

S189577

2nd Civil No. B222784

LASC No. KC053945

**IN THE
SUPREME COURT OF CALIFORNIA**

FAIZ ENNABE, individually and as Administrator, etc., et al.

Plaintiffs and Appellants,

vs.

CARLOS MANOSA, et al.,

Defendants and Respondents.

SUPREME COURT
FILED

JUL 07 2011

Frederick K. Ohlrich Clerk
CFC
Deputy

**RESPONDENTS' REQUEST FOR JUDICIAL
NOTICE; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION;
PROPOSED ORDER**

*From a Decision of the Court of Appeal
Second Appellate District, Division One*

Honorable Robert A. Dukes, Judge

MORRIS, POLICH & PURDY LLP
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CARLOS, MARY and JESSICA MANOSA

TABLE OF CONTENTS

	<u>Page</u>
RESPONDENTS' REQUEST FOR JUDICIAL NOTICE.....	1
MEMORANDUM OF POINTS AND AUTHORITIES	3
CERTIFICATE OF WORD COUNT	6
DECLARATION OF RICHARD H. NAKAMURA JR.	7

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Committee for Green Foothills v. Santa Clara County Bd. of Supervisors</i> (2011) 48 Cal.4th 32.....	3
<i>Day v. City of Fontana</i> (2001) 25 Cal.4th 268.....	3
<i>Ennabe v. Manosa</i> (2010) 190 Cal.App.4th 707.....	4
Statutes	
California Business and Professions Code	
§ 25602.1	1, 3
California Evidence Code	
§ 452	1
§ 459	1
Rules	
California Rules of Court	
Rule 8.252(a).....	1, 4
Rule 8.252(b).....	4
Rule 8.252(c).....	4
Rule 8.520(g).....	1

RESPONDENTS' REQUEST FOR JUDICIAL NOTICE

Pursuant to California Evidence Code sections 452 and 459, and California Rules of Court, Rules 8.252(a) and 8.520(g), defendants and respondents Carlos, Mary and Jessica Manosa respectfully request this Court to take judicial notice of the following documents from the legislative history behind the 1986 amendments to Business and Professions Code section 25602.1:

- Exhibit 1: All versions of Senate Bill 1053 (Lockyer-1986);
- Exhibit 3: Analysis of Senate Bill 1053 prepared for the Senate Committee on Judiciary;
- Exhibit 5: Third Reading analysis of Senate Bill 1053 prepared by the Office of Senate Floor Analyses;
- Exhibit 7: Analysis of Senate Bill 1053 prepared for the Assembly Committee On Judiciary;
- Exhibit 9: Two Third Reading analyses of Senate Bill 1053 prepared by the Assembly Committee on Judiciary;
- Exhibit 11: Unfinished Business analysis of Senate Bill 1053 prepared by the Office of Senate Floor Analysis;
- Exhibit 12: Legislative Counsel's Rule 26.5 analysis of Senate Bill 1053.

This request is based on the attached Memorandum of Points and Authorities, the Declaration of Richard H. Nakamura, Jr. and attached exhibits, the respondents' brief filed concurrently with this request and the record on appeal in this case.

Dated: July 6, 2011

MORRIS POLICH & PURDY LLP

By: *Richard H. Nakamura Jr.*
Richard H. Nakamura Jr.
*Attorneys for Defendants and Respondents
Carlos, Mary and Jessica Manosa*

MEMORANDUM OF POINTS AND AUTHORITIES

The key issue before this Court is whether the \$3 to \$5 entrance fee charged to certain guests attending respondent Manosa's party constitutes the sale of alcohol under California Business and Professions Code section 25602.1. But section 25602.1 does not define "sale" and, as set forth in Manosa's answer brief, the statutory definition of "sale" that appears elsewhere in California's Alcoholic Beverage Control Act is ambiguous in the context of social gatherings with communal alcohol. Accordingly, resort to extrinsic evidence – including legislative history – is appropriate to discern legislative intent. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2011) 48 Cal.4th 32, 45 [legislative history may be consulted where statute's language is "reasonably subject to multiple interpretations"]; *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 ["If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history."].)

Manosa requests judicial notice as to the following legislative analyses:

- Exhibit 1: All versions of Senate Bill 1053 (Lockyer-1986);
- Exhibit 3: Analysis of Senate Bill 1053 prepared for the Senate Committee on Judiciary;
- Exhibit 5: Third Reading analysis of Senate Bill 1053 prepared by the Office of Senate Floor Analyses;

- Exhibit 7: Analysis of Senate Bill 1053 prepared for the Assembly Committee On Judiciary;
- Exhibit 9: Two Third Reading analyses of Senate Bill 1053 prepared by the Assembly Committee on Judiciary;
- Exhibit 11: Unfinished Business analysis of Senate Bill 1053 prepared by the Office of Senate Floor Analysis;
- Exhibit 12: Legislative Counsel's Rule 26.5 analysis of Senate Bill 1053.

These documents are relevant because they show that by “sale,” the Legislature intended a “sale for commercial gain.” (California Rules of Court, rule 8.252(a).)

These documents were not presented to the trial court. (California Rules of Court, rule 8.252(b).) Nor were they presented to the Court of Appeal. Nonetheless, the Court of Appeal relied upon part of this legislative history in its opinion. (*Ennabe v. Manosa* (2010) 190 Cal.App.4th 707, 714-715, quoting and discussing what appears to be Exhibit 11, *post*.)

The documents do not relate to proceedings occurring after the judgment that is the subject of this appeal. (California Rules of Court, rule 8.252(c).)

Therefore, respondents respectfully ask the Court to take judicial notice of these materials.

