



1989) p. 78 and Vol. 9, No. 1 (Winter 1989) p. 67 for detailed background information on these changes.)

Future Roles of LVNs and PTs. The Board's Education/Practice Subcommittee on the Future Roles of the Licensed Vocational Nurse and Psychiatric Technician is continuing its review of proposals made by the Board at its November 1988 meeting. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 78 and Vol. 9, No. 1 (Winter 1989) p. 67 for background information.)

LEGISLATION:

SB 368 (Torres). Existing law defines nursing hours as the number of hours of work performed per patient day by aides, nursing assistants, or orderlies, plus two times the number of hours worked per patient day by RNs and LVNs. This bill would instead define nursing hours as the number of hours of work performed per patient day by aides, nursing assistants, orderlies, RNs, or LVNs. This bill would also require an increase in the Medi-Cal reimbursement rate for facilities affected by this act in staffing levels and would specify the method of establishing the increase. SB 368 is pending in the Senate Appropriations Committee at this writing.

SB 576 (Maddy). Persons partici-

pating in the Registered Nurse Education Program are required to either be from demographically underrepresented groups or persons who agree in writing prior to graduation to serve in a health manpower shortage area. This bill would add that persons who agree in writing prior to graduation to serve in an eligible county health facility would also be eligible to participate in the Program. This bill passed the Senate on May 18 and is pending in the Assembly Health Committee.

The following is a status update of bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 78:

AB 395 (Felando), which would require all hemodialysis technicians, LVNs, and RNs who provide services to dialysis patients in a patient's home to be held to the same requirements as when they provide health care services to dialysis patients in a dialysis clinic, is still pending in the Assembly Health Committee.

SB 325 (Greene, B.), which would authorize the Board to suspend or revoke the license of an LVN who uses excessive force upon or mistreats any patient, is pending in the Assembly Health Committee.

FUTURE MEETINGS:

September 22 in San Diego.

November 16-17 in Los Angeles.

(HWA) published notice of its intent to amend section 12601, Title 22, California Code of Regulations (CCR), to set forth a sample warning message which must be posted by businesses involved with alcoholic beverages on and after July 1, 1989. The warnings must be posted pursuant to Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986.

As amended, section 12601 would set forth the following warning message: "WARNING: Drinking Distilled Spirits, Beer, Coolers, Wine and Other Alcoholic Beverages May Increase Cancer Risk, and, During Pregnancy, Can Cause Birth Defects."

HWA was scheduled to hold a July 25 public hearing on the proposed amendment.

LEGISLATION:

AB 2066 (Killea) would provide for specified increases in excise taxes on certain alcoholic beverages including beer, wine, and distilled spirits, and would provide for compensating floor taxes for those increases. Half of the revenues from the increases would be credited to the general fund; the other half would be used for alcohol and drug abuse prevention, education, and treatment programs. This bill is pending in the Assembly Ways and Means Committee at this writing.

AB 2451 (Statham) would have permitted ABC investigators to wear electronic devices to enable them to overhear or record communications while investigating a possible violation of the California Uniform Controlled Substances Act, but failed passage in the Assembly Public Safety Committee on May 2.

AB 205 (Floyd). Existing law requires applicants for liquor licenses to mail out notices to all property owners within a 500-foot radius of the licensed premises. This bill, which is pending in the Assembly Governmental Organization Committee, would specify the contents of that notice.

AB 213 (Floyd). Existing provisions of the Penal Code prohibit the sale of alcohol near certain institutions, such as prisons. This bill would repeal certain of those provisions and state legislative intent in that regard. AB 213 is pending in the Assembly inactive file.

AB 585 (Friedman). Existing law prohibits 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. As amended June 15, this bill would enact the Drunk Driv-



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. 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:

Proposition 65 Rulemaking. In early June, the Health and Welfare Agency



REGULATORY AGENCY ACTION

ing Prevention Responsible Server Practices Act of 1989, and would impose liability upon the holder of an ABC 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, but would provide that an action may not be brought against a bona fide eating place except for serving alcoholic beverages to an obviously intoxicated minor, as specified. This bill is pending in the Assembly Ways and Means Committee at this writing.

AB 1742 (Friedman) would require ABC, upon receipt of an application to exchange a liquor license, to make a thorough investigation to determine whether the applicant and the premises are qualified for an alcoholic beverage license. This bill would also require ABC to deny an application for a license, as well as an application for an exchange or transfer of a license, if the issuance of the license would tend to create a law enforcement problem or would create an undue concentration of licensees and the applicant fails to show that public convenience or necessity would be served by the issuance. This bill was passed by the Assembly on June 8 and is pending in the Senate Governmental Organization Committee at this writing.

