



# REGULATORY AGENCY ACTION

except as specified. This bill is pending in the Senate Business and Professions Committee.

**AB 2116 (Hunter).** Under existing law, the Department of Corrections and the Department of the Youth Authority are prohibited from appointing a person as a medical technical assistant unless the person is an LVN, RN, or has certain prescribed experience in the medical corps of the armed forces of the United States or the United States Public Health Service. These departments are authorized only to hire persons who are eligible for licensure and, as a condition of employment, must require that those persons obtain a license as a vocational nurse within six months of employment. As introduced March 8, this bill would require the departments to require those persons to obtain a license as a vocational nurse within twelve (as opposed to six) months of employment. This bill is pending in the Assembly Health Committee.

## RECENT MEETINGS:

At its April 5 meeting, the Enforcement Committee reviewed the Board's disciplinary guidelines, which are intended to assist deputy attorneys general and administrative law judges in determining appropriate penalties for particular violations. The Committee authorized staff to submit proposed revisions to probationary terms and conditions to the Board's legal counsel and the Attorney General's office for review; these revisions will be submitted to the Committee at its next meeting. The Committee also authorized staff to make revisions to existing penalties and present proposed changes at the next Committee meeting.

At the May 9 Board meeting, the Board accepted the Education Practice Subcommittee's suggestion that it change its name to the Education and Practice Committee. Also in May, the Board reviewed the Education and Practice Committee's four functions. The first Committee function, relating

to education, requires the Committee to review relevant materials and make recommendations to the Board regarding the educational preparation of LVNs and psych techs. In addition, the Committee addresses curricular, faculty and clinical facility requirements, student policies, and other school issues.

The second Committee function is to monitor the practice of LVNs and psych techs. To fully execute this responsibility, the Committee must stay abreast of changing trends in health care, technological advances, and innovative practice. The Committee explores practice issues in all health care settings, including long-term, acute, mental health, home health, and other specialized areas. The Committee also reviews new procedures and techniques related to patient care.

The third Committee function is to direct the activities of the Examination Subcommittees, which review examination issues related to the National Council Licensure Examination for Practical Nurses and the psych tech computer-administered test.

The fourth function of the Committee is, in conjunction with the Board's legal counsel, to make recommendations to the full Board on interpretations of the laws related to the education and practice of Board licensees.

At the May 9 Board meeting, the Education and Practice Committee clarified the LVN's role in the insertion of weighted nasogastric tubes. The Committee determined that LVNs who have the knowledge, skill, and ability may insert weighted feeding tubes if the procedure is performed in an organized health care setting; the feeding tube does not extend beyond the pylorus; feeding tube placement is determined by X-ray; and the feeding tube is inserted only into conscious and responsive patients.

## FUTURE MEETINGS:

September 12-13 in San Diego.

November 14-15 in Los Angeles.

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:

**Bill to Increase ABC License Fees Defeated.** In April, the Senate Governmental Organization Committee twice rejected SB 22 (Kopp), which—in its original form—would have increased certain ABC license fees by as much as 300%, with much of the money earmarked to add 200 enforcement officers to ABC's workforce. It also would have generated as much as \$50 million in general fund revenue to improve the state's budget deficit. Industry lobbyists vehemently opposed the fee increase proposal, which follows a recent federal excise tax increase and several proposed alcohol tax hikes at the state level. (*See infra* LEGISLATION for related information.)



## BUSINESS, TRANSPORTATION AND HOUSING AGENCY

### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh  
(916) 445-6811

The Department of Alcoholic Bever-

age 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



**Federal Agency Scrutinizes Wine Labels.** The U.S. Bureau of Alcohol, Tobacco and Firearms (BATF) has announced its objection to certain types of wine labels recently introduced to the market. The labels in question, which trumpet the cultural, medicinal, and religious "value" of wine consumption, are alleged by BATF to be misleading. The industry's controversial label language appears to be a response to a 1988 federal statute which requires alcohol containers to include warnings about health risks to pregnant women, the dangers of drunken driving, and other alcohol-related problems. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 86 for background information.)

Although BATF has not introduced specific, industrywide content restrictions, the agency has developed guidelines for future label content decisions. According to regulators, the content of some of the new labels contradicts the health warnings now required on each bottle. These new labels often appear as wineries' "mission statements" and describe wine drinking as desirable, culturally approved behavior. For example, one label proposed by the Robert Mondavi Winery touted wine as a "temperate, civilized, sacred, romantic mealtime beverage recommended in the Bible." This proposed label and more than ten others have been rejected in recent months because of the mixed message they would send to consumers. However, a modified version of the Mondavi label, which excludes (among other things) the reference to the Bible, has received BATF approval.

