

BASIC COURSE INSTRUCTOR UNIT GUIDE

13

ABC LAW

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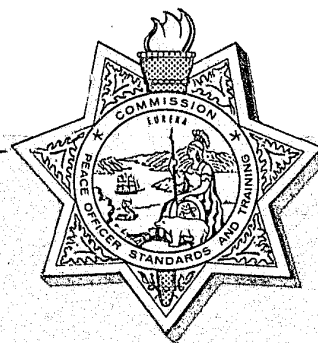
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

This unit of instruction is designed as a *guideline* for performance objective-based law enforcement basic training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives which are required as minimum content of the Basic Course.

UNIT GUIDE 13

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ABC Law**

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SALE OF ALCOHOLIC BEVERAGE WITHOUT A LICENSE

Given a word picture depicting the sale of alcoholic beverages without a license, the student will identify if the crime is complete and, if it is complete, identify it by its common name. (Business and Professions Code Section 23300)

Performance Objective 3.36.2

CURRICULUM

A. Sales of alcoholic beverages without a license

1. No one may sell any alcoholic beverage without a license
 - a. Licenses are issued to specific persons for specific locations and the licensee must post the license in a conspicuous place.
 - b. It is necessary to prove that in sales case, the seller had no license.
 - c. It is necessary to show an exchange of consideration for an alcoholic beverage.
 - (1) Must observe actual sale and retain evidence of the violation.
 - (2) Of prime concern in this type of offense are unlicensed premises, "underground" clubs, (temporary businesses operating without the required licenses or permits), private parties which require an entry fee.

NOTE: Refer to Alcoholic Beverage Control Act Enforcement Manual for investigative techniques.

B. Retail alcoholic beverage license recognition

1. **Off-Sale:** The words "off-sale" on an alcoholic beverage license means the license privilege is for alcoholic beverages to be sold in original, unopened packages for consumption off the premises where sold
 - a. License types:
 - (1) Off-sale beer & wine - Authorizes the sale of beer, wine for consumption off the premises where sold.
 - (2) Off-sale general - Authorizes the sale of beer, wine, and distilled spirits for consumption off the premises where sold.

2. **On Sale:** The words "on sale" on an alcoholic beverage license mean the license privilege is for alcoholic beverages sold on the premises to be consumed on the premises.

a. License types:

- (1) On-sale beer - Authorizes the sale of beer for consumption on the premises where sold and the sale of beer for consumption off the premises where sold.
- (2) On-sale beer and wine eating place - Authorizes the sale of beer and wine for consumption on a bona fide public eating place type premises plus the sale of beer and wine for consumption off the premises where sold. May possess brandy, rum and liqueurs for use solely for cooking purposes.
- (3) On-sale beer and wine public premises - Authorizes the sale of beer and wine for consumption on the premises wherein no person under 21 years of age is allowed plus the sale of beer and wine for consumption off the premises where sold.
- (4) On-sale general eating place - Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide public eating place type premises plus the sale of beer and wine only for consumption off the premises where sold.

3. **On-sale general public premises:** Authorizes the sale of beer, wine, and distilled spirits for consumption on the premises wherein no person under 21 years of age is allowed, plus the sale of beer and wine only for consumption off the premises where sold.

a. License types:

- (1) "Public Premises" - means premises licensed with any type of license other than an on-sale beer license, or maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages.
- (2) "Bona fide public eating place" - means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith.

UNAUTHORIZED ALCOHOL ON PREMISES

Given a word picture depicting the presence of an alcoholic beverage on the premises where such beverage is not authorized by license, the student will identify if the crime is complete and, if it is complete, identify it by its common name and crime classification. (Business and Professions Code Section 25607)

Performance Objective 3.36.4

CURRICULUM

- A. Unlawful possession of alcoholic beverage in violation of license (Business and Professions Code Section 25607)
 1. It is unlawful for any person or the licensee of an Alcoholic Beverage Control Act licensed establishment to:
 - a. Have on the premises.
 - b. Alcoholic beverage which is not covered under the license.
 2. The presumption is made that the licensee is aware of all beverages on the premises.
 - a. The licensee is held responsible for alcoholic beverages on the premises.
 - b. It is illegal for a person to possess his personal alcoholic beverage if it is in violation of the statute (e.g., if the establishment is licensed to sell beer and wine, no one may possess hard liquor).
 3. Violation of this section is a misdemeanor
 - a. Licensee does not have to be on the premises to be in violation.
 - b. All alcoholic beverages may be seized that are in violation of this section.

