



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 73,000 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*.

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 Prepares to Drastically Reduce Staff. As part of a legislatively-approved \$5 billion reduction in state spending, the Wilson administration is expected to reduce the Department's \$24 million budget by 20-25%; such cuts would require ABC to lay off over 150 employees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 120 for background information.) The layoffs were scheduled to begin on November 1, but have been delayed until at least February to enable various groups to present alternatives to minimize the number of layoffs required. If the layoffs prove necessary, ABC's investigator-to-licensee ratio would be reduced to approximately 1:1,300, based on approximately 73,000 licensees within California. During fiscal year 1965-66, the last year of full staffing at ABC, there were 217 investigators and 47,000 licenses, a ratio of approximately 1:220.

According to ABC, instead of taking 90-120 days to process a license application, the budget cuts might result in delays of up to nine months to one year. In addition, ABC's reduced staff is expected to affect the Department's law enforcement ability and reduce its potential deterrent effect. Deputy Director Manuel Espinoza predicted that the perception of ABC's reduced viability might encourage some licensees to disregard state laws regarding the sale to minors or obviously intoxicated persons, and could increase the potential for vice crimes. In fiscal year 1990-91, ABC received 14,410 police reports of violations occurring on or near ABC-licensed premises. Of these alleged violations, 4,075 were assigned for follow-up investigation; 5,128 were logged in the licensees' files for possible disorderly history use; and 5,207 were evaluated as having no basis for action against the licensee. In November, Espinoza predicted that relatively few complaints will be pursued during January to June 1992 as ABC's emphasis during that period will be on its licensing function.

On October 17, the Assembly and Senate Committees on Governmental Organization conducted a joint hearing to discuss and receive testimony on

various ABC-related issues. Noticeably absent from the hearing were representatives of the Wilson administration, despite the fact they were specifically asked to appear. The committees heard testimony from ABC personnel, including Director Jay Stroh, who emphasized the drastic impact of the mandated cuts. Law enforcement officials testified about the necessity and effectiveness of ABC's investigatory functions, and about local agencies' inability to take over those functions. In addition, members of community and public health groups testified that ABC has become active in addressing problems associated with alcohol abuse, such as drunk driving and domestic violence; they noted that the Department would be unable to continue these activities if the budget cuts are implemented. Assemblymember Richard Katz prophesied that the cutbacks would cost the state more money over the long run due to the social problems caused by alcohol abuse. Assemblymember Barbara Lee noted that Alabama, with only one-seventh of California's population, would have twice as many liquor control officers if the layoffs occur.

The California Association of Special Investigators and the liquor industry are expected to jointly sponsor legislation which would replace the \$5 million cut from ABC's budget by increasing the surtax fees across the board on all liquor and beer and wine licensing. Assemblymember Katz was expected to introduce the legislation in January.

ABC Prepares Affidavit and Acknowledgment Forms. AB 3448 (Statham) (Chapter 695, Statutes of 1990), as amended by AB 1784 (Floyd) (Chapter 726, Statutes of 1991), requires that, as of January 1, any clerk making an off-sale of alcoholic beverages must sign an affidavit which verifies his/her understanding of ABC laws prohibiting the sale of liquor to minors and "obviously intoxicated persons," and regulations concerning the validity of identification, the hours during which alcohol may be sold, and ABC license privileges; licensees are required to post a sign on the premises informing consumers of those laws. In addition, current law requires each licensee to sign an acknowledgment indicating that he/she has reviewed each clerk's affidavit and will have copies ready for inspection. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 121 for background information.) On November 15, ABC released the four-page affidavit form and the acknowledgment form for use by the industry.



REGULATORY AGENCY ACTION

LEGISLATION:

H.R. 1750 (Scheuer) as introduced April 11, and **S. 391 (Reid)**, as amended August 1, are federal bills which would enact the Lead Exposure Reduction Act, and direct the Secretary of Health and Human Services to promulgate regulations to establish tolerance levels and testing procedures with respect to wine. (See *infra* LITIGATION; see also CRLR Vol. 11, No. 4 (Fall 1991) p. 120 for background information.) These bills would prohibit the manufacture or importation of foils for wine bottles if they contain more than 0.1% lead by dry weight. H.R. 1750 is pending in the House Energy and Commerce Committee; S. 391 is pending in the Senate Environment and Public Works Committee.

