

2011 LICENSEE'S HANDBOOK

CALIFORNIA ALCOHOLIC BEVERAGE CONTROL LAW

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INTRODUCTION

In the following pages, we have included those statutes and rules of the ABC Act which are relevant to most ABC proceedings. We have also included several statutes in the Administrative Procedure Act which are the laws governing the administrative process for ABC cases.

Lesson One: The ABC issues licenses and therefore can take them away.

Lesson Two: Resisting the ABC's process can be successful.

Lesson Three: The time-lines to respond are very short. When an accusation is filed, the licensee's time to answer is extremely brief.

EMERGENCY CHECK LIST

If you are confronted by a law enforcement agency:

1. Cooperate
2. Don't talk
3. Gather names of witnesses
4. Don't obstruct the officers
5. Gather statements of employees
6. Note evidence seized
7. Don't talk
8. Seek assistance from your ABC lawyer
9. Don't talk
10. Law enforcement officers do not need a search warrant to search or inspect
11. Don't say anything

ABC AND POLICE RESPONSIBILITIES

THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

In California, the Department of Alcoholic Beverage Control (the "ABC") has the exclusive power to license and regulate the manufacture, importation and sale of alcoholic beverages and to revoke any alcoholic beverage license for good cause. Article XX Section 22 of the California Constitution.

RESPONSIBILITIES OF POLICE AGENCIES

Police officers are required to enforce state liquor laws and other laws at licensed establishments and to report any violations to the ABC for review. Any reports generated at a licensed premises must be given to the ABC by statute.

The Decoy Program The decoy program is one way the police handle complaints of sales to minors. The police send an underage person, acting as their agent, into a licensed establishment to see if the establishment will sell alcohol. The California State Supreme Court (in the case of Provigo v. Appeals Board (1974)) has upheld use of police “decoys” to buy alcohol in licensed premises.

Decoy programs are widely utilized by police agencies throughout California. The constitutionality of these programs has been upheld by the California Supreme Court.

Effective January 1995, Business and Professions Code §25658, requires the Department to provide guidelines to law enforcement agencies. This subsection also states:

Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department’s final adoption of regulatory guidelines.

[See Sales to Minors: Rule 141.]

LIABILITY

The liability of licensees and their employees falls into three areas of law: criminal, administrative, and civil.

1. CRIMINAL LIABILITY

Owner/licensees, managers or employees who violate the law by, for example, selling to minors or intoxicated persons are guilty of a misdemeanor and could face arrest, fines and/or a county jail sentence.

Dealing in drugs could result in a felony conviction and imprisonment in the state prison.

2. ADMINISTRATIVE LIABILITY

Violations of law, rules or regulations by employees may also result in the ABC taking disciplinary action against the establishment’s ABC license.

For the licensee this could mean:

- a. A fine, suspension, or revocation of the ABC license.
- b. A damaged reputation in the community.
- c. A loss of customers.
- d. A forced sale of the ABC license.
- e. An outright revocation of the license.

For the employee this could mean:

- a. Being laid off during the period when the ABC license is under suspension.
- b. Being terminated.

3. CIVIL LIABILITY

In California, a licensee is only liable for civil damages when an obviously intoxicated minor is sold or furnished an alcoholic beverage and when that service is the proximate cause of the death or injury to a third party. It should be noted however, that nearly every year there is an attempt to change the law to increase liability for licensees to include liability related to the service of alcohol to obviously intoxicated persons 21 years of age or older. Also, the existing law is constantly being challenged in the courts as being against good public policy. It is possible that a particularly aggravated factual situation could cause the current law to be overturned. In any case, if a lawsuit is brought against a licensee for damages incurred as the result of a sale to an obviously intoxicated minor, the costs of litigation can be very expensive even if the licensee won his or her case.

DISCIPLINARY PROCESS

The director, the persons employment by the Department for the administration and enforcement of this division, and peace officers listed in Section 830.1 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

1. ABC investigators and police vice officers are hunters and you are the hunted. They, like all hunters, go where the hunting is best, so they rely heavily on complaints.
2. Where do complaints come from?
 - a. Your ex-employees.
 - b. Your competitors.
 - c. Your neighbors.
 - d. Parents of kids they find possessing or under the influence of alcohol.
 - e. People who see underage persons buying alcohol and know the young person's age.

3. When an ABC investigator or peace officer walks into your premises, what do you do?
 - a. First you do nothing. Let them go about their business. If they want to talk to you, they will. It's your choice whether to talk (see Emergency Checklist).

If they contact you, be courteous and helpful. That does not mean admitting to any violations. If they find no violations in your establishment, they most likely will go somewhere else where the hunting is better and are less likely to return to yours soon. Remember your Emergency Checklist.

§25619 Enforcement by local authorities. Every peace officer and every district attorney in this state shall enforce the provisions of this division and shall inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this division. Every such officer refusing or neglecting to do so is guilty of a misdemeanor.