FURNISH ALCOHOL TO AN INTOXICATED PERSON

Given a word picture depicting the possible sale or furnishing of an alcoholic beverage to an obviously intoxicated person, the student will identify if the crime is complete and, if it is complete, will identify it by its common name and crime classification. (Business and Professions Code Section 25602)

Performance Objective 3.36.5

CURRICULUM

- A. Sale to an intoxicated person
 - 1. It is illegal for alcoholic beverage to be
 - a. Sold
 - b. Furnished
 - c. Given to
 - 2. Person who is drunk or commonly known to be drunk
 - a. Person must be obviously drunk
 - b. If person is a common or habitual drunkard, the officer must be able to prove it by:
 - (1) Many prior arrests
 - (2) Prior observations
 - (3) Self-admission

NOTE: The statute makes reference to sales to habitual drunkards. There is a deep legal question as to enforcement ability of that portion of the section. See your local prosecutor for his opinion. Common drunkard provisions have been deleted from the Penal Code Section 647.

SALE AFTER HOURS

Given a word picture depicting the sale or consumption of alcoholic beverages on a licensed premises during prohibited hours, the student will identify if the crime is complete and, if it is complete, identify it by its common name. (Business and Professions Code Sections 25631 and 25632)

Performance Objective 3.36.6

CURRICULUM

- A. Hours of sale of alcoholic beverages
 - 1. Pertains to on-sale or off-sale licensee, agent, or employees or any person who knowingly purchases an alcoholic beverages during restricted hours is guilty of a misdemeanor.
 - a. Aforementioned are not to sell, deliver or give away alcoholic beverages
 - b. The activity is prohibited between the hours of 0200 and 0600 of the same day.
- B. Unlawful consumption on premises that are Alcoholic Beverage Control Act-licensed
 - 1. Pertains to retail licensee, agent, or employee.
 - a. Aforementioned are prohibited from:
 - (1) Allowing consumption of alcoholic beverages
 - (2) On Alcoholic Beverage Control Act-licensed premises
 - (3) Between hours 0200 and 0600 of same day
- C. Removal of opened wine bottle from restaurant
 - 1. Pertains to on-sale licenses which maintain a full restaurant.
 - a. Aforementioned are not allowed to have opened containers of alcoholic beverages leave premises.
 - (1) Exception - a patron who has purchased a bottle of wine may take home the partially consumed bottle.

SALE OF AN ALCOHOLIC BEVERAGE TO A MINOR

Given a word picture depicting the sale of an alcoholic beverage to a minor or an attempt to purchase an alcoholic beverage by a minor, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Business and Professions Code Sections 25658a, 25658b and 25658.5)

Performance Objective 3.40.1

CURRICULUM

- A. The various sections of the California Business and Professions Code covered in this series deal with the possession and consumption of alcoholic beverages by minors.
- B. Related offenses include the sales or furnishing of such beverages to minors.
 1. The nature of these offenses is such that one incident may include multiple offenses and offenders.
- C. Sales/furnishing alcoholic beverage to minor - Consumption by minor in on-sale premises
 1. Business and Professions Code Section 25658(a)
 - a. 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
 - b. Guilty of a misdemeanor.
 - c. A minor is 21 years of age on the day of the minor's 21st birthday (District Court of Appeal Ruling).
 2. Business and Professions Code Section 25658(b)
 - a. Any person under the age of 21 years who purchases any alcoholic beverage.
 - b. Any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises.
 - c. Is guilty of a misdemeanor and shall be punished by a fine of not less than one-hundred dollars (\$100), no part of which shall be suspended.
 - d. B & P applies to the licensee only. Where licensee has knowledge but an employee actually serves the minor, the employee is to be cited (Business and Professions Code Section 25658(a)) and the licensee.

D. Minor attempting to purchase from a licensee, the licensee's agent or employee.

1. Business and Professions Section 25658.5
2. Any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, the licensee's agent or employee, is guilty of an infraction.

