



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh
(916) 445-3221

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:

War on Illegal Drugs. Investigators from the ABC's Drug Enforcement Narcotics Team (DENT) have continued the Department's campaign against drug and narcotic violations on licensed premises. In May, the ABC announced seizures of over \$10,000 in drug-related paraphernalia being sold by a dozen southern California liquor retailers. Items seized included hundreds of glass pipes intended for smoking crack or freebasing cocaine, scales, cocaine vials, kits containing razor blades and mirrors, and chemicals used to cut cocaine. ABC

licensees selling such paraphernalia face license revocation under Health and Safety Code section 11364.7. (For background information on the ABC's anti-drug campaign, see CRLR Vol. 8, No. 2 (Spring 1988) p. 80.)

Happy Hour Proposals Abandoned. The ABC recently announced abandonment of its five-point proposal to reduce on-sale "happy hour" promotions. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 80 for background information.) The Department decided to drop the proposed program, which would have restricted promotions such as two-for-one drinks, price discounts, and contests awarding alcohol as prizes, after determining that it lacks sufficient statutory authority to promulgate necessary regulations. The issue will now go back to the legislature, where several measures to limit happy hour discounts have failed passage in recent years. (For related information, see CRLR Vol. 8, No. 1 (Winter 1988) p. 76; Vol. 7, No. 2 (Spring 1987) pp. 72-73; and Vol. 7, No. 1 (Winter 1987) p. 64.)

Alcohol Labeled Cancer-Causing. In April, the state's Proposition 65 scientific review panel declared that alcoholic beverages cause cancer. Although Proposition 65 requires public warnings about dangers associated with identified carcinogens, the practical implications of the panel's determination regarding alcohol are unclear. The panel stressed that alcohol abuse is an important factor in assessing health risks, hinting that required warnings may focus on amounts of alcohol consumed.

The panel directed Thomas Warriner, undersecretary of the Health and Welfare Agency, which is charged with implementing Proposition 65, to conduct an alcoholic beverage risk assessment. According to an April 23 report in the *Sacramento Bee*, Warriner anticipates that such an assessment will be time-consuming because little research has thus far been focused on what constitutes moderation and abuse.

The Proposition 65 panel's conclusions linking alcohol and cancer have been challenged by liquor industry advocates and scientists, who charge that human studies, upon which the conclusions were based, did not factor out

other contributing sources of cancer. The conclusions have also been faulted because animal studies have not ascertained a cancer-alcohol link. In response to this latter criticism, panel scientists have stated their belief that animal studies are less crucial in such research when human data is available.

LEGISLATION:

SB 2273 (Mello), as amended May 25, would authorize a peace officer, under specified circumstances, to seize and impound all alcoholic beverages in plain view at social gatherings where persons under the age of 21 years are consuming alcohol. The measure passed the Senate on May 26 and is pending in the Assembly Committee on Governmental Organization at this writing.

SB 2430 (Dills), as introduced, is intended to address inconsistencies between the ABC's statutes and regulations which recently resulted in partial invalidation of an ABC regulation. (See *infra* LITIGATION.) The bill would provide that premiums, gifts, or free goods, including advertising specialties which have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they exceed a specified price. The Senate passed SB 2430 on April 21. The bill is pending in the Assembly Committee on Governmental Organization at this writing.

SB 2490 (Nielsen) would amend the state's "tied-house" restrictions to authorize a licensed winegrower to sell wine for consumption on the premises of a bona fide eating establishment licensed to sell and serve wine if the eating place is located off the premises of the winegrower and is owned by, and operated by or for, the licensee. The measure would also prohibit a licensed winegrower from purchasing wine for such sale other than from a California wholesale licensee and would further provide that the amount of wine obtained from the licensed winegrower which may be sold and served in the bona fide eating place may not exceed 10% of the total wine sales in that establishment. SB 2490 passed the Senate on April 28 and is pending in the Assembly Committee on Governmental Organization.

