Department of Alcoholic Beverage Control Background and General Overview

State Alcohol Oversight – The Department of Alcoholic Beverage Control

The enactment of the 21st Amendment to the U.S. Constitution in 1933 repealed the 18th Amendment and ended the era of Prohibition. Accordingly, states were granted the authority to establish alcoholic beverage laws and administrative structures to regulate the sale and distribution of alcoholic beverages. In California, this responsibility was originally entrusted to the State Board of Equalization (BOE). In 1955, however, the State Constitution was amended to shift this responsibility to the newly established Department of Alcoholic Beverage Control (ABC).

The Department of ABC is vested with the exclusive power to license and regulate persons and businesses engaged in the manufacture, importation, distribution, and sale of alcoholic beverages in the State of California. The mission of the Department of Alcoholic Beverage Control is to administer the provisions of the Alcoholic Beverage Control Act in a manner that fosters and protects the health, safety, welfare, and economic well-being of the people of California. ABC has the authority to suspend, revoke or deny a license if it determines that granting or continuance of the license would be contrary to public welfare or morals.

ABC is a special fund agency. Its operations are funded entirely by license fees from the alcoholic beverage industry. For administrative purposes, ABC is divided into a Southern and Northern division with an Assistant Director in charge of each. ABC is further divided into approximately 24 field offices. These field offices are located in the following cities: Eureka, Fresno, Oakland, Redding, Sacramento, Salinas, San Francisco, San Jose, Santa Rosa, Stockton, Yuba City, Bakersfield, Long Beach/Lakewood, Los Angeles/Metro, Monrovia, Palm Desert, Riverside, San Diego, San Marcos Santa Ana, San Luis Obispo, Van Nuys, and Ventura.

Licensing

There are currently about 90,000 alcoholic beverage licenses throughout the state. Retail licenses are the most common type of license encountered by the public. Retail licenses include both "on-sale" and "off-sale" licenses. An on-sale licensee is one who sells alcoholic beverages for consumption on the premises, such as a restaurant or bar. An off-sale licensee is one who sells alcoholic beverage products that are purchased for consumption off of the premises (grocery store or liquor store).

Some of the other common ABC licenses issued on an annual basis include: beer manufacturer, winegrower, small beer manufacturer, rectifier, wholesaler, importer, winegrowers agent, club, and bed and breakfast inn. ABC also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. All licenses must pay an annual license fee to ABC.

ABC is required to investigate both the applicant and the premises for, which a license is applied, to determine if the public would be adversely affected by the issuance of a license. These investigations include an evaluation of the moral character of the applicant and the suitability of the proposed premises.

There is a 30-day minimum statutory waiting period for all permanent licenses, whether an original (new) license or transfer of an existing license. During this period, ABC notifies the public and local officials of the application. The 30-day period gives community members the chance to decide whether the issuance would adversely affect their community, to voice their concerns, or officially protest. The actual time it takes to issue a license is sometimes delayed due to a number of factors. i.e., protests, public convenience and necessity in high crime or over concentrated areas as well as local land use zoning.

ABC must deny an application for a license if issuance would create a law enforcement problem or if issuance would result in, or add to, an "undue concentration" of licenses in the area where the license is desired. Current law defines "undue concentration" as an area where there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction; or the ratio of the type of retail licenses applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located. For specified retail licenses, however, ABC is authorized to issue a license if the respective local government determines that public convenience or necessity would be served by granting the license.

State law caps the number of new on-sale and off-sale general licenses issued by ABC. For off-sale licenses, the ratio is one license for every 2,500 inhabitants of the county where the establishment is located, for on-sale licenses, the ratio is 1 license for every 2,000 inhabitants of that county. If no licenses are available from the state due to the population restrictions, those people interested in obtaining a liquor license may purchase one from an existing licensee, for "whatever price the market bears."

Enforcement

ABC Agents are sworn law enforcement officers (peace officers) with statewide powers of arrest. Whether in plain clothes or uniform, peace officers have the legal right to visit and

inspect any licensed premises at any time during business hours without a search warrant. This includes inspecting the bar and back bar, storeroom, office, closed or locked cabinets, safes, kitchen, or any other area within the licensed premises. Licensees cannot and must not deny entry to, resist, delay, obstruct, or assault a peace officer.