According to the new guidelines, claims about the medical benefits of wine, while not flatly prohibited, must be appropriately qualified. Similarly, misleading statements about the social value of wine consumption will be subject to closer agency scrutiny. Regulators and public interest advocates maintain that the federally mandated warnings alert consumers to alcohol's link with many health risks and its status as a potentially addictive drug. They fear that misleading "mission statement" labels will counteract the effect of federal warnings.

**Fatal Accidents Involving Alcohol Consumption Decline.** The number of fatal, alcohol-related automobile accidents in California dropped by 5.2% in 1990. Representatives of the California Highway Patrol (CHP) attributed the reduction in fatalities to stricter drunk driving laws and their enforcement. The state recently lowered the presumptive impairment level for blood-alcohol content to .08 from 0.10. In addition, new

penalties mean that driving while impaired may result in a license suspension of four months in some cases. Arrests under the new .08 provision contributed to a record 158,000 recorded violations of the state's drunk driving laws during the 1990 calendar year.

Seatbelt use by auto drivers and passengers also contributed to the decrease in traffic fatalities, according to the CHP. Governor Wilson has expressed his support for the concept of a primary seatbelt law, which would give officers the authority to stop motorists for that violation alone.

## LEGISLATION:

**H.R. 1443 (Kennedy)** is federal legislation which would require one of five warnings to be rotated on all print, broadcast, and outdoor advertisements for alcoholic beverages. This bill virtually replicates last year's H.R. 4493, which died in committee. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 94-95 and Vol. 10, No. 4 (Fall 1990) p. 112 for background information.) The warnings would contain disclosures about alcohol addiction, risks to pregnant women, drunk driving, and underage drinking. The bill 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. The bill is opposed by a coalition of beverage industry, broadcast and print media, and advertising companies.

**AB 1151 (Friedman)**, as introduced March 5, would delete existing "dram shop" statutes which prohibit the imposition of civil liability upon persons who sell, furnish, or give alcoholic beverages to an intoxicated person when that person inflicts injury upon a third party. Instead, this bill would enact the Drunk Driving Prevention Responsible Server Practices Act of 1991, 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 bill is pending in the Assembly Judiciary Committee.

**SB 1099 (Petrus)**, as introduced March 8, 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 agency to regulate tobacco in much the same manner as ABC regulates the sale of alcoholic beverages. Following intense lobbying by the tobacco industry, this bill was rejected in the Senate Governmental

Organization Committee on April 30, but has been granted reconsideration.

**AB 1620 (Knowles)**, as amended April 23, would have created the Driving Under the Influence Reporters Reward Program, applicable in counties in which the board of supervisors has approved its application and has adopted a prescribed program for payment of cash rewards to persons who report information which results in the arrest of an intoxicated driver. This bill was rejected by the Assembly Public Safety Committee on May 21.

**SB 655 (Dills)**, as introduced March 5, would require that beer price schedules be subject to public inspection only after they take effect. The bill would also delete the existing requirement that a copy of the effective posted and filed price schedule be retained in the licensed premises for public inspection. This bill was passed by the Senate on May 16 and is pending in the Assembly Governmental Organization Committee.

**AB 1784 (Floyd)** The Alcoholic Beverage Control Act prohibits, on and after January 1, 1992, a clerk from making an off-sale of alcoholic beverages unless the clerk executes, under penalty of perjury, on the first day he/she makes that sale, an application and acknowledgment, on a form prepared by ABC, and which the licensee is required to keep on the premises at all times and available for inspection by ABC. As amended April 17, this bill would provide that a licensee with more than one licensed off-sale premises in the state may comply with this requirement by maintaining an executed application and acknowledgment at a designated licensed premises or headquarters in the state; and provide that an executed application and acknowledgment shall be valid for all licensed off-sale premises owned by the licensee. This bill passed the Assembly on May 9 and is pending in the Senate Governmental Organization Committee.

**AB 30 (Murray)**, as amended April 15, would impose on and after July 1, 1991, a surtax at specified rates on beer, wine, sparkling hard cider, and distilled spirits, and an equivalent compensating floor stock tax on beer, wine, sparkling hard cider, and distilled spirits in the possession of licensed persons on July 1, 1991, except with respect to certain licensees. This bill, which would take effect immediately as a tax levy, passed the Assembly on May 9 and is pending on the Senate floor.