Dated: July 6, 2011

MORRIS POLICH & PURDY LLP

By: *Richard H. Nakamura Jr.*

Richard H. Nakamura Jr.
Attorneys for Defendants and Respondents
CARLOS, MARY and JESSICA MANOSA

CERTIFICATE OF WORD COUNT

The text of this motion, including footnotes, consists of 581 words as counted by the Microsoft Office Word 2003 word-processing program used to generate this motion.

Dated: July 6, 2011

MORRIS POLICH & PURDY LLP

By: *Richard H. Nakamura Jr.*

Richard H. Nakamura Jr.
Attorneys for Defendants and Respondents
CARLOS, MARY and JESICA MANOSA

DECLARATION OF RICHARD H. NAKAMURA JR.

I, RICHARD H. NAKAMURA JR., declare:

1. I am an attorney at law and an active member of the State Bar of California. I am a partner at Morris Polich & Purdy LLP (MPP), counsel for respondents Carlos, Mary and Jessica Manosa in this appeal.
2. I am the attorney responsible for briefing and argument of this appeal on behalf of the Manosas. I was counsel for the Manosas in the Court of Appeal, but not in the Superior Court.
3. On April 8, 2011, following this Court's grant of review, I directed the purchase of the legislative history of Senate Bill 1053 of 1986 through Legislative Intent Service, Inc.
4. Legislative Intent Service, Inc. forwarded to me its compiled legislative history on Senate Bill 1053 of 1986, along with an authenticating declaration from attorney Maria A. Sanders. A true and correct copy of the Sanders declaration is attached as Exhibit A.
5. The exhibit numbers that I have used correspond to the exhibit numbers used in the Sanders declaration. These are the exhibits as to which judicial notice is requested:

Exhibit 1: All versions of Senate Bill 1053 (Lockyer-1986);

Exhibit 3: Analysis of Senate Bill 1053 prepared for the Senate

Committee on Judiciary;

Exhibit 5: Third Reading analysis of Senate Bill 1053 prepared by the Office of Senate Floor Analyses;

Exhibit 7: Analysis of Senate Bill 1053 prepared for the Assembly Committee On Judiciary;

Exhibit 9: Two Third Reading analyses of Senate Bill 1053 prepared by the Assembly Committee on Judiciary;

Exhibit 11: Unfinished Business analysis of Senate Bill 1053 prepared by the Office of Senate Floor Analysis;

Exhibit 12: Legislative Counsel's Rule 26.5 analysis of Senate Bill 1053.

6. Not everything in the compiled legislative history is relevant or proper for judicial notice. I have omitted the following exhibits:

Exhibit 2: Procedural history of Senate Bill 1053 from the 1985-1986 Senate Final History

Exhibit 4: Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1053. This exhibit contains copies of judicial opinions, news articles, letters, and unsigned handwritten notes.

Exhibit 6: Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1053. This exhibit contains letters in support of SB 1053, an analysis prepared by the California Highway Patrol as to the original version of SB 1053 pertaining to

driver's licenses, and an analysis by the California Department of Alcoholic Beverage Control (ABC) recommending a position of neutral as to SB 1053.

Exhibit 8: Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 1053. This exhibit contains letters in support of SB 1053 and an unsigned, blank worksheet form.

Exhibit 10: Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1053. This exhibit contains a duplicate of the same ABC analysis contained in Exhibit 6.

Exhibit 13: Material from the legislative bill file of Senator Lockyer on Senate Bill 1053. This exhibit contains newspaper articles, letters in support of SB 1053, the opinion of the Legislative Counsel of California as to the constitutionality of SB 1053, and an unsigned letter from Senator Lockyer to Governor Deukmejian regarding SB 1053.

Exhibit 14: Post-enrollment documents regarding Senate Bill 1053. This exhibit contains Senator Lockyer's signed letter of June 30, 1986, to Governor Deukmejian regarding SB 1053, an enrolled bill report prepared by the ABC, and the opinion of the Legislative Counsel of California as to the constitutionality of SB 1053

7. No party to this action requested judicial notice of any legislative history pertaining to SB 1053 in the Superior Court or the Court of Appeal. The Court of Appeal, as part of its opinion, cited and discussed what I believe is Exhibit 11. (*Ennabe v. Manosa* (2010) 190 Cal.App.4th 707, 714-715.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 6, 2011, at Los Angeles, California.

A handwritten signature in black ink, reading "Richard H. Nakamura Jr." with a stylized flourish at the end.

Richard H. Nakamura Jr.

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**IN THE
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FAIZ ENNABE, individually and as Administrator, etc., et al.

Plaintiffs and Appellants,

vs.

CARLOS MANOSA, et al.,

Defendants and Respondents.

[PROPOSED] ORDER

GOOD CAUSE HAVING BEEN SHOWN, it is hereby ordered that
Respondents' Motion for Judicial Notice is granted.

DATED: _____

Justice of the Supreme Court of California





LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (11750) 668-5866 • www.legintent.com

DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1175 of 1978. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories. Senate Bill 1175 was approved by the Legislature and was enacted as Chapter 930 of the Statutes of 1978.