ABC takes disciplinary action against licensees who violate, or whose employees violate, existing laws. The disciplinary process consists of up to 15 steps, most of which are subject to statutory and due process requirements. If ABC has evidence of a violation involving a licensee or a licensed premises, it files an administrative complaint called an "accusation." An accusation, if proven, leads to the suspension or revocation of the license. The process starts with (a) the reporting of a violation to ABC and subsequent confirmation by ABC, (b) the identification of a violation as a result of an ABC compliance investigation, and/or (c) an investigation conducted by another law enforcement agency.

After an investigation has been completed, an ABC district office evaluates the case and can take one of six different actions, as appropriate (no violation, letter of warning, verbal admonition, written notice of public nuisance, incident file, or a formal accusation). Formal discipline by way of accusation is the most severe for the licensee. Should an accusation be prepared, a preaccusation interview will be held with the licensee, an accusation package will be prepared and an administrative hearing will be scheduled. This hearing is followed by action by the ABC Director, and possibly an appeals process that can go to the California Supreme Court, if necessary.

The number of complaints ABC receives may range from 3,000-6,000 annually. These complaints come from concerned citizens, local law enforcement agencies, and the alcoholic beverage industry itself. Each complaint is analyzed by sworn management staff and evaluated for further investigation.

Since different types of crimes can occur in and around locations where alcoholic beverages are sold and consumed, to maximize the Department's enforcement efforts, complaints assigned for investigation are prioritized based upon the seriousness of their nature. The most serious are classified as Priority 1 complaints which include violations such as disruptive and disorderly premises, illegal narcotics activity, sales of alcohol to minors and to obviously intoxicated persons. Priority 2, 3, and 4 complaints, while also serious, have a lesser immediate public safety impact and therefore received lower priority.

Budget

ABC is a special fund Department funded from the Alcohol Beverage Control Fund (ABC Fund). The primary revenue sources for this fund are fees, many of which are established by

statute in the Business and Professions Code. ABC receives no funding from the General Fund to cover expenditures associated with its public mandates.

ABC's budget is based on the administration of the Act. ABC conducts three major activities: 1) licensing, which ensures that only qualified persons and legitimate businesses are licensed to sell, manufacture, or otherwise deal in alcoholic beverages; 2) compliance, which ensures adherence to the alcoholic beverage control laws and regulations by all persons operating within the alcoholic beverage industry; and 3) administration, which provides staff support and conducts administrative hearings.

Prior to 2001, the annual fees were fixed in statute and had not been changed since 1983 when a 6% annual fee surcharge to offset administrative hearing costs was enacted. Over time, the revenue generated by these fees was insufficient to sustain ABC's budget and maintain a reserve. To avoid substantial reductions in ABC programs, legislation (AB 1298, Chapter 488, Statutes of 2001) was enacted which abolished two annual fee surcharges and provided for a phased three-year (2002, 2003, and 2004) increase in annual fees and the authorization for an annual Consumer Price Index (CPI) fee increase effective January 1, 2005. The intent of the CPI provision was to allow fees to be adjusted incrementally at the CPI rate to provide sufficient funds to address necessary increases to ABC's budget and to obviate the need to make large adjustments to the base fee structure.

ABC's budget for fiscal year (FY) 2019-20 is about \$76 million, and ABC has 431 authorized positions.

Tied-house laws

Tied-house law refers to the statutory scheme restricting any cross-ownership among the three independent tiers of the alcohol industry: 1) manufacturers; 2) distributors/wholesalers; and, 3) retailers. The term "Tied-house" refers to a practice which was common in this country prior to prohibition, and is still occurring in England today, where a bar or "public house" is tied to the products of a particular manufacturer.

The original rationale for Tied-house restrictions was to promote the state's interest in maintaining an orderly market, to prohibit the vertical integration of the alcohol industry, to protect the public from predatory marketing practices, and to prevent the intemperate consumption of alcoholic beverages. In order to further these policy goals, the Legislature has generally prohibited forms of cross-ownership between manufacturers and retailers, and discouraged manufacturers from providing anything of value to distributors or retailers, be it free goods, services or advertising.

Numerous exceptions to these restrictions have been enacted through the years in those specific instances where the Legislature determined that the public's interests were protected. Generally, the business community is interested in removing unnecessary business regulations and creating

conditions that facilitate investment and expansion opportunities for companies that have some degree of ownership in multiple segments of the industry.		