MINOR IN POSSESSION OF AN ALCOHOLIC BEVERAGE

Given a word picture depicting a minor in possession of an alcoholic beverage, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Business and Professions Code Section 25662(a))

Performance Objective 3.40.2

CURRICULUM

- A. Minor in possession of an alcoholic beverage
 - 1. Business and Professions Code Section 25662
 - a. Any person under the age of 21 years who has any alcoholic beverage in his possession on any street or highway or in any public place or in any place open to the public.
 - b. Is guilty of a misdemeanor
 - c. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of an order of his parent or in pursuance of his employment.

MINOR PRESENT INSIDE ON-SALE PUBLIC PREMISES

Given a word picture depicting a minor's presence inside "on-sale public premises," the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Business and Professions Code Section 25665)

Performance Objective 3.40.3

CURRICULUM

A. Minor's presence/on-sale public premises

1. Business and Professions Code Section 25665

- a. **Any licensee** under an on-sale license issued for public premises, as defined in Section 23039, who permits a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein.
- b. Is guilty of a misdemeanor.
- c. Any person under the age of 21 years who enters and remains in the licensed public premises without business therein
- d. Is guilty of a misdemeanor and shall be punished by a fine of not less than one-hundred dollars (\$100), no part of which shall be suspended.

NOTE: Only licensee may be cited, but Alcoholic Beverage Control Act may take disciplinary action against the licensee if his/her employees violate this section.

POSSESSION OF ALCOHOL ON SCHOOL GROUNDS

Given a word picture depicting an individual possessing, consuming, selling, giving or delivering to any person an alcoholic beverage in or on the grounds of a public schoolhouse, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Business and Professions Code Section 25608)

Performance Objective 3.40.4

CURRICULUM

- A. Consumption, sale of alcoholic beverages on school premises forbidden
 - 1. Business and Professions Code Section 25608
 - a. Every person who possesses, consumes, sells, gives, or delivers to any other person any alcoholic beverage in or on any public schoolhouse or any of the grounds thereof.
 - b. Any person convicted of a violation of this section is guilty of a misdemeanor.
 - c. Any alcoholic beverage acquired, possessed or used in connection with an approved course of instruction given at a school is exempt from this section.

MINOR DISPLAYING FALSE IDENTIFICATION

Given a word picture depicting an individual furnishing false identification to a minor or a minor displaying such identification, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Business and Professions Code Sections 25660, 25660.5, and 25661)

Performance Objective 3.40.5

CURRICULUM

A. False identification (use by minor)

1. Business and Professions Code Section 25660
 - 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, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces.
 - b. Proof that the defendant-licensee, or his employee or agent, demanded, was shown, and acted in reliance upon such bona fide evidence in any transaction, employment, use, or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.
2. The licensee must have demanded and have been shown and have acted in reliance upon such documentary evidence of identity and majority prior to:
 - a. Furnishing any alcoholic beverage to a person under 21 years of age,
 - b. Employing or using a minor,
 - c. Permitting a minor to remain on a public premises.
3. This documentary evidence may be:
 - a. Motor vehicle operator's license,
 - b. A registration certificate issued under the Federal Selective Service Act,
 - c. An armed forces identification card,
 - d. Or other bona fide documentary evidence of majority and identity of the person.

4. To be bona fide the documentary evidence of majority and identity must:
 - a. Be of official issue of some governmental agency.
 - b. Furnish satisfactory evidence of majority and identity. For example:
 - (1) Weight and height
 - (2) Color of eyes and hair
 - (3) Sex
 - (4) Age and/or date of birth
 - (5) Signature
5. Birth certificates alone are not enough, as they do not include evidence of identity by description of the person named. No defense will exist if an ID card has obviously been altered or if the identity on the card does not reasonably fit the person presenting the card.
6. Under a District Court of Appeal ruling, once a minor has exhibited bona fide evidence of majority and identity to gain entrance to a licensed premise, the licensee may rely on the original demand and exhibition without a further inquiry prior to selling alcoholic beverages to the minor.
7. Business and Professions Code Section 25660.5
 - a. Furnishing identification .
 - b. Any person who sells, gives, or furnishes to any person under the age of 21 years a false or fraudulent written, printed, or photo-static evidence of the majority and identity of such person or who sells, gives or furnishes to any person under the age of 21 years evidence of majority and identification of another person,
 - c. Is guilty of a misdemeanor.
8. Business and Professions Code Section 25661
 - a. Use of false identification by minor
 - b. Any person under the age of 21 years who presents or offers to any licensee, his agent or employee any written, printed, or photostatic evidence of age and identity which is false, fraudulent, or not actually his own, for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or

