



tech educators, students, and organizations to solicit participation in the practice test.

CTB also has developed a data base program to automate the scheduling of candidates. The first phase of this program was installed in the Board's office on August 5. When completed, the program will schedule exam candidates, generate admission letters and exam rosters, and maintain a historical record of each candidate's exam performance. With this automation, the Board will soon be able to generate exam results in one day.

On June 19, the Board submitted its Post-Implementation Evaluation Report of the CAT Project, evaluating the project for the period of July 1988 through June 1991, to the Office of Information Technology. A fiscal analysis of the CAT project indicates the baseline contract is decreasing as the project matures. Using fiscal year 1989-90 as the base year, costs for operation and maintenance of the system for fiscal years 1990-91, 1991-92, and 1992-93 are projected to decrease by 48%, 52%, and 53%, respectively. Since CAT began, the number of candidates tested annually has increased from 800 to 1,200.

At the Board's September 13 meeting, Executive Officer Billie Haynes reported that the 1991 National Council of State Boards of Nursing Delegate Assembly voted to convert from paper and pencil testing to CAT testing for all LVN and registered nurse candidates in all states at one time.

**Discipline Statistics.** At the Board's September 13 meeting, Enforcement Officer Angelina Martin announced that from May through July 1991, five LVNs were disciplined for drug abuse; three LVNs and five psych techs were disciplined for unprofessional conduct; one psych tech was disciplined for charting errors; two LVNs were disciplined for gross negligence; and two psych techs were disciplined for patient abuse.

#### LEGISLATION:

**SB 1070 (Thompson)**, the Patient Protection Act of 1991, was signed by the Governor on October 14 (Chapter 1180, Statutes of 1991). This bill requires the Department of Health Services to promulgate guidelines and regulations to minimize the risk of transmission of blood-borne infectious diseases in the health care setting by January 1993. It further requires the Board, in addition to the Board of Dental Examiners, the Board of Registered Nursing, and the Medical Board, to ensure that licentiates are informed of their

responsibility to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission. This bill amends the Vocational Nursing Practice Act's definition of unprofessional conduct to include, except for good cause, a knowing failure to protect patients by failing to follow infection control guidelines and, thereby, risking the transmission of blood-borne infectious diseases.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 113-14:

**SB 664 (Calderon)**, as introduced March 5, would prohibit LVNs and psych techs, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This two-year bill is pending in the Senate Business and Professions Committee.

**AB 2116 (Hunter)** would have required the Department of Corrections and the Department of the Youth Authority to require specified persons to obtain a license as a vocational nurse within twelve (as opposed to six) months of employment. This bill died in the Assembly Health Committee.

#### RECENT MEETINGS:

On May 20, Executive Officer Billie Haynes met with members of the Office of the Auditor General's Office (OAG). OAG has requested a report from the Board by January 1, 1992. Board staff providing data for the re-

port hoped to have a draft prepared by mid-November.

On June 4 and 5, Executive Officer Haynes met with a task force comprised of representatives of the California State Employees Association and the Department of Health Services. The group's goal is to upgrade job specifications for LVNs in state service in an attempt to achieve higher utilization of LVNs. Proposed regulatory revisions were submitted to Ms. Haynes clarifying the scope of practice, educational requirements, and current role of LVNs. These regulatory changes will be drafted and presented to the Board at a future date.

At the September 13 meeting, Executive Officer Haynes noted that about 60% of LVN licensure examination applicants speak English as a second language. Haynes stressed the need to assist these applicants through the examination process. One option would be to extend the time allotted for examination. More research is needed to explore what other states are doing to assist examinees who have English as a second language.

The Board also discussed a critical provision of the state budget bill approved by the Governor and legislature on July 17. That provision requires licensing boards within the Department of Consumer Affairs to transfer the bulk of their reserve funds to the general fund, in an attempt to help balance the state's unprecedented budget deficit. The Board's vocational nurse program expects to lose \$1.2 million as a result of the transfer; the psych tech program stands to lose \$25,000.

