



# REGULATORY AGENCY ACTION

*SB 2509 (Lockyer)*, as amended May 1, would provide that any disease, illness, syndrome, or condition requiring treatment pursuant to prescribed provisions resulting from blood-borne pathogens which occurs, develops, or manifests itself in certain health care workers shall constitute an injury to arise out of and in the course of employment for workers' compensation purposes. This bill is pending in the Assembly Finance and Insurance Committee.

## RECENT MEETINGS:

During the May 11 Board meeting, staff announced that six of the eleven vacancies in Board staff positions have been filled. In addition, two new staff positions—Assistant Executive Officer and Area Supervisor—were announced, both of which have been filled.

The role of the LVN in the private doctor's office was discussed in conjunction with an incident surrounding a physician in the private sector who encouraged LVNs to perform procedures on patients

which were outside the LVN's scope of practice and could cause irreparable harm. LVNs were admonished by the Board to stop such practices or face suspension of their licenses.

The President of the California Association of Psychiatric Technicians addressed the Board as to the concern of his constituents that their fees might also be raised. The Board responded that it actually has little control over its budget, and that DCA tells it when a fee increase is warranted. Since the Board has not been told to increase PT fees, it has no plans to do so at the present time.

During the May 11 Board meeting, it was announced that the summer July meeting would not be held. The Board will assess the impact of this decision at its September meeting, and determine whether this will be a permanent schedule change.

## FUTURE MEETINGS:

September 21 in San Diego.  
November 16 in Los Angeles.

signatures to the Secretary of State, in hopes of qualifying the measure for the November ballot. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 100 for background information.) The so-called "nickel-a-drink" initiative, authored by Assemblymember Lloyd Connelly, would raise the tax on wine (which has not been raised in fifty years) from one cent per gallon to \$1.29; the beer tax from four cents per gallon to 57.3 cents; and the tax on hard liquor from \$2 per gallon to \$8.40. This initiative would raise more than \$700 million per year, and allocate it to programs designed to treat social problems caused by alcohol, including emergency and trauma care; programs for the prevention and treatment of alcohol abuse; law enforcement; community mental health programs; and services for innocent victims of alcohol abuse, particularly infants and children. The measure later qualified easily and will appear as Proposition 134 on the November ballot.

The alcohol industry vociferously opposes the measure, and has sponsored its own measure, ACA 48 (Cortese), which would also raise alcohol taxes, but not nearly to the levels in Proposition 134. The industry's measure would raise beer and wine taxes to twenty cents per gallon, \$3.30 per gallon for liquor of 100 proof or less, and \$6.60 per gallon for liquor that is more than 100 proof. This proposal would raise \$200 million per year, all of which would go un earmarked into the state's general fund.

In early June, the Senate passed ACA 48 easily, and sent it to the Assembly. On June 25, the Assembly passed the measure by 26-19 vote—but far short of the two-thirds majority (54 votes) needed. The industry went to work, lobbying the Assembly with unprecedented intensity. On reconsideration only three days later, and with the strong support of Assembly Speaker Willie Brown and all but two Republicans, ACA 48 barely passed by a 54-18 vote, thus placing it on the November ballot as Proposition 126.

The industry also supports another initiative which—if enacted in November—would likely override both Propositions 134 and 126. Proposition 136, dubbed the Taxpayers' Right to Vote Act, would require a two-thirds public vote, instead of the current majority, to approve any ballot measure raising statewide taxes for a particular purpose. Any measure which does not meet Proposition 136's standards—including measures on the same November 1990 ballot—would be voided. Proposition 136 stands to wipe out



## 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. ABC's regulations are codified in Chapter 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 licenses issued each year per county.

## MAJOR PROJECTS:

*Competing Alcohol Tax Initiatives to Appear on November Ballot.* On May 17, supporters of the citizens' Alcohol Tax Initiative submitted over 1.1 million



both alcohol tax initiatives and "Big Green" (Proposition 128), the Attorney General's Environmental Protection Initiative of 1990. The validity of Proposition 136 is currently being tested in court (see *infra* LITIGATION).

*Enforcement of Local Ordinances.* A major issue facing ABC, local governments, and licensees is the proliferation of local ordinances and zoning regulations imposing conditions and restrictions on liquor licensees. These ordinances are enforceable by the cities or counties which adopt them; they were not imposed by ABC and are thus not within ABC's jurisdiction. However, local governments are not able to revoke liquor licenses as a sanction for violation; only ABC has that authority.

At this writing, ABC does not plan to challenge these ordinances as infringing on ABC's authority. However, a Los Angeles-area retailer recently challenged a city ordinance which, among other things, prohibited the sale of cold beer and wine, the sale of beer in units of less than six-packs, the sale of wine in units of less than four-packs, the sale of wine in containers less than 750 milliliters, and required that alcoholic beverages be sold only by employees at least 21 years of age. A Los Angeles Superior Court judge struck down those provisions of the ordinance (leaving others intact), on grounds they infringe upon the exclusive authority of ABC to grant, deny, or suspend liquor licenses, as well as impose conditions on licensees directly relating to the sale of alcohol. At this writing, the City of Los Angeles is considering an appeal.

