



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh
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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code section 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. Approximately 68,000 retail licensees operate under this authority. ABC's regulations are codified in Divisions 1 and 1.1, Title 4 of the California Code of Regulations (CCR). ABC's decisions are appealable to the Alcoholic Beverage Control Appeals Board. Further, ABC has the power to investigate violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in liquor industry trade publications such as *Beverage Bulletin* and *Beverage Industry News*.

The Director of ABC is appointed by, and serves at the pleasure of, the Governor. ABC divides the state into two divisions (northern and southern) with assistant directors in charge of each division; ABC maintains 26 field offices.

ABC dispenses various types of licenses. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" means that the licensee sells alcoholic beverages which will not be consumed on the premises. Population-based quotas determine the number of general liquor licenses issued each year per county; in 1995, the legislature applied similar quotas to beer and wine licenses for a three-year period.

MAJOR PROJECTS

ABC Adopts Regulatory Language for Decoy Programs. ABC's use of minors for decoy operations was upheld last year by the California Supreme Court in *Proviso Corporation v. Alcoholic Beverage Control Appeals Board*, 7 Cal. 4th 561 (Apr. 7, 1994); legislation requiring ABC to develop and administer regulations governing the use of minors as police decoys—AB 3805 (Richter) (Chapter 1205, Statutes of 1994)—took effect on January 1, 1995. [15:2&3 CRLR 107-08; 15:1 CRLR 100; 14:4 CRLR 108-09]

On August 4, ABC published notice of its intent to adopt new section 141, Title 4 of the CCR, which would contain the Department's requirements for minor decoy programs. Among other things, the proposed language would provide that the purpose of law enforcement agencies using persons under the age of 21 attempting to purchase alcoholic beverages is to apprehend ABC licensees, or employees or agents of licensees, who sell alcoholic beverages to minors, and to reduce sales of alcoholic beverages to minors, and would state that the minor decoy programs must be operated in such a fashion that promotes fairness.

Under the proposal, at the time of the operation, the decoy must be less than 20 years of age; display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense; either carry his/her own identification showing the decoy's correct date of birth or carry no identification; and answer truthfully any questions about his/her age. Following any completed sale, the law enforcement officer directing the decoy shall, not later than the time a citation, if any, is issued, make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face-to-face identification of the alleged seller of the alcoholic beverages. The regulation would also provide that failure to comply with these requirements is a defense to any disciplinary action brought by ABC pursuant to Business and Professions Code section 25658.

ABC did not hold a hearing on the proposed language; after the public comment

period, the Department adopted the new section, which—at this writing—awaits review and approval by the Office of Administrative Law.

Record Budget for ABC. The Budget Act of 1995-96 authorizes ABC to spend a record \$31 million; according to the Department, this will fund a total of 437 positions. Among other things, the budget includes \$2.5 million to augment ABC's special operations unit by 32 positions and \$416,000 to fund six positions in its Licensee Education on Alcohol and Drugs (LEAD) program. According to ABC, \$16.8 million will be budgeted for its overall licensing activities, and \$12.6 million will be directed toward enforcement operations.

Legislature Rejects "Tippler's Tax" Proposal. In response to the severe budget crisis facing Los Angeles County, legislators have been developing innovative ways for the County to create new sources of revenue. For example, Assemblymember Antonio Villaraigosa proposed a legislative amendment which would have authorized the board of supervisors of a county or city and county, subject to certain conditions, to levy (on a countywide basis for revenue purposes) a tax on the sale of beer, wine, and distilled spirits when the beer, wine, and distilled spirits are sold for consumption on the premises of the seller of the beer, wine, or distilled spirits. Although Villaraigosa attempted to amend SB 1330 (Killea) to include this so-called "tippler's tax," he failed to round up enough votes to so amend the measure; other such legislative proposals were similarly rejected by the legislature.