#### FUTURE MEETINGS:

January 23-24 in San Diego.  
March 12-13 in Los Angeles.  
May 7-8 in Sacramento.  
September 10-11 in San Francisco.



## BUSINESS, TRANSPORTATION AND HOUSING AGENCY

### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh  
(916) 445-6811

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 ex-

clusive 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 Divi-



## REGULATORY AGENCY ACTION

sions 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 Experiences Severe Budget Decrease.** During fiscal year 1991-92, ABC will experience a budget cut of at least 20-25% of its usual operating budget of \$24 million. According to ABC Deputy Director Jerry Jolly, this reduction will require ABC to reduce its current statewide staff of 197 investigators to 55. The Department may have to close six of its thirteen southern California offices and seven of its eleven northern California offices. Due to the cuts, local law enforcement will be forced to police the alcohol industry and the licensing process is expected to be delayed.

With the controversial cuts, ABC is expected to generate far more money than it spends; the Governor's office predicts that ABC will contribute \$30.3 million to the general fund this year. However, Governor Wilson contends that he was forced to make the severe budget reduction because the California Union of Safety Employees would not agree to a 5% pay cut for its members; such a cut would have saved only 35 of the investigator jobs statewide.

**Record Number of Licenses Available.** At the same time ABC's enforcement program is suffering serious setbacks, the number of ABC licensees

requiring monitoring is on the rise. In September, ABC Director Jay Stroh announced authorization of 1,099 new and transfer licenses statewide, including a record 532 new and intercounty transfer licenses available in southern California. Each year, ABC issues new and transfer licenses based on population increases by county. ABC permits one new off-sale general license to be issued for every 2,500 residents and one new on-sale general license for every 2,000 residents. If increased population warrants, each county may be issued up to a maximum of 25 new licenses and 25 transfer licenses annually. ABC accepted applications for new licenses between September 9-20; new licenses cost \$6,000 and transfer licenses cost \$3,000.

**New Alcohol Tax Imposed.** Beginning July 15, AB 30 (Murray) and SB 179 (Deddeh) impose an excise surtax on beer, wine, sparkling hard cider, and distilled spirits, and an equivalent compensating floor tax on such beverages in the possession of licensed persons on July 1, 1991, with specified exceptions. The surtax is imposed at a rate of sixteen cents per gallon of beer; nineteen cents per wine gallon of all still wines containing not more than 14% of absolute alcohol by volume; eighteen cents per wine gallon of all still wines containing more than 14% of absolute alcohol by volume; eighteen cents per gallon of sparkling hard cider; \$1.30 per gallon on all distilled spirits of proof strength or less; and \$2.60 per gallon on all distilled spirits in excess of proof strength. This plan is expected to raise \$127 million from beer and wine and \$63 million from distilled spirits annually for the state's general fund.

This law follows 1990's dueling alcohol tax initiatives, Propositions 126 and 134, both of which failed to gain voter approval. Proposition 134, the so-called "nickel-a-drink" initiative sponsored by Assemblymember Lloyd Connolly, would have raised over \$700 million. The liquor industry sponsored Proposition 126, which would have resulted in substantially less of an increase than the "nickel-a-drink" proposal. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 112; Vol. 11, No. 1 (Winter 1991) p. 94; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 130-31 for background information on the initiatives.) Although taxes on wine have not been increased for fifty years, the legislature—by passing AB 30—responded to the national trend to raise alcohol taxes and Governor Wilson's public support for increased alcohol taxes to raise revenues to help balance the state budget deficit.

**Lead Levels in Wine Studied.** On July 31, the U.S. Bureau of Alcohol, Tobacco and Firearms released a report indicating that more than 600 wines tested contain lead, some at potentially dangerous levels for high-risk individuals. The report stated that lead foil capsules that cover table wine corks corrode and contaminate the wine. These findings resulted in a U.S. Food and Drug Administration (FDA) announcement that it would propose a ban on all lead foil wine capsules.