who has in his possession any false or fraudulent written, printed or photostatic evidence of age and identity,

- c. Is guilty of a misdemeanor and shall be punished by a fine of at least one hundred dollars (\$100), no part of which shall be suspended.

DISORDERLY HOUSE

Given a word picture depicting a set of circumstances which may or may not describe a "disorderly house", the student will identify whether the situation constitutes a "disorderly house".
(Section 25601 Business and Professions Code)

Performance Objective 3.40.6

CURRICULUM

- A. Disorderly house
 - 1. Business and Professions Code Section 25601
 - a. Every licensee, or agent or employee of a licensee who keeps, permits to be used, or suffers to be used, in conjunction with 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.
 - b. Guilty of a misdemeanor.

ALCOHOLIC BEVERAGE PRESENT AT SOCIAL GATHERING

Given a word picture depicting a social gathering where an alcoholic beverage is present and/or being consumed, the student will identify whether or not enforcement action is permissible.
(Section 25662(b) Business and Professions Code)

Performance Objective 3.40.7

CURRICULUM

A. Social gatherings with minors consuming alcoholic beverages

1. Business and Professions Code Section 25662(b)

- a. Where a peace officer has lawfully entered the premises.
- b. Peace officer may seize any alcoholic beverage in plain view, at social gatherings.
- c. When gatherings are open to the public.
- d. Ten or more persons under the age of 21 are participating.
- e. Persons under the age of 21 years are consuming alcoholic beverages.
- f. No supervision of the social gathering by a parent or guardian of one or more of the participants.
- g. Alcoholic beverages seized pursuant to the subdivision shall be impounded.
- h. The statute carries no criminal penalties.
- i. Officers are encouraged to consult with the local prosecutor's office regarding local procedure issues.

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Alcoholic Beverage Control Act Check List

Alcoholic Beverage Control Laws

Regulatory Section of the Alcoholic Beverage Control Act

ALCOHOLIC BEVERAGE CONTROL ACT CHECK LIST (Investigative Tool)

MINORS - Section 25658 (a) and (b)

1. P.C. or officer observation
2. Apparent age of minor
3. Minor possess false ID (seize)
4. False ID used any time
5. Previous buys by minor at premise
6. Age or ID request by seller
7. Confront seller with minor
8. Seller statements/admission
9. What ID shown to seller
10. Minor affidavit

SALES TO OBVIOUSLY INTOXICATED PERSONS - Section 25602

1. P.C. or actions of obvious intoxicated persons
2. Position/knowledge of seller/server
3. Seize and determine drink alcoholic
4. Statements of seller/server - drunk

SALE/CONSUMED AFTER HOURS - Sections 25631 and 25632

1. Probable Cause
2. Time check (0215 or later)
3. Officer observation point
4. Observe sale, service or consume
5. Seize-determine drink alcoholic
6. ID seller/server and consumer are they friends, employees or patron
7. Location of premises clock and time
8. Statements of employee - patrons

ALCOHOLIC BEVERAGE CONTROL ACT REGULATORY SECTIONS - BUSINESS AND PROFESSIONS CODE

- | | |
|-----------|--|
| 23300 | - Sales without a license |
| 25177 | - Selling refilled spirits |
| 25601 | - Disorderly house |
| 25602 | - Sale to obviously intoxicated person |
| 25608 | - Sale on public school grounds |
| 25631 | - Sale during restricted hours |
| 25632 | - Consumption after hours |
| 25675 (a) | - Soliciting drinks (employee) |
| 25675 (b) | - Soliciting drinks (loiterer) |
| 25658 (a) | - Sales to minors |
| 25658 (b) | - Minor purchasing or consuming |
| 25660 | - Evidence of age and identify |
| 25660.5 | - Furnishing false identification |