AB 767 (Eaves) would authorize a licensed beer manufacturer or holder of an out-of-state beer manufacturer's certificate to give away promotional items of nominal value, except for beer or nonalcoholic beverages, in connection with a concert or supporting event, for the benefit of a charitable or civic organization. The bill would prohibit the manufacturer from inducing a beer and wine wholesaler, through coercion or other means, to fulfill any obligation of the manufacturer entered into pursuant to that provision. This bill is pending in the Assembly Governmental Organization Committee.

SB 760 (Campbell), as amended April 27, would require all state and local law enforcement agencies to notify ABC of any arrests made by them for violations over which ABC has jurisdiction, within ten days of the arrest. This bill would also provide that every clerk who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor. The bill would also make it unlawful for any person over 21 years of age to purchase alcoholic beverages from an off-sale seller and furnish those alcoholic beverages to a person under the age of 21 years. SB 760 is pending in the Senate Judici-

ary Committee.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 79-80:

AB 16 (Klehs), which would have repealed the corporate income tax exemption for a private club which discriminates against any person by restricting its membership or the use of its facilities or services on the basis of age, sex, race, religion, color, ancestry, or national origin, was rejected on the Assembly floor on June 8. Although the bill received a majority 47-26 vote, it failed to receive a two-thirds vote of the Assembly; Assemblymember Klehs is challenging the two-thirds requirement in court (see *infra* LITIGATION).

AB 1361 (Friedman), which would have prohibited the issuance or renewal of any alcoholic beverage license to a club which engages in membership or employment discrimination, failed passage on May 3 in the Assembly Governmental Organization Committee.

AB 78 (Hansen), which would have required a fourth drunk driving offense within seven years to be prosecuted as a felony, was dropped by its author.

AB 261 (Floyd), which would allow a holder of an alcoholic beverage wholesaler's license to hold ownership in any on-sale alcoholic license only in counties with a population lesser than 25,000 people, is still pending in the Assembly Governmental Organization Committee.

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

SB 346 (Nielsen), which would authorize a licensed winegrower to hold, directly or indirectly, the ownership of any interest in an on-sale license under specified conditions, is still pending in the Senate Governmental Organization Committee.

LITIGATION:

In *Klehs v. Gregory, et al.*, No. 351501 (Sacramento Superior Court), Assemblymember Johan Klehs seeks a preliminary injunction barring the Assembly from applying a two-thirds vote requirement to pass AB 16 (see *supra* LEGISLATION). Section 3 of Proposition 13 requires a two-thirds vote of the Assembly on any bill which proposes increased tax rates or a change in the method of computation for the purpose of increasing tax revenues. This vote requirement

was applied to AB 16 (Klehs), which would eliminate the tax exempt status of social clubs which discriminate. The court was scheduled to hear Klehs' motion on July 14.

In *McFaddin San Diego 1130, Inc. v. Department of Alcoholic Beverage Control Appeals Board, et al.*, No. D008947 (Mar. 24, 1989), the Fourth District Court of Appeal ruled that the ABC unjustifiably suspended the liquor license of a disco in which cocaine sales were taking place, but which had a policy of controlling drug trafficking and whose employees neither knew nor had reason to know that narcotics were being sold on the premises.

The disco had been under investigation by the San Diego Police Department for alleged sales of cocaine by employees and patrons. On six occasions, undercover police officers purchased cocaine from four patrons. ABC charged the disco with "permitting the premises to be used in a manner which created conditions contrary to the public welfare," in violation of the California Constitution and Business and Professions Code section 24200(a). An ABC administrative law judge found the disco permitted the premises to be so used, but did not find that the disco's employees participated, knew of, or reasonably should have known of the narcotics sales. She determined that grounds for license suspension existed under section 24200(a) based on the occurrence of the sales on the premises.

The Fourth District reversed, concluding that "where a licensee does not reasonably know of the specific drug transactions and further has taken all reasonable measures to prevent such transactions, the licensee does not 'permit' the transactions."

In the so-called "Yukon Jack case," both the First District Court of Appeal and the California Supreme Court recently declined to review a decision by ABC's Alcoholic Beverage Control Appeals Board challenged by ABC itself. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 80 for background information.) ABC had suspended Heublein, Inc., for offering a bottle of Yukon Jack Canadian Liqueur for \$1.91, along with a \$2.50 rebate promotion. ABC considers this 130% refund promotion violative of its rules prohibiting giveaways. ABC fears that the courts' refusal to interfere with the Appeals Board's decision will unleash a flood of new coupon-rebate promotions.