The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 385, nays 35, not voting 14, as follows:

[Roll No. 362]

YEAS—385

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Capuano
Cardin
Carson
Castle
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Collins
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crowley
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Goodlatte
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson, E.B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Kasich
Kelly
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaHood
Lampson
Larson
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Oxley
Packard
Pallone
Pascrell
Pastor
Payne
Pease
Pelosi
Peterson (MN)
Phelps
Pickett
Pitts
Pomeroy
Porter
Portman
Price (NC)
Quinn
Ramstad
Rangel
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Rogan
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Scarborough
Schaffer
Schakowsky
Scott
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Strickland
Stupak
Sununu
Sweeney
Talent
Tancredo
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—35

Barr
Chabot
Chenoweth
Coburn
Combest
Condit
Doolittle
Duncan
Goode
Goodling
Hall (TX)
Hansen
Hefley
Herger
Jones (NC)
LaFalce
Largent
Lucas (OK)
McInnis
Paul
Petri
Pombo
Rahall
Roemer
Rogers
Rohrabacher
Sanford
Sensenbrenner
Stark
Stearns
Stenholm
Stump
Tanner
Taylor (MS)
Traficant

NOT VOTING—14

Bilbray
Buyer
Frank (MA)
Gilchrest
Johnson (CT)
Lantos
McDermott
Mollohan
Owens
Peterson (PA)
Pickering
Pryce (OH)
Radanovich
Thompson (MS)

□ 1128

Mr. BLAGOJEVICH changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2587. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2000, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2587) ''An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2000, and for other purposes,'' requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mrs. HUTCHISON, Mr. KYL, Mr. STEVENS, Mr. DURBIN, and Mr. INOUYE, to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 335. An act to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 880) ''An Act to amend the Clean Air Act to remove flammable fuels from the list of substances with respect to which reporting and other activities are required under the risk management plan program.''

□ 1130

TWENTY-FIRST AMENDMENT ENFORCEMENT ACT

Mr. GOSS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 272 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 272

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2031) to provide for injunctive relief in Federal district court to enforce State laws relating to the interstate transportation of intoxicating liquor. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed two hours. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment,

the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Florida (Mr. GOSS) is recognized for one hour.

Mr. GOSS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the distinguished gentleman from the Commonwealth of Massachusetts (Mr. MOAKLEY), my friend and colleague, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

Mr. Speaker, this is a fair rule. It provides for adequate and appropriate consideration of H.R. 2031, the Twenty-First Amendment Enforcement Act. It is a modified open rule that will accommodate Member interests in the amendment process while keeping us on track to meet our Friday deadline for August recess, a deadline that many Members, including the minority leader, have urged the Speaker, in writing, to keep.

While the lack of time may argue for a more closed structure, the Committee on Rules has erred on the side of openness and provided an open rule with a 2-hour limit on amendments. Of course, the rule also provides for a motion to recommit, with or without instructions.

Introduced by my colleague, the gentleman from Florida (Mr. SCARBOROUGH), H.R. 2031 was reported favorably by the Committee on the Judiciary on July 20 by voice vote. I understand that while hearings were not held in this Congress, the Subcommittee on Courts and Intellectual Property did convene hearings in the 105th Congress on nearly an identical bill.

I would like to commend the gentleman from Florida (Mr. SCARBOROUGH) for his continued efforts on behalf of American children, particularly when it comes to the tricky business of alcohol access. It is clearly a difficult question to resolve. However, it is encouraging to see the major players, the beer and wine distributors, as well as the vintners, the growers, fully engaged in the deliberative process.

Mr. Speaker, while the underlying legislation may engender some debate, this rule should receive unanimous support. It is certainly an open and fair rule.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my dear friend, the gentleman from Florida (Mr. GOSS), for yielding me the customary half-hour.

Mr. Speaker, as most people know, the Twenty-First Amendment to the Constitution ended prohibition. It also bestowed upon the States the authority to write their own liquor laws. The problem, Mr. Speaker, is there is no interstate enforcement mechanism. The way the law is written, States have virtually no way to enforce the liquor laws when they are violated by distributors in other States, especially now that there are so many ways to buy alcohol.

People can call a 1–800 number, they can order over the Internet, they can do all sorts of things to buy alcohol, and with the limited judicial options available to them now, State attorneys general are having a very hard time making sure that people abide by the law.

This bill will give the State attorneys general another option. If they believe someone is in violation of their State's liquor laws, this bill will enable them to file suit in Federal Court to get them to stop. It says you cannot ship alcohol into a State in violation of that State's liquor laws. It is that simple.

It is not a new Federal law, it is not a new State law, it is not a threat to anyone who sells alcohol legally. It is just a way for State attorneys general to get people who sell alcohol illegally to stop.

Mr. Speaker, in my home State of Massachusetts, Massachusetts is considered a limited personal importation State. We allow Massachusetts residents to buy alcohol from outside of Massachusetts but only for their own consumption and only in limited quantities.

The Commonwealth of Massachusetts determined how alcohol could cross its borders. If a liquor distributor outside of Massachusetts breaks that law, our attorney general should be able to get them to stop.

This bill will help stop the illegal interstate shipments of alcohol by giving State attorneys general the power to enforce State laws. In particular, Mr. Speaker, it takes us a step closer to stopping the sale of alcohol to minors over the Internet. But I still believe we can do more to stop underage drinking, especially underage drinking and driving.

This is a good bill, and I urge my colleagues to support it.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOSS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have no requests for time, and I do not anticipate any. Again, the purpose of this hour of debate is to discuss the rule, which is an open and fair rule. I would prefer that we not engage in the debate on the substance of the bill until we get to the time carefully set aside. I have not encouraged any speakers to come forward.

Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous questions on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. GOSS). Pursuant to House Resolution 272 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2031.

□ 1139

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2031) to provide for injunctive relief in Federal district court to enforce State laws relating to the interstate transportation of intoxicating liquor, with Mr. HANSEN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida (Mr. SCARBOROUGH) and the gentleman from Massachusetts (Mr. DELAHUNT) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to begin my testimony by reading Section 2 of the Twenty-First Amendment to the Constitution: ''The transportation or importation into any State, Territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.''

Mr. Chairman, the Twenty-First Amendment's import is clear. States have been given the right to stop interstate bootlegging. This right was reaffirmed by Congress in the Webb-Kenyon Act 65 years ago, by 6 decades of Supreme Court case law, and by subsequent Congressional acts. Yet, today, some modern-day bootleggers still seek refuge from the Twenty-First Amendment.

They seek to avoid State laws and constitutional amendments so they can sell their liquor more profitably than small businesses who dare to play by the rules. Bootleggers sell liquors to minors over the Internet, again avoiding State laws given preeminence by the Twenty-First Amendment.

Shamed by the countless media stories detailing how young children are buying liquor from these modern-day bootleggers over the Internet, they have shrugged off such media stories, calling them nothing more than stings by their economic enemies. But the only sting here comes from the harsh reality that too many young children can buy alcohol over the Internet.

Selling liquor to minors, or anyone, illegally, is simply wrong. It is bootlegging, and bootlegging is not protected by the commerce clause. Bootlegging is not cleansed by full page ads or media campaigns or by hiring public relations firms. You can dress it stylistically, but, in the end, just like Fitzgerald's Jay Gatsby, a bootlegger is a bootlegger.

Mr. Speaker, our bill allows States simply to protect themselves from illegal alcohol sales. It also allows States to protect children, like my 11- and 8-year-old boys, from interstate bootleggers over the Internet, and it allows States to enforce the laws that they passed because of direction given them by the Twenty-First Amendment.

With that in mind, this bill allows State attorneys general to seek injunctive relief in Federal court to stop illegal direct shipments of alcohol into their respective States. Nothing more, nothing less. This bill only affects those people who break liquor laws.

Now, you will have people coming up here today, saying some of these laws are not fair and saying some of these laws do not allow wineries to sell to this State or that State.

The bottom line is if you do not break the law, then this bill will not apply to you. If you play by the rules, you have nothing to worry about. Yet we are going to have red herrings piled high on this floor today, like we had in the Committee on the Judiciary. Opponents will distract. They will talk about fairness. They will talk about the commerce clause. They will talk about the Internet, trying to claim that this bill will destroy E-commerce in the 21st Century.

And get, the only E-commerce this will destroy in the 21st Century is illegal E-commerce. You can make the same arguments if you want to import pot from Amsterdam and say nobody can stop me from importing pot from Amsterdam, because doing so will compromise the future of E-commerce.

□ 1145

That is laughable. If someone imports wine or alcohol legally, our bill is inapplicable. If they do it illegally, then all this does is allow States Attorneys General to bring the person to court, to get injunctive relief to stop illegal shipments.

Some people do not like that. They say it will destroy some wineries in California. We are going to have a lot of people from California talking today on the floor, talking about how small wineries are going to be destroyed.

Let me tell the Members something, small wineries will only be destroyed if small wineries' existence depends on the illegal sale of alcohol to minors and adults.

What needs to be understood is that this narrowly focused bill assures States that they have a course of action against bootleggers. They need to enforce their own alcohol laws to control out-of-State companies, many of whom have shown no interest in preventing the sales of alcohol to minors.

It would make clear that States have the right once again, under Webb-Kenyon that was passed 60 years ago, under the 21st amendment that was passed 56 years ago, under existing Supreme Court case law that has been ruled on over the past six decades, it will simply allow them to enforce these laws in the Constitution, and to use Federal courts to enforce their laws against individuals, against modern-day bootleggers who are illegally shipping alcohol products into States from other jurisdictions.

These direct shipments bypass a key part of the States' control method, the face-to-face transaction, in order to sell their products at the highest possible profit margin.

This new black market in alcohol is dangerous. It is dangerous because, if left unchecked, it will ultimately frustrate the ability of States to regulate and control the shipment of alcoholic products, a responsibility mandated under the 21st amendment to the Constitution. It will also cut off their regulation, it will cut off any fees they collect, it will cut off tax revenue that States depend on to regulate alcohol inside their own border. That is the way we have set this up. That is the way we have set it up.

Mr. Speaker, it is very important today to ask those coming to the floor and opposing this bill, to ask the simple question: How does the bill affect people that play by the rules, that abide by the law, and that understand the Constitution and the constitutional amendments?

I think if we ask those direct questions, we will understand that this is something that needs to be passed to stop illegal interstate bootlegging, and to protect not only minors but to protect everybody from the scourge of illegal alcohol shipping across State lines.

Mr. Chairman, I reserve the balance of my time.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the bill. As my friend, the gentleman from Florida (Mr. SCARBOROUGH) indicated, this bill is very simple, Mr. Chairman. It does nothing more than to confer upon a State the right to go to Federal court to stop someone from outside the State from violating its liquor laws. It is nothing more, it is nothing less. It in no way changes substantive law at the State or Federal level.

The bill is necessary not only to prevent illegal shipments to minors, but to enable States to police licensing standards, track sales, and collect taxes on those sales.

Last year, illegal alcohol shipments cost States some $600 million in lost revenues. State taxes on alcohol are an important source of support for State programs, and protecting that funding stream is a legitimate State objective.

Some who are opposed to this legislation argue that it would impede the development of electronic commerce by taxing the Internet, or chilling direct sales of wine and spirits over the Internet. Well, whatever the merits of chilled wine are, Mr. Chairman, there is no merit whatsoever to these arguments.

As my friend, the gentleman from Florida, pointed out, lawful sales of alcohol over the Internet are thriving. Such online enterprises as wineshopper.com, sendwine.com, and virtualvineyard.com, generated hundreds of millions of dollars in lawful online sales last year alone.

Just last month, Geerlings & Wade of Massachusetts, which has endorsed this bill and is the Nation's largest direct marketer of wines, announced another new website called winebins.com, which will sell thousands of labels in the 27 States in which the company is operating, is licensed to operate. No doubt it will continue to add new labels.

Let us be clear, the bill would impose no new taxes on any of these electronic transactions, nor would it make them illegal. The State laws we seek to defend were put into place to regulate alcohol sales after the failure of Prohibition. In effect, they were the instrument by which an illegal enterprise, bootlegging, was turned into a lawful and regulated activity.

Some will argue that now these laws are an anachronism. Well, maybe they are correct. Maybe there is a better way for States to protect minors, track sales, ensure quality control, and to raise taxes. But that is an argument better addressed by State legislatures, which have the power to rewrite those laws. Until they do so, they have a right to expect that the laws on the books will be enforced.

That is really what the legislation is all about. If we permit States to pass laws but deny them a remedy when those laws are broken, we encourage disrespect for the law. It is really that simple. That is why attorneys general from across the country support this legislation.

I include for the RECORD, Mr. Chairman, letters of support from the chief law enforcement officers of Alabama, Alaska, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, Montana, Nebraska, Nevada, New

Hampshire, North Carolina, North Dakota, Oregon, Utah, Virginia, West Virginia, Wyoming, and my own Commonwealth of Massachusetts.

The letters referred to are as follows:

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
Richmond, VA, July 29, 1999.

Hon. LEE TERRY,
House of Representatives,
Washington, DC.

DEAR MR. TERRY: As the chief law enforcement officers of our respective states, we are pleased that on July 20 the Judiciary Committee voted overwhelmingly in favor H.R. 2031, the 21st Amendment Enforcement Act, and understand that the House is expected to vote on this important legislation soon.

We are very concerned by media reports that opponents of this common sense, law and order legislation are raising superfluous issues and misrepresenting the facts in an effort to defeat it, and would like to underscore the following points:

This is not anti-Internet legislation. There is no language or intent in the bill that could even be remotely construed to impede lawful Internet commerce in wine or any other consumer product. This bill does not even mention online sales. H.R. 2031 merely seeks to stop illegal alcohol distribution, regardless of how the order was placed—by computer, toll-free number, or by mail.

We strongly support online commerce for all legal products and want to encourage its growth to improve consumer choice and convenience. This goal is actually harmed, however, by those who distribute their products illegally. H.R. 2031 would not impose a burden on any manufacturer, wholesaler or retailer of alcohol beverages that is operating lawfully. In fact, it would still be possible to purchase alcohol over the Internet and have it shipped to a licensed distributor, where it could then be obtained.

This is a states' rights issue. The 21st Amendment recognizes the right of each state to structure its laws accordingly, and as law enforcement officials we have an obligation to stand in strong opposition to businesses that ignore them. We are not asking for any new federal laws regarding the transportation or distribution of alcohol; we are merely asking for the power to enforce our own state laws already on the books.

None of us has a vested interest in the alcohol beverage industry beyond making sure that our alcohol-related laws are obeyed and that we have adequate enforcement authority. H.R. 2031 will give us access to federal courts, thereby simplifying the legal process for prosecuting those who are distributing in our states illegally.

Sincerely,

MARK L. EARLEY,
Attorney General of Virginia.
BILL PRYOR,
Attorney General of Alabama
BRUCE M. BOTELHO,
Attorney General of Alaska.
MARK PRYOR,
Attorney General of Arkansas.
KEN SALAZAR,
Attorney General of Colorado.
THURBERT E. BAKER,
Attorney General of Georgia.
JIM RYAN,
Attorney General of Illinois.
JEFFREY A. MODISETT,
Attorney General of Indiana,
TOM MILLER,
Attorney General of Iowa.
CARLA J. STOVALL,
Attorney General of Kansas.
JENNIFER GRANHOLM,
Attorney General of Michigan.
JOSEPH P. MAZUREK,
Attorney General of Montana.
DON STENBERG,
Attorney General of Nebraska.
FRANKIE SUE DEL PAPA,
Attorney General of Nevada.
PHILIP T. MCLAUGHLIN,
Attorney General of New Hampshire.
MICHAEL F. EASLEY,
Attorney General of North Carolina.
HEIDI HEIKAMP,
Attorney General of North Dakota.
HARDY MYERS,
Attorney General of Oregon.
JAN GRAHAM,
Attorney General of Utah.
DARRELL V. MCGRAW, JR.,
Attorney General of West Virginia.
GAY WOODHOUSE,
Attorney General of Wyoming.

STATE OF MICHIGAN,
DEPARTMENT OF ATTORNEY GENERAL,
Detroit, MI, July 2, 1999.

Hon. JOHN CONYERS,
House of Representatives, Longworth House O.B., Washington, DC.

DEAR CONGRESSMAN CONYERS: I am writing to ask that you support and co-sponsor H.R. 2031, a bill introduced by Congressman Scarborough, which will give my office the ability to better enforce our laws against underage access to alcohol, excise and sales tax collection and other restrictions on alcoholic beverage distribution and sale.

H.R. 2031 will allow states to file for federal court injunctions against out-of-state wineries and retailers who illegally bypass our state system and ship alcohol directly to consumers. These clandestine shipments make it easier for young people to obtain alcohol and make a mockery of our other alcoholic beverage laws. Recent court decisions in Utah and Florida make it clear that all states need this federal court access to ensure their ability to enforce their alcoholic beverage laws.

H.R. 2031 is common sense legislation that makes no change in current state law and makes no restrictions on Internet or catalogue sales. H.R. 2031 simply gives my office the tools we need to take against out-so-state interests that bypass our existing regulations and controls with immunity. As you may know, H.R. 2031 may be brought to the House floor in the next few days. I would appreciate your support of this bill.

Very truly yours,

JENNIFER M. GRANHOLM,
Attorney General.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
Richmond, VA, June 14, 1999.

Hon. DENNIS HASTERT,
Office of the Speaker,
The Capitol, Washington, DC.

DEAR SPEAKER HASTERT: The Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act passed in the U.S. Senate recently, and the U.S. House of Representatives plans to vote on similar legislation next week. The legislation contains an amendment to help stop the illegal shipment of alcohol to minors and other violations of state alcohol laws.

The amendment was first introduced last March as S. 577 by Senator Orrin Hatch (R–UT) in response to dozens of television station investigative reports showing how teenagers can have alcohol sent directly to them by ordering it through the mail, over the Internet, through toll-free phone services, and by other means. The amendment was offered to the juvenile justice bill by Senator Robert C. Byrd (D–WV) and passed by an overwhelming 80–17 bipartisan vote.

The amendment gives state attorneys general access to federal courts to seek injunctive relief against those who are violating our state laws and shipping alcohol directly to minors. States have difficulty detecting these illegal shipments, which also evade our state tax systems. Because of jurisdictional issues, prosecuting violators is a very uncertain process in state courts. Access to federal courts is needed to handle these cases expeditiously and in a manner consistent with the alcohol laws and regulations in Virginia and other states.

This amendment would not restrict legitimate commerce in alcohol or any other product, or impose a burden on any manufacturer, wholesaler or retailer of alcohol beverages that is operating lawfully. As things now stand, those companies that are doing business in a manner that respects the law are at a competitive disadvantage to those who are engaged in illegal tactics.

This amendment is not an attempt to change or revise any alcohol law; rather, it would simply give attorneys general the ability to enforce their state laws, whatever those laws may be. If an individual or entity can flout our states' alcohol laws without consequence, it erodes the very integrity of our states' legislative authority.

In the fall of 1997, five Virginia college students died due to binge drinking related accidents. In response, my Office launched a statewide task force to address the subject of college binge drinking. After speaking with students and parents who have been affected by alcohol abuse, I have made a personal commitment to fighting binge drinking among our young people, and I am convinced that curbing the direct shipment of alcohol to minors is an important part of that effort.

Beyond college alcohol abuse, there are many other health and safety issues related to underage drinking. These concerns are shared by parents across the nation, in every state of the union. Attorneys general must have the enforcement tools needed to help combat this problem

I urge you to support this important amendment, H.R. 2031, introduced by Congressmen Scarborough (R–FL), Delahunt (D–MA), and Sensenbrenner (R–WI). It will give attorneys general the option to use the federal court system for injunctive relief to stop the direct shipment of alcohol to minors and other violations of state law regarding the importation and transportation of alcohol.

In addition to contacting my own state's Congressional delegation in support of this amendment, I have written other attorneys general encouraging them to do the same.

If anyone in your office has questions about this legislation, they can call Jonathan Amacker in my officer at 804–786–4596. Thank you for your consideration of this matter.

Sincerely,

MARK L. EARLEY,
Attorney General.

COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE ATTORNEY GENERAL,
Boston, MA, July 15, 1999.

Senator EDWARD M. KENNEDY,
Russell Senate Office Building,
Washington, DC.

DEAR ED KENNEDY: I am writing to enlist your support for H.R. 2031, a bill introduced by Congressmen Scarborough, Delahunt, Sensenbrenner and Cannon, to provide State Attorneys General with the ability to seek federal injunctive relief against out-of-state alcohol beverage distributors which ship alcohol directly to minors in contravention of state laws and regulations.

Specifically, H.R. 2031 allows states to file for federal injunction relief where the Attorney General has reasonable cause to believe that an out-of-state entity is engaging in, or about to engage in, an act that would constitute a violation of a state law regulating the importation or transportation of alcohol. Shipments by alcohol distributors to minors provide our youth with the opportunity to obtain alcohol in direct contravention of state laws. By giving State Attorneys General access to federal courts to seek injunctive relief against those who are violating our state laws, we can hopefully prevent such direct shipment of alcohol to minors.

This bill is important and will provide my office with the tools we need to take action against out-of-state businesses that bypass our existing laws and regulations, and in so doing, jeopardize the health and welfare of our children. On behalf of the citizens of the Commonwealth of Massachusetts, particularly our young people, I ask for your vote of support for this important legislation.

Sincerely,

TOM REILLY,
Attorney General.

STATE OF UTAH,
OFFICE OF THE ATTORNEY GENERAL,
Salt Lake City, UT, June 14, 1999.

Congressmember JAMES V. HANSEN,
House of Representatives, Rayburn Building, Washington, DC.

DEAR JIM HANSEN: I am writing to encourage you to support a bill that will be voted upon this week. H.R. 2031, introduced by Congressmen Scarborough, Delahunt, and Sensenbrenner, contains an amendment to help stop the illegal shipment of alcohol to minors and other violations of state alcohol law.

The amendment was first introduced last March by Senator Hatch, days after Utah secured a significant ruling in the Court of Appeals which asserted state jurisdiction of all liquor sales that cause unlawful results in Utah and enables the State to criminally prosecute businesses that violate Utah's liquor laws.

Utah must have the authority to enforce its state laws governing the sale and distribution of alcohol, and this amendment does just that. By giving state attorneys general access to federal courts to seek injunctive relief against those who are violating our state laws, we can prevent the direct shipment of alcohol to minors.

I hope you support this important piece of legislation; it will enhance Utah's ability to enforce its laws and will contribute greatly to the safety and welfare of Utah's children.

Sincerely,

JAN GRAHAM,
Attorney General.

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, PA, June 29, 1999.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: I am writing to urge your support for H.R. 2031, the proposed ''Twenty-First Amendment Enforcement Act.'' This legislation, introduced by Congressmen Scarborough (R–FL), Delahunt (D–MA) and Sonsenbrenner (R–WI), will help prevent illegal shipments of alcohol to minors, and the evasion of state tax laws.

The ''Twenty-First Amendment Enforcement Act'' would give state attorneys general access to federal courts to seek injunctive relief against individuals and businesses who violate state liquor laws by shipping alcohol directly to consumers. These transactions, usually completed over the Internet, allow purchases to be made without adequate proof of age, giving minors easy access to alcohol.

It is important to note that this measure will have no impact on legitimate sales of alcoholic beverages by manufacturers, wholesalers, or retailers who operate within the parameters set by law. House Resolution 2031 merely gives the states a better opportunity to enforce their current liquor and tax laws.

The problem of underage drinking has been exacerbated by the explosion of Internet liquor sales. Passage of H.R. 2031 would provide a valuable tool with which state attorneys general can work to prevent the direct shipment of alcohol to minors. Again, I urge you to support this important legislation.

Very truly yours,

MIKE FISHER,
Attorney General.

STATE OF NEBRASKA,
OFFICE OF THE ATTORNEY GENERAL,
Lincoln, NE, June 17, 1999.

Congressman BIL BARRETT,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN BARRETT: H.R 2031 would give states access to federal courts to enforce their laws against illegal, direct shipping of alcoholic beverages. I urge you to support this bill.

Illegal, direct shipping of alcoholic beverages into the State of Nebraska undermines Nebraska's Liquor Control Act, creates unfair competition for Nebraska liquor wholesalers and retailers who are complying with the Liquor Control Act and who are paying applicable taxes, and creates a risk of alcohol shipment of under-age persons.

A copy of H.R. 2031 is enclosed for your quick reference. As you can see it is a simple, common sense approach to a rapidly growing problem.

Yours truly,

DON STENBERG,
Attorney General.

STATE OF KANSAS,
OFFICE OF THE ATTORNEY GENERAL,
Topeka, KS, June 15, 1999.

Hon. JERRY MORAN,
House of Representatives, Longworth House O.B., Washington, DC.

DEAR CONGRESSMAN MORAN: I am writing to ask that your support and co-sponsor H.R. 2031, a bill introduced by Congressman Scarborough that will give my office the ability to better enforce our laws against underage access to alcohol, excise and sales tax collection and other restrictions on alcoholic beverage distribution and sale.

H.R. 2031 will allow states to file for federal court injunctions against out-of-state wineries and retailers who illegally bypass our state system and ship alcohol directly to consumers. These clandestine shipments make it easier for young people to obtain alcohol and make a mockery of our other alcoholic beverage laws. recent court decisions in Utah and Florida make it clear that all states need this federal court access to ensure their ability to enforce their alcoholic beverage laws.

H.R. 2031 is common sense legislation that makes no change in current state law and makes no restrictions on Internet or catalogue sales. H.R. 2031 simply gives my office the tools we need to take action against out-of-state interests that bypass our existing regulations and controls with impunity. As you may know, H.R. 2031 may be brought to the House floor in the next few days. I would appreciate your prompt co-sponsorship of this important legislation and your vote of support if it should be offered as an amendment to the Juvenile Justice bill.

