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 Continues Focus on Processing Liquor License Applications. After Governor Wilson's decision to reduce ABC's 1991–92 budget by approximately $5 million, the Department lost 165 employees (including 96 investigators) and amassed an application backlog that has created up to a seven-month wait to receive one's liquor license. Because this backlog was costing the state money, Business, Transportation and Housing Agency Secretary Carl Covitz issued a March 16 order to all ABC employees to stop their enforcement activities and instead focus on processing the backlog of liquor license applications. *[12:2&3 CRLR 157]* According to ABC Deputy Director Manuel Espinoza, the Department currently maintains a three-month backlog in processing applications and a four-month backlog for completing its investigation of the applicant.

This seven-month backlog, which is primarily felt in the southern division, hurts small businesses as well as the state, which would normally be collecting taxes from these businesses. This situation is not expected to change in the near future, as ABC's fiscal year 1992–93 budget is about $19 million compared with its 1990–91 budget of $24 million. Even though AB 432 (Floyd) (Chapter 900, Statutes of 1992) will impose a $70 surcharge on various fees paid by ABC licensees, the money generated by the surcharge is expected to go toward paying off an unfunded deficit and updating ABC's telecommunications equipment (*see infra* LEGISLATION).

The unfunded deficit occurred due to the Department's inability to quickly lay off the required number of employees to meet its reduced 1991–92 budget. According to Deputy Director Espinoza, the layoff process takes eight months; because the major portion of ABC's budget is for personnel, the Department went into the red paying salaries of employees who would eventually be laid off. Although a top priority of the Department is to rehire as many of those employees as possible, its 1992–93 budget may prohibit ABC from doing so.

The Wilson administration's budget cuts to ABC's enforcement program have been the subject of sharp criticism by many constituencies, including parts of the alcohol industry. Although ABC generates over $30 million per year in revenue, it will be allowed to spend only about $19 million of that amount to do the job mandated by California law. On top of ABC's loss of resources to fund its enforcement activities, a total of 385 new on-sale and 356 new off-sale licenses became available in September, with 34 of the state's 58 counties eligible for new licenses. Organizations such as the California Organization of Police and Sheriffs and Mothers Against Drunk Driving contend that Governor Wilson's actions have placed the public safety in jeopardy. According to Assemblymember Richard Katz, "[t]here are 70,000 liquor licenses in California and today not a single ABC officer is on the street to check on them. More liquor sales to minors, more drunk driving accidents and deaths, and more drug dealing and prostitution around bars is the result."

Survey Says Teen Drinking Rose in 1991. According to the Attorney General's fourth biennial statewide survey of drug and alcohol use among junior high and high school students, teenage alcohol use and drinking and driving has increased while cocaine and amphetamine use has decreased. This survey was given to a representative sample of 8,084 students in grades 7, 9, and 11 enrolled in 47 public high schools and 44 public junior and middle schools statewide; as in past surveys, students completed the questionnaire under conditions of anonymity.

Attorney General Dan Lungren cited as "disturbing" the survey's finding that the decline in alcohol use observed in the 1989–90 report was reversed, with prevalence rates returning to levels of earlier surveys; for example, beer drinking increased at all three grade levels, and the consumption of wine remains as popular as beer. "Particularly alarming, the survey findings show that students are continuing to mix drinking and driving," said Lungren, who noted that 25% of ninth-grade students and 39% of eleventh-graders reported that they had either driven a car after drinking or were passengers in a car while the driver had been drinking. Lungren further noted that over half of eleventh-grade students reported that it is very easy for them to obtain alcohol in their communities.

One of the enforcement activities carried on by ABC before its funding reduction was monitoring the sales of alcohol to minors (*see infra* LITIGATION). According to ABC, the use of decoys has proven to be a successful deterrent, since the fines imposed for such activity are often upheld by the ABC Appeals Board. Although local police agencies are allowed to run their own decoy programs, many have found it difficult to do so in this time of statewide budget austerity.

Rebuilding in Los Angeles Continues. According to ABC, the recent rioting in Los Angeles County affected over 600 establishments selling beer, wine, and/or distilled spirits; these licensees have a vested right, based upon state law, to reopen their operations within 500 feet of the original business without going through the normal ABC license application process. However, 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. *[12:2&3 CRLR 157]* Further, ABX 40 (Archie-Hudson) would have required ABC to hold hearings in the community before determining whether to issue or reissue licenses or permits to owners whose stores were destroyed to relocate to a new location. Although ABX 40 died in committee, many of the bill's issues are expected to resurface for further debate (*see infra* LEGISLATION).