LEGISLATION

AB 303 (Tucker). Existing law authorizes a winegrower, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent to serve and provide, free of charge, food and alcoholic and nonalcoholic beverages to retail licensees and their guests, in conjunction with meetings, conventions, or combined conventions and trade shows of bona fide trade associations of retail licensees, notwithstanding any restrictions of the ABC Act. Existing law also authorizes those alcoholic beverage manufacturers to advertise in any regular publication, published at least quarterly, of a bona fide trade association, the members of which are food or alcoholic beverage retailers, if that publication does not advertise on behalf of, or directly benefit, any individual retail licensee. As introduced February 8, this bill makes various changes with regard to those authorizations, including provisions authorizing the



provision by alcoholic beverage manufacturers of entertainment and recreational activities to retail licensees at meetings, conventions, or trade shows, the payment by alcoholic beverage manufacturers of nondiscriminatory fees for the privilege of providing food, beverages, entertainment, or recreational activities or for display booth space at these events, and the payment of nondiscriminatory membership dues by alcoholic beverage manufacturers to the trade associations. This bill was signed by the Governor on July 17 (Chapter 127, Statutes of 1995).

AB 805 (Cortese). Existing law (so-called "tied-house" restrictions) generally prohibits a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler from, among other things, holding the ownership, directly or indirectly, of any interest in any on-sale or off-sale license. Existing law contains various exemptions from this restriction, however, including an exemption for a retail on-sale license for a marine park located in San Diego County. As amended July 5, this bill provides an additional exemption for a retail on-sale license for premises that are an integral part of, or adjacent to, the operations of a motion picture or television production facility or an affiliated theme park in Los Angeles County. This bill was sponsored by MCA Inc.-Universal Studios; the recent purchase of a controlling interest in MCA Inc. by the Seagram Company, Ltd., a producer of beer, wine, and distilled spirits, necessitates this exemption to the state's "tied-house" restrictions. This bill was signed by the Governor on July 31 (Chapter 232, Statutes of 1995).

AB 683 (Tucker). The ABC Act provides that persons under the age of 21 years may be used by peace officers to apprehend licensees, or their employees or agents, who sell alcoholic beverages to minors (*see* MAJOR PROJECTS). As amended September 6, this bill requires ABC to send information regarding this procedure to all on-sale and off-sale licensees with each license renewal notice.

Existing law establishes that an ABC licensee's failure, within a reasonable time after specified notice, to take reasonable steps to correct objectionable conditions that occur during business hours on any public sidewalk abutting a licensed premises and constitute a nuisance, is grounds for the suspension or revocation of a liquor license, except with respect to certain licenses, including a retail on-sale license for a bona fide public eating place, as defined in a specified statute. Existing law establishes certain general operating stan-

dards that are applicable, as provided, to the licensed premises of certain retailers of alcoholic beverages, the violation of which is punishable as a misdemeanor, except with respect to certain licenses, including a retail on-sale license for a bona fide public eating place, as defined in a specified statute. This bill also excepts from those provisions a retail on-sale license for a convention center, exhibit hall, or auditorium, or an on-sale beer and wine license for a ballpark, stadium, or coliseum featuring professional sporting events, defined as a bona fide public eating place under specified statutes.

The ABC Act provides that any hearings held on a protest, accusation, or petition for a license shall be held at the county seat of the county in which the premises or licensee is located. This bill instead provides that those hearings shall be held in the county in which the premises or licensee is located. This bill was signed by the Governor on October 9 (Chapter 743, Statutes of 1995).

AB 1166 (McPherson). Existing law authorizes a licensed beer manufacturer or out-of-state beer manufacturer operating under a certificate to conduct beer tastings off licensed premises only for events sponsored by certain nonprofit organizations and only if persons attending the event are affiliated with the sponsor. This bill authorizes an incorporated beer manufacturer's trade association to conduct beer tastings on behalf of one or more licensed manufacturers for educational purposes. The bill requires the association to obtain a permit from ABC for each tasting event. This bill was signed by the Governor on July 30 (Chapter 216, Statutes of 1995).

SB 408 (Thompson), as amended May 10, eases the three-year moratorium on original "type 20" beer and wine licenses imposed by AB 463 (Tucker) (Chapter 627, Statutes of 1994). [15:1 CRLR 100-01; 14:4 CRLR 110] SB 408 exempts from the moratorium any application for the issuance of retail off-sale beer and wine licenses where the applicant shows that public convenience or necessity would be served, and if all of the following conditions are found to exist: (1) the applicant premises are located in a crime reporting district that is below the applicable standard; (2) the premises are located in an area that falls below the concentration levels provided for in existing law; and (3) the local governing body of the area in which the applicant premises are located determines that public convenience or necessity would be served by license issuance.

