



late with patients' needs. The Board unanimously referred the petition to its Education and Practice Committee for review in 1994.

The Board also approved a proposal to review the impact of the North American Free Trade Agreement (NAFTA) on the LVN and psych tech professions in California. The Board will review its current regulations to determine if there are any artificial barriers to Mexican or Canadian professionals who wish to practice in California; evaluate its present procedures and policies for processing foreign transcripts; and form an ad hoc committee of psych tech, LVN, and BRN staff to research NAFTA's impact on disciplinary procedures.

■ FUTURE MEETINGS

May 19-20 in Sacramento.
September 15-16 in San Diego.
November 17-18 in Los Angeles.



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 sections 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 77,000 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 the *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. The state is further subdivided into 21 districts, with two districts maintaining branch 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. No such state restrictions apply to beer and wine licenses.

■ MAJOR PROJECTS

Retailers Fight Local Governments' Use of Conditional Use Permits to Regulate Liquor Stores in High-Crime Areas. In an attempt to decrease criminal activity, many local governments have begun to aggressively regulate the activities of liquor retailers through conditional use permit ordinances; some local governments are also requiring retailers to finance and implement crime reduction programs in their communities. The City of Oakland has one of the most controversial conditional use permit ordinances; the law makes the presence of crime-related activities—such as assaults, drug activities, loitering, and graffiti—on the premises of a liquor store *prima facie* grounds for revoking a retailer's land use permit. Affected retailers in Oakland must also pay a \$600 annual fee to support the Oakland alcohol beverage control operation, and a \$200 reinspection fee each time violations are found.

Oakland's ordinance has been—at least temporarily—successfully challenged in Alameda County Superior Court by the California Beverage Retailer Coalition, a newly formed coalition of trade groups including the California Beverage Merchants Association, the California Package Stores and Tavern Owners Association, the California Grocers Association, the California Association of Neighborhood Stores, the California Beer and Wine Wholesalers Association, and many other retail associations and individual retailers (see LITIGATION). The coalition was formed on September 17 as a group "dedicated to the development of consistent and nondiscriminatory local alcohol beverage sales regulations throughout California." The first priority of the coalition is to support local merchants against what it considers discriminatory conditional use permits, and its ultimate goal is to develop a uniform, statewide system of alcoholic beverage license conditions to be enforced by ABC in a nondiscriminatory fashion.

Opposing the retailers' coalition are the League of California Cities, the Coali-



tion on Alcohol Outlet Issues, and other community action groups determined to reduce the number of alcohol outlets in their neighborhoods. With recent budget cuts to police protection and enforcement programs, communities are looking for alternative ways to reduce crime and provide more enforcement power; they contend that ordinances like Oakland's provide added enforcement power by requiring liquor store owners to take responsibility for criminal activity in and around their stores, as well as to finance enhanced enforcement programs.

On October 20, the Assembly Governmental Organization Committee held a day-long hearing to discuss the issue of state versus local control of the regulation of alcoholic beverages. San Francisco Mayor Frank Jordan and Hawaiian Gardens Mayor Robert Canada wrote letters to the Governor arguing that ABC has failed to provide adequate enforcement, and has thereby left enforcement up to local governments. Committee Chair Curtis Tucker Jr. noted, however, that no city or police department in the state has, in the past fifteen years, exercised its legal right to request that ABC hold a special hearing to discuss particularly dangerous retail outlets in their jurisdictions.

According to ABC Deputy Director Manuel Espinoza, ABC is in the process of rebuilding its enforcement program after massive budget cuts (*see below*); further, when a community has a high crime rate (a community with a crime rate 20% above the area's average) and an overpopulation of alcohol outlets (when the ratio exceeds the average of the county), ABC claims that it generally denies any new liquor licenses in that area. Espinoza noted that while a city's right to engage in community planning is important, some cities are taking local regulation too far by focusing on the sale of alcohol, the regulation of which falls within the exclusive power of ABC.