- 25661 - Possess/use false identification by minor
- 25662 - Possession of alcohol by minor
- 25663 - Employment of minors
- 25665 - Minors in public premises
- 25607 - Unlawful possession of alcoholic beverage in premises

EIGHT BASIC LICENSES ISSUED BY ALCOHOLIC BEVERAGE CONTROL ACT

1. Off-sale General License - Authorizes the sale of beer, wine, and distilled spirits for consumption off the premises where sold.
2. On-sale Beer License - Authorizes the sale of beer for consumption on the premises where sold and the sale of beer for consumption off the premises where sold.
3. On-sale Beer License for Public Premises - Authorizes the sale of beer for consumption on the premises wherein no person under 21 years of age is allowed, plus the sale of beer for consumption off the premises where sold.
4. On-sale Beer and Wine License - Authorizes the sale of beer and wine for consumption on a bona fide public eating place type premises plus the sale of beer and wine for consumption off the premises where sold.
5. On-sale Beer and Wine License (Public Premises) - Authorizes the sale of beer and wine for consumption on the premises wherein no person under 21 years of age is allowed, plus the sale of beer for consumption off the premises where sold.
6. On-sale General License - Authorizes the sale of beer, wine, and distilled spirits for consumption on a bona fide public eating place type premises, plus the sale of beer and wine only for consumption off the premises where sold.
7. On-sale General License (Public Premises) - Authorizes the sale of beer, wine, and distilled spirits for consumption on the premises wherein no person under 21 years of age is allowed, plus the sale of beer and wine only for consumption off the premises where sold.
8. Off-sale Beer and Wine License - Authorizes the sale of beer and wine for consumption off the premise where sold.

The Department also issues licenses on a temporary basis for the sale of beer, wine, and distilled spirits, and caterer's permits which have the privileges of a temporary on-sale general license. These licenses are issued for a period of from one to five days, and their privileges are the same as outlined above for permanent licenses. The Alcoholic Beverage Control Act License is on light pink paper.

While working vice, you notice a violation of Business and Professions Code Section 25607. You seize the evidence. The licensee is not on the premises, but one of his employees is. While you are gathering evidence and information, the licensee walks in the establishment. When questioned, he claims no knowledge of the violation. Even though the licensee was not on the premises at the time the violation was observed, the officer feels that the licensee can also be held in violation. Is the officer right or wrong?

Answer: Right

Minors may be present in:

- "40" - On-sale beer
- "41" - On-sale beer and wine eating place
- "47" - On-sale general eating place

NO minors without LAWFUL BUSINESS:

- "61" - On-sale beer public premises
- "42" - On-sale beer and wine public premise
- "48" - On-sale general public premise

PUBLIC PREMISES MUST BE POSTED WITH SIGNS AT ENTRANCE AND INTERIOR NO PERSON UNDER 21 ALLOWED"

Note that both the on-sale licensee and the minor are guilty of a misdemeanor under this section. This section does not apply to off-sale premises, bona fide public eating place premises, or to on-sale beer licenses premises other than those holding on-sale beer licenses for public premises.

Public schools include day or evening elementary schools, and such day and evening secondary schools, technical schools, and kindergarten schools as may be established by the Legislature, or by municipal or district authority (Education Code Section 14255). Public schools include junior colleges.

ALCOHOLIC BEVERAGE CONTROL LAWS

LEGAL BASIS FOR THE ALCOHOLIC BEVERAGE CONTROL ACT

1. Article XX, Section 22, California Constitution gave the State exclusive power to regulate and license activities relating to alcoholic beverages.
2. Enactment of Division 9, Business and Professions Code or the Alcoholic Beverage Control Act provided the required laws, regulations and rules relating to this power.

LEGAL BASIS FOR ENFORCEMENT OF THE ACT BY PEACE OFFICERS

1. State does not retain exclusive enforcement rights or power.
2. Business and Professions Code Section 25619 requires peace officers to enforce the Alcoholic Beverage Control Act. (Reference page 5, Alcoholic Beverage Control Act Enforcement Manual).
3. Business and Professions Code Section 25373 authorizes peace officers to seize and hold alcoholic beverages and other property as evidence.
4. Business and Professions Code Section 25755 authorizes peace officers to visit and inspect any licensed premises during the time the licensee is exercising his licensed privileges. (Reference page 22, Alcoholic Beverage Control Act Enforcement Manual).

