

106TH CONGRESS  
1ST SESSION

# H. R. 2031

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IN THE SENATE OF THE UNITED STATES

AUGUST 4, 1999

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To provide for injunctive relief in Federal district court to enforce State laws relating to the interstate transportation of intoxicating liquor.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Twenty-First Amend-  
3 ment Enforcement Act”.

4 **SEC. 2. SHIPMENT OF INTOXICATING LIQUOR INTO STATE**  
5 **IN VIOLATION OF STATE LAW.**

6 The Act entitled “An Act divesting intoxicating liq-  
7 uors of their interstate character in certain cases”, ap-  
8 proved March 1, 1913 (commonly known as the “Webb-  
9 Kenyon Act”) (27 U.S.C. 122) is amended by adding at  
10 the end the following:

11 **“SEC. 2. INJUNCTIVE RELIEF IN FEDERAL DISTRICT**  
12 **COURT.**

13 “(a) DEFINITIONS.—In this section—

14 “(1) the term ‘attorney general’ means the at-  
15 torney general or other chief law enforcement officer  
16 of a State, or the designee thereof;

17 “(2) the term ‘intoxicating liquor’ means any  
18 spirituous, vinous, malted, fermented, or other in-  
19 toxicating liquor of any kind;

20 “(3) the term ‘person’ means any individual  
21 and any partnership, corporation, company, firm, so-  
22 ciety, association, joint stock company, trust, or  
23 other entity capable of holding a legal or beneficial  
24 interest in property, but does not include a State or  
25 agency thereof; and

1           “(4) the term ‘State’ means any State of the  
2           United States, the District of Columbia, the Com-  
3           monwealth of Puerto Rico, or any territory or pos-  
4           session of the United States.

5           “(b) ACTION BY STATE ATTORNEY GENERAL.—If  
6           the attorney general has reasonable cause to believe that  
7           a person is engaged in, or has engaged in, any act that  
8           would constitute a violation of a State law regulating the  
9           importation or transportation of any intoxicating liquor,  
10          the attorney general may bring a civil action in accordance  
11          with this section for injunctive relief (including a prelimi-  
12          nary or permanent injunction or other order) against the  
13          person, as the attorney general determines to be necessary  
14          to—

15                 “(1) restrain the person from engaging, or con-  
16                 tinuing to engage, in the violation; and

17                 “(2) enforce compliance with the State law.

18          “(c) FEDERAL JURISDICTION.—

19                 “(1) IN GENERAL.—The district courts of the  
20                 United States shall have jurisdiction over any action  
21                 brought under this section by an attorney general  
22                 against any person, except one licensed or otherwise  
23                 authorized to produce, sell, or store intoxicating liq-  
24                 uor in such State.

1           “(2) VENUE.—An action under this section  
2           may be brought only in accordance with section  
3           1391 of title 28, United States Code, or in the dis-  
4           trict in which the recipient of the intoxicating liquor  
5           resides or is found.

6           “(d) REQUIREMENTS FOR INJUNCTIONS AND OR-  
7           DERS.—

8           “(1) IN GENERAL.—In any action brought  
9           under this section, upon a proper showing by the at-  
10          torney general of the State, the court may issue a  
11          preliminary or permanent injunction or other order  
12          to restrain a violation of this section. A proper show-  
13          ing under this paragraph shall require clear and con-  
14          vincing evidence that a violation of State law as de-  
15          scribed in subsection (b) has taken place. In addi-  
16          tion, no temporary restraining order or preliminary  
17          injunction may be granted except upon—

18                  “(A) evidence demonstrating the prob-  
19                  ability of irreparable injury if injunctive relief is  
20                  not granted; and

21                  “(B) evidence supporting the probability of  
22                  success on the merits.

23           “(2) NOTICE.—No preliminary injunction or  
24           permanent injunction or other order may be issued

1 under paragraph (1) without notice to the adverse  
2 party and an opportunity for a hearing.