The following list identifies all documents purchased on April 8, 2011, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Senate Bill 1175 of 1978. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

SENATE BILL 1175 OF 1978:

1. All versions of Senate Bill 1175 (Foran-1978);
2. Procedural history of Senate Bill 1175 from the 1977-78 Senate Final History;
3. Two analyses of Senate Bill 1175 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1175;
5. Third Reading analysis of Senate Bill 1175 prepared by the Senate Republican Caucus;
6. Two Third Reading analyses of Senate Bill 1175 prepared by the Senate Democratic Caucus;
7. Three analyses of Senate Bill 1175 prepared for the Assembly Committee on Judiciary;
8. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 1175;

9. Third Reading analysis of Senate Bill 1175 prepared by the Assembly Office of Research;
10. Analysis of Assembly Amendments made to Senate Bill 1175 prepared by the Senate Republican Caucus;
11. Third Reading analysis of Senate Bill 1175 as amended in Conference prepared by the Senate Republican Caucus;
12. Conference Committee Report No. 01511753 of Senate Bill 1175 prepared by the Assembly Office of Research;
13. Material from the legislative bill file of Senator John Foran on Senate Bill 1175;
14. Post-enrollment documents regarding Senate Bill 1175;
15. Material from the file of the Legislative Representative of the State Bar of California on Senate Bill 1175;
16. Article regarding Senate Bill 1175 entitled "Bill Seeks Reversal of Dramshop Law" from the Los Angeles Daily Journal, dated March 20, 1979;
17. Article regarding Senate Bill 1175 entitled "Loophole Opened in Dram Shop Act" from the Los Angeles Daily Journal, dated December 1, 1981.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of April, 2011 at Woodland, California.



MARIA A. SANDERS



Introduced by Senator Lockyer

March 7, 1985

An act to add Section 40308 to the Vehicle Code, relating to driving offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 1053, as introduced, Lockyer. Driving offenses.

(1) Under existing law, the Department of Motor Vehicles is required to give copies of records or information from its records without charge to any county, city, state department, or the United States government, and, in specified cases, the court or judge is required to obtain the driving record of the person accused or convicted.

This bill would impose a state-mandated local program by requiring a complaint, or citation in lieu thereof, alleging a violation of the Vehicle Code to be accompanied by a copy of the defendant's current driving record from the department if the court requests it.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be payable from the State Mandates Claims Fund.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this bill does not contain a repealer, as required by that section; therefore, the



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provisions of the bill would remain in effect unless and until they are amended or repealed by a later enacted bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 40308 is added to the Vehicle
 2 Code, to read:
 3 40308. Each complaint, or citation in lieu thereof,
 4 alleging a violation of this code, or any ordinance adopted
 5 pursuant thereto, relating to the ownership or operation
 6 of a vehicle shall, at the time of filing with the court, be
 7 accompanied by a copy of the current record of the
 8 defendant's driving history obtained from the
 9 Department of Motor Vehicles if the record is requested
 10 by the court.
- 11 SEC. 2. Reimbursement to local agencies and school
 12 districts for costs mandated by the state pursuant to this
 13 act shall be made pursuant to Part 7 (commencing with
 14 Section 17500) of Division 4 of Title 2 of the Government
 15 Code and, if the statewide cost of the claim for
 16 reimbursement does not exceed five hundred thousand
 17 dollars (\$500,000), shall be made from the State Mandates
 18 Claims Fund.
- 19 SEC. 3. Notwithstanding Section 2231.5 of the
 20 Revenue and Taxation Code, this act does not contain a
 21 repealer, as required by that section; therefore, the
 22 provisions of this act shall remain in effect unless and
 23 until they are amended or repealed by a later enacted
 24 act.



AMENDED IN SENATE JANUARY 13, 1986

SENATE BILL

No. 1053

Introduced by Senator Lockyer

March 7, 1985

An act to add Section 40308 to the Vehicle Code, relating to driving offenses. An act to amend Section 25602.1 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1053, as amended, Lockyer. *Driving offenses Alcoholic beverages.*

(1) Under existing law, the Department of Motor Vehicles is required to give copies of records or information from its records without charge to any county, city, state department, or the United States government, and, in specified cases, the court or judge is required to obtain the driving record of the person accused or convicted.

This bill would impose a state/mandated local program by requiring a complaint, or citation in lieu thereof, alleging a violation of the Vehicle Code to be accompanied by a copy of the defendant's current driving record from the department if the court requests it.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed



\$500,000, shall be payable from the State Mandates Claims Fund.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this bill does not contain a repealer, as required by that section; therefore, the provisions of the bill would remain in effect unless and until they are amended or repealed by a later enacted bill.

Existing law provides that no person who sells, furnishes, gives, or causes to be sold, furnished or given away, any alcoholic beverage shall be civilly liable to any person injured as a result of the intoxication by the consumer of the alcoholic beverage. Existing law does provide that a cause of action may be brought by or on behalf of an injured person against a person licensed pursuant to the Alcoholic Beverage Control Act who has sold, furnished, or given away, any alcoholic beverage to an obviously intoxicated minor where the furnishing, sale or giving of the alcoholic beverage is the proximate cause of the injury to another person.

This bill would extend the bringing of the cause of action to any person required to be licensed pursuant to the Alcoholic Beverage Control Act and any other person who sells, or causes to be sold, any alcoholic beverage to an obviously intoxicated minor.

Vote: majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: yes no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 40308 is added to the Vehicle
- 2 SECTION 1. Section 25602.1 of the Business and
- 3 Professions Code is amended to read:
- 4 25602.1. Notwithstanding subdivision (b) of Section
- 5 25602, a cause of action may be brought by or on behalf
- 6 of any person who has suffered injury or death against
- 7 any person licensed, or required to be licensed, pursuant
- 8 to Section 23300 who sells, furnishes, gives or causes to be
- 9 sold, furnished or given away any alcoholic beverage,
- 10 and any other person who sells, or causes to be sold, any
- 11 alcoholic beverage, to any obviously intoxicated minor
- 12 where the furnishing, sale or giving of such beverage to,



1 the minor is the proximate cause of the personal injury or
2 death sustained by such person.

3 Code, to read:

4 40308. Each complaint, or citation in lieu thereof,
5 alleging a violation of this code, or any ordinance adopted
6 pursuant thereto, relating to the ownership or operation
7 of a vehicle shall, at the time of filing with the court, be
8 accompanied by a copy of the current record of the
9 defendant's driving history obtained from the
10 Department of Motor Vehicles if the record is requested
11 by the court.