§24202 Report of arrest. All state and local law enforcement agencies shall immediately notify the department of any arrests made by them for violations over which the department of any arrests made by them for violations over which the department has jurisdiction which involves a licensee or licensed premises. The department shall promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of the license or licenses of the licensee.

§24200 Grounds for suspension or revocation. The following are the grounds that constitute a basis for the suspension or revocation of licenses:

- a. When the continuance of a license would be contrary to public welfare or morals. However, proceedings under this subdivision are not a limitation upon the department's authority to proceed under Section 22 of Article XX of the California Constitution.

- b. Except as limited by Chapter 12 (commencing with Section 25000), the violation or the causing or permitting of a violation by a licensee of this division, any rules of the board adopted pursuant to Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code, any rules of the department adopted pursuant to the provisions of this division, or any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors.

- c. The misrepresentation of a material fact by an applicant in obtaining a license.

- d. The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public

offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.

e. Failure to take reasonable steps to correct objectionable conditions on the licensed premises, including the immediately adjacent area that is owned, leased, or rented by the licensee, that constitute a nuisance, within a reasonable time after receipt of notice to make those corrections from a district attorney, city attorney, county counsel, or the department under Section 373a of the Penal Code. For the purpose of this subdivision only, ‘property or premises’ as used in Section 373a of the Penal Code includes the area immediately adjacent to the licensed premises that is owned, leased, or rented by the licensee.

f. Failure to take reasonable steps to correct objectionable conditions that occur during business hours on any public sidewalk abutting a licensed premises and constitute a nuisance, within a reasonable time after receipt of notice to correct those conditions from the department. This subdivision shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice upon its own determination, or upon a request from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that persistent objectionable conditions are occurring on the public sidewalk abutting the licensed premises. For purposes of this subdivision:

1. “Any public sidewalk abutting a licensed premises” means the publicly owned, pedestrian-traveled way, not more than 20 feet from the premises, that is located between a licensed premises, including any immediately adjacent area that is owned, leased, or rented by the licensee, and a public street.

2. “Objectionable conditions that constitute a nuisance” means disturbance of the peace, public drunkenness, drinking in public, harassment of passerby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise.

3. “Reasonable steps” means all of the following:

A. Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed by the department as evidence of objectionable conditions that constitute a nuisance.

B. Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

C. Making good faith efforts to remove items that facilitate loitering, such as furniture, except those structures approved or permitted by the local jurisdiction. The licensee

shall not be liable for the removal of those items that facilitate loitering.

4. When determining what constitutes “reasonable steps,” the department shall consider site configuration constraints related to the unique circumstances of the nature of the business.

(g) Subdivision (f) does not apply to a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, that is so operated by a retail on-sale licensee or on-sale beer and wine licensee; a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrower’s license; a licensed beer manufacturer, as defined in Section 23357; those same or contiguous premises for which a retail licensee concurrently holds an off-sale retail beer and wine license and a beer and a beer manufacturer’s license; or those same or contiguous premises at which a retail on-sale licensee or on-sale beer and wine licensee who is licensed as a bona fide public eating place as defined in Section 23038, 23038.1, or 23038.2, a hotel, a motel, or similar lodging establishment as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrower’s license, sells off-sale beer and wine under the licensee’s on-sale license.

SPECIFIC VIOLATIONS

1. NARCOTICS SALES, NEGOTIATIONS AND RELATED TRANSACTIONS.

§24200.5 Mandatory Revocation Notwithstanding the provision of Section 24200, the department shall revoke a license upon any of the following grounds:

1. If a retail licensee has knowingly permitted the illegal sale, or negotiations for such sales, of controlled substances or dangerous drugs upon his licensed premises. Successive sales, or negotiations for such sales, over any continuous period of time shall be deemed evidence of such permission. As used in this section, “controlled substances: shall have the same meaning as is given that term in Article 1 (commencing with section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and “dangerous drugs” shall have the same meaning as is given that term in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

2. SALES TO MINORS.

§ 25658. Providing alcoholic beverages to persons under the age of 21; prohibition; criminal punishment; law enforcement decoys; additional punishment

Effective: January 1, 2011

[Currentness](#)

(a) Except as otherwise provided in subdivision (c), every person 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.

(b) Except as provided in [Section 25667](#), any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e)(1) Except as otherwise provided in paragraph (2), (3), or [Section 25667](#), any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b), where prosecution of the previous violation was not barred pursuant to [Section 25667](#), shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of one thousand dollars (\$1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with [Section 11340](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#)). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given to licensees and the department within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, [Section 272 of the Penal Code](#) and [Section 13202.5 of the Vehicle Code](#).

Pursuant to [Business and Professions Code §25658](#), the department has adopted Rule 141 which provides:

(a) A law enforcement agency may only use a person under the age of 21 years to attempt to purchase alcoholic beverages to apprehend licensees, or employees or agents of licensees who sell alcoholic beverages to minors (persons under the age of 21) and to reduce sales of alcoholic beverages in a fashion that promotes fairness.