Very truly yours,

CARLA J. STOVALL,
Attorney General.

Mr. DELAHUNT. Mr. Chairman, let us make no mistake, the online bootleggers who evade State alcohol control laws are hopefully not the future of electronic commerce. They are a throwback to a bygone era.

Let us embrace E commerce and do all we can to encourage it, but let us do it in a manner that respects the rule of law.

Mr. Chairman, I reserve the balance of my time.

Mr. SCARBOROUGH. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, this legislation will allow State Attorneys General to seek Federal court injunctions against any out-of-State companies that illegally direct ship alcohol to consumers. These illegal direct shippers are bypassing State excise and sales taxes, operating without required licenses, and most appallingly, illegally selling alcohol to underage persons.

It is important to note what H.R. 2031 does not do. It does not change existing State laws, and makes no restrictions on legal Internet or catalog sales. It does not open the door to Internet taxation. In fact, the word ''Internet'' does not appear anywhere in the text. It does not create a new Internet E commerce policy. It only deals with direct shipments of alcohol.

The legislation has bipartisan support. It was adopted overwhelmingly as an amendment to the other body's juvenile justice bill. Attorneys General from 23 States have signed a letter of support on this bill.

Mr. Chairman, I rise in support of States' rights, and urge my colleagues to allow States to enforce their own alcohol laws by voting in favor of this much needed legislation.

Mr. DELAHUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. DEUTSCH).

Mr. DEUTSCH. Mr. Chairman, I rise in support of H.R. 2031, the 21st Amendment Enforcement Act. The rational for this bill is simple and straightforward. State laws governing alcohol shipping and distribution must be followed and enforced. This bill ensures that States have the tools needed to fully enforce their laws, especially those governing the distribution of alcohol to minors.

This bill will ensure that States have legal recourse against alcohol distributors who deliberately seek to violate State laws. Any vintner, retailer, or

marketer who ships alcohol to adults in compliance with laws governing the shipments's destination should support this legislation. H.R. 2031 will simply allow States to take legal action in Federal courts against illegal business practices which often jeopardize the welfare of children.

Just as law enforcement officials need the proper tools to fight crime, and drug enforcement officials need the proper tools to fight the war on drugs, liquor enforcement officials need the tools to enforce State liquor laws. These laws keep alcohol out of the hands of minors, and ensure that consumers receive safe products from people who sell these products.

I urge my colleagues to support the 21st Amendment Enforcement Act.

I would just quickly add that I served 10 years in the Florida legislature, Mr. Chairman, and was involved in legislating areas of enforcement of the structure that Florida has for alcohol sales in Florida.

What is going on today, I do not think there will be any speaker here today who would question it, is absolutely in violation not just of Florida laws, but laws in the 50 States and the District of Columbia.

Essentially, people have created a way to evade systems that legislatures have in place for the sale of alcoholic beverage, which are different in the 50 States, but these systems literally violate those laws in the 50 States and the District of Columbia.

Again, it has been made clear that this is not against E commerce in any way, but in fact what the Internet has done is allow a new way of bootlegging. I, as one of many millions, tens of millions of Americans, have purchased products through the Internet. I encourage that.

But as I sat with my son, and my son, who is 8 years old, has the ability, he remembers credit card numbers and access numbers pretty well, and has the ability today or tomorrow to, in his own way, perhaps, purchase things through the Internet. Obviously, that is not what we want to see happen. On top of that, there are legal ways to purchase these products through the Internet today.

Again, I urge my colleagues to close a loophole. This is not an issue of trying to stop commerce on the Internet, it is an issue of enforcement of State liquor laws which have existed in the 50 States, with a great deal of authority for that enforcement.

Mr. SCARBOROUGH. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, I thank the gentleman from Florida for yielding time to me, and I thank the gentleman from Massachusetts and the gentleman from Florida for their leadership on this very important issue.

Mr. Chairman, as the previous speaker from Florida said, this is an issue about States' rights. It is not anti-commerce, it is not anti-free enterprise. What we must keep in mind is that there are legitimate areas where States have carved out the responsibility in support of their constituents to regulate certain types of activity, whether it be illicit drugs or sale of alcohol to minors.

We must constantly try and balance the rights of States, the powers of States, to exercise legitimate supervision in those particular areas which, if not properly supervised, would be harmful to the citizens of that State against what we all here believe in, and that is free enterprise and the capitalist system.

But we must ask ourselves, in that regard, at what price is free enterprise allowed to reign? We have witnessed in recent weeks tremendous damage to our national security, information on that damage coming forward, where secrets and very important military national security information was disclosed and made available to China, including information made available to China by companies seeking to exercise so-called free enterprise.

□ 1200

Free enterprise does not mean that corporations and companies in America can do whatever they want whenever they want with whom they want. They have to act responsibly, and they have to subject themselves to legitimate exercises of State authority.

The sale of alcohol to minors in particular States, and other laws within those States regarding the regulation of the sale of alcoholic beverages, is a long-standing authority recognized by the courts and by this Congress. As a matter of fact, in the Constitution itself, as the gentleman from Florida (Mr. SCARBOROUGH) indicated, is a legitimate area where there are going to be placed and have been placed some restrictions.

But that power is hollow if, in fact, companies are allowed, as they are doing now, to circumvent State law by Internet sales of alcohol in circumvention of and derogation of and flouting State laws.

This legislation that the gentleman from Florida has proposed, supported by the gentleman from Massachusetts, mandates nothing. It simply empowers those States who wish to exercise the power through their attorneys general, duly elected by the people of the several States, to enforce laws against the sale of alcoholic beverages in their State which are in violation of State laws. It does nothing more. It does nothing less.

We hope to keep the debate focused, Mr. Chairman, with regard to amendments that might be opposed on that fundamental power of States' rights.

One certainly will see, as amendments are proposed, we suspect that it is commercial interests that are behind the amendments. Again, while all of us are very, very strong proponents of free enterprise, we also are proponents of States rights and to protect American families.

In an age where we are seeing far too much youth violence, for example, Mr. Chairman, I think we need to be especially mindful that our families all across America need to be empowered and need to be able to rely on the legitimate authorities that they have elected in their States, such as the attorneys general, to protect their children in those legitimate areas where State exercise of authority can, indeed, do so in regulation of alcohol; and sales of alcoholic beverages is one such area.

We must enact this legislation. It is a very specific, very narrow, very limited response to a problem that has developed in recent years that is a very real problem. Again, to emphasize Mr. Chairman, while we are in favor of Internet sales, we are in favor of commerce generally between the States, this is a legitimate area long recognized by the Congress, by the courts, and by the legislatures of the several States for State regulation.

In order for that State regulation to be meaningful, the State attorneys general must have the power to enforce the interstate sale of alcoholic beverages in derogation of State laws. I urge support of this bill.

Mr. DELAHUNT. Mr. Chairman, I yield as much time as he may consume to the distinguished gentleman from California (Mr. THOMPSON).

Mr. THOMPSON of California. Mr. Speaker, it is unfortunate that this bill is on the floor today. This bill is no more than an attempt to advantage one industry group over another. It comes at a time when we should be working to find a solution to the problem, the problem of consumers not having access to the wines of their choice because distributors are unable to service the growth in small wineries.

In 1963, there were 375 wineries. Today, in 1999, there are 2,000 wineries. In 1963, we had 10,900 distributors. Today, we have 300 distributors. This is the problem. This is why small wineries and consumers who want to buy premium wine from small wineries are looking for other available places in order to purchase it.

There is an Amador Foothill grower in California that was interviewed by the press; and he said, ''A lot of large distributors look on wineries of our size as a nuisance. They cannot sell much of our wine. And the larger wineries are banking on them to sell 10 percent more each year, so they do not have time to sell small premium wines.''

That is the problem. This problem is not about kids buying wine in cyberspace. As a matter of fact, that argument does not even pass the giggle test. The fact of the matter is, teenage kids across this Nation are not going to be purchasing premium Cabernet wine from my district, from anywhere from $40 to $150 a bottle.

Everyone has been able to see through this clever cover. As a matter of fact, two of the original supporters of this idea, the Mothers Against

Drunk Driving and the Emergency Room Nurses have withdrawn their support. The Mothers Against Drunk Driving stated that, in fact, this is a battle between various elements within the alcohol beverage industry. They go on to say that they are dismayed that the industry would go this far or go to such lengths to misrepresent their views.

Even the National Council on State legislatures is opposed to this measure. They have been working on this issue for the past couple of years, and they see some progress being made. Last week, they voted 41 to 7 in opposition to this legislation. They, too, understand it is a turf issue and have asked this Congress not to interfere.

The Wall Street Journal just editorialized against this, citing it as ''an obstacle to interstate commerce of precisely the type the Founders intended to prohibit.'' The Journal goes on to say and to warn that ''Today wine; tomorrow any out-of-State competition that some local interest with campaign money did not want to deal with.''

I also want to point out that this bill deals with all liquor violations, not just the ones that were mentioned by the supporters of the bill.

Attorneys General across this Nation could take all and any liquor violation regarding importation and transportation to the Federal courts. This is true even in States that allow direct shipment of wine.

Oklahoma, for example, has a limited personal importation. However, they disallow any transaction on Memorial Day, Labor Day, or Election Day. So if one transports an alcoholic beverage in Oklahoma on the day of a special election to pass a school bond, one could find oneself in Federal court.

Wyoming has a law that prohibits the sale of private labeled wines. So if one sells or transports private labeled wines in Wyoming, it could be Federal court.

Now, the supporters will tell us that this is farfetched; that an Attorney General would not do that. I want to tell my colleagues that it is no more farfetched than the supporters' claims that kids are buying high-priced premium wine over the Internet.

Most troubling, Mr. Chairman, is the fact that one of the coauthors of this bill has informed me that small wineries and consumers are not going to be disenfranchised because, in the end, the distributors will go online and sell online themselves.

I cannot understand why direct sales can be harmful to one industry, the small wineries, but then be good in their eyes for the distributors who are trying to sell these wines.

Finally, I want to point out that this bill has had no public input. It was rushed to the floor. It was a markup in the Committee on the Judiciary. The public has not been able to speak. Small wineries have not been able to speak. Consumers have not been able to speak. That is particularly troubling, given the long list of amendments that we are looking at today on the bill.

One of the amendments, I understand, is going to provide immunity for Internet service providers. What does this mean, that Yahoo can go online and sell direct in States that prohibit the direct sale of alcoholic beverages? I think this is a huge loophole, and it is one that the supporters of this bill were not counting on.

There was also a great deal of discussion about the loss of tax revenue. I can tell my colleagues that, without an analysis of this bill, I do not know how one can ascertain what the impact, the economic impact of this bill would be one way or the other.

I also want to point out that there are a couple of local laws that could end up landing their constituents in Federal court. Indiana allows a person to bring one bottle of wine home per trip every time they come back to Indiana. If one brings back two bottles of wine, it could be Federal court.

Maryland allows one bottle at a time, but not more than two bottles per calendar month. What if someone visits the Virginia wine country three times over the course of the month and brings back three bottles of wine? They are subject to Federal court.

Right here in D.C., you can bring back four bottles of wine. If one visits Virginia wine country or my district in California, and one comes back with a six-pack of premium wine, the little six-pack containers that are so common for people to carry on the airplanes, one can be in violation of this district's laws, and one can be prosecuted in Federal court.

Mr. Chairman, this bill should be defeated, and this issue should be left up to the States to decide without the heavy hand of the Federal Government's interference.

Mr. SCARBOROUGH. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I would just like to ask if the gentleman from California (Mr. THOMPSON) would be open to a few questions about some statements he made.

The gentleman from California criticized selected State laws.

Mr. THOMPSON of California. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from California.

Mr. THOMPSON of California. Mr. Chairman, I have not criticized any State laws. I am just pointing out that this measure could put violation of something, of a law such as the Oklahoma measure that allows transportation of an alcoholic beverage product, into Federal court. I do not think that is what the gentleman's intention is.

I do not think it is the intention of the gentleman's supporters that, if the Internet service provider does direct sales, that they could sell wine in Florida, which makes it a felony to directly ship to Florida. It is completely at odds with the State law that you claim that the gentleman is trying to protect.

Mr. SCARBOROUGH. Mr. Chairman, reclaiming my time for a question, I need to ask the gentleman from California this question. Does the gentleman from California understand that all this provides is Federal injunctive relief for attorneys general towards businesses that continually ship in alcohol illegally; since it provides for injunctive relief, nobody is going to be thrown into Federal court and then thrown into prison? Does the gentleman understand that?

Mr. THOMPSON of California. Mr. Chairman, I understand that. I also understand that the Federal court is not the place to determine how much wine one can bring back if one decides to go to the vineyards of Virginia over the course of a weekend that one spends here in D.C.

Mr. SCARBOROUGH. Mr. Chairman, I think the gentleman said it is his position that minors are not purchasing alcohol over the Internet. Is that the gentleman's position?

Mr. THOMPSON of California. Mr. Chairman, I think it is a clever cover for what the gentleman from Florida is trying to do, and that is advantage one industry player. I believe that the gentleman was privy to the same tape that I saw in Mr. HATCH's committee hearing that showed a 14-year-old girl accessing the Internet, trying to buy an alcoholic beverage. But the thing that was not talked much about in that hearing was the fact that her older brother or father was standing right there next to the television camera operator and filming this using his credit card. It is a far stretch from leading us to believe that some youngster is going to plan weeks ahead to purchase some alcoholic beverage and, in the case that impacts my district, a bottle of Cabernet.

I do not think the teenagers of the gentleman from Florida (Mr. SCARBOROUGH) are going to buy Opus Cabernet over the Internet with their parents' credit card.

Mr. SCARBOROUGH. Mr. Chairman, reclaiming my time, if they did try to use my credit card, it would not go through for the type of wine that the gentleman sells in his district.

Mr. SCARBOROUGH. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, one might ask the opponents of this very measured legislation why they think the International Association of Chiefs of Police is endorsing it. The International Association of Chiefs of Police certainly has no problem with the legitimate sale of alcohol. They are not beholden to the wine industry, large or small. They are not beholden to the beer industry, large or microbrew. Yet, they are very strongly in support of this legislation.

The reason they are very strongly in support of this legislation is they

know, as I suspect the opponents do also but will not admit it, that there are in fact numerous documented instances of minors purchasing alcoholic beverages over the Internet. For anybody to claim otherwise, they are simply misleading this debate or cannot make that argument with a straight face.

There is a case, a documented case just recently reported in Alabama, of a 17-year-old boy able to buy alcoholic beverages over the Internet according to some plan where they will send it periodically, once a month.

There is also, documented through Americans for Responsible Alcohol Access, a documentary that shows teenagers in various States, including Mississippi, buying alcoholic beverages.

Also for the opponents of this very measured legislation, also to make the speechless argument that there has been no public input, that is absolutely wrong. There have been debates on this issue in the Congress. There have been hearings on this, two hearings. This passed overwhelmingly in the United States Senate. Every one of those Senators who voted in support of this, I would presume maybe the opponents of this measured bill know otherwise, but I would certainly presume that those Senators were speaking for their constituents, the citizens of the State.

□ 1215

So there are plenty of documented instances of minors using the internet in violation of State law to purchase or receive alcoholic beverages.

Mr. Chairman, this is a very measured response to a real problem. I urge support of the legislation.

Mr. DELAHUNT. Mr. Chairman, I yield 5 minutes to the gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Chairman, I rise in strong opposition to this legislation that would criminalize the efforts of the small wineries in my district in responding to their consumers.

This bill is a wolf in sheep's clothing. It is not about State's rights, it is not about combating the problem of underage drinking. Instead, this bill is about wholesalers and distributors that do not want small wineries to move into their turf.

Make no mistake, I firmly believe that we have a national obligation to take care of our children and protect them from threats to their health and safety. Nobody speaks more to that than I do. Too many young people are starting to drink at an early age leading to alcohol and other substance abuse problems. That is why I have fought so strongly in this Congress to support the passage of zero tolerance legislation for underage drinking and driving.

But this legislation does not address that pressing issue. In fact, Mothers Against Drunk Driving, MADD, will not even endorse this bill. That is because they recognize this bill for what it is: A power grab by wholesalers and distributors.

This power grab involves a 65-year-old regulatory scheme that grew out of prohibition and stands on three legs: Politics, policy, and profits. Through the three-tier system, manufacturers are required to sell their beer, wine, and liquor to licensed wholesalers who are the sole suppliers for stores, bars and restaurants, sports arenas, and other retailers. They have got it all tied up and they do not want to give any of that up.

But guess what, this distribution system does not work for consumers who want to access hard-to-find good wines from small wineries. The wineries in my district in Sonoma and Marin Counties, just north of the Golden Gate Bridge, produce some of the world's finest wines, and we will have to say Napa too, because that is where my colleague, the gentleman from California (Mr. THOMPSON) is from, but many of them cannot get their products to markets the traditional ways.

Wholesalers and distributors will not carry their products because the wineries are not big enough. These winemakers now are joining the point-and-click-world of Internet commerce to get their products directly to the consumers. So, do not inhibit their ability to sell their product.

At another time support efforts to ensure that children and teenagers do not buy alcoholic beverages, but today is not the day to address that. Vote against H.R. 2031.

Mr. SCARBOROUGH. Mr. Chairman, I yield myself 4 minutes.

The statement has been made that alcohol sales to minors over the internet is not a real problem. In fact, one individual stood up and said that I was clever in using this as a front. I thank him for calling me clever, but I am not clever enough to have about 30 news stations across the country running stories specifically on minors purchasing alcohol over the Internet.

WBRC–TV in Birmingham; WIAT–TV in Birmingham; KPMO in Phoenix, Arizona; KEYT–ABC in Santa Barbara; WUSA–CBS in Washington; WPEC in West Palm Beach; WPLG in Miami; WWSB in Sarasota, Florida; WICS in Springfield, Illinois, a three-part series; WEVV–TV in Evansville, Indiana, a two-part series; WBFF in Baltimore; stations also in Boston; Lansing, Michigan; Greenville, Mississippi; Syracuse, New York; Charlotte, North Carolina; Columbus, Ohio; Cleveland, Ohio; Oklahoma City; Philadelphia; Lancaster, Pennsylvania; Pittsburgh, Pennsylvania; Providence, Rhode Island; Spartanburg, South Carolina; Amarillo, Texas, a three-part series; San Antonio; Salt Lake City; Norfolk; Seattle; Green Bay; WISC, Wisconsin; WMTV, Wisconsin; CNN Morning News, Hard Copy; NWCN–TV cable news in Seattle; and ZDTV cable news have all done stories on illegal sales of alcohol to minors over the Internet.

While I thank the gentleman for saying I am clever and suggesting that I would be resourceful enough to set up such a media explosion on this happening from coast to coast, but regretfully I would have to disagree with the gentleman and say I am not quite that clever.

Also, regarding the question of no public input, I sat through the Committee on the Judiciary hearings and can report we heard all the input we could get for about 6 or 7 hours. There have been 2 other days and two other committee hearings over the past several years where this issue has been debated over and over and over again.

In the end, again, all it comes down to is the fact that there are some people that want to allow small businesses to sell wine illegally over the Internet. I want to be able to have my rich Republican supporters to be able to purchase the finest wine from Napa valley, or purchase the finest wine from Sausalito, a beautiful region I recently visited. I have nothing against that. It just has to be legal.

And it does not matter how small the winery is, it does not matter how fine the wine is, it does not matter how strong these businesses may support my colleagues in their districts, or how strong my wine lovers in my district may support me. If it is illegal, it is illegal. If it is bootlegging, it is bootlegging. The only thing this bill does is stop the illegal shipment of alcohol into States, and it does it by allowing the State's attorney general to file an injunction. Nothing more, nothing less.

Mr. Chairman, I reserve the balance of my time.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume to concur with my friend from Florida. I too want my middle class Democrats to have availability on the Internet to purchase the wines out in Sausalito, California.

Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. RANGEL).

(Mr. RANGEL asked and was given permission to revise and extend his remarks.)

Mr. RANGEL. Mr. Chairman, I would have to agree that the gentleman from Florida is clever, and I do hope we can use his ingenuity as relates to the interstate sale of guns. Because, clearly, we ought to have as much concern about these dangerous weapons as we do about our children consuming wine.

Now, in the old days, when I was a kid, kids did not wait 2, 3, 4 days in order to get wine. They used to get outside the liquor store and get someone to go there and buy wine for them. So if they are clever enough to use the Internet to do it, I do not really think that this law is going to catch too many of them.

It seems to me, coming from a State that has wineries, that we have a major problem here, and that is whether or not some of my Republican friends want to throw the baby out

with the bathwater. We want to be able to have as much competition in this great Republic of ours that we can. I do not think it can be challenged that we have some 1700 small wineries that are unable to penetrate the larger distributors that we have in this country. They have fine products, but they do not have the money and the know-how to get it into the stores.

Finally, technology has given them the opportunity to break through these barriers and to be able to sell their products, subject to State law. Now, we know that one of the things that Congress wants to do is to get government out of the lives of people, especially the Federal Government, and we do not have a lot of attorneys general pleading, knocking down our doors and saying, for God's sake come in here and provide oversight for us.

If we are going to start doing this with wine, there is no reason why we do not start controlling competition in books and recordings and in clothing, and taking away the very same technology that is pumping up our economy and allowing people to be able to get their wares to the marketplace.

Mr. SCARBOROUGH. Mr. Chairman, I yield myself 30 seconds just to respond.

There is a big difference between books and liquor. Amazon.com can still continue to sell books. There is nothing in the Constitution regarding the importance of books. There is nothing in the Constitution regarding sweaters from J. Crew. There is something in the Constitution regarding the twenty-First Amendment, which says it is going to be the province of the States to regulate alcohol sales. So there is a big difference.

Regarding guns, guns can also be shipped, they just have to be shipped legally.

Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. RADANOVICH). We violently disagree on this issue, but he is a good friend, nonetheless.

(Mr. RADANOVICH asked and was given permission to revise and extend his remarks.)

Mr. RADANOVICH. Mr. Chairman, I thank the gentleman for yielding me this time on this issue, even though I oppose this legislation.

I am not a lawyer, I am a small winery owner. I am one of more than 2,000 wineries in about 47 States, however, only 50 wines are available in a typical retail marketplace. More specifically, about 20 wineries produce 90 percent of all the wine produced. Despite this, sales of regional or limited availability of wine, of which there are perhaps over 10,000 labels, have grown. Unfortunately, at the same time the traditional distribution avenues have decreased from over 20,000 wholesalers to fewer than 400.

These wholesalers are not sufficient to handle the shipment and delivery of wines from numerous small producers. Direct mail and the Internet, on the other hand, have helped these small wineries stay afloat, while at the same time helping to satisfy a growing consumer demand for smaller, lesser-known wines produced in this country.

The reason H.R. 2031 is proposed is to stop these alternative avenues to market in favor of existing monopolistic wholesalers. The Twenty-First Amendment to the Constitution is not an absolute divestment of Federal power of the States. The U.S. Supreme Court has long established that the amendment has its limits and must be considered in the context of the constitutional provisions, including Congress' exclusive right to regulate interstate commerce.

Proponents of this legislation claim that it is necessary to curb the delivery of alcohol products to underage purchasers. I believe that there are few more important causes than to stem the tide of underage drinking in this country, however, I am convinced that direct shipment of wine, beer, and spirits does not contribute to the problem.

The two States with the highest consumption of wines, California and New York, have long permitted interstate shipments over the phone or by mail. Surely if these mechanisms were inherently open to abuse, the authorities in those States would have discovered that by now, but they have not.

I am sure we can all remember when we were kids, when we were teenagers in high school and we stole our dad's credit card to order a $200 case of premium wine over the phone to have parties with our friends 30 days down the line. And in the meantime, 38 percent of those kids who go into retail stores in the District of Columbia to purchase beer over the counter succeed. So my advice to those that are so concerned about underage purchasers is to focus their direction where the problem really is. The issue is not an issue under this piece of legislation.

The National Conference of State Legislatures recently passed a resolution that opposed legislation which allowed Federal interference in the purchase and delivery of wine across State borders. Forty-one States joined in the passing of the resolution, with only 7 States supporting this attempt to Federalize the laws. The Federal Government should not empower States to engage in this kind of activity. This is monopoly protection at its best. And even those wineries can ship into approximately 12 States now, they will, through the support of the attorneys general, limit that as well.

I am a California farmer. In 1982, I established a small vineyard and winery in the Sierra foothill community of Mariposa, my hometown. The Radanovich Winery, which produces Sauvignon blanc, Chardonnay, Merlot, Zinfandel and Cabernet Sauvignon, has grown to over 4,000 cases annually.

Like most wineries, mine is small. Of the more than 2,000 wineries in this country, only 50 are available in a typical retail marketplace. More specifically, about 20 wineries produce 90% of all the wine produced. Despite this, sales of regional or limited availability wine—of which there are perhaps over ten thousand labels—have grown. Unfortunately, traditional distribution avenues are insufficient for the shipment and delivery of wines from these numerous small producers. Direct mail, the Internet and other alternative forms of distribution have helped these small wineries stay afloat, while at the same time helping to satisfy the growing consumer demand for smaller, lesser known wines produced in this country.

Grape growing is a very important agricultural crop, the largest crop in California and the sixth largest crop in the nation. Over 60% of the grape crop is used in the production of wine. The resulting wine industry in total annually contributes over $45 billion to the American economy; provides 556,000 jobs, accounting for $12.8 billion in wages; and pays $3.3 billion in state and local tax revenues. In addition, wine is our third largest horticultural export. Wine is commercially produced in 47 states.

Consumers in every state should be able to obtain access to a wide variety of wines, especially the wines of small producers who lack the distribution channels of the major wine producers in this nation. To meet these consumer needs, I point to the 20 states which have chosen to enact limited interstate shipments directly from winery to consumer or retailer to consumer. Intrastate direct shipments are legal in 30 states. I also direct your attention to recently passed ''shipper permit'' legislation in New Hampshire and Louisiana and to the special order system developed and implemented by the Pennsylvania state liquor monopoly.