12 SEC. 2. Reimbursement to local agencies and school
13 districts for costs mandated by the state pursuant to this
14 act shall be made pursuant to Part 7 (commencing with
15 Section 17500) of Division 4 of Title 2 of the Government
16 Code and, if the statewide cost of the claim for
17 reimbursement does not exceed five hundred thousand
18 dollars (\$500,000), shall be made from the State Mandates
19 Claims Fund.

20 SEC. 3. Notwithstanding Section 2231.5 of the
21 Revenue and Taxation Code, this act does not contain a
22 repealer, as required by that section; therefore, the
23 provisions of this act shall remain in effect unless and
24 until they are amended or repealed by a later enacted
25 act.

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AMENDED IN ASSEMBLY JUNE 18, 1986
AMENDED IN SENATE JANUARY 13, 1986

SENATE BILL

No. 1053

Introduced by Senator Lockyer
(Coauthor: Assembly Member Bradley)

March 7, 1985

An act to amend Section 25602.1 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1053, as amended, Lockyer. Alcoholic beverages.

Existing law provides that no person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage shall be civilly liable to any person injured as a result of the intoxication by the consumer of the alcoholic beverage. Existing law does provide that a cause of action may be brought by or on behalf of an injured person against a person licensed pursuant to the Alcoholic Beverage Control Act who has sold, furnished, or given away, any alcoholic beverage to an obviously intoxicated minor where the furnishing, sale or giving of the alcoholic beverage is the proximate cause of the injury to another person.

This bill would extend the bringing of the cause of action to any person required to be licensed pursuant to the Alcoholic Beverage Control Act, *to any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave*, and to any other person who sells, or causes to be sold, any alcoholic beverage to an obviously intoxicated minor.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Section 25602.1 of the Business and
2 Professions Code is amended to read:
3 25602.1. Notwithstanding subdivision (b) of Section
4 25602, a cause of action may be brought by or on behalf
5 of any person who has suffered injury or death against
6 any person licensed, or required to be licensed, pursuant
7 to Section 23300, *or any person authorized by the federal*
8 *government to sell alcoholic beverages on a military base*
9 *or other federal enclave*, who sells, furnishes, gives or
10 causes to be sold, furnished or given away any alcoholic
11 beverage, and any other person who sells, or causes to be
12 sold, any alcoholic beverage, to any obviously intoxicated
13 minor where the furnishing, sale or giving of ~~such that~~
14 beverage to the minor is the proximate cause of the
15 personal injury or death sustained by ~~such that~~ person.

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Senate Bill No. 1053

CHAPTER 289

An act to amend Section 25602.1 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor July 11, 1986. Filed with Secretary of State July 11, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1053, Lockyer. Alcoholic beverages.

Existing law provides that no person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage shall be civilly liable to any person injured as a result of the intoxication by the consumer of the alcoholic beverage. Existing law does provide that a cause of action may be brought by or on behalf of an injured person against a person licensed pursuant to the Alcoholic Beverage Control Act who has sold, furnished, or given away, any alcoholic beverage to an obviously intoxicated minor where the furnishing, sale or giving of the alcoholic beverage is the proximate cause of the injury to another person.

This bill would extend the bringing of the cause of action to any person required to be licensed pursuant to the Alcoholic Beverage Control Act, to any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, and to any other person who sells, or causes to be sold, any alcoholic beverage to an obviously intoxicated minor.

The people of the State of California do enact as follows:

SECTION 1. Section 25602.1 of the Business and Professions Code is amended to read:

25602.1. Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, pursuant to Section 23300, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session

SR 1053 (Lockyer)
As amended January 13, 1986
Business and Professions Code
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DRAMSHOP LAW
-LIABILITY FOR SERVING MINORS-

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: No known

KEY ISSUE

SHOULD ANY PERSON WHO SELLS OR CAUSES TO BE SOLD ANY ALCOHOLIC BEVERAGE TO AN OBVIOUSLY INTOXICATED MINOR BE CIVILLY LIABLE FOR ANY INJURY OR DEATH PROXIMATELY CAUSED BY THE FURNISHING OF ALCOHOL TO THE MINOR?

PURPOSE

Existing law generally immunizes a provider of alcohol from liability for any injury caused by the consumer of the alcohol. However, it specifically holds a liquor licensee civilly liable for any injury or death proximately caused by the licensee's sale or furnishing of alcohol to an obviously intoxicated minor. The liability provision has been interpreted by the Ninth

(More)

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LEGISLATIVE INTENT SERVICE



SF 1053 (Lockyer)
Page 2

Circuit Court of Appeals to be inapplicable to a nonlicensed club on a United States military base which sells alcohol to an obviously intoxicated minor. [Gallea v. United States (1986) ___F.2d___].

This bill would revise the liability provision to impose civil liability upon any person who sells or causes to be sold any alcoholic beverage to an intoxicated minor where the sale proximately causes a death or injury. It would also impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by nonlicensed liquor sellers required to be licensed.

The purpose of this bill is to close gaps in the law which impose civil liability for selling alcohol to obviously intoxicated minors.

COMMENT

1. Law presently applicable only to licensees.

Business and Professions Code Section 25602.1 presently imposes potential civil liability for serving obviously intoxicated minors only upon liquor (and beer and wine) licensees. Thus, the status of the provider, i.e. whether or not the person is a licensee, is a determinative factor. As a result of this distinction, a minor who allegedly sold alcohol to an obviously intoxicated minor escaped civil liability for injuries caused by the intoxicated minor because the provider was not a licensee. [See Cory v. Shierloh (1981) 29 Cal.3d 430.] Similarly, a military base which serves alcohol to an obviously intoxicated minor was also immunized from civil liability because the federal installation--being exempt from state

(More)



licensing requirements--was not a licensee.
[Gallea v. United States.]

