

# DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

ANNUAL REPORT FISCAL YEAR 2012/13

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

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February 28, 2014

## **ABC MISSION**

The mission of the Department of Alcoholic Beverage Control (ABC) is to administer the provisions of the ABC Act in a manner that fosters and protects the health, safety, welfare, and economic well-being of the people of California.

Upon the repeal of Prohibition in 1933 and the return of the legal sale of alcoholic beverages to California, taxation and regulation of the manufacture, distribution, and sale of alcoholic beverages were given to the State Board of Equalization (BOE). In 1955, an amendment to the State Constitution moved the responsibility to ABC.

California Constitution, Article XX, Section 22, vests ABC with the exclusive right and power to license and regulate the manufacture, importation, and sale of alcoholic beverages within the State. Today, ABC is authorized 427 positions and is currently organized into three major divisions and 24 district offices. As of June 30, 2013, there were 85,788 ABC licensed businesses in California.

ABC licensed outlets comprise approximately eight percent of all the State's businesses which generate more than \$500 million a year in sales and excise taxes. California's wine is world renowned, and the restaurant and hospitality industry is the State's number one employer providing more than one million jobs.

## **BUDGET**

ABC's budgeted appropriations authority for fiscal year 2012/13 was just under \$57 million and represented an increase of 13 percent from the previous fiscal year. The increase is due to increased personnel costs related to the expiration of mandatory reductions associated with the Personal Leave program.

See Appendix A for more detailed information on the ABC budget.

## LICENSING

The ABC licensing function is to thoroughly investigate all applicants and proposed business locations to ensure they meet the minimum qualifications of the ABC Act. The licensing investigation is conducted to protect public welfare and safety concerns. Issues examined during a licensing investigation may include police problems, over concentration of licensed premises in the area, and the possible impact the proposed business will have on nearby residences, religious facilities, schools, and hospitals.

The number of permanent licenses issued by ABC for the 2012/13 fiscal year remained relatively constant, down by two percent, while the average number of days to process applications received increased by two days. There are many common external factors impacting the amount of time and effort required to investigate and issue a license including: how quickly the applicant provides information to ABC; the applicant's qualifications; proposed business location, license type; and local land-use requirements. In addition, if the license is protested or otherwise objected to by members of the public, they may be entitled to a hearing to voice their concerns.

ABC experienced a 158 percent increase in the number of protests received over the last fiscal year. The number of licensing applications actually protested also increased by 24 percent. This increased public input and involvement in the licensing investigation process directly impacts the licensing staff workload in terms of investigative effort, reporting detail, and management review.

The combined number of temporary one-day licenses issued to non-profit organizations and caterer's events authorized decreased by approximately seven percent compared to the prior fiscal year. Despite this decrease, revenue derived from such licenses increased by eight percent. As there were no fee increases this year, the increase can be attributed to the issuance of more temporary licenses and authorizations for multi-day, large-scale events. The review for such events is typically more cumbersome and often requires more and higher levels of licensing personnel resources and additional input from local law enforcement agencies.

ABC denied six applications for permanent licenses although this number does not take into account the 942 applications that were withdrawn by the applicant before receiving a formal denial. Significant resources and efforts are required by licensing staff in terms of completing a denial investigation and subsequent report preparation.

See Appendix B for more detailed information on licensing statistics.

## ENFORCEMENT

Violations of the ABC Act and other penal provisions at ABC licensed premises may result in the filing of a criminal complaint, an administrative action against the licensee, or both. To determine if a criminal or administrative violation has occurred, ABC conducts an investigation. The vast majority of enforcement investigations conducted by ABC result from complaints received from local law enforcement agencies, the general public and other ABC licensees or their employees. ABC also engages in proactive inspections at ABC licensed businesses before complaints are received to further its goal of voluntary compliance.