I am concerned that passage of the proposed legislation would have a chilling effect on efforts underway to craft creative state-by-state solutions such as these.

Legislation to allow states to bring to Federal court an action to enjoin shipment or transportation of liquor in violation of the laws of a particular state would have the unintended consequence of crippling small wineries in this country. The proposed legislation does much more than simply providing a remedy for a violation of the Webb-Kenyon statute that generally governs states authority over interstate shipments. I fear that it will authorize a state to erect discriminatory barriers to interstate commerce, which will be used to favor in-state commercial interests to the detriment of out-of-state wine producers. The Commerce Clause protects against state imposed barriers to free trade. That protection should apply to wineries as well as all other businesses.

The twenty-first amendment to the Constitution is not an absolute divestment of Federal power to the States. The U.S. Supreme Court has long established that the amendment has its limits and must be considered in the context of other constitutional provisions, including Congresses exclusive right to regulate interstate commerce.

Further, existing remedies are available for violations of liquor laws. In the case of wine (as with harder liquors) there is an underlying federal permit which is required to operate a winery. That permit is subject to oversight by the Bureau of Alcohol, Tobacco and Firearms, and requires conformance to applicable laws. There have been successful compliance actions through this mechanism. An additional mechanism is not necessary.

Professor Jesse H. Choper, a distinguished scholar in the field of constitutional law from the University of California has written expressing his concerns about the possible consequences of Federal legislation in this arena. Professor Choper concludes that the proposed legislation would violate the Commerce Clause protection against barriers to free trade among the states, by allowing states, rather than the Congress, to establish those barriers.

I am also concerned that the thrust of this legislation is to allow states to use the Federal courts to obtain direct jurisdiction over small businesses located in other states in a manner which invites abuse of the court system and a trampling of the rights of out-of-state citizens in order to satisfy the demands of politically powerful local interests. Allowing the federal courts to be used as enforcement machinery for state action seems to me a huge expansion of federalism and a very dangerous precedent.

Proponents of this legislation claim it is necessary to curb the delivery of alcohol product to underage purchasers. I believe that there are few more important causes than to stem the tide of underage drinking in this country. A Health and Human Services survey reflects that more than half of 18–20 year olds were drinking alcohol in the month prior to the survey, and an astonishing quarter of that age group have engaged in binge drinking during the same period.

However, I am convinced that direct shipment of wine, beer or spirits does not contribute to the problem. The two states with the highest consumption of wines—California and New York—have long permitted Intrastate shipments ordered by phone or mail. Surely, if such mechanisms were inherently open to abuse the authorities in those states would have discovered that by now. But they have not.

Manuel Espinoza, Chief Deputy Director of the California Alcoholic Beverage Control agency has written to Congressman THOMPSON and myself that as a result of remote sales of alcohol in California, a practice that has been legal for almost fifty years, the state has experienced no enforcement problems or impediments in its ability to enforce laws related to sales to minors. California has only received one complaint about the delivery of alcohol to underage recipients via interstate mail orders. That complaint originated from a privately organized ''sting'' and subsequent investigation determined that the actual delivery, though left at the door, was accepted by the minor's mother.

Another concern raised by proponents is the avoidance of state excise taxes by interstate shippers. There is no indication that taxes avoided by shippers constitute a significant loss of revenue to any state. It is estimate that interstate direct shipments consist primarily of ultra premium wine and never constitute more than one-half of one percent of a state's total wine volume. For the entire country, a tax loss of that magnitude would be $2 million annually. For the State of Maryland, even if it were to allow direct shipment of wine, annual tax losses at full volume would be less than $20,000 per year.

To address even this minuscule problem, forty-one members of California's Congressional delegation have written to the Advisory Commission on Electronic Commerce requesting that the Commission address this problem when it examines means to ensure the fair imposition of consumption, sales and use taxes arising from remote sales of all products, a far more significant revenue problem estimated to involve many billions of dollars in lost revenue. Congress established this Commission for just such a purpose, and this member suggests that we wait for the report we requested of them.

Legislation which preempts the Advisory Commission on Electronic Commerce regarding wine will have the effect of setting a precedent in regulation of the Internet before the Commission has done its' work. We are moving into an arena that all of us have not had the opportunity to think through, and our narrow attempts with wine may end up with far-reaching impacts on the sale of anything through the Internet. That is why Andy Sernovitz, the President of the Association for Interactive Media (AIM) a 300 member Internet trade group, said; ''If they can stop you from selling wine on the Internet, books and music are next.''

Mr. Chairman, the National Conference on State Legislatures recently passed a resolution that opposed legislation which allowed federal interference in the purchase and delivery of wine across state borders.'' Forty-one states joined in passing that resolution, with only 7 states supporting this bodies attempt to federalize state laws.

Mr. Chairman, I am not convinced there is an urgent national problem which needs to be solved by allowing virtually unprecedented use of federal courts to solve state problems which can be addressed by state legislative and judicial means. States can make it a crime for a person under 21 to attempt to purchase alcohol. Most have. Why don't the Attorneys general in the states prosecute their own citizens when they violate state laws?

Rather than the proposed legislation, alternatives include legislation which would encourage the development of open markets so that consumers can have access to the products which they wish to purchase.

I close by quoting for you from a letter by Florida Attorney General Robert Butterworth urging the veto of a bill making direct interstate shipment of wine to a Florida consumer a felony: ''[The bill] is the perfect tool for the vested interests who seek additional control over the marketplace, at the expense of competition and consumer choice.''

The federal government should not empower states to engage in anti-competitive actions favoring their in-state businesses. The federal government should not use the power of the courts to suppress competition. The federal government should not expand its reach into the private purchases of consumers, or the activities of the small businesses, which make up the largest part of the wine business.

Mr. Chairman, I thank the gentleman once again for yielding me this time, but I must ask my colleagues to join me in opposing the bill.

□ 1230

Mr. DELAHUNT. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Wisconsin (Mr. BARRETT.)

Mr. BARRETT of Wisconsin. Mr. Chairman, I thank the gentleman from Massachusetts for yielding me the time.

Mr. Chairman, I rise in support of the 21st Amendment Enforcement Act, which will help States such as my home State of Wisconsin crack down on the illegal shipment of alcoholic beverages.

But I am concerned that today's debate is being framed as an effort to restrict E-commerce.

Ironically, this bill does not even mention Internet and would have no effect on the direct shipment of alcohol and other products just as long as those shipments comply with State law.

The issue today is whether a State should have the right to take action against a company that violates the law of that State by shipping alcohol directly to the customer.

The 21st Amendment to the Constitution repealed prohibition but gave each State the right to regulate the sale of alcoholic beverages. Direct sales, whether over the Internet, by phone, or through the mail, violate the laws of certain States, make it easier for children to obtain alcohol, and drain needed tax revenue. This bill merely gives these States an additional tool to stop a practice that is already illegal.

Commerce over the Internet continues to grow at an incredible rate, and Congress should do nothing to discourage fair growth. But companies in one State should not be able to disregard the laws of another State in an effort to reach new customers.

I urge my colleagues to cast a vote for fair Internet commerce and for States' rights by passing the 21st Amendment Endorsement Act.

Mr. SCARBOROUGH. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. NETHERCUTT) another friend and classmate with whom I disagree today.

Mr. NETHERCUTT. Mr. Chairman, I thank the gentleman from Florida for his gracious yielding of time even though we disagree on this.

My colleagues, I think this is a legislation that is ill-advised. And I commend to the sponsors and the managers today, the gentlemen from Florida, Massachusetts, and Georgia, to the National Conference of State Legislatures vote which occurred on July 29, just a few days ago, by a vote of 41–7.

Forty-one States oppose H.R. 2031, including Massachusetts, Georgia, and Florida. These State legislators who made this judgment believe that the direct shipping issue should be resolved at the State and local levels of government. And so I think there is a disconnection here between a perceived problem, as I see it, by the sponsors and an actual problem.

I come from a State and represent a district, Washington State, and the Fifth Congressional District, where we have emerging small wineries who do direct customer transfers and shipments. They are not trying or do not violate the law. But there is a chilling effect that this legislation would have on it on this emerging business.

It is clear to me that this is a job loser to the extent that there is a restriction on these emerging companies over the Internet. What they do and what they have explained to me very clearly is there is a very complicated process they must go through in order to ship a bottle of wine or a case of wine from manufacturer A to customer B in another State.

The Federal Express transfer company has to make sure there is a signature on the other end from an adult over the age of 18 able to buy this kind of product. And if not, it has to be sent back. So it is the shipper and the shipping company that is the most at risk.

So I urge my colleagues to reject this bill.

Mr. DELAHUNT. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee (Mr. GORDON).

Mr. GORDON. Mr. Chairman, as I have listened to the debate this morning, I have discovered that there has been an abundance of debate on pros and cons of this legislation, contradictory pros and cons.

However, there has been one common denominator. That common denominator is that no one wants to see the Internet used to encourage alcohol abuse by minors. So the real question before us today is how can we stop the Internet from using or being used as a vehicle for alcohol abuse by minors?

After reviewing this legislation, it seems to me that there is a better way, that this legislation simply oversteps and that a better approach would be requiring sellers and shippers to clearly label packages as containing alcohol and that they obtain proof that the recipient is of legal drinking age.

I am co-sponsoring legislation to do that and would suggest that is a better approach.

The CHAIRMAN. The gentleman from Florida (Mr. SCARBOROUGH) has 3 minutes remaining. The gentleman from Massachusetts (Mr. DELAHUNT) has 7½ minutes remaining.

Mr. DELAHUNT. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Chairman, I thank my colleague for yielding me the time.

Mr. Chairman, I rise in strong opposition to H.R. 2031. This legislation would restrict interstate commerce and limit consumers' choices throughout the country. It would also seriously harm the small vintners in my district and around this Nation.

Let me explain how some people from our States and districts like to buy wine. They come to places like the central coast of California and spend a few days touring the vineyards and tasting the wines of my district and maybe they buy some to take home.

After they get home, they will discover they cannot find any wine from these lovely vineyards in Paso Robles or the Santa Maria Valley that they like so much. So they try to order some over the phone or through the Internet, until the vineyard tells them, ''No, sorry, but your State will not let us ship to you. You're out of luck.''

Right now a number of States have adopted laws that restrict the rights of their citizens to order wine from out-of-state wineries. This bill would encourage more State legislatures to adopt these anti-consumer laws.

Is that really what the authors of this legislation want to do, restrict the choices of law-abiding adult consumers?

Let me quote from the Wall Street Journal. ''Shutting down shipments of $300 cases of wine is not a reasonable regulation of intoxicating beverages; it is an obstacle to interstate commerce of precisely the type the Founders intended to prohibit.''

What this legislation will do is harm the little guy, the small family vintners and wineries. I have heard from so many vintners in my district who would like to be able to reach more consumers throughout the country. However, this is not possible without going through a large distributor who simply will not ship small quantities of wine. And besides, retailers only have so much shelf space and certainly not enough for the wine productioned by 1,600 small wineries throughout the United States.

So vintners seek to expand their businesses and serve their loyal customers through phone orders or through the Internet. This bill will seek to shut down that avenue of commerce.

The authors of this legislation claim that its purpose is to cut down on underage drinking, and that is a noble goal.

As a school nurse for 20 years, I have worked very hard to fight underaged drinking. But this bill is not about stopping kids from drinking. If it were, we would think Mothers Against Drunk Driving would be in favor of it. They are not.

California has allowed direct sales for over 20 years, and it has had no measurable effect on underage drinking. If we really want to discourage underage drinking, we should support programs like Fighting Back in my district, which works through public awareness initiatives and provides youth services, or we should challenge the drug czar to include anti-youth drinking ads as part of the government's anti-drug ad campaign.

If this were a bill to cut down on underage drinking, I would be for it. But it is not. It is an attack on our small vintners.

Mr. Chairman, I urge my colleagues to join me in opposition to this misguided legislation.

Mr. SCARBOROUGH. Mr. Chairman, I yield myself 30 seconds to respond to something that the gentlewoman from California (Mrs. CAPPS) said.

She said that this would restrict choices of legal purchases of wine. That is just not the case. If they sell alcohol legally, this does not apply to them. If they sell alcohol illegally, it applies to them.

Because all this language says is, if they sell alcohol illegally, that States' attorneys general will be able to go to court and stop them from selling alcohol illegally and stopping interstate bootlegging.

Mr. DELAHUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri (Mr. HULSHOF).

Mr. HULSHOF. Mr. Chairman, I thank the gentleman for yielding me the time, especially as time is drawing short.

Mr. Chairman, I rise in opposition to the bill of the gentleman and in the interest of full and complete disclosure.

I have got to tell my colleagues that I am an avid wine enthusiast and that my wife and I took our honeymoon vacation to the wineries of California, and we have enjoyed our subsequent visits there. But I will tell my colleagues, Mr. Chairman, this is not just an issue that affects California but one that impacts Texas, Oregon, Washington, Virginia, New York. And my own beloved State of Missouri is home to many family-run wineries whose intentions are not criminal.

Instead, these small businesses attempt to satisfy long-time repeat customers and cultivate new ones, those who have left those well-worn tourist paths and have chosen to adventure to experience the adventure and hospitality of a small but friendly winery.

These long-time family businesses in my district, one dating back to 1855, nonetheless depend on E-commerce, a way to attract new business and survive alongside the large wholesalers.

Mr. Chairman, this law, in my belief, is unnecessary. I have listened and I have accepted the invitation of my friend from Florida, and I have listened to the debate; and I have got to tell my colleagues that I am unmoved by arguments offered by the proponents that massive numbers of underage drinkers are searching the Internet for basement bargains of bottles of Bordeaux to binge with their friends on their parents' next night out. I am struck, however, by the apparent inconsistency demonstrated by some of those who are leading the charge in favor of this measure.

A few weeks ago, the gentleman from Georgia, we were leading the charge, a very emotional debate, about the availability of and access to firearms and whether further restrictions were needed. Many argued against further intrusions claiming appropriately, in my view, that additional gun laws were in violation of the rights of law-abiding citizens.

Here is my question: If gun manufacturers are immune from civil liability in the case of criminal conduct committed by a violent felon who has purchased a firearm, and I support that immunity, then how can we hold vintners responsible for the unlawful purchases of wine?

I urge the defeat.

The CHAIRMAN. Both gentlemen have 2½ minutes remaining. The manager of the bill has the right to close.

Mr. GOODLATTE. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, this particular analogy just put forth by the gentleman from Missouri (Mr. HULSHOF) with gun liability is completely misplaced.

We are not saying that anybody should or should not be immune from ultimate illegal use of the alcohol, such as the drunk driver. This bill simply goes to the shipping into the State in violation of an existing State law.

Now, if those States, and we have heard from a number of Members that are speaking for the wineries, if those States have a disagreement with a particular alcoholic restrictive law of a particular State, then their remedy should be to go to those State legislators and change the State laws that relate to how liquor can be brought into and distributed within that State.

But again, to make perfectly clear, and let us remove the clouds of the gun debate and the commerce debate here, this is a bill that simply empowers attorneys general of the States to seek injunctive relief to stop shippers, large or small, from shipping into their State in violation of State laws. It does not affect the legal shipper.

I urge support of the bill.

Mr. DELAHUNT. Mr. Chairman, I yield 30 seconds to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Chairman, I thank the gentleman for the generous grant of time.

Mr. Chairman, I rise in opposition to the bill. Where in this bill do we target or state explicitly that what we are doing is going after underage purchasers of wine over the Internet or microbrew over the Internet?

This is a very broad bill. The target is much larger than underaged drinking and access to alcohol. They are still going to go down to the concern and give the guy an extra couple of bucks who is a bad guy to go into the store and buy the stuff. They are not going to do it over the Internet and buy an expensive case of wine. That is not what we are after here. We are trying to close down the small wineries and breweries.

Mr. SCARBOROUGH. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Florida (Mr. SCARBOROUGH) has 1½ minutes remaining. The gentleman from Massachusetts (Mr. DELAHUNT) has 2 minutes remaining.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think the point has been made again and again that this particular proposal has nothing whatsoever to do with impeding the growth of E-commerce in terms of the sales of wine or any spirits or alcohols.

What it has to do is with respect to State laws. The fact and the reality is that we should be here to respect and provide an opportunity to States that find themselves with limited capacity and ability to enforce their own laws.

Now, the gentleman from New York (Mr. RANGEL) spoke to the issue of guns. Now, I know I have a disagreement with my friends from Georgia and Florida. But let me say, when it comes to that particular issue, I want the laws in Massachusetts relative to guns respected and honored anywhere in this Nation.

□ 1245

I do not want the shipment of firearms into Massachusetts from Georgia, Florida or California. I want to ensure that my Attorney General has the right to go to court and have the firearm laws of Massachusetts respected, initially.

Another item here, Mr. Chairman. This is from the New York Times. ''Officials Struggle to Regulate On-Line Sale of Prescription Drugs.'' I am just going to quote:

> The Food and Drug Administration announced steps today to curb the illegitimate sale of prescription drugs over the Internet. Now doctors are prescribing pills on-line to patients they have never met in States where they are not authorized to work. Pharmacies are shipping pills across State lines without the requisite license.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. DELAHUNT) has expired.

Mr. SCARBOROUGH. Mr. Chairman, I yield myself such time as I may consume. I would just like to say in closing, again bringing up what I brought up at the very beginning of the debate. We can talk about a lot of different things, we can throw red herrings in front of the people in this Chamber, but in the end the dividing line of this bill is between legal alcohol sales and illegal alcoholic sales.

We have had some people who are angry because they say we are trying to destroy local wineries. Again, the only local wineries that will be destroyed will be the local wineries whose very existence depends on illegal sales, because their legal sales will not be affected. We have people that are angry because we are not limiting this to merely people under 21 years of age. Their argument seems to be that if you are 21 years old and 1 day, then illegal bootlegging to you is okay while it is not okay to minors. That is just not right.

We have had the argument that this is a made-up issue. Again, I do not know how many times we have to read the 30 plus television stations that have run stings on this thing.

Also, one thing, going back to what my good friend the gentleman from Missouri said about gun sales. That is just not relevant. I will say to the gentleman right now, I, too, oppose illegal gun sales across State lines, and I think it is very courageous that you do that, also. Now I am asking you and everybody in this House to join with me and support the banning of illegal alcoholic sales.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise in opposition to H.R. 2031, the 21st Amendment Enforcement Act.

H.R. 2031's proponents contend that it will address the problem of illegal sales to minors over the Internet. I strongly support cracking down on underage drinking, but this bill does nothing to address this serious problem. Rather, H.R. 2031 is nothing more than an intra-industry battle between liquor wholesalers and Internet liquor retailers. Under the guise of protecting minors from Internet alcohol sales, this bill's true intent is to tie up Internet liquor retailers in federal litigation.

Supporters of this legislation have failed to provide evidence of any wide-spread problem with illegal, under-age Internet alcohol sales. In fact, in California, we have had telephone and mail-ordered wine deliveries since 1963 and our law enforcement agencies report they have not encountered problems with these deliveries. Moreover, legitimate concerns over underage Internet purchases of alcohol have been adequately addressed by the industry's practice of visibly labeling shipping packages as containing alcohol and requiring the signature of persons over the age of 21 for receipt. Finally, state and federal enforcement mechanisms already exist to address illegal alcohol sales. H.R. 2031 will add a duplicative and unnecessary layer to already existing law.

I find it ironic that one of the chief proponents of this bill, the National Beer Wholesalers Association, actively opposed my efforts to include language in the Treasury-Postal Appropriations Bill to include underage drinking in the billion-dollar anti-drug media campaign administered by the Office of National Drug Control Policy. If the National Beer Wholesalers are so devoted to fighting underage drinking, you would think they would have joined forces with me. Instead, they fought tooth and nail against establishing an effective effort to combat illegal alcohol use by teenagers.

Not only is this bill bad policy, it's also anti-business. As small vintners in California and across the nation seek innovative ways to promote their quality product, they are naturally looking at the marketing opportunities presented by the Internet. This bill would work directly against such marketing and trade opportunities.

Direct access has been a long-standing problem for the 1,600 family-owned wineries who compete with the 10 mega-wineries that produce 90% of the wine in the United States. Wholesalers cannot supply all of the unique wines available from smaller wineries to the majority of consumers and thus, these small wineries are excluded from the national market. The Internet is a vital sales tool for the small wineries to directly promote their wines to consumers.

H.R. 2031's true design is simple: it would protect wholesalers of wine, beer and distilled spirits from Internet competition. I urge my colleagues to defeat this proposal and work instead to promote interstate trade. Let's support the 1,600 small wineries in California and across the United States who are using their good business sense to expand markets and create jobs in their communities.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered

as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2031

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Twenty-First Amendment Enforcement Act''.

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

The Act entitled ''An Act divesting intoxicating liquors of their interstate character in certain cases'', approved March 1, 1913 (commonly known as the ''Webb-Kenyon Act'') (27 U.S.C. 122) is amended by adding at the end the following:

''SEC. 2. INJUNCTIVE RELIEF IN FEDERAL DISTRICT COURT.

''(a) DEFINITIONS.—In this section—

''(1) the term 'attorney general' means the attorney general or other chief law enforcement officer of a State, or the designee thereof;

''(2) the term 'intoxicating liquor' means any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind;

''(3) the term 'person' means any individual and any partnership, corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a State or agency thereof; and

''(4) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

''(b) ACTION BY STATE ATTORNEY GENERAL.—If the attorney general has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute a violation of a State law regulating the importation or transportation of any intoxicating liquor, the attorney general may bring a civil action in accordance with this section for injunctive relief (including a preliminary or permanent injunction or other order) against the person, as the attorney general determines to be necessary to—

''(1) restrain the person from engaging, or continuing to engage, in the violation; and

''(2) enforce compliance with the State law.

''(c) FEDERAL JURISDICTION.—

''(1) IN GENERAL.—The district courts of the United States shall have jurisdiction over any action brought under this section by an attorney general against any person, except one licensed or otherwise authorized to produce, sell, or store intoxicating liquor in such State.

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

''(d) REQUIREMENTS FOR INJUNCTIONS AND ORDERS.—

''(1) IN GENERAL.—In any action brought under this section, upon a proper showing by the attorney general of the State, the court may issue a preliminary or permanent injunction or other order to restrain a violation of this section. A proper showing under this paragraph shall require clear and convincing evidence that a violation of State law as described in subsection (b) has taken place. In addition, no temporary restraining order or preliminary injunction may be granted except upon—

''(A) evidence demonstrating the probability of irreparable injury if injunctive relief is not granted; and

''(B) evidence supporting the probability of success on the merits.

''(2) NOTICE.—No preliminary injunction or permanent injunction or other order may be issued under paragraph (1) without notice to the adverse party and an opportunity for a hearing.

''(3) FORM AND SCOPE OF ORDER.—Any preliminary or permanent injunction or other order entered in an action brought under this section shall—

''(A) set forth the reasons for the issuance of the order;

''(B) be specific in its terms;

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

''(D) be binding upon—

''(i) the parties to the action and the officers, agents, employees, and attorneys of those parties; and

''(ii) persons in active concert or participation with the parties to the action who receive actual notice of the order by personal service or otherwise.

''(e) ADDITIONAL REMEDIES.—

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

''(2) STATE COURT PROCEEDINGS.—Nothing in this section may be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any State law.''.

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendment made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENT.—The amendment made by this Act shall apply only with respect to the importation or transportation of any intoxicating liquor occurring after—

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

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

The CHAIRMAN. The bill shall be considered under the 5-minute rule for a period not to exceed 2 hours.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

AMENDMENT OFFERED BY MR. GOODLATTE

Mr. GOODLATTE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GOODLATTE:

Page 6, line 9, strike the close quotation marks and the period at the end.

Page 6, after line 9, insert the following:

''SEC. 3. GENERAL PROVISIONS.

''(a) EFFECT ON INTERNET TAX FREEDOM ACT.—Nothing in this Act may be construed to modify or supersede the operation of the Internet Tax Freedom Act (47 U.S.C. 151 note).

''(b) ENFORCEMENT OF TWENTY-FIRST AMENDMENT.—It is the purpose of this Act to assist the States in the enforcement of section 2 of the twenty-first article of amendment to the Constitution of the United States, and not to impose an unconstitutional burden on interstate commerce in violation of in article I, section 8, of the Constitution of the United States. No State may enforce under this Act a law regulating the importation or transportation of any intoxicating liquor that unconstitutionally discriminates against interstate commerce by out-of-State sellers by favoring local industries, thus erecting barriers to competition and constituting mere economic protectionism.

''(c) SUPPORT FOR INTERNET AND OTHER INTERSTATE COMMERCE.—Nothing in this Act may be construed—

''(1) to permit state regulation or taxation of Internet services or any other related interstate telecommunications services

''(2) to authorize any injunction against—

''(A) an interactive computer service (as defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)); or

''(B) electronic communication service (a defined in section 2510(15) of title 18 of the United States Code).

Mr. GOODLATTE. Mr. Chairman, I offer this amendment along with the gentleman from California (Mr. COX) and the gentleman from Michigan (Mr. CONYERS) and with the support of the gentleman from Florida who has offered the underlying legislation.

The amendment to H.R. 2031 clarifies that this bill is not meant to interfere with legitimate electronic commerce on the Internet. First, the amendment clarifies that the bill in no way supersedes the recently enacted Internet Tax Freedom Act which placed a 3-year moratorium on new multiple and discriminatory Internet taxes. I strongly supported passage of that act and do not wish to see it compromised.

Second, our amendment clarifies that this bill in no way extends the powers of States to interfere with electronic commerce. It includes language that clarifies that the authority granted to States under this bill is limited to the enforcement of State laws regarding the transportation of alcohol within its borders, not to the legal advertisement or sale of alcohol on-line.

