

Calendar No. 438

106TH CONGRESS
2D SESSION

S. 577

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

IN THE SENATE OF THE UNITED STATES

MARCH 10, 1999

Mr. HATCH (for himself, Mr. DEWINE, Mr. CONRAD, Mr. BYRD, Mr. ROBB, Mr. KOHL, Mr. HUTCHINSON, Mr. THURMOND, Mrs. HUTCHISON, Mr. CLELAND, Mr. DORGAN, Mr. BUNNING, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 2, 2000

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Twenty-First Amend-~~
5 ~~ment Enforcement Act~~”.

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

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

8 **“SEC. 2. INJUNCTIVE RELIEF IN FEDERAL DISTRICT**
 9 **COURT.**

10 “(a) DEFINITIONS.—In this section—

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

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

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

23 “(3) the term ‘State’ means any State of the
 24 United States, the District of Columbia, the Com-
 25 monwealth of Puerto Rico, or any territory or pos-
 26 session of the United States.

1 “(b) ACTION BY STATE ATTORNEY GENERAL.—If
 2 the attorney general of a State has reasonable cause to
 3 believe that a person is engaged in, is about to engage
 4 in, or has engaged in, any act that would constitute a vio-
 5 lation of a State law regulating the importation or trans-
 6 portation of any intoxicating liquor, the attorney general
 7 may bring a civil action in accordance with this section
 8 for injunctive relief (including a preliminary or permanent
 9 injunction or other order) against the person, as the attor-
 10 ney general determines to be necessary to—

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

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

14 “(c) FEDERAL JURISDICTION.—

15 “(1) IN GENERAL.—The district courts of the
 16 United States shall have jurisdiction over any action
 17 brought under this section.

18 “(2) VENUE.—An action under this section
 19 may be brought only in accordance with section
 20 1391 of title 28, United States Code.

21 “(d) REQUIREMENTS FOR INJUNCTIONS AND OR-
 22 DERS.—

23 “(1) IN GENERAL.—In any action brought
 24 under this section, upon a proper showing by the at-
 25 torney general of the State, the court shall issue a

1 preliminary or permanent injunction or other order
2 without requiring the posting of a bond.

3 “(2) NOTICE.—No preliminary or permanent
4 injunction or other order may be issued under para-
5 graph (1) without notice to the adverse party.

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

9 “(A) set forth the reasons for the issuance
10 of the order;

11 “(B) be specific in terms;

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

15 “(D) be binding only upon—

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

19 “(ii) persons in active cooperation or
20 participation with the parties to the action
21 who receive actual notice of the order by
22 personal service or otherwise.

23 “(e) CONSOLIDATION OF HEARING WITH TRIAL ON
24 MERITS.—

1 “(1) IN GENERAL.—Before or after the com-
2 mencement of a hearing on an application for a pre-
3 liminary or permanent injunction or other order
4 under this section, the court may order the trial of
5 the action on the merits to be advanced and consoli-
6 dated with the hearing on the application.

7 “(2) ADMISSIBILITY OF EVIDENCE.—If the
8 court does not order the consolidation of a trial on
9 the merits with a hearing on an application de-
10 scribed in paragraph (1), any evidence received upon
11 an application for a preliminary or permanent in-
12 junction or other order that would be admissible at
13 the trial on the merits shall become part of the
14 record of the trial and shall not be required to be
15 received again at the trial.

16 “(f) NO RIGHT TO TRIAL BY JURY.—An action
17 brought under this section shall be tried before the court.

18 “(g) ADDITIONAL REMEDIES.—

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

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

1 **SECTION 1. TWENTY-FIRST AMENDMENT ENFORCEMENT.**

2 (a) *SHIPMENT OF INTOXICATING LIQUOR IN VIOLA-*
 3 *TION OF STATE LAW.*—*The Act entitled “An Act divesting*
 4 *intoxicating liquors of their interstate character in certain*
 5 *cases”, approved March 1, 1913 (commonly known as the*
 6 *“Webb-Kenyon Act”)* (27 U.S.C. 122) *is amended by adding*
 7 *at the end the following:*

8 **“SEC. 2. INJUNCTIVE RELIEF IN FEDERAL DISTRICT COURT.**

9 “(a) *DEFINITIONS.*—*In this section—*

10 “(1) *the term ‘attorney general’ means the attor-*
 11 *ney general or other chief law enforcement officer of*
 12 *a State or the designee thereof;*

13 “(2) *the term ‘intoxicating liquor’ means any*
 14 *spirituous, vinous, malted, fermented, or other intoxi-*
 15 *cating liquor of any kind;*

16 “(3) *the term ‘person’ means any individual and*
 17 *any partnership, corporation, company, firm, society,*
 18 *association, joint stock company, trust, or other entity*
 19 *capable of holding a legal or beneficial interest in*
 20 *property, but does not include a State or agency*
 21 *thereof; and*

22 “(4) *the term ‘State’ means any State of the*
 23 *United States, the District of Columbia, the Common-*
 24 *wealth of Puerto Rico, or any territory or possession*
 25 *of the United States.*

1 “(b) *ACTION BY STATE ATTORNEY GENERAL.*—If the
 2 attorney general has reasonable cause to believe that a per-
 3 son is engaged in, or has engaged in, any act that would
 4 constitute a violation of a State law regulating the importa-
 5 tion or transportation of any intoxicating liquor, the attor-
 6 ney general may bring a civil action in accordance with
 7 this section for injunctive relief (including a preliminary
 8 or permanent injunction) against the person, as the attor-
 9 ney general determines to be necessary to—

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

12 “(2) *enforce compliance with the State law.*

13 “(c) *FEDERAL JURISDICTION.*—

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

20 “(2) *VENUE.*—An action under this section may
 21 be brought only in accordance with section 1391 of
 22 title 28, United States Code, or in the district in
 23 which the recipient of the intoxicating liquor resides
 24 or is found.

