is within the sole discretion of the Department.

If aggravating circumstances are present, the Department may impose a harsher penalty than that set forth in this advisory opinion. In every case, the Department has sole discretion to determine whether to depart from these guidelines and impose another sanction within the statutory authority granted by the General Assembly.

OFFENSES AND PENALTY GUIDELINES:

The penalties listed below provide a monetary amount, a license suspension period, license revocation, or some combination thereof. In counting the previous number of previous violations at the licensed location, the Department will look back 3 years from the date of the most recent violation. At the Department's discretion, and for purposes of counting the number of previous violations only, previous violations written on the same date may be counted as one violation, even though separate penalties were assessed for each violation.

Generally, when the Department seeks suspension or revocation of a license, it will also seek suspension or revocation, respectively, of any other license issued to the same license holder at the same location or at a location within close proximity. S.C. Code Ann. §61-2-140(E). An example of more than one license at the same location: a license holder operating a restaurant with both a license to sell beer and wine and a license to sell liquor by the drink on the restaurant premises. An example of a license at a location within close proximity: a license holder operating separate, side-by-side retail stores for off-premises consumption, one under a license to sell liquor at retail and the other under a license to sell beer and wine.

Beer and Wine (Retail)

1. All offenses except as specified below or as otherwise specified by statute:

1st offense	- \$500
2nd offense	- \$1,000
3rd offense	- 45 Days Suspension
4th offense	- Revocation

2. Hindering/delaying inspection (61-4-230 and 61-4-250): - Revocation

3. Permittee/employee not of good moral character (61-2-100 and 61-4-520(1)): - Revocation
4. Permitting any act that constitutes a crime under the laws of South Carolina (61-4-580(5)) (see note below): - Revocation
5. Permitting gambling (61-4-580(3)): - Revocation
6. Permitting games of chance except certain game promotions (61-4-580(3)) (see note below): - Revocation
7. Permitting any act that tends to create a public nuisance (61-4-580(5)): - Revocation
8. Permitting lewd entertainment (61-4-580(4)): - Revocation
9. Failure to comply with the sign requirements, or to conspicuously post a retail permit (61-4-70, 61-4-900, and Regs. 7-200.3 and 7-200.5): - \$50
10. Dishonored payments to beer and wine wholesalers (61-4-30 and 61-4-40): - See SC Rev. Proc. #12-1

Note: As a general rule, the Department will not issue a Notice of Intent to Revoke a beer or wine license under Code Section 61-4-580(5) for permitting an act that constitutes a crime under the laws of this State, unless the following conditions are met: (1) the underlying crime has a jail sentence as a possible penalty, (2) a criminal citation was issued to the permit holder, agent, employee or other person on the licensed premises, and (3) the criminal act resulted in conviction.

However, the Department may issue a Notice of Intent to Revoke under Code Section 61-4-580(5) for possession of illegal gambling/gaming machines on the licensed premises, after a magistrate has found the machines to be illegal in a civil forfeiture proceeding under Code Section 12-21-2712. No criminal citation or conviction will be required. The South Carolina Supreme Court has specifically stated that, under Code Section 12-21-2712, it is the magistrate's court that determines the legality of those machines seized by any law enforcement officer. See *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 621 S.E.2d 344 (2005), and *Allendale County Sheriff's Office v. Two Chess Challenge II*, 361 S.C. 581, 606 S.E.2d 471 (2004).

Wholesale Beer and Wine and Wholesale Liquor

1. All offenses except as specified below or as otherwise specified by statute:

1st offense	- \$500
2nd offense	- \$1,500
3rd offense	- 45 Days Suspension
4th offense	- Revocation

2. License holder, or person having actual control, not of good repute or good moral character (61-2-100 and 61-6-110): - Revocation
3. Hindering/delaying inspection (61-4-4190): - Revocation
4. License holder, or person acting on behalf of the license holder, having an interest in a retail or manufacturing business (61-4-735, 61-6-930 and 61-6-130): - Revocation

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume Jr.
William M. Blume Jr., Director

April 16, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable S. Phillip Lenski, Administrative Law Judge

RECEIVED

MAY 21 2018

SC Court of Appeals

Case No. 16-ALJ-17-0221-CC
Case No. 17-ALJ-17-0113-CC
Appellate Case No. 2017-002568

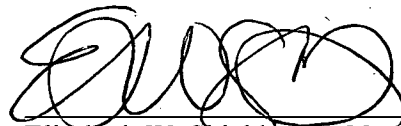
South Carolina Department of RevenueAppellant,

v.

Bi-Lo, LLC, d/b/a Bi-Lo #5612Respondent.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned certifies that this Record of Appeal contains all material proposed to be included by the above-referenced parties and not any other material.



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