AB 2073 (Floyd) was signed by the Governor in April (Chapter 69, Statutes of 1988). The measure authorizes a winemaker to have an interest in any retail liquor license as long as he/she has an agreement with the ABC not to sell or unfairly promote the products of the winemaker at the retail premises.



AB 2187 (Freidman, et al.), as amended May 18, would prohibit the issuance or renewal of any alcoholic beverage license to a club, as defined and with specified exceptions, which makes any discrimination, distinction, or restriction for the purpose of membership against any person on account of that person's color, race, religion, ancestry, national origin, sex, or age. The bill would also amend an existing provision of law which prohibits the sale of alcoholic beverages within one mile of the grounds belonging to the University of California at Berkeley if the club meets specified criteria, including, *inter alia*, that the membership of the club is limited to male American citizens over the age of 21 years. This bill would delete the requirement that the membership is limited to male American citizens over the age of 21 years. *AB 2187* has passed the Assembly and is pending in the Senate Committee on Governmental Organization at this writing.

AB 2946 (Moore) has been dropped by its author. The measure would have changed the specified ratio used to determine the number of off-sale general liquor licenses issued per county by providing that the number of such licenses shall not exceed one for each 2,500 adult inhabitants. Existing law uses a general per capita ratio without specifying that inhabitants counted are adults. Critics of this measure claimed that it would have forced county populations to double before any new liquor licenses could be granted.

AB 3090 (Floyd), a bill intended to address problems created last year with the passage of *AB 1712 (Areias)*, a "tied-house" measure which prohibited manufacturers and distributors from holding off-sale beer and wine licenses, has been signed by the Governor as urgency legislation (Chapter 116, Statutes of 1988). The legislation, considered extremely important for small wineries and breweries in the state, corrects *AB 712* drafting errors which would have otherwise forced 300 or more dual licensees to surrender one of their licenses as of July 1.

AB 3144 (Floyd) is a companion bill to *AB 3090*. As amended in April, the measure would permit a wholesaler's license restricted to the sale of wine to be issued or renewed to an off-sale beer and wine licensee. On May 31, the Assembly refused to concur on Senate amendments to the measure, which included a provision declaring the bill to be urgency legislation. In June, a conference

committee was formed to address issues prompting the Assembly's refusal to concur.

AB 3348 (Floyd) was substantially amended in June. The measure would clarify existing law which prohibits an alcoholic beverage licensee from giving a premium, gift, or free goods in connection with the sale or distribution of an alcoholic beverage, except as provided by rules adopted by the ABC. This bill would define the term "distribution" as used in existing law. *AB 3348* passed the Assembly on May 23 and is pending in the Senate Committee on Governmental Organization at this writing.

AB 3354 (Floyd), as amended in June, would clarify existing provisions of the Alcoholic Beverage Control Act which concern signs or other advertising matter used by or furnished to licensees. The bill would specify that such provisions are the exclusive regulation of signs, posters, notices, or placards posted or displayed in connection with the sale or consumption of alcoholic beverages at licensed retail premises. The bill passed the Assembly in May and is pending in the Senate Committee on Governmental Organization at this writing.

AB 3869 (Leslie), as amended, would have prohibited the consumption or the possession of alcoholic beverages by a person under the age of 21 years in any place where alcoholic beverages are provided or consumed but would have specified that the prohibition did not affect consumption or possession by such persons at any religious observance, ceremony, or service. The measure failed passage twice in the Assembly Ways and Means Committee.

The following is a status update on measures discussed in *CRLR Vol. 8, No. 2 (Spring 1988)* at page 81:

SB 625 (Keene), as amended in June, would delete a provision of existing law which prohibits a licensed winegrower or brandy manufacturer from selling wine or brandy to consumers for consumption on the premises in a bona fide eating place at an off-premises branch office, warehouse, or wine cellar. The measure would specifically authorize the sale by a licensed winegrower or brandy manufacturer of wine or brandy to consumers for consumption on the premises in a bona fide eating place at not more than one licensed premises. The measure is pending in the Assembly Committee on Governmental Organization.

