



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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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

ABC Enforcement Focuses on Problem Licensees Statewide, While Communities Push for Local Control. 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 that require retailers to finance and implement crime reduction programs in their communities. [14:1 CRLR 89-90]

The City of Oakland recently enacted just such an ordinance, which 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. That ordinance has been temporarily derailed by the Alameda County Superior Court, which enjoined it last December as preempted by the ABC Act. A more subtle Los Angeles ordinance, however, has survived judicial review. After the 1992 riots which destroyed many liquor stores in the South Central region of the city, Los Angeles enacted ordinances requiring all conditional uses—including conditional uses selling alcohol whose business permits had been issued prior to enactment of the conditional use scheme and were "grandparented in" as "deemed approved"—to secure approval of their rebuilding plans, which approval may be conditioned on the owner's agreement to remove graffiti, provide adequate lighting, remove trash, or provide a security guard. In *Korean American Legal Advocacy Foundation v. City of Los Angeles*, the Second District Court of Appeal upheld the validity of the law, noting that while local governments may not restrict the sale of alcohol, they do have the right to impose land use regulation aimed at eradicating criminal and "nuisance" activities in the area of a licensed premises (see LEGISLATION).

Local governments are also vying for control of problem liquor outlets through the legislative process. Bills such as AB 2742 (Lee) and AB 2698 (Tucker) would expand the ability of ABC to require li-

quor store owners to police and prevent criminal activity occurring in the general vicinity of their store, and increase penalties for retailers who do not take specified steps to reduce crime in their neighborhoods (see LEGISLATION).

Meanwhile, ABC says it has been beefing up enforcement in order to deal with crime problems in and around liquor stores and problematic bars and other on-sale establishments. ABC Deputy Director Manuel Espinoza reports that about 96% of the Department's investigator positions are now filled, and about 50% of the sworn staff at ABC are now working enforcement. Espinoza believes the problem of crime around alcohol-selling establishments should be dealt with by improving ABC's direct enforcement programs.

In January, Governor Wilson proposed a 10.4% budget increase for ABC, bringing its total budget to \$28 million for fiscal year 1994-95. Part of the increase would establish a fund of over \$2 million to support a grant assistance program, whereby ABC would award fifteen \$100,000 grants to local law enforcement agencies each year. This money would help train police officers in methods of investigating and prosecuting problem licensees through ABC's administrative system. Espinoza believes that this kind of enforcement program—where ABC works with local law enforcement—is the most efficient way to control problem licensees in high-crime areas. While ABC has not taken an official stand on the recent legislation and litigation regarding local control of alcohol outlets, Espinoza notes that ABC is the only agency authorized to issue and revoke liquor licenses, and he expressed some concern about cities which may see conditional use permits as a possible source of revenue.

On March 18, the City of Oakland and the League of California Cities sponsored a workshop where local public officials, neighborhood group representatives, city attorneys, managers, planners, and law enforcement personnel gathered to discuss local enforcement issues regarding alcoholic beverage retailers in high-crime areas. Some of the subjects addressed at the day-long conference included tools which local governments can use to combat public nuisances at alcohol outlets, ways to work with ABC in local enforcement methods, and outlooks on legislation being introduced by community groups and the alcohol industry.

Beer Labeling Requirements. On February 25, ABC adopted an emergency revision to section 130, Title 4 of the CCR, which—prior to the revision—permitted certain types of beer (bottled or canned ale, porter, brown, stout, and malt liquor)



to exceed an alcoholic content of 4% by weight, but prohibited the label on the bottle from disclosing the actual alcoholic content. ABC's emergency revision to section 130 repealed the prohibition, thus allowing the manufacturers of these malt beverages to advise consumers of the alcoholic content of their product labels. This emergency action brings ABC's regulation into compliance with a recent U.S. Tenth Circuit Court of Appeals decision in a case brought by the Adolph Coors Company, in which Coors challenged the prohibition on grounds it violates Coors' right to engage in nondeceptive commercial speech under the first amendment. The Tenth Circuit found that consumers have a substantial interest in knowing the alcoholic content of malt beverages, and that any prohibition on such statements constitutes a violation of the first amendment. ABC's emergency revision is effective for 120 from the date of adoption.

On April 15, ABC published notice of its intent to permanently adopt this revision. At this writing, ABC is accepting written comments until May 31, and has not scheduled a public hearing on the proposed regulatory change.

