



AB 4349 (Filante), as amended August 14, increases the fees relating to the practice of vocational nursing, and adds fees for a duplicate license and the endorsement of a license. This bill also requires the Auditor General to review and report to the legislature on or before January 1, 1992, concerning the operations of the Board of Vocational Nurse and Psychiatric Technician Examiners. This bill was signed by the Governor on September 20 (Chapter 1131, Statutes of 1990).

AB 3306 (Lancaster), as amended July 28, affects LVN applicants by increasing the educational requirement to the twelfth grade. The Governor signed this bill on August 13 (Chapter 520, Statutes of 1990).

SB 2481 (Hart), as amended June 27, would have prohibited any person or public agency from operating, conducting, or maintaining a temporary nursing service, as defined, after January 1, 1992, unless it has applied for and been approved by the state Department of Health Services as a temporary nursing service. This bill died in the Assembly Health Committee.

SB 2509 (Lockyer), as amended July 6, would have provided 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 presumed to arise out of and in the course of employment for workers' compensation purposes. This bill was vetoed by the Governor on September 18.

RECENT MEETINGS:

In response to AB 3306 (Lancaster), which increased the educational requirement for LVNs from tenth to twelfth grade or the equivalent (*see supra* LEGISLATION), the Board announced at its September meeting that any vocational nursing student with only a tenth grade education or equivalent who is presently enrolled and will apply to take the licensing examination prior to January 1, 1991 will not be required to obtain a twelfth grade education or its equivalent. Also, all students who enroll in a vocational nursing program after December 31, 1990 will be required to show proof of completion or obtain a twelfth grade education or its equivalent prior to graduation from the program. Any person who applies for licensure prior to January 1, 1991, based on an equivalency method of qualification (such as graduation from an accredited school of vocational/practical nursing outside of California) will not be required to obtain a

twelfth grade education or its equivalent. Any person who applies for licensure after December 31, 1990, based on an equivalency method of qualification will be required to show proof of completion or obtain a twelfth grade education or its equivalent before submitting the application. The Board will send a memorandum to all vocational nursing programs to inform them of this change.

At the September 21 meeting, Executive Officer Billie Haynes announced that due to the current crisis in the Middle East, many candidates for licensure are now expecting active duty status. Therefore, they may not be available to appear for the scheduled examinations. At Ms. Haynes' recommendation, the Board voted to waive retake fees for all LVN and PT candidates who are called to active duty and cannot appear for the scheduled exam. All such candidates must provide documentation to verify their active duty status.

At its April 26-27 meeting, the Education/Practice Committee determined that the Vocational Nursing Practice Act does not permit LVNs to apply liquid nitrogen to skin. The Board accepted these findings at its May 11 meeting.

However, this issue was reopened at the September 21 meeting, when attorney David Sanders was allowed to speak in support of allowing LVNs to apply liquid nitrogen. With the assistance of a physician and several nurses, Sanders gave a demonstration of liquid nitrogen application. He stated that it is a relatively simple procedure which an LVN should be permitted to conduct under a physician's supervision. The Board referred this issue back to the Education/Practice Committee for reconsideration.

Also at the September 21 meeting, the Board assessed the impact of the cancellation of its July meeting. The Board concurred that cancellation of the July meeting did not seem to negatively impact the Board's ability to fulfill its legislative mandate, and a proposal was made to cancel all future July meetings. However, the Board decided to wait until the May meeting to assess the need for a July meeting.

FUTURE MEETINGS:

January 18 in San Diego.
March 14-15 in Los Angeles.



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh
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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code sections 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. 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 liquor licenses issued each year per county. No such state restrictions apply to beer and wine licenses.

MAJOR PROJECTS:

Air Time Controversy Surrounds Alcohol Tax Initiatives. Supporters of Proposition 134, the so-called "nickel-a-drink" alcohol tax increase authored by Assemblymember Lloyd Connelly, recently accused the alcohol industry of "extortion" in trying to keep unpaid pro-134 messages off the air. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 130-31 for background information on the competing alcohol tax initiatives on the November 1990 ballot.) Pro-134 forces requested free advertising from media outlets in order to compete with the industry's advertising campaign, which is expected to cost over \$20 million by November. The extortion claim stems from threats by the industry-financed Taxpayers for Common Sense to withdraw its political advertising from any station that gives the Proposition 134 campaign free broadcast time.