The wine industry characterized this information as inflammatory, noting that the FDA has never defined what constitutes a safe level of lead in food or beverages. However, the U.S. Environmental Protection Agency permits only 15 parts per billion of lead in drinking water; according to the Bureau's report, lead levels ranged from zero to 1,980 parts per billion in the wines tested. Under Proposition 65, the state Safe Drinking Water and Toxics Enforcement Act of 1986, exposure to lead in excess of 0.5 parts per billion per liter per day requires a warning. According to John De Luca, president of the San Francisco-based Wine Institute, the signs warning about alcohol's link to birth defects—which are required to be posted in all retail outlets in California which sell alcohol—fulfill the industry's obligations under Proposition 65. Further, De Luca contends that most California wineries have agreed to change from lead to aluminum, plastic, or paper closures by January 1992. On September 9, the FDA asked the Bureau to prohibit the sale of any wine containing more than 300 parts per billion of lead; this temporary standard will remain in place until a permanent standard is established.

### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 115-17:

**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. 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, which is opposed by a coalition of beverage industry, broadcast and print media, and advertising companies, is pending in the House Energy and Commerce Committee.



**AB 30 (Murray)**, as amended June 15, imposes 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. (See *supra* MAJOR PROJECTS.) This bill, which took effect immediately as a tax levy, was signed by the Governor on June 30 (Chapter 86, Statutes of 1991).

**SB 179 (Deddeh)**, as amended June 30, among other things, provides that AB 30's surtax shall be imposed on and after July 15, 1991, and the equivalent compensating floor stock tax on those alcoholic beverages in the possession of licensed persons shall be imposed on July 15, 1991. This bill was signed by the Governor on June 30 (Chapter 88, Statutes of 1991).

**SB 655 (Dills)**, as introduced March 5, requires that beer price schedules be subject to public inspection only after they take effect. The bill also deletes 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 signed by the Governor on July 22 (Chapter 161, Statutes of 1991).

**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 acknowledgement, 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 July 3, this bill provides 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 acknowledgement at a designated licensed premises or headquarters in the state; and provides that an executed application and acknowledgement shall be valid for all licensed off-sale premises owned by the licensee. This bill was signed by the Governor on October 7 (Chapter 726, Statutes of 1991).

**AB 140 (Floyd)**, as introduced December 12, reinstates 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. Among other things, the bill prohibits the display of alcohol in ice chests; prevents the sale of alcohol from drive-up windows; prohibits the advertisement of alcohol at motor fuel islands; prohibits the placement of self-illuminated advertisements for beer or wine on buildings or windows; and requires sales clerks to be over 21 years of age during the hours of 10:00 p.m. until 2:00 a.m. This urgency bill was signed by the Governor on July 10 (Chapter 108, Statutes of 1991).

**AB 232 (Floyd)**, as amended July 1, permits 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 was signed by the Governor on August 29 (Chapter 347, Statutes of 1991).

**AB 1151 (Friedman)**, as introduced March 5, would enact the Drunk Driving Prevention Responsible Server Practices Act, which would impose liability upon the holder of an alcoholic beverage retail license in connection with a variety of specified acts relating to the serving of alcoholic beverages to a minor or an obviously intoxicated person. This two-year bill is pending in the Assembly Judiciary Committee.

**SB 1099 (Petris)**, 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 entity to regulate tobacco in much the same manner as ABC regulates the sale of alcoholic beverages. This bill is pending in the Senate Governmental Organization Committee.

**AB 286 (Floyd)**, 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 two-year bill is pending in the Assembly Governmental Organization Committee.

**AB 374 (Floyd)**. Existing law prohibits the holder of an alcoholic beverage wholesaler's license from holding any ownership interest in any on-sale alcoholic beverage license, except in a county with a population not in excess of 15,000, where one person may hold a wholesaler's license and an on-sale license. As introduced January 30, this

bill would increase the population of the county where the exception applies from 15,000 to 25,000. This bill is pending in the Senate Governmental Organization Committee.

**AB 432 (Floyd)**. Existing law requires an applicant for an alcoholic beverage license to post a notice of intention to engage in the sale of alcoholic beverages at any premises in a conspicuous place at the entrance to the premises. 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, is pending in the Senate 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 two-year bills are pending in the Assembly Revenue and Taxation Committee.

