



REGULATORY AGENCY ACTION

of duty in the Middle East in support of the military operation when they submit their requests for relicensure. Board legal counsel Bob Miller stated that Business and Professions Code section 114.5 addresses licenses or registrations which expire during a war. Also, Business and Professions Code section 2892.5(d) allows the Board to waive continuing education requirements for these individuals. He stated that these provisions would allow the Board to comply with Brigadier General Adams-Ender's request. The Board voted to implement the above provisions of the Business and Professions Code for the licensees serving in the Middle East.

At the January 18 Board meeting, Agnes Fortney, executive director of the California Licensed Vocational Nurses Association (CLVNA), made a presentation on the need for the expansion of the scope of practice for LVNs. Ms. Fortney discussed several issues of concern to

CLVNA, including the pilot project to permit emergency medical technicians-paramedics to work in hospital emergency rooms; the pilot project to permit pharmacy assistants to administer medication to patients in acute care hospitals; the pilot project which would license geriatric technicians; the proposed classification of registered care technologists; and expansion of the LVN scope of practice to include starting and superimposing intravenous medications. The report was noted by the Board.

Also in January, Kathleen Barr was reelected President and Charles Bennett was elected Vice-President of the Board. Board staff also reported that three new employees have been hired since November 1990; recruitment is under way to fill the remaining two staff vacancies.

FUTURE MEETINGS:

September 12-13 in San Diego.

November 14-15 in Los Angeles.

alcoholic beverages (*see infra* LEGISLATION). The so-called "booze tax bills" resemble Propositions 134 and 126, the failed November ballot initiatives. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 94; Vol. 10, No. 4 (Fall 1990) p. 112; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 130-31 for background information on the initiatives.) Meanwhile, citing the need for revenues to reduce the state's staggering deficit, Governor Wilson gave support to new alcohol taxes in his inaugural address. Wilson's plan for a balanced state budget includes \$190 million in proposed new alcohol taxes under terms similar to last year's industry-sponsored Proposition 126. The result appears to be executive and legislative agreement in principle to alcohol tax increases.

Wilson's proposal would channel new tax revenues to counties, which would assume a greater role in administering mental health programs. The proposed shift in mental health responsibility from state to county programs would reduce state spending while allowing larger county mental health budgets. Specifically, the proposal would increase state taxes on beer and wine to 20 cents per gallon. The tax per gallon is now four cents for beer, two cents for sweet wine, and one cent for dry wine. The Wilson proposal would also increase taxes on distilled spirits from \$2 per gallon to \$3.30 per gallon. This plan, expected to raise \$127 million from beer and wine and another \$63 million from distilled spirits, would take effect on July 1 at the start of the new fiscal year.

At this writing, Senator Marks, whose SB 21 initiated the flurry of tax increase measures during the current legislative session, has contacted the Wilson administration to establish common ground and encourage potential bipartisan support for a collaborative tax hike effort.

The proposed state tax increases constitute a second blow to the California alcohol industry, which recently experienced a federal tax hike aimed at reducing the federal budget deficit. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 94 for background information.)

State Alcohol Consumption Continues to Drop. In December, the California Council on Alcohol Problems (C-CAP) released statistics which indicate decreased alcohol consumption in the state. Figures for the 1989-90 fiscal year show one-year declines of 6.8% in per capita consumption of wine, 1.8% for hard liquor, and 1.2% for beer.

C-CAP, which released the figures as part of its annual year-end report on alcohol use, obtained the raw data for the



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code sections 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. Approximately 68,000 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:

Legislators and Governor Propose Alcohol Tax Increases. Despite voter rejection of competing alcohol tax initiatives in November 1990, several California legislators have introduced bills designed to increase taxes on the sale of



report from the State Board of Equalization. The report emphasized a continuing decrease in hard liquor and wine consumption. California per capita consumption of hard liquor is at its lowest point in nearly three decades, dropping 33% since fiscal year 1978-79. Per capita wine consumption in California has fallen 27.6% during the last four years.

Dr. Donald Bowman, C-CAP's executive director, attributed the consumption decrease to growing public awareness of alcohol-related risks and the recent enactment of more stringent drunk driving laws. He noted that as higher alcohol taxes take effect, consumption will likely decline further.

Despite the decline, the state Department of Health Services recently reported that alcohol abuse still is California's fourth leading cause of death.