The narrowness of the statute has been criticized. While upholding the statute's constitutionality, the California Supreme Court noted:

We are not unmindful of the fact that the [law] constitutes a patchwork of apparent inconsistencies and anomalies. Thus, a licensed seller of liquor is liable to anyone injured by an obviously intoxicated minor served by the seller, while a nonlicensed, presumably illegal seller is not so liable....Accordingly, whether or not the selling or supplying of liquor is a tortious cause of a resultant injury turns upon the license status of the supplier....Causation in the common law sense...has never pivoted on such a perilous and seemingly irrelevant fulcrum....[Cory v. Shierloh, 29 Cal.3d at 440 (emphasis in original).]

2. Liability for any sale to obviously intoxicated minor

This bill would hold a person civilly liable for any injury or death which proximately results from the person's sale of alcohol to an obviously intoxicated minor. According to the author's office, there is no reason to maintain the distinction between a licensed and nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a sufficient basis for imposing

(More)



liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public. Further, the effect of the distinction may not have been foreseen or intended by the Legislature. A review of the Senate Judiciary Committee analysis of the enabling legislation (SB 1175--Foran) suggests that the term "licensee" was used only as a means of distinguishing between a licensed seller and a nonlicensed social host.

Imposing civil liability for any sale of alcohol to an obviously intoxicated minor would nullify the Cory (in part) and Gallea decisions. The bill would not, however, affect the existing immunity for social hosts as it would not impose any liability for the free furnishing of alcohol.

3. Liability for furnishing by illegal nonlicensed seller

The bill would also impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by any person required to be licensed. This provision is intended to cover the seller operating without a license or with an expired, suspended or revoked license. The provision would not apply to the furnishing of alcohol by a social host.





THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614	Bill No.	SB 1053
	Author:	Lockyer (D)
	Amended:	1/13/86
	Vote Required:	Majority
	Committee Votes:	Senate Floor Vote:

Assembly Floor Vote:

SUBJECT: Driving offenses

SOURCE: Author

DIGEST: This bill would revise the liability provisions of current law relating to the selling of an alcoholic beverage to an intoxicated minor where the sale causes death or injury, as specified.

ANALYSIS: Existing law generally immunizes a provider of alcohol from liability for any injury caused by the consumer of the alcohol. However, it specifically holds a liquor licensee civilly liable for any injury or death proximately caused by the licensee's sale or furnishing of alcohol to an obviously intoxicated minor.

The liability provision has been interpreted by the Ninth Circuit Court of Appeals to be inapplicable to a nonlicensed club on a United States military base which sells alcohol to an obviously intoxicated minor. (Gallea v. United States (1986)).

This bill would revise the liability provision to impose civil liability upon any person who sells or causes to be sold any alcoholic beverage to an intoxicated minor where the sale proximately causes a death or injury. It would also impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by nonlicensed liquor sellers required to be licensed.



Reason For Bill

The purpose of this bill is to close gaps in the law which impose civil liability for selling alcohol to obviously intoxicated minors.

According to the Senate Judiciary Committee analysis, the Business and Professions Code (Section 25602.1) presently imposes potential civil liability for serving obviously intoxicated minors only upon liquor (and beer and wine) licensees. Thus, the status of the provider, i. e., whether or not the person is a licensee, is a determinative factor.

As a result of this distinction, a minor who allegedly sold alcohol to an obviously intoxicated minor escaped civil liability for injuries caused by the intoxicated minor because the provider was not a licensee. (Cory v. Shierloh (1981)). Similarly, a military base which serves alcohol to an obviously intoxicated minor was also immunized from civil liability because the federal installation -- being exempt from state licensing requirements -- was not a licensee. (Gallea v. United States.)

The narrowness of the statute has been criticized.

According to the author's office, there is no reason to maintain the distinction between a licensed and nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public. Further, the effect of the distinction may not have been foreseen or intended by the Legislature.

The bill would impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by any person required to be licensed. This provision is intended to cover the seller operating without a license or with an expired, suspended or revoked license. The provision would not apply to the furnishing of alcohol by a social host.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

VW:ct1 1/15/86 Senate Floor Analyses





ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

SB 1053 (Lockyer) - As Amended: January 13, 1986

PRIOR ACTION

Sen. Jud. Com. 7-0

Sen. Floor 29-0

SUBJECT: This bill expands the existing liability for selling, furnishing or giving alcoholic beverage to an intoxicated minor.

DIGEST

Existing law (Business and Professions Code Section 25602.1) authorizes a cause of action to be brought against any licensee of the Alcoholic Beverage Control Act (ABCA) who sells, furnishes or gives any alcoholic beverage to an obviously intoxicated minor where the sale, furnishing, or giving to the minor is the proximate cause of injury or death to a person.

This bill extends the authority to bring an action for injury or death resulting from the sale, furnishing, or giving of alcohol to an intoxicated minor, by providing that such actions may also be brought against (1) persons required to be licensed under ABCA, and (2) any other person who sells, or causes to be sold, alcoholic beverages to an obviously intoxicated minor.

FISCAL EFFECT

None

COMMENTS

- 1) The author contends that this bill is necessary to "close gaps" in the law which permits the imposition of civil liability only on persons licensed to sell alcohol for providing alcoholic beverage to intoxicated minors but not on unlicensed persons who sell such beverages to minors. According to the author's office, there is no reason to maintain the distinction between a licensed and nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public.
- 2) Existing statutory law generally provides that a person who sells, furnishes or gives alcohol, whether commercially or socially, is not liable to another person for injuries sustained as a result of intoxication by the consumer of the alcohol (i.e., dram shop immunity). It also declares that

- continued -



specified case law is abrogated in favor of the pre-existing common law holdings that the consumption of alcoholic beverages rather than the serving of alcohol is the proximate cause of injuries inflicted upon another by an intoxicated person.