CATEGORIES OF LICENSES (Reference Handout Material)

1. Permanent license
 - a. Required to legally sell alcoholic beverages on a permanent basis until license is surrendered, transferred, suspended or revoked, and contains the following information.
 - (1) Licensee's name
 - (2) Business address
 - (3) Business name (DBA)
 - (4) Conditions placed on the license
 - (a) Licensee, upon demand of a peace officer, must produce a copy of the written conditions.
 - (5) Issue date
 - (6) Type business for which licensed
2. Renewal receipts

- a. No longer issued--this is NOT a license
- 3. Form Alcoholic Beverage Control Act 211 and Temporary Retail Permit
 - a. Used when license is being sold or transferred
- 4. Special Daily Temporary Beer or Wine License
 - a. Issued for periods of one to five days
 - b. For picnics or social functions for members of fraternal, religious, benevolent, or social organizations and invited guests.
 - c. For sale of beer or wine to general public at county fairs or civic celebrations.
- 5. Caterer's Authorization
 - a. Issued only to holders of a Caterer's permit for sale of beer, wine, and distilled spirits for consumption at premises where sold.
- 6. Posting of licenses is mandatory
 - a. Section 24046. Upon receipt of any license, the licensee shall post it in a conspicuous place upon the licensed premises. (Not a citable offense, report should be made to Alcoholic Beverage Control Act)

TYPES OF LICENSES (Reference pages and Alcoholic Beverage Control Act Enforcement Manual)

- 1. "20" - Off-sale beer and wine
- 2. "21" - Off-sale general
- 3. "40" - On-sale beer
- 4. "61" - On-sale beer public premises
- 5. "41" - On-sale beer and wine eating place
- 6. "42" - On-sale beer and wine public premises
- 7. "47" - On-sale general eating place
- 8. "48" - On-sale general public premises
- 9. "58" - Caterer's permit
- 10. Public premises type license
 - a. It is illegal for a minor to be in this type premises without lawful business. Premises must be posted at or near all public entrances and prominently in the interior with a sign at least 7" x 11" bearing the legend, "No Person Under 21 Allowed".

REGULATORY SECTIONS OF THE ALCOHOLIC BEVERAGE CONTROL ACT

1. Many sections of the Act are beyond the scope of the average uniformed officer's function, due to their administrative or technical nature. The following sections, with which you will have most contact, however, are important:
 - a. Section 23300 - When license required (Reference page 26, Alcoholic Beverage Control Act Enforcement Manual)
 - b. Section 25177 - Selling refilled spirits (Reference page 28, Alcoholic Beverage Control Act enforcement Manual)
 - c. Section 25601 - Disorderly house (Reference page 29, Alcoholic Beverage Control Act Enforcement Manual)
 - d. Section 25602 - Sales to habitual drunkards or obviously intoxicated persons (Reference page 31, Alcoholic Beverage Control Act Enforcement Manual)
 - e. Section 25604 - Bottle clubs (Reference page , Alcoholic Beverage Control Act Enforcement Manual)
 - f. Section 25607 - Unlawful possession on licensed premises (Reference page 34, Alcoholic Beverage Control Act Enforcement Manual)
 - g. Section 25608 - Sales on public school grounds (Reference page 35, Alcoholic Beverage Control Act Enforcement Manual)
 - h. Section 25631 - Sales during restricted hours (Reference page 36, Alcoholic Beverage Control Act Enforcement Manual)
 - i. Section 25632 - Permitting consumption during restricted hours (Reference page 37, Alcoholic Beverage Control Act Enforcement Manual)
 - j. Section 25657(a) - Hostesses or entertainers (Reference page 38, Alcoholic Beverage Control Act Enforcement Manual)
 - k. Section 25657(b) - Hostesses or entertainers (Reference page 39, Alcoholic Beverage Control Act Enforcement Manual)
 - l. Section 25658(a) - Sales to minors (Reference page 42, Alcoholic Beverage Control Act Enforcement Manual)
 - m. Section 25658(b) - Sales to minors (Consumption) (Reference page 43, Alcoholic Beverage Control Act Enforcement Manual)
 - n. Section 25658(c) - Sales to minors (Consuming) (Reference page 43, Alcoholic Beverage Control Act Enforcement Manual)
 - o. Section 25660 - Documentary evidence of age and identity (Reference page 44, Alcoholic Beverage Control Act Enforcement Manual)

