



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:

Wilson Administration Orders ABC to Cease Enforcement Activities. Effective March 16, Business, Transportation and Housing Agency Secretary Carl Covitz ordered all ABC employees to stop their enforcement activities and instead focus on processing the backlog of liquor license applications, with the exception of one investigator in each of the Department's 23 field offices, who will primarily be processing incoming police reports. Due to Governor Wilson's decision to reduce ABC's 1991-92 budget by approximately \$5 million, the Department has lost 165 employees (including 96 investigators) and amassed a licensing backlog that has hurt California businesses and jobs by creating up to an eight-month wait to receive one's liquor license. [12:1 CRLR 107] When the Wilson administration realized that its budget action was decreasing the amount of incoming fees and tax dollars, it ordered ABC to focus the efforts of its remaining staff on reducing the licensing backlog. According to ABC Deputy Director Manuel Espinoza, the Department anticipates that it will take three to four months to reduce the backlog to a manageable level. The administration also assigned 35 Department of Motor Vehicle employees to temporarily help process ABC license applications.

The administration's budget cuts to ABC's enforcement program have been the subject of sharp criticism by many constituencies, including parts of the industry. Many observers note the irony of eliminating enforcement at the same time the number of licensees is increased, and predict that the lack of ABC enforcement activity will have a profound effect statewide. Although local police and sheriffs' agencies are being asked to take over some of the agency's enforcement responsibilities, many such groups will be unable to do so because of budget restraints. California Organization of Police and Sheriffs president Don Brown opined that the Wilson administration's actions "place the public safety in jeopardy." Mothers Against Drunk Driving chair Kellie Mattson expressed concern that "if there is more licensing and not any enfor-

cement, then there is a likelihood of more people being killed or harmed" in alcohol-related occurrences.

Several pending bills would provide ABC with some additional funding. ABX 28 (Katz) would impose a permanent 20% surcharge on the annual renewal fee; AB 432 (Floyd), which has received industry support, would impose a one-year, \$70 surcharge on all of the ABC's fees; and AB 3220 (Klehs) would increase license fees for off-sale general and beer and wine licenses. (See *infra* LEGISLATION.) Although most of the parties involved agree that some revenue-increasing measure is necessary, and despite requests from ABC that legislative action be completed before May 15 (the deadline for ABC renewal notices to be mailed to licensees), the legislature failed to take any action which could take effect before July 1 (the start of the state's new fiscal year). Additionally, the Wilson administration's proposed budget calls for another 13-15% decrease in ABC's overall budget during 1992-93.

Los Angeles Riots Damage Numerous ABC Licensees. The recent widespread rioting in Los Angeles County triggered by the controversial verdict in the criminal trial of police officers accused of using excessive force on Los Angeles resident Rodney King resulted in almost \$1 billion in property damage and the temporary loss of about 23,000 jobs; it is estimated that 20% of all riot-affected businesses were liquor stores. According to ABC, over 600 establishments selling beer, wine, and/or distilled spirits were damaged or destroyed.

In a controversial move, the Los Angeles Planning Commission voted to generally exclude liquor stores from an emergency ordinance intended to facilitate rebuilding efforts; unlike other businesses, many liquor stores must undergo public hearings before obtaining new building permits. According to ABC, there are 728 liquor licenses in a 70-square-mile area in South Central Los Angeles. According to Los Angeles City Council member Rita Walters, "[t]here absolutely has to be a lessening of the number [of liquor stores]."

However, to aid its licensees hurt by the riots, ABC notes that retailers whose premises were destroyed have a vested right to reopen their operations within 500 feet without going through the normal ABC license application process. According to ABC Deputy Director Manuel Espinoza, the Department is considering expanding that allowance to as much as 1,000 feet and making other temporary changes which would assist licensees whose businesses were affected.



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ABC Proposes Numerous Regulatory Revisions. On December 13, ABC published notice of its intent to amend sections 52, 53, 55.5, 59, 59.5, 106, and 107, and adopt new sections 53.5 and 101, Title 4 of the CCR. Amendments to section 52, concerning the offering of samples of alcoholic beverages, would repeal section 52(b), which provides that licensees or officers, agents, or employees of licensees may make gifts of alcoholic beverages to nonlicensees, provided such gifts are not made in connection with the sale of an alcoholic beverage; a provision regarding gifts is being amended into section 106 (*see infra*).

Section 53 currently provides that winetastings sponsored by licensees must be conducted without charge. ABC's proposed amendments would allow winetastings to be conducted for a fee and would repeal a provision requiring prior Department approval for specified winetastings.