SB 408 also authorizes a manufacturer, winegrower, manufacturer's agent, wine-

grower's agent, rectifier, distiller, bottler, importer, or wholesaler to hold an ownership interest in a retail licensee, to serve as an officer, director, employee, or agent of the retail licensee, and to sponsor or fund certain programs or projects, if the retail license is for a nonprofit school for professional chefs in Napa County and other requirements are met. This bill was signed by the Governor on August 1 (Chapter 245, Statutes of 1995).

SB 646 (Kelley). The ABC Act prohibits the application for, and issuance of, until January 1, 1998, an original retail off-sale beer and wine license for any premises if the applicant premises are located in a city, county, or city and county where the number of retail off-sale beer and wine licenses or total number of retail off-sale beer and wine licenses and off-sale general licenses exceeds one license for a certain number of inhabitants. [15:1 CRLR 100] As amended March 27, this bill provides, until January 1, 1998, notwithstanding any other provision, that a retail off-sale beer and wine "replacement" license shall be issued for a specified fee when (1) the replacement license is only for use at a premises licensed within the past twelve months; (2) the prior licensee abandoned the premises or the original license is subject to a bankruptcy proceeding; (3) the applicant must pay a fee of \$100; (4) the replacement license will not be transferred to another premises; (5) all conditions imposed on the original license will be imposed on the replacement license; and (6) the original license will not be transferred subsequent to the issuance of the replacement license. Also, the bill places certain limitations on a replacement license. This bill was signed by the Governor on October 12 (Chapter 834, Statutes of 1995).

AB 1781 (Cortese). Under the ABC Act, a seller may accept the return of wine from a retailer, but the seller may not sell wine to the retailer for one year, unless the wine was returned under specified circumstances. Existing law also provides that wines returned and exchanged due to deterioration, damage, or a change in the label or container shall have the same current posted price to retailers. As amended June 6, this bill eliminates the provision that certain wines returned and exchanged shall have the same current posted price. The bill additionally provides that a seller may accept the return of wine from a seasonal or temporary licensee and from an annual licensee operating on a temporary basis if they have wine remaining unsold at the termination of the license period or temporary period.

The ABC Act provides for the issuance of an off-sale general license and provides



for the issuance of various special or temporary licenses. This bill authorizes the issuance of a special temporary off-sale license to a former licensee for the limited purpose of selling any stock of collectible beer, wine, or distilled spirits decanters acquired when previously licensed. This bill was signed by the Governor on July 17 (Chapter 139, Statutes of 1995).

SB 436 (Rosenthal). Under the ABC Act, a seller may accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. An exception to that provision permits a seller to accept the return of beer from a seasonal or temporary licensee or an annual licensee operating on a temporary basis. This bill revises the exception relating to the return of beer by annual licensees operating on a temporary basis, to require the licensee to notify the seller within fifteen days of the date the licensee's operations ceased. This bill was signed by the Governor on July 12 (Chapter 97, Statutes of 1995).

SB 584 (Dills), as introduced February 24, authorizes ABC to issue a club license to certain beach and athletic clubs that do not discriminate or restrict membership. The bill, which declares that it is to take effect immediately as an urgency statute, was signed by the Governor on July 22 (Chapter 173, Statutes of 1995).

AB 684 (Tucker), as amended April 3, would require ABC to send information regarding decoy procedures to all on-sale and off-sale licensees with each license renewal notice.

The ABC Act provides that any hearings held on a protest, accusation, or petition for a license shall be held at the county seat of the county in which the premises or licensee are located. This bill would, instead, provide that those hearings shall be held in the county in which the premises or licensee are located.

The ABC Act makes it a misdemeanor for any person to sell or otherwise dispose of, except for export, any draught or bottled beer containing a certain percentage of alcohol. This provision does not apply to the sale of bottled or draught ale, porter, brown, malt liquor, and stout bearing certain labels or a notice describing the contents under any licenses, other than on-sale beer licenses. This bill would remove the limitation respecting on-sale beer licenses, thus permitting those licensees to sell those beverages. *[S. GO]*

AB 957 (Gallegos). Under the ABC Act, any person possessing an open container of an alcoholic beverage in any city or county park area or public space, as specified, or any regional park or recreation and park district, is guilty of an in-

fraction if the city or county has enacted an ordinance that prohibits the consumption of alcoholic beverages in those areas, except as specified. As amended April 18, this bill would provide, in addition, that any person possessing any can, bottle, or other receptacle containing any alcoholic beverage in any city, county, or city and county owned park shall be guilty of an infraction if the city, county, or city and county has enacted an ordinance that prohibits the possession of alcoholic beverages in those areas. However, the bill would provide that the first offense for the possession of an unopened alcoholic beverage container shall not result in the imposition of a fine. *[S. GO]*