ABC Continues Work on Regulatory Revisions. At this writing, ABC's proposed amendments to sections 52, 53, 55.5, 59, 59.5, and 106, and proposed adoption of new sections 53.5 and 101, Title 4 of the CCR, have been adopted by the Director and await review and approval by the Office of Administrative Law (OAL). [13:4 CRLR 96] Among other things, the changes would provide that licensees or officers, agents, or employees of licensees may make gifts of alcoholic beverages to non-licensees for personal use under specified conditions; allow winetastings to be conducted for a fee; implement the statutory privilege of holding beer tastings; provide that each

on-sale beer and wine boat licensee and each on-sale general boat licensee may designate ten commercial docks from which it will be allowed to sell alcoholic beverages, in addition to the boat's home port dock; provide that a temporary beer license, a temporary wine license, and/or a daily on-sale general license may be revoked summarily by ABC if, in the opinion of ABC or the local law enforcement agency, such action is necessary to protect the safety, welfare, health, peace, and morals of the people of California; require brand sales reporting in California; and provide that "drink nights," "bar nights," or similar promotional events conducted for the purpose of promoting a specific brand of alcoholic beverage products may be sponsored by suppliers on licensed retail premises, under specified circumstances.

ABC Proposed Amendments to Conflict of Interest Code. On October 1, ABC published notice of its intent to amend its conflict of interest code, which designates employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. No public hearing was scheduled; the deadline for public comment was November 15. The changes await adoption by ABC and review and approval by OAL.

ABC Continues to Strengthen Enforcement Program. Promising signs of California's economic recovery have strengthened ABC's shift of focus from licensing to enforcement. Deputy Director Manuel Espinoza recently reported that all new investigator positions at ABC have been filled, and personnel are moving from licensing departments into support positions for investigations and other enforcement positions. [13:4 CRLR 95]

ABC's enforcement activity will continue to focus on bars which pose a "disorderly presence" within their community; two ABC special operations units are now operating in southern and northern California to provide quick response to such problem bars. Through close associations with local law enforcement agencies, ABC says the special operations units are designed to quickly investigate and discipline the most problematic licensees in the state. The units are equipped with their own surveillance vans and video equipment, and ABC has awarded special grants to local police departments to train officers to work with ABC investigators.

ABC is also forming regional task forces centered at its 24 field offices to target the "disorderly presence" problem

throughout the state. Each task force includes two or three police officers working with two or three ABC field investigators. The task forces will focus on about 20 problem outlets at a time, with surveillance and investigation lasting for about one week before disciplinary actions are taken.

ABC Staff Preparing New Keg Registration Tags. Following the enactment of AB 8 (Connolly) (Chapter 270, Statutes of 1993), ABC has been preparing for its implementation. AB 8 requires retail beer sellers to attach an identification tag to each keg of beer sold for private functions; the tags will be used to identify those who purchase beer kegs for consumption by minors at "keg parties." [13:4 CRLR 96] ABC Supervising Investigator Paul Luna estimates that over 1.3 million kegs were sold to private parties in the state in 1993; the Department is preparing a system for tagging and tracking at least that many kegs in 1994. At this writing, Luna expects to have the system online when the law goes into effect January 1.

LEGISLATION

SB 182 (Hughes). Existing law permits ABC to refuse to grant an alcoholic beverage license to a club if the club discriminates on specified grounds. As amended July 13, this bill would prohibit the licensure of any club, as defined, that restricts membership or the use of services or otherwise discriminates on specified grounds, and provide for the suspension or revocation of licensure for those clubs. This bill would exempt specified clubs from these provisions. [A. Inactive File]

SB 184 (Maddy), as introduced February 3, would provide that, with respect to beer sold by a licensed wholesaler to a retailer, delivery shall be made only at a retail premises licensed to the retailer or from a loading area at the wholesaler's licensed premises. [S. Floor]

SB 283 (Dills). Existing law prohibits the issuance of a wholesale license to any person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business by sale to retail licensees of the alcoholic beverages designated in the wholesale license. As amended May 24, this bill would require beer wholesalers to own or lease licensed warehouse space for each location where the wholesaler stores or sells beer; offer to sell and deliver all of the brands of beer it handles, except private label brands, to retailers generally, rather than a selected few retailers; service for the purpose of quality control all the beer it sells to retailers; and comply with specified requirements. [S. Floor]



SB 1156 (Watson), as introduced March 5, would require on-sale licensees to install and maintain coin-operated vending machines which dispense affordable, high quality latex condoms. [S. GO]