Proposed new section 53.5 would implement the statutory privilege of holding beer tastings, which are the presentations of samples of one or more beers, representing one or more beer manufacturers or industry labels, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the beer(s) tasted. Section 53.5 would provide—among other things—that any beer manufacturer or out-of-state beer manufacturer's certificate holder selling, furnishing, or donating beer to any private organization for a beer tasting shall notify an ABC office on a form prescribed by the Department at least ten days before the event is scheduled to take place. The section would also provide that no student organization, college fraternity, or college sorority shall sponsor a beer tasting.

Section 55.5 provides that on-sale beer and wine licenses and on-sale general licenses may be issued to the owner, lessee, or operator of a boat carrying passengers for hire, and alcoholic beverages may be served on such vessels when operated or navigated by a person duly licensed by the U.S. Coast Guard; on-sale beer and wine licenses and on-sale general licenses may also be issued to qualified persons who operate as concessionaires on such publicly or privately owned, leased, or operated boats carrying passengers for hire. Currently, section 55.5 provides that there shall be no sales of alcoholic beverages while the boat is at any dock, except sales to passengers at the designated home port dock one-half hour prior to departing on scheduled trips, and one-half hour after returning to the home port dock. In response to a petition from

Hornblower Dining Yachts, which contends that the "home port" limitation is onerous and creates a business hardship, ABC is proposing to amend section 55.5 to provide that each on-sale beer and wine boat licensee and each on-sale general boat licensee may designate ten commercial docks from which it will be allowed to sell alcoholic beverages, in addition to the boat's home port dock.

ABC proposes to amend section 59, regarding temporary beer or wine licenses, and section 59.5, regarding daily on-sale general licenses, to provide that a temporary beer license, a temporary wine license, and/or a daily on-sale general license may be revoked summarily by ABC if, in the opinion of ABC or the local law enforcement agency, such action is necessary to protect the safety, welfare, health, peace, and morals of the people of California.

In response to a petition from the Distilled Spirits Council of the United States, ABC proposes to adopt new section 101, which would require brand sales reporting in California. According to ABC, such statistical information would aid industry members in marketing, advertising, planning, and evaluating the general situation in the California liquor industry.

ABC is proposing to make a number of amendments to section 106, regarding the advertising and merchandising of alcoholic beverages. For example, amended section 106 would provide that a supplier may furnish, give, lend, rent, or sell promotional materials for alcoholic beverages sold by him/her to a retailer for use within off-sale premises in the same manner and under the same terms and conditions as the supplying of signs or displays pursuant to section 106, so long as the promotional material has no intrinsic value other than as advertising. Also, section 106 would provide that suppliers or retailers of alcoholic beverages may sponsor either a mail-in refund program or an in-store coupon promotion for its alcoholic beverage products so long as specified conditions are met.

Further, section 106 would provide that "drink nights," "bar nights," or similar promotional events, conducted for the purpose of promoting a specific brand(s) of alcoholic beverage products, may be sponsored by suppliers on licensed retail premises. Section 106 would also provide that "wine maker dinners," "meet the wine maker," or similar promotional events held at an on-sale retail premises may be conducted by a California winegrower licensee or California winegrower's agent licensee. Such promotional events would be subject to

the following conditions:

—There shall be no advance advertising or promoting of the event by the supplier or the participating retailer, except that the retailer may provide notice of the event in the interior of his/her licensed premises.

—No prizes, free goods, or other thing of value shall be given away in connection with the event by the supplier or the participating retailer, unless such prize, free goods, or thing of value is a permitted consumer advertising specialty, as defined.

—No alcoholic beverage shall be given away. The supplier or retailer, or their representative, shall not purchase or subsidize the cost of an alcoholic beverage for any consumer attending the event. A price reduction of the brand or brands being promoted may be offered provided any pricing decision is made solely by the retailer.

—The promotion shall be available to retailers in general, rather than limited to a particular chain or group of retailers.

—A retailer shall not receive, directly or indirectly, any compensation or reward for agreeing to participate in the promotional event.

Also, section 106 would be amended to provide that no supplier or retailer, in connection with his/her business, shall give or furnish any alcoholic beverage to any person except as authorized by the Alcoholic Beverage Control Act or ABC regulation, unless specified conditions are met.