(b) The following minimum standards shall apply to actions filed pursuant to [Business and Professions Code §25658](#) in which it is alleged that a minor decoy has purchased an alcoholic beverage:

(1) At the time of the operation the decoy shall be less than 20 years of age;

(2) The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense;

(3) A decoy shall either carry his or her own identification showing the decoy's correct date of birth or shall carry no identification. A decoy who carries identification shall present it upon request to any seller of alcoholic beverages;

(4) A decoy shall answer truthfully any questions about his or her age;

(5) Following any completed sale, but not than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages to make a face to face identification of the alleged seller of the alcoholic beverages;

(c) Failure to comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code Section 25658.

§25659 Right to refuse service to minors. For the purpose of preventing the violation of Section 25658, any licensee, or his agent or employee, may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence that he or she is over the age of 21 years.

§25660 Bona fide evidence of majority and identity; Armed Forces members; defense to criminal prosecutions.

- (a) Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, an identification card issued to a member of the Armed Forces that contains the name, date of birth, description, and picture of the person, or a valid passport issued by the United States or by a foreign government.
- (b) In the event that an identification card issued to a member of the Armed Forces is provided as proof of majority and lacks a physical description, but does include date of birth and a photo, further proof of majority shall not be required.
- (c) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefore or to any proceedings for the suspension or revocation of any license based thereon.

HOW TO CHECK IDENTIFICATION

It is the seller's responsibility to verify that purchasers of alcoholic beverages are at least 21 years of age.

WHAT CONSTITUTES BONA FIDE I.D.

1. Issued by a governmental agency (Federal, State, County, City, or subdivision or agency thereof)
2. Name
3. Date of birth
4. Physical description of the person
5. Photograph of the person
6. Currently valid (i.e., not expired)

EXAMPLES OF ACCEPTABLE DOCUMENTS

The law allows you to accept the following documents:

1. Driver's license
2. State-issued I.D. card
3. Federal military I.D. card
4. U.S. passport (and foreign passport with photo)
5. U.S. government immigrant I.D. card

The licensee may, however, have a policy of accepting only California driver's licenses. That is perfectly acceptable as far as the ABC is concerned.

IDENTIFYING MINORS

It is important to know how minors may look and act in order to keep from serving them. A minor could look like he or she is in their mid-twenties. **According to the ABC**, the following characteristics may be observed:

1. PHYSICAL CHARACTERISTICS
 - a. Face (acne, pimples, complexion, peach fuzz, baby face)
 - b. Eyes (lack of wrinkles, no eye contact, downcast eyes)
 - c. Hands (girlish nails and polish, absence of prominent veins)
 - d. Body type (undeveloped, skinny, plumpish)
 - e. Voice (high pitched, effort made to be deep, nervous, stuttering, whispering)
 - f. Sweating

2. BEHAVIOR

- a. Verbal (giggling, loud, arguing)
- b. Acting (immature, nervous, childish, inconsiderate, insecure, confused, silly)
- c. Lack of confidence
- d. Trying too hard

3. MANNERISMS

- a. Look (uncoordinated, sheepish)
- b. Sound (vocabulary, talking “cool” or “hip”)
- c. Your impression (furtiveness, guarded, sneaky, evasive)

4. DRESS STYLE

- a. The fashion look (trendy, over-dressed, faddish)
- b. Type of clothes (jeans, gym shoes, rock T-shirts)

5. ACCESSORIES

- a. Hair (unusual length, unusual style)
- b. Jewelry (class ring, friendship ring, cheap-looking imitations)
- c. Make-up (too much, unevenly applied)
- d. School logos

6. COMPANIONS

- a. Young looking group
- b. Discussion outside before entering
- c. Whispering in the group
- d. Older person in group orders

7. I.D. EXCUSES

- a. “I lost it”
- b. “I left it in the car”
- c. “My dog ate it”
- d. “It got stolen”
- e. “It got ruined in the washing machine”
- f. “Come on, don’t I look old enough?”
- g. “I can’t believe you’re asking for my I.D.”
- h. “So-and-so always sells to me”

However, any given minor may have the appearance of a much older person. This is especially true of minor decoys who may appear much, much, much older. They may appear to be in their mid-twenties both physically and by behavior. Beware.