**SB 179 (Deddeh)**, as introduced January 15, would, among other things, provide that if AB 30 is chaptered before this bill, this bill would instead impose AB 30's surtax on and after July 15,



## REGULATORY AGENCY ACTION

1991, and the equivalent compensating floor stock tax on those alcoholic beverages in the possession of licensed persons on July 15, 1991. This bill passed the Senate on March 21 and is pending in the Assembly Ways and Means Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 113-14:

**AB 140 (Floyd)**, as introduced December 12, would reinstate until January 1, 1994, former provisions which required establishments engaged in the concurrent sale of motor vehicle fuel and beer and wine for off-premises consumption to abide by certain conditions, and which 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. This urgency bill passed the Assembly on April 4 and is pending in the Senate Appropriations Committee.

**AB 232 (Floyd)**, as amended June 11, would permit the holder of any retail on-sale or off-sale license to purchase 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 passed the Assembly on May 6 and is pending in the Senate 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. 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 is pending in the Assembly Governmental Organization Committee.

**AB 368 (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 passed the Assembly on May 9 and 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. As introduced February 5, 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, passed the Assembly on May 30 and is pending in the Governmental Organization Committee.

**AB 541 (Bronzan)** and **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. These bills, which would take effect immediately as a tax levy, are pending in the Assembly Revenue and Taxation Committee.

**AB 1246 (Murray)**, as amended May 20, would impose, on and after July 1, 1991, a surtax at specified rates on beer, wine, hard cider, 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. This bill is pending in the Assembly Ways and Means Committee.

**AB 1290 (Murray)**, as introduced March 6, would 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. This bill is 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. Although this bill was rejected by the Assembly Governmental Organization Committee on April 22, it was granted reconsideration and is still pending in that committee.

**AB 1738 (Chacon)**, as introduced March 8, would have authorized ABC to impose reasonable conditions upon retail licensees 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 was rejected by the Assembly Governmental Organization Committee on April 29.

**SB 22 (Kopp)**, as amended April 29, would have increased certain fees, surcharges, and penalties imposed by ABC, and would have increased the maximum purchase price or consideration that may be paid for the transfer of certain on-sale general licenses and off-sale general licenses. This bill was rejected by the Senate Governmental Organization Committee on April 9, granted reconsideration by the Committee on April 23, and again rejected by the Committee on April 30.

**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 support an off-campus performing arts theater operated by a community college district. This bill passed the Senate on May 23 and is pending in the Assembly Governmental Organization Committee.

**AB 94 (Friedman)**, as amended March 18, would make four changes in the regulatory scheme for alcoholic beverages. First, it 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.

Second, it would enlarge the scope of ABC's authority to deny licenses due to "undue concentration." While ABC already has the authority, under certain circumstances, to deny licenses if the issuance would tend to create undue concentration of licenses in a certain area,



this bill would make that authority applicable to the exchange or transfer of a license.

Third, it would authorize written protests against the exchange of a license where no public notice of intent to sell alcoholic beverages is required. The written protests would be filed within 30 days of the application for the exchange of a license and would be subject to the same hearing provisions as protests against applications for new licenses.

Fourth, the bill would add a condition to existing law which requires ABC to deny an application for a license if either the applicant or premises do not qualify. Applications for the exchange of a license would be included within those provisions. This bill was rejected by the Assembly Governmental Organization Committee on April 29; however, the Committee granted the bill reconsideration on that same day.

*SB 21 (Marks)*, as amended April 24, would impose on and after July 15, 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 July 15, 1991. This bill is pending on the Senate floor.

## 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 proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the proposed name does not so closely resemble as to cause confusion 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 or relocation of branch offices and the establishment 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 travelers checks unless licensed. The superintendent also regulates the safe-deposit business.

The superintendent examines the condition of all licensees. However, as

the result of the increasing number of banks and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other 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 all 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:

*Amendments to SBD's Conflict of Interest Code.* On May 10, SBD published notice of its intent to amend its conflict of interest (COI) code, which is set forth at Article 3, Subchapter 5, Chapter 1, Title 10 of the CCR. The proposed amendment would repeal the provisions of the Department's existing COI code, and adopt provisions incorporating by reference the terms of the model code of the Fair Political Practices Commission, codified at section 18730, Title 2 of the CCR. SBD also proposes to adopt an Appendix which identifies SBD officers, employees, and consultants who will be required to disclose specified investments, income, interests in real property, and business positions, and who will be required to disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

Among the significant differences between the Department's existing COI provisions and those contained in the model code are the following:

-The model code requires initial and assuming office statements of economic interest to disclose income received during the twelve months prior to the effective date of the COI code or the date of assuming office, as applicable; SBD's existing COI code does not contain these requirements.

-The model code provides that persons who resign within thirty days of their initial appointment will not be deemed to have assumed or left an office if they did not make or participate in the making of any decision, use their position to influence any decision, or