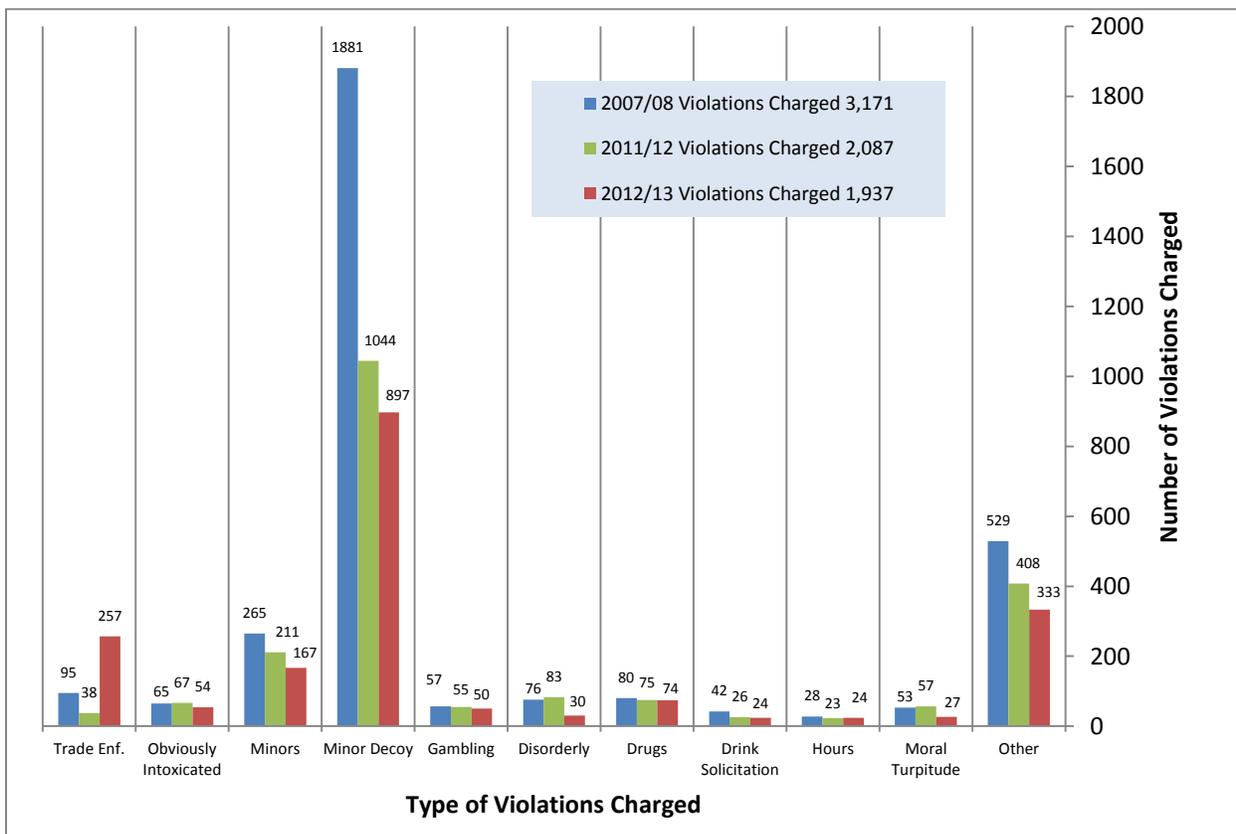
ABC peace officers conducting criminal and administrative investigations have the responsibility to make arrests, preserve evidence and prepare written reports. The officers then present the case to the local district attorney or city attorney for possible criminal prosecution against the individuals involved in the crimes, as well as to ABC leadership for possible administrative action against the licensed premise where the crimes occurred. Common enforcement investigations conducted by ABC include: sales of alcoholic beverages to minors; sales of alcoholic beverages to obviously intoxicated persons; sales of alcoholic beverages without a license; sales of illegal drugs; solicitation of prostitution; gambling; and receiving stolen property at ABC licensed businesses.

Enforcement investigations completed during this reporting period decreased approximately 18 percent from the prior year and 35 percent from fiscal year 2007/08. There are several factors that contributed to these reductions including the statewide salary savings measures that were initiated in fiscal years 2008/09 through 2012/13 and the subsequent workforce reduction measures causing ABC to reduce its peace officer staff by 14 positions on July 1, 2011. In addition, based upon significant demand from the alcoholic beverage industry, ABC increased its focus on trade enforcement violations during the reporting period. These are often more complex investigations and require increased time and resources than other violations. Although more resource intensive, trade enforcement regulation is critical to the goal of the ABC Act to maintain a fair marketplace throughout the State.