H.R. 1443 (Kennedy) and **S. 664 (Thurmond)** are federal bills which would require one of five warnings to be rotated on all print, broadcast, and outdoor advertisements for alcoholic beverages. The warnings would contain disclosures about alcohol addiction, risks to pregnant women, drunk driving, and underage drinking. The bills, which are opposed by a coalition of beverage industry, broadcast and print media, and advertising companies, would also require publication of a toll-free number that consumers could call for information about alcohol abuse. The number would be administered by the U.S. Department of Health and Human Services. H.R. 1443 is pending in the House Energy and Commerce Committee; S. 664 is pending in the Senate Commerce, Science, and Transportation Committee.

AB 1151 (Friedman) would enact the Drunk Driving Prevention Responsible Server Practices Act, which would impose liability upon the holder of an alcoholic beverage retail license in connection with a variety of specified acts relating to the serving of alcoholic beverages to a minor or an obviously intoxicated person. This two-year bill is pending in the Assembly Judiciary Committee.

SB 1099 (Petris) would require ABC to establish the Division of Tobacco Control, which would license and regulate the retail sale of tobacco. In essence, the bill calls for the creation of an entity to regulate tobacco in much the same manner as ABC regulates the sale of alcoholic beverages. This bill is pending in the Senate Governmental Organization Committee.

AB 286 (Floyd) would repeal the \$5 surcharge currently imposed on alcoholic beverage licensees to fund the preparation and transmission of Desig-

nated Driver Program information sheets. This two-year bill is pending in the Assembly Governmental Organization Committee.

AB 374 (Floyd). Existing law prohibits the holder of an alcoholic beverage wholesaler's license from holding any ownership interest in any on-sale alcoholic beverage license, except in a county with a population not in excess of 15,000, where one person may hold a wholesaler's license and an on-sale license. This bill would increase the population of the county where the exception applies from 15,000 to 25,000. This bill is pending in the Senate Governmental Organization Committee.

AB 432 (Floyd). Existing law requires an applicant for an alcoholic beverage license to post a notice of intention to engage in the sale of alcoholic beverages at any premises in a conspicuous place at the entrance to the premises. This bill would require the notice to be posted at each entrance if there is more than one entrance; if the premises are not yet built, the bill would require two waterproof notices to be posted on the property. This bill, which would specify the contents of the notice, is pending in the Senate Governmental Organization Committee.

AB 541 (Bronzan) and **AB 542 (Bronzan)** would increase excise taxes on the privilege of selling or possessing for sale beer, wine, and distilled spirits in an unspecified amount. These two-year bills are pending in the Assembly Revenue and Taxation Committee.

AB 368 (Murray) and **AB 1290 (Murray)** would impose a surtax at specified rates on beer, wine, and distilled spirits, and an equivalent compensating floor stock tax on beer, wine, and distilled spirits in the possession of licensed persons on March 1, 1991. These two-year bills are pending in the Assembly Revenue and Taxation Committee.

AB 1438 (Archie-Hudson), as amended April 17, would require that every container of fortified wine, as defined, sold in this state have affixed to the container a distinctive label or package that clearly distinguishes fortified wine from nonalcoholic beverages; require that the labeling or packaging include the percentage of alcohol by volume; and prohibit the mislabeling of fortified wine. This bill is pending in the Assembly Governmental Organization Committee.

SB 737 (Killea), as amended April 18, would authorize ABC to issue special on-sale beer and wine licenses to any nonprofit foundation formed to sup-

port an off-campus performing arts theater operated by a community college district. This bill is pending in the Assembly Governmental Organization Committee.

AB 94 (Friedman), as amended March 18, would prohibit the issuance or renewal of any club license to a club, as defined, with specified exceptions, which denies any person entry or membership or unreasonably prevents the full enjoyment of the club on the basis of the person's color, race, religion, ancestry, national origin, sex, or age; enlarge the scope of ABC's authority to deny licenses due to "undue concentration"; authorize written protests against the exchange of a license where no public notice of intent to sell alcoholic beverages is required; and add a condition to existing law which requires ABC to deny an application for a license or for the exchange of a license if either the applicant or premises do not qualify. This two-year bill is pending in the Assembly Governmental Organization Committee.

LITIGATION:

On December 5, San Diego County Superior Court Judge Judith L. Haller approved the settlement of a class action regarding the wine industry's failure to warn consumers of possible contamination from lead foil caps on wine bottles. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 120 for background information.) The suit, originated by William Lerach of the San Diego law firm Milberg Weiss Bershad Specthrie & Lerach, was filed under the provisions of Proposition 65, which allows citizens to sue manufacturers and retailers for failure to warn the public of specified health hazards. However, the state Attorney General's Office took over the lawsuit and eventually negotiated the settlement, which requires most California wineries to stop using lead foil caps on wine bottles as of January 1 and to spend \$700,000 to educate consumers how to avoid exposure to lead in already bottled wine on store shelves and in homes; additionally, winery defendants must pay the state \$200,000 in penalties for failing to make the required Proposition 65 warnings. Lerach urged Haller to reject the settlement, characterizing it as "grotesquely inadequate" and "a laughable pittance compared to [the wineries'] liability." Lerach stated that if allowed to pursue the action, he could obtain at least \$1 million in penalties, or his firm would make up the difference. However, Haller approved the settlement, opining that it was in the public interest to



settle the case.

