

**RESOLUTION 09-01-06**

**DIGEST**

Alcohol Beverages: Possession or Consumption in Public Place

Amends Business and Professions Code section 25620 to make possession and consumption of alcoholic beverages in public places an infraction.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar associations recommend that legislation be sponsored to amend Business and Professions Code section 25620 to read as follows:

- 1    § 25620
- 2           (a) Any person possessing or consuming any alcoholic beverages contained in any
- 3    can, bottle, or other receptacle containing any alcoholic beverage that has been opened, or a
- 4    seal broken, or the contents of which have been partially removed, in any city, county, or
- 5    city and county owned park or other city, county, or city and county owned public place, or
- 6    any recreation and park district, or any regional park or open-space district shall be guilty of
- 7    an infraction if the city, county, or city and county has enacted an ordinance that prohibits
- 8    the possession of those containers in those areas or the consumption of alcoholic beverages
- 9    in those areas. To qualify as an alcoholic beverage under this section the beverage must
- 10 have one-half of one percent alcohol by volume or greater.
- 11           (b) This section does not apply where the possession is within premises located in a
- 12    park or other public place for which a license has been issued pursuant to this division.
- 13           (c) This section does not apply when an individual is in possession of an alcoholic
- 14    beverage container for the purpose of recycling or other related activity.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Ventura County

**STATEMENT OF REASONS**

Existing Law: Standing in public with an open container of alcohol has long been classified an infraction only. However, some cities have taken it upon themselves to draw a distinction between merely possessing an open container and drinking from the open container. In Ventura, for example, the police wait and “stake out” a subject until the subject holding the can of beer takes a sip, and then arrests them for consumption, costing the person (in the case of the City of Ventura, the person targeted is almost always homeless) a night or two in jail. Existing law also includes so-called “non-alcoholic” beers, most of which contain less than one-half of one percent alcohol by volume.

This Resolution: Makes both possession and consumption of alcohol infractions.

The Problem: The fact that the word “consumption” is omitted from this penal portion of this statute has led to an application of this law that is subject to widespread abuse, especially toward the homeless or transient population, and indeed, is abused in such a way by the City of Ventura. In accordance with CDCBA rules, VCBA timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

#### IMPACT STATEMENT

This resolution would not affect any other statute, rule, or law.

AUTHOR AND/OR PERMANENT CONTACT: Jason S. Leiderman, Deputy Public Defender, Law Offices of the Public Defender, 800 South Victoria Avenue, Suite 207, Ventura, CA 93009, telephone (805) 654-2201, facsimile (805) 648-9220, e-mail [jay.leiderman@ventura.org](mailto:jay.leiderman@ventura.org).

RESPONSIBLE FLOOR DELEGATE: Jay Leiderman