Criminal arrests by ABC peace officers increased 19 percent over the prior fiscal year, 15 percent below the pre-recession era levels experienced in fiscal year 2007/08. The 19 percent increase in arrests over the immediate prior fiscal year is attributable to greater demand for ABC law enforcement efforts at large scale special events, such as concerts, music festivals, sporting events, and college-related activities. At these events, ABC peace officers focus on underage drinking and over-consumption, thereby preventing traffic collisions and other alcohol-related tragedies. These large-scale events continue to necessitate an ABC presence due to public safety concerns, but also cause a significant drain on our peace officer staffing and resources statewide.

During this reporting period, ABC charged 1,937 separate violations by licensees or their employees which is down seven percent from the prior reporting period. This represents a 39 percent reduction from the pre-recession era levels experienced during fiscal year 2007/08. In addition, of the 1,937 violations of this fiscal year, 257 were related to trade enforcement violations, which equates to 13 percent of all violations charged. This is a significant increase compared to the prior reporting period where trade enforcement violations constituted only two percent of the total violations charged. As mentioned above trade enforcement violations are generally the most complex and time consuming violations to investigate.

The graph below illustrates the number and type of violation charged by ABC during this reporting period and fiscal years 2007/08 and 2011/12.



See Appendix C for more detailed information on enforcement investigation statistics and violations charged.

## ENFORCEMENT PENALTIES

ABC may impose a disciplinary penalty on a licensee for failing to comply with the laws, rules and conditions governing a licensee. Warning letters are issued when there is sufficient evidence to indicate a violation has occurred but has not risen to the level of an administrative action against the licensee. These warning letters serve to advise licensees of issues occurring at their licensed premises, with the goal of achieving voluntary compliance. For more serious violations, ABC may suspend or revoke a license. Both a suspension and revocation may be stayed by ABC. A stayed suspension or revocation is similar to probation; if there are no further violations during a specified time period the penalty will not go into effect. If there are further violations, the penalty will go into effect as a result of the new violation. This fiscal year, ABC imposed 606 suspensions, both stayed and served. This represents an overall decrease of 13 percent from the prior fiscal year.

In certain circumstances, licensees may be allowed to pay a fine instead of serving a suspension. This year ABC collected 922 fines, totaling \$2,641,714. This is a 19 percent decrease in the amount of revenue collected from fines compared to the prior fiscal year. Further, this represents a 50 percent decrease from the pre-recession era levels experienced during fiscal year 2007/08. The amount of a fine is based on a licensee's revenues; thus, the fine amounts vary with economic trends. Additionally, whether a licensee can pay a fine is discretionary on the part of ABC. Depending on the facts and circumstances of a violation, ABC may determine that an actual suspension is necessary to further compliance goals. As this determination is fact specific, there can be significant differences in how many fines are allowed each year.

During this fiscal year, ABC determined it was necessary to revoke 21 licenses. This represents a two percent decrease in the number of revocations as compared to the prior fiscal year. However, ABC saw a significant increase in revocations of beer and wine importer and wholesaler licenses. Last fiscal year, ABC did not revoke any of these licenses, while this year seven such licenses were revoked. This can be attributed in large part to ABC's increased trade enforcement activities as noted previously in this report.

ABC stayed 129 revocations during the fiscal year. ABC's efforts in gaining voluntary compliance this fiscal year led to a 28 percent decrease in the misconduct discovered by ABC warranting stayed revocations. Significant in this area is a 49 percent decrease in the number of general eating places observed engaging in misconduct resulting in a stayed revocation.

See Appendix D for more detailed information on enforcement penalty statistics.

## **APPEALS**

Contested ABC decisions in both licensing and enforcement actions may be appealed to the Alcoholic Beverage Control Appeals Board, a three-member panel that is independent of the ABC. After the ABC Appeals Board issues its determination, further appeal may be made by way of a Petition for Writ of Review to the District Court of Appeal or California Supreme Court.