*Rulemaking on Supplier-Furnished Entertainment.* In late May, ABC Director Jay Stroh issued a bulletin stating that ABC's existing policy allowing reasonable supplier-furnished entertainment to retailers is not consistent with sections 25500, 25502, and 25600 of the Alcoholic Beverage Control Act, which prohibit suppliers from furnishing gifts, free goods, or other things of value to a retail licensee and his/her employees unless authorized by a rule adopted by the Department. No such rule has ever been formally adopted.

Thus, Stroh announced that ABC is presently in the process of drafting a regulation that would authorize suppliers to furnish modest entertainment and hospitality to retailers and/or their employees. Until that rule is adopted, supplier-furnished retailer entertainment is a violation of the ABC Act; suppliers which furnish illegal entertainment and retailers who accept it risk suspension or revocation of their licenses.

#### LEGISLATION:

*AB 129 (Floyd)*, as amended March 5, amends section 25505.3 of the Business and Professions Code to authorize any winegrower, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent to advertise in any regular publication, published at least quarterly, of any bona fide trade association the members of which are food or alcoholic beverage retailers, which does not advertise on behalf of or directly benefit any individual retail licensee. This bill was signed by the Governor on May 1 (Chapter 78, Statutes of 1990).

*AB 3056 (Floyd)* would authorize ABC to establish a 17-member task force to investigate methods of decreasing public inebriation and to report its findings, conclusions, and recommendations to the Governor and legislature by July 1, 1993, on the causes of and cures for alcoholism. The bill, which would also contain a statement of legislative findings, is pending in the Senate Governmental Organization Committee.

*AB 3174 (Floyd)*, as introduced February 26, would amend Business and Professions Code section 23790.5, which requires establishments engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption to abide by certain conditions. The law also requires the alcoholic beverage license at the establishment to be suspended for a minimum of 72 hours upon a finding that a licensee or a licensee's employee sold any alcoholic beverages to a minor at an establishment engaged in the concurrent sale of motor vehicle fuel with beer and wine for off-premises consumption. This bill would continue both of these provisions in operation until January 1, 1996. This bill, which would take effect immediately upon passage as an urgency statute, is pending in the Senate Governmental Organization Committee.

*AB 3448 (Statham)*, as amended May 3, would require that state and local law enforcement agencies notify ABC within ten days of any arrests made by them for violations over which the Department has jurisdiction and which involve a licensee or licensed premise. The bill would provide that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to a person under the age of 21 years, or any licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, is guilty of a misdemeanor punishable by a fine, or community service, or both. This bill is pending in the Senate

Governmental Organization Committee.

*AB 3612 (Frizzelle)*, as introduced March 1, would provide that only an applicant for a retail license at premises not currently licensed or for a different retail license would be required to mail notification of the application to every resident of real property within a 500-foot radius of the premises for which a license is to be issued. The bill would also permit protests to be filed at any ABC office at any time within thirty days from the first date a notice of intention is posted to engage in the sale of alcoholic beverages at a premises. This bill is currently in the Senate Governmental Organization Committee.

*AB 3890 (Mojonnier)*, as introduced March 1, would allow a nonprofit theater company holding a special on-sale general license to sell and serve alcoholic beverages two hours prior to a theater performance. This bill is pending in the Senate Governmental Organization Committee.

*SB 2637 (Dills)*, as introduced March 1, would prohibit any local agency from regulating the hours or days of delivery of any alcoholic beverage by ordinance, rule, or regulation. This bill is pending in the Assembly Governmental Organization Committee.

*AB 2772 (Hannigan)* permits a beer manufacturer or winegrower to purchase advertising space and time from, or on behalf of, an on-sale retail licensee who is the owner of a stadium with a fixed seating capacity in excess of 3,000 seats, during the use of a stadium for an annual water ski show. This bill was signed by the Governor on June 7 (Chapter 124, Statutes of 1990).

*AB 3514 (Bates)*. Under existing law, the Department may deny an application for a license if issuance of the license would tend to create a law enforcement problem or if the issuance would result in or add to an undue concentration of licensees. This bill would define "undue concentration" for purposes of the above provisions. This bill is pending in the Senate Governmental Organization Committee.

*SB 2411 (Dills)*. Existing tied-house provisions of the Alcoholic Beverage Control Act generally prohibit certain alcoholic beverage licensees from having an interest in various other alcoholic beverage licensees. This bill would authorize the holder of a beer manufacturer's or winegrower's license to enter into a written contract to purchase advertising space and time from, or on behalf of, an on-sale licensee who is the owner or lessee, or a wholly owned subsidiary of a lessee, of an arena that is located in the County of Alameda or the



County of San Mateo. This bill was signed by the Governor (Chapter 206, Statutes of 1990).