The Federal Communications Commission (FCC) encourages free advertising under its fairness doctrine, which requires that when "controversial issues of public importance" are on the ballot, both sides must be covered fairly by the broadcast media. The doctrine helped public interest groups to pass Proposition 99, a similar cigarette tax initiative, in 1988.

To bolster the industry's position, the American Association of Advertising Agencies has urged stations statewide to deny Proposition 134 proponents' requests for free air time. The alcohol industry, vehemently opposed to the initiative, contends that Proposition 134 promoters plan to mount an expensive, paid advertising assault in late October, despite reports that the campaign is running at a deficit. If successful, the industry's tactics could affect future campaigns by public interest organizations to pass initiatives.

The alcohol industry-sponsored Proposition 126 would impose a dramatically smaller tax increase than would Proposition 134. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 130-31 for specific distinctions.) This proposed amendment to the constitution competes for popular votes against the "nickel-a-drink" initiative; if both measures pass, the proposition receiving more votes controls in areas of irreconcilable conflict. Thus far, Proposition 126 has received relatively little adver-

tising attention due to the industry's focus on defeating Proposition 134.

Connelly's "nickel-a-drink" initiative could be undercut by a third proposition, also heavily financed by the alcohol industry. Proposition 136, dubbed the "Taxpayers Right to Vote Act," is a "poison pill" proposal. If passed, Proposition 136 would void any proposition to raise statewide taxes for a particular purpose unless such proposition wins two-thirds of the public vote. Currently, only a majority vote is required. The industry-sponsored Proposition 126 would escape the reach of this two-thirds vote requirement because revenues from the industry's proposed tax hike are not earmarked for a particular purpose. Proposition 134, by contrast, would allocate revenues to programs designed to treat social problems caused by alcohol consumption and abuse.

The alcohol beverage industry faces additional tax wars on the federal battleground. In July, the Bush administration proposed a quadruple increase in the federal excise tax on beer and an even higher tax increase on wine. The administration estimates that such a tax hike would raise \$7 billion to reduce the federal deficit.

Liquor License Seizure Law Used for Drug-Related Violation. On June 16, ABC confiscated the license of a man charged with providing undercover law enforcement agents with two pounds of cocaine in exchange for chemicals used in the manufacture of amphetamines. The seizure represents an expansion of the Department's enforcement powers; it is the first action of its kind in California history. ABC officials relied on a recent amendment to section 25375 of the Business and Professions Code as authority for the action. The amendment, authored by Assemblymember Richard Katz, became effective on January 1, 1990.

ABC's Riverside office, which regulates licensing in Rubidoux where the violation occurred, worked in conjunction with the Riverside District Attorney under the authority of the new law. The District Attorney served the licensee with notice of the pending seizure and, on the order of Riverside County Superior Court Judge J. Barnard ten days later, confiscated the license.

ABC acted through its own Drug Enforcement Narcotics Team (DENT), a special division created in 1988 under a grant from the federal Office of Criminal Justice Planning. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 84 and Vol. 8, No. 2 (Spring 1988) p. 80 for background information.) However, the federal grant expired on July 1, prompting a \$325,000 special request by the Department to

continue the program through state budget monies. The legislature denied the special request on July 28 due to budget constraints, making the continued existence of DENT highly improbable. ABC may examine ways to continue DENT's operations despite the funding refusal.

Licensing at Maximum Levels in Southern Counties. On July 17, ABC Director Jay Stroh announced that the Department would accept applications for a total of 645 new liquor licenses in September. In addition, 275 intercounty transfer licenses are available. The new licenses are based on population ratios. State law allows one general on-sale license for every 2,000 people, and one general off-sale license for every 2,500 people in a county.

Orange, Riverside, San Bernardino, and San Diego counties each have available the maximum fifty new licenses. The four counties also account for over 45% of the state's intercounty transfer licenses. The recent figures indicate that the continued expansion of liquor licensing in southern California exceeds that in other areas in the state, and that more liquor licenses are available statewide this year than in any previous year. Beer and wine licenses are not based on population and are offered separately through ABC.

Rulemaking on Supplier-Furnished Entertainment Preempted. Despite ABC Director Jay Stroh's May announcement that the Department was drafting appropriate regulations, suppliers need not wait for rulemaking allowing them to furnish entertainment and hospitality to retailers and/or their employees. Legislation to achieve the same effect has been enacted. (See *infra* LEGISLATION for provisions of AB 3175.)