Third, our amendment ensures that injunctive relief is available against the entity shipping alcohol in violation of applicable laws, not against communications companies used by these third parties' activities for advertising and other communication purposes.

Mr. Chairman, it is important as we craft laws that apply to the Internet and other communications services that we avoid imposing liability on these service providers for the actions of third parties. The approach of this amendment is fully consistent with the approach we have adopted in the Telecommunications Act of 1996 which has played a very beneficial role in the growth of the Internet over the last 3½ years.

Mr. Chairman, aiming injunctive relief at the individual engaged in the commercial activity we are concerned about, not the communications company, is a common-sense solution. Unlike the seller or transporter engaged in an illegal transaction, the communications company has no idea what

States the transaction affects and is not in a position to tailor the transaction to comply with the different laws of 50 States. Furthermore, Internet service providers and other communications companies are in no position to monitor the conduct of their users or to prevent transactions. Indeed, enforcement approaches such as injunction to block Internet sites can seriously disrupt lawful Internet communications and slow the operations of a service provider's network for all users.

Mr. Chairman, if we do not adopt this amendment, we risk needless legal uncertainty and pointless litigation against Internet service providers and other communications companies. The amendment has the support of groups such as America Online, the Commercial Internet Exchange, Prodigy, PSI Net, BellSouth and Bell Atlantic.

Mr. Chairman, I urge my colleagues to adopt the tech-friendly, commonsense solution and pass this amendment.

Mr. DELAHUNT. Mr. Chairman, I rise in support of the amendment.

I want to applaud the gentleman from Virginia and the gentleman from California. I concur that this is an amendment that is needed and it addresses a problem. I support the amendment.

Mr. COX. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wish to thank the author of the bill the gentleman from Florida (Mr. SCARBOROUGH) and the gentleman from Virginia (Mr. GOODLATTE) who just offered this amendment for their excellent work in support not only of the main purpose of the law but also in another area, and, that is, Internet freedom, Internet freedom from regulation and Internet freedom from taxation so that that dynamic medium can continue to grow and prosper.

The amendment's language makes it clear that search engines, Internet service providers, web hosting services and other interactive computer services will not be adversely affected by this bill. In addition, the bill makes it clear, as presently written with this amendment, that it is for the enforcement of the 21st amendment that we are granting State attorneys general the power to enter Federal court. This is not the beginning of a slippery slope in which new laws can be written to regulate and tax the Internet under the guise of regulating alcoholic beverage transactions. To the contrary, it is the 21st amendment which will control, and the Supreme Court has told us that the 21st amendment did not have the effect of repealing the interstate commerce clause. Rather, States are free to regulate within their boundaries the sale, distribution and production of alcoholic beverages and the importation of alcoholic beverages produced and sold elsewhere in order to promote temperance, in order to maintain their status as dry States or even counties to be dry counties, to promote those social purposes behind the 21st amendment. But in doing so, in vindicating the purposes of the 21st amendment, a State cannot discriminate as mere economic protectionism against other sellers, other producers in the rest of the United States. I think that this language that is agreed upon all around makes it clear so that today what we are talking about is alcohol, we are talking about the 21st amendment. We are not talking about newfound powers of the parochial, of the municipality, the county, the State, to tax or regulate either instrumentalities of interstate commerce, particularly the Internet and other telecommunications, and neither are we talking about new opportunities to tax and regulate the things that move across it. We are limiting ourselves, as properly we should, to those things that are covered by the 21st amendment and nothing else.

Mr. BARR of Georgia. Mr. Chairman, will the gentleman yield?

Mr. COX. I yield to the gentleman from Georgia.

Mr. BARR of Georgia. Mr. Chairman, if the gentleman would engage in a brief colloquy. It is, then, with the language that the gentleman is proposing here, if in fact hypothetically, if you have the recipient State which prohibits the sale of alcoholic beverages to anyone under the age of 21 and you have a seller winery in another State and there is a transaction made over the Internet to sell the alcoholic beverage to somebody in the recipient State who is in fact under 21, the language that the gentleman is proposing here, which is really clarifying language, would not prohibit the attorney general of the recipient State from seeking injunctive relief if they can otherwise meet the burdens of the legislation, is that correct?

Mr. COX. Yes. That is true if the underlying State legislation is itself consistent with the 21st amendment and the interstate commerce clause.

Mr. BARR of Georgia. In other words, if a State, as many States do, have a flat out prohibition on the sale of alcoholic beverages to a person under the age of 21, then the language that the gentleman is proposing here would not prohibit the recipient State from seeking injunctive relief from an out-of-State seller using the Internet to sell the alcohol to somebody under 21 in the recipient State?

Mr. COX. Yes. The State law itself is authorized, to the extent it is authorized, by the 21st amendment to the Constitution. And because the United States Supreme Court has interpreted the 21st amendment to mean that it does not empower States to pass laws that favor local liquor industries by erecting barriers to competition and that State laws that constitute mere economic protectionism are not entitled to the same deference as laws enacted to combat the perceived evils of an unrestricted traffic in liquor. We are simply restating those constitutional principles in the statute.

Mr. BARR of Georgia. In other words, so long as there is the basis for the recipient State's prohibition on the sale of alcoholic beverages to somebody under 21.

The CHAIRMAN. The time of the gentleman from California (Mr. COX) has expired.

(On request of Mr. BARR of Georgia, and by unanimous consent, Mr. COX was allowed to proceed for 1 additional minute.)

Mr. COX. Mr. Chairman, I continue to yield to the gentleman from Georgia.

□ 1300

Mr. BARR of Georgia. In other words, just to clarify this point, I appreciate the indulgence of the gentleman from California. If in fact the law prohibiting the sale of alcoholic beverages to anyone under the age of 21 in the recipient State is based on a legitimate public interest and public safety, not on economic protectionism, then under the scenario that I indicated, the attorney general of the recipient State could, under this legislation as proposed to be amended by the gentleman from California, seek injunctive relief.

Mr. COX. That is correct. What we are trying to do is restate in simple, easy to understand language the balance that the courts, I think, have properly struck between vindicating the purpose of the 21st amendment and at the same time making sure that we do not subtract in any way from the interstate commerce clause. They are both parts of the Constitution, both read together. I think that the current case law that we have cited and that we repeat in the statute expresses it as elegantly and simply as it can be expressed.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do want to comment briefly on the amendment offered by the gentleman from California (Mr. COX).

I will support this amendment. It does clarify issues relative to Internet service providers and to the Net itself. However, I do want Members to know that, although this amendment should be supported and I intend to vote for it, it does not cure other problems that we find troubling in the underlying bill.

The issues relate to the commerce clause and to the conflict between that clause and the 21st amendment. This conflict continues to be problematic. As we discussed at some length in the Committee on the Judiciary when the bill was considered, the 21st amendment did not repeal the commerce clause. So even though this amendment does accommodate the Internet—and I credit the gentleman from California (Mr. COX) for bringing this forward and commend the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Michigan (Mr. CONYERS) for their considerable effort on Internet issues—the problem in the underlying bill persists. If this bill becomes

law, State AG's shall be able to burden impermissibly interstate commerce using the cover of the 21st amendment.

Thus, even with this fine amendment, the underlying bill continues to be overbroad. We can't seem to agree to limit it to the one issue that we all agree is significant, namely that we should not permit or facilitate underage drinking. By contrast, this bill would allow a variety of arcane blue laws that have nothing whatsoever to do with underage drinking or any other legitimate concern of the Federal Government to be enforced by a State attorney general in a Federal court.

I will wholeheartedly support this amendment, and I sincerely hope it is approved, but I intend, even if it is adopted, to oppose the underlying bill because of the other problems I've enumerated.

Mr. SCARBOROUGH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to enter into a colloquy with the gentleman from California (Mr. COX) briefly just to clarify a few things.

The gentleman from Georgia (Mr. BARR) was asking the gentleman if a State would still be able to enforce their alcohol laws, and the gentleman said they could. If he can explain the purpose of this clarifying language regarding economic protectionism and a bill a State legislature passes for the mere purposes of economic protectionism.

Mr. COX. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from California.

Mr. COX. Yes, the language in section 1 is now written as section 3(b) on Line 17 of the amendment, as reported, states that no State may enforce under this act a law regulating the importation or transportation of any intoxicating liquor and with some additional language interpolated that constitutes mere economic protectionism, and that is the existing Supreme Court test, and we wish simply to conform our statute with that Supreme Court test.

Mr. SCARBOROUGH. Mr. Chairman, reclaiming my time, let me ask the gentleman another question.

We go to support for Internet and other interstate commerce, and it says nothing in this act may be construed to permit State regulation or taxation of Internet services or any other related interstate telecommunications, and it is important for us to differentiate here that we are talking about the actual Internet service itself or the telecommunication service and not the goods that are sold over the Internet.

Mr. COX. Yes, I think that that is correct.

In addition, when combined with the preceding section, we make it clear that the goods that we are talking about letting States regulate and tax are alcoholic beverages and those things covered by the 21st amendment, so that it is also true what we are not doing in this legislation today is opening up new vistas of taxation and regulation of products that move across the Internet. We are restricting ourselves only to the four corners of the power that States have under the 21st amendment.

Mr. SCARBOROUGH. And the gentleman's actual language, the language that we have all agreed to, goes again to the Internet service and not the goods, and the goods here being alcohol.

Mr. COX. Yes, and the reason we hope that this is a belt-and-suspenders operation, that this is surplusage, but perhaps not because States and localities have been very aggressive about taxation and regulation of the Internet. We want to make sure that no State confuses its power to tax or regulate alcoholic beverages with a new one found in this statute or anywhere else to tax or regulate the Internet or the means of interstate communication or sale.

Mr. SCARBOROUGH. And reclaiming my time, I just like to say I agree with the gentleman and the gentleman from Virginia (Mr. GOODLATTE) 100 percent, and it is very important that we allow E-commerce to flourish without new regulations or tax burdens, and I believe this language does so while still allowing the State to enforce its alcohol laws as it was given the right in the 21st amendment some 60 or 65 years ago.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I just want to make it clear that it is my intention and I believe the intention of the gentleman from California, and he may want to speak for himself, that if there is an existing State law that taxes the sale of alcohol in that State and the sale happens to come into the State from out of State and the original purchase was made over the Internet, that that taxation still applies as it does with the Internet Tax Freedom Act. The Internet Tax Freedom Act does not overturn existing State laws on the sale of products from one State to another, just like it does not with a catalogue sale or any other type of sale. It simply imposes a moratorium on new taxes on Internet services.

Is that a correct statement?

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from California.

Mr. COX of California. It is certainly correct as far as the gentleman has taken it. I would add to that the following:

Some State laws are unconstitutionally and impermissibly discriminatory, as for example the Hawaii tax that exempted pineapple wine. The Supreme Court properly said that that was an unconstitutional impermissible discrimination in favor of instate and against out-of-state producers, and all of these laws not having been tested under the commerce clause, we cannot say that we are trying to grandfather them here against that.

The CHAIRMAN. The time of the gentleman from Florida (Mr. SCARBOROUGH) has expired.

(On request of Mr. GOODLATTE, and by unanimous consent, Mr. SCARBOROUGH was allowed to proceed for an additional 2 minutes.)

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Virginia.

Mr. GOODLATTE. What the gentleman is saying is that if there is a law existing out there or one that may be proposed in the future that is unconstitutional, we do not want this act, whether it could or could not, we do not want it to be read as encouraging anybody in that direction. We want to make sure that unconstitutional laws are discouraged because they are unconstitutional whether we pass this amendment or not.

Mr. DELAHUNT. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Massachusetts.

Mr. DELAHUNT. I think it is very important because during the course of the general debate, mention was made that this proposal could lead to new taxation, taxation on the Internet; and I think that the colloquy that has occurred here has clarified that. In fact, it was the gentleman from California (Mr. COX) who during the 105th session of Congress was the key sponsor that led to the enactment of the moratorium on taxation on the Internet; but that did not, that did not extinguish the right of States to tax on the Internet according to their preexisting taxation scheme.

Am I correct, Mr. Chairman?

Mr. COX. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from California.

Mr. COX. Yes, the purpose of the Internet Tax Freedom Act was to prevent new taxes on the Internet and discriminatory taxes that prayed upon the Internet.

Mr. DELAHUNT. And if the gentleman yield, nothing that this bill proposes in any way impacts that moratorium.

Mr. COX. Again, Mr. Chairman, if the gentleman from Florida will yield?

Mr. SCARBOROUGH. I yield to the gentleman from California.

Mr. COX. Mr. Chairman, I thank the gentleman. That is correct.

AMENDMENT OFFERED BY MR. CONYERS TO THE AMENDMENT OFFERED BY MR. GOODLATTE

Mr. CONYERS. Mr. Chairman, I offer a perfecting amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS to the amendment offered by Mr. GOODLATTE:

At the end of the matter proposed to be inserted, strike the period and insert a semicolon and add the following text: ''used by

another person to engage in any activity that is subject to this Act.''.

Mr. CONYERS. Mr. Chairman, I want to thank my friends who have introduced this. I had an amendment quite similar to it, and I do not think it will be necessary to offer it now. But the perfecting amendment I am offering will clarify that Internet service providers and electronic communication services will be exempted only where they are used by another person to engage in activity covered by the act. Thus, for example, if Yahoo or another Internet provider goes into the business of selling or shipping liquor, they would not be exempted from liability.

Now, Mr. Chairman, Internet commerce has opened new doors of opportunities for entrepreneurs around the country as well as provided consumers with a vast array of new choices of goods and services; and with the expansion of commerce over the Internet comes the added benefit of greater competition which will lead to lower prices for consumers.

Of course, we do not want people to use Internet to violate the law, but we also do not want to create unnecessary and burdensome regulations that will hinder this emerging new marketplace, nor do we want to hinder the types of commercial transactions that permit direct contact between producers and consumers.

The best marketplace is one that promotes robust competition, and therefore we want to encourage new entrants to the market and not erect barriers blocking them.

As is currently written, the legislation could have negative repercussions for the emerging Internet marketplace. State alcohol laws often target liquor sold over the Internet, and therefore I urge that we proceed cautiously when we grant a Federal forum for these types of State actions to ensure the Internet service providers and other telecommunication services do not bear the brunt of the liability.

□ 1315

Another problem is that the bill gives and encourages the imposition of new Internet taxes by giving States another forum in which to collect those taxes from out-of-State defendants. This is a bipartisan and non-controversial improvement, and I hope that my perfecting amendment will be accepted, which remedies these problems.

What we are doing here, I believe, is clarifying that this measure cannot be used as a tool to bring actions against Internet providers and other wired telecommunications services.

It seems to me we can all agree that we do not want Internet carriers to be the targets of State attorney general actions to enforce our State alcohol laws. The amendment also clarifies that the legislation does not modify or supersede the Internet Tax Freedom Act, in which Congress placed a moratorium on new Internet taxes. We do not want to undermine Congress' prior legislation and permit selective carveouts to that important commitment.

This amendment is supported by many groups and organizations, America Online, Bell Atlantic, Bell South, the Commercial Internet Exchange Association, Prodigy and PSInet. Whether or not one ultimately supports 2031, this very important amendment deserves your vote. Although these changes do not address all of my concerns, this is an important improvement to the legislation, and I urge that the perfecting amendment be accepted and the amendment be supported.

Among other things the Cox amendment makes it clear that neither this act nor Webb Kenyon are in anyway designed to supersede any other provision of the Constitution, such as the first amendment or the Commerce clause (including the so-called ''dormant'' Commerce clause). In this regard, the amendment reaffirms the Supreme Court's 1984 decision in *Bacchus Imports* v. *Dias*, 468 U.S. 263 (1984), which held that a state law which imposed an excise tax on sales of liquor but exempted certain locally produced alcoholic beverages violated the Commerce clause. The Court concluded that this state legislative scheme was clearly discriminatory legislation and constituted ''economic protectionism.'' The Court noted that ''one thing is certain: The central purpose of the [Twenty-First Amendment] was not to empower States to favor local liquor industries by erecting barriers to competition.'' The Court held that the state's law was not designed to promote temperance but was ''mere economic protectionism.''

The Court has adopted this line of reasoning in striking down numerous other state liquor laws. See e.g., *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U.S. 573 (1986) (relying on Bacchus); *Healy* v. *Beer Inst.,* 491 U.S. 324 (1989) (relying on Brown-Forman). See also Capital Cities Cable versus Crisp (holding that a state statute which banned the transmission of out of state alcoholic beverage commercials by cable television stations in the state violated the Commerce Clause and was outside of the state's Twenty-First Amendment power); *California Retail Liquor Dealers Ass'n* v. *Medcal Aluminum* 445 U.S. 97 (1980) (holding that a state wine pricing system violated Sherman Antitrust Act and noting that the ''Federal Government retains some Commerce clause authority over liquor); *Hostetter* v. *Idlewild Bon Voyage,* 377 U.S. 324, (1968) (holding that the Commerce clause prohibited the State of New York from interfering with the sale of alcohol to departing international airline travelers at a New York airport and that the argument that the Twenty-First amendment trumps the Commerce clause where states regulate alcohol is ''patently bizarre,'' ''an absurd oversimplification,'' and ''demonstrably incorrect'').

AUGUST 2, 1999.

Re amendment to H.R. 2031.

Hon. JOHN CONYERS,
Ranking member, House Judiciary Committee, Rayburn House Office, Washington, DC.

Hon. BOB GOODLATTE,
Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE CONYERS AND REPRESENTATIVE GOODLATTE: We write to express our strong support for the amendment you intend to offer tomorrow to H.R. 2031 to clarify that injunctive relief under the bill is available against certain shippers of alcohol, and not against providers of communications services.

This important clarification will avoid confusion and needless litigation against internet service providers and other providers of communications services who are not engaged in the sort of shipments that are the subject of the bill.

Thank you very much for your leadership on this issue.

Sincerely,

AOL.
BELL ATLANTIC.
BELLSOUTH.
COMMERCIAL INTERNET EXCHANGE ASSOCIATION. (''CIX'')
PRODIGY.
PSINET.

Mr. GOODLATTE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I support the perfecting amendment offered by the gentleman from Michigan (Mr. CONYERS), and I commend him for offering this amendment. The underlying amendment that I have offered makes it clear that Internet service providers, those who provide interactive computer service or an electronic communications service, would not be subject to the injunction provided for in the underlying bill if all they did was provide the ability to communicate with people and were not involved in transactions themselves.

The gentleman from Michigan's amendment makes it clear that if that company, that Internet service provider, is, in fact, themselves selling the alcoholic beverage, then they would be subject to the injunction, because it adds the language used by another person to engage in any activity that is subject to this act to create an exception to the exception already created for them to the injunction.

The gentleman's language is well taken, I support it, and I urge my colleagues to support it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS) to the amendment offered by the gentleman from Virginia (Mr. GOODLATTE).

The amendment to the amendment was agreed to.

Mr. BARR of Georgia. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do not see the gentleman from California on the floor. Perhaps the gentleman from Virginia would engage in a colloquy.

I think, getting to the intent, the Congressional intent of the proposed amendment, as amended, needs further clarification. If I could engage the gentleman from Virginia in a brief colloquy and elicit from him if he thinks it is accurate, just a simple yes or no.

If, in fact, under the legislation as proposed and as amended, as proposed to be amended by the gentleman from California, if State A has a law on the books that prohibits the sale of alcoholic beverages to anyone under 21, and the attorney general of that State seeks to go into Federal court under

this law simply based on that law to seek an injunction to enjoin a seller of an alcoholic beverage from State B from shipping that alcoholic beverage into State A and it being directed to or received by somebody under 21 in violation of State law, this proposal would still allow the attorney general of State A to seek injunctive relief. Is that correct?

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BARR of Georgia. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the one word answer is yes, and that is certainly my intention in offering this amendment to make sure that the underlying purpose of the bill is preserved, but make sure that, A, there are no efforts here to create new taxes or new regulations of Internet activities, and, B, that there is no unconstitutionally, and I think that is an important word we use here, unconstitutionally discriminatory action taken by a State that would disfavor out-of-State purveyors of these products.

Mr. BARR of Georgia. Mr. Chairman, reclaiming my time, this is the problem, and maybe the gentleman from Florida could listen also, this is the problem that I have with this language. It has taken us approximately half an hour to debate this, trying to get just a simple yes or no.

If State A has a law on the books that says no sales of alcoholic beverages to somebody under 21, with this language, does this modify or in some way limit the ability that the attorney general would have in the bill as proposed to stop an Internet sale of alcoholic beverage coming in from another State to that person?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will yield further, it would not stop the attorney general of a State that wishes to seek an injunction against a company violating that State's laws, prohibiting either the sale of alcohol in the State or the sale of alcohol to minors in that State from continuing to seek that injunction. I strongly support the gentleman and the gentleman from Florida's efforts to allow the States to go into Federal court to achieve that injunction.

Mr. BARR of Georgia. Mr. Chairman, reclaiming my time, is it the purpose of this amendment to limit the scope of the Webb-Kenyon Act?

Mr. GOODLATTE. Mr. Chairman, it is not the purpose of this amendment to limit the scope of the Webb-Kenyon Act.

Mr. BARR of Georgia. Does this amendment create any new right of action to challenge State laws regulating alcohol?

Mr. GOODLATTE. In my opinion, it does not, and it is not my intention in offering this amendment to in any way affect the rights of the States to regulate the sale of alcohol in their State as provided by the Twenty-First Amendment to the Constitution.

Mr. BARR of Georgia. Would this language, as proposed, permit a defendant in the recipient State or in the shipping State to delay enforcement of a valid State alcohol law by claiming that the law creates a barrier to competition, that this language creates a barrier to competition?

Mr. GOODLATTE. That may be an issue in seeking an injunction, but certainly is not the intention of this amendment, to allow anybody to delay State enforcement of State laws controlling the sale of alcohol in their State borders.

Mr. BARR of Georgia. Finally, are there any State laws today that would be subject to a challenge under this proposed language?

Mr. GOODLATTE. Would the gentleman repeat the question?

Mr. BARR of Georgia. Are there any State laws today that would be subject to a challenge under this proposed language by the gentleman from California?

Mr. GOODLATTE. I am not aware of any laws that would be subject to them. However, I would say to the gentleman, the way I read section 3(b) of the amendment, that if they would be subject to challenge, they would have already been subject to challenge as being unconstitutional to begin with. I think that portion of this amendment reinforces the gentleman from California's concern that we do not have any unconstitutionally discriminatory treatment, but, if it exists, I think it would have been treatable under existing law and certainly would also be treatable under this law.

Mr. BARR of Georgia. The gentleman from Virginia, who has researched issue extensively, is not aware of any State laws that would be subject to challenge under the proposed language today?

Mr. GOODLATTE. None that I know of.

Mr. NETHERCUTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me ask the gentleman from Virginia further clarification. I heard the gentleman say in the colloquy with the gentleman from Georgia that under the example that the gentleman from Georgia gave, that the attorney general of a State where there was an alleged violation relating to a sale to a person under 21, I thought I heard the gentleman say that if there was a violation, that the State attorney general would thereafter be enabled under this amendment to prohibit any further Internet sales into that State, even though it was to someone over the age of 21. Did I misunderstand the gentleman?

Mr. GOODLATTE. Mr. Chairman will the gentleman yield?

Mr. NETHERCUTT. I yield to the gentleman from Virginia.

Mr. GOODLATTE. The gentleman misheard. The question from the gentleman from Georgia was whether or not anything in my amendment would undermine the purpose of the underlying bill, which is to allow the attorney general to go into Federal Court and to seek an injunction restraining the sale of alcohol to minors. Then later, or maybe in an earlier conversation, in reference to a dry State, whether they could seek an injunction from violating the laws of the State for shipping any alcohol into the State.

If you have a dry State that prohibits the sale of alcohol, now or in the future, this amendment would not affect that one way or another. That is the assurance the gentleman from Georgia wanted, that the underlying bill would still have the effect the gentleman intends, which is that the attorney general of that State could go into Federal court and seek an injunction, but he would not be able to seek an injunction for the sale of alcohol to an adult unless that sale itself violated that State law in some way, shape, or form. This amendment does not in any way change that.

Mr. NETHERCUTT. Mr. Chairman, reclaiming my time, I appreciate the clarification.

Mr. Chairman, I want to rise in support of the Goodlatte amendment, which I believe improves significantly on H.R. 2031. The proponents have argued that this bill does not inappropriately interfere with Internet commerce. It is true they worked very hard to avoid any reference to the Internet on this legislation, but the reality is quite different.

A great many of the wine sales we are discussing occur over the Internet sites of small wineries. The entrepreneurial owners of these wineries have learned, like many other small businessmen and women, that the Internet levels the playing field and makes it possible for small proprietors to reach customers. These companies cannot afford sales departments or national advertising. They are forced by their size to rely on Internet sales. That is what I want to be sure that this legislation does not prohibit.

This amendment ensures that Internet sales by wineries are not treated any differently than any other product. The Internet Tax Freedom Act blocked the imposition of new Internet taxes, and this amendment ensures compliance with that act.

Proponents of this legislation have called small wineries and brewers bootleggers and smugglers, suggesting somehow their intent in selling wine is criminal. To the contrary, these small businesses play by the rules and only want an opportunity to sell their superior product in the interstate marketplace. There is no pressing problem of minors buying cases of ultra-premium wines, and the authors of the legislation have shown no evidence to the contrary, notwithstanding the few news clips that they have discussed.

I have talked with wineries in Washington State about the supposed problem of minors purchasing alcohol. They have told me that in fact they know virtually all of their customers. Their buyers have in virtually all cases

bought wine in person from the winery in the first place. These are repeat customers who have taken the time to travel all the way to rural wineries in eastern Washington. Once they get home, these customers enjoy the superior product that Washington State provides and that these wineries provide, and they want to order again. Many of these customers are from other States and would be unable to purchase wines with this legislation.