The sole exception to immunity from dram shop liability is provided in Business and Professions Code Section 25602.1 which subjects licensed commercial vendors to liability when they furnish alcohol to an obviously intoxicated minor who thereafter, as a result, injures any person. This bill amends only Section 25602.1 and therefore will have no impact on general dram shop immunity relative to the sale, furnishing or giving of alcohol to an adult. Nor would the bill affect the liability of a social host who furnishes alcoholic beverages (i.e., a person who does not sell alcoholic beverages and is not required to be licensed).

- 3) The author points out that the courts have narrowly construed the application of Section 25602.1. For example, in Cory v. Shierloh (1981) 29 Cal.3d 430, the California Supreme Court found that Section 25602.1 could not be used to impose liability on a minor who allegedly sold or furnished alcohol to an obviously intoxicated minor because the minor-defendant "was not licensed to sell or furnish alcoholic beverages." Similarly, a recent federal appellate court [Gallea v. United States (1986) 779 F.2d 1403] held that since the authorization for the cause of action is limited to actions against ABCA licensees no cause of action could be sustained against persons authorized to sell alcohol on a military base (i.e., persons not licensed to sell alcohol under the state's ABCA).

Nevertheless, while strictly construing Section 25602.1, the Courts have been critical of the narrow exception to the general dram shop liability which the Section provides. For example, in Cory v. Shierloh, the court noted:

"We are not unmindful of the fact that the [law] constitutes a patchwork of apparent inconsistencies and anomalies. Thus, a licensed seller of liquor is liable to anyone injured by an obviously intoxicated minor served by the seller, while a nonlicensed, presumably illegal seller is not so liable.... Accordingly, whether or not the selling or supplying of liquor is a tortious cause of a resultant injury turns upon the license status of the supplier and the age of the consumer. Causation in the common law sense...has never pivoted on such a perilous and seemingly irrelevant fulcrum....[29 Cal.3d at 440 (emphasis in original).]"

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This bill will abrogate the result in Gallea v. United States and, in part, abrogate the ruling in Cory v. Shierloh.

- 4) AB 3635 (Bradley) also amends Section 25602.1 and extends liability for providing alcohol to an obviously intoxicated minor. However, it differs from SB 1053 by imposing liability on (1) persons requiring an ABCA license and (2) persons authorized by the federal government to sell alcoholic beverage on a military base or other federal enclave. The author's office has advised committee staff that it will work with Assemblyman Bradley to avoid any conflicts.

Support

Opposition

California Council on Alcohol
Problems
California Trial Lawyers Association

Unknown





ASSEMBLY THIRD READING

SB 1053 (Lockyer) - As Amended: January 13, 1986

SENATE VOTE: 29-0

ASSEMBLY ACTIONS:

COMMITTEE G. O. VOTE _____ COMMITTEE JUD. VOTE 8-0
(Withdrawn from Committee)

Ayes:

Ayes:

Nays:

Nays:

DIGEST

Existing law (Business and Professions Code Section 25602.1) authorizes a cause of action to be brought against any licensee of the Alcoholic Beverage Control Act (ABCA) who sells, furnishes or gives any alcoholic beverage to an obviously intoxicated minor where the sale, furnishing, or giving to the minor is the proximate cause of injury or death to a person.

This bill extends the authority to bring an action for injury or death resulting from the sale, furnishing, or giving of alcohol to an intoxicated minor, by providing that such actions may also be brought against (1) persons required to be licensed under ABCA, and (2) any other person who sells, or causes to be sold, alcoholic beverages to an obviously intoxicated minor.

FISCAL EFFECT

None

COMMENTS

- 1) The author contends that this bill is necessary to "close gaps" in the law which permits the imposition of civil liability only on persons licensed to sell alcohol for providing alcoholic beverage to intoxicated minors but not on unlicensed persons who sell such beverages to minors. According to the author's office, there is no reason to maintain the distinction between a licensed and nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public.

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9-a



- 2) Existing statutory law generally provides that a person who sells, furnishes or gives alcohol, whether commercially or socially, is not liable to another person for injuries sustained as a result of intoxication by the consumer of the alcohol (i.e., dram shop immunity). It also declares that specified case law is abrogated in favor of the pre-existing common law holdings that the consumption of alcoholic beverages rather than the serving of alcohol is the proximate cause of injuries inflicted upon another by an intoxicated person.

The sole exception to immunity from dram shop liability is provided in Business and Professions Code Section 25602.1 which subjects licensed commercial vendors to liability when they furnish alcohol to an obviously intoxicated minor who thereafter, as a result, injures any person. This bill amends only Section 25602.1 and, therefore, will have no impact on general dram shop immunity relative to the sale, furnishing or giving of alcohol to an adult. Nor would the bill affect the liability of a social host who furnishes alcoholic beverages (i.e., a person who does not sell alcoholic beverages and is not required to be licensed).

- 3) The author points out that the courts have narrowly construed the application of Section 25602.1. For example, in Cory v. Shierloh (1981) 29 Cal.3d 430, the California Supreme Court found that Section 25602.1 could not be used to impose liability on a minor who allegedly sold or furnished alcohol to an obviously intoxicated minor because the minor-defendant "was not licensed to sell or furnish acholic beverages." Similarly, a recent federal appellate court [Gallea v. United States (1986) 779 F.2d 1403] held that, since the authorization for the cause of action is limited to actions against ABCA licensees, no cause of action could be sustained against persons authorized to sell alcohol on a military base (i.e., persons not licensed to sell alcohol under the state's ABCA).

This bill will abrogate the result in Gallea v. United States and, in part, abrogate the ruling in Cory v. Shierloh.

