



## REGULATORY AGENCY ACTION

nursing shortage; however, the Board believes that the proposal would significantly lower the quality of patient care as well as endanger the health, safety, and welfare of consumers in California. One of the Board's primary concerns is that most of the functions identified for the RCT position are within the scope of LVN practice in California.

**Implementation of Automated Cashiering System.** The central cashiering unit of the Department of Consumer Affairs (DCA) has implemented an automated license renewal process which was intended to decrease personnel needs in that area. However, many of the Board's licensees' checks and money orders for renewal of their licenses have been lost; as a result, 5,000 nurses have been laid off pending receipt of notification of status by their employers. Billie Haynes will be meeting with DCA Director Michael Kelley to resolve this serious nursing problem.

### LEGISLATION:

The following is a status update on bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 75:

*SB 325 (Greene, B.)*, as amended July 10, authorizes the Board to suspend or revoke the license of an LVN who uses excessive force upon or mistreats any patient. This bill was signed by the Governor on September 22 (Chapter 685, Statutes of 1989).

*SB 576 (Maddy)*, which states that persons who agree in writing prior to graduation to serve in an eligible county health facility are eligible to participate in the Registered Nurse Education Program, was signed by the Governor on September 8 (Chapter 326, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *SB 368 (Torres)*, which would define "nursing hours" as the number of hours of work performed per patient day by aides, nursing assistants, orderlies, RNs, or LVNs; and *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.

### RECENT MEETINGS:

At its September 22 meeting, the Board discussed a recent management study of its PT and LVN organizational structure performed by an outside consulting group. The PT and LVN units are essentially two separate boards supported

by a single support staff group. The consultants recommended that the Board hire a full-time program manager to oversee the PT program and supervise budget and licensure responsibilities. This individual would report to the Board Executive Officer Billie Haynes.

The Board agreed with the recommendation at the September meeting, but does not currently have the funds to hire the manager.

### FUTURE MEETINGS:

May 10-11 in Sacramento.



## 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.* Following a July 25 public hearing, the Health and Welfare Agency (HWA) adopted an amendment to section 12601, Title 22 of the California Code of Regulations (CCR), to set forth a warning message

which must be posted by businesses involved with alcoholic beverages on and after July 1, 1989. HWA has previously approved the change on an emergency basis; the July 25 hearing was conducted for purposes of permanently adopting the regulatory change. The warning must be posted pursuant to Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986. As amended, section 12601 sets 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." The warning must be posted at point of sale.

*Federal Labeling Requirements Now Effective.* Congress passed the Alcoholic Beverage Labeling Act of 1988, 27 U.S.C. section 213, to require uniform warnings informing the American public of the health hazards which may result from alcohol consumption or abuse. The Act requires health warning labels to appear on all alcoholic beverages sold or distributed in the United States beginning with beverages bottled as of November 18, 1989. Although the Act directly affects the California liquor industry, investigations of violations will not be conducted by ABC but rather by the U.S. Bureau of Alcohol, Tobacco and Firearms.

### LEGISLATION:

*AB 165 (Floyd)* specifies that a person under the age of 21 who produces, uses, or possesses false or fraudulent evidence of age and identity for the purpose of obtaining alcoholic beverages is guilty of a misdemeanor and subject to a minimum fine of \$250. This bill was signed by the Governor on July 10 (Chapter 110, Statutes of 1989).

*AB 594 (Hill)*, as amended August 22, authorizes ABC to impose reasonable conditions as any alcoholic beverage li-



cense in the exercise of retail privileges in specified situations. This bill was signed by the Governor on September 25 (Chapter 903, Statutes of 1989).

*SB 1351 (Boatwright)*, as amended September 7, authorizes peace officers employed by ABC to enforce any penal provisions of law prohibiting various acts involving alcoholic beverages or intoxicating liquors while in the course of employment. This bill was signed by the Governor on September 29 (Chapter 1166, Statutes of 1989).

*SB 771 (Nielsen, Dills)*, as amended August 21, requires that all wines produced within Napa County on or after January 1, 1990, must be labeled as being derived from that county and authorizes ABC to suspend or revoke the licenses of violators. This bill was signed by the Governor on September 20 (Chapter 588, Statutes of 1989).

*AB 151 (Floyd)* 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. In addition, the bill would specify the contents of that notice. This bill is a two-year bill pending in the Senate Committee on Governmental Organization.

*AB 585 (Friedman)*, which would have enacted the Drunk Driving Prevention Responsible Server Practices Act of 1989, and imposed liability upon holders of ABC retail licenses for specified acts relating to the serving of alcoholic beverages to a minor or to an obviously intoxicated person, was defeated in the Assembly on August 28.

The following bills, which were discussed in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 75-76, were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 78 (Hansen)*, which would require a fourth drunk driving offense within seven years to be prosecuted as a felony; *AB 205 (Floyd)*, which would specify the contents of notices which license applicants are required to mail to property owners within a 500-foot radius of the premises for which the license is sought; *AB 213 (Floyd)*, which would repeal certain provisions of the Penal Code prohibiting the sale of alcohol near certain institutions, such as prisons; *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 less than 25,000; *AB 767 (Eaves)*, which would authorize licensed beer manufacturers or holders of out-of-state beer manu-

facturer's certificates to give away promotional items of nominal value, except for beer or nonalcoholic beverages, under specified conditions; *AB 1742 (Friedman)*, which, as amended July 17, would prohibit the issuance or renewal of any club license to a club, as defined, 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; *AB 2066 (Killea)*, which would provide for specified increases in excise taxes on beer, wine, and distilled spirits, and would designate how that tax revenue would be used; *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; *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; and *SB 760 (Campbell)*, which would require all state and local law enforcement agencies to notify ABC of any arrests they make for violations over which ABC has jurisdiction, and would make it unlawful for any person over 21 years of age to purchase alcohol for a minor.

## LITIGATION:

Under pressure from Assembly Speaker Willie Brown and at the behest of Democratic Caucus counsel Joseph Remcho, Assemblymember Johan Klehs has decided to drop *Klehs v. Gregory, et al.*, No. 351501 (Sacramento Superior Court), his action seeking a preliminary injunction to bar the Assembly from applying a two-thirds vote requirement to AB 16 (Klehs). (See CRLR Vol. 9, No. 3 (Summer 1989) p. 76 for background information.) 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. Reform efforts led by California Common Cause have long sought to allow the removal of "tax loopholes" by majority vote, contending that special interests are easily able to prevent the 53 Assembly and 27 Senate votes necessary to end them. AB 16 was a vehicle prepared by those reformers to test the constitutionality of the two-thirds vote requirement applicable to the termination of those loopholes. AB 16 (which would eliminate the tax-exempt status of social clubs which discriminate)

received a simple majority, but failed to garner enough votes to satisfy the two-thirds vote requirement, and had therefore succeeded in qualifying as a test case. According to counsel for Klehs and others, the Assembly leadership persuaded the assemblymember that pursuit of this case would set a bad precedent (and possibly transgress the separation of powers doctrine) in allowing a legislator to challenge a ruling from the floor and enabling the courts to resolve it. According to the Litigation Chairperson for California Common Cause, the withdrawal of Assemblymember Klehs from this case, after positioning it for court test and obtaining the reliance of those who believe that the current application of the two-thirds vote requirements is overly broad, undemocratic, and unconstitutional, has caused substantial bitterness and disappointment.

## BANKING DEPARTMENT

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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 trans-