Small businesses are the actual target of this legislation. These small wineries will never be able to ship their product through normal distributor channels. They simply do not produce enough to be worth the large distributors' time. These producers bottle 2,000 cases a year, an insignificant amount to a distributor, but a very significant quantity when the survival of these small businesses is on the line.

We are adding a winery in our State of Washington every 18 days. It is a growth industry that creates new jobs in rural areas. These are small wineries, specialty wineries. Any Member representing constituencies that rely on Internet telemarketing or catalog sales should be concerned about where this legislation is taking us.

From the perspective of the States, this bill is all about taxation. Any company or industry that is perceived to be circumventing State laws, State taxes through mail sales, could run afoul of such efforts in the future. This is why the National Conference on Legislators has opposed this bill, because of a belief that the problem should be resolved at the State level. I am still concerned about this bill, and I urge my colleagues to support this amendment.

□ 1330

Mr. DOOLEY of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this particular amendment, but I remain opposed to the underlying bill. I oppose the legislation because it is clearly anti-small business, and it is also anti-consumer.

We are moving into a new economy, an economy that is giving opportunities for small business people to participate by offering their products over the Internet. One of the greatest innovations and greatest opportunities that we are seeing in E commerce is the fact that we are almost eliminating all barriers to entry. We are allowing almost any company to set up and develop a web page, and they can immediately be in a worldwide business.

What we are doing with this legislation is to preclude a lot of small business people that are involved in the wine industry, that do not have the volumes to work with the archaic structure that is currently in place in many parts of the country to distribute their product, from having the opportunity to have the access to consumers that they need. This is clearly not a direction that we should be going, and is clearly a direction that is inconsistent with the changes in the United States' economy and the changes in the international economy.

This legislation is a heavy-handed approach that would chill the rights of adults to purchase wine over the Internet, unfairly discourage small wineries from marketing their products nationwide through E commerce, and create a new Federal remedy for a problem that is already addressed by State and Federal statutes.

Supporters of this legislation contend that the bill is being done at the behest of States' rights, but nothing could be further from the truth. As we saw just in the last week, the National Conference of State Legislatures overwhelmingly passed a resolution opposing this legislation.

The arguments that this is somehow going to result in more alcohol being in the hands of minors is also equally without foundation and substantiation. Nothing could be further from the truth.

I ask my colleagues to oppose this legislation. We ought to be passing policies which encourage and provide greater opportunity for more families to enter into business, for more families to live out a dream. What we are doing here, in so many ways, is impeding that opportunity.

Also speaking as a wine consumer, I almost think it is un-American because I might live in a particular part of the country, in a particular State, that I am precluded from purchasing a bottle of wine over the Internet. That is not what our Founding Fathers had in mind when they passed the interstate commerce clauses. They had in mind that we would allow for free competition that would benefit consumers and benefit our businesses.

I urge my colleagues to oppose this legislation.

Mr. KOLBE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, although I rise in support of the pending amendment, which I think certainly improves the bill, I do want to express my concerns about the legislation as a whole, H.R. 2031.

This is legislation that directly impacts interstate commerce, and it drastically tips the scales of commerce in favor of large wholesale distributors at the expense of consumers and small local vineyards, which rely heavily on direct sales for their business. This legislation gives attorneys general the power to sue out-of-State wine and beer distributors in Federal court for violations of State liquor laws.

As a recent editorial in the Wall Street Journal makes clear, giving State attorneys general the power to sue out-of-State vineyards in Federal court can lead to nothing but political mischief. What better way for a politically ambitious attorney general to build political support at home than to sue out-of-State shippers on behalf of local wholesalers to help keep the competition out?

The 21st amendment was designed to give States the power to regulate alcohol sales within their States, and to ban it altogether, if they choose. It was not designed to give States the power to keep the wine sales of some distributors out while allowing others in. Such a result flies directly in the face of the interstate commerce clause by establishing special interest protections for local distributors.

Any resident who seeks to buy a rare or obscure vintage of wine not offered by his local distributor with this legislation is simply out of luck. The legislation is anticompetitive, it is anticonsumer. Unfortunately, it sounds good.

This legislation would do great mischief. It injects the strong arm of the Federal courts into an area of commerce that is best left to the States. It imposes unnecessary Federal interference in the enforcement of State laws, and gives the State Attorney General a new weapon, the Federal court, to favor local over interstate commerce.

The result will not balance the scales of justice. It will, instead, tip those scales against consumers who have found in the Internet a cornucopia of goods and services heretofore unknown to them.

I urge us to defeat this legislation.

AMENDMENT OFFERED BY MR. BARR OF GEORGIA TO THE AMENDMENT OFFERED BY MR. GOODLATTE, AS AMENDED

Mr. BARR of Georgia. Mr. Chairman, I offer an amendment to the amendment, as amended.

The Clerk read as follows:

Amendment offered by Mr. BARR of Georgia to the amendment offered by Mr. GOODLATTE, as amended:

On page 1 of the amendment offered by Mr. GOODLATTE, at line 16, strike the words ''thus'' and continuing to the end of line 17, and inserting the following: ''erecting barriers to competition, and constituting mere economic protectionism.''

Mr. BARR of Georgia. Mr. Chairman, this simply cleans up the language.

It struck a number of us, in trying to analyze the final language on this page of the amendment offered by the gentleman from Virginia (Mr. GOODLATTE) that the words ''thus erecting barriers to competition'' was unusual language to use in a statutory provision. Therefore, what we do is simply keep the same intent, but clarify it so it reads, ''erecting barriers to competition and constituting mere economic protectionism.''

We are just taking out and changing the grammar so that it is consistent with the earlier language in the particular provision.

Mr. Chairman, I would ask the gentleman from Virginia (Mr. GOODLATTE) if he has any problem with the clarifying language.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BARR of Georgia. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. This

language is perfectly fine with us. We have no objection to the amendment, and urge its adoption.

Mr. DAVIS of Virginia. Mr. Chairman, I rise today to urge my colleagues to support the Goodlatte/Conyers/Davis amendment to the Twenty-First Amendment Enforcement Act because it is essential to ensuring that this legislation does not restrict the growth of Internet commerce. This amendment clarifies first that the Act does not modify or supersede the Internet Tax Freedom Act that we worked hard to enact last year under the leadership of my colleague Representative COX. Equally important is the clarification that an injunctive relief action may not be sought against an Internet Service Provider. Indeed, enforcement approaches such as injunctions to block Internet sites can seriously disrupt lawful Internet communications, and slow the operations of a service provider's network for all other uses.

In sponsoring this clarifying amendment today with my colleagues, I want to alleviate the concern I had that in its current form, H.R. 2031 could be misinterpreted as authorizing injunctions by the states against communications companies who are not involved in the shipping or importing of liquor, but are simply used by third parties for communications purposes. I want to ensure that in enacting this legislation, we do not implement a burdensome Federal enforcement action that would hamper the growth of the Internet. Not just when it comes to the sale of alcohol over the Internet, but we must consider the message we send to business—from the small entrepreneurs to large industry—when they make commercial decisions about how they use the Internet to do business.

While the Twenty-First Amendment Enforcement Act does not specifically mention the Internet, there is no doubt that it is the inmate nature of the Internet that has spurred the call for this legislation. It is my firm belief that Federal policy must use market-driven principles as the underpinning of any enacted legislation affecting the Internet. Despite the Federal Government's initiation and financing of the Internet, its expansion and diversity has been driven mainly by the private sector. Each piece of legislation that will change people's commercial behavior must be thoroughly examined and the consequences understood, lest we unleash a federal mandate or restriction that will harm the Internet's success and growth as the primary tool for communication between people and business.

The Federal Government can be the leader in developing incentives to move the Internet forward as the primary tool of businesses, educators, scholars, students, and the ordinary citizen. We must ensure the no Government can hinder that development. I ask my colleagues to support the Goodlatte/Conyers/Davis/Boucher/McCollum/Dunn amendment and guarantee the continued growth of the Internet as a tool of business.

Mr. CHAMBLISS. Mr. Chairman, today, I rise in support of the Twenty-First Amendment Enforcement Act, which will provide individual states the ability to enforce statutes regulating the distribution and sale of alcoholic beverages within their border, a right guaranteed by the Twenty-First Amendment.

Most states, including my home state of Georgia, employ a three-tiered system of alcohol distribution to control the distribution and sale of alcoholic beverages within their borders. Under this system alcohol producers go through state-licensed wholesalers, who must go through retailers, who alone may sell to consumers. Furthermore, Georgia is one of nineteen ''express prohibition'' states that expressly outlaw direct shipments of alcohol from out-of-state. Georgia's system has proven quite effective in combating illegal alcohol sales to minors.

While Georgia's alcohol statutes have proven successful throughout the years, the recent development of electronic commerce via the Internet has presented new challenges to preventing illegal shipments of alcohol into our state. Confronted with this new challenge, as well as the difficulty of enforcing its laws in court, Georgia in 1997 enacted statutes making the illegal shipment of alcoholic beverages within its borders a felony. This action was necessary to ensure the state would have jurisdiction over violators of its state liquor transportation laws.

I believe if states are unable to effectively enforce their laws against illegal interstate shipment of alcoholic beverages, they may also lose some ability to police sales to underage purchasers. Illegal direct shipments also deprive the state of the excise and sales tax revenue that would otherwise be generated by a regulated state, placing regulated businesses at a distinct commercial disadvantage. Finally, if direct shippers violate state law, they exclude themselves from other state obligations such as submitting to quality control inspections, licensing requirements, and complying with other restrictions placed upon sellers of alcohol.

As an advocate of smaller government and state's rights, I favor a resolution to this problem that does not mandate changes to any existing state laws or alter existing case law interpreting the Commerce clause of the Constitution. I believe the Twenty-First Amendment Enforcement Act is the common-sense solution to this problem as it allows Georgia the authority to seek enforcement, through a federal district court injunction, of its state laws regulating the importation or transportation of intoxicating liquors without infringing on states' rights or creating Constitutional confusion.

For these reasons, I support the passage of H.R. 2031, the Twenty-First Amendment Enforcement Act, and urge its adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. BARR) to the amendment offered by the gentleman from Virginia (Mr. GOODLATTE), as amended.

The amendment to the amendment, as amended, was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE), as amended.

The amendment, as amended, was agreed to.

The CHAIRMAN. Are there further amendments to the bill?

AMENDMENT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. LOFGREN:

Page 21, after line 17, insert the following (and make such technical and conforming changes as may be appropriate):

''(2) the term 'firearm' shall have the meaning given such term in section 921(a) of title 18 of the United States Code;

Page 3, line 128, insert ''or firearm'' after ''liquor''.

Mr. SCARBOROUGH. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN. A point of order is reserved by the gentleman from Virginia (Mr. SCARBOROUGH) to the amendment offered by the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, I offer this amendment on behalf of myself, as well as the gentlewomen from New York, Mrs. MCCARTHY and Mrs. LOWEY.

As I mentioned earlier, Mr. Chairman, in a discussion on the Cox amendment, I do have concerns about the underlying amendment and its ability to constrain interstate commerce unreasonably. However, if this House is insistent upon pursuing the remedies outlined in the Scarborough bill, I would suggest that we ought to provide those tools equally to the chief law enforcement officers of our States in the enforcement of gun laws.

As many of my colleagues know, the State of California has recently passed, by wide margins in the assembly and the State Senate, and these measures have been signed into law by the Governor, a whole series of gun safety measures that I believe put California on the cutting edge of gun safety measures among the 50 States.

It seems to me that, if we are going to give the Attorneys General of the 50 States the ability to go into Federal court to protect their citizens from $20 bottles of cabernet, we ought to be at least as willing to give the attorney general of the State of California the ability to go into Federal court to protect his citizens against the Tech–DC9, the AK–47, and other weapons of mass destruction.

Mr. Chairman, as we know, we failed to come together across the aisle on a bipartisan basis to adopt gun safety measures earlier in this Congress, but we have an opportunity here to at least allow those States that have been more progressive and more receptive to the people of the country than has the United States Congress to have an additional tool to protect the citizens of the States who have forward-thinking State legislatures and forward-thinking Governors.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentlewoman from California (Ms. LOFGREN), who finds it, as do many of us, ironic that this House apparently does not demonstrate the same concern for the dangers of interstate shipment of firearms as they claim to have about the interstate shipment of alcohol.

If we opened the Federal courts to State alcohol suits, we should at least do the same for firearms. I thank the gentlewoman for making the connection in this debate.

Ms. LOFGREN. I thank the gentleman from Michigan (Mr. CONYERS), the ranking member.

I would note, as to the issue of germaneness, noting that the gentleman from Florida (Mr. SCARBOROUGH) has reserved a point of order, that it is my contention that the amendment is germane.

As we know, the underlying bill deals with issues that are governed by the Alcohol, Tobacco, and Firearms Bureau, as is the issue of guns. It seems to me, if we are going to give a tool to States to use the Federal courts for an item that is regulated by ATF, to wit, bottles of cabernet, that we ought to provide that same remedy and tool to States to deal with another item which is within the jurisdiction of ATF, to wit, firearms, as defined in title 18 of the U.S. Code.

I would hope that we might move apace to adopt this resolution. I have two teenage children. They will be starting high school again this fall. They will be starting school, before this House finishes our annual recess. I would like to be able to tell them and to tell their classmates that the House of Representatives has done something, anything rational, to preserve and to enhance gun safety in America. I think we owe that to the mothers and fathers across the United States.

Although we have not been able previously to come together, although we have not been able to support the gun safety measures that have passed the United States Senate, although we have not been able to deliver that level of safety to the American people, we could act today and at least do this much.

So I am hopeful that we can approve this amendment. It is so important to me that I believe I would vote for the underlying bill, despite the reservations I have, in order to get this important new enforcement tool for State Attorneys General.

POINT OF ORDER

Mr. SCARBOROUGH. Mr. Chairman, I ask to speak on the point of order, the fundamental purpose of the bill is to provide the attorney general of any State with the authority to bring a civil action to the United States district court to enjoin any person or entity that the attorney general has reasonable cause to believe is engaged in any act that would constitute a violation of State law regulating the importation or transportation of any intoxicating liquor.

The fundamental purpose of the amendment is to expand the single class of merchandise covered by this bill, to wit, intoxicating liquor, by adding another class of merchandise, to wit, firearms, to the one class covered by this bill.

A distinction also exists that the distinguished ranking member of the Committee on the Judiciary did not touch on when he said we ought to be able to blur alcohol and firearms together in this sort of stew. The main difference is that none of us here support the illegal transportation of firearms across State lines.

□ 1345

What this amendment does is this amendment tries to bring in the gun amendments. We all agree illegal transportation of firearms across State lines should not be permissible. Unfortunately, illegal alcohol sales being transported across State lines is still being defended by many people here today.

According to House Practice Germaneness section 9: ''One individual proposition is not germane to another individual proposition.'' This is clearly one individual proposition being added to another. Accordingly, Mr. Chairman, the amendment is not germane, and I insist on my point of order.

The CHAIRMAN. Does the gentlewoman from California (Ms. LOFGREN) desire to be heard on the point of order?

Ms. LOFGREN. Yes, Mr. Chairman.

Mr. Chairman, I believe that the amendment is germane. I would ask, clearly even if there is a question as to germaneness, it does not need to be raised if all Members agree that the underlying measure should be supported by us all. I was glad to hear the comments of the gentleman from Florida (Mr. SCARBOROUGH) that none of us support the illegal transport of firearms across State laws. The question is whose laws? In California, it is now, because of what the State legislature has done, it is illegal. TEC–9s are covered. TEC DC–9s are covered.

That is not the case under Federal law. So this would allow those States' Attorneys General, the State of California, to go to Federal court to enforce California State laws vis-a-vis firearms.

I hope that we might be able to come together, the gentleman from Florida (Mr. SCARBOROUGH) and I, to allow this amendment to be offered and adopted; and that if he would withdraw his point of order, we need not discuss the germaneness issue any further.

I would hope that he would do that since, if I understood him correctly, he agrees or says he agrees with the intention of the amendment. Therefore, I would hope, and I do not know if he wishes to respond, but I would hope that he might withdraw his objection on this point.

The CHAIRMAN. Does the gentleman from Georgia (Mr. BARR) desire to be heard on the point of order?

Mr. BARR of Georgia. I do, Mr. Chairman. Mr. Chairman, I am not quite sure whether the gentlewoman from California (Ms. LOFGREN) correctly characterized the earlier remarks of the gentleman from Florida (Mr. SCARBOROUGH) who has sponsored the underlying bill here and who has risen and asserted and insisted on a point of order against the amendment of the gentlewoman from California.

I think the gentleman from Florida has made very clear that he is opposed to this amendment. I think the point that the gentleman was making earlier is a very accurate one; and that is that Federal law already provides that, when one ships a firearm in interstate commerce, it has to be shipped consistent with State laws, and it has to be shipped, for example, to a licensed firearms dealer if it is shipped through the mails.

There already, in other words, are very sever limitations on the interstate shipment of firearms. And to open that Pandora's box or that can of worms now to insert into a piece of legislation that is very specific, very clear, very limited, very reasonable, a whole new issue on which there have not been hearings, I mean, the opponents of the bill of the gentleman from Florida earlier were bemoaning the fact, erroneously as it turns out, bemoaning the fact that there had not been hearings and debate and information solicited on his proposed piece of legislation. In fact, as the gentleman from Florida correctly stated, there have been hearings. There has been information. There has been evidence to support his legislation.

What the gentlewoman from California is now proposing to do is to raise another whole issue which has not been debated certainly in the context of the intent of this legislation.

I believe the gentleman from Florida is very correct when he points respectfully to the Chair on section 9 of House Practice on Germaneness. The proposed amendment from the gentlewoman from California has nothing whatsoever to do with the intent or the effect of the underlying bill proposed by the gentleman from Florida.

I rise in support of the reservation on this and I join the gentleman from Florida (Mr. SCARBOROUGH) in insisting on his point of order. I respectfully urge the Chair to strike the amendment as not germane and out of order.

The CHAIRMAN. The Chair is prepared to rule on the point of order.

The bill permits a State Attorney General to bring a civil action in Federal court against a person who has violated a State law regulating the importation and transportation of intoxicating liquor.

The amendment offered by the gentlewoman from California attempts to create an additional Federal cause of action against a person who violates a State law regulating firearms.

As stated in section 798a of the House Rules and Manual, an amendment must address the same subject as the bill under consideration.

This amendment addresses a separate subject matter (regulating traffic in firearms) than that addressed by the bill (regulating traffic in intoxicating liquors).

Accordingly, the amendment is not germane and the point of order is sustained.

AMENDMENT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. LOFGREN:

On page 6 at the end, insert the following:

(c) Application of Amendment with regard to Certain Violations of Law. This Act and the amendment made by this act shall take immediate effect with regard to any violation of a state law regulating the importation or transportation of any intoxicating liquor which results from any violation of a state's firearms laws.

Mr. SCARBOROUGH. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The gentleman from Florida reserves a point of order on the amendment.

Ms. LOFGREN. Mr. Chairman, I believe that the amendment offered by myself and by the gentlewoman from New York (Mrs. MCCARTHY) and the gentlewoman from New York (Mrs. LOWEY) adequately addresses the germaneness issue that was the subject of the point of order on the prior amendment we offered.

There are a series of cases that relate to the interplay between alcohol laws of the States and firearms. I would note for the RECORD and will include for the RECORD two cases: first, the case of *Davis versus State of Alabama Alcohol Beverage Control Board* wherein the court found that the ABC Board in Alabama was able to refuse the renewal of liquor licenses for good cause including the discharge of firearms in the parking lot of the facility in question.

Second, a case from Illinois, *Sip and Save Liquors versus Richard M. Daley, Mayor*, cited at 657 N.E.2d. 1, provides that the Commission may take notice of gun law violations of the State in the proceedings instituted pursuant to the Illinois liquor laws.

This amendment would allow State AGs to utilize the Federal courts to enforce the State gun laws relative to liquor law violations. Let me give an example where this might be pertinent. For example, as I mentioned earlier, in California, TEC–DC9s are no longer a legal weapon.

It would be possible for a State AG, Mr. Lockyer, to go into Federal Court and to seek removal of the liquor license or the license of a winery when the violation of the winery owner related to the violation of the State weapons laws. This may be a niche, and it is a niche I propose only because of the germaneness issue, given the prior ruling of the Chair, and given the unwillingness of those who raised the germaneness issue to waive or withdraw it.

But, once again, as I argued earlier, if we are able to do something, anything to enhance the Nation's gun safety laws, we should do it. As I mentioned before, school will commence all across America before our recess has ended. This is one of the last opportunities the House of Representatives will have before our recess to do something, to do something reasonable, to do something responsible to enhance gun safety laws.

I would hope that we could come together across the aisle on a bipartisan basis to do even this modest thing to help guarantee the safety of the children of this country and the children of the high schools in California, even if it is only some modicum of increased safety when they return to school in September.

(Cite as: 657 N.E.2d 1, 212 Ill.Dec. 306)

SIP & SAVE LIQUORS, INC., AN ILLINOIS CORPORATION, PLAINTIFF-APPELLANT, *v.* RICHARD M. DALEY, MAYOR AND LOCAL LIQUOR CONTROL COMMISSIONER OF THE CITY OF CHICAGO, AND WILLIAM D. O'DONAGHUE, CHAIRMAN OF THE LICENSE APPEAL COMMISSION, DEFENDANTS-APPELLEES

No. 1–93–0760

Appellate Court of Illinois, First District, Third Division, Sept. 6, 1995, Rehearing Denied Nov. 9, 1995

Liquor retailer sought review of revocation of retailer's license by mayor and city liquor control commissioner. The Circuit Court, Cook County, Edward C. Hofert, J., denied relief, and retailer appealed. The Appellate Court, Cerda, J., held that: (1) municipal code section placing time limit on issuance of revocation applied to liquor licenses; (2) state's five-day time limit, not code's 60-day limit, was applicable to revocation of liquor license; (3) failure to issue revocation within five days did not deprive commission of jurisdiction; (4) retailer was not deprived of due process; and (5) revocation was warranted.

Affirmed.

[1] INTOXICATING LIQUORS—106(1)—223k106(1)

City code section allowing mayor to suspend or revoke any license issued under code and state reasons for any revocation or suspension within 60 days was applicable to liquor licenses. Chicago, Ill., Municipal Code §§4–4–280, 4–60–070.

[1] INTOXICATING LIQUORS—108.1—223k108.1

City code section allowing mayor to suspend or revoke any license issued under code and state reasons for any revocation or suspension within 60 days was applicable to liquor licenses. Chicago, Ill., Municipal Code §§4–4–280, 4–60–070.

[2] INTOXICATING LIQUORS—10(2)—223k10(2)

Liquor control is subject to concurrent jurisdiction of state and local government; home-rule municipalities may legislate in area of liquor control, except as restricted by state, pursuant to home-rule provisions of state constitution. S.H.A. Const. Art. 7, §6.

[2] INTOXICATING LIQUORS—11—223k11

Liquor control is subject to concurrent jurisdiction of state and local government; home-rule municipalities may legislate in area of liquor control, except as restricted by state, pursuant to home-rule provisions of state constitution. S.H.A. Const. Art. 7, §6.

[3] INTOXICATING LIQUORS—11—223k11

State statute requiring that revocation of liquor license be issued within five days of hearing prevailed over municipal code section imposing 60-day time limitation for issuing revocation, as code expanded state's time limit and was thus inconsistent with state law. S.H.A. 235 ILCS 5/7–5; Chicago, Ill., Municipal Code §4–4–280.

[3] INTOXICATING LIQUORS—15—223k15

State statute requiring that revocation of liquor license be issued within five days of hearing prevailed over municipal code section imposing 60-day time limitation for issuing revocation, as code expanded state's time limit and was thus inconsistent with state law. S.H.A. 235 ILCS 5/7–5; Chicago, Ill., Municipal Code §4–4–280.

[4] ADMINISTRATIVE LAW AND PROCEDURE—489.1—15Ak489.1

City liquor control commission's failure to issue reasons for revocation within five-day period prescribed by state law did not deprive commission of jurisdiction to revoke license, as statute setting forth five-day period was directory, not mandatory, Liquor Act was to be liberally construed, licensee was not injured by late decision, and Liquor Act did not provide that jurisdiction was lost. S.H.A. 235 ILCS 5/1–2, 7–5.

[4] INTOXICATING LIQUORS—108.9—223K108.9

City liquor control commission's failure to issue reasons for revocation within five-day period prescribed by state law did not deprive commission of jurisdiction to revoke license, as statute setting forth five-day period was directory, not mandatory, Liquor Act was to be liberally construed, licensee was not injured by late decision, and Liquor Act did not provide that jurisdiction was lost. S.H.A. 235 ILCS 5/1–2, 7–5.

[5] STATUTES—227—361k227

Word ''shall'' generally is mandatory and not directory, but it can be construed as meaning ''may'' depending on legislative intent.

[6] STATUTES—227—361k227

Generally, statutory regulations designed to secure order, system and dispatch in proceedings, and by disregard of which rights of interested parties cannot be injuriously affected, are not mandatory unless they are accompanied by negative language that imports that acts required shall not be done in any other manner or time than designated.

[7] STATUTES—227—361k227

If statute is mandatory, it prescribes result that will follow if required acts are not done; if statute is directory then its terms are limited to what is required to be done.

[8] STATUTES—227—361k227

Failure to comply with mandatory provision will render void proceeding to which provision relates, but strict observance of directory provision is not essential to validity of proceedings.

[9] ADMINISTRATIVE LAW AND PROCEDURE—670—15Ak670

Liquor retailer waived issued that he was denied due process because shotgun which retailer was charged with possessing in license revocation proceeding was destroyed and police officer was allowed to testify to its measurement, where retailer did not object to testimony, and did not make motion in limine at hearing, and did not raise issue until penalty hearing.