1 “(3) *FORM OF RELIEF.*—An action under this
2 section is limited to actions seeking injunctive relief
3 (a preliminary and/or permanent injunction).

4 “(4) *NO RIGHT TO JURY TRIAL.*—An action
5 under this section shall be tried before the court.

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

8 “(1) *IN GENERAL.*—In any action brought under
9 this section, upon a proper showing by the attorney
10 general of the State, the court may issue a prelimi-
11 nary or permanent injunction to restrain a violation
12 of this section. A proper showing under this para-
13 graph shall require that a State prove by a prepon-
14 derance of the evidence that a violation of State law
15 as described in subsection (b) has taken place or is
16 taking place.

17 “(2) *ADDITIONAL SHOWING FOR PRELIMINARY*
18 *INJUNCTION.*—No preliminary injunction may be
19 granted except upon—

20 “(A) evidence demonstrating the probability
21 of irreparable injury if injunctive relief is not
22 granted; and

23 “(B) evidence supporting the probability of
24 success on the merits.

1 “(3) *NOTICE.*—No preliminary or permanent in-
2 junction may be issued under paragraph (1) without
3 notice to the adverse party and an opportunity for a
4 hearing.

5 “(4) *FORM AND SCOPE OF ORDER.*—Any pre-
6 liminary or permanent injunction entered in an ac-
7 tion brought under this section shall—

8 “(A) set forth the reasons for the issuance of
9 the order;

10 “(B) be specific in terms;

11 “(C) describe in reasonable detail, and not
12 by reference to the complaint or other document,
13 the act or acts sought to be restrained; and

14 “(D) be binding upon—

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

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

22 “(5) *ADMISSIBILITY OF EVIDENCE.*—In a hear-
23 ing on an application for a permanent injunction,
24 any evidence previously received on an application
25 for a preliminary injunction in connection with the

1 *same civil action and that would otherwise be admis-*
2 *sible, may be made a part of the record of the hearing*
3 *on the permanent injunction.*

4 “(e) *RULES OF CONSTRUCTION.*—*This section shall be*
5 *construed only to extend the jurisdiction of Federal courts*
6 *in connection with State law that is a valid exercise of*
7 *power vested in the States—*

8 “(1) *under the twenty-first article of amendment*
9 *to the Constitution of the United States as such arti-*
10 *cle of amendment is interpreted by the Supreme*
11 *Court of the United States including interpretations*
12 *in conjunction with other provisions of the Constitu-*
13 *tion of the United States; and*

14 “(2) *under the first section herein as such section*
15 *is interpreted by the Supreme Court of the United*
16 *States; but shall not be construed to grant to States*
17 *any additional power.*

18 “(f) *ADDITIONAL REMEDIES.*—

19 “(1) *IN GENERAL.*—*A remedy under this section*
20 *is in addition to any other remedies provided by law.*

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

1 **“SEC. 3. GENERAL PROVISIONS.**

2 “(a) *EFFECT ON INTERNET TAX FREEDOM ACT.*—

3 *Nothing in this section may be construed to modify or su-*
4 *perse the operation of the Internet Tax Freedom Act (47*
5 *U.S.C. 151 note).*

6 “(b) *INAPPLICABILITY TO SERVICE PROVIDERS.*—

7 *Nothing in this section may be construed to—*

8 “(1) *authorize any injunction against an inter-*
9 *active computer service (as defined in section 230(f)*
10 *of the Communications Act of 1934 (47 U.S.C. 230(f))*
11 *used by another person to engage in any activity that*
12 *is subject to this Act;*

13 “(2) *authorize any injunction against an elec-*
14 *tronic communications service (as defined in section*
15 *2510(15) of title 18, United States Code) used by an-*
16 *other person to engage in any activity that is subject*
17 *to this Act; or*

18 “(3) *authorize an injunction prohibiting the ad-*
19 *vertising or marketing of any intoxicating liquor by*
20 *any person in any case in which such advertising or*
21 *marketing is lawful in the jurisdiction from which the*
22 *importation, transportation or other conduct to which*
23 *this Act applies originates.”.*

1 **SEC. 4. EFFECTIVE DATE.**

2 *This Act and the amendments made by this Act shall*
3 *become effective 90 days after the date of this enactment*
4 *of this Act.*

5 **SEC. 5. STUDY.**

6 *The Attorney General shall carry out the study to de-*
7 *termine the impact of this Act and shall submit the results*
8 *of such study not later than 180 days after the enactment*
9 *of this Act.*

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