AB 463 (Tucker). Existing law requires beer manufacturers, importers, and wholesalers to file and maintain on file with ABC a schedule of selling prices charged by the licensee for beer. As amended April 12, this bill would require the licensee, unless exempted as specified, to mail or deliver written notice of any new or changed wholesale price to all retail licensees within a specified territory, and to maintain a record of the mailing or delivery, including an affidavit or declaration executed under penalty of perjury. This bill would provide that, alternatively, the licensee may notice the new or changed wholesale price for each affected brand by advertisement in a publication intended for circulation to retail licensees. [A. Inactive File]

AB 987 (Tucker). Existing law authorizes the exchange of an on-sale license issued for a bona fide public eating place for a similar license for public premises and the exchange of a license issued for public premises for a similar license for a bona fide public eating place, upon the payment of an exchange fee, as specified, which is deposited directly in the general fund, rather than in the Alcohol Beverage Control Fund. As amended June 16, this bill would instead provide for the deposit of that fee amount directly into the Alcohol Beverage Control Fund.

Existing law authorizes and regulates certain fair trade contracts and the filing of price lists with ABC, as specified. This bill would delete those provisions. [S. Inactive File]

AB 988 (Tucker). Existing law authorizes and regulates certain fair trade contracts and the filing of price lists with ABC, as specified. As introduced March 1, this bill would delete those provisions. [S. GO]

ACA 6 (Tucker), as amended August 16, would provide that if there is probable cause to believe a licensee has sold an alcoholic beverage to a person under the age of 21 years, the state Constitution does not prohibit the use of persons at least 18 years of age but under the age of 21 years by peace officers as decoys to catch persons who sell alcoholic beverages to persons under the age of 21 years, and would provide that a person at least 18 years of age but under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to

purchase alcoholic beverages, as specified. [A. Inactive File]

AB 1208 (Tucker), as amended July 13, would provide that if there is reasonable cause to believe a licensee has sold an alcoholic beverage to a person under the age of 21 years, specified statutory provisions do not prohibit the use of persons under the age of 21 years by peace officers as decoys to catch persons who sell alcoholic beverages to persons under the age of 21 years, and would provide that a person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase alcoholic beverages. It would require law enforcement agencies that use decoys to abide by specified guidelines. The bill would specify that certain requirements shall be met in order for the ABC to use decoys in those circumstances, including a requirement that prior to using a decoy ABC or the peace officer proposing the use shall prepare and execute an affidavit under penalty of perjury stating facts supporting the reasonable cause. [A. GO]

AB 1230 (Conroy). Existing law authorizes ABC to impose reasonable conditions upon a retail alcoholic beverage licensee or any licensee in exercise of retail privileges, upon request of the licensee or an applicant for a license, in specified situations. Existing law also specifies the subject matter to which these conditions may relate, including the personal conduct of the licensee. As amended April 15, this bill would provide that a condition concerning the personal conduct of the licensee, placed upon a license issuance or renewal which forbids or limits the installation, placement, or use of coin-operated video games on the premises, shall not be imposed without a hearing. [A. W&M]

AB 1932 (Quackenbush). Existing law provides that beer and wine upon which excise taxes have been paid to the state may be stored by or for any licensee without the necessity of any license by the person furnishing the storage space or any special additional license by the licensee. As amended May 25, this bill would limit this provision to wine. The bill would also provide that, with respect to beer sold by a licensed wholesaler to a retailer, delivery shall be made only at a retail premises licensed to the retailer from a loading area at the wholesaler's licensed premises or to an approved warehouse. [A. GO]

AB 1974 (Horcher). Existing law provides that premises that have been used prior to the effective date of a zoning ordinance may continue operation if certain conditions are met. As amended Sep-

tember 1, this bill would provide for any license issued for any grocery, market, or convenience store that was completely destroyed or rendered unusable as a result of the civil disturbance in Los Angeles in April 1992, the City or County may not impose or enforce, as a specific condition of allowing reconstruction or reopening, any of specified types of restrictions on the reconstruction or continued operation of those premises. The bill would provide for any grocery, market, or convenience store that was completely destroyed or rendered unusable as a result of the civil disturbance in Los Angeles in April 1992, any off-sale general license issued prior to April 29, 1992, for that location may be transferred from that County to another county without regard to certain limitations on transfer.