PROCEDURES FOR CHECKING IDENTIFICATION:

1. Be familiar with the standard California driver's license and identification card formats.

2. Use the booklet, I.D. Checking Guide, to help you to identify out-of-state documents. After looking up the format in the booklet, be sure to take the extra step of scrutinizing the information on the document just as you would with a California I.D. The I.D. Checking Guide is available from:

Driver's License Guide Company
1492 Oddstad Drive
Redwood City, CA 94063
1-800-227-8827

3. Ask for I.D. from anyone who appears 30 years of age or younger.

4. Have the person remove the I.D. from their wallet or any plastic holder.

5. Using a flashlight or a "Retro-reflective viewer," look at the I.D. for:

a. California State seal (a counterfeit I.D. has none)

b. Alterations, erasures, mismatched type, information cut-out or pasted on

c. Fuzzy or dark photos

6. Compare to see the following things reasonable match:

a. The photograph with the person. Keep in mind that photos may be old on passports and driver's licenses with extensions. In comparing the person to the photograph, focus your attention on the nose and chin because these features are not changed as easily as are hairstyle and eye makeup.

b. The physical description on the I.D. (Height, weight, eye and hair color) with the person's actual appearance.

c. The age the I.D. shows the person to be with the age the person appears to

be.

7. Feel the I.D. for alterations such as information cut out or pasted on.
8. Question the person about the information on the I.D.
 - a. Name
 - b. Date of birth
 - c. Height, weight, eye/hair color
 - d. Driver's license number
9. Have the person sign their name and compare signatures. You can use an "I.D. Register" for this purpose. Minors who get arrested for carrying false I.D.'s often claim that their I.D.'s were never checked. By keeping a register, you can help prove that they were checked.
10. Request two forms of I.D., one primary, which meets the criteria for being bona fide, and a secondary form of I.D. The secondary I.D. can be something with the person's name on it such as a credit card, which will help verify they are not lying.
11. Do the math! Figure out how old the person is. In many decoy programs the server is "cited" because they asked for I.D., but failed to calculate the person's age. Pre-printed age charts can be helpful.
12. Beware, kids buy very accurate looking I.D.'s from the nearby college campus.
13. Manufactured ID's can fool anyone, ask questions if the presenter of the ID looks young.
14. The most expensive manufactured ID's have **functioning magnet strips** on the back. (Re-read 13 above).

THREE TYKES AND YOU'RE OUT!

1995 amendments provide that the first sale to a minor (if the accusation is sustained) will result in a 15-day penalty (or less).

The second sustained offense in three years in the 1995 litigation would have resulted in the closure of the licensed premises. A typical penalty is a 25 day suspension. The 2004 amendment allows for a fine up to \$20,000 for such second sales to a minor case.

The third sustained "minor" offense in three years will result in a revocation of the license. (See Business and Professions Code §25628.1.)

OBVIOUSLY INTOXICATED

§25602 Sales to drunkard or intoxicated person; offense; civil liability

1. Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

2. No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.

3. No licensee is eligible to pay a fine in lieu of serving a suspension for a second or subsequent violation of 25602 within 36 months of the initial violation.

Waitresses who serve a drink to an obviously intoxicated person may be cited criminally.

The bartender who mixed the drink served by the waitress must have knowledge of the person's condition.

A person is obviously intoxicated when the average person in his/her presence can plainly determine intoxication by:

- a. Staggering gait
- b. Thick tongue or muttering
- c. Ineffective muscular coordination
- d. Falling against bar or off stool
- e. Unable to pick up change
- f. Uncontrollable voice pitch
- g. Loud and boisterous behavior
- h. Blood-shot eyes
- i. Disheveled condition of clothes and hair

Additional signs of intoxication include:

- a. Overly friendly
- b. Loud
- c. Changing volume of speech
- d. Annoying others
- e. Using foul language

Judgement is impaired as demonstrated by:

- a. Argumentative (e.g., low-key, altercations, confrontations or heated arguments)
- b. Careless with money
- c. Irrational statements
- d. Belligerent
- e. Loss of train of thought
- f. Argues with uniform police

Reactions are affected:

- a. Slurred speech
- b. Slow and deliberate movement
- c. Decreased alertness
- d. Quick, slow or fluctuating pace of speech

Loss of coordination (muscle control):

- a. Fumbling with money
- b. Swaying, drowsy
- c. Stumbling
- d. Bumps into things
- e. Falling

Physical appearance:

- a. Red, watery eyes
- b. Disheveled clothing
- c. Sweating
- d. Smell of an alcoholic beverage on person
- e. Droopy eyelids
- f. Lack of eye focus
- g. Flushed face.

Receiving a citation or accusation for this violation seems hopeless. It is not. This is a defensible charge if handled properly from the beginning. Step One is to get names of witnesses, including the person who is allegedly intoxicated, his/her friends and employees who witnessed the events and observed the alleged intoxicated person.

NEW LAWS FOR 2011

Civil Code §1714 the “Teen Alcohol Safety Act of 2010” opens a “social host” who is 21 or older to the risk of legal liability for property damage, injury or death that results from knowingly serving alcohol to underage guests.

Business and Professions Code §25658 and §25662 aims to help teens stay safe by granting them limited protection from certain criminal charges if they call 911 to ask for help for themselves or another teen who has been drinking.