The following is a status update of bills previously reported in CRLR Vol. 10, No. 1 (Winter 1990) at pages 100-101:

*AB 213 (Floyd)*, as amended January 18, would repeal an exception to the Penal Code prohibition of the sale or exposure for sale of intoxicating liquor near certain institutions, for sales by a licensee within the premises occupied by any bona fide club situated within one mile of the grounds belonging to the University of California at Berkeley. This bill is still pending in the Senate Governmental Organization Committee.

*AB 151 (Floyd)*, which would require applicants for an alcoholic beverage license to post a notice of intention to engage in the sale of alcoholic beverages at each entrance of the premises and would specify the contents of that notice, is still pending in the Senate Governmental Organization Committee.

*AB 205 (Floyd)*, as amended June 12, would permit the holder of a distiller's, bottler's, or importer's license to purchase advertising space and time from, or on behalf of, an on-sale retail licensee who is the owner of the arena in Sacramento County, and would also permit a beer manufacturer, without regard to whether the beer manufacturer is licensed as such in California, to purchase advertising space in other specified facilities. The bill would also incorporate changes in section 25503.26 of the Business and Professions Code proposed by SB 2411, to be operative only if both bills are chaptered and this bill is chaptered last. This bill is pending in the Senate Governmental Organization Committee.

*AB 1742 (Friedman)*, which would prohibit 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, is still pending in the Assembly Governmental Organization Committee.

#### LITIGATION:

Proponents of four initiatives slated to appear on the November 1990 ballot recently filed suit to remove Proposition 136, which would nullify the four even if they pass by a majority vote. In *Van de Kamp v. Eu*, No. C009032 (Third District Court of Appeal), filed June 13, the proponents of several tax-raising initiatives challenge the validity of the so-called "Taxpayers Right to Vote Act of

1990" (Proposition 136), on grounds it violates the single-subject rule and is therefore unconstitutional.

Proposition 136 would require that statewide initiatives designed to adopt new "special taxes" must have a two-thirds majority approval from the voters or both houses of the legislature. The initiative is also expressly designed to affect other propositions appearing on the same ballot. Thus, if Proposition 136 passes by a majority vote, Proposition 134 (the Alcohol Tax Initiative sponsored by Assemblymember Lloyd Connelly and a number of public interest organizations), Proposition 126 (the alcohol industry's minimal tax increase proposal), Proposition 128 (Attorney General John Van de Kamp's Environmental Protection Act of 1990), Proposition 133 (Lieutenant Governor Leo McCarthy's Safe Streets Act of 1990), and Proposition 129 (Van de Kamp's Comprehensive Crime Reduction and Drug Control Act of 1990) would all fail unless they receive a two-thirds approval vote.

On June 21, the Third District Court of Appeal declined to review the case without comment. However, the California Supreme Court subsequently granted the plaintiffs' petition for review, and will hear the case on an expedited basis.

In *People v. Paulson*, No. A044696 (Jan. 4, 1990), the First District Court of Appeal upheld ABC's warrantless search for drugs of a licensee's premises because the search fell under the "closely regulated business exception" to the search warrant requirement. In March 1988, an ABC investigator followed up on an anonymous tip and conducted a warrantless search for narcotics at the "My House" bar in San Francisco. The ABC agent found 5.5 grams of cocaine. The owner of the liquor license was subsequently convicted on one count of possession of cocaine. The licensee appealed on grounds that the search exceeded the scope of administrative searches permitted by Business and Professions Code sections 25733 and 25755, and that the regulatory scheme created in those statutes is unconstitutional. In rejecting the licensee's argument, the court affirmed ABC's power to search licensee premises without a search warrant.

The court stated that "legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate" the Fourth Amendment's prohibition on warrantless searches. Since commercial premises owners necessarily have a lesser expectation of privacy on such property,

the U.S. Supreme Court has recognized an exception to the search warrant rule where "closely regulated industries, which by their very nature, require unannounced visits from government agents," if (1) there is a substantial government interest; (2) the warrantless inspections are necessary to further the regulatory scheme, and (3) the scheme provides a "constitutionally adequate substitute" for a warrant.

Here, the court found a substantial government interest in preventing the sale of drugs on licensed premises because of the potential threat to the "safety, welfare, health, peace and morals of the people of the State." The court also found that the second prong of the test was satisfied because contraband may be easily concealed, such that the sale of contraband "can only be deterred by frequent and unannounced inspections." The last requirement was satisfied, according to the court, because section 25753 of the Business and Professions Code explicitly states that ABC agents may, in enforcing the laws under the Alcoholic Beverage Control Act, "visit and inspect the premises of any licensee at any time." More specifically, section 24200.5 requires mandatory license revocation if a "retail licensee has knowingly permitted the legal sale, or negotiations for such sales of controlled substances or dangerous drugs" upon the licensed premises. Taken together, the court found that licensees "cannot help but be aware" that their property will be "subject to periodic inspections...for the specific purpose of determining" whether they are permitting the sale of controlled substances or dangerous drugs on the premises. The requirements of the exception being fulfilled, the First District invoked the "closely regulated business" exception to the search warrant requirement and upheld the warrantless search.

The California Supreme Court subsequently denied Paulson's petition for review, thus leaving the First District's decision intact.

#### BANKING DEPARTMENT

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