Clarification of "Tied-House" Laws. On May 13, ABC republished notice of its intent to amend section 106, Title 4 of the CCR, relating to the advertising and merchandising of alcoholic beverages. ABC published similar amendments to section 106 in a previous rulemaking package (*see below*), but failed to submit those regulatory changes to the Office of Administrative Law within one year of their original publication, as required by the Administrative Procedure Act.

The sale and distribution of alcoholic beverages is divided into a three-tiered system of manufacturers, wholesalers, and retailers. Since the repeal of Prohibition, the so-called "tied-house" laws have strictly controlled the advertising, marketing, and promotional programs of alcoholic beverage suppliers and their relationships with retailers and consumers. These restrictions have been justified as preventing the abuses associated with tied-houses prior to Prohibition, promoting an orderly and equitable market for alcoholic beverages, and prohibiting unrestrained advertising and promotions which would be contrary to promoting temperate use and consumption of alcoholic beverages.

Read together, Business and Professions Code sections 25500, 25502, and 25600 clearly prohibit suppliers from providing inducements or items of value to retailers. Likewise, no retailer may give premiums, gifts, or free goods to any per-

son, licensed or not, unless specifically authorized by an ABC regulation. These prohibitions are made even broader by the statutory use of the phrase "directly or indirectly" in all three sections.

In its proposed amendments, ABC is attempting to comprehensively address several promotions and marketing issues which are not covered by its current regulations. Its proposed changes to section 106 would add a table of contents for clarity; authorize and regulate "drink night" promotions; authorize and regulate consumer merchandise offers; authorize and regulate sweepstakes; authorize and regulate supplier participation in public service activities; authorize and regulate distilled spirits beverage lists and dispensing equipment; authorize and regulate supplier-sponsored entertainment at retail premises; and regulate contests sponsored by suppliers.

At this writing, ABC is scheduled to hold a public hearing on its proposed changes to section 106 on June 27 in Sacramento.

Other ABC Rulemaking. On January 18, the Office of Administrative Law (OAL) approved ABC's amendments to section 53, Title 4 of the CCR, which allows winetastings to be sponsored by licensees for a fee, and repeals a provision requiring prior Departmental approval for specified winetastings. [14:1 CRLR 90; 13:2&3 CRLR 118]

On January 27, OAL approved ABC's amendments to sections 59, 59.5, and 55.5, Title 4 of the CCR. Revised sections 59 and 59.5, which pertain to daily on-sale general licenses, provide that a temporary beer license, temporary wine license, and/or 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. Revised section 55.5 provides 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. [14:1 CRLR 90; 13:2&3 CRLR 118]

On February 1, OAL approved ABC's amendments to section 150, Title 4 of the CCR, which designates ABC 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. [14:1 CRLR 90]

On February 8, OAL approved ABC's adoption of section 53.5, Title 4 of the CCR, which implements the statutory privilege of holding beer tastings. [14:1 CRLR 90; 13:2&3 CRLR 118]

On February 10, OAL rejected ABC's adoption of new section 101, which would have required brand sales reporting in California; OAL found that the proposed rule does not satisfy the necessity and authority standards in Government Code section 11349.1, and that ABC failed to publish its final modifications to the proposed rule for public comment. ABC has 120 days in which to cure the deficiencies cited by OAL and resubmit the rulemaking file for review.

On March 23, OAL disapproved ABC's amendments to section 52, concerning the offering of samples of alcoholic beverages by licensees or officers, agents, or employees of licensees. [13:2&3 CRLR 118] OAL found that the amendments failed to comply with the consistency, clarity, and necessity standards in Government Code section 11349.1, and that ABC failed to adequately respond to all comments received during the public comment period. ABC has 120 days in which to cure the deficiencies cited by OAL and resubmit the rulemaking file for review.

LEGISLATION

AB 2742 (Lee). Existing law requires ABC to notify the appropriate sheriff, chief of police, district attorney, and local government legislative body of an application for the issuance or transfer of a liquor license, and prohibits ABC from issuing or transferring a license until at least thirty days after these notices are provided. As amended April 11, this bill would require ABC to also notify the appropriate local land use planning agency of license or license transfer application, and would allow any party that is so notified to request an extension of the thirty-day waiting period for a period not to exceed an additional thirty days. This bill would require ABC to give substantial deference, as defined, to the comments of a local jurisdiction with respect to an application for the issuance or transfer of a license, and to provide written findings where the Department determines that the application should not be denied or conditionally approved because those comments are outweighed by other factors.