ABC Continues Work on Numerous Regulatory Revisions. In December 1991, 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; all of the proposed amendments, with the exception of section 107, are moving forward. *[12:2&3 CRLR 158]* ABC is in the process of responding to all of the comments received regarding the proposed revisions. The highlights of these revisions and how they change existing law are as follows:

-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 Departmental approval for specified winetastings.

-New section 53.5 would implement the statutory privilege of holding beer tastings, which are 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.

-Amendments to section 55.5 would 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.

-Amendments to section 59, regarding temporary beer or wine licenses, and section 59.5, regarding daily on-sale general licenses, would 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's proposed adoption of new section 101 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.

-Amendments to section 106, regarding the advertising and merchandising of alcoholic beverages, 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. Further, amendments to 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.

In response to a petition by Harding Housing Limited, a manufacturer of signs and displays incorporating electronically-operated, self-changing, digital date/time devices, ABC considered an amendment to section 107 which would have required all retail licensees to 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 the notice; coincidentally, that notice would have incorporated into its text an electronically-operated automatic calendar or device, displaying the correct time and date every two seconds. This self-changing calendar or device would have been set and maintained to show the date 21 years earlier. On August 21, ABC denied this petition mainly due to the significant economic impact on small businesses and the availability of less burdensome alternatives.

LEGISLATION

AB 2868 (Floyd) authorizes any winegrower, winegrower's agent, or officer, director, agent, or representative of that person to conduct and participate in wine promotional lectures held at any on-sale or offsale retailer's premises featuring the winegrower's brands of alcoholic beverages, as specified. This bill was signed by the Governor on August 9 (Chapter 471, Statutes of 1992).

ABX 40 (Archie-Hudson), among other things, would have provided that, in counties with a population of one million or more and cities with a population of 500,000 or more, upon request by the city council, board of supervisors if not within a city, the chief of police or sheriff, or a resident whose residence is located within one mile of the licensed premises, ABC shall hold a public hearing to determine whether an application for transfer or renewal of an off-sale license should be granted; authorized ABC to refuse to permit the transfer or renewal or impose conditions upon renewal or transfer if it determines that the transfer or renewal would result in an excess concentration of off-sale general licenses within the area; and provided that if a city council or board of supervisors has adopted an ordinance determining that an excessive number of alcohol-related crimes occur in an area and has imposed restrictions related to the sale of alcohol in that area, on off-sale general license shall not be renewed or transferred in that area unless a public hearing has been held on whether that renewal or transfer shall take place. This bill died in committee.

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 159–60:

AB 432 (Floyd). Existing law establishes various annual fees for different categories of ABC licensees. This bill imposes a $70 surcharge on each of those fees, to be deposited into the Alcoholic

Beverage Control Fund. This increase will be operative from July 1, 1992 to July 1, 1993.

Existing law provides that fees for various licenses issued by ABC shall be deposited into the state's general fund. This bill instead provides that these fees shall be deposited in the Alcoholic Beverage Control Fund.

This bill also provides that the fee for on-sale licenses shall be determined by ABC, and prohibits an original on-sale or off-sale general license from being transferred for one year following its initial issuance.

Existing law provides that all money collected as license fees pursuant to the Alcoholic Beverage Control Act and other specified provisions shall be deposited into the State Treasury to the credit of the Alcoholic Beverage Control Fund for the purpose of refunds and transfer to the general fund. This bill instead provides for the deposit of that money into the Alcoholic Beverage Control Fund, and provides that certain money collected as license fees and deposited in the Alcoholic Beverage Control Fund is allocated, upon appropriation by the legislature, to ABC for the enforcement and administration of the Act.

Finally, this bill appropriates over $23 million from the Alcoholic Beverage Control Fund to ABC, and provides that unencumbered amounts of appropriations made by the Budget Act of 1992 shall be returned; provides that the appropriation is not subject to a reduction provision of the Budget Act; and provides for certain transfers between the general fund and the Alcoholic Beverage Control Fund. This bill was signed by the Governor on September 24 (Chapter 900, Statutes of 1992).

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. This urgency measure grants a tied-house exemption to Sea World, a marine park located in San Diego County owned by Anheuser-Busch, Inc., an alcoholic beverage manufacturer. One of the conditions of that exemption requires the licensee to serve other brands of beer, wine, and distilled spirits in addition to the beer or distilled spirits manufactured by the licensee. This bill was signed by the Governor on July 20 (Chapter 277, Statutes of 1992).

