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DEPARTMENT OF
POLICE

ARTURO VENEGAS, JR.
CHIEF OF POLICE

CITY OF SACRAMENTO
CALIFORNIA

May 5, 1994

HALL OF JUSTICE
815 SIXTH STREET
SACRAMENTO, CA
95814-2495

PH 916-264-5121

Law and Legislation Committee
City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Assembly Bill 3805 - Use of Decoys

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION: Oppose the legislation

CONTACT PERSON: Claudia Evans, Administrative Services Officer, 264-7346

FOR COMMITTEE MEETING OF: May 17, 1994

SUMMARY

Assembly Bill 3805 adds two sections to the Business and Professions Code which deal with the use of decoys by law enforcement officers to detect persons who sell alcoholic beverages to persons under the age of 21 years. The bill would allow the use of minors as decoys; however, it sets into law guidelines for the use of minor decoys, including specific procedures that must be followed during a decoy operation. The bill also includes several presumptive defenses for licensees who violate the law by selling alcohol to a minor decoy. We believe that some of the guidelines are subjective, while others would hinder, if not preclude entirely, the efficient operation of a minor decoy program. For these reasons, it is recommended that the committee oppose A.B. 3805.

BACKGROUND INFORMATION

Alcohol is the drug of choice for many of today's youth. You cannot pick up a newspaper or watch a news broadcast without learning about a violent crime or a fatal accident involving a minor who was under the influence of alcohol. Businesses that violate the law and sell alcohol to persons under the age of 21 contribute to these tragedies and adversely impact the quality of life in our communities.

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Prior to 1992, law enforcement officers used minor decoys as a valuable tool for dealing with businesses that violate the law by selling alcohol to minors. The purpose of the minor decoy program was to attack problems associated with the unlawful purchase and consumption of alcoholic beverages by our youth. In 1992, a court ruled that law enforcement could no longer use minors as decoys. Recently, the California Supreme Court unanimously upheld the use of minor decoys by law enforcement. In their decision, the Supreme Court held that the use of minor decoys was not entrapment and did not violate due process requirements.

A.B. 3805 allows the use of minor decoys if reasonable cause exists to believe the licensee sold alcohol to a person under the age of 21. While this provision would help insure the continued use of minor decoys, the bill goes much further in requiring law enforcement to follow specific guidelines when using decoys. These specific guidelines include using decoys who are 18 years of age or younger, keeping decoys under the constant surveillance of a peace officer, and returning a decoy immediately to a premise after a sale is complete to make an immediate confrontation with the seller.

While the police department does not have a quarrel with most of these guidelines, we do not feel that they should be a matter of law. The guidelines should be established by the Department of Alcoholic Beverage Control (A.B.C.). In this way, the guidelines would be flexible and allow for changes as needed without going through the legislative process.

A.B. 3805 also establishes requirements for decoy operations that must be met which include:

- Preparing and executing an affidavit stating the facts that support the reasonable cause to believe the targeted establishment is involved in selling alcohol to persons under the age of 21.
- Requiring decoys to display the appearance, mannerisms and dress of a person under the age of 18. Males cannot have facial hair and females cannot wear makeup or display jewelry.
- Requiring decoys to identify themselves as such if the licensee asks for or begins to examine their identification.
- Requiring law enforcement to identify the purchasers as a decoy even in those cases where an attempted transaction is not completed.
- Precludes law enforcement from conducting a decoy operation unless the targeted establishment has been notified within the last six months of the possibility of further decoy operations.

A.B. 3805 also provides that failure to comply with any of the guidelines or procedures would be a defense in any prosecution or administrative proceedings.

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The requirements and guidelines set forth in A.B. 3805 will hamper any decoy operation and will nullify law enforcement's use of minor decoys. The requirement that the minor display the appearance, mannerisms and dress of a person 18 years of age or younger is highly subjective. In reality, there is little difference in the appearance and mannerisms of a 17 years old and a 21 years old. This requirement will result in cases being dismissed based on one individual's perception of the minor's appearance.

The police department plans to notify all current licensees in the City that we intend to resume decoy operations. However, to be required to notify liquor licensees of the possibility of future decoy operations every six months will be expensive. Liquor licensees are in the business of selling alcohol and should be responsible for knowing and insuring that their employees are thoroughly familiar with the laws regarding sales of alcohol to individuals under the age of 21.

