



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

Decoy Programs in Full Force. Since the California Supreme Court's decision in *Provigo Corporation v. Alcoholic Beverage Control Appeals Board*, 7 Cal. 4th 561 (Apr. 7, 1994), ABC and local law enforcement agencies have reactivated their decoy programs, also known as "sting operations," resulting in the issuance of numerous citations for selling alcohol to minors. In *Provigo*, the court upheld the use of underage decoys to catch ABC licensees selling liquor to minors. [14:2&3 CRLR 115; 13:4 CRLR 99; 13:2&3 CRLR 120] Recent sting operations in Fresno led to 63 citations out of 143 decoy attempts, 8 citations out of 19 attempts in Brea and Yorba Linda, 24 citations out of 66 attempts in Simi Valley, and 5 citations out of 15 attempts in Sacramento. These and other reports suggest that sting operations result in citations about 30% of the time.

In further support of sting operations, ABC will award fifteen grants of \$100,000 each to local law enforcement agencies to expand a program to target lawbreaking liquor stores and bars. The grants will include training in specialized investigative techniques by ABC's special operations unit. [14:2&3 CRLR 114]

ABC Budget Update. Under the state's 1994-95 Budget Act, ABC will receive \$28 million, a 10.4% increase over its 1993-94 budget, and a 29% increase over its 1992-93 budget. Among other things, the Department's budget provides \$16.6 million for licensing and over \$11 million for enforcement, including \$1.5 million to provide grants to law enforcement agencies (see above). [14:2&3 CRLR 114]

Beer Labeling Requirements. On July 18, the Office of Administrative Law (OAL) approved ABC's amendment to section 130, Title 4 of the CCR, which now allows manufacturers of certain types of beer (bottled or canned ale, porter, brown, stout, and malt liquor) to advise consumers of the alcoholic content on their product labels. This amendment 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 previous labeling prohibition on the grounds that it violated Coors' right to engage in nondeceptive commer-

cial 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. [14:2&3 CRLR 114-15]

Clarification of "Tied-House" Laws. On June 27, ABC held a public hearing on its proposed amendments to section 106, Title 4 of the CCR, relating to the advertising and merchandising of alcoholic beverages. [14:2&3 CRLR 115] 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 person, 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. Following the public hearing, the ABC Director approved the proposed regulatory changes; at this writing, the rulemaking file awaits review and approval by OAL.

Other ABC Rulemaking. On February 10, OAL rejected ABC's adoption of new section 101, Title 4 of the CCR, which



would have required brand sales reporting in California. [14:2&3 CRLR 115] ABC did not cure the deficiencies noted by OAL and resubmit the proposed section for review within the 120-day period authorized by the Administrative Procedure Act (APA).

On March 23, OAL disapproved ABC's amendments to section 52, Title 4 of the CCR, concerning the offering of samples of alcoholic beverages by licensees or officers, agents, or employees of licensees. [14:2&3 CRLR 115; 13:2&3 CRLR 118] ABC did not cure the deficiencies noted by OAL and resubmit the proposed section for review within the 120-day period authorized by the APA.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 115-18:

AB 2742 (Lee). Existing law requires ABC to notify the appropriate sheriff, chief of police, district attorney, and 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 August 8, this bill requires ABC to also notify the city or county planning agency of the license or license transfer application, and allows any local law enforcement agency that is so notified to request an extension of the thirty-day waiting period for a period not to exceed an additional twenty days.

Existing law provides that protests against the issuance of a liquor license may be filed with ABC; permits ABC to reject protests it determines to be false, vexatious, or without reasonable or probable cause; and permits a protestant whose protest has been rejected to request a hearing by ABC. This bill requires ABC—if, after investigation, it recommends that a license be issued notwithstanding a protest by a public agency, a public official, or the governing body of a city or county—to notify the agency, official, or governing body in writing of its determination and the reasons therefor, in conjunction with the notice of hearing provided to the protestant.

Existing law provides that a 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 is grounds for the suspension or revocation of a liquor license. This bill also provides that a licensee's failure, within a reasonable time after notice from ABC, to take reasonable

steps to correct objectionable conditions that occur during business hours on any public sidewalk abutting a licensed premises, is an additional ground for revocation or suspension of a liquor license, except with respect to certain specified licenses. For purposes of this provision, "objectionable conditions" includes disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise. "Reasonable steps" means all of the following: calling the local law enforcement agency, requesting those persons engaging in the objectionable activities to cease (unless the licensee believes his/her personal safety would be threatened in making that request), and making good faith efforts to remove items that facilitate loitering.

This bill also establishes in statute certain general operating standards that are applicable to the premises of all ABC licensees except restaurants, hotels, motels, and brew pubs, the violation of which is punishable as a misdemeanor. These standards involve (among other things) the posting of signs prohibiting littering and open alcoholic beverages on the premises; illumination of the premises (including adjacent sidewalks and parking lots) during darkness; daily removal of litter; removal of graffiti within 120 hours of application; and restrictions on advertising signs in windows and doors to ensure that law enforcement personnel have a clear and unobstructed view of the interior of the premises. This bill was signed by the Governor on September 19 (Chapter 629, Statutes of 1994).