**AB 368 (Murray)**, as introduced January 30, and **AB 1290 (Murray)**, as introduced March 6, would impose a surtax at specified rates on beer, wine, and distilled spirits, and an equivalent compensating floor stock tax on beer, wine, and distilled spirits in the possession of licensed persons on March 1, 1991. These two-year bills are pending in the Assembly Revenue and Taxation Committee.

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

**SB 737 (Killea)**, as amended April 18, would authorize ABC to issue special on-sale beer and wine licenses to any nonprofit foundation formed to support an off-campus performing arts theater operated by a community college district. This bill is pending in the Assembly Governmental Organization Committee.

**AB 94 (Friedman)**, as amended March 18, would prohibit the issuance or renewal of any club license to a club, as defined, with specified exceptions, which denies any person entry or



## REGULATORY AGENCY ACTION

membership or unreasonably prevents the full enjoyment of the club on the basis of the person's color, race, religion, ancestry, national origin, sex, or age; enlarge the scope of ABC's authority to deny licenses due to "undue concentration"; authorize written protests against the exchange of a license where no public notice of intent to sell alcoholic beverages is required; and add a condition to existing law which requires ABC to deny an application for a license or for the exchange of a license if either the applicant or premises do not qualify. This two-year bill is pending in the Assembly Government Organization Committee.

**AB 268 (Hauser)**, which would have required beer kegs to clearly display a registration number, and required every person who rents, leases, or sells a beer keg to a consumer to maintain a record of the registration and information identifying the consumer, was dropped by its author.

**AB 1246 (Murray)** was substantially amended on July 16 and is no longer relevant to ABC.

**SB 21 (Marks)** was substantially amended on July 17 and is no longer relevant to ABC.

### LITIGATION:

On June 12, in *In the Matter of the Accusation Against Fortune Three Inc.*, No. 208606, Administrative Law Judge (ALJ) Milford A. Maron ruled that Vertigo, a trendy disco in downtown Los Angeles, violated California's Unruh Civil Rights Act by refusing to admit all customers. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 113 for background information.) ALJ Maron ordered the club to stop using its "priority admission policy," under which a door guard selects patrons at random according to an unspecified dress code, and to post a large sign by the entrance stating that Vertigo is open to the general public in an indiscriminate manner, in accordance with California law. The ALJ found Vertigo's door policy to be "nothing more than a smokescreen for blatant discriminatory behavior, with awesome potential for abuse," and ruled that because Vertigo holds a state liquor license, it must be open to the general public and obey state laws, including those requiring equal access.

In the action brought by ABC after it received an anonymous complaint about the club's admission policy, the judge revoked Vertigo's liquor license, but suspended the revocation for one year and placed Vertigo on probation. One condition of probation is that the club write and enforce a nondiscrimination

policy; if the club adheres to the ruling, it may keep its liquor license. Vertigo representatives vowed to appeal the ALJ's decision, and stated that the club's admission policy will remain in effect pending the appeal.

In a similar action, a Los Angeles Municipal Court commissioner ruled earlier this year that the Mayan, a downtown Los Angeles nightclub, illegally discriminated against four people by denying them admission without a stated reason while allowing others to enter. In *Soltzer v. Ten Thirty Eight, Inc.*, No. 735730, the commissioner awarded monetary damages of \$1,112 but did not order the club to change its door policy.

The legal basis for these proceedings is the Unruh Civil Rights Act, a wide-ranging law which, among other things, prohibits businesses from discriminating against customers based on such criteria as race, gender, or religion. In the Vertigo case, ALJ Maron agreed with ABC's argument that the Act bans all types of arbitrary discrimination against any group or individual, not just the racial- and gender-based discrimination specified in the language of the Act. Contrary to the argument advanced by Vertigo, the ALJ found that the constitutionally protected rights of assembly and free speech do not protect an establishment's right to select patrons, and found that the Constitution does protect the right of equal access. Neither of these decisions are binding on any court but, if affirmed on appeal, would establish precedent and increase the contexts in which the Unruh Act could provide consumer protection.

### 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