Existing law provides that a liquor licensee's failure to take reasonable steps to correct a nuisance on the licensed premises or other immediate areas within a reasonable time after receipt of a notice pursuant to a specified statute, is grounds for the suspension or revocation of a li-



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quor license. This bill would include public sidewalks adjacent to the licensed premises as other immediate areas for purposes of this provision. This bill would also include the failure to operate the licensed premises in conformity with local zoning regulations, as evidenced by a local jurisdiction's revocation of a local land use permit, as grounds for suspension or revocation of a liquor license; authorize ABC to pursue license suspension or revocation upon notice that a local jurisdiction has revoked a land use permit with respect to the licensed premises; and require ABC to give substantial deference, as defined, to a local jurisdiction's revocation of a land use permit, in conducting a hearing on a disciplinary accusation filed against such a licensee, and to make written findings where ABC determines that the local permit revocation is outweighed by other evidence.

Existing law makes it a misdemeanor for any licensee, or agent or employee thereof, to keep, permit, or suffer, in conjunction with licensed premises, a disorderly house or other place that is a source of disturbance or is injurious to the public welfare. This bill would revise and recast this provision to, among other things, also establish misdemeanor liability in the case of constructive knowledge of the disturbing or injurious conditions.

Existing law establishes certain regulatory requirements with respect to alcoholic beverages, and provides that the violation of any of those requirements shall be punished as a misdemeanor, unless otherwise provided. This bill would establish certain minimum general operating standards with respect to the licensed premises of retailers of alcoholic beverages, the violation of which would be punishable as a misdemeanor. [A. W&M]

AB 2698 (Tucker), as introduced February 7, would expand ABC's authority to impose conditions upon any retail licensee where ABC makes findings that the licensee has failed to correct objectionable conditions within a reasonable time after receipt of a notice from ABC, a district attorney, city attorney, or county counsel to correct a public nuisance. These conditions could include restrictions on the hours of operation, the types and strengths of alcohol served, or the employment of security guards. This bill would also permit the ABC Director to bring an action to enjoin a licensee who has failed to correct objectionable conditions following such a notice.

This bill would also place a moratorium on the number of off-sale beer and wine licenses that may be issued until January 1, 1998, where (a) the proposed

premises is located in a city or county where the number of retail off-sale beer and wine licenses issued exceeds one license for each 2,500 inhabitants, or (b) the proposed premises is located in a city and county where the total number of retail off-sale beer and wine and off-sale general licenses exceeds one license for every 1,250 inhabitants.

AB 2698 would also increase the annual fees from \$24 to \$100 for an off-sale beer and wine license, set at \$12,000 the fee for an original on-sale or off-sale general license, and provide that these licenses may not be transferred for two years; allow ABC to appoint its own administrative law judges instead of using ALJs from the Office of Administrative Hearings; make it a misdemeanor to sell, except for export, any beer containing more than 6% of alcohol by volume (except for the sale of ale, porter, brown, malt liquor, or stout bearing a label which discloses the alcohol content, as required by federal law), or any wine product that contains added distilled spirits, including grape brandy, fruit brandy, or spirits of wine (fortified wine); and delete the January 1, 1994 sunset date and permanently extend requirements imposed upon licensees who sell both gasoline and beer and wine, including display restrictions, employee age requirements, and a drive-in window prohibition. AB 2698 was rejected by the Assembly Governmental Organization Committee on April 5, but was granted reconsideration.

AB 2897 (Caldera). Existing law authorizes ABC to deny an application for a license if the issuance would result in or add to an undue concentration of licenses and the applicant fails to show that public convenience or necessity would be served by the issuance; and defines the term "undue concentration" with regard to applications for on-sale and off-sale retail licenses. As amended April 26, this bill would instead require ABC to deny an application if issuance would tend to create a law enforcement problem, or would result in or add to an undue concentration of licenses. The bill would change the definition of undue concentration and provide that, notwithstanding the requirement that ABC deny an application that would result in or add to an undue concentration of licenses, a license may be issued with respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued in a place of public accommodation offering overnight lodging, or a beer manufacturer license, if the applicant shows that public convenience or necessity would be served by the issuance and, with respect to any other license,

if the local governing body of the area in which the applicant premises are located determines that public convenience or necessity would be served by the issuance. [A. Floor]

SB 1618 (Beverly). The ABC Act regulates the provision of signs and other advertising matter to licensed retail premises by manufacturers and others. As amended April 27, this bill—which is sponsored by the Miller Brewing Company—would specify that nothing in the ABC Act prohibits any beer manufacturer from furnishing electronic data services to a licensed retail premises, with the ultimate goal of establishing a paperless inventory and delivery process.