Pursuant to the settlement, and until January 1, 1993, retailers must post illustrated warning signs for their customers containing the following message: "Before pouring wine, wipe bottle tops clean with damp cloth to avoid residue from lead foil capsules. The purpose of this is to remove any residue from the capsules only. Many wine bottles are sealed with corks covered by lead foil capsules. These capsules can leave a deposit of a small amount of lead on the lip of the bottle, where it will mix with the wine when poured. Lead is a chemical known to the state of California to cause birth defects or other reproductive harm. Not all wine bottle capsules contain lead—some are made of plastic or other metals. Most vintners have agreed to stop using lead capsules on any wine bottled after December 31, 1991. In the meantime, remember to: [followed by an illustration of the wipe and pour method]."

In *People v. Brewer*, No. A051318 (Oct. 30, 1991), the First District Court of Appeal considered the constitutionality of Oakland Municipal Ordinance section 3-4.21, which originally provided that "[n]o person shall drink or have in his possession an open container of any alcoholic beverage: (1) on any public street, sidewalk, or other public way; (2) within 50 feet of any public way while on private property open to public view without the express permission of the owner, his agent, or the person in lawful possession thereof." In 1981, a municipal court found those portions of the ordinance that were linked to its "public way" language to be unconstitutionally vague; all references to a "public way" were subsequently deleted from the ordinance.

The instant case arose when Oakland police officer Timothy Sanchez saw George Brewer standing in front of a liquor store, apparently drinking from a container enveloped in a brown paper bag; upon seeing Sanchez, Brewer set down the bag and began walking away. Sanchez checked the bag and found it contained a partially consumed can of beer. Believing that he had observed a violation of the ordinance, Sanchez initiated a detention that led to his discovery of cocaine on Brewer.

At the ensuing trial for the possession of cocaine, Brewer moved to suppress the evidence generated by the search. A trial court granted the motion, finding that (1) the ordinance's attempted regulation of alcohol possession is preempted by the exclusive power of the state; (2) Oakland does have the power to prohibit alcohol consumption;

but (3) the preempted portion of the ordinance is not severable from the legitimate portion.

On appeal, the First District affirmed the trial court's first two holdings, but reversed the trial court's finding that the preempted portion is not severable from the rest, noting that "[t]he test of 'mechanical severability' requires parsing the Ordinance to delete the segments found preempted and unconstitutional in order to determine if the remaining provisions have sufficient grammatical, functional, and volitional characteristics to deserve an independent reincarnation." After severing the vague and preempted language, the court noted that the statute would read as follows: "No person shall drink any alcoholic beverage: (1) on any street or sidewalk; (2) while on private property open to public view without the express permission of the owner, his agent, or the person in lawful possession thereof." The First District found that the reconstructed version is capable of an independent existence, grammatically coherent, and functionally complete. The court concluded that, "[a]s thus reconstructed, the ordinance constituted a valid and effective statute at the time Officer Sanchez detained defendant. Sanchez was therefore entitled to use it as the basis for initiating the detention."

On December 5, a settlement was reached in *Patricia Aguayo, et al. v. David Dilchert, et al.*, No. US-90-20091-JW, filed in U.S. District Court for the Northern District of California. This civil rights class action concerned a raid of Club Elegante, a Hispanic-owned nightclub in San Francisco's Mission District; the raid was jointly conducted by the Immigration and Naturalization Service (INS) and ABC on July 22, 1989. According to witnesses, INS and ABC officials burst into the nightclub, sealed all exits, and kept dozens of people detained for as long as two hours while questioning them about their age and immigration status. One witness contended, "There was severe racism. If you were in that club and your skin wasn't white, you were a suspect." Although admitting no wrongdoing, INS and ABC agreed to pay \$83,000 in damages to settle the matter; as part of the settlement, 33 people who were at the nightclub during the raid will receive \$2,000 each. ABC did find 25 minors in the establishment and filed an accusation against the licensee for violation of Business and Professions Code section 25665; the licensee admitted the charge and was assessed a 60-day license suspension.

BANKING DEPARTMENT

Superintendent: James E. Gilleran
(415) 557-3232
Toll-Free Complaint Number:
1-800-622-0620

Pursuant to Financial Code section 200 *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