LEGISLATION:

H.R. 4493 (Kennedy, Gore) is federal legislation which would require the placement of one of five rotating health warnings in all alcohol beverage advertising. The warnings would advise against drinking in high-risk situations and characterize alcohol as addictive. Each warning would also list a toll-free telephone number for information about alcohol abuse. At this writing, the bill is pending in the Subcommittee on Transportation and Hazardous Materials of the U.S. House of Representatives' Energy and Commerce Committee.

AB 3175 (Floyd). Under existing law, no manufacturer, bottler, importer, or wholesaler of products of the brewing industry may furnish, give, rent, lend, or sell, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to any person



engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises. As amended July 2, this bill permits a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler to provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and local ground transportation to and from those meetings; and tickets or admission to athletic activities or other forms of entertainment, food and beverages for consumption at those activities, and local ground transportation to and from those activities. This bill was signed by the Governor on July 25 (Chapter 425, Statutes of 1990).

AB 3280 (Tanner), as amended July 27, prohibits the sale, lease, rental, provision, or offer of video games intended primarily for use by any person under the age of 18 years which contain paid commercial advertising for tobacco products or alcoholic beverages. This bill was signed by the Governor on September 8 (Chapter 639, Statutes of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 131-32:

AB 3056 (Floyd), as amended August 17, would have authorized ABC to establish a 17-member task force to investigate methods of decreasing public inebriation and to report its findings, conclusions, and recommendations on the causes of and cures for alcoholism to the Governor and legislature by July 1, 1993. This bill was vetoed by the Governor on September 22.

AB 3174 (Floyd), as amended August 22, would have extended until January 1, 1993, existing law which requires establishments engaged in the concurrent sale of motor vehicle fuel and beer and wine for off-premises consumption to abide by certain conditions, including a requirement that employees on duty between the hours of 10:00 p.m. and 2:00 a.m. be at least 21 years of age to sell beer and wine. The bill would also have lowered the required age of employees on duty between these hours to 18 years, but was vetoed by the Governor on September 21.

AB 3448 (Statham), as amended May 3, requires 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 a licensed premise; and

provides 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, and any licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in an on-sale premises, is guilty of a misdemeanor punishable by a fine, community service, or both. The bill was signed by the Governor on September 10 (Chapter 695, Statutes of 1990).

AB 3612 (Frizzelle), as introduced March 1, provides that only an applicant for a retail license at premises not currently licensed or for a different retail license is 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; and permits 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 the premises. This bill was signed by the Governor on September 7 (Chapter 612, Statutes of 1990).

AB 3890 (Mojonnier), as introduced March 1, allows 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 was signed by the Governor on July 11 (Chapter 238, Statutes of 1990).

SB 2637 (Dills), which would have prohibited any local agency from regulating alcohol delivery times, was vetoed by the Governor on August 9.

AB 3514 (Bates), as amended June 27, would have defined "undue concentration" for license denial purposes. This bill died in the Senate Governmental Organization Committee.

AB 213 (Floyd), which would have repealed an exception to the prohibition of the sale of alcoholic beverages near the University of California at Berkeley, died in the Senate Governmental Organization Committee.

AB 151 (Floyd), which would have required 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 specified the contents of that notice, died in the Senate Governmental Organization Committee.

AB 205 (Floyd), as amended August 9, would have permitted 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 have permitted a beer manufacturer, without

regard to whether the beer manufacturer is licensed in California, to purchase advertising space in other specified facilities. This bill died in the Senate inactive file.

AB 1742 (Friedman), which would have prohibited 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, was rejected by the Assembly Governmental Organization Committee on June 20.

LITIGATION:

In a surprise move on August 8, the California Supreme Court announced that it would not decide the validity of Proposition 136 prior to the November election. The so-called "Taxpayers Right to Vote Act" would require a two-thirds public vote to approve any ballot measure raising statewide taxes for a particular purpose. (See *supra* MAJOR PROJECTS; see also CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 132 for background information on this case.) Only three weeks earlier, the Supreme Court had granted review in *Van de Kamp v. Eu*, No. C009032 (Third District Court of Appeal); the lower court refused to find that Proposition 136 violates the single subject rule. In its August ruling, the Supreme Court dismissed the case without prejudice, indicating that it may review the case if Proposition 136 passes in the November election.

In *Chung v. City of Los Angeles*, No. 753792 (Los Angeles County Superior Court), liquor retailers successfully challenged the enforcement of certain local ordinances imposing restrictions on alcohol sales on grounds that they infringe on the exclusive authority of ABC. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 131 for background information.) The Los Angeles City Council decided not to appeal this ruling.

BANKING DEPARTMENT

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1-800-622-0620

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