AB 2897 (Caldera). Existing law authorizes ABC to deny an application for a license if the issuance would, among other things, 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; existing ABC regulations define "undue concentration" with regard to applications for on-sale and off-sale retail licenses. As amended June 9, this bill instead requires 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 changes the definition of undue concentration, and provides 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 for a hotel, motel, or other lodging estab-

lishment, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's 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. This bill was signed by the Governor on September 19 (Chapter 630, Statutes of 1994).

SB 1618 (Beverly), as amended June 1, specifies that nothing in the ABC Act prohibits any alcoholic beverage manufacturer, manufacturer's agent, or winegrower from furnishing electronic data services, as specified, to a licensed retail premises. This bill was signed by the Governor on July 9 (Chapter 171, Statutes of 1994).

AB 3805 (Richter), as amended August 8, 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. It also provides 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. The bill requires ABC to adopt and publish guidelines with respect to the use of persons under the age of 21 years as decoys in accordance with the Administrative Procedure Act. This bill is the liquor industry's successful attempt to temper the impact of the California Supreme Court's recent decision in *Proviso v. Alcoholic Beverage Control Appeals Board* (see above). This bill was signed by the Governor on September 30 (Chapter 1205, Statutes of 1994).

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 adds licensed importers to those who are not prohibited from giving or selling beer or wine to those nonprofit organizations. This bill was signed by the Governor on July 20 (Chapter 266, Statutes of 1994).

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 June 13, this bill provides that a refund to, or exchange of products for, a dissatisfied consumer by a licensee au-



thorized 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. The bill provides that a winegrower may advertise or otherwise offer consumers a guarantee of product satisfaction only in newsletters or other publications of the winegrower or at the winegrower's premises. It also provides that a winegrower may refund to a dissatisfied consumer the entire purchase price of wine produced by that winegrower and sold to that consumer, regardless of where the wine was purchased. This bill was signed by the Governor on August 31 (Chapter 392, Statutes of 1994).

SB 1376 (Thompson), as amended July 1, provides that a licensed winegrower may 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 or a bona fide bed and breakfast inn; 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, whether individually or in the aggregate, do not sell and serve wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest; and, in the case of a bona fide public eating place, wine produced by the winegrower does not exceed a specified percentage of the wine items offered for sale in the on-sale premises. This bill was signed by the Governor on August 21 (Chapter 318, Statutes of 1994).

AB 2346 (Cortese), as amended April 4, amends 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. This bill was signed by the Governor on May 20 (Chapter 80, Statutes of 1994).

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 requires that a license transferred pursuant to those provisions be issued for the unexpired term remaining on the license of the

transferor. This bill was signed by the Governor on June 30 (Chapter 123, Statutes of 1994).

SB 1936 (Thompson). The ABC Act defines the term "beer manufacturer" as any person engaged in the manufacture of beer. As amended August 18, this bill would have added to that law a definition of the term "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; provided that any person who holds a beer manufacturer's license for a specific location shall not also hold an on-sale license for the same or contiguous premises, except as specified; and provided that any person who holds an on-sale general license for a specific location shall not also hold a beer manufacturer's license for the same or contiguous premises, except as provided. This bill was vetoed by Governor Wilson on September 30; according to Wilson, numerous brew pubs requested this legislation "ostensibly to preserve their unique restaurant environment." However, Wilson opined that they can accomplish this without the legislation by voluntarily limiting their sales to beer and wine; Wilson concluded that, rather than having government restrict marketing opportunities, "the entrepreneur and the marketplace should determine whether brew pubs will serve distilled spirits."

SB 1542 (Kopp), as amended August 26, would have transferred the Business, Transportation and Housing Agency to the existing Trade and Commerce Agency, and established the Office of Business and Housing in the Trade and Commerce Agency to consist of the Department of Alcoholic Beverage Control, the Department of Corporations, the Department of Housing and Community Development, the Department of Real Estate, the Department of Savings and Loan, the State Banking Department, the Stephen P. Teale Data Center, and the California Housing Finance Agency. On September 27, Governor Wilson vetoed this bill, contending that "the reorganization of state government is the prerogative of the executive branch, not the legislative branch of government." Moreover, Wilson claimed that the Secretary of Business, Transportation and Housing is already addressing many of the concerns which prompted the introduction of this legislation.

AB 463 (Tucker), as amended August 23, expands ABC's authority to impose and enforce conditions on retail licenses, limits applications for and the issuance of original retail off-sale beer and wine licenses, and revises existing law regarding

an offer in compromise following the suspension of a license.

Under existing law, until January 1, 1994, establishments engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption were required to abide by certain conditions. Under existing law, until January 1, 1994, if there was a finding that a licensee or his/her employee had sold any alcoholic beverage to a minor at such an establishment, the license at the establishment would be suspended for 72 hours. This bill deletes the termination dates from those provisions, thereby reinstating their operation.