The bill would provide that if a city or county enacts or applies land use regulations and restrictions on the operation of those premises that are more restrictive than those applicable prior to April 29, 1992, and if the owner of the premises refuses to consent to those restrictions or to transfer the license to another county, at the option of the owner of the premises or licensee, the city or county may purchase the business provided that specified funds are available, in which case the business would be valued at its value prior to destruction less any insurance payments received on account of the destruction. [S. Inactive File]

AB 611 (Cortese). Existing law generally prohibits a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of that person from, among other things, providing a licensee alcoholic beverages as free goods as a part of any sale or transaction involving alcoholic beverages, or furnishing anything of value to a licensee for specified purposes. However, existing law authorizes any winegrower, California winegrower's agent, importer, or any director, partner, officer, agent, or representative of that person, to conduct or participate in an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or imported by the importer, subject to certain specified conditions. One condition provides that no alcoholic beverages shall be given away in connection with the instructional event; however, wine taken from barrels or from tanks, that is used in blending the wines being featured, may be sampled at the instructional event. As amended April 29, this bill would specify that the term "importer" as used in that



provision means a wine importer. The bill would modify the above condition to delete the requirement that the wine to be sampled at the instructional event be wine that is used in blending the wines being featured. [S. GO]

S. 674 (Thurmond) is federal legislation to enact the Sensible Advertising and Family Education Act which would, among other things, require specified health warnings to be included in alcoholic beverage advertisements. This bill is pending in the Senate Commerce, Science, and Transportation Committee.

LITIGATION

In *California Beverage Retailer Coalition v. City of Oakland*, No. 726329-3, filed in Alameda County Superior Court on November 10, the Coalition challenges an Oakland ordinance which would make it possible for the city to revoke an alcoholic beverage retailer's permit to sell alcohol if activities such as vandalism, drug sales, assaults, gambling, or prostitution take place anywhere in the surrounding neighborhood (see MAJOR PROJECTS). The Coalition contends that the ordinance violates the California Constitution and the California Beverage Control Act by purporting to regulate in an area which is reserved for state regulation and by placing additional zoning and fee requirements on existing licensed beverage establishments; the Coalition also claims that the ordinance violates retailers' rights to due process because it fails to require a causal link between a local business operation and the conduct of third parties outside the business, and fails to provide business owners with guidelines for controlling local crime. The City of Oakland counters that the ordinance is merely an effort to control a variety of problems associated with liquor stores in high-crime neighborhoods, and is not aimed at shutting down the stores.

On December 21, Superior Court Judge James Lambden agreed with the Coalition and held that the ordinance is preempted by the state's constitutional authority to regulate the sale of alcohol; Judge Lambden therefore issued the preliminary injunction sought by the Coalition prohibiting the ordinance's enforcement. At this writing, the Oakland City Council has not decided whether it will appeal the judge's ruling.

In *Provigo Corporation v. Alcoholic Beverage Control Appeals Board* and its companion case, No. S031492, the California Supreme Court will review the First District Court of Appeal's decision regarding the constitutionality of the use of underage youths as decoys in the enforce-

ment of the prohibition against selling alcohol to minors. [13:4 CRLR 99; 13:2&3 CRLR 120] In both cases, ABC suspended the licenses of petitioners for selling alcohol to minors; the minors who purchased the alcoholic beverages were working in a decoy program for their respective police departments. Petitioners argued that the use of underage police agents to purchase alcoholic beverages is unconstitutional and requires dismissal of the charges. Petitioners also raised the defense of entrapment and violation of due process in the failure of the local police departments to follow ABC guidelines for a decoy program. In its decision reversing ABC's action, the First District found that the constitutional provision which states that "[n]o person under the age of 21 shall purchase any alcoholic beverage" is clear and unambiguous and contains no exceptions; the court also noted that no exception has been created by statute. At this writing, the Supreme Court is scheduled to hear oral argument in this case on February 16.

The decoy issue is also being addressed in the legislature; ACA 6 (Tucker) and its companion measure, AB 1208 (Tucker), would permit the use of minor decoys but require ABC and enforcement agencies to show "probable cause" before proceeding with a minor decoy operation (see LEGISLATION).

BANKING DEPARTMENT

Superintendent:

James E. Gilleran

(415) 557-3232

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 business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the capital is adequate; the proposed name does not so closely resemble as to cause confusion with the name of any other bank or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office; the establishment, relocation, or discontinuance of branch offices and ATM facilities; and the establishment, discontinuance, or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue money orders or travelers checks unless licensed.