Finally, ABC proposes to amend section 107, which provides that the licensee of each premises licensed with an on-sale license for public premises shall maintain a clearly legible permanent sign, not less than seven inches by eleven inches in size reading, "No Person Under 21 Allowed" at or near each public entrance thereto in such a manner that such sign shall be visible from the exterior of each public entrance. In response to a petition by Harding Housing Limited, a manufacturer of signs and displays incorporating electrically-operated, self-changing, digital date/time devices, ABC's proposed amendments would provide that all retail licensees shall maintain a clearly legible notice advising prospective customers that no alcoholic beverage will be sold or served to a person born after the date shown in said notice; coincidentally, that notice will have incorporated into its text an electrically-operated automatic calendar or device, displaying the correct time and date every two seconds. This self-changing calendar or device incorporated into the notice will be set and maintained to show precisely the date 21 years earlier



than the current date.

ABC conducted a public hearing on these proposed changes on February 19 in Sacramento. The proposal receiving the most attention was the revision to section 107 which would require that licensees use a notice containing an electrically-operated automatic calendar or device. Representatives of the restaurant, liquor store, and grocery store industries agreed that such a requirement places an unnecessary burden and expense on licensees. Harding House president William Harding contends that such a device will make it "evident even to the juvenile population that the state is serious in its efforts to curb juvenile alcoholism." According to Harding, his unit sells for \$20 and can be updated yearly for \$5.

Another regulatory proposal receiving significant attention is the proposed version of section 106; representatives from Canada, Australia, and Italy contend that some of the proposed language is unnecessarily restrictive against imports. Also, many hearing participants complained that the prohibition against advance advertising of promotional events by a participating retailer would negatively affect the usefulness of such promotions.

Because of the controversy surrounding many of the regulatory proposals, ABC extended the public comment period until April 20. At this writing, these regulatory proposals have not yet been adopted by ABC.

Alcohol Advertising Criticized for Inducing Teen Drinking. U.S. Surgeon General Antonia Novello is continuing her campaign against alcohol industry advertisements which specifically target the teen-age market. According to Dr. Novello, industry ads routinely equate drinking with health and vitality, by displaying beach scenes featuring young, healthy beachgoers drinking and frolicking in the sun or participating in athletic events. In contrast to that portrayal, Dr. Novello described alcohol as leading the nation's youth into emergency rooms and jails, and noted that teen drinking is often a factor in accidents, deaths, assaults, rapes, bad grades, and school dropouts. Calling on the industry to eliminate ads which appeal primarily to the nation's youth, Dr. Novello reported that 350,000 of the country's eighth-grade children are considered binge drinkers; that number nearly doubles for tenth-graders.

In a related matter, U.S. Senator Strom Thurmond and Representative Joseph Kennedy have introduced legislation which would require that one of five warnings be rotated on all print, broadcast, and

outdoor alcoholic beverage advertisements. The messages would address drunk driving, drinking and pregnancy, the dangers of mixing alcohol with other drugs, alcohol addiction, and underage drinking. (See *infra* LEGISLATION.) Proponents of the measures cite numerous benefits of such warnings. For example, they contend that the warnings would counterbalance many of the misleading and one-sided promotions for alcohol that inundate the media. The alcohol industry spends over \$2 billion annually on advertising and promotion. One prominent study of teen-age drinking found that advertising is more strongly related to alcohol drinking than parental influence, social status, or gender.

On April 2, the Consumer Subcommittee of the Senate Commerce, Science and Transportation Committee conducted a hearing on the proposed federal legislation. At that hearing, the Beer Institute presented the findings of a survey conducted by the Roper Organization. Based on the study, which was commissioned by alcohol manufacturer Anheuser-Busch, Inc., the Beer Institute contended that the public already has a high level of awareness of the information that would be contained in the proposed warnings. For example, Roper contends that 99% of respondents aged 14-20 and 98% of respondents aged 21 and older were aware that drinking during pregnancy may cause birth defects and that women should avoid alcohol during pregnancy; 98% of all respondents were aware that drinking alcohol may become addictive; 94% of the minors polled and 98% of the adults polled knew that alcohol may be hazardous if used with certain kinds of over-the-counter, prescription, or illegal drugs; 99% of all respondents knew that alcohol impairs one's ability to drive a car or operate machinery; and 100% of the minors polled and 98% of the adults polled knew that it is against the law to purchase alcohol for persons under age 21. While acknowledging that "[s]uch high levels of awareness are very rarely found," Roper Organization vice chair Harry O'Neill contended that "[t]he poll shows extremely high awareness of the information in the proposed warnings among adults and young people alike." Based on Roper's survey results, Anheuser-Busch vice president and group executive Stephen K. Lambright opined that the "ad warnings approach should be rejected in favor of education, awareness, and law enforcement, which are already reducing abuse." At this writing, the Subcommittee has scheduled no action for the legislation.