## APPENDIX A: BUDGET

	<i>Budgeted</i>	<i>Expended</i>
Licensing	\$27,259,425	\$27,239,735
Enforcement	\$26,752,585	\$25,078,943
Administration	\$ 4,008,291	\$ 4,008,291
Distributed Administration	\$ -4,008,291	\$ -4,008,291
Reimbursements	\$ 2,957,218	\$ 2,167,140
<b>TOTAL</b>	<b>\$56,969,228</b>	<b>\$54,485,819</b>

## APPENDIX B: LICENSING

Number of permanent licenses issued and average number of days from application to issuance, by license type:

<i>License Type</i>	<i>Number Issued</i>	<i>Days</i>
01 Beer Manufacturer .....	8	76
02 Winegrower .....	713	123
03 Brandy Manufacturer.....	6	127
04 Distilled Spirits Manufacturer .....	18	143
05 Distilled Spirits Manufacturer Agent .....	5	104
06 Still .....	26	114
07 Rectifier.....	5	221
09 Beer and Wine Importer .....	208	113
10 Beer & Wine Importers General .....	42	109
12 Distilled Spirits Importer .....	114	99
13 Distilled Spirits Importer's General .....	42	109
14 Public Warehouse .....	45	114
15 Customs Broker .....	1	49
16 Wine Broker .....	7	79
17 Beer & Wine Wholesaler .....	435	108
18 Distilled Spirits Wholesaler.....	123	93
19 Industrial Alcohol Dealer .....	1	348
20 Off-Sale Beer & Wine.....	1,503	112
21 Off-Sale General .....	982	119
22 Wine Blender.....	8	156
23 Small Beer Manufacturer .....	96	138
29 Winegrape Growers Storage License .....	4	70
40 On-Sale Beer .....	74	118
41 On-Sale Beer & Wine Eating Place.....	3,243	105
42 On-Sale Beer & Wine Public Premises .....	203	115
45 On-Sale Beer and Wine Boat.....	4	103
47 On-Sale General Eating Place .....	1,646	128
48 On-Sale General Public Premises.....	239	136
49 On-Sale General Seasonal .....	1	90
51 Club.....	8	100
52 Veterans' Club.....	4	123
54 On-Sale General Boat.....	8	129
55 On-Sale General Airplane .....	3	157
57 Special On-Sale General .....	15	342
59 On-Sale Beer and Wine Seasonal .....	2	75

64	Special On-Sale General Theater .....	7	184
67	On-Sale Wine, Bed & Breakfast .....	7	148
68	Portable Bar .....	87	137
70	On-Sale General Restrictive Service.....	17	82
75	On-Sale General Brew-Pub .....	12	183
80	Special On-Sale General Bed and Breakfast Inn .....	5	83
83	On-Sale General Caterer's License .....	2	14
85	Limited Off-Sale Wine License .....	52	70
86	Instructional Tasting License.....	118	141

**Total Permanent Licenses Issued: 10,150**

**Average Number of Days for Processing All Applications:.....116\***

\*Common external factors impacting the number of days to issue a license include those related to premises construction, escrow delay and tax delinquency, compliance with local land-use requirements, protests against issuance, etc.

**Number of permanent licenses renewed, by license type:**

	<i>License Type</i>	<i>Number</i>
01	Beer Manufacturer .....	29
02	Winegrower .....	4,500
03	Brandy Manufacturer.....	36
04	Distilled Spirits Manufacturer .....	73
05	Distilled Spirits Manufacturer Agent .....	15
06	Still .....	117
07	Rectifier .....	24
08	Wine Rectifier.....	2
09	Beer & Wine Importer.....	1,295
10	Beer & Wine Importers General .....	215
11	Brandy Importer .....	24
12	Distilled Spirits Importer .....	587
13	Distilled Spirits Importer's General .....	116
14	Public Warehouse .....	277
15	Customs Broker .....	26
16	Wine Broker .....	59
17	Beer & Wine Wholesaler .....	2,556
18	Distilled Spirits Wholesaler.....	644
19	Industrial Alcohol Dealer .....	4
20	Off-Sale Beer & Wine.....	13,105
21	Off-Sale General .....	12,486
22	Wine Blender.....	92
23	Small Beer Manufacturer .....	286
24	Distilled Spirits Rectifier's General .....	3