Business and Professions Code §23395.6 and §25503.6 Beginning January 1, 2011, certain retailers with an “off-sale” alcoholic beverage license-which usually means grocery stores, liquor stores and other retailers selling alcoholic beverages that won’t be consumed on their own premises-are eligible for \$300 instructional tasting license from the Alcoholic Beverage Control board.

DISORDERLY HOUSE

§25601 Disorderly houses; places of disturbance, etc.

Every licensee, or agent or employee of a licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.

Look for the following:

1. Frequent police visits
2. Frequent 647(f) (e.g. drunk in public) arrests
3. Problems in your parking lot

When the Department of ABC gets residential complaints of disturbances either directly from the premises, such as loud music, loud boisterous talk, etc., or from patrons leaving or congregating around the premises and creating a disturbance. They will normally be two (2) things:

1. Explain to the residents to keep logs as to what disturbed them, the date and time they were disturbed, and how they knew the disturbance came from the premises or patrons of the premises.
2. Call the licensee(s) in and give a written warning that the Department received complaints. If the disturbance is not stopped, both of the above will be used against the licensee at a later hearing.

While the police are compiling reports and the neighbors are making log entries, you should be preparing logs yourself, inside and outside so that you can refute the allegations which may be brought against you six months to a year after the fact.

WHAT CONSTITUTES A LAW ENFORCEMENT PROBLEM?

1. Too many visits to the police.
2. Too many visits by the sheriffs.
3. Too many calls for service.
4. Too many incident/arrest reports sent to the ABC.
5. Too many patrons taken away in handcuffs.

OTHER COMMON VIOLATIONS

CONTAMINATION ADULTERATED ALCOHOLIC BEVERAGE (BUGS IN THE BOTTLE)

An on-sale licensee who allows open bottles of alcoholic beverages in his/her premises to become contaminated with insects or other foreign matter may suffer disciplinary action for violations of the Health and Safety Code.

§25631 RETAIL HOURS OF SALE

Any on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o'clock a.m. and 6 o'clock a.m. of the same day, is guilty of a misdemeanor.

For the purposes of this section, on the day that a time change occurs from Pacific standard time to Pacific daylight saving time, or back again to Pacific standard time, "2 o'clock a.m." means two hours after midnight of the day preceding the day such change occurs.

§25632 PERMITTING CONSUMPTION DURING RESTRICTED HOURS

Any retail licensee, or agent or employee of such licensee, who permits any alcoholic beverage to be consumed by any person on the licensee's licensed premises during any hours in which it is unlawful to sell, give or deliver any alcoholic beverage for consumption on the premises is guilty of a misdemeanor.

Most frequent violators of the above two sections are employees and their friends.

§25600 PREMIUMS, GIFTS, OR FREE GOODS; ADVERTISING SPECIALTIES

No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage except as provided by rules which shall be adopted by the department to implement this section or except as authorized by the division.

No rule of the department may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. With respect to beer, 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 cost more than twenty-five cents (\$0.25) per unit, or cost more than fifteen dollars (\$15) in the aggregate for all such items given by a single supplier to a single retail premises per calendar year.

With respect to distilled spirits and wines, a licensee may furnish, give, rent, loan, or sell advertising specialties to a retailer provided those 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 fifty dollars (\$50) per grand in any one calendar year per retail premises. The value of a retailer advertising specialty is the actual cost of that item to the supplier who initially purchased. Transportation and installation costs are excluded. The furnishing or giving of any retailer advertising specialty shall not be conditioned upon the purchase of the suppliers' product. Retail advertising specialties given or furnished free of charge may not be sold by the retail licensee.

§25657 EMPLOYMENT OF PERSONS TO PROCURE OR ENCOURAGE PURCHASE OR SALE OF DRINKS; PERSONS BEGGING OR SOLICITING DRINKS

It is unlawful:

1. For any person to employ, upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such person a percentage or commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.
2. In any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting.

Every person who violates the provisions of this section is guilty of a misdemeanor.

See also Business and Professions Code Section 24200.5(b) which makes the B-girl violation a mandatory revocation offense.

THE ADMINISTRATIVE PROCESS

Government Code Section 11506(a) requires a response to an accusation to be filed within fifteen (15) days following service of the accusation.

Government Code Section 11507.6 allows the accused licensee to obtain information concerning the ABC investigation. The licensee must formally request the information. It will not be sent by the ABC without a specific and timely request.

PETITIONS OFFER IN COMPROMISE

The “offer in compromise” shall be the equivalent of 50% of the estimated gross sales of alcoholic beverages for each day of suspension. The “first time” within three year fine will be a minimum of \$750.00 and a maximum of \$3,000.00. The second and subsequent within three year fine will be a minimum of \$1,500.00 and a maximum of \$6,000.00.

No petition for a fine may be accepted by the department for a suspension of more than 15 days. The old law allowed fines for suspension up to 30 days.