The ABC Act makes it a misdemeanor to sell, except for export, any beer that contains more than 4% of alcohol by weight, with specified exceptions. This bill would eliminate those exceptions to the existing misdemeanor provision, and would instead provide that the misdemeanor provision does not apply to the sale of beer labeled as ale, porter, brown, malt liquor, or stout, or to the sale of beer bearing a label of alcohol content that meets federal labeling requirements. As such, this bill would allow Miller to label "Ice," a new malt beverage containing 5.5% alcohol, as a "beer" instead of having to call it ale, porter, brown, malt liquor, or stout. [S. Floor]

AB 3805 (Richter), as amended April 12, 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, peace officers may use persons under the age of 21 years as decoys to catch persons who sell alcoholic beverages to persons under the age of 21 years; and 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 ABC's decoy guidelines. The bill would specify that certain requirements shall be met in order for 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. This bill is a liquor industry attempt to limit the impact of the California Supreme Court's recent decision in *Provigo v. Alcoholic Beverage Control Appeals Board* (see LITIGATION). [A. GO]

AB 2919 (Frazee). The ABC Act provides that nothing therein prohibits a



winegrower from giving or selling wine, or a beer manufacturer from giving or selling beer, to certain specified nonprofit organizations at prices other than those contained in schedules filed with ABC. As amended April 7, this bill would add licensed importers to those who are not prohibited from giving or selling beer or wine to those nonprofit organizations. [S. GO]

AB 3329 (V. Brown). The ABC Act prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided. As amended April 12, this bill would provide that the refund to, or exchange of products for, a dissatisfied consumer by a licensee authorized to sell to consumers shall not be deemed a premium, gift, or free goods given in connection with the sale or distribution of an alcoholic beverage. [S. GO]

AB 2785 (Tucker). Existing provisions of the ABC Act known as "tied-house" restrictions generally prohibit certain alcoholic beverage licensees from holding an interest in various other alcoholic beverage licensees. However, in certain instances, holders of a beer manufacturer's license or a winegrower's license are permitted to purchase advertising space and time from, or on behalf of, an on-sale retail licensee under specified conditions, pursuant to a written contract. As amended March 22, this bill would add manufacturers of distilled spirits to those who may purchase advertising space and time from, or on behalf of, an on-sale retail licensee.

Existing law provides that a beer manufacturer or winegrower who coerces or employs other illegal means to induce a beer or wine wholesaler to fulfill those contractual obligations on behalf of an on-sale licensee is guilty of a misdemeanor. This bill would include distilled spirits manufacturers and distilled spirits wholesalers within that misdemeanor definition. [S. GO]

SB 1376 (Thompson), as amended May 18, would amend existing "tied-house" restrictions to authorize a licensed winegrower to hold an ownership interest in an on-sale license, if certain conditions are met, including that the licensed on-sale premises are operated as a bona fide eating place, a bona fide bed and breakfast inn, or a bona fide hotel or motel; any alcoholic beverage sold and served at the on-sale licensed premises is purchased only from a California wholesale licensee, except as specified; the winegrower and any officer, director, or agent of that person hold, whether individually or in the aggregate, an ownership interest in no more than two licensed on-sale premises; and, in the case

of a bona fide eating place or a bona fide hotel or motel, wine produced by the winegrower does not exceed a specified percentage of the wine items offered for sale in the on-sale premises. [S. Floor]

SB 1400 (Greene), as introduced February 7, would amend existing "tied-house" restrictions to authorize the holder of an on-sale license in Sacramento County to own a winegrower's license if the winegrower's premises are located in Santa Clara County and the winegrower produces 40,000 gallons or less of wine per year. This bill would further provide that the on-sale licensee shall purchase no alcoholic beverages for sale in the state other than from a wholesale or winegrower licensee. [S. Floor]

AB 2346 (Cortese), as amended April 4, would amend existing "tied-house" restrictions to add a retail entertainment development adjacent to, and under common ownership with, a theme park, amphitheater, and motion picture production studio, to those on-sale retail licensees from whom holders of a beer manufacturer's or winegrower's license may purchase advertising space and time, as provided. [A. Floor]