[9] INTOXICATING LIQUORS—108.10(4)—223k108.10(4)

Liquor retailer waived issue that he was denied due process because shotgun which retailer was charged with possessing in license revocation proceeding was destroyed and police officer was allowed to testify to its measurement, where retailer did not object to testimony, did not make motion in limine at hearing, and did not raise issue until penalty hearing.

[10] CONSTITUTIONAL LAW—287.2(3)—92k287.2(3)

Liquor retailer received sufficient notice of charge of possessing sawed-off shotgun, thus, retailer was not denied due process in license revocation proceeding. U.S.C.A. Const. Amend. 14.

[10] INTOXICATING LIQUORS—108.2—223k108.2

Liquor retailer received sufficient notice of charge of possessing sawed-off shotgun, thus, retailer was not denied due process in license revocation proceeding. U.S.C.A. Const. Amend. 14.

[11] INTOXICATING LIQUORS—106(4)—223k106(4)

Presence of sawed-off shotgun on premises of liquor retailer warranted revocation of liquor license; retailer was not improperly found guilty of failing to register gun which was not registerable, location of shotgun permitted inference that retailer had control

of gun, and factors both in favor of and against revocation existed.

[12] INTOXICATING LIQUORS—108.10(8)—223k108.10(8)

Appellate court may reverse licensing decision of liquor control commission only if manifest weight of evidence supports opposite conclusion.

*2 **307 Lamendella & Daniel, Chicago (Joseph A. Lamendella, Kris Daniel, of counsel), for appellant.

Corp. Counsel, Chicago (Susan S. Sher, Lawrence Rosenthal, Benna Ruth Solomon, Mardell Nereim, of cousel), for appellees.

Justice CERDA delivered the opinion of the court:

Plaintiff, Sip & Save Liquors, Inc., an Illinois corporation, appeals from the revocation of its retail liquor license. It argues on appeal that: (1) the City of Chicago Local Liquor Control Commission (the commission) lost jurisdiction when it did not timely issue a decision; (2) plaintiff was denied due process; and (3) revocation was an unreasonable penalty.

One of the issues in this case is whether the City of Chicago Local Liquor Control Commission lost jurisdiction to impose any sanction when it failed to render a decision within the mandatory 15-day period prescribed by section 4–4–280 of the Chicago Municipal Code (the Code) (Chicago Municipal Code §4–4–280 (1990)) and the holding in Puss N Boots, Inc. v. Mayor's License Commission (1992), 232 Ill. App. 3d 984, 173 Ill. Dec. 676, 597 N.E. 2d 650 or whether instead the Liquor Control Act of 1934 (235 ILCS 5/1–1 et seq. (West 1992)) (the Liquor Act) of the State of Illinois was applicable.

The commission charged in a notice of hearing to plaintiff that on August 19, 1990, the Code was violated when Thomas Shubalis, plaintiff's president, possessed an unregistered Winchester .22-caliber rifle, a Harlin 20-gauge shotgun, a Ruger .357 Magnum firearm, and a .25-caliber automatic firearm. It was also charged that Shubailis violated State law by possessing firearms without possessing an Illinois firearm owner's identification card. The notice also charged that on August 29, 1990, plaintiff sold or gave alcoholic beverages on the licensed premises to a person under the age of 21 years.

The notice stated that the city would present evidence of previous acts of misconduct. Attached as exhibits were orders of dispositions of previous charges: (1) sale to a minor on November 4, 1983, resulting in a warning on July 18, 1984; (2) sale to a minor on January 11, 1985, resulting in a warning on July 17, 1985; and (3) sale to a minor on August 31, 1985, resulting in a $300 voluntary fine on April 29, 1986.

A hearing was held before the commission on January 17, February 14, and April 4, 1991.

Chicago police officer Anthony Wilczak testified at the hearing that he responded to a burglary alarm on August 19, 1990, at plaintiff's liquor store. He searched the premises and found a .357 Magnum revolver and a .25-caliber automatic pistol below the cash register on the shelf. He asked Shubalis *3**308 about the guns, and Shubalis said that the guns were his brother's. Shubalis also said that the did not know where the .22-caliber rifle came from and that the sawed-off shotgun belonged to friend of his brother. He did not find a firearm owner's identification card when he searched Shubalis nor did he find a city registration for any of the weapons.

Chicago police officer Sharon Gaynor testified at the hearing that she recovered in the search a sawed-off 20-gauge shotgun and a Winchester rifle, which were found in a large safe in a back storage area. The safe was open, and the guns were lying in the safe.

On April 26, 1991, Richard M. Daley, mayor and local liquor control commissioner of the city of Chicago, revoked plaintiff's city of Chicago retail liquor license. The order stated that the proceedings were instituted pursuant to the Liquor Act (Ill. Reve. Stat. 1989, ch. 43, pars. 93.9 through 195). The order made the following findings: (1) on or about August 19, 1990, the licensee possessed unregistered firearms (Harlin 20-gauge shotgun, Ruger .357 Magnum firearm, and .25-caliber automatic firearm) on the licensed premises in violation of former section 11.1–13 of chapter 11.1 of the code (Chicago Municipal Code §11.1–13 (1983) (now codified as Chicago Municipal Code §8–20–150 (1995))); (2) on or about August 19, 1990, the licensee possessed firearms on the licensed premises without possessing a firearm owner's identification card issued by the State of Illinois in violation of State law; and (3) on or about August 29, 1990, plaintiff sold or gave alcoholic beverages on the licensed premises to a person under 21 years of age in violation of former section 147–14(a) of chapter 147 of the Code (Chicago Municipal Code §147–14(a) (1983) (now codified as Chicago Municipal Code §4–60–140(a) (1993))).

Plaintiff appealed to the City of Chicago License Appeal Commission (the appeal commission), which affirmed Daley's action on September 30, 1991. Plaintiff's petition for rehearing was denied by the appeal commission on November 6, 1991.

On December 6, 1991, plaintiff filed a complaint in administrative review against defendants Daley and William D. O'Donaghue, chairman of the appeal commission.

On May 6, 1992, the trial court found the following: (1) finding charge number one (Harlin 20-gauge shotgun) was sustained; (2) the other findings were not sustained; (3) the matter was remanded to the commission to consider its order of revocation with respect to finding against the plaintiff on charge number one.

On June 6, 1992, the commission reconfirmed the revocation of the license based on the finding that the owner possessed an unregistered Harlin 20-gauge shotgun.

On August 14, 1992, the trial court reversed the order reconfirming revocation and remanded the matter for a hearing by the commission on the penalty in view of the fact that the charges were modified. The commission was ordered not to consider the charges that were not sustained by the trial court. It was also ordered that both parties would have a full hearing in aggravation and mitigation.

A hearing on the penalty was held on October 8, 1992, before the commission. During Chicago police officer Lawrence Seidler's testimony, plaintiff made an oral motion in limine based on the following: (1) the charge was the failure to exhibit a registration certificate and not the possession of a sawed off shotgun; and (2) the shotgun was destroyed by the police. The motion was denied.

Officer Seidler testified that the barrel of the shotgun was 14 inches long and that a portion of the stock was sawed off.

Thomas Shubalis testified at the hearing that the liquor store had been in business at the same location for 17 years. He recognized the shotgun and had seen it once before on the premises. He did not believe that the shotgun was on the premises on August 19, 1990. The shotgun had been brought in by a neighbor who was moving and who was going to pick up the gun in a *4 **309 couple of days. The shotgun had been on the premises in a storeroom safe for a number of years but he thought it had long been removed and never even thought of it. The safe was not used, and it was hardly visible because there were liquor boxes in front of it. He never had occasion to open the safe between the time he saw the shotgun and the time of the burglary. He had no registration for the shotgun.

On October 14, 1992, plaintiff moved in the trial court to reverse all orders of the commission and the appeal commission on the basis that the mayor lost jurisdiction to revoke the liquor license. The hearings had terminated on April 4, 1991, and the decision was rendered on April 26, 1991, which was later than the mandatory 15-day period.

On October 16, 1992, the commission sustained ''charge one'' and revoked the license. The following findings of fact were made. Shubalis admitted that he first saw the sawed-off shotgun eight or nine years before the burglary and that he did nothing to assure that the shotgun was removed from the premises. Shubalis's testimony that the gun was hidden in the old safe and that he did not even think about it after first seeing it was not credible. The licensee had a history of three prior violations, one of which resulted in a fine of $300. The weapon was an extremely dangerous type of weapon. In light of the serious nature of the offense, revocation was appropriate.

On January 22, 1993, the trial court denied plaintiff's motion to reverse and to reinstate the license, denied plaintiff's motion to reverse the post-remand order of revocation, and affirmed the order of revocation.

Plaintiff filed a notice of appeal on February 19, 1993.

I. JURISDICTION

Plaintiff first argues that the commission lost jurisdiction to impose any sanction when it failed to render a decision within the 15 days following the hearing as prescribed by section 4–4–280 of the Code (Chicago Municipal Code §4–4–280 (1990)), which was amended in 1992 to expand the time period to 60 days (Journal of the Proceedings of the City Council of the City of Chicago, July 29, 1992, at 20041–42). If the proceedings were initiated exclusively under the Liquor Act, then the procedural requirements of section 7–5 of the Liquor Act were not met (235 ILCS 5/7–5 (West 1995)). The term ''shall'' was mandatory and not directory.

[1] The first issue is whether section 4–4–280 of the Code applied to the revocation of plaintiff's liquor license. It states in part:

''The mayor shall have the power to * * * suspend or revoke any license issued under the provisions of this code * * *.

If the mayor shall determine after [a] hearing that the license should be revoked or suspended, within 60 days he shall state the reason or reasons for such determination in a written order or revocation or suspension * * *.''

According to the Journal of the Proceedings of the City Council of the City of Chicago, the ordinance was:

''intended to ratify prior actions of the Mayor in revoking licenses and * * * shall apply to all cases in which licenses have been revoked * * * within 60 days of the conclusion of a hearing required by Section 4–4–280 * * *.'' Journal of the Proceedings of the City Council of the City of Chicago, July 29, 1992, at p. 20042.

Section 4–4–280 states that it is applicable to the revocation of any license, and it does not exempt liquor licenses. Section 4–60–070 of the Code states that a liquor license shall be issued subject to chapter 4–4, the chapter in which section 4–4–280 appears. [FN1] (Chicago Municipal Code §4–60–070 (1994).) We find that section 4–4–280 covers liquor licenses.

''FN1. Section 4–60–070(a) of title four of the Code states in part that ''[a] city retailer's license for the sale of alcoholic liquor shall be issued by the local liquor control commissioner, subject to the provisions of an act entitled 'An Act relating to alcoholic liquor,' approved January 31, 1934, as amended, and subject to the provisions of this chapter and Chapter 4–4 relating to licenses in general not inconsistent with the law relating

to alcoholic liquor.'' (Emphasis added.) Chicago Municipal Code §4–60–070 (1994).''

*5 **310 The next issue is whether section 7–5 of the Liquor Act states with its requirement that a statement of reasons for revocation be given within five days of hearing controls over Code section 4–4–280's time frame of 60 days. Section 7–5 of the Liquor Act states in part:

''The local liquor control commissioner shall within 5 days after [a] hearing, if he determines after such hearing that the license should be revoked or suspended or that the licensee should be fined, state the reason or reasons for such determination in a written order * * *.'' 235 ILCS 5/7–5 (West 1995).

[2] Liquor control is subject to concurrent jurisdiction of the State and local government. (Easter Enterprises, Inc. v. Illinois Liquor Control Commission (1983), 114 Ill. App. 3d 855, 858–59, 70 Ill. Dec. 666, 449 N.E. 2d 1013.) Home-rule municipalities such as Chicago may legislate in the area of liquor control, except as restricted by the State, pursuant to the home-rule provisions of the 1970 Illinois Constitution (Ill. Cont. 1970, art. VII, §6). (Easter, 114 Ill. App. 3d at 858–59, 70 Ill. Dec. 666, 449 N.E. 2d 1013.) Courts have approved local liquor ordinances in home-rule municipalities that were either more restrictive than State statutes on the same subject matter or that placed additional requirements on licenses not found in State statutes. Easter, 114 Ill. App. 3d at 859, 60 Ill. Dec. 666, 449 N.E. 2d 1013.

[3] Section 4–60–070 states that provisions of the Code chapter relating to licenses in general would govern liquor licenses except when they are inconsistent with ''the law relating to alcoholic liquor.'' (Chicago Municipal Code §4–60–070 (1994).) The ordinance also states that the license was subject to the provisions of the Liquor Act. The Liquor Act enumerates in section 4–1 certain powers of municipalities including the power ''to establish * * * regulations and restrictions upon the issuance of an operations under local licenses not inconsistent with law as the public good and convenience may require.'' 235 ILCS 5/4–1 (West 1993).

The Code's time limit is not just different than State law but expands a time limit established by State law. The longer time period is not a further restriction or an additional requirement. (Easter, 114 Ill. App. 3d at 859, 70 Ill. Dec. 666, 449 N.E. 2d 1013.) The Code's longer time for the issuance of the penalty decision is inconsistent with the five-day time limit in the Liquor Act. Under the terms of the Code and the Liquor Act, the inconsistent 15- and 60-day limits cannot stand. (Village of Mundelein v. Hartnett (1983), 117 Ill. App. 3d 1011, 1015, 73 I11.Dec. 285, 454 N.E.2d 29 (where there is a conflict between a statute and an ordinance, the ordinance must give way).) The State five-day limitation for issuing a revocation decision prevails over the Code.

The case of Puss N Boots, Inc. v. Mayor's License Commission (1992), 232 I11.App.3d 984, 173 I11.Dec. 676, 597 N.E.2d 650, was an appeal from an order of the mayor of the city of Chicago revoking the public place of amusement license of the plaintiff. Plaintiff argues that this court should follow the decision in Puss N Boots. One of the issues in that case was whether the mayor had lost jurisdiction to revoke the public place of amusement license because of failure to act within a 15-day time period prescribed by ordinance section 4–4–280. The court pointed out that the Code section providing for ''interpretation of language'' expressly stated that ''[t]he word 'shall' as used in this code is mandatory.'' (Puss N Boots, 232 I11.App.3d at 987, 173 I11.Dec. 676, 597 N.E.2d 650.) The court concluded that ''shall'' in section 4– 4–280 was mandatory and therefore the failure to render a decision within the mandatory time deprived the mayor of jurisdiction. Puss N Boots, 232 I11.App.3d at 987–89, 173 I11.Dec.676, 597 N.E.2d 650.

We agree with the decision rendered in the Puss N Boots case. The word ''shall'' in section 4–4–280 of the Municipal Code of Chicago is mandatory rather than directory, and the commission would have lost jurisdiction when the mayor failed to act within the 15-day period in this case if only the local code were involved. However, liquor control is subject to concurrent jurisdiction of the State and the city of Chicago. (Easter Enterprises, Inc. v. Illinois Liquor Control Commission (1983), 114 I11.App.3d 855, 858–59, 70 I11.Dec. 666, 449 N.E.2d 1013.) In this *6 **311 case, the order of April 26, 1991, was issued by Richard M. Daley as mayor and local liquor control commissioner. The order also stated that the proceedings were instituted pursuant to the Liquor Act. In the Puss N Boots case the State of Illinois had no involvement in the revocation of a Chicago public place of amusement license whereas in this case the proceedings were conducted subject to the Liquor Act. We find that the Puss N Boots case is distinguishable from the case sub judice and is not controlling.

[4] The next issue is whether the failure to issue the reasons for revocation within the five-day period provided by State law deprived the commission of jurisdiction. If the five-day requirement of the Liquor Act was mandatory and not directory, then the failure to act within the required time meant the commission did not have jurisdiction to act beyond the time limit. See Johnkol, Inc. v. License Appeal Commission (1969), 42 I11.2d 377, 383– 84, 247 N.E.2d 901 (failure of liquor license appeal commission to render a decision within 20 days of filing the appeal as required by State law resulted in loss of jurisdiction for noncompliance).

[5][6][7][8] Section 7–5 of the Liquor Act states that the local liquor control commissioner ''shall'' within five days of the hearing state the reasons for revocation. (235 ILCS 5/7–5 (West 1995).) The word ''shall'' generally is mandatory and not directory, but it can be construed as meaning ''may'' depending on the legislative intent. (Village of Mundelein v. Hartnett (1983), 117 I11.App.3d 1011, 1016, 73 I11.Dec. 285, 454 N.E.2d 29.) Generally, statutory regulations designed ''to secure order, system and dispatch in proceedings, and by a disregard of which the rights interested parties cannot be injuriously affected'' are not mandatory unless they are accompanied by negative language that imports that the acts required shall not be done in any other manner or time than designated. (Village of Mundelein, 117 I11.App.3d at 1016, 73 I11.Dec. 285, 454 N.E.2d 29.) If a statute is mandatory, it prescribes the result that will follow if the required acts are not done; if the statute is directory then its terms are limited to what is required to be done. (Village of Mundelein, 117 I11.App.3d at 1016, 73 I11.Dec. 285, 454 N.E.2d 29.) The failure to comply with a mandatory provision will render void the proceeding to which the provision relates, but strict observance of a directory provision is not essential to the validity of the proceedings. Village of Mundelein, 117 I11.App.3d at 1016, 73 I11.Dec. 285, 454 N.E.2d 29.

Alpern v. License Appeal Commission (1976), 38 I11.App.3d 565, 567, 348 N.E.2d 271, was the first decision that held that the Liquor Act's five-day requirement was directory so that a revocation issued beyond that time was valid and the commissioner did not lose jurisdiction. The court adopted the reason that ordinarily a statute that specifies the time for the performance of an official duty will be considered directory only where the rights of the parties cannot be injuriously affected by the failure to act within the time indicated. (Alpern, 38 Ill. App. 3d at 567, 348 N.E. 2d 271.) The court also noted that the Liquor Act provided that it was to be liberally construed to protect the welfare of the people. (Alpern, 38 Ill. App. 3d at 567, 348 N.E. 2d 271.) The five-day provision did not contain language denying the exercise of the power after the time named and no right of plaintiff would be injuriously affected by a failure to serve the revocation order timely. Alpern, 38 Ill. App. 3d at 568, 348 N.E. 2d 271.

Several first district cases have followed Alpern; Dugan's Bistro, Inc. v. Daley (1977), 56 Ill. App. 3d 463, 475, 14 Ill. Dec. 63, 371 N.E. 2d 1116; Rincon v. License Appeal Commission (1978), 62 Ill. App. 3d 600, 606, 19 Ill. Dec. 406, 378 N.E. 2d 1281; Watra, Inc. v. License Appeal Commission (1979), 71 Ill. App. 3d 596, 600, 28 Ill Dec. 120, 390, N.E. 2d. 102; and Cox v. Daley (1981), 93 Ill. App. 3d 593, 595–96, 49 Ill. Dec. 55, 417 N.E. 2d 745.

Miller v. Daley (1973), 14 Ill. App. 3d 394, 397, 302 N.E. 2d 347, stated that the five-day limit was mandatory but found that the order was served within the period prescribed by the statute so that the conclusion that it was mandatory was dictum. (See Alpern, 38 Ill. App. 3d at 568, 348 N.E. 2d 271 (the interpretation in Miller was dictum).) The weight of the authority is that the five-day period is directory.

*7 **312 We concur with the cases finding that the failure to act in five days does not result in the loss of jurisdiction because even though the word ''shall'' is used (1) the Liquor Act is to be liberally construed to protect the welfare of the people (235 ILCS 5/1–2 (West 1993)), and a construction voiding a late revocation order would not serve the welfare of the people; (2) the license was not injured by a late decision as he continued to run his business until the license was revoked; and (3) the Liquor Act does not provide that jurisdiction is lost after the five-day period.

II. DUE PROCESS

Plaintiff next argues that the plaintiff was denied due process because the shotgun was destroyed and a police officer was permitted to testify about the measurements of one barrel of the shotgun. Plaintiff was also denied due process because he did not receive notice of the charge of possession of a sawed-off shotgun. The penalty was based on possession of a sawed-off shotgun, which was a separate offense from the charge of possession of an unregistered shotgun.

[9] Plaintiff did not object to the testimony concerning the shotgun at the first hearing, which was when the charges were tried. A motion in limine was not made at the first hearing. Plaintiff did not raise the issue of the denial of due process based on destruction of the shotgun until the penalty hearing. Therefore, that issue was waived. Harbor Insurance C. v. Arthur Andersen & Co. (1986), 149 Ill. App. 3d 235, 240, 102 Ill. Dec. 814, 500 N.E. 2d 707.

[10] The charge of possessing an unregistered shotgun was stated in the notice of hearing to be a violation of former section 11.1–13 of chapter 11.1 of the Code, which is now codified as section 8–20–150. Section 8–20–150 of the Code requires one to exhibit a valid registration certificate. (Chicago Municipal Code §8–20–150 (1995).) Section 8–20–040 of the Code states in part that no person shall within the city possess or have under his control any firearm unless he holds a valid registration certificate for that firearm. (Chicago Municipal Code §8–20–040(a) (1990).) A sawed-off shotgun is unregisterable. (Chicago Municipal Code §8–20–050(a) (1995).) Although the predecessor of section 8–2–150 was cited in the notice of

hearing instead of the predecessor of section 8–20–040, plaintiff received adequate notice that he was charged with possessing an unregistered sawed-off shotgun. From the beginning of the proceedings plaintiff knew that possession of a shotgun was the issue.

III. REVOCATION

[11] Plaintiff next argues that the revocation was unreasonable. Plaintiff had no duty to register a firearm and display a registration certificate for a firearm that was unregisterable, that the licensee did not own, and that the licensee did not constructively possess. The revocation order states that the ordinance violated was section 8–20–150 requiring a registration certificate (Chicago Municipal Code § 8–20–150 (1995)), but the conduct was described as possession of an unregistered firearm, which was prohibited by section 8–20–040 Chicago Municipal Code § 8–20–040 (1990)).

Plaintiff further argues that the finding of possession was erroneously based on the fact that the licensee had knowledge of the presence of the shotgun on the premises eight or nine years earlier. Plaintiff operated the business for 17 years. In a two-year period plaintiff was charged with three separate sales of alcohol to minors, but there was no other record of wrongful conduct. Failure to display a certificate was the most venial of the firearms offenses and should have resulted in a more lenient sanction of either fine or suspension. There was no evidence that the shotgun was functional.

The second revocation order issued does not refer to the specific ordinance violated as plaintiff contends but merely states that ''charge one'' was sustained. The order should have referred to the first ''finding'' of the revocation order, which was that plaintiff possessed an unregistered shotgun, because the first charge in the notice of hearing was possession of a rifle. Plaintiff was informed as to the basis for the revocation. Furthermore, the findings of the commission were given, and they emphasized the possession of the shotgun.

*8 **313 The licensee was found to have possessed an unregistered gun and was not found guilty of the offense of failing to register the unregisterable shotgun. Therefore the licensee was not punished for failing to perform an impossible act, and United States v. Dalton (10th Cir. 1992), 960 F.2d 121, is distinguishable. The Dalton court held that due process barred a conviction under a statute that required registration of a firearm where the subject firearm could not be legally registered. (Dalton, 960 F.2d at 124.) Section 8–20–040 does not only state that one cannot possese an unregistered gun (which would imply that the gun was registerable); the ordinance precludes possession of any firearm that is unregisterable. Chicago Municipal Ordinance § 8–20–040 (1995).

The next issue is whether the licensee possessed the shotgun within the meaning of section 8–20–040(a), which states that no person shall ''possess, harbor, have under his control, * * * or accept'' Any unregisterable firearm. (Chicago Municipal Code § 8–20–040(a) (1999).) Although there were employees who had access to the room where the shotgun was located, the shotgun was at the licensee's place of business so that it can be inferred that the licensee had control over the area where the shotgun was found.

[12] The appellate court may reverse the commission's decision only if the manifest weight of the evidence supports the opposite conclusion. (Lopez v. Illinois Liquor Control Commission (1983), 120 Ill.App.3d 756, 762–63, 76 Ill.Dec. 199, 458 N.E.2d 599.) Section 7–5 of the Liquor Act permits revocation if the licensee violated any provisions of the act or any ordinance of the municipality or any rule of the local liquor control commission (235 ILCS 5/7–5 (West 1995)), but the violation must fairly relate to the control of liquor. Lopez, 120 Ill. App. 3d at 761, 765, 76 Ill.Dec. 199, 458 N.E.2d 599.

That shotgun was deemed to be especially dangerous because it was unregisterable. The presence of this firearm on the premises jeopardized the safety of the public because employees of the licensee would have access to it. On the other hand, the business had been operated for 17 years with only three other charges. There were factors going in favor and against revocation. A less severe penalty could have been imposed, but under the abuse of discretion standard, the revocation must be upheld.

The judgment of the trial court is affirmed.

Affirmed.

RIZZI and TULLY, JJ., concur.

(Cite as: 636 So.2d 448)

ROBERT DAVIS D/B/A SOLID GOLD, INC. *v.* STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD.

AV92000711

Court of Civil Appeals of Alabama, Feb. 25, 1994

Owner of lounge sought review of Alcoholic Beverage Control (ABC) Board decision denying renewal of lounge liquor license. The Mobile Circuit Court, Ferill D. McRae, J., affirmed. Owner appealed. The Court of Civil Appeals, Robertson, P.J., held that substantial evidence supported ABC Board's finding that operation of lounge was prejudicial to health, welfare and morals of community.

Affirmed.

[1] ADMINISTRATIVE LAW AND PROCEDURE—701—15Ak701

Circuit court review of decision of Alcoholic Beverage Control (ABC) Board decision denying renewal of liquor license is governed by administrative procedure statute pertaining generally to judicial review of agency actions in contested cases. Code 1975, § 41–22–20.