The more recent amendment allows for payout of a fine up to \$20,000 maximum, but only for a “second strike” sales to a minor case without regard to the number of days of suspension ordered.

LICENSE APPLICATION

1. The Moratorium

Business and Professions Code §23817.5 provides:

No application for an original retail off-sale beer and wine license may be made nor any original retail off-sale beer and wine license issued until January 1, 1998, for any premises where any of the following conditions exist at the time this section takes effect:

(a) The applicant premises are located in an incorporated city where the number of retail off-sale beer and wine licenses issued exceeds one license for each 2,500, or fraction thereof, inhabitants of the incorporated city.

(b) The applicant premises are located in a county where the number of retail off-sale beer and wine licenses issued exceeds one license for each 2,500, or fraction thereof,

inhabitants of the county.

(c) The applicant premises are located in a city and county where the total number of retail off-sale beer and wine licenses and off-sale general licenses issued exceeds one license for each 1,250, or fraction thereof, inhabitants of the city and county.

Subsection C refers exclusively to San Francisco. The moratorium applies to most but not all (a) counties and to some but not all (b) cities in unaffected counties.

2. Over-concentration: Part 2

Business and Professions Code §23958.4 defines under concentration and requires off-sale license applicants and on-sale general license applicants (with exceptions) to obtain a determination from the “local governing body” a determination that public convenience and necessity would be served by the issuance.

3. Premises within 100 feet of a residence cannot be licensed unless the residents quiet enjoyment will not be disturbed. (See Rule 61.4)

CONDITIONS

Business and Professions Code §23800 expands the process of the department to impose conditions where:

1. Grounds exist to deny an application;
2. Findings made by the department would justify suspension or revocation where the conditions are reasonably related to the findings;
3. Where the department issues an order suspending or revoking only a portion of the license privilege; and,
4. Where the department makes findings that a licensee has failed to correct objectionable conditions within a reasonable time after receipt of notice to make corrections...(See 24200(e),) (This section was added effective January 1, 1995.)

F.) Under §23803, conditions can be removed but only when the licenses can show that the basis for the imposition of the condition “no longer exists.” Notice of such requests must be given to the local government which can then object in writing.

RULE 144 (PENALTY GUIDELINES)

Pursuant to Rule 144, the department has published penalty guidelines. See ABC Rule Appendix.

PENALTY SCHEDULE

Note: For purposes of this schedule of penalties, “revocation” includes any period of stayed revocation as well as outright revocation of the license.

Sales to minors - § 25658 Business and Professions Code:

Sales of alcoholic beverages to person(s) under 21, 15-day suspension.

Permitting person(s) under 21 to consume 15-day suspension.

Furnishing or causing to be furnished alcoholic beverages to person(s) under 21, 15-day suspension.

Second violation of Section 25658 within 36 months, 25-day suspension.

Third violation of Section 25658 within 36 months, revocation.

(Note: priors must be final – B&P § 25658.1)

Minor(s) on public premises – 25665 B&P, 10-day suspension.

Employment of minor(s) – 25663 B&P, 10-day suspension.

Unsupervised sales by person(s) under 18 – 25663(b) B&P, 10-day suspension.

Sales to obviously intoxicated person(s) – 25602 B&P, 15-day suspension.

Second violation of 25602 within 3 years, 25-day suspension.

Third violation of 25602 within 3 years, 45-day suspension to revocation.

Sale and/or Consumption After Hours – 25631 & 25632 B&P: By public, 15-day suspension. By employees and friends, only 10-day suspension. By employees, only 5-day suspension.

Illegal Solicitation of Alcoholic Beverages:

Violation of Section 24200.5(b) Revocation.

Violation of Section 25657(a) Revocation.

Violation of Section 25657(b) and Section 303a PC, 30-day suspension to revocation.

Employees accepting alcoholic drinks – Rule 143 CCR, 15-day suspension.

Refilling – 25176 & 25177 B&P:

With different brand, 15-day suspension. With same brand, 5-day suspension.

Contaminated Bottles (insects, etc.) – 347b PC, 5-day suspension.

Substitution of Brands – 25609 & 23614 B&P, 15-day suspension.

Club Licenses, Sale to Public – 23431 B&P, 10-day suspension.

Sale to Purchase Between Retailers – 23402 B&P, 15-day suspension.

Not Operating Bona Fide Eating Place – 23038 & 23396 B&P, 10-day suspension indefinite until

compliance.

Licensee or Bartender Working In Premises While Intoxicated - 24200(a) B&P, 30-day suspension.

Licensee or Employee Resisting Arrest or Interfering With, 35-day suspension.

Investigation on The Premises – 24200(a) B&P and 148 PC to revocation.

Licensee or Employee Not Permitting Inspection Of: Premises – 25755 B&P, 30-day suspension.

Records – 25616 B&P, 30 days and indefinite until records produced.