AB 1521 (Lee), as introduced February 24, would make legislative findings and declarations regarding the use of the name "Crazy Horse" in connection with an alcoholic beverage label. It would provide that it shall be unlawful for any alcoholic beverage bottled, sold, or distributed in California to carry a label bearing the name "Crazy Horse." *[A. GO]*

AB 1918 (Ducheny). Under the California Beverage Container Recycling and Litter Reduction Act, every beverage container sold or offered for sale in the state is required to have a minimum refund value. A distributor is required to pay a redemption payment for every beverage container sold or offered for sale in the state to the Department of Conservation (DOC) and DOC is required to deposit these amounts in the California Beverage Container Recycling Fund. The term "beverage" is defined for purposes of the Act, and wine and wine from which alcohol has been removed are excluded from that definition. As introduced February 24, this bill would, as of March 1, 1996, include, within that definition of "beverage," fortified wine, as defined, and would require manufacturers of fortified wine to pay DOC a redemption payment for the beverage containers. The bill would require DOC to deposit the redemption payments, processing fees, and all civil penalties, fines, and other revenue received resulting from the inclusion of fortified wine in the definition of "beverage" for purposes of the act into the California Beverage Container Refund Fund, which the bill would create. The bill would require that the money in that fund be available to DOC for the payment of specified refund values and processing fees to processors and for related administrative costs, upon appropriation in the Budget Act.

The Act requires that a beverage manufacturer indicate a specified message on every beverage container sold or offered

for sale in the state. This bill would require manufacturers of fortified wine to indicate that message on every beverage sold in the state on and after March 1, 1996. *[A. NatRes]*

SB 1320 (Calderon), as introduced March 7, would, as of March 1, 1996, include distilled spirits within the definition of "beverage" for the purposes of the California Beverage Container Recycling and Litter Reduction Act, and require manufacturers of distilled spirits to pay DOC a redemption payment for the beverage containers. The bill would require DOC to deposit the redemption payments, processing fees, and all civil penalties, fines, and other revenue received resulting from the inclusion of distilled spirits in the definition of beverage for purposes of the Act into the California Beverage Container Refund Fund, which the bill would create. The bill would require that the money in that fund be available to DOC for the payment of specified refund values and processing fees to processors and for related administrative costs, upon appropriation in the Budget Act.

The Act requires that a beverage manufacturer indicate a specified message on every beverage container sold or offered for sale in the state. This bill would require manufacturers of distilled spirits to indicate that message on every beverage sold in the state on and after March 1, 1996. *[A. NR&W]*

SB 1171 (Thompson). Existing law provides that an on-sale beer and wine license may be issued or transferred to any person with respect to premises which are an integral part of a restaurant owned by, or operated by or on behalf of, the licensee, notwithstanding that a wholesaler licensed to sell alcoholic beverages in states other than California has an interest in the premises, license, or licensee, if (1) the licensee purchases no beer or wine for sale in this state from other than a California wholesaler, nor purchases beer or wine from any wholesale licensee or manufacturer holding specified ownership interests, and (2) no more than 30% of the revenues of the restaurant are derived from the sale of alcoholic beverages. As amended May 1, this bill would revise that license issuance and transfer provision to make it applicable to all retail on-sale licenses and expand the prohibitions against purchases to apply to purchases of any alcoholic beverage. *[A. GO]*

SB 632 (Thompson). The ABC Act provides that each license shall be issued to a specific person, except licenses authorizing the sale of alcoholic beverages on trains, boats, or airplanes, for a specific location. As amended April 24, this bill



would prohibit any person who holds a beer manufacturer's license for a specific location from holding an on-sale license for the same or contiguous premises, unless the licenses for the contiguous premises were issued prior to January 1, 1996, and the licensed contiguous premises have been in continuous operation since the issuance of the licenses.