SB 1379 (Beverly). The existing ABC Act provides that all licenses, except as specified, shall be issued on an annual basis. Existing law further provides for the transfer of a license when a partner on a license dies or is otherwise removed from the license, or upon reorganization of the corporate or partnership ownership of a license. As amended March 15, this bill would require that a license transferred pursuant to those provisions be issued for the unexpired term remaining on the license of the transferor. [A. W&M]

SB 1936 (Thompson). The ABC Act defines "beer manufacturer" as any person engaged in the manufacture of beer. As introduced February 24, this bill would add to that law a definition of "small beer manufacturer" as any person who holds a beer manufacturer's license pursuant to a specified provision applicable to beer manufacturers that produce 60,000 barrels or less a year. [S. Floor]

SB 1542 (Kopp), as amended April 28, would move ABC from the Business, Transportation and Housing Agency to the Business and Housing Agency, which this bill would create. [A. Trans]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 90-92:

SB 182 (Hughes), as amended July 13, 1993, would prohibit ABC from issuing a license to any club 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 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, 1993, 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. Inactive File]

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, 1993, 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. [S. GO]

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, 1993, this bill would instead provide for the deposit of that fee amount directly into the Alcohol Beverage Control Fund. This bill would also delete provisions of existing law which authorize and regulate certain fair trade contracts and the filing of price lists with ABC. [S. Inactive File]

AB 988 (Tucker), as introduced March 1, 1993, would delete provisions of existing law which authorize and regulate certain fair trade contracts and the filing of price lists with ABC. [S. GO]

AB 1230 (Conroy). Existing law generally prohibits a manufacturer of alco-



holic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising or paying or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. It authorizes, as an exception, the holder of a beer manufacturer's or winegrower's license to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, subject to specified conditions, including that the on-sale licensee is the owner of either an outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in a county of the eighth class, or of a fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County. As amended March 22, this bill extends the application of those exceptions to situations in which the on-sale retail licensee is an agent of the owner, manager of the stadium or arena, assignee of the owner's advertising rights, or the major tenant of the owner, as provided. This bill was signed by the Governor on May 9 (Chapter 67, Statutes of 1994).

AB 1974 (Horcher). Existing law provides that premises which have been used prior to the effective date of a zoning ordinance may continue operation if certain conditions are met. As amended September 1, 1993, 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, that 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, and that 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, wine-

grower, 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, 1993, 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 which would enact the Sensible Advertising and Family Education Act which would, among other things, require specified health warnings to be included in alcoholic beverage advertisements. On May 13, Senator Thurmond (R-S.C.) canceled a scheduled mark-up for S. 674 due to a lack of favorable votes; according to Thurmond's staff, although the Senator remains committed to the proposal, he will probably not be pursuing it in the immediate future. The measure is heavily opposed by the National Association of Broadcasters.

The following bills died in committee: **SB 1156 (Watson)**, which would have required on-sale licensees to install and maintain coin-operated vending machines which dispense affordable, high-quality latex condoms; **AB 1208 (Tucker)** and **ACA 6 (Tucker)**, which would have authorized ABC to use underage decoys if there is reasonable cause to believe a licensee has sold an alcoholic beverage to a person under the age of 21 years; **SB 184 (Maddy)**, which would have required beer sold by a licensed wholesaler to a retailer to be delivered at the retailer's licensed premises or from a loading area at the wholesaler's licensed premises; and **AB 1932 (Quackenbush)**, which would have, among other things, required

beer sold by a licensed wholesaler to a retailer to be delivered only at the retailer's licensed premises from a loading area at the wholesaler's licensed premises or to an approved warehouse.

■ LITIGATION

In *Provigo Corporation v. Alcoholic Beverage Control Appeals Board*, 7 Cal. 4th 561 (Apr. 7, 1994), the California Supreme Court unanimously held that the law enforcement technique of using underage decoys to catch ABC licensees who sell liquor to minors is constitutionally valid. In so ruling, the Supreme Court reversed the decision of the First District Court of Appeal, which held that the use of underage decoys is unconstitutional under the plain language of Article XX, section 22 of the California Constitution, which states that "no person under the age of 21 shall purchase any alcoholic beverage." The Court of Appeal noted that no exception from this rule has been created by statute for underage decoys, and further observed that in 1987, the legislature declined to adopt an exception for underage decoys when it added a provision prohibiting the attempt to purchase alcoholic beverages by any person under the age of 21. Thus, it reversed ABC's suspension of two licensees who had been subjects of a minor decoy operation. [*13:4 CRLR 99; 13:2&3 CRLR 120*]

