

## LEGISLATIVE SUMMARIES

***Alcoholic Beverages—Highways—The Uniform Minimum Drinking Age Act of 1984—Pub. L. No. 98-363, 1984 U.S. Code Cong. & Ad. News (98 Stat.) 436 (to be codified at 23 U.S.C. §§ 158, 402, 408).***

Over the last ten years there has been an outpouring of public support for the enactment of tougher drunk driving laws.<sup>1</sup> On July 17, 1984, President Reagan signed a bill into law aimed at reducing alcohol-related deaths on America's highways.<sup>2</sup> Sponsored in the Senate by Senator Frank Lautenberg (D-N.J.), and in the House by Representative James Howard (D-N.J.), the bill was quickly passed<sup>3</sup> despite potential tenth amendment ramifications.<sup>4</sup> The Uniform Minimum Drinking Age Act of 1984 (the Act), provides for a combined system of penalties and grants tied to federal highway funds in order to provide an incentive for states to raise their drinking age to twenty-one and to take steps to combat drunk driving.<sup>5</sup>

The Act initially grants states a two year grace period, beginning September 30, 1984, within which the minimum age for the purchase and public possession of alcoholic beverages must be raised to twenty-one.<sup>6</sup> Currently, twenty-three states have a minimum drinking age of twenty-one.<sup>7</sup> Nine additional states and

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<sup>1</sup> CONG. Q., Vol. 42, No. 6, p. 276 (Feb. 11, 1984).

<sup>2</sup> The Uniform Minimum Drinking Age Act of July 17, 1984, Pub. L. No. 98-363, 1984 U.S. CODE CONG. & AD. NEWS (98 Stat.) 436 (to be codified at 23 U.S.C. §§ 158, 402, 408) [hereinafter cited as The Act].

<sup>3</sup> 130 CONG. REC. S-8247 (daily ed. June 26, 1984); 130 CONG. REC. H-7220 (daily ed. June 27, 1984).

<sup>4</sup> U.S. CONST. amend. X provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

<sup>5</sup> See generally, The Act, *supra* note 2.

<sup>6</sup> *Id.* at § 158.

<sup>7</sup> ALASKA STAT. § .04.16.050 (1983); ARIZ. REV. STAT. ANN. § 4.241 (1984); ARK. STAT. ANN. § 48-903.1 (1975); CAL. BUS. & PROF. CODE § 25662 (West 1933); DEL. CODE ANN. tit. 4, § 713 (1983); ILL. REV. STAT. ch. 43, § 131 (1980); IND. CODE ANN. § 7.1-5-7-8 (West 1984); KY. REV. STAT. § 244.080 (1938); MICH. COMP. LAWS § 436.336 (1978); MO. REV. STAT. § 311.310 (1945); NEB. REV. STAT. § 53-180 (1984); NEV. REV. STAT. § 202.055 (1933); N.J. STAT. ANN. § 33:1-81 (1982); N.M. STAT. ANN. § 60.7B-1 (1934); N.D. CENT. CODE § .5-02-06 (1936); OKLA. STAT. ANN. tit. 37, § 246 (West 1983); OR. REV. STAT. § 471.105 (1933); PA. STAT. ANN. tit. 47, § 3-393

the District of Columbia prohibit the sale of liquor, but not beer or wine to those under twenty-one.<sup>8</sup>

Upon expiration of the grace period, those states that have not raised the legal drinking age to twenty-one will be subject to the Act's penalties and ineligible for its rewards.<sup>9</sup> Accordingly, five percent of federal highway funds allotted to a state under the primary, secondary, interstate, and urban construction programs<sup>10</sup> will be withheld for failure to raise the drinking age to twenty-one.<sup>11</sup> The following year those states that still have not complied with the Act will have an additional five percent of their apportionment withheld.<sup>12</sup> The Act provides for the reimbursement of withheld funds to any state that subsequently raises the drinking age to twenty-one.<sup>13</sup>

Other provisions of the Act establish federal highway grants to states that undertake measures to combat drunk driving and to increase highway safety.<sup>14</sup> For example, states that implement or have implemented comprehensive computerized traffic safety recordkeeping systems are entitled to a federal highway grant.<sup>15</sup> The Act also provides grants to states that enact mandatory penalties for drunk drivers.<sup>16</sup> These incentives are available for not more than two fiscal years.<sup>17</sup>

Prior to the Act, the federal government addressed the problem of teenage drunk driving on more than one occasion. In January, 1983, when the Surface Transportation Act was adopted, Congress strongly recommended that states prohibit the sale of

(Purdon 1935); R.I. GEN. LAWS § 3-8-10 (1984); TENN. CODE ANN. § 57-5-301 (1984); UTAH CODE ANN. § 32.7-15.4 (1935); WASH. REV. CODE ANN. § 66.44.290 (1934).