This bill also authorizes ABC, on and after July 1, 1995, to appoint its own administrative law judges to hear matters related to the suspension and revocation of licenses; previously, ABC used ALJs from the Office of Administrative Hearings. This bill was signed by the Governor on September 19 (Chapter 627, Statutes of 1994).

AB 987 (Tucker). Existing law provides that alcoholic beverage license fees and taxes be deposited in the Alcohol Beverage Control Fund, with a specified portion of that revenue to be transferred to ABC and the remainder to be transferred to the general fund on the order of the Controller. As amended September 19, this bill appropriates the amounts of \$900,000 and \$2,600,000 from the Alcohol Beverage Control Fund to ABC in augmentation of specified items in the Budget Act of 1994. This bill was signed by the Governor on September 19 (Chapter 628, Statutes of 1994).

AB 988 (Tucker). Under existing law, ABC sets the fee for an original on-sale or off-sale general license according to a specified formula, but in no event at less than \$12,000. The fee for an original on-sale general license for seasonal business is set according to another specified formula, but in no event at less than \$9,000. Existing law also provides that an original on-sale or off-sale general license for which a fee has been paid pursuant to the above provision may not be transferred for one year following its initial issuance. As amended August 24, this bill instead provides that an original on-sale or off-sale general license for which a fee in excess of \$12,000 has been paid may not be transferred for one year following its initial issuance. The bill sets the fee for an original on-sale or off-sale general license at \$12,000, and provides that such a license may not be transferred for 2 years following its initial issuance. This bill also deletes the provision regarding an original on-sale general license for seasonal business.



The ABC Act provides that nothing in that law prohibits a winegrower from giving or selling wine, or a beer manufacturer from giving or selling beer, to certain nonprofit organizations, at prices other than those contained in schedules filed with ABC. This bill provides that distilled spirits manufacturers and distilled spirits manufacturers' agents are not prohibited from giving or selling distilled spirits to those nonprofit organizations. The bill also provides that licensed importers are not prohibited from giving or selling beer, wine, or distilled spirits to those nonprofit organizations.

Under existing law, the holder of no more than six on-sale licenses may hold not more than 10% of the stock of one corporate licensed beer manufacturer located in the County of Los Angeles. This bill deletes that provision.

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, and provides that the on-sale licensee shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee. This bill creates an exception to the requirement regarding purchase from a wholesale or winegrower licensee for alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee. This bill also allows, until January 1, 1998, a holder of no more than one on-sale license and one off-sale general license in Siskiyou County only to own a licensed beer manufacturer, as specified. This bill was signed by the Governor on September 28 (Chapter 1028, Statutes of 1994).

AB 611 (Cortese). Existing law provides that any unlicensed adult person may apply to ABC for a permit to receive, under specified conditions, a shipment of wine, not in excess of 2.4 gallons in any calendar month, from another state. As amended June 22, this bill instead provides that any unlicensed adult resident of California may apply for a permit to receive, under specified conditions, a shipment of wine, not in excess of nine liters in any calendar month, from another state that allows adult residents of that state to receive shipments of wine, as specified, from California.

Existing law generally prohibits a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rec-

tifier, 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. This bill specifies that the term "importer" as used in that provision means a wine importer, and modifies 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. This bill was signed by the Governor on August 31 (Chapter 394, Statutes of 1994).

The following bills died in committee: **AB 2698 (Tucker)**, which would have—among other things—expanded ABC's authority to impose conditions upon any retail licensee where ABC finds 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; **AB 2785 (Tucker)**, which would have added manufacturers of distilled spirits to those who may purchase advertising space and time from, or on behalf of, an on-sale retail licensee; **SB 1400 (Greene)**, which would have authorized the holder of an on-sale license in Sacramento County to own a winegrower's license if the winegrower produces 40,000 gallons or less of wine per year; **SB 182 (Hughes)**, which would have prohibited ABC from issuing a license to any club that restricts membership or the use of services or otherwise discriminates on specified grounds, and provided for the suspension or revocation of licensure for those clubs; **SB 283 (Dills)**, which would have required beer wholesalers to own or lease licensed warehouse space for each location where the wholesaler stores or sells beer; and **AB 1974 (Horcher)**, which would have provided, for any license issued to any grocery, market, or convenience store that was com-

pletely 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.

■ LITIGATION

On July 14, the California Supreme Court denied review in *Korean American Legal Advocacy Foundation v. City of Los Angeles*, 23 Cal. App. 4th 376 (Mar. 17, 1994) (as modified Apr. 15, 1994), leaving intact the Second District Court of Appeal's opinion 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. [14:2&3 CRLR 119]

At this writing, *California Beverage Retailer Coalition v. City of Oakland* is still pending in the First District Court of Appeal. Last December, Alameda County Superior Court Judge James Lambden issued an order temporarily enjoining enforcement of an Oakland 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. [14:2&3 CRLR 119; 14:1 CRLR 89-90, 92] The city has appealed Judge Lambden's injunction; a decision is expected by late September.

BANKING DEPARTMENT

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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