

Brief History of California's Department of Alcoholic Beverage Control

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1919, October 28--The Eighteenth Amendment to the US Constitution (commonly called the Volstead Act¹) legislated the prohibition of alcohol across the United States. Prior to the start of Prohibition, at least in the State of California, there was little legislation or control over the production, distribution, or sale of alcoholic beverages.

1922, November 7—California passed the Wright Act (Proposition Two on the 1922 ballot, titled “Prohibition Enforcement Act”) to provide stronger enforcement of the national-level Eighteenth Amendment.

1926—Defeat of the first attempt to appeal the Wright Act (California ballot Proposition 9.)

1932, November 8—California ballot Proposition One was second attempt at repeal of the Wright Act. Among arguments made on the ballot is that the repeal will send a message to Congress to repeal the Volstead Act. The Proposition passed.

In the event the Volstead Act was repealed, California voters also passed Proposition Two. This restored the state's right to license and regulate liquor. Article XX, Section 22 of the California Constitution allowed the sale and consumption of beer and wine when consumed with food. Package store sales were a possible option, but saloons, bars and distilled liquor would remain illegal.

1932, December 19—The Alcoholic Beverage Control Division, under the State Board of Equalization, was established to license and regulate production and sale of alcoholic beverages. Prior to this, the State Board of Equalization was responsible for alcohol taxation as a means of revenue, but no agency had regulated businesses involved with alcoholic beverages.

Between December 1932 and December 5, 1933, municipalities had the right to license liquor dealers in addition to the State. Afterwards, the right to license was revoked, but cities could tax alcoholic beverages.

1933, December--The repeal of the Eighteenth Amendment by passage of the Twenty-first Amendment did not end all limitations on liquor production and consumption. States were given leeway in how they addressed the production, distribution, sale and taxation of beer, wine, and distilled spirits. Several states continued some form of prohibition until the 1980s.

¹ Also known as the *Wartime Prohibition Act*

1934—Article XX, Section 22 of the California Constitution was further amended with passage of a new Proposition Two allowing sale and consumption of beer in saloons, bars, and other drinking places. The Board’s licensing power was broadened as well.

1934, November—Stanford University challenges the State Board of Equalization’s granting of a liquor license within one and one-half miles of the campus. The issue was based on straight-line v. shortest road measurement. Stanford won the case and was able to maintain its ‘dry’ status established in 1909 land deeds for Palo Alto, the university, and surrounding area. *Bd. of Trustees v. State Bd. of Equalization*, 1 Cal.2d 784. Liquor sales eventually allowed in 1971.

1949—The Black Cat Bar (San Francisco) lost their alcohol license when the ABC ruled the business to be a disorderly house since it served as a meeting place for homosexuals. Stoumen (the Black Cat owner) contested the revocation and eventually won an overturn of the ruling in the courts.

1955, January 1—The Department of Alcoholic Beverage Control became a separate unit from the Board of Equalization. All powers in licensing and enforcement regarding alcoholic beverages transfer from the State Board of Equalization. The Board of Equalization retained taxation of alcoholic beverages. The 1949 Black Cat decision is credited as one reason for the separation of the ABC from the Board of Equalization to provide the ABC broader powers.

In the same year, Section 24200(e) of the Business and Professional Code gave the ABC the power to shut down bars catering to homosexuals as “sexual perverts”. This also included businesses having customers using or selling drugs, and allowing pimps, prostitutes, and panderers. The Black Cat Bar’s license was again revoked based on this law. The revocation of the license was struck down by the courts in *Stoumen vs. Reilly*, ruling that the revocation was based on the sexual orientation of the group, as opposed to behaviors (e.g., selling drugs), and therefore discriminatory.

1973—Ban of topless waitresses in businesses serving alcohol was upheld in *Locker v. Kirby*, 31 C.A. 3d 520

1976—Courts rule law enforcement officers and spouses cannot hold liquor licenses *Reece v. Alcoholic Beverage Control Appeals Board*, 64 Cal. App. 3d 675

2013—The department was moved to the Business, Consumer Services and Housing Agency.
<http://www.bcsb.ca.gov/>

The repeal of the Volstead Act in this amendment left a great deal to individual states to further define through their own legislation and courts, it created a patchwork of different agencies and means of enforcement. The following are some California-specific cases to clarify legislation:

- Established an importer’s license requirement for beer

State Board of Equalization v. Young's Market Company, 299 U.S. 59

- Shipments of alcohol allowed through the state without property tax
Von Hamm-Young Co. v. San Francisco, 29 Cal.2d 798
- State legislation favoring California production over out-of-state
American Distilling Co. v. State Board of Equalization, 144 Cal. App.2d 457, 301 Pac.2d 495
- Broad state powers over public health, welfare, and morals
California v. LaRue, 409 U.S. 109 (1972)
- Differentiation made between dramatic theatrical performances and "lewd or naked entertainment." Liquor by the drink is not served at the same time as the latter's. This case also establishes the state's right to regulate licensing the sale of liquor by the drink.
California v. LaRue, 409 U.S. 109 (1972)
- Regulation of liquor prices is not allowed by the Sherman Anti-Trust Act
Rice v. ABC Appeals Board (Corsetti, et al.), 21 Cal.3d 431

Summarized points from Article XX of the California Constitution (State Control of Liquor Sales), effective January 1, 1957:

- Lists the types of establishments able to sell and serve liquor.
- Limits by age, the persons able to be in the establishment.
- Describes how the Director of the ABC is appointed and removed.
- The Director appoints a three-member Board in addition to one more person.
- Grants full power of discretion to license, collect fees and revoke licenses.
- Describes ABC Appeals Board (3 members) and appeals process.
- Gives inspection powers to the Board for licensing and compliance purposes.
- Creates close ties to police and other regulatory agencies for investigation and prevention of violations and disorderly premises.
- Directs agency to work on prevention of sales to minors and intoxicated persons.

Notes:

The ABC has three functions: administration, licensing, and compliance. The personnel consist of both sworn peace officers and non-sworn staff. ABC agents are peace officers under the Penal Code and can investigate and make arrests for violations of the Business and Professional Code.

ABC's power to license supersedes both county and city regulations. The Board may deny a license for on-sale beer on the grounds of overconcentration in the area but may also be petitioned by a metropolitan district for review based on "public convenience or necessity."

California operates a "three-tier" system separating the manufacturers (breweries), distributors (wholesalers and importers), and retailers (consumer sales). This was developed to combat the dangers seen in "tied-house" establishments where retail vendors (bars) are required to buy from particular suppliers (breweries) in an exclusive arrangement.

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