SB 1730 (Dills) was substantially amended in April and passed the Senate on May 12. The measure would, with respect to beer and other malt beverages,

deem the person named on the certificate of compliance issued by the ABC to be the beverage manufacturer for purposes of payment of beverage container processing fees. The bill would also establish procedures for notification requiring payment of the fees and would provide for suspension or revocation of the certificate of compliance for failure to pay the fees. *SB 1730* is pending in the Assembly Committee on Natural Resources.

SB 2014 (Deddeh) failed passage in the Assembly Committee on Governmental Organization on June 14, but reconsideration was granted.

SB 2257 (Dills) passed the Senate on May 5 and is pending in the Assembly Ways and Means Committee at this writing.

SB 2316 (Dills) passed the Senate on June 12 and was set for its third reading in the Assembly on June 14.

AB 612 (Sher) was signed by the Governor in May (Chapter 170, Statutes of 1988). The measure adds wine coolers and removes carbonated fruit juices from the state's beverage container recycling program.

AB 773 (Floyd) has been chaptered (Chapter 68, Statutes of 1988).

LITIGATION:

In *California Beer and Wine Wholesalers Association v. ABC*, No. C000498 (May 13, 1988), the California Court of Appeal (Third District) invalidated an ABC regulatory provision which authorized the gift of "supplies" by a wholesaler to a retailer of beer. The court's peremptory writ of mandate, directing the Department not to enforce section 106(e)(1), Title 4 of the California Code of Regulations, was based on a finding that the ABC exceeded its statutory rule-making authority in adopting the regulation.

Specifically, the court invalidated a 1986 amendment to rule 106, which provides in pertinent part that a wholesale supplier "may furnish, give, rent, loan or sell advertising specialties to a retailer provided such items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a supplier directly or indirectly, to a retailer shall not exceed \$50 per brand in any one calendar year per retail premises...." (Section 106(e)(1).)

The court ruled that the ABC's general rulemaking authority, as provided in section 25600 of the Business and Professions Code, is limited by section 25501 of the Code, which prohibits, *inter alia*, the gift of "supplies" to any



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person engaged in operating, owning, or maintaining on-sales premises, as specified. The court further ruled that the offending language in section 106(e)(1) could not be severed from the balance of the subdivision, thus rendering subsection (e)(1) invalid in its entirety. The remaining provisions of section 106 were not affected by the court's ruling.

BANKING DEPARTMENT

Superintendent: Howard Gould
(415) 557-3232

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 and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent

oversees all deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS:

Interstate Regulatory Agreement Signed. During the recent Annual Convention of the Conference of State Bank Supervisors in Orlando, Florida, Superintendent Gould obtained the signatures of twelve state bank superintendents from western states, setting the stage for cooperative state and federal regulation of interstate bank operations. Each state will share confidential information regarding the financial condition of a bank, management evaluations, business practices, compliance with laws, current financial statements, enforcement action against an institution, and notice of adverse or significant events which may have an impact upon affiliates operating in other states.

Stock Option Guidelines Proposed. On April 22, Superintendent Gould announced that the Department would propose regulations which would exempt from the permit requirement of Financial Code section 691 stock options which comply with certain guidelines. The regulations would also set forth administrative standards for processing applications for permits to insure non-exempt stock options.

The proposed regulations will be drafted and published for comment in the future. Pending submission and approval of the regulations by Office of Administrative Law, the Superintendent has decided to set forth "administrative standards" permitting the use of stock options on a broader basis effective immediately. These new administrative standards for stock options are directed at directors, full-time salaried officers, and employees of banks. The number of shares subject to outstanding stock options held by a single optionee may not exceed 10% of the total outstanding shares of the same class and series of the bank.

Address Changes. The State Banking Department has moved. Effective February 1, 1988, the Department's San Francisco office is now located at 111 Pine Street, Suite 1100, San Francisco, CA 94111-5613. The Department's telephone number, (415) 557-3232, remains the same.

Effective April 4, 1988, the office of the Administrator of Local Agency Security has a new location. The new address is 111 Pine Street, Suite 1000,