LEAD Program Server Training Standards Scrutinized. Following ABC's December announcement of the creation of Licensee Education on Alcohol and Drugs (LEAD) Program, several health agencies and county-level policymakers have questioned the server training standards expected to be used. LEAD is a cooperative effort with the Office of Traffic Safety, the Department of Alcohol and Drug Programs, and the California Highway Patrol. LEAD will use state funds to provide 90-minute information sessions on "responsible hospitality," including recognizing false IDs and preventing sales to minors or intoxicated patrons. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 94 for background information on LEAD.) The incentive for ABC licensees to participate in free LEAD training sessions is reduced administrative penalties for violation of the law prohibiting sales/service to obviously intoxicated patrons or minors, contingent on prior participation in the program.

While supportive of licensee training generally, critics of the program maintain that a 90-minute training program conducted by ABC is insufficient to properly address the problems faced by licensees. Many health agency representatives advocate more extensive training and suspect that ABC's LEAD program will remove incentives for licensees to participate in more comprehensive, fee-based programs.

A statewide symposium sponsored by the Department of Alcohol and Drug Programs in March allowed representatives from health groups, state agencies, and county organizations to discuss the possibility of universal server training standards. ABC representatives attended the symposium and participated in consensus-building discussions. At this

writing, however, no changes in the LEAD program licensee training standards have been proposed.

New Driver Licenses Will Aid Detection of Underage Patrons. The Department of Motor Vehicles began issuing new driver licenses and identification cards in January. The computer-generated California cards are virtually impossible to alter or counterfeit, and should assist the alcoholic beverage industry in avoiding underage sales.

The cards, which were unveiled at a Sacramento news conference, include holograms, color-digitized photos, and magnetic stripes similar to those featured on automatic teller machine cards. The new licenses will be phased in when current licenses expire or when a person loses his/her license, obtains a license for the first time, or initiates a name change. Those persons under the age of 21 will be issued licenses with their photo on the right side of the card, together with a bold red inscription of the year in which they will reach age 21.

ABC Fights Nightclub's Door Policy Under Unruh Act. An administrative complaint filed by ABC in March 1990 challenges selective night club admission policies, and presents a novel civil rights issue for adjudication. The licensee, Fortune Three, Inc., owns and operates Vertigo, a downtown Los Angeles night club which denied admission to several would-be patrons last year, including undercover ABC officers. Attorneys for ABC contend that the club's admission policy is discriminatory and violates the Unruh Civil Rights Act. The licensee contends that it may pick and choose its clientele at the door, and that the Unruh Act does not apply to the controversial patron selection process.

The Unruh Act is best known as a wide-ranging law prohibiting businesses from discriminating against customers on the basis of race, gender, or religion. Courts generally have given the law broad construction, but ABC's complaint appears to require a substantial extension of the Unruh Act into uncharted civil rights territory. The Office of Administrative Hearings scheduled a February 22 hearing to decide whether Vertigo violated the Unruh Act by allegedly choosing patrons from a crowd gathered outside based on an arbitrary perception of "hipness."

However, Administrative Law Judge Ronald Gruen postponed that hearing after media crews and attorneys delayed its commencement. Before the hearing, Gruen ordered television cameras removed due to the limited space in the courtroom. Later, apparently angry that attorneys were talking to media person-

nel in the hall instead of in court, Gruen postponed the hearing until April 30.

According to Vertigo marketing director Tod Breslau, club door personnel may turn away customers whose attire is considered "tacky." He asserts that the club owners want to maintain a mystique that sets Vertigo patrons apart as "elite."

The Unruh Act has been used to prohibit discriminatory policies such as "adults only" apartments, Disneyland's policy of banning same-sex dancing, and a shopping mall policy banning hippies in the 1960s. In a recent proceeding similar to the Vertigo action, the Chippendale's male-stripper nightclub lost its liquor license after an ALJ found the club guilty of discrimination against men. The ABC license revocation proceeding against Vertigo's owners (OAH File No. L-51499), if taken to the state court of appeal, could establish a new published precedent extending the scope of Unruh Act protection.

LEGISLATION:

AB 140 (Floyd). Until January 1, 1990, the law required establishments engaged in the concurrent sale of motor vehicle fuel and beer and wine for off-premises consumption to abide by certain conditions. The law also required such an establishment's alcohol license to be suspended for a minimum period of 72 hours if there is a finding that the licensee or his/her employee sold any alcoholic beverages to a minor. As introduced December 12, this urgency bill would reinstate these provisions until January 1, 1994. This bill is pending in the Assembly Ways and Means Committee.

AB 232 (Floyd), as introduced January 14, would provide that nothing in the Alcoholic Beverage Control Act prohibits the holder of any retail on-sale or off-sale license from purchasing advertising in any publication published by any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, wholesaler, or any person who directly or indirectly holds the ownership of any interest in the premises of the retail licensee. This bill is pending in the Assembly Governmental Organization Committee.

