



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. The Alcoholic Beverage Control Act vests the Department with the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the state. 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 issues liquor licenses and investigates 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 the liquor industry trade publications *Beverage Bulletin* and *Beverage Industry News*.

ABC divides the state into two divisions 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.

MAJOR PROJECTS:

ABC Increases Staff Workload Goals. In January, the ABC implemented a new staff program focusing on law enforcement by increasing its investigators' workload production goals. ABC charged its investigative team with increasing the number of accusations filed by 37%, and raising the number of completed investigations by 47% during 1989.

The planned increase is attributable to the ABC's hiring of 50 new investigators and 14 support staff in the latter

part of 1988. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 68 for background information.) The ABC was alerted in December 1989 of impending budget cuts (see *infra*). As a result, the ABC is trying to demonstrate the benefits of enlarging its workforce.

Another reason for the increased workload goals is that while the number of public complaints about licensing violations has recently increased, the number of new accusations filed by the ABC actually decreased in 1988. ABC's new investigative employees have just completed their training and are expected to enable ABC to improve its enforcement output statistics.

The emphasis on law enforcement also coincides with the ABC's receipt of federal funds for a Drug Enforcement Narcotics Team (DENT) to investigate alleged drug sales in bars and taverns.

ABC Faces Budget Cut. In December, the ABC and other regulatory agencies were forewarned by Governor Deukmejian's economists to prepare to cut spending in 1989 as the state attempts to reduce its budget in order to fund public schools at an increased level as required by Proposition 98. After increasing its investigative and support staff by over 60 people in 1988, the ABC plans to meet future budget cuts by possibly not filling some staff vacancies which occur in 1989.

Alcohol Industry to Fight Additional Warning Signs. The alcohol industry expects a year-long battle regarding Proposition 65, the 1986 initiative which (among other things) requires all sellers of alcohol to post signs in their establishments warning about the cancer-causing chemicals in alcohol. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 68 for background information.)

The industry hopes to persuade the California legislature that because of a federal law which goes into effect in November 1989 requiring all alcohol containers to have label warnings (see CRLR Vol. 9, No. 1 (Winter 1989) pp. 68-69 for background information), the industry should be excused from some of Proposition 65's warning require-

ments. Industry groups also plan to introduce legislation which would preempt all local warning laws passed by cities and counties. The measure would provide statewide consistency for warning notices and eliminate inconsistent signs required by various local governments.

California Liquor Sales Decline. Liquor sales in California in 1988 declined to their lowest level in fifteen years. According to the State Board of Equalization, 48.6 million gallons of distilled spirits were purchased during July 1987-June 1988, matching the total reached during the 1972-73 period. California distilled spirits reached an all-time high in 1981-82, when 56 million gallons were purchased by California consumers. Beer and wine sales also declined last year, with beer consumption down by eleven million gallons and wine sales decreasing by two million gallons.

The decline in liquor sales is even more apparent when California's increased population is considered. California's population has increased by 40%, from 20 million residents in 1972 to 28 million in 1988. The decrease in liquor sales can be attributed to inflation, increased federal liquor excise taxes, consumer drinking trends, and societal pressure to consume alcohol in moderation.

ABC Issues Guidelines on Supplier Advertising Specialties. In response to the Third District Court of Appeal's ruling in *California Beer and Wine Wholesalers Association v. ABC* (see CRLR Vol. 8, No. 4 (Fall 1988) p. 79 and Vol. 8, No. 3 (Summer 1988) p. 85 for background information), which invalidated ABC's Rule 106(e)(1), the legislature recently amended section 25600 of the ABC Act through SB 2430 (Dills) (Chapter 1980, Statutes of 1988).

As amended, section 25600 allows a single supplier (manufacturer or wholesaler) of malt beverages to give advertising specialties to a single retail premises provided the specialties do not exceed 25 cents per unit or cost more than \$15 in the aggregate per calendar year.

Suppliers of wine and distilled spirits are now permitted to furnish retailer advertising specialties, provided the specialties do not exceed \$50 aggregate value for a single brand given to a single retail premises.

LEGISLATION:

AB 16 (Klehs) would repeal the corporate income tax exemption for private clubs that discriminate against any person by restricting its membership or the use of its facilities or services on the



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basis of age, sex, race, religion, color, ancestry, or national origin. At this writing, the bill is pending on the Assembly floor.

AB 1361 (Friedman) resurrects AB 2187 (Friedman), which was vetoed by Governor Deukmejian last fall (see CRLR Vol. 9, No. 1 (Winter 1989) p. 69 for background information). This bill would, on and after January 1, 1990, prohibit the issuance or renewal of any alcoholic beverage license to a club which makes any discrimination, distinction, or restriction for the purpose of membership against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age. This bill has become a two-year bill.

AB 78 (Hansen) would require a fourth drunk driving offense within seven years to be prosecuted as a felony, and would require the court to sentence the person to imprisonment in the state prison and pay a fine of not less than \$390 and not more than \$2,500. This bill is pending in the Assembly Ways and Means Committee.

AB 261 (Floyd). Existing law prohibits the holder of an alcoholic beverage wholesaler's license from holding ownership in any on-sale alcoholic beverage license, except in counties with populations less than 15,000. This bill would increase that population figure to 25,000. This bill is pending in the Assembly Committee on Governmental Organization.

SB 327 (Beverly) would authorize any person who holds any other ABC license and who has been in the restaurant business outside of California to hold an on-sale general license provided other specified conditions are met. This bill is pending in the Senate Governmental Organization Committee.

SB 346 (Nielsen) would authorize a licensed winegrower to hold, directly or indirectly, the ownership of any interest in an on-sale license if (1) the premises are licensed as a bona fide eating establishment; (2) alcohol beverages sold and served at the premises are purchased only from a California wholesale license; and (3) the wine items of that winegrower or any person holding any interest in the winegrower do not exceed 15% of the total wine items listed and offered for sale in that bona fide eating place. This bill is pending in the Senate Governmental Organization Committee.

SB 396 (Dills). Existing law prohibits any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person

from owning any interest, directly or indirectly, in any realty acquired after June 13, 1935, upon which on-sale premises are maintained, unless the holding of the interest is permitted in accordance with ABC rules. This bill, which is pending in the Senate Governmental Organization Committee, would delete the requirement that the realty be acquired after June 13, 1935.

LITIGATION:

In January, the ABC appealed a decision of its own Alcoholic Beverage Control Appeals Board. In December, the Appeals Board validated a coupon-rebate promotion which gave a consumer a 130% refund on his purchase price. The ruling came after the ABC has suspended Heublein, Inc. for ten days after Heublein had offered a bottle of Yukon Jack Canadian Liqueur for \$1.91 with a refund price of \$2.50. The ABC termed this refund promotion as gift, a violation of the ABC's restrictions against giveaways.

After the Appeals Board approved the rebate program, the ABC filed a petition for writ of review in the First District Court of Appeal in San Francisco. The appellate court's ruling could result in a complete revision of the ABC's prohibitions on free alcohol gifts and other industry promotions which provide prizes and rebates for purchasing alcohol. A final decision is expected to take several months.

BANKING DEPARTMENT

Superintendent: Howard Gould
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The State Banking Department 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 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