LEGISLATION:

ABX 28 (Katz), as amended April 9, would impose a 20% surcharge on ABC's annual license fee, applicable to any renewal occurring on or after July 1, 1992. This bill would also provide that any former employee of ABC who on or after January 1, 1991, left ABC to accept employment with another state agency shall be entitled to be reinstated upon request made within six months of the effective date of this act. [A. Floor]

AB 432 (Floyd). Existing law establishes various annual fees for different categories of ABC licensees. As amended March 2, this bill would impose a \$70 surcharge on each of those fees, to be deposited into the Alcoholic Beverage Control Fund. This increase would be operative from July 1, 1993 to July 1, 1994, and only if a specified amount of money is appropriated from ABC. 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 specify the contents of the notice and 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. [S. Appr]

AB 3220 (Klehs), as introduced February 20, would increase the annual license fee for all retail package off-sale beer and wine licensees to \$124 per year and the annual license fee for all retail package off-sale general licensees to \$450 per year. ABC's license fees have not been increased in 20 years, although surcharges have occasionally been authorized. [A. GO]

AB 2860 (Floyd). Existing law requires all moneys paid as ABC license fees, fines, and excise taxes to be deposited into the Alcoholic Beverage Control Fund. After deductions for license fee and tax refunds, the remainder of the Alcoholic Beverage Control Fund is transferred to the general fund. As amended April 20, this bill would instead provide that all fines levied in lieu of license suspension be deposited directly into the general fund. [S. GO]

AB 2711 (Floyd). Existing law generally prohibits a manufacturer, among others, from holding the ownership, directly or indirectly, of any interest in any on-sale or off-sale license. As introduced February 13, this urgency measure would grant a tied-house exemption to Sea World, a marine park located in San Diego County owned by Anheuser-Busch, Inc.,



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an alcoholic beverage manufacturer. One of the conditions of that exemption would require the licensee to serve other brands of beer, wine, and distilled spirits in addition to the beer or distilled spirits manufactured by the licensee. [S. *Appr*]

SB 1617 (Thompson) would authorize a licensed winegrower, or any officer, director, or agent of that person, to hold, directly or indirectly, the ownership of any interest in an on-sale license, provided that specified conditions are met. [S. *Floor*]

AB 2858 (Floyd). Existing law authorizes ABC to issue a temporary permit to a transferee of any license to continue the operation of a premise during the period a transfer application is pending, subject to certain enumerated conditions. As amended May 4, this bill would require ABC to issue, upon request, a temporary permit to an applicant for an original on-sale general license or to the transferee of any on-sale general license to operate a premise subject to specified conditions. [S. *GO*]

AB 2960 (Costa), as amended May 4, would provide that a wholesaler—as part of the terms of sale or distribution—may reduce the net price of alcoholic beverages sold or distributed to a licensee by an allowance for breakage or for defects in the merchandise equal to 0.001% of the purchase price; require the sales invoice to contain a notice that the purchaser is precluded from any further claim for breakage or spoilage; and prohibit the acceptance of certain returns if that notice is given. These provisions would not apply to beer. [A. *GO*]

AB 3335 (Brulte). Existing law authorizes ABC to impose reasonable conditions upon a retail alcoholic beverage licensee or any licensee in exercise of retail privileges, upon request of the licensee or an applicant for a license, in specified situations. Existing law also specifies the subject matter to which these conditions may relate, including the personal conduct of the licensee. As introduced February 20, this bill would provide that a condition concerning the personal conduct of the licensee, which is placed upon a license renewal and which forbids or restricts the sale of nonalcoholic products or the offering of services unrelated to the license, may not be imposed without a hearing. [A. *GO*]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 108:

H.R. 1750 (Scheuer) and **S. 391 (Reid)** are federal bills which would enact the Lead Exposure Reduction Act, and direct the Secretary of Health and Human Services to promulgate regulations to estab-

lish tolerance levels and testing procedures with respect to wine. [11:4 CRLR 120] 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. (See *supra* MAJOR PROJECTS.) 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 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. [S. *GO*]

SB 737 (Killea), as amended April 18, would authorize ABC to issue special on-sale beer and wine licenses to any non-profit foundation formed to support an off-campus performing arts theater operated by a community college district. [A. *GO*]