- p. Section 25660.5 - Furnishing fraudulent identification (Reference page 45, Alcoholic Beverage Control Act Enforcement Manual)
- q. Section 25661 - Use of false identification by minors (Reference page 46, Alcoholic Beverage Control Act Enforcement Manual)
- r. Section 25662 - Possession by minors (Reference page 48, Alcoholic Beverage Control Act Enforcement Manual)
- s. Section 25663 - Employment of minors (Reference page 49, Alcoholic Beverage Control Act Enforcement Manual)
- t. Section 25665 - Minors in public premises (Reference page 51, Alcoholic Beverage Control Act Enforcement Manual)

CATEGORIES OF VIOLATIONS OF THE ACT

- 1. Administrative
 - a. Only the department may take action
- 2. Misdemeanor
 - a. Violations of the Act are misdemeanors except for three felonies.
 - (1) Section 24209 (quoted in part, reference page 22, Alcoholic Beverage Control Act Enforcement Manual) . . . when an arrest is made of a licensee or employee of a licensee, the arresting officer shall release such licensee or employee without taking such licensee or employee before a magistrate upon such licensee or employee signing an agreement to appear in court or before a magistrate at a place and time designated by the arresting officer.
- 3. Felonies
 - a. Only three in the ACT
 - (1) Section 23301 (summarized) - Any persons operating a still without a license.
 - (2) Section 25603 (summarized) - Persons not authorized bringing alcoholic beverages on the grounds of or into any state prison, city or county jail, city and county jail, or reformatory.
 - (3) Section 25372 (summarized) - Unlawful disposition of evidence by department employees.

PUNITIVE POWER OF THE DEPARTMENT - (Reference page 13, Alcoholic Beverage Control Act Enforcement Manual)

- 1. The Department, for good cause, has exclusive right to:

- a. Deny issuance of any license
 - b. Suspend any license
 - c. Revoke any license
2. Dismissal or not guilty verdict in criminal action
 - a. Department may take administrative action
 3. Basis for departmental action may be police arrest reports.

Disciplinary procedures (Reference page 13, Alcoholic Beverage Control Act Enforcement Manual)

1. General procedure upon occurrence of a violation
 - a. Accusation filed by the department
 - b. Licensee provided a copy of the accusation
 - c. Licensee is permitted to:
 - (1) Stipulate and waive and accept penalty
 - (2) Petition for a hearing
 - d. Hearing procedure
 - (1) Public hearing held before a hearing officer of Office of Administrative Procedures
 - (2) Standard court procedure followed
 - (3) Rules of evidence in civil hearings followed
 - (4) Burden of proof is on the department
 - (5) Hearing officer submits proposed decision
 - (6) Department may accept and reject decision
 - e. Licensee's action after hearing
 - (1) Accepts penalty
 - (2) May appeal for administrative review
 - (a) To the department for reconsideration
 - (b) To the Alcoholic Beverage Control Appeals Board
 - (3) If administrative review adverse, may appeal for judicial review

- (a) District Court of Appeals
 - (b) State Supreme Court
 - (c) U.S. Supreme Court
- (4) Upon final decision may apply for a payment of offer in compromise in lieu of serving suspension
- (5) May remain open during suspension period, but cannot sell alcoholic beverages
- (a) During the period, premises is posted with a Notice of Suspension sign

ADDITIONAL REFERENCES

Alcoholic Beverage Control Act Questions and Answers Pamphlet, State Department of Alcoholic Beverage Control,
Sacramento, California, (Current edition).

Business and Professions Code, Division 9.

PDR Physicians Desk Reference

Alcoholic Beverage Control Act Enforcement Manual, State Department of Alcoholic Beverage Control, local district office