[1] INTOXICATING LIQUORS—102—223k102

Circuit court review of decision of Alcoholic Beverage Control (ABC) Board decision denying renewal of liquor license is governed by administrative procedure statute pertaining generally to judicial review of agency actions in contested cases. Code 1975, § 41–22–20.

[2] ADMINISTRATIVE LAW AND PROCEDURE—683—15Ak683

In reviewing trial court's determination as to propriety of action of Alcoholic Beverage Control (ABC) Board, standard of review of Court of Civil Appeals is same as that of trial court. Code 1975, § 41–22–20.

[2] INTOXICATING LIQUORS—102—223k102

In reviewing trial court's determination as to propriety of action of Alcoholic Beverage Control (ABC) Board, standard of review of Court of Civil Appeals is same as that of trial court. Code 1975, § 41–22–20.

[3] INTOXICATING LIQUORS—102—223k102

Substantial evidence supported Alcoholic Beverage Control (ABC) Board's finding that operation of lounge was prejudicial to health, welfare and morals of community, thus supporting Board's denial of lounge's liquor license renewal, where neighborhood residents testified that lounge patrons discharged firearms, brawled in parking lot, made excessive noise, loitered, trespassed, deposited weapons and narcotics in yards, parked illegally, and urinated, defecated, and engaged in sexual activities on residents' property, and residents' testimony was supported by testimony of ABC Board employees and city police sergeant. Code 1975, § 28–3A–5(b).

*448 Major E. Madison, Jr., Mobile, for appellant.

H. Lewis Gillis and Anita L. Kelly of Thomas, Means & Gillis, P.C., Montgomery, for appellee.

ROBERTSON, Presiding Judge.

Robert Davis d/b/a Solid Gold, Inc., appeals from a judgment of the trial court upholding a decision of the State of Alabama Alcoholic Beverage Control Board (ABC *449 Board) denying a renewal of his lounge liquor license.

By a letter to the ABC Board dated August 20, 1991, Thomas Sullivan, the City of Mobile council member representing the district in which Davis operated his business, protested the renewal of Davis's liquor license for the lounge known as the Solid Gold Social Club (lounge), stating that he had received several complaints from nearby residents that shootings, prostitution, and drug deals had occurred at the lounge. The ABC Board notified Davis of protests it had received that the lounge's ''operation and location [were] prejudicial to the health, welfare and morals of the community.''

The ABC Board held a hearing on the protests on September 26, 1991. By a letter dated October 11, 1991, the ABC Board notified Davis that it had denied a renewal of his liquor license. Davis appealed the Board's decision to the Mobile County Circuit Court, which, following an ore tenus hearing, affirmed the Board's decision.

The sole issue presented to this court on appeal is whether the ABC Board's decision not to renew Davis's liquor license for his lounge was clearly erroneous, unreasonable, arbitrary, or an abuse of discretion.

[1][2] The ABC Board may refuse the renewal of liquor licenses for ''good cause,'' provided that ''within one month prior to the scheduled date of expiration of such licenses the applicant shall have been notified by the board of objections to the [renewal] signed by persons authorized to do so.'' § 28–3A–5(b), Ala. Code 1975. The judicial review of such an action in circuit court is governed by § 41–22–20, Ala. Code 1975. Dawson v. Department of Environmental Management, 529 So.2d 1012 (Ala. Civ. App. 1988). Section 41–22–20(k) provides that ''the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute.'' The trial court may reverse, modify, or alter a decision of the ABC Board if the Board's action was clearly erroneous, unreasonable, arbitrary, capricious, or an abuse of discretion. § 41–22–20(k)(6), (7), Ala. Code 1975. In reviewing a trial court's determination as to the propriety of an ABC Board action, this court's standard of review is the same as that of the trial court. Dawson, supra.

[3] The record of the ABC Board's hearing reflects that the lounge is located in Mobile, at 1385 Dr. Martin Luther King, Jr., Avenue, an area of mixed commercial and residential properties. Neighborhood residents testified that the lounge's patrons discharged firearms; brawled in the parking lot; made excessive noise; loitered; trespassed; deposited weapons and narcotics in neighborhood yards; illegally parked their cars; and urinated, defecated, and engaged in sexual activities on the residents' property. Supporting testimony was offered by George Boan and Kenneth Kirkland, two ABC Board employees, and by Sgt. Kay Taylor of the Mobile Police Department. Boan, an ABC Board district supervisor, testified that he had personally observed loitering, noise, and illegal parking at the lounge, and he stated that during an investigation of the lounge he had been approached by prostitutes working the area. Kirkland, an ABC Board agent, played a videotape that he had made of the parking lot and the area surrounding the lounge; on that tape he had captured an apparent drug deal. Sgt. Taylor presented a

telephone log listing 95 complaints lodged with the police department between January 1, 1990, and September 25, 1991, concerning activities allegedly occurring inside the lounge or on its premises.

Davis denied that his patrons were responsible for the illegal activities that had occurred in the vicinity, blaming persons driving by and the occupants of a nearby house for causing the trouble. However, after a thorough review of the record, we find that the ABC Board heard substantial evidence that the operation of the lounge was prejudicial to the health, welfare, and morals of the community. Consequently, we cannot hold that the Board's action was clearly erroneous, unreasonable, arbitrary, or an abuse of discretion.

*450 The judgment of the trial court is affirmed.

AFFIRMED.

THIGPEN and YATES, JJ., concur.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Michigan, the ranking member.

Mr. CONYERS. Mr. Chairman, I want to thank the gentlewoman from California (Ms. LOFGREN) for her insistence.

PARLIAMENTARY INQUIRY

Mr. SCARBOROUGH. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. Does the gentlewoman from California yield to the gentleman from Michigan (Mr. CONYERS)?

Ms. LOFGREN. I have yielded to the gentleman from Michigan.

Mr. SCARBOROUGH. Parliamentary inquiry. Is this for the first 5 minutes?

Ms. LOFGREN. Yes, it is.

Mr. SCARBOROUGH. Parliamentary inquiry. Is it the rule of the Chair, then, that they can yield during the first 5 minutes when a point of order has been raised?

The CHAIRMAN. Does the gentlewoman from California yield to the gentleman from Florida for a parliamentary inquiry?

Ms. LOFGREN. I will yield for a parliamentary inquiry which has been stated. May I yield time to the gentleman from Michigan (Mr. CONYERS), the ranking member, under regular order?

The CHAIRMAN. The gentleman from Florida may state his parliamentary inquiry.

Mr. SCARBOROUGH. Mr. Chairman, the parliamentary inquiry, earlier I had tried to yield some time on reserving a point of order.

The CHAIRMAN. The Chair controls debate on the point of order when it is raised.

Ms. LOFGREN. Mr. Chairman, reclaiming my time, that was on the germaneness issue. This is on the 5 minutes.

Mr. SCARBOROUGH. I am trying to get a ruling from the Chair.

The CHAIRMAN. Members will suspend. Earlier the gentleman tried to yield time during argument on a point of order. That cannot be done under the rules.

The gentlewoman from California (Ms. LOFGREN) controls 5 minutes and can yield to the gentleman from Florida for a parliamentary inquiry.

Mr. SCARBOROUGH. Okay.

Ms. LOFGREN. Mr. Chairman, I yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the gentlewoman from California for yielding to me.

I am glad the gentleman from Florida (Mr. SCARBOROUGH) realizes that this is perfectly orderly procedure.

I wanted to just thank the gentlewoman for her persistence in trying to connect at a Federal level the relationship between gun safety, the shipment of firearms, and the shipment of alcoholic beverages. There is nothing illogical or irrational about it. They are both very related subject matter.

The need for using these regulations and looking at them from this perspective of a Federally licensed firearm dealer and wine distributor or alcohol beverage distributor are related.

I am glad that the gentlewoman has reformulated her amendment. I think it now attaches to this bill with a great rationality, and it is an amendment on its own that I support very strongly.

Ms. LOFGREN. Mr. Chairman, I thank the ranking member for his kind comments.

POINT OF ORDER

Mr. SCARBOROUGH. Mr. Chairman, I rise to speak on the point of order that I reserved.

The CHAIRMAN. The gentleman may state his point of order.

Mr. SCARBOROUGH. Mr. Chairman, again, the fundamental purpose of this bill is to provide the attorney general of any State with the authority to bring a civil action in the United States district court to enjoin any person or entity that the attorney general has a reasonable cause to believe is engaged in any act that would constitute a violation of State law regulating the importation or transportation of intoxicating liquor.

Now, the fundamental purpose of this amendment is again to expand the single class of merchandise covered by the bill from intoxicating liquor to now adding another class of merchandise, which is firearms to the one class covered by the bill.

Secondly, it makes absolutely no sense because it adds an unrelated contingency in the final line when, again, reading the amendment, it says: ''This Act and the amendment made by this act shall take immediate effect with regard to any violation of a State law regulating the importation or transportation of any intoxicating liquor which results from any violation of a State's firearms laws.''

□ 1400

Now that is clearly, clearly, an unrelated contingency.

Also, I think it is very important to understand that what we are doing here is we are commingling again two issues. Instead of the single issue of alcohol that is being illegally shipped across State lines, we are actually talking about gun sales or the transporting of guns inside of a State. Obviously, that can already be taken care of inside the State by a State attorney general who simply goes to State court. The State attorney general also has the power to simply take away the State liquor license of the person who is illegally selling guns, and so it is unnecessary.

Again, it is a commingling of two issues and, as I said earlier, the fundamental purpose of this bill is a single issue, and that is to stop the illegal sales of alcohol across State lines. So for those reasons and many others, I think, once again, we have to go back to House Practice, Germaneness, section 9, which says, ''One individual proposition is not germane to another individual proposition.'' And this is clearly one individual proposition that is being added to another in a mix, sort of a legislative goo that I think even gives sausage making a bad name.

Accordingly, Mr. Chairman, I do not believe this amendment is germane and I insist on my point of order.

The CHAIRMAN. Does the gentlewoman from California wish to be heard on the point of order?

Ms. LOFGREN. Yes, Mr. Chairman.

The CHAIRMAN. The gentlewoman from California (Ms. LOFGREN) is recognized.

Ms. LOFGREN. Mr. Chairman, I would disagree with my colleague from Florida on the germaneness issue. In the example I gave in my 5 minutes in support of my amendment, I mentioned the issue where we had the possession of a Tech DC 9 by the owner of a winery and the holder of a Federal license of a winery. That is not a State license, that is a Federal license. And in order to affect that Federal license, recourse first of the ATF and later, and arguably necessarily, to the Federal courts, would be necessary. The State does not have jurisdiction over the Bureau of Alcohol, Tobacco and Firearms.

Further, I would note that the forum of a Federal court gives multi-State enforcement opportunities that arguably are not available to the attorneys general by recourse to a State forum. And if that is not the case, if that turns out to be incorrect, then the entire basis for this act being asserted by the proponents of the Scarborough bill evaporates. Because if the point of the gentleman from Florida (Mr. SCARBOROUGH) is that there is adequate remedy in State court, then there ought to be adequate remedy in State court for alcohol violations as well.

As the Chair will note, I did not ask for a vote on his prior ruling on the first amendment, because although I think an argument, and a good argument, could be made on its germaneness, I think that the arguments on germaneness on this amendment are weak indeed, and I would hope that the Chair would allow a vote to be taken on this amendment.

We have gone to great lengths to make sure it deals with the germaneness issue. Consequently, it is much smaller in scope than I think is appropriate and warranted by the violence emergency that faces us. But I offer it because at least it is something that this Congress could do as a show of good faith to the mothers and fathers of America who, like myself, are preparing to send their children back to school in just a month or so.

So I would hope that the Chair would rule that this is germane, and that absent that, those who have raised the point of order might consider withdrawing that point of order. I think it is only fair that this House be given the opportunity to do something, something for gun safety for the mothers and fathers of this country.

Mr. Chairman, I submitted for the RECORD legal citations from the Appellate Court of Illinois on this subject matter.

The CHAIRMAN. Does the gentleman from Georgia desire to be heard on the point of order?

Mr. BARR of Georgia. He does.

The CHAIRMAN. The gentleman from Georgia (Mr. BARR) is recognized.

Mr. BARR of Georgia. Mr. Chairman, in looking at this amendment, I have to conclude that Rube Goldberg is alive and well. If the Chair can figure out what this amendment means, the Chair is indeed very smart.

I think, though, that it can be stated very clearly, very succinctly, Mr. Chairman, that this is simply an evidence of the gun control advocates seeking to interject gun control into any piece of legislation they can at whatever the cost. And the cost here would be at the price of clarity and germaneness.

What the gentlewoman is proposing here in bringing in the issue of State firearms laws, which have nothing whatsoever to do with the laws of a State regarding the sale of alcoholic beverages, is to try to bring in an unrelated contingency. That, Mr. Chairman, is specifically precluded by House rules, number 22, on germaneness, entitled Conditions or Qualifications, which I would respectfully quote to the Chair. It says, ''A condition or qualification sought to be added by way of amendment must be germane to the provisions of the bill.''

The provisions of this bill relate solely and exclusively to State laws regarding the sale of alcoholic beverages. They have nothing whatsoever to do with firearms violations. This is not germane, it is unrelated, and I urge the Chair to sustain the point of order raised by the gentleman from Florida.

The CHAIRMAN. Does the gentleman from Michigan wish to be heard on the point of order?

Mr. CONYERS. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) is recognized.

Mr. CONYERS. Mr. Chairman, I rise in opposition to the point of order that is made, and I simply want to make it clear that this is a completely different amendment that is being brought forward.

What the gentlewoman is pointing out is that this is a subset of liquor violations, and some liquor violations result from gun violations. She is merely setting a different effective date for those violations. This is just empowering the States to enforce their own liquor laws, which sometimes involve gun laws.

So this supports the principle purpose of the bill. It in no way is caught by germaneness. It is stopping the sale of alcohol in violation of State laws. It does this by allowing cases where firearms' use violate State alcohol laws to be heard immediately. She merely changes the date.

So to argue the same nongermaneness arguments that were previously advanced fails to recognize that this is a substantially different amendment, and that it is clearly germane and is in accord with the precedence of the House.

This amendment does nothing whatsoever to expand the scope of the bill. It merely deals with the effective date issue, and for that reason I urge that the point of order be rejected.

The CHAIRMAN. The Chair is prepared to rule on the point of order raised by the gentleman from Florida.

The gentleman from Florida raises a point of order that the amendment offered by the gentlewoman from California is not germane.

The bill amends the Webb-Kenyon Act to authorize an attorney general of a State to bring a civil action in a Federal court against a person that an attorney general has reason to believe has engaged in an act in violation of a State law regulating the importation or transportation of intoxicating liquor. The bill also establishes certain parameters for Federal judicial purview of an action brought under the new law.

Clause 7 of Rule XVI, the germaneness rule, provides that no proposition on a ''subject different from that under consideration shall be admitted under color of amendment.'' One of the central tenets of the germaneness rule is that the fundamental purpose of an amendment must be germane to the fundamental purpose of the bill.

The Chair discerns that fundamental purpose of a bill by examining the text of the bill and the report language accompanying the bill as evidenced by the ruling of the Chair on July 18, 1990, recorded in Volume 10, Chapter 28, section 5.6 of the Deschler-Brown Precedents. As indicated on page 5 and 6 of the committee report, the underlying bill was ''introduced in order to specifically provide States with access to Federal court to enforce their laws regulating interstate shipments of alcoholic beverages.''

The fundamental purpose of the amendment appears to be to single out certain violations of liquor trafficking laws on the basis of their regard for any and all firearms issues. The Chair is of the opinion that the question illustrates the principle that an amendment may relate to the same subject matter, yet still stray from adherence to a common fundamental purpose, by singling out one constituent element of the larger subject for specific and unrelated scrutiny.

The fundamental purpose of the amendment is not the same as the fundamental purpose of the bill, nor is it a mere component of the larger purpose. Rather, the amendment pursues a purpose that, by its specialized focus, bears a corollary relationship to that pursued by the bill.

The proponent of this amendment has argued that her amendment merely addresses a subset of those State laws already addressed in the bill and is germane based on subject matter grounds. The Chair would note that general principle found on page 618 of the House Rules and Manual that the standards by which the germaneness of an amendment may be measured are not exclusive. Thus, while the amendment may arguably address the same subject matter, or a subset thereof, as that of the underlying bill, the fundamental purpose of the amendment must still be germane under every application thereof to that of the bill.

In the opinion of the Chair, the amendment is not germane and the point of order is sustained.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

Mr. SCARBOROUGH. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The point of order by the gentleman from Florida is reserved.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Ms. JACKSON-LEE of Texas: Page 6, line 9, strike the close quotation marks and the period at the end.

Page 6, after line 9, insert the following (and make such technical and conforming changes as may be appropriate):

''SEC. 3. REQUIREMENTS APPLICABLE TO CERTAIN CARRIERS IN CONNECTION WITH DELIVERY OF INTOXICATING LIQUOR TO A PLACE OF RESIDENCE.

''(a) DELIVERY OF INTOXICATING LIQUOR BY NON-GOVERNMENTAL CARRIERS FOR HIRE.—It shall be unlawful for a nongovernmental carrier for hire to knowingly deliver a container transported in interstate commerce that contains intoxicating liquor to a place of residence of any kind if such carrier fails to obtain the signature of the individual to whom such container is addressed.

''(b) PENALTY.—Whoever violates paragraph (1) shall be liable for a fine of $500.''.

Ms. JACKSON-LEE of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). Is there objection to the request of the gentlewoman from Texas?

Mr. SCARBOROUGH. Objection, Mr. Chairman.

The CHAIRMAN pro tempore. Objection is heard.

The Clerk will continue the reading.

The Clerk continued reading the amendment.

Mr. SCARBOROUGH. Mr. Chairman, I continue to reserve a point of order.

The CHAIRMAN pro tempore. The gentlewoman from Texas (Ms. JACKSON-LEE) is recognized.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I hope my colleague will see fit to join me in this amendment, and I would like to share with him language in H.R. 2031 in particular that specifically states, ''if the Attorney General has reasonable cause to believe that a person is engaged or has engaged in any act that would constitute a violation of State law regulating the importation or transportation of any liquor.'' In part, this provision reads that we are dealing with the illegal transportation of liquor. And the supporting materials that my colleagues have circulated to even support this legislation all goes to the underage drinking of our young people.

We realize and have seen documentation, Mr. Chairman, that underage drinking is more devastating in our youth community than drugs. And interestingly enough, the amendment that I have just offered, and I might add that I would be happy to see if the gentleman would accept a friendly amendment to my amendment or a perfecting amendment that deals with narrowing the opportunity by way of requiring the carrier, and I might amend that to be shipper, to in fact make sure that they have the signature of the individual to whom the container is addressed, which would, in and of itself, help to bring down the amendment of illegal alcohol being shipped and transported to youth.

□ 1415

In particular, materials that were sent out by the beer wholesalers, national beer wholesalers, speak to this issue, as well as some additional new faces and anecdotal stories that tell us what happens when young people use the Internet and these amounts of liquor come without any restraint whatsoever.

In Greenville, Mississippi, a teenage girl says ordering liquor or alcohol over the Internet is easier than walking into a store and buying it. February 16, 1999, in Boston, Massachusetts, indicates an 18-year-old lies about his age and uses his own debit card to order wine by the Internet. One package is left at the door without an ID check. One winery uses a deceptive return label that indicates the package was shipped from a printing company.

In addition, on May 13, 1999, again beer is sent to a 17-year-old. The UPS delivers it to an unmarked box. No ID check.

Materials that the beer wholesalers have offered to us have said several things. There is a new black market in alcohol. It says State laws are broken. Today this sensitive marketplace structure is in jeopardy, a national problem with local impact. Television stations in more than three dozen communities across the Nation have produced investigative reports that document how easy it is for teenagers to use the Internet to acquire beer.

If this is the premise upon which this legislation has been written, if we are to assist the attorney general in preventing illegal intoxicating liquors from being shipped across State lines, then I would argue that in fact this is an amendment that should be accepted. Because what it asks the carrier to do is to simply get a signature of the individual on the container that is addressed.

I would say to the gentleman from Florida (Mr. SCARBOROUGH) as well that we need to do what he says the legislation is attempting to do and that is to respond to underage drinking.

We can all rally around underage drinking, Mr. Chairman. For many of the carriers who are receiving alcohol from the shippers, they are in fact shipping to teenagers, leaving it, getting no ID, getting no signature, getting absolutely nothing. And that allows our teenagers, our youth, our college students to engage in alcohol abuse, which enhances and increases the numbers of those who are abusing alcohol.

I ask the gentleman from Florida to consider this amendment and, as well, be happy to offer a friendly amendment that should say that such requirement that requires the carriers to get the signature would be subject to the passage of a State law.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to compliment the gentlewoman from Texas (Ms. JACKSON-LEE).

If I understand the amendment, all she is asking is that the outside package have some identifying label that this is alcohol. Is that correct?

Ms. JACKSON-LEE of Texas. Mr. Chairman, reclaiming my time, I am asking for the signature.

Mr. CONYERS. Mr. Chairman, if the gentlewoman would continue to yield, plus the signature when it is received to determine that it is going into the proper hands.

Ms. JACKSON-LEE of Texas. Mr. Chairman, that is correct.

Mr. CONYERS. Mr. Chairman, first of all, I am sure that is consistent with the bill. I mean, I hope we do not have a germaneness problem.

Secondly, it makes pretty good sense. It would seem that those who support the bill might want to make this improvement merely because it makes more efficacious the whole process.

POINT OF ORDER

Mr. SCARBOROUGH. Mr. Chairman, I insist on my point of order and disagree with the gentlewoman from Texas (Ms. JACKSON-LEE) and also the ranking member of the Committee on the Judiciary. This is not consistent at all with the bill, and it is far outside the fundamental scope of this legislation.

Mr. Chairman, again, the fundamental purpose of this bill is to provide the attorneys general of any State with the authority to bring civil action in the United States District Court to enjoin any person or entity that the attorney general has reasonable cause to believe is engaged in any act that would constitute a violation of State law regulating the importation or transportation of an intoxicating liquor.

Now, what we have here from the gentlewoman from Texas (Ms. JACKSON-LEE) is actually a new set of substantive laws that would actually apply fines, penalties, and hold them accountable in Federal court for actual criminal or civil penalties. It is a substantive approach.

It is very important to remember, in this legislation the only thing we are talking about is providing States' attorneys general a procedural mechanism to go into State courts.

So by proposing this bill and if it passes, after it passes, we have not proposed any new Federal laws regarding the sale of alcohol. We have not proposed any new civil penalties. We have not proposed any new criminal penalties.

The only thing that we are doing is providing States' attorneys general with a procedural mechanism to go into court and stop illegal wine sales that are transported across State lines.

So when the gentlewoman from Texas (Ms. JACKSON-LEE) offers this amendment, she is taking us out of this very narrowly limited procedural safeguard for States' attorneys general and instead expanding it to a point where we are going to have an entirely new class of individuals and businesses that are going to be liable under Federal law that are going to be able to be dragged into Federal court and be held accountable under civil or criminal penalties.

Despite the debate that has preceded this conversation on the floor right now, there is nothing in my legislation and in the legislation of the gentleman from Massachusetts (Mr. DELAHUNT) that would hold anybody accountable under any new civil or criminal penalty. Again, it only provides a simple procedural safeguard so States' attorneys general are allowed only to stop the illegal shipment of alcohol into their States.

According to House Practice Germaneness Section 9, one individual proposition is not germane to another individual proposition.

This is clearly one individual proposition that is being added to another. We are clearly bringing in an entirely new group of people who will be liable under this. We are trying to add new

Federal regulations, telling shippers, nongovernmental shippers, what they may or may not ship and when they ship and how they ship and what procedures they must go through so they are not dragged into Federal court and then held liable.

So accordingly, Mr. Chairman, this amendment is clearly not germane. And I will insist on my point of order.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). Does the gentlewoman from Texas (Ms. JACKSON-LEE) wish to speak to the point of order?

Ms. JACKSON-LEE of Texas. Yes, I would, Mr. Chairman.

Mr. Chairman, I am disappointed in my colleague from Florida. And I realize that he has turned the debate away from the premise of the bill.

Again I say, Mr. Chairman, that this bill was argued on and discussed in the Committee on the Judiciary on the question of underaged drinking. What are we here for on the floor of the House?

Again I refer to H.R. 2031, which says, ''if the attorney general has reasonable cause to believe that a person is engaged or has engaged in any act that would violate a constitution of State law regarding the importation or transportation of any intoxicating liquor.''

That is what this amendment proposes to do. It proposes to make illegal for a nongovernmental carrier to deliver liquor to a place of residence without a signature.

I have already indicated to the gentleman from Florida (Mr. SCARBOROUGH) that I would be more than willing to make it subject to the passage of such State law. But we have a problem with underage drinking. And as the materials have indicated, sent out by the supporters of this bill, the national beer wholesalers who indicate that, if I might just cite some of their information, Mr. Chairman, State laws are broken. A national problem with local impact exists. They cited a number of instances where college students were receiving large amounts of alcohol and, of course, without any identification and, therefore, engaging in alcohol abuse.

I would simply raise the specter to the gentleman that germaneness is a potential waiver to something that is on the crisis level. We are at a crisis level with the abuse of alcohol by our young people.

First of all, I would ask the gentleman from Florida (Mr. SCARBOROUGH) would he accept a friendly amendment to modify it to make this subject to the passage of State laws in order to get to the point that we are trying to do?

Let me say this, Mr. Chairman, in particular. We have a situation where our children are being negatively impacted. We have clear evidence that laws are being broken, that there is no enforcement. The amendment that I offer would provide enforcement. It would encourage carriers to make sure that the addressee and the individual that signs equals the same person. By that they would determine whether or not to deliver to underage drinkers.

I think, Mr. Chairman, that we can do no less. If this bill is argued on the premise of bringing down underage drinking, then I clearly believe this amendment should be ruled not only in order but should be ruled as germane.