AB 268 (Hauser), as introduced January 18, would require beer kegs to clearly display a registration number. This bill would also require every person who rents, leases, or sells a beer keg to a consumer, as defined, to maintain a record of the registration and information identifying the consumer. Licensees would be permitted to refuse to rent,



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lease, or sell beer kegs to a consumer who is unable to produce the specified information and identification. This bill is pending in the Assembly Governmental Organization Committee.

AB 286 (Floyd), as introduced January 22, would repeal the \$5 surcharge currently imposed on alcoholic beverage licensees to fund the preparation and transmission of Designated Driver Program information sheets. This bill would also make declarations of legislative intent that the costs of preparing the information sheet and sending it to all on-sale licensees are to be funded by the California Highway Patrol and ABC as ordinary and usual operating expenses. This bill is pending in the Assembly Governmental Organization Committee.

AB 386 (Murray), as introduced January 30, would impose on and after March 1, 1991, a surtax at specified rates on beer, wine, champagne, hard cider, and distilled spirits, as specified, and an equivalent compensating floor stock tax on beer, wine, champagne, hard cider, and distilled spirits in the possession of licensed persons, as specified, on March 1, 1991. This bill, which would take effect immediately as a tax levy and would require the proceeds from the surtaxes to be deposited in the General Fund, is pending in the Assembly Revenue and Taxation 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. As introduced January 30, this bill would increase the population of the county where the exception applies from 15,000 to 25,000. The bill is pending in the Assembly 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. As introduced February 5, this bill would require a 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 Assembly Governmental Organization Committee.

AB 542 (Bronzan), as introduced February 14, would increase excise taxes on the privilege of selling or possessing

for sale beer, wine, and distilled spirits in an unspecified amount. The bill, which would take effect immediately as a tax levy, is pending in the Assembly Revenue and Taxation Committee.

AB 1246 (Murray) and *AB 1290 (Murray)*, as introduced March 6, each seek to impose, on and after July 1, 1991, 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 bills are pending in the Assembly Revenue and Taxation Committee.

AB 1438 (Archie-Hudson), as introduced March 7, would require that every container of alcoholic beverages sold in this state have affixed to the container a distinctive label or package that clearly distinguishes those beverages from non-alcoholic beverages; require that the labeling or packaging include the percentage of alcohol by volume; and prohibit the mislabeling of alcoholic beverages. This bill is pending in the Assembly Governmental Organization Committee.

AB 1738 (Chacon). Existing law authorizes ABC to impose reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in specified situations. As introduced March 8, this bill would additionally authorize ABC to impose reasonable conditions in the case where ABC makes certain findings that specified circumstances have occurred or that restrictions for the sale of certain types of alcoholic beverages would benefit the local community. This bill would permit conditions to be imposed at the time of renewal, upon notice and hearing, that may be based upon information obtained from allegations by individuals, hearings, independent investigation by the Department, or any combination thereof. This bill would also place the burden of proving grounds for placing conditions on a license on the party seeking the conditions. This bill is pending in the Assembly Governmental Organization Committee.

SB 22 (Kopp), as amended March 12, would increase specified fees, surcharges, and penalties imposed by ABC and would require ABC to adjust certain fees every third year, based on the change in the California consumer price index.

Existing law limits the maximum purchase price or consideration which may be paid for the transfer of certain on-sale general licenses and off-sale general licenses. This bill would increase the maximum purchase price or

consideration that may be paid. This bill is pending in the Senate Governmental Organization Committee.

SB 737 (Killea), as introduced March 6, would authorize ABC to issue special on-sale beer and wine licenses to any performing arts theater or symphony association organized as a nonprofit corporation more than 90 days before the date of application. This bill is pending in the Senate Governmental Organization Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 1 (Winter 1991) at page 94:

AB 94 (Friedman), as introduced December 4, would, among other things, prohibit on and after January 1, 1992, the issuance or renewal of any club license to a club which makes any discrimination, distinction, or restriction for the purpose of membership against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age. This bill is pending in the Assembly Governmental Organization Committee.

SB 21 (Marks), which would impose on and after March 1, 1991, 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, is pending in the Senate Revenue and Taxation Committee.

SB 23 (Kopp) was substantially amended on March 4 and is no longer relevant to ABC.

LITIGATION:

On February 14, the California Supreme Court denied a petition for review of the Second District Court of Appeal's ruling in *Williams v. Saga Enterprises, Inc.*, No. B043922 (Nov. 15, 1990). The Second District held that a restaurant bartender's voluntary retention of a customer's car keys created a duty to protect third parties from the customer's drunk driving. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 95 for background information on the decision.)

BANKING DEPARTMENT

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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,