In reversing the appellate court's decision, the California Supreme Court noted that "constitutional provisions must receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people." The court found that "the likely purpose underlying provisions prohibiting sales of intoxicating beverages to, or purchases by, minors is to protect such persons from exposure to the harmful influences associated with the consumption of such beverages," and "[t]he use of underage decoys to enforce laws against unlawful sales to minors clearly promotes rather than hinders the foregoing salutary purpose." The court reasoned that no entrapment exists unless "pressure or overbearing conduct is employed by the decoy." It also noted that the practice of using minor decoys does not violate the due process rights of the licensees, as they have a ready means of protecting themselves by simply asking purchasers for valid identification.

The liquor industry is attempting to limit the impact of this decision by sponsoring bills like AB 3805 (Richter) (*see* LEGISLATION), which would codify ABC's decoy guidelines and require local law enforcement agencies to follow them.



In *Korean American Legal Advocacy Foundation v. City of Los Angeles*, 23 Cal. App. 4th 376 (Mar. 17, 1994) (as modified Apr. 15, 1994), the Second District Court of Appeal held that the City of Los Angeles is not preempted by the ABC Act from exercising land use authority over liquor stores as they rebuild after the 1992 Los Angeles riots.

At issue is the interaction of several land use ordinances enacted by the City of Los Angeles. Since 1985, the City has required a conditional use permit for off-site alcoholic beverage sales citywide. In 1987, the City adopted a specific plan for the sale of alcoholic beverages for the South Central area of Los Angeles; the plan required conditional use approvals for establishments dispensing alcohol in South Central and provided that approval was contingent upon specified findings. Under either ordinance, existing uses before their operative dates—such as the business owned by the individual plaintiffs in this matter—became “deemed to be approved” conditional uses.

During the civil disturbance of 1992, a number of these businesses were destroyed or damaged. In the aftermath, the City enacted ordinances with expedited procedures to facilitate rebuilding. Despite these expedited procedures, however, the ordinances required all conditional uses—including conditional uses selling alcoholic beverages for offsite consumption—to submit plans for approval before rebuilding; the ordinances also provided that approval of a rebuilding plan may be made contingent on agreement to conditions imposed “on the same basis as provided for in this section for the establishment of new conditional uses.” These conditions typically require owners to agree to remove graffiti promptly, provide adequate lighting, remove trash, provide a security guard, and—in some instances—limit hours of operation. In addition to the plan approval process, the City also instituted a number of “revocation” hearings to revoke or condition an owner’s deemed approve status or use permit in the event the business threatens to become, or has become, a nuisance or law enforcement problem in the area.

Plaintiffs primarily challenged the City’s ordinances as being preempted by state statutory and constitutional provisions which vest “the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the state” with the State of California and ABC. The trial court denied their motion for preliminary injunction and sustained the City’s demurrer on the preemption issue.

In affirming the trial court’s ruling, the Court of Appeal stated that the ordinances at issue do not constitute a total prohibition on alcohol sales. “Instead the focus is to abate or eradicate nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects. These are typical and natural goals of zoning and land use regulations.” As to the preemption issue, the court stated that the state ABC Act “expressly excludes from the jurisdiction of the ABC and reserves to local governments the right to impose reasonable land use and zoning controls,” citing Business and Professions Code sections 23790–91 and Government Code sections 65850–61. The court also noted that the 1992 riots do not qualify as an “act of God” or “toxic accident” to exempt the businesses from regulation, since the destruction was caused by human intervention.

The Second District’s opinion in *Korean American Legal Advocacy Foundation* may help the City of Oakland in defending its conditional use permit ordinance at issue in *California Beverage Retailer Coalition v. City of Oakland*, which is currently pending in the First District Court of Appeal. Last December, Alameda County Superior Court Judge James Lambden issued an order temporarily enjoining enforcement of Oakland’s ordinance, under which vandalism, drug sales, assault, prostitution, public drinking, graffiti, gambling, and public urination are grounds for revoking any nearby retailer’s local permit to sell alcohol. Under the ordinance, Oakland retailers must pay a \$600 annual fee to support the Oakland alcohol beverage control operation, and a \$200 reinspection fee each time violations are found. Judge Lambden agreed with the industry-backed coalition that the ordinance is preempted by the ABC Act, and issued a preliminary injunction voiding the ordinance. [14:1 CRLR 89–90, 92] The City has appealed Judge Lambden’s injunction.

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