The following bills died in committee: **AB 1151 (Friedman)**, the Drunk Driving Prevention Responsible Server Practices Act, which would have imposed 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; **SB 1099 (Petris)**, which would have required ABC to establish the Division of Tobacco Control to regulate the retail sale of tobacco; **AB 286 (Floyd)**, which would have repealed the \$5 surcharge currently imposed on alcoholic beverage licensees to

fund the preparation and transmission of Designated Driver Program information sheets; **AB 541 (Bronzan)** and **AB 542 (Bronzan)**, which would have increased taxes on the privilege of selling or possessing for sale beer, wine, and distilled spirits in an unspecified amount; **AB 368 (Murray)** and **AB 1290 (Murray)**, which would have imposed 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; **AB 1438 (Archie-Hudson)**, which would have required 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; and **AB 94 (Friedman)**, which would have prohibited 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.

LITIGATION:

In *Laube, et al. v. Stroh and Alcoholic Beverage Control Appeals Board*, No. A050709, and *De Lena v. Stroh and Alcoholic Beverage Control Appeals Board*, No. A052207 (Jan. 6, 1992), consolidated matters before the First District Court of Appeal, petitioners were liquor licensees who suffered suspension or revocation of their liquor licenses because they allegedly permitted drug sales in their establishments. Under ABC's interpretation of *McFaddin San Diego 1130, Inc. v. Stroh*, 208 Cal. App. 3d 1384 (1989), a licensee "permits" drug activity when he/she fails to take reasonable steps to prevent it, even when the licensee has no reason to believe such activity is occurring, and regardless of the nature of the establishment or its clientele. [9:3 CRLR 76]

The court noted that the crux of the case is the *McFaddin* decision, its interpretation by ABC and the Alcoholic Beverage Control Appeals Board, and its historical antecedents. According to the First District, a long line of California liquor license decisions since *McFaddin* have transformed the original, perhaps reasonable, definition of "permitting" into something entirely different: "The notion that the passive conduct of permitting something by failing to take measures to prevent it does not require knowledge of the thing permitted. The concept that one



may permit something of which he or she is unaware does not withstand analysis." The First District rejected such an interpretation, and instead stated that a licensee "has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly. Once a licensee knows of a particular violation of the law, that duty becomes specific and focuses on the elimination of the violation. Failure to prevent the problem from recurring, once the licensee knows of it, is to 'permit' by a failure to take preventive action." According to the court, "[t]his is a more reasonable alternative to the Board's interpretation of *McFaddin*, and one more consistent with logic and reasonable fairness."

In *Laube*, the court noted that the evidence failed to establish that either the licensee's management or its employees knew of the drug transactions that occurred on the premises; as such, the court annulled the decision of ABC and the ABC Appeals Board. In *De Lena*, the court remanded the matter to the ABC Appeals Board to determine whether De Lena was aware of the illegal activity.

In similar cases, *Yu v. Alcoholic Beverage Control Appeals Board and Stroh*, No. H008497, and *Min v. Alcoholic Beverage Control Appeals Board*, No. H008615 (Jan. 31, 1992), the Sixth District Court of Appeal reviewed these consolidated matters which presented the issue whether, because of frequently occurring illegal drug transactions on the premises, ABC may revoke the off-sale alcohol licenses of petitioners without requiring proof that petitioners knowingly permitted the drug transactions or that the sale of alcohol caused or contributed to the illegal conduct. Although both petitioners argued that the evidence did not sustain a finding that either knew of the drug transactions, the Sixth District determined that "the record amply sustains findings of implied knowledge as to Min and actual knowledge as to Yu" of numerous drug transactions on the premises. However, the court also found that there was no evidence of complicity on the part of either petitioner.

The California Constitution authorizes the revocation of an ABC license where the premises have essentially become a public nuisance; the existence on the premises of a condition injurious to the public welfare is enough for revocation. According to the court, fault is not relevant; the power of ABC derives from its police power to prevent nuisances

regardless of anyone's fault in creating them. Because the evidence showed that "the premises have become law enforcement problems, that the owners were actually or constructively aware of the problems, and that they were not effective in controlling the rampant drug trade on the licenses premises," the court held that ABC did not abuse its discretion in revoking the licenses.

BANKING DEPARTMENT

Superintendent: James E. Gilleran

(415) 557-3232

Toll-Free Complaint Number: 1-800-622-0620

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

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

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

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

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

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

business qualifications of the proposed officers; and

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

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

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

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

The superintendent examines the condition of all licensees when necessary, but at least once every two years. The Department is coordinating its examinations with the Federal Deposit Insurance Corporation (FDIC) so that every year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees security pools that cover the deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS:

FDIC Increases Insurance Fund