3 “(3) FORM AND SCOPE OF ORDER.—Any pre-  
4 liminary or permanent injunction or other order en-  
5 tered in an action brought under this section shall—

6 “(A) set forth the reasons for the issuance  
7 of the order;

8 “(B) be specific in its terms;

9 “(C) describe in reasonable detail, and not  
10 by reference to the complaint or other docu-  
11 ment, the act or acts sought to be restrained;  
12 and

13 “(D) be binding upon—

14 “(i) the parties to the action and the  
15 officers, agents, employees, and attorneys  
16 of those parties; and

17 “(ii) persons in active concert or par-  
18 ticipation with the parties to the action  
19 who receive actual notice of the order by  
20 personal service or otherwise.

21 “(e) ADDITIONAL REMEDIES.—

22 “(1) IN GENERAL.—A remedy under this sec-  
23 tion is in addition to any other remedies provided by  
24 law.

1           “(2) STATE COURT PROCEEDINGS.—Nothing in  
2           this section may be construed to prohibit an author-  
3           ized State official from proceeding in State court on  
4           the basis of an alleged violation of any State law.

5   **“SEC. 3. GENERAL PROVISIONS.**

6           “(a) EFFECT ON INTERNET TAX FREEDOM ACT.—  
7           Nothing in this Act may be construed to modify or super-  
8           sede the operation of the Internet Tax Freedom Act (47  
9           U.S.C. 151 note).

10          “(b) ENFORCEMENT OF TWENTY-FIRST AMEND-  
11          MENT.—It is the purpose of this Act to assist the States  
12          in the enforcement of section 2 of the twenty-first article  
13          of amendment to the Constitution of the United States,  
14          and not to impose an unconstitutional burden on inter-  
15          state commerce in violation of article I, section 8, of the  
16          Constitution of the United States. No State may enforce  
17          under this Act a law regulating the importation or trans-  
18          portation of any intoxicating liquor that unconstitutionally  
19          discriminates against interstate commerce by out-of-State  
20          sellers by favoring local industries, erecting barriers to  
21          competition, and constituting mere economic protec-  
22          tionism.

23          “(c) SUPPORT FOR INTERNET AND OTHER INTER-  
24          STATE COMMERCE.—Nothing in this Act may be  
25          construed—

1 “(1) to permit State regulation or taxation of  
 2 Internet services or any other related interstate tele-  
 3 communications services; or

4 “(2) to authorize any injunction against—

5 “(A) an interactive computer service (as  
 6 defined in section 230(f) of the Communica-  
 7 tions Act of 1934 (47 U.S.C. 230(f)); or

8 “(B) electronic communication service (as  
 9 defined in section 2510(15) of title 18, United  
 10 States Code) used by another person to engage  
 11 in any activity that is subject to this Act.”.

12 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.**

13 (a) EFFECTIVE DATE.—Except as provided in sub-  
 14 section (b), this Act and the amendment made by this Act  
 15 shall take effect on the date of the enactment of this Act.

16 (b) APPLICATION OF AMENDMENT.—The amendment  
 17 made by this Act shall apply only with respect to the im-  
 18 portation or transportation of any intoxicating liquor oc-  
 19 ccurring after—

20 (1) October 31, 1999, or the expiration of the  
 21 90-day period beginning on the date of the enact-  
 22 ment of this Act, whichever is earlier, if this Act is  
 23 enacted before November 1, 1999; or

24 (2) the date of the enactment of this Act if this  
 25 Act is enacted after October 31, 1999.

1 **SEC. 4. STUDY.**

2       The Attorney General shall submit to the Congress  
3 the results of a study to determine the impact of this Act.  
4 The Attorney General shall carry out the study required  
5 by subsection (a) and shall submit the results of such  
6 study not later than 180 days after the date of the enact-  
7 ment of this Act.

Passed the House of Representatives August 3,  
1999.

Attest:

JEFF TRANDAHL,  
*Clerk.*

By MARTHA C. MORRISON,  
*Deputy Clerk.*