Existing provisions of the ABC Act known as "tied-house" restrictions generally prohibit an on-sale alcoholic beverage licensee from having an ownership interest in an alcoholic beverage manufacturer. Existing law allows as an exception to those provisions a holder of no more than six on-sale licenses to own a microbrewery, as specified. Existing law limits the licensee to purchasing alcoholic beverages for sale from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensee at a single location contiguous or adjacent to the licensee's premises. This bill would, instead, limit the on-sale licensee to purchasing alcoholic beverages from a wholesale or winegrower licensee, except for licensees who hold on-sale and beer manufacturer's licenses for contiguous premises that were issued prior to January 1, 1996, and the licensed contiguous premises have been in continuous operation since the issuance of the licenses. The bill would prohibit an on-sale licensee who also has an ownership interest in a licensed beer manufacturer from operating the on-sale licensed premises and the beer manufacturing premises as contiguous premises, unless the licenses for the contiguous premises were issued prior to January 1, 1996, and the contiguous premises have been in continuous operation since the issuance of the licenses. [S. GO]

AB 385 (Tucker). The ABC Act provides for the issuance of a retail package off-sale beer and wine license at an annual fee of \$24. As introduced February 14, this bill would increase the annual fee for that license to \$100. [A. GO]

LITIGATION

In *44 Liquormart, Inc., et al., v. Rhode Island, et al.*, 39 F.3d 5 (Oct. 24, 1994), plaintiffs 44 Liquormart, Inc., and Peoples Super Liquor Stores, Inc., sought declaratory relief that two Rhode Island statutes are unconstitutional as contravening the First Amendment; the statutes, assertedly aimed at promoting temperance, prohibit advertisement of the price of intoxicating liquor, except at the place of sale if sold within the state. After a bench trial, the district court found for plaintiffs. On appeal, the U.S. Court of Appeals for the First Circuit reversed, thus allowing the

state to limit advertising by Rhode Island vendors. According to the First Circuit, in order for plaintiffs to prevail, they first must prove that the expression is protected by the First Amendment; for commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, the court must determine whether the asserted governmental interest is substantial. Answering both of these questions in the affirmative, the court then sought to determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. After reviewing the effect that price advertising has on alcohol consumption, the First Circuit found that the state's action was reasonable as a control.

On May 1, 1995, the U.S. Supreme Court granted plaintiffs' petition for a writ of certiorari, but limited its review to the following question: "Whether Rhode Island may, consistent with the First Amendment, prohibit truthful, non-misleading price advertising regarding alcoholic beverages?" The Supreme Court heard oral argument on November 1; at this writing, it has not yet issued its opinion.

The battle continues in *California Beverage Retailer Coalition v. City of Oakland*, No. 726329-3 (Alameda County Superior Court), in which the Coalition is challenging an Oakland city ordinance which establishes performance standards for licensed premises, requires merchants to post a notice of the standards, and provides that vandalism, drug sales, prostitution, and graffiti in violation of the standards are grounds for revocation of a nearby retailer's local permit to sell alcohol. [15:1 CRLR 101; 14:4 CRLR 111; 14:2&3 CRLR 119] In January 1995, Alameda County Superior Court Judge James R. Lambden granted the Coalition's motion for summary adjudication of two causes of action which seek declaratory and injunctive relief based upon claims that the ordinance is preempted by the ABC Act (specifically, Business and Professions Code section 23790) and Article XX, section 22 of the California Constitution. The City of Oakland and seven intervenors then filed a petition for writ of mandate with the First District Court of Appeal, asking that court to issue a peremptory writ of mandate directing the superior court to vacate and set aside its order granting the motion for summary adjudication. Among other things, the petitioners argued that no appellate court decision considers whether section 23790 precludes a city from enforcing an ordinance which sets up a public nuisance/crime enforcement mechanism against a preexisting alcoholic beverage sales es-

tablishment, and that there is ample case authority supporting the power of a city to regulate public nuisance and criminal activities connected with existing alcoholic beverage sales establishments. [15:2&3 CRLR 111] At this writing, the First District has not yet ruled on the matter; a decision is expected to be made in early 1996.

BANKING DEPARTMENT

Superintendent:

Conrad Hewitt

(415) 288-8800

Toll-Free Complaint Number:

1-800-622-0620

Pursuant to Financial Code section 99 *et seq.*, the State Banking Department (SBD) administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks. The Department is authorized to adopt regulations, which are codified in Chapter 1, Title 10 of the California Code of Regulations (CCR).

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity, and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience, and busi-