FINANCIAL CONSIDERATIONS

Opposition of A.B. 3805 will have no financial implications for the City. Should the bill pass in its present form, there would be a cost in notifying licensees on a biannual basis of the possibility of future decoy operations. At this time, it is unknown what this cost would be.

POLICY CONSIDERATIONS

Opposition of A.B. 3805 is consistent with the City's policy of holding liquor licensees, who are not "good neighbor" accountable for the neighborhood problems fostered by their businesses such as loitering, urinating in public, public drunkenness, etc.

MBE/WBE: Not Applicable

Respectfully submitted,


ARTURO VENEGAS, JR.
CHIEF OF POLICE

RECOMMENDATION APPROVED:


DAVID MARTINEZ
DEPUTY CITY MANAGER

AV:cre
Ref: 5-26

AMENDED IN ASSEMBLY APRIL 12, 1994

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 3805

Introduced by Assembly Member ~~Brulte~~ Richter
(Principal coauthor: Assembly Member Tucker)

February 25, 1994

An act to amend and renumber Section 23800 of, and to add ~~Section 23800~~ Sections 23800, 25658.6, and 25658.7 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 3805, as amended, ~~Brulte~~ Richter. Alcoholic beverages: conditional licenses.

Existing law authorizes the Department of Alcoholic Beverage Control to place reasonable conditions on a retail licensee or upon any licensee in the exercise of retail privileges, in specified situations, and provides for suspension and revocation of a license for a violation of one of those conditions.

This bill would specify that the provisions governing conditional licenses shall be known as the California Neighborhood Improvement Act.

Existing law prohibits the sale of alcoholic beverages to, or purchase of alcoholic beverages by, persons under the age of 21 years.

This bill would provide that if there is reasonable cause to believe a licensee has sold an alcoholic beverage to a person under the age of 21 years, the statutory provisions do not prohibit the use of persons under the age of 21 years by peace officers as decoys to catch persons who sell alcoholic beverages to persons under the age of 21 years, and would provide that a person under the age of 21 years who purchases

or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase alcoholic beverages. It would require law enforcement agencies that use decoys to abide by specified guidelines. The bill would specify that certain requirements shall be met in order for the department to use decoys in those circumstances, including a requirement that prior to using a decoy the department or peace officer proposing the use shall prepare and execute an affidavit under penalty of perjury stating facts supporting the reasonable cause. In so doing the bill would expand the definition of an existing crime and impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 23800 is added to the Business
2 and Professions Code, to read:

3 23800. This act shall be known and may be cited as the
4 California Neighborhood Improvement Act.

5 SEC. 2. Section 23800 of the Business and Professions
6 Code is amended and renumbered to read:

7 23800.5. Upon request of the licensee or applicant for
8 a license the department may place reasonable
9 conditions upon retail licensees or upon any licensee in
10 the exercise of retail privileges in the following situations:

11 (a) If grounds exist for the denial of an application for
12 a license or where a protest against the issuance of a
13 license is filed and if the department finds that those
14 grounds may be removed by the imposition of those
15 conditions.

16 (b) When a protest is made by the department

1 which would justify a suspension or revocation of a
2 license, and where the imposition of a condition is
3 reasonably related to those findings. In the case of a
4 suspension, the conditions may be in lieu of or in addition
5 to the suspension.

6 (c) Where the department issues an order suspending
7 or revoking only a portion of the privileges to be
8 exercised under the license.

9 *SEC. 3. Section 25658.6 is added to the Business and*
10 *Professions Code, to read:*

11 *25658.6. (a) If reasonable cause exists to believe that*
12 *a licensee has sold an alcoholic beverage to a person*
13 *under the age of 21 years, nothing in this chapter shall*
14 *prohibit the use of persons under the age of 21 years by*
15 *peace officers as decoys to catch persons who sell*
16 *alcoholic beverages to persons under the age of 21 years,*
17 *and a person under the age of 21 years who purchases or*
18 *attempts to purchase any alcoholic beverage while under*
19 *the direction of a peace officer is immune from*
20 *prosecution for that purchase or attempt to purchase*
21 *alcoholic beverages.*