27	California Winegrowers Agent.....	2
29	Winegrape Growers Storage License .....	48
40	On-Sale Beer .....	789
41	On-Sale Beer & Wine Eating Place.....	18,797
42	On-Sale Beer & Wine Public Premises .....	1,171
44	On-Sale Beer & Wine Fishing Party Boat.....	33
45	On-Sale Beer & Wine Boat .....	39
47	On-Sale General Eating Place .....	12,528
48	On-Sale General Public Premises.....	2,646
49	On-Sale General Seasonal .....	2
50	On-Sale General Club.....	48
51	Club.....	798
52	Veterans' Club.....	305
53	On-Sale General Train .....	9
54	On-Sale General Boat.....	149
55	On-Sale General Airplane .....	36
56	On-Sale General Vessel, 1,000 Ton .....	15
57	Special On-Sale General .....	234
59	On-Sale Beer & Wine Seasonal.....	3
60	On-Sale Beer Seasonal .....	1
61	On-Sale Beer Public Premises.....	15
62	On-Sale General Dockside .....	11
63	On-Sale Special Beer & Wine, Hospitals .....	47
64	Special On-Sale General Theater .....	70
68	Portable Bar .....	862
69	Special On-Sale Beer & Wine Theatre.....	3
70	On-Sale General Restrictive Service.....	209
75	On-Sale General Brew-Pub .....	98
76	On-Sale General Maritime Museum Association.....	1
83	On-Sale General Caterer's License .....	5
85	Limited Off-Sale Wine License.....	38
86	Instructional Tasting License.....	281

**TOTAL PERMANENT LICENSES RENEWED.....75,864**

**Number of penalties imposed for late renewal of permanent licenses:....7,909**

**Total amount collected from late renewal penalties: .....\$1,526,054**

**Number of certificates issued pursuant to Business and Professions Code  
Section 25503.42: .....0**

**Number of permanent licenses automatically canceled for non-payment of renewal fee, by license type:**

<i>License Type</i>	<i>Number</i>
02 Winegrower .....	78
07 Rectifier .....	1
09 Beer & Wine Importer.....	67
10 Beer & Wine Importer's General .....	9
12 Distilled Spirits Importer .....	28
13 Distilled Spirits Importer's General .....	10
14 Public Warehouse .....	12
15 Customs Broker .....	1
16 Wine Broker .....	9
17 Beer & Wine Wholesaler .....	140
18 Distilled Spirits Wholesaler.....	32
20 Off-Sale Beer & Wine.....	196
21 Off-Sale General .....	28
23 Small Beer Manufacturer .....	5
40 On-Sale Beer .....	25
41 On-Sale Beer & Wine Eating Place.....	756
42 On-Sale Beer & Wine Public Premises .....	55
44 On-Sale Beer Fishing Party Boat .....	1
47 On-Sale General Eating Place .....	28
48 On-Sale General Public Premises.....	8
51 Club.....	2
52 Veterans Club .....	2
54 On-Sale General Boat.....	1
56 On-Sale General Vessel .....	5
59 On-Sale Beer and Wine Seasonal .....	1
62 On-Sale Dockside .....	1
64 Special On-Sale General Theater .....	2
67 Special On-Sale Wine Bed & Breakfast Inn .....	1
68 Portable Bar .....	2
70 On-Sale General Restrictive Services.....	1
75 On-Sale General Brew-Pub .....	3
83 On-Sale General Caterer's License .....	1
86 Instructional Tasting License.....	1
<b>TOTAL NUMBER CANCELED FOR NON-PAYMENT .....</b>	<b>1,513</b>

**Number of temporary licenses, permits and authorizations issued, by type:**

Temporary Permits & Interim Permits.....	2,932
Special Daily License Beer & Wine.....	11,095
Special Daily License General .....	15,782
Catering Authorizations.....	10,550

## APPENDIX C: ENFORCEMENT

Enforcement investigations conducted (Department-generated):.....3,323

Enforcement investigations conducted as response to reports received  
from allied law enforcement agencies: .....1,223