- 4) AB 3635 (Bradley) also amends Section 25602.1 and extends liability for providing alcohol to an obviously intoxicated minor. However, it differs from this bill by imposing liability on (1) persons requiring an ABCA license and (2) persons authorized by the federal government to sell alcoholic beverage on a military base or other federal enclave. The author's office has advised committee staff that it will work with Assemblyman Bradley to avoid any conflicts.



ASSEMBLY THIRD READING

SB 1053 (Lockyer) - As Amended: June 18, 1986

SENATE VOTE: 29-0

ASSEMBLY ACTIONS:

COMMITTEE	<u>G. O.</u>	VOTE	COMMITTEE	<u>JUD.</u>	VOTE	<u>8-0</u>
	<u>(Withdrawn from Committee)</u>					

Ayes:

Ayes:

Nays:

Nays:

DIGEST

Existing law (Business and Professions Code Section 25602.1) authorizes a cause of action to be brought against any licensee of the Alcoholic Beverage Control Act (ABCA) who sells, furnishes or gives any alcoholic beverage to an obviously intoxicated minor where the sale, furnishing, or giving to the minor is the proximate cause of injury or death to a person.

This bill extends the authority to bring an action for injury or death resulting from the sale, furnishing, or giving of alcohol to an intoxicated minor, by providing that such actions may also be brought against (1) persons required to be licensed under ABCA, (2) any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave and (3) any other person who sells, or causes to be sold, alcoholic beverages to an obviously intoxicated minor.

FISCAL EFFECT

None

COMMENTS

- 1) The author contends that this bill is necessary to "close gaps" in the law which permits the imposition of civil liability only on persons licensed to sell alcohol for providing alcoholic beverage to intoxicated minors but not on unlicensed persons who sell such beverages to minors. According to the author's office, there is no reason to maintain the distinction between a licensed and nonlicensed seller of liquor for purposes of imposing civil

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liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public.

- 2) Existing statutory law generally provides that a person who sells, furnishes or gives alcohol, whether commercially or socially, is not liable to another person for injuries sustained as a result of intoxication by the consumer of the alcohol (i.e., dram shop immunity). It also declares that specified case law is abrogated in favor of the pre-existing common law holdings that the consumption of alcoholic beverages rather than the serving of alcohol is the proximate cause of injuries inflicted upon another by an intoxicated person.

The sole exception to immunity from dram shop liability is provided in Business and Professions Code Section 25602.1 which subjects licensed commercial vendors to liability when they furnish alcohol to an obviously intoxicated minor who thereafter, as a result, injures any person. This bill amends only Section 25602.1 and, therefore, will have no impact on general dram shop immunity relative to the sale, furnishing or giving of alcohol to an adult. Nor would the bill affect the liability of a social host who furnishes alcoholic beverages (i.e., a person who does not sell alcoholic beverages and is not required to be licensed).

- 3) The author points out that the courts have narrowly construed the application of Section 25602.1. For example, in Cory v. Shierloh (1981) 29 Cal.3d 430, the California Supreme Court found that Section 25602.1 could not be used to impose liability on a minor who allegedly sold or furnished alcohol to an obviously intoxicated minor because the minor-defendant "was not licensed to sell or furnish alcoholic beverages." Similarly, a recent federal appellate court [Gallea v. United States (1986) 779 F.2d 1403] held that, since the authorization for the cause of action is limited to actions against ABCA licensees, no cause of action could be sustained against persons authorized to sell alcohol on a military base (i.e., persons not licensed to sell alcohol under the state's ABCA).

This bill will abrogate the result in Gallea v. United States and, in part, abrogate the ruling in Cory v. Shierloh.

- 4) AB 3635 (Bradley) also amends Section 25602.1 and extends liability for providing alcohol to an obviously intoxicated minor. AB 3635 imposes liability on (1) persons requiring an ABCA license and (2) persons authorized by the federal government to sell alcoholic beverage on a military base or other federal enclave.



<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614</p>	Bill No.	SB 1053
	Author:	Lockyer (D) and Assemblyman Bradley (R)
	Amended:	6/18/86
	Vote Required:	Majority

Committee Votes:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1053	
DATE OF HEARING:	1-14-86	
SENATORS:	AYE	NO
Doolittle	✓	
Keene		
Marks	✓	
Petris	✓	
Presley	✓	
Richardson		
Roberti		
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	7	0

Senate Floor Vote: Page 6511, 6/26/86
Senate Bill 1053—An act to amend Section 25602.1 of the Business and Professions Code, relating to alcoholic beverages.
 Bill presented by Senator Lockyer.
 The question being: Shall the Senate concur in the Assembly amendments to SB 1053?

Roll Call

The roll was called and the Senate concurred in Assembly amendments by the following vote:
 AYES (28)—Senators Alquist, Ayala, Bergeson, Beverly, Craven, Davis, Deddeh, Dills, Doolittle, Ellis, Foran, Leroy Greene, Hart, Lockyer, Maddy, Marks, McCorquodale, Montoya, Morgan, Petris, Presley, Richardson, Robbins, Roberti, Royce, Russell, Torres, and Vuich.
 NOES (0)—None.
 Above bill ordered enrolled.

Assembly Floor Vote: 64-3, p. 8073, 6/19/86

SUBJECT: Alcoholic beverages

SOURCE: Author

DIGEST: This bill would revise the liability provisions of current law relating to the selling of an alcoholic beverage to an intoxicated minor where the sale causes death or injury, as specified. The liability revision includes any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave.

Assembly Amendments added language relative to selling alcoholic beverages on federal property, and also an Assembly author.

ANALYSIS: Existing law generally immunizes a provider of alcohol from liability for any injury caused by the consumer of the alcohol. However, it specifically holds a liquor licensee civilly liable for any injury or death proximately caused by the licensee's sale or furnishing of alcohol to an obviously intoxicated minor.