22 *(b) Any law enforcement agency that uses persons*
23 *under the age of 21 years as decoys to catch persons who*
24 *sell alcoholic beverages to persons under the age of 21*
25 *years, shall abide by the following guidelines:*

26 *(1) The decoy shall be 18 years of age or younger.*

27 *(2) A photograph of the decoy shall be taken and*
28 *retained by the law enforcement agency.*

29 *(3) If the decoy is questioned about age, the decoy*
30 *shall state his or her actual age or present true and correct*
31 *identification.*

32 *(4) The decoy shall be under the constant surveillance*
33 *of a regularly employed peace officer.*

34 *(5) After the sale is complete, the decoy shall be*
35 *stopped by the peace officer or peace officers after*
36 *leaving the premises and escorted back into the premises*
37 *by the officer to make an immediate confrontation with*
38 *the seller in order to elicit any statements.*

39 *SEC. 4. Section 25658.7 is added to the Business and*
40 *Professions Code, to read:*

1 25658.7. A person under the age of 21 years may be
2 used by the department or by a peace officer as a decoy
3 to apprehend persons who sell alcoholic beverages to
4 persons under the age of 21 years provided that the
5 following requirements are met:

6 (a) Prior to using a decoy to attempt to purchase an
7 alcoholic beverage in a specific establishment, the
8 department or the peace officer proposing the use shall
9 prepare and execute an affidavit, under penalty of
10 perjury, stating the facts supporting the department's or
11 the officer's reasonable cause to believe that the targeted
12 establishment has sold, or is involved in selling, alcoholic
13 beverages to persons under the age of 21 years. Failure of
14 the peace officer or the department to prepare and
15 execute the affidavit, or lack of good faith belief in the
16 truth of the statements contained in the affidavit by the
17 person executing it, shall be a defense to any prosecution
18 or accusation arising out of the use of a decoy against the
19 specific establishment that was the subject of the
20 affidavit.

21 (b) All persons under the age of 21 years used as
22 decoys by the department or by a peace officer shall
23 display the appearance, mannerisms, and dress of a
24 person 18 years of age or younger. Males may not have
25 beards or mustaches and females may not wear makeup
26 or display jewelry. It shall be a defense to any prosecution
27 or accusation arising out of the use of a specific decoy that
28 the decoy's appearance, mannerisms, and dress were not
29 those of a person 18 years of age or younger under the
30 actual circumstances presented to the seller of alcoholic
31 beverages at the time of the offense as determined by the
32 trier of fact in any prosecution or accusation proceeding.

33 (c) All decoy programs initiated by the department or
34 by a peace officer shall observe the following procedures:

35 (1) Each decoy shall be photographed immediately
36 prior to each occasion that the decoy is used.

37 (2) No attempt to purchase alcoholic beverages shall
38 be made from a seller of alcoholic beverages who has
39 more than three persons in line at the time that the decoy
40 enters the line to attempt to purchase an alcoholic

1 beverage.

2 (3) All decoys shall carry proof of age and shall show
3 the same to the seller of alcoholic beverages if asked.

4 (4) Following the completion of the sales transaction,
5 or if there is no completed transaction, the attempted
6 transaction, the police officer or agent of the department
7 accompanying the decoy shall inform the seller that the
8 purchaser is a decoy and shall display the decoy to the
9 person in charge of the establishment.

10 (5) If the licensee asks for or begins to examine the
11 identification of the decoy, the decoy shall be required to
12 immediately identify himself or herself as a decoy.

13 (6) No decoy operation shall take place on any
14 establishment that, within the last six months, has not
15 been notified, in writing, by the department of possible
16 future decoy operations. X

17 Failure to observe these procedures by the department
18 or by a peace officer shall be a defense in any prosecution
19 or accusation proceeding. X

(20 SEC. 5. No reimbursement is required by this act
21 pursuant to Section 6 of Article XIII B of the California
22 Constitution because the only costs which may be
23 incurred by a local agency or school district will be
24 incurred because this act creates a new crime or
(25 infraction, changes the definition of a crime or infraction,
26 changes the penalty for a crime or infraction, or
27 eliminates a crime or infraction. Notwithstanding Section
28 17580 of the Government Code, unless otherwise
29 specified in this act, the provisions of this act shall become
30 operative on the same date that the act takes effect
31 pursuant to the California Constitution.