### Criminal arrests:

	<u>Underage Alcohol-related</u>	<u>Other</u>	<u>TOTAL</u>
ABC	2,294	1,008	3,302
Joint (with allied law enf.)	<u>238</u>	<u>164</u>	<u>402</u>
<b>TOTAL:</b>	<b>2,532</b>	<b>1,172</b>	<b>3,704</b>

### Numbers of violations charged, by violation type:

Business Practices .....	257
Service of Alcohol to Obviously Intoxicated Persons .....	54
Sales of Alcohol to Minors .....	167
Sales of Alcohol to Minors through the Minor Decoy Program.....	897
Illegal Gambling .....	50
Disorderly Premises/Disruptive Premises .....	30
Drugs .....	74
Illegal Solicitation of Drinks .....	24
Sales or Service during Restricted Hours .....	24
Moral Turpitude.....	27
Condition Violations, Receiving Stolen Property Hidden Ownership and Other Misc. ....	333
<b>TOTAL.....</b>	<b>1,937</b>

## APPENDIX D: ENFORCEMENT PENALTIES

**Formal warning letters issued to permanent license holders:.....425**

**Number of fines imposed as a result of disciplinary action, by license type:**

<i>License Type</i>	<i>Number</i>
02 Winegrower .....	4
10 Beer and Wine importer's General .....	1
17 Beer & Wine Wholesaler .....	8
18 Distilled Spirits Wholesaler.....	1
20 Off-Sale Beer & Wine.....	245
21 Off-Sale General .....	354
23 Small Beer Manufacturer .....	3
26 Out-of –State Beer Manufacturer's Certificate .....	1
40 On-Sale Beer .....	9
41 On-Sale Beer & Wine Eating Place.....	95
42 On-Sale Beer & Wine Public Premise .....	7
47 On-Sale General Eating Place .....	133
48 On-Sale General Public Premises.....	53
51 Club.....	3
52 On-Sale Beer Seasonal .....	2
<b>TOTAL FINES IMPOSED.....</b>	<b>922</b>

**Total amount of fines collected as a result of accusations:.....\$2,641,714**

**Number of permanent licenses revoked as a result of disciplinary action, by license type:**

<i>License Type</i>	<i>Number</i>
9/17 Beer & Wine Importer/Wholesaler.....	7
20 Off-Sale Beer & Wine.....	5
21 Off-Sale General .....	6
40 On-Sale Beer .....	1
41 On-Sale Beer & Wine Eating Place.....	3
42 On-Sale Beer & Wine Public Premises .....	2
47 On-Sale General Eating Place .....	2
48 On-Sale General Public Premises.....	1
<b>TOTAL REVOKED .....</b>	<b>21</b>

**Number of permanent licenses revoked as a result of disciplinary action, with revocation stayed, by license type:**

<i>License Type</i>	<i>Number</i>
9/17/20 Beer and Wine Importer/Wholesaler/Off-Sale .....	1
20 Off-Sale Beer & Wine .....	25
21 Off-Sale General .....	29
40 On-Sale Beer .....	8
41 On-Sale Beer & Wine Eating Place .....	14
42 On-Sale Beer & Wine Public Premises .....	11
47 On-Sale General Eating Place .....	19
48 On-Sale General Public Premises.....	22
<b>TOTAL REVOKED WITH REVOCATION STAYED.....</b>	<b>129</b>

**Number of permanent licenses suspended as a result of disciplinary action, including suspensions stayed, by license type:**

<i>License Type</i>	<i>Number</i>
02 Winegrower .....	3
17 Beer and Wine Wholesaler .....	2
17/20 Beer and Wine Wholesaler/Off-Sale .....	2
18 Distilled Spirits Wholesaler.....	2
20 Off-Sale Beer & Wine.....	159
21 Off-Sale General .....	158
23 Small Beer Manufacturer .....	2
40 On-Sale Beer .....	10
41 On-Sale Beer & Wine Eating Place.....	111
42 On-Sale Beer & Wine Public Premises .....	19
47 On-Sale General Eating Place .....	84
48 On-Sale General Public Premises.....	52
51 Club.....	1
75 On-Sale General Brew-pub.....	1
<b>TOTAL SUSPENDED (including stayed).....</b>	<b>606</b>