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TO: Property & Liability Members

FROM: Susan Adams, Executive Director

DATE: January 28, 2015

SUBJECT: * **HEADS UP** *
Alcoholic Beverages at Educational Facilities

Effective January 1, 2015, Business and Professions Code § 25608 (a)(17) allows alcoholic beverages at educational facilities as follows:

"When the *alcoholic beverages* are acquired, possessed, used, or consumed pursuant to a license or permit obtained under this division for *special events* held at facilities owned and operated by an educational agency, a county office of education, superintendent of schools, school district, or community college district *at a time when pupils are not on the grounds*. As used in this paragraph, "facilities" includes, but are not limited to, office complexes, conference centers, or retreat facilities."

BACKGROUND: On August 22, 2014, Assembly Bill 2073 authored by Assembly Member Frank Bigelow was signed by Governor Brown and become law effective January 1, 2015. Existing law generally prohibits the sale or consumption of alcoholic beverages at a public school house or any grounds thereof. The law has evolved to provide for many exceptions, sixteen (16) to be exact. Assemblyman Bigelow's bill goes one step further in an attempt to alleviate the financial constraints on cash-strapped schools. "Our schools are losing out on extra revenue that could be gained from allowing groups within their community to rent out on-campus centers," Assemblyman Bigelow stated. "This bill would allow local organizations like the PTA and FFA to host fundraisers and events to help benefit our community during these economically challenging times."

This **HEADS UP** is meant to provide members with guidance in understanding this new law.

Current law prohibits anyone from, "possessing, consuming, selling, giving, or delivering to any other person, any alcoholic beverage in or on any public school house or any grounds of the school house..." California Bus. & Prof Code §25608 (a). Violation of this statute is a misdemeanor. Although the prohibition appears subsumed in the exceptions, the recent legislation goes significantly farther allowing alcoholic beverages to be consumed at social events held on school houses or school facilities where a license or permit has been acquired and pupils are not on the grounds. On first analysis, the exception appears to give K-12 districts the flexibility to rent facilities for fundraisers and other events that include alcohol. However, as in most things, the devil is in the details.

Initially, in order to avoid a misdemeanor violation under this exception, the user must obtain appropriate state and local permits for alcohol consumption on public premises. This is no small feat. Furthermore, the educational institution must give great consideration to where the social event takes place and how the alcoholic beverages are distributed. The exception provides great discretion regarding the facilities on which alcohol may be consumed. The exception is not limited to school houses, but is expressly extended to other facilities owned and operated by the school.

Does this mean the football field, swimming pool, or multi-use room? The answer is likely yes; outdoor spaces would presumably qualify; however, they are not expressly identified in the statutory language like office complexes or conference centers. Furthermore, the exception prohibits alcohol distribution when, "pupils are not on the grounds," but is it a misdemeanor violation if students are present? Can children be present at an after school event where alcohol is being consumed? Finally, this amendment did not change the existing language of section 25608 prohibiting alcohol sales. Although the law allows alcohol to be acquired, possessed, used or consumed, there is no express language expressly authorizing users to sell alcohol. **All the aforementioned questions beg the ultimate question, is the potential fundraising venue worth the risk?**

Do Not Forget Risk Management!

Before allowing community groups to consume alcohol on school facilities or premises, a school district should consider their legal exposure. Any activity involving alcohol increases liability concerns. Consequently, when considering allowing user groups to consume alcohol on a school premises or in an educational institution, you should consult with legal counsel and your liability insurance carrier, CRSIG. You should determine whether your facilities use agreements are consistent with the new statute. You may want to consider additional event insurance, or require local law enforcement involvement. Finally, you may want to consult with local authorities or the Department of Alcoholic Beverage Control to determine their understanding of the new exception. A.B. 2073 is clearly a well-intentioned effort to allow educational institutions to use facilities for fundraising, but it may create more work and problems than it solves.

NOTE: Information contained in this document was provided by:

- California Legislative Information <http://leginfo.legislature.ca.gov>
- Haight Brown & Bonesteel Publications & Insights – www.hbblaw.com
- School & College Legal Services of California JPA – www.sclsca.org

Proposed Policy No. _____

The District may allow the possession, sale or consumption of alcoholic beverages in connection with a special event on District property if the event organizer complies with the following conditions.

For each such event, the District shall designate a single individual who shall be responsible for compliance with this policy ("Designee").

A) Governing Board Approval

- 1) The "special event" must be approved by the governing board of the District.

"Special event" is defined as follows: a festival, show, private party, concert, theatrical production, or other event held on the premises of the District and for which the principal attendees are members of the general public or invited guests and not students of the _____ District.

B) Required Permits Shall Be Obtained

- 1) A temporary ABC license shall be obtained for the event as required by law.
- 2) Some counties or cities require a separate permit or approval for special events when alcohol will be served. The Designee shall contact the local agency where the event is to be held to determine if such a permit is required for the event and, if so, such a permit shall be obtained.

C) District Rules for Special Events When Alcohol is Served

- 1) The Designee shall provide for the proper supervision of the event and shall ensure that the terms of this policy and any issued permit are followed.
- 2) No one under the age of 21 shall be present at the event.
- 3) All servers of alcohol at the event shall be informed of the terms of any permit and this policy. All such servers shall be at least 21 years of age.
- 4) No alcohol shall be furnished to any individual under the age of 21. The server shall request bona fide photo identification from a guest seeking alcohol whenever there is any question as to whether the individual seeking alcohol is not age 21 or older.
- 5) No alcohol shall be furnished to an obviously intoxicated person or to a habitual or common drunkard.
- 6) The service of alcohol shall be limited to one drink per person at any one time.
- 7) Drinks shall be served in containers no larger than 12 ounces.

- 8) No alcohol shall be consumed in a parking lot, sidewalk or street.
- 9) Non-alcoholic beverages shall be available for consumption at the event. Where practicable, free water shall be provided for consumption.
- 10) Where practicable, food shall be available for consumption at the event.
- 11) No attendee shall be allowed to bring his/her own alcoholic beverages to the event.
- 12) Servers of alcohol shall not also consume alcohol at the event.
- 13) The service of alcohol shall cease at least one hour prior to the end of the event.