SB 1617 (Thompson) authorizes 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. This bill was signed by the Governor on July 24 (Chapter 362, Statutes of 1992).

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. This bill authorizes ABC, in its discretion, to issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions. This bill also repeals and recasts existing law to provide that all licenses, except on-sale licenses for seasonal businesses and daily on-sale licenses, shall be issued on an annual basis. This bill was signed by the Governor on September 21 (Chapter 838, Statutes of 1992).

H.R. 1750 (Scheuer) and **S. 391 (Reid)** are federal bills which would enact the Lead Exposure Reduction Act, and direct the Secretary of the U.S. Department of Health and Human Services (DHHS) to promulgate regulations to establish 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 recently passed 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 DHHS. H.R. 1443 is pending in the House Energy and Commerce Committee; S. 664 is pending in the Senate Commerce, Science, and Transportation Committee.

The following bills died in committee: **ABX 28 (Katz)**, which would have imposed a 20% surcharge on ABC's annual license fee, applicable to any renewal occurring on or after July 1, 1992, and would have provided 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; **AB 3220 (Klehs)**, which would have increased 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; **AB 2860 (Floyd)**, which would have provided that all fines levied in lieu of license suspension shall be deposited directly into the general fund; **AB 2960 (Costa)**, which would have, among other things, provided 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; **AB 3335 (Brulte)**, which would have provided 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; **AB 374 (Floyd)**, which would have increased the population of the county where a specified exception applies from 15,000 to 25,000; and **SB 737 (Killea)**, which would have authorized ABC to issue special on-sale beer and wine licenses to any nonprofit foundation formed to support an off-campus performing arts theater operated by a community college district.

LITIGATION

An administrative complaint filed by ABC in March 1990 challenged selective nightclub admissions policies, and presented a novel civil rights issue for adjudication. *[11:2 CRLR 113]* The complaint cited Vertigo, a Los Angeles nightclub, for turning away customers whom the club employees considered "tacky"; several of these customers were ABC undercover officers. This relatively new phenomenon has been referred to as the "nerd rule," whereby nightclubs and other similar establishments turn away potential customers based upon any criteria they choose. Licensees contend that they may pick and choose its clientele at the door, and that the Unruh Act, a wide-ranging law that prevents businesses from discriminating against customers on such bases as race, gender, or religion, does not apply to the controversial patron selection process; however, courts have construed the Unruh Act quite broadly. The owners of Vertigo are appealing ABC's license revocation decision to the ABC Appeals Board; oral argument was scheduled for October 17. If the Appeals Board's decision is appealed to a state court, the resulting decision could establish a new precedent extending or limiting the scope of Unruh Act protection.

The First District Court of Appeal is currently reviewing a case in which a supermarket clerk sold a six-pack of beer to a 19-year-old police decoy; this is the first time a state court has examined the use of minor decoys by ABC and police departments to catch ABC licensees violating the law regarding sales to minors. Licensees who sell to a minor decoy risk fines, license suspension, and even revocation of their licenses. Opponents of the practice claim that it amounts to entrapment, while proponents contend that it is the best way for police to keep alcoholic beverage retailers honest. John Hinman, the attorney representing several retailers caught selling alcohol to minor decoys, contends the following:

–The state constitution prohibits sales of alcohol to any person under the age of 21; therefore, police are acting improperly by having under-age agents buy alcohol and should not be allowed to introduce such evidence in court.

–By using a decoy whose appearance and mannerisms are that of an adult over the age of 21, clerks are entrapped into believing sales are legal or, in the alternative, not given constructive notice that they are selling to a minor.

–ABC has provided no evidence that the use of decoys is an effective deterrent in preventing alcohol use by minors.

The case to be heard in the First District involves the sale of beer to a 19-year-old football player and weightlifter who said he was not nervous when he made the transaction and was not told to act like a "typical minor" making an illegal purchase. When the case came before an administrative law judge (ALJ) during ABC's disciplinary process, the ALJ agreed that the ABC's guidelines for decoys had not been followed. Those guidelines require the decoy to be 18 or 19 years of age and have the general appearance, mannerisms, and dress of a person well under 21 years of age; if a male is used, he should not be large in stature. Nevertheless, the ALJ issued a ten-day suspension or payment of a fine in lieu of the suspension.

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

New Federal Rules Hasten Shutdown of Ailing Banks. In late September, the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) adopted tough new rules which will speed the closure of troubled banks. The corrective action scheme, which took effect on December 19, implements new section 38 of the Federal Deposit Insurance Act, and divides financial institutions into five