Mr. BARR of Georgia. Mr. Chairman, I wish to be heard on the point of order.

Mr. Chairman, here again, similarly, though not exactly the same as the prior amendments, there is a germaneness issue that jumps to the fore in looking at the amendment proposed by the gentlewoman from Texas.

I would note particularly in the House Practice Volume, Section 27, that what the gentlewoman is proposing to do is to amend a bill that amends existing law and going beyond the proposed amendment to the existing law.

It says, ''A germaneness rule may provide the basis for a point of order against an amendment that is offered to a bill amending existing law.''

The gentleman from Florida (Mr. SCARBOROUGH) is proposing an amendment to an existing law in a very narrow respect.

What the gentlewoman from Texas (Ms. JACKSON-LEE) is proposing to do by way of an amendment to the bill of the gentleman goes beyond that. It indeed would establish not an amendment to what the gentleman is proposing, and that is a change to Section 28 of the Federal Rules of Procedure relating to injunctive relief, but she is proposing a new substantive provision of the Federal Criminal Code.

We are talking about two entirely different titles of the Federal Code. We are talking here about the Civil Code. She is talking about a new substantive criminal provision.

It clearly raises germaneness questions. She is attempting to amend a bill that amends existing law in a way that is clearly improper pursuant to precedent and House Practice.

I would urge the Chair to sustain the point of order raised by the gentleman from Florida (Mr. SCARBOROUGH).

The CHAIRMAN pro tempore. Does the gentlewoman from Texas (Ms. JACKSON-LEE) have further argument on the point of order?

Ms. JACKSON-LEE of Texas. Yes, Mr. Chairman, I do.

Mr. Chairman, I am disappointed. And I hear the opponents' arguments.

As I indicated, the bill itself speaks to the attorney general being able to prohibit the illegal transfer or interstate transfer of alcohol. The underlying arguments for the bill speak to underage drinking.

My amendment in particular deals with carriers shipping interstate, in the course of interstate commerce, alcohol and the requirement thereof for a signature to the addressee.

I cannot imagine the unwillingness of the proponents of this legislation to be willing to accept this amendment based on the premise of the legislation to reduce underage drinking.

The CHAIRMAN pro tempore. The Chair is prepared to rule on the point of order.

□ 1430

The gentleman from Florida raises a point of order that the amendment offered by the gentlewoman from Texas is not germane.

Under clause 7 of rule XVI, one of the fundamental tenets of the germaneness test is that the amendment must have the same fundamental purpose as the bill. The fundamental purpose of the bill under consideration is the creation of Federal court jurisdiction for civil actions arising under State laws regulating the importation or the transportation of intoxicating liquor. The fundamental purpose of the amendment offered by the gentlewoman from Texas is the creation of new Federal prohibitions regarding the transportation of intoxicating liquor under Federal law. Therefore, the amendment has a different fundamental purpose and is not germane.

The point of order is sustained.

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. JACKSON-LEE of Texas:

At the end of the bill, add the following:

SEC. 4. EFFECTIVE DATE.

(a) STUDY.—This Act shall not take effect until 90 days after the Attorney General submits to the Congress the results of a study to determine the effect the amendment made by this Act will have on reducing consumption of intoxicating liquor by individuals who by reason of age may not lawfully purchase such liquor.

(b) COMPLETION OF STUDY.—The Attorney General shall carry out the study required by subsection (a) and shall submit the results of such study not later than 180 days after the date of the enactment of this Act.

Mr. SCARBOROUGH. Mr. Chairman, I reserve a point of order.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The gentleman from Florida reserves a point of order.

Ms. JACKSON-LEE of Texas. Mr. Chairman, we commit ourselves as Members of the United States Congress to not waste the taxpayers' dollars, to solve national crises, and to respond to the immediacy of the issue. As I indicated in all of the underlying arguments and supporting documentation that the proponents of this legislation have utilized, they have utilized the premises of teenagers getting alcohol, underage drinking, the abuse of alcohol. In fact, in their own documentation, there is a recounting of the tragedies of what happens when underage drinkers or how they get alcohol.

This amendment is a simple request, Mr. Chairman. I would ask my good friend from Florida to reconsider his point of order, because it simply asks for a study to determine the impact of

this act on underage drinking. It then asks for the Attorney General to carry out the study required by subsection A and it asks for these results to be presented back to us, this Congress, to ensure that what we are trying to do, to bring down the numbers of underage drinking and to stop the abuse of alcohol, has really occurred by passage of this legislation.

This is an amendment that deals with the question of what is H.R. 2031 going to accomplish and what are we doing today with the passage of this legislation. Does it help the 17-year-old who calls a retailer's toll-free number to order a case of beer, she gives a fake birth date and uses someone else's credit card, the operator asks why she wants to pay $20 for a $7 case of beer and the teen says that she cannot get that brand where she lives although the brand is brewed in Michigan. The driver's license is never verified and the package is dropped off on the doorstep without an ID.

So it is important that we understand as we pass this legislation whether or not we are seeing the results that we should see, whether or not it will impact, as I indicated earlier, the 19-year-old who lies about his age, uses his own debit card to order wine via the Internet, one package is left at the door without an ID, one winery uses a deceptive return label that indicates the package was shipped from a printing company. There we are, Mr. Chairman, misrepresenting.

Or May 13, 1999, another television viewpoint, a 17-year-old orders beer from a Colorado company admitting that she is under 21, the company calls to confirm her age, she again admits she is under 21, beer arrives, anyway, left on the doorstep by UPS in an unmarked box, no ID checked.

My amendment simply asks that all of the points that we have made today regarding the impact of this legislation on again underage drinking would be studied in order to, first of all, assess what impact legislation like this might have, to assist the States, many of whom do not have legislation like this. Most of them have the 21 requirement but they do not have the requirement dealing with shipper's labeling, they do not require the requirement of signatures, none of that is required, and this is a study, Mr. Chairman, that would simply be able to provide us with the necessary information.

The CHAIRMAN pro tempore. Does the gentleman insist upon his point of order?

Mr. SCARBOROUGH. No, I do not.

The CHAIRMAN pro tempore. The gentleman from Florida withdraws the point of order.

Mr. SCARBOROUGH. Mr. Chairman, I rise in opposition to the amendment.

Let me, first of all, respond to some things that have been said by the gentlewoman from Texas. She has been saying them several times today regarding the main purposes of this bill being to stop the illegal sales of alcohol to minors. That certainly is a very important part of it, but I believe it is just as important that we stop illegal bootlegging to people over 21 years of age as it is to stop illegal bootlegging for people under 21 years of age. I am hopeful that the gentlewoman from Texas will be able to support this overall bill.

I must say that I was a bit confused in committee after she had expressed her deep concerns about underage drinking and said that it was a national crisis and that it was extraordinarily important for us to stop the illegal sales of alcohol to minors and then voted against the bill because she said that it applied also to people over the age of 21. This is a great first step. I know the gentlewoman wants to expand and wants to have carriers, nongovernmental carriers held liable, wants to put nongovernmental carriers in a position where they are actually going to be responsible for carding, and I certainly know that my friends, or perhaps my former friends, in the wine industry would not want to make Federal Express and UPS and other common carriers liable for carding at doors across the United States, because obviously their response to that would be to stop transporting wine across State lines.

So I certainly am hopeful that the gentlewoman will be supportive of the overall bill. If she believes that illegal alcohol sales to minors is a national crisis, then this is the way you stop it. The argument that you oppose stopping illegal bootlegging to minors through a bill form because you also are trying to stop illegal bootlegging to people over the age of 21 is an argument that quite bluntly I just do not understand. I certainly am hopeful that the gentlewoman is not going to oppose this bill if again she is concerned about this national crisis.

Let me also say, further, I am very pleased that she sees this as a national crisis. I mentioned 30, 35 news stations across the country that had identified this as a national crisis. I was accused of being clever and somehow, I do not know, I guess somehow getting these 35 stations from San Francisco to Washington, DC to do this. I wish I could have had that influence in the media. I do not. I think it is helpful, though, that the gentlewoman understands that there is a national crisis out there but the national crisis is not limited to illegal alcoholic sales for people that are under the age of 21. Illegal bootlegging is occurring across the country now, people of all ages.

I do obviously withdraw the point of order that I reserved. I do understand the purpose of this amendment. I will not be supporting this amendment. I do not think we need to stall an additional 90 days. If it is a crisis, I do not think we should give minors or people over 21 an additional 3 months to purchase alcohol illegally over the Internet. Likewise, I do not think you need a study for 180 days from the Attorney General to the State attorneys general telling them that illegal wine sales are occurring. They are occurring. Everybody knows they are occurring.

Again the only thing this bill does, the overall bill that she is seeking to amend, is it differentiates between illegal alcoholic sales and legal alcoholic sales.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Michigan.

Mr. CONYERS. I was wondering over here on our side, if we strike out the not taking effect for 90 days and make this a straight study, would that meet the objections and then the approval of the leadership on that side?

Mr. SCARBOROUGH. Again, my only concern with that is if we strike out the 90 days, I am concerned that that gives in to the argument that this measure strictly is concerned with illegal sales to people under the age of 21.

The CHAIRMAN pro tempore. The time of the gentleman from Florida (Mr. SCARBOROUGH) has expired.

(On request of Mr. CONYERS, and by unanimous consent, Mr. SCARBOROUGH was allowed to proceed for 2 additional minutes.)

Mr. SCARBOROUGH. I continue to yield to the gentleman from Michigan.

Mr. CONYERS. Suppose we make it a study of the impact of this legislation assuming that it passes, so that there would be no taking of effect and it would have no negative implications.

Mr. SCARBOROUGH. If it will have no negative effect on the effective date, I certainly will consider it. I cannot give the gentleman an answer right now, but I certainly would consider that. My main concern is that we do not delay implementation of this obviously, because if it is a national crisis, as the gentlewoman from Texas says it is, we do not want to waste 3 months.

Mr. BARR of Georgia. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Georgia.

Mr. BARR of Georgia. I am still not quite sure what the purpose of a study just to have a study is. Members on the other side have spoken very eloquently in committee as well as on the floor today recognizing that there is indeed a very serious national problem with underage drinking. That conclusion has been reached in the absence of a magical study by the Attorney General. So we all know there is a problem out there. This bill has nothing to do with Federal authorities. This bill has to do with the authorities of State attorneys general, not the United States Attorney General. I think this is makework, I do not think we need this, and I would urge my colleagues, and especially the gentleman from Florida, to oppose the amendment as unnecessary and costly. The Attorney General of the United States has far too many issues, including what I presume my colleagues on the other side would agree is inadequate enforcement of gun

laws already, and now we are saying take some of those scarce resources and conduct a study of an issue that we are not even proposing here because what we are proposing here is the authority of State attorneys general, not the U.S. Attorney General. I would oppose the amendment.

Mr. SCARBOROUGH. Reclaiming my time, let me ask the gentleman, is he saying here that it is his position that this study would not delay the implementation of this?

Mr. CONYERS. Absolutely. I am trying to save time actually, I am trying not to go to a vote and all of that, if we could merely have the impact of the legislation studied, which is not inconsistent with anything in the bill, nor anything that either of us on either side have debated in this matter.

The CHAIRMAN pro tempore. The time of the gentleman from Florida (Mr. SCARBOROUGH) has again expired.

Mr. CONYERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, what we are trying to do is suggest that there be a study, an impact study on the legislation if and when it is passed. I do not think that will hurt anybody pro or con. It should be very helpful to us, particularly on the Committee on the Judiciary, who will be looking at this matter across the years. This is not some fly-by-night provision. And it expedites time. We are working under 2 hours of amendments. The gentlewoman from California has an amendment she would like to put forward. It would save us a vote. I think that without a not taking effect for 90 days taken out of this, we are in a position to move forward expeditiously.

Mr. SCARBOROUGH. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. We have concerns from the gentleman from Georgia regarding the cost of this. Is there any estimate, CBO estimate or any other estimate on what the cost of this study would be? Because certainly if it is a national crisis, as you say it is, it is certainly something that we need to address and we need to know the depth of that national crisis and certainly we know what kind of impact this is having.

□ 1445

Mr. CONYERS. Mr. Chairman, let me comfort the gentleman by saying that I am sure that the Attorney General has one or two or three people who could conduct a study here that would be negligible in the budget of the Department of Justice. I think cost would be no immediate concern whatsoever.

Mr. SCARBOROUGH. Mr. Chairman, if the gentleman would yield one more time?

Mr. CONYERS. Of course.

Mr. SCARBOROUGH. Mr. Chairman, is the gentleman also willing to get rid of the age issue and not only look at under-age, illegal alcohol sales to under age drinkers, but also illegal bootlegging for all ages? Would he be willing to do that?

Mr. CONYERS. Yes, we are looking at an impact of this entire legislation. So we have taken out the specific references.

Mr. SCARBOROUGH. So, Mr. Chairman, all aspects of this legislation, including lost revenues to States to enforce their laws.

Mr. CONYERS. Absolutely.

Mr. SCARBOROUGH. Mr. Chairman, I have got to say I have no objection to that. I would like to see the draft.

Mr. CONYERS. Mr. Chairman, we assure the gentleman that there is nothing but fairness exuding from this side of the aisle, no underhanded motives, and the impact study of the legislation, nothing could be more neutral than that.

Mr. SCARBOROUGH. Certainly, and if the gentleman would yield, if the gentlewoman would withdraw this amendment and then have the modified language offered at the desk, I would have no objection to that.

Mr. CONYERS. There is no other way we can do that.

I want to assure the gentleman that from my point of view there is no other way we can proceed without withdrawing this and advancing the other, and because I know the gentleman's good faith is no less than mine, I am prepared to go that way.

Mrs. MALONEY of New York. Mr. Chairman, I rise in opposition to this bill and in support of the amendment offered by my friend from California.

I share the concern of my friend from Florida and other supporters that we must do everything possible to reduce underage drinking, and I would be proud to vote for this bill if I thought it would achieve that goal.

But in reality, Mr. Chairman, this bill will do little to stop underage drinking while potentially crippling an industry that is very important to our nation and to my home state of New York.

New York, like many other states across the country, has a thriving wine industry dominated by small vineyards.

These vineyards have taken advantage of the Internet to sell their products across the nation.

The vast majority of these sales are to responsible adult consumers.

This legislation threatens these small wineries by permitting other states to seek action in federal court to block them from distributing their wines.

This bill is an unjustified intrusion by the federal government into matters that should be left to the states. It is opposed by the National Conference of State Legislatures—the very same people that this bill is supposed to be helping. Moreover, it would effectively give states the authority to regulate interstate commerce, in direct violation of the Constitution.

Mr. Chairman, the real purpose of this bill is not to prevent underage drinking. The real purpose of this bill is to protect the large beer and wine wholesalers from competition from independent producers, like many of the small wineries found in my home state of New York.

The amendment, by contrast, will target our efforts toward preventing underage drinking, where they belong.

I urge my colleagues to support this amendment, and to oppose this bill.

The CHAIRMAN. All time authorized under the rule for consideration of amendments is now expired.

The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Ms. JACKSON-LEE of Texas. Mr. Chairman, can we ask unanimous consent for additional time of 10 minutes? It is always better when we can work together.

I ask unanimous consent for an additional 10 minutes to be able to respond to these concerns and work out some of the issues that we are working on.

The CHAIRMAN. The Chair continues to count for a quorum, but the gentlewoman from Texas is advised that the Committee of the Whole cannot entertain such a unanimous consent request to change the rule adopted by the House.

Does the gentlewoman withdraw her request?

Ms. JACKSON-LEE of Texas. Can the Chair restate the motion that he cannot entertain for clarification?

The CHAIRMAN. The Committee of the Whole may not entertain such a unanimous consent request.

Ms. JACKSON-LEE of Texas. All right, Mr. Chairman. I now withdraw my request for a vote.

The CHAIRMAN. The request for a vote on Amendment No. 4 offered by the gentlewoman from Texas (Ms. JACKSON-LEE) is withdrawn.

The amendment is rejected.

The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. CALVERT) having assumed the chair, Mr. BARRETT of Nebraska, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2031) to provide for injunctive relief in Federal district court to enforce State laws relating to the interstate transportation of intoxicating liquor, pursuant to House Resolution 272, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute

adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. BARR of Georgia. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 99, not voting 9, as follows:

[Roll No. 363]

YEAS—325

Abercrombie
Aderholt
Allen
Archer
Armey
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boswell
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Callahan
Camp
Campbell
Canady
Cannon
Capuano
Cardin
Castle
Chabot
Chambliss
Chenoweth
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Coyne
Cramer
Crane
Crowley
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
Delahunt
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dingell
Dixon
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Etheridge
Evans
Everett
Ewing
Filner
Fletcher
Foley
Ford
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Frost
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hilliard
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Hostettler
Hutchinson
Hyde
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Kanjorski
Kaptur
Kelly
Kennedy
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Largent
Larson
Latham
Lazio
Leach
Levin
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Markey
Mascara
McCollum
McCrery
McGovern
McHugh
McInnis
McIntosh
McIntyre
McKeon
McNulty
Meehan
Menendez
Metcalf
Mica
Miller (FL)
Miller, Gary
Mink
Moakley
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Neal
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Pascrell
Payne
Pease
Peterson (MN)
Petri
Pickering
Pickett
Pitts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Traficant
Turner
Udall (CO)
Upton
Visclosky
Walden
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Wu
Young (AK)
Young (FL)

NAYS—99

Ackerman
Andrews
Berman
Blumenauer
Borski
Boucher
Buyer
Calvert
Capps
Carson
Clay
Conyers
Cox
Cummings
Davis (IL)
DeFazio
DeGette
DeLauro
Dicks
Doggett
Dooley
Engel
Eshoo
Farr
Fattah
Forbes
Gallegly
Gejdenson
Gordon
Gutierrez
Hastings (FL)
Hastings (WA)
Hill (IN)
Hinchey
Horn
Houghton
Hoyer
Hulshof
Hunter
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jones (NC)
Jones (OH)
Kasich
Kildee
Kilpatrick
Kuykendall
LaTourette
Lee
Lewis (CA)
Lofgren
Lowey
Maloney (NY)
Martinez
Matsui
McCarthy (MO)
McCarthy (NY)
McKinney
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller, George
Minge
Nadler
Napolitano
Nethercutt
Owens
Oxley
Packard
Pallone
Pastor
Paul
Pelosi
Phelps
Pombo
Radanovich
Rangel
Rohrabacher
Roybal-Allard
Rush
Schakowsky
Serrano
Shays
Sherman
Skelton
Slaughter
Stark
Tauscher
Tauzin
Thomas
Thompson (CA)
Udall (NM)
Velazquez
Vento
Waters
Waxman
Weiner
Woolsey

NOT VOTING—9

Bilbray
Frank (MA)
Gephardt
Lantos
McDermott
Mollohan
Peterson (PA)
Vitter
Wynn

□ 1513

Mr. HASTINGS of Florida and Mr. ENGEL changed their vote from ''yea'' to ''nay.''

Messrs. CRANE, SISISKY, LAFACE, HINOJOSA, MALONEY of Connecticut, CUNNINGHAM, LAHOOD, BLILEY, ADERHOLT and SAWYER and Ms. BROWN of Florida changed their vote from ''nay'' to ''yea.''

So the bill was ordered to be engrossed and read a third time and was read the third time.

The result of the vote was announced as above recorded.

□ 1515

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. CALVERT). Is the gentleman opposed to the bill?

Mr. CONYERS. Yes, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit the bill H.R. 2031 to the Committee on the Judiciary with instructions to report the bill forthwith to the House with the following amendment:

At the end of the bill, add the following:

SEC. 4. STUDY.

The Attorney General shall submit to the Congress the results of a study to determine the impact of this Act. The Attorney General shall carry out the study required by subsection (a) and shall submit the results of such study not later than 180 days after the date of enactment of this Act.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes on his motion to recommit.

Mr. CONYERS. Mr. Speaker, I wish the membership to know that there was a vote taken on the third reading. That has only occurred about 2 times in recent years.

So this is a motion to recommit for which I will not ask a record vote, and then there will be a final passage vote, which may or may not be a record vote.

Mr. Speaker, this motion to recommit is simple. It merely provides for a study to ascertain the impact of the legislation. It does not limit the study to the impact on underage drinking or any other specific area, although the amendment of the gentlewoman from Texas (Ms. JACKSON-LEE) originally did that.

This will give the Congress the information we need to assess how the legislation is working so that we can determine any changes that might be needed in the bill in the future.

As the bill passed the committee, I opposed it. I believed the bill had the potential to burden Internet providers, to discriminate against out-of-State winemakers, and to authorize discriminatory taxes. Many of these concerns were addressed in the Goodlatte-Conyers-Cox amendment, which passed.

The acceptance of this motion to recommit will offer an additional modest improvement to the bill.

Mr. SCARBOROUGH. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, we can make this brief. I do not intend to oppose this motion to recommit. I certainly understand

the concerns of many people from California and other wine-producing regions, and understand their eagerness. I would like to thank them for working with us to make this a better bill. I would also like to thank them, in their eagerness, for allowing me the opportunity to vote on the engrossment and third reading. I have not done that before. I thank the gentleman from California that did that.

Mr. Speaker, I think this is very important for us to have this study. I understand the gentleman's concerns. I thank the gentleman from California (Mr. COX) and others for coming together and having us produce something that works. The study, I think, of the gentlewoman from Texas (Ms. JACKSON-LEE) would be helpful. As she said, we have a national crisis right now regarding the sale of alcohol to minors, and a national crisis on the sale of alcohol to people of majority age.

I thank the gentleman for working with us on the motion to recommit, and I will be supporting it, as well as the final bill.

Mr. CONYERS. I thank the gentleman, Mr. Speaker. I urge the Members to support the motion to recommit.

The SPEAKER pro tempore. If no Member rises in opposition, without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was agreed to.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Speaker, acting under the instructions of the House on behalf of the Committee on the Judiciary, I report the bill, H.R. 2031, back to the House with an amendment.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment:

At the end of the bill, add the following:

SEC. 4. STUDY.

The Attorney General shall submit to the Congress the results of a study to determine the impact of this Act. The Attorney General shall carry out the study required by subsection (a) and shall submit the results of such study not later than 180 days after the date of enactment of this Act.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. LOFGREN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 310, nays 112, not voting 11, as follows:

[Roll No. 364]

YEAS—310

Abercrombie
Aderholt
Allen
Archer
Armey
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Bateman
Becerra
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burr
Burton
Callahan
Camp
Campbell
Canady
Cannon
Capuano
Cardin
Castle
Chabot
Chambliss
Chenoweth
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Cook
Costello
Coyne
Cramer
Crane
Crowley
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Deal
Delahunt
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Doyle
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Etheridge
Evans
Everett
Ewing
Fattah
Filner
Fletcher
Foley
Ford
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Ganske
Gekas
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hayes
Hefley
Herger
Hill (MT)
Hilleary
Hilliard
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Hutchinson
Hyde
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Kanjorski
Kaptur
Kelly
Kildee
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kucinich
LaHood
Lampson
Largent
Larson
Latham
Lazio
Leach
Levin
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Markey
Mascara
McCollum
McHugh
McInnis
McIntosh
McIntyre
McNulty
Meehan
Menendez
Mica
Miller, Gary
Mink
Moakley
Moore
Moran (KS)
Morella
Murtha
Myrick
Neal
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Pascrell
Pastor
Pease
Peterson (MN)
Petri
Pickering
Pickett
Pitts
Pomeroy
Porter
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaffer
Scott
Sensenbrenner
Sessions
Shadegg
Sherwood
Shimkus
Shows
Shuster
Simpson
Sisisky
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Upton
Visclosky
Walden
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Young (FL)

NAYS—112

Ackerman
Andrews
Barton
Berman
Blumenauer
Boucher
Buyer
Calvert
Capps
Carson
Clay
Conyers
Cooksey
Cox
Davis (IL)
Davis (VA)
DeFazio
DeGette
DeLauro
Dixon
Doggett
Dooley
Doolittle
Dreier
Engel
Eshoo
Farr
Forbes
Gallegly
Gejdenson
Gibbons
Gordon
Goss
Gutierrez
Hastings (WA)
Hayworth
Hill (IN)
Hinchey
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jones (NC)
Jones (OH)
Kasich
Kilpatrick
Kolbe
Kuykendall
LaFalce
LaTourette
Lee
Lewis (CA)
Lofgren
Lowey
Maloney (NY)
Martinez
Matsui
McCarthy (MO)
McCarthy (NY)
McCrery
McGovern
McKeon
McKinney
Meeks (NY)
Metcalf
Millender-McDonald
Miller (FL)
Miller, George
Minge
Moran (VA)
Nadler
Napolitano
Nethercutt
Owens
Oxley
Packard
Pallone
Paul
Payne
Pelosi
Phelps
Pombo
Radanovich
Rangel
Rohrabacher
Roybal-Allard
Rush
Schakowsky
Serrano
Shaw
Shays
Sherman
Skeen
Slaughter
Stark
Tauscher
Tauzin
Thomas
Thompson (CA)
Velazquez
Vento
Waters
Waxman
Weiner
Woolsey
Wu
Young (AK)

NOT VOTING—11

Barcia
Bilbray
Kennedy
Lantos
McDermott
Meek (FL)
Mollohan
Peterson (PA)
Portman
Vitter
Wynn

□ 1539

Mr. FOSSELLA changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. KENNEDY of Rhode Island. Mr. Speaker, on rollcall No. 364, final passage of H.R. 2031, I was unavoidably detained. Had I been present, I would have voted ''yea.''

Mr. PORTMAN. Mr. Speaker, on rollcall No. 364, I was detained in a conference committee meeting and did not hear the bells. Had I been present, I would have voted ''yea.''

GENERAL LEAVE

Mr. SCARBOROUGH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2031.

The SPEAKER pro tempore (Mr. CALVERT). Is there objection to the request of the gentleman from Florida?