Alcoholic Beverage Not Permitted By License – 25607 & 23355 B&P:

Sale 15-day suspension.

Possession 10-day suspension.

Gambling – 24200(a) B&P and 330 PC:

Organized (bookmaking, football cards, etc.) 30-day suspension.

Local (cards, dice, football & baseball pools, etc.) 10-day suspension.

Electronic/video games (slot machines, Poker, 21, etc.) – possession 15-day suspension.

Electronic/video with payoffs 30-day suspension, with 15 days stayed for 2 years.

Disorderly House, Prostitution, Lewd Conduct – 25601 B&P:

Occasional or isolated offenses, 30-day suspension.

Recurring/aggravated offenses, revocation.

Nude Entertainers, etc. – Rule 143.2 and .3, 30-day suspension to revocation.

Narcotics – B&P 24200.5 and H&S Violations:

Transactions on licensed premises, revocation.

Paraphernalia, possession for sale, revocation, stayed for 3 years and a 20-day suspension.

Failure to correct objectionable conditions - 24200(e) and (f) B&P, 30-day suspension to revocation.

Undisclosed Ownership – 23300 & 23355 B&P:

Hidden owner qualified, 15-day suspension, indefinite until ownership corrected.

Hidden owner not qualified, revocation.

Hidden owner-priority license, revocation.

Commission of Crime Involving Moral Turpitude – 24200(a) B&P:

Committed on premises, revocation.

Committed away from premises (petty theft/shoplifting), revocation stayed 3 years.

Committed away from premises (other than petty theft), revocation.

Conviction of a crime involving moral turpitude – 24200(d) B&P, revocation.

Violation Of Conditions – B&P 23804, 15-day suspension with 5 days stayed for one year.

Rule 65 – Chapter 1, Title 4 of the CCR Revocation stayed for 180 days to permit transfer or reactivation of license.

Rule 107 – Chapter 1, Title 4 of the CCR, 5-day suspension.

Rule 108 – Chapter 1, Title 4 of the CCR, 5-day suspension to a suspension equal to double the original suspension.

Exceeding license privileges – 24200(a), 23300, 23355 B&P, 5-day suspension to revocation.

PC 313.1 – Harmful matter, 5-day suspension.

Sale of alcoholic beverages while under suspension, double the original suspension to revocation.

Receiving Stolen Property – 24200(a) and 664 & 496 PC:

By license on premises, revocation.

By employee on premises, revocation stayed for 3 years, and a 20 day suspension.

Food Stamp Violations – 24200(a) B&P:

Allowing purchases of alcoholic beverages, 10-day suspension.

Food stamp trafficking (i.e. purchasing stamps at discount): By licensee, revocation.

By employee, with premises involvement revocation, stayed for one year and a 20-day suspension..

Keg Registration violations, 10-day suspension.

Operating Condition Violations – Section 25612.5 B&P:

Subsections (c) (3), (4), (5), (6), (7), (10), 5-day suspension.

Subsections (c) (1), (2), (8), (9), 10-day suspension indefinite until compliance

Misrepresenting Material Fact on Application – 24200(c) B&P, revocation.

PETITION FOR OFFER IN COMPROMISE (“POIC”):

B&P Section 23095 authorizes the Department may accept a Petition for Offer in Compromise (“POIC”) in lieu of the service of a suspension of 15 days or less. For purposes of determining whether the Department may accept a POIC in lieu of suspension, the total penalty imposed must be for 15 days or less, and shall not include any period of stayed suspension that would result in the potential suspension being for a period of greater than 15 days, nor can it include any period of stayed revocation. In the event that the suspension is for a period of 15 days or less with some portion thereof stayed, the POIC shall be calculated based upon the period of actual suspension (not including the stayed portion). In such cases, if the stayed period of suspension is later reimposed, the Department will generally not accept a POIC in lieu of serving the reimposed period of suspension (note second-strike-minor exception noted above).

(e) Notwithstanding subdivision (b), a licensee may petition the department for an offer in compromise for a second violation of Section 25658 that occurs within 36 months of the initial

violation without regard to the period of suspension. In these cases, the offer in compromise shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may be not less than two thousand five hundred dollars (\$2,500) nor more than twenty thousand dollars (\$20,000).

Abbreviation legend:

B&P: California Business and Professions Code

PC: California Penal Code

H&S: California Health & Safety Code

CCR: California Code of Regulations

POIC: Payment of Offer in Compromise (Business and Professions Code Sections 23095 & 23096)

144 PENALTY GUIDELINES

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, et seq.) and the Administrative Procedures Act (Govt. Code Sections 11400, et seq.), the Department shall consider the disciplinary guidelines entitled “Penalty Guidelines” (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation – such as where facts in aggravation or mitigation exist.

ABC RULE APPENDIX

TITLE 4 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
(Register 84. No. 23—6-9-84)

§61.4

61.4 Proximity to Residences.

No original issuance of a retail license or premises-to-premises transfer of a retail license shall be approved for premises at which either of the following conditions exist:

(a) The premises are located within 100 feet of a residence.