The liability provision has been interpreted by the Ninth Circuit Court of Appeals to be inapplicable to a nonlicensed club on a United States military base which sells alcohol to an obviously intoxicated minor. (Gallea v. United States (1986)).

This bill would revise the liability provision to impose civil liability upon any person who sells or causes to be sold any alcoholic beverage to an intoxicated minor where the sale proximately causes a death or injury. This liability includes any person authorized by the federal government to sell

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alcoholic beverages on a military base or other federal enclave. It would also impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by nonlicensed liquor sellers required to be licensed.

Reason For Bill

The purpose of this bill is to close gaps in the law which impose civil liability for selling alcohol to obviously intoxicated minors.

According to the Senate Judiciary Committee analysis, the Business and Professions Code (Section 25602.1) presently imposes potential civil liability for serving obviously intoxicated minors only upon liquor (and beer and wine) licensees. Thus, the status of the provider, i. e., whether or not the person is a licensee, is a determinative factor.

As a result of this distinction, a minor who allegedly sold alcohol to an obviously intoxicated minor escaped civil liability for injuries caused by the intoxicated minor because the provider was not a licensee. (Cory v. Shierloh (1981)). Similarly, a military base which serves alcohol to an obviously intoxicated minor was also immunized from civil liability because the federal installation -- being exempt from state licensing requirements -- was not a licensee. (Gallea v. United States.)

The narrowness of the statute has been criticized.

The bill would impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by any person required to be licensed. This provision is intended to cover the seller operating without a license or with an expired, suspended or revoked license. The provision would not apply to the furnishing of alcohol by a social host.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 6/20/86)

California Council on Alcohol Problems
California Trial Lawyers Association

ARGUMENTS IN SUPPORT: According to the author's office, there is no reason to maintain the distinction between a licensed and nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public. Further, the effect of the distinction may not have been foreseen or intended by the Legislature.



ASSEMBLY FLOOR VOTE:

SENATE BILL NO. 1053 (Lockyer)—An act to amend Section 25602.1 of the Business and Professions Code, relating to alcoholic beverages.

Bill read third time, and presented by Assembly Member Bradley.
Bill passed by the following vote:

AYES—64

Allen	Davis	Isenberg	O'Connell
Areias	Duffy	Johnston	Papan
Bader	Eaves	Katz	Peace
Baker	Elder	Kelley	Polanco
Bane	Farr	Killea	Roos
Bates	Felando	Klehs	Seastrand
Bradley	Ferguson	La Follette	Sher
Bronzan	Filante	Leonard	Statham
Calderon	Floyd	Margolin	Stirling
Campbell	Frazee	McAlister	Tucker
Chacon	Frizzelle	McClintock	Vasconcellos
Clute	Hannigan	Mojonnier	Vicencia
Condit	Harris	Molina	Waters, Maxine
Connelly	Hauser	Moore	Waters, Norman
Cortese	Hayden	Naylor	Wright
Costa	Hill	Nolan	Mr. Speaker

NOES—3

Brown, Dennis Johnson Sebastiani

Bill ordered transmitted to the Senate.

VW:ctl 6/23/86 Senate Floor Analyses





TUESDAY, JUNE 24, 1986

129

UNFINISHED BUSINESS—Continued

119

335

S.B. No. 1053—Lockyer.

An act relating to alcoholic beverages.

Legislative Counsel's Digest of Assembly Amendments

SB 1053, as it passed the Senate, extended provisions of existing law which authorize the bringing of an action against a licensee of the Alcoholic Beverage Control Act who has sold, furnished, or given away any alcoholic beverage to an obviously intoxicated minor where the furnishing, sale, or giving of the alcoholic beverage is the proximate cause of an injury, to any person required to be licensed under that act and to any other person who sells, or causes to be sold, any alcoholic beverage to an intoxicated minor.

The Assembly amendments add provisions to include any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave in those provisions.

Vote: majority. Substantial substantive change: yes.

(For final vote in the Senate see the Daily Journal of January 17, 1986, page 4237. AYES—29. NOES—0.)

1986

June 19—Concurrence in Assembly amendments pending.

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LEGISLATIVE INTENT SERVICE



PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On, July 6, 2011, I served the foregoing document described as:

**RESPONDENTS' REQUEST FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION; PROPOSED ORDER**

by placing a true copy thereof in separate sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

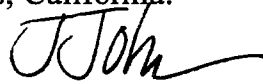
BY U.S. MAIL I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Morris Polich & Purdy LLP's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

BY OVERNIGHT MAIL I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

BY FACSIMILE I caused the above-referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

STATE I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on July 6, 2011, at Los Angeles, California.



J. Johnson

SERVICE LIST

<p>Abdalla J. Innabi INNABI LAW GROUP, APC 2500 East Colorado Boulevard, Suite 230 Pasadena, California 91107</p> <p>Phone: (626) 395-9555 Fax: (626) 395-9444</p> <p><i>Attorneys for Plaintiffs, Faiez Ennabe; Christina Ennabe; Estate of Ennabe Ennabe</i></p>	<p>Thomas J. Mullen BONNIE R. MOSS & ASSOCIATES 1600 Iowa Avenue, Suite 200 Riverside, California 92507</p> <p>Phone: (951) 328-2000 Fax: (951) 328-2090</p> <p><i>Attorneys for Cross-Defendant, Marcello Aquino</i></p>
<p>Clerk Court of Appeal, Second Appellate District, Division One 300 South Spring Street Floor 2, North Tower Los Angeles, California 90013-1213</p>	<p>Clerk of the Court For Delivery To: The Honorable Robert A. Dukes Los Angeles Superior Court Pomona, East District 400 Civic Center Plaza Pomona, California 91766</p>