(b) The parking lot or parking areas which is maintained for the benefit of patrons of the premises, or operated in conjunction with the premises, is located within 100 feet of a residence, Where the parking lot is maintained for the benefit of patrons of multiple businesses in the vicinity of the premises, the parking area considered for the purpose of this rule shall be determined by the area necessary to comply with the off-street parking requirements as mandated by the local ordinance, or if there are no local requirements for off-street parking, then the area which would reasonably be necessary to accommodate the anticipated parking needs of the premises, taking into consideration the type of business and operation contemplated.

Distances provided for in this rule shall be measured by airline from the closest edge of any residential structure to the closest edge of the premises or the closest edge of the parking lot or parking area, as defined hereinabove, which ever distance is shorter.

This rule does not apply where the premises have been licensed and operated with the same type license within 90 days of the application.

Notwithstanding the provisions of this rule, the department may issue an original retail license or transfer a retail licenses premises-to-premises where the applicant establishes that the operation of the business would not interfere with the quiet enjoyment of the property by residents.

NOTE: Authority cited: Section 25750. Business and Professions Code: Section 22, Article XX, California Constitution. Reference: Section 23958. Business and Professions Code.

HISTORY:

1. New section filed 8-1-77; effective thirtieth day thereafter (Register 77, No 32). For history of former section, see Register 61, No. 20.

2. Amendment filed 6-27-29 as an emergency; effective upon filing (Register 79, No. 26).

3. Certificate of Compliance filed 10-23-79 (Register 79, No. 43.)

TITLE 4 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
(Register 84. No. 23—8-8-84)

§142

(P.24.36)

Article 22. Suspension or Revocation of Licenses

142. Receiving Stolen Alcoholic Beverages; Ceiling Price Violations.

HISTORY:

1. Originally published 3-22-45 (Title 4).

2. Repealer filed 9-11-47 (Register 9).

143. Employees of On-Sale Licensees Soliciting or Accepting Drinks.

No on-sale retail licensee shall permit any employee of such licensee to solicit, in or upon the licensed premises, the purchase or sale of any drink, any party of which is for, or intended for, the consumption or use of such employee, or

to permit any employee of such licensee to accept, in or upon the licensed premises, any drink which has been purchased or sold there, any part of which drink is for, or intended for, the consumption or use of any employee.

It is not the intent or purpose of this rule to prohibit the long-established practice of a licensee or a bartender accepting an incidental drink from a patron.

NOTE: Authority cited: Section 24200.5 and 25657, Business and Professions Code.

HISTORY:

1. New section filed 5-25-54; effective thirtieth day thereafter (Register 54, No.12).
2. Amendment filed 7-12-72; designated effective 8-14-72 (Register 72, No. 29).

143.1 Employment of Minors in Public Premises

NOTE: Authority cited: Section 25750, Business and Professions Code, and Section 22, Article XX, California Constitution.

HISTORY:

1. New section filed 4-18-63; designated effective 5-21-62 (Register 62, No. 8).
2. Repealer filed 7-12-72; designated effective 8-14-72 (Register 72, No.29).

143.2 Attire and Conduct..

The following acts or conduct on licensed premises are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted:

(1) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(2) To employ or use the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph (1) above.

(3) To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person..

(4) To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the breast genitals, anus, pubic hair or any portion thereof.

If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

NOTE: Authority cited: Section 25750. Business and Professions Code: Section 22, Article XX, California Constitution.

Reference: Section 23001. Business and Professions Code.

HISTORY:

1. New section 143.2 filed 7-9-70; designated effective 8-10-70 (Register 70, No. 28).

TITLE 4 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
(Register 84. No. 23—6-9-84)

§143.4
(P.24.37)

143.3 Entertainers and Conduct.

Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

Live entertainment is permitted on any licensed premises, except that:

(1) No licensee shall permit any person to perform acts of or acts which simulate:

(a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.

(c) The displaying of the pubic hair, anus, vulva or genitals.

(2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.

If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

NOTE: Authority cited: Section 25750. Business and Professions Code and Section 22 of Article XX, California Constitution. Reference: Section 23001. Business and Professions Code.

HISTORY:

1. New section filed 7-9-70; designated effective 8-10-70 (Register 70, No. 28).

143.4 Visual Displays.

The following acts or conduct on licensed premises are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

The showing of film still pictures, electronic reproduction, or other visual reproductions depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(2) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.

(3) Scenes wherein a person displays the vulva or the anus or the genitals.

(4) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

NOTE: Authority cited: Section 25750. Business and Professions Code: Section 22, Article XX, California Constitution. Reference: Section 23001. Business and Professions Code.

HISTORY:

1. New section filed 7-9-70; designated effective 8-10-70 (Register 70, No 28).