<sup>8</sup> COLO. REV. STAT. § 12-47-128 (1945); KAN. STAT. ANN. § 41.715 (1949); MISS. CODE ANN. § 67-1-81 (1966); N.C. GEN. STAT. § 18B-302 (1935); OHIO REV. CODE ANN. § 4301.63 (Page 1935); S.C. CODE ANN. § 61-13.270 (Law. Co-op. 1935); S.D. CODIFIED LAWS ANN. § 35-4-78 (1984); VA. CODE § 4-62 (1981); W. VA. CODE § 60-3-22 (1983); D.C. CODE ANN. § 25-121 (1934).

<sup>9</sup> The Act, *supra* note 2, at § 158.

<sup>10</sup> Federal Highway-Aid Appropriations, 23 U.S.C. § 104(b)(1), (2), (5), (6) (1956).

<sup>11</sup> The Act, *supra* note 2, at § 158(a)(1).

<sup>12</sup> *Id.* at § 158(a)(2).

<sup>13</sup> *Id.* at § 158(b).

<sup>14</sup> *Id.* at § 402(k)(1) and (k)(3).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 408(e)(3).

<sup>17</sup> *Id.* at § 402(k)(2).

alcoholic beverages to persons under the age of twenty-one.<sup>18</sup> The Presidential Commission on Drunk Driving, in November, 1983, also recognized the need for a uniform minimum drinking age of twenty-one.<sup>19</sup> In light of these exhortations, only four states have raised the drinking age,<sup>20</sup> while at least fourteen have considered but failed to adopt such legislation.<sup>21</sup> The prospect of losing federal highway funds is intended to press most non-complying legislatures into action.<sup>22</sup>

A national effort is required to solve the quandary of teenage drunk driving.<sup>23</sup> A uniform age of twenty-one will help curb this problem by eliminating "blood borders"—state lines that teenagers cross to legally purchase or consume alcohol.<sup>24</sup> Studies indicate that the Act could save hundreds of teenage lives per year.<sup>25</sup> Moreover, the provisions encouraging the use of a computerized traffic recordkeeping system and the suggested mandatory penalty procedures will help combat the overall problem of the drinking driver by insuring that all are held accountable.<sup>26</sup>

Some issues remain unanswered. Opponents have asserted that the Uniform Minimum Drinking Age Act runs counter to traditional, indeed constitutionally engrained, notions of federal-

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<sup>18</sup> The Act of January 6, 1983, Pub. L. No. 97-424, 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 2140 (to be codified at 23 U.S.C. § 408), *reprinted in* 23 U.S.C.A. § 408.

<sup>19</sup> Presidential Commission on Drunk Driving Report, November 1983 (available at U.S. Gov't Printing Office, 427-056 814/233) [hereinafter cited as Presidential Commission Report].

<sup>20</sup> ARIZ. REV. STAT. ANN. § 4-241 (1984); NEB. REV. STAT. § 53-180 (1984); R.I. GEN. LAWS § 3-8-10 (1984); TENN. CODE ANN. § 57-5-301 (1984).

<sup>21</sup> Alabama, H.B. 26 (1984); Colorado, H.B. 1243 (1984); Connecticut, H.B. 146 (1984); Florida, H.B. 21 and S.B. 51 (1984); Georgia, S.B. 4 (1984); Hawaii, H.B. 66 and S. 524 (1983); Iowa, H.F. 2161 (1984); Kansas, S.B. 192 (1983) and H.B. 2392 (1984); Maine, to be introduced by Governor; Mississippi, S.B. 2086 and H.B. 76 (1984); New York, A-10980-6 (1984); Ohio, voter referendum defeated (1983); Vermont, H.105 and H.106 (1984); Virginia, H.B. 351 (1984).

<sup>22</sup> 130 CONG. REC. S-8217 (daily ed. June 26, 1984) (statement of Sen. Lautenberg).

<sup>23</sup> Presidential Commission Report, *supra* note 19, at 2.

<sup>24</sup> *Id.* at 10.

<sup>25</sup> *Id.*; see also National Transportation Safety Board, Safety Recommendations, H-82-18, 47 Fed. Reg. 32818 (July 29, 1982); Insurance Institute for Highway Safety, "The Effect of Raising the Minimum Drinking Age in Fatal Crash Involvement," *Journal of Legal Studies*, Sept. 1981.

<sup>26</sup> Presidential Commission Report, *supra* note 19, at 18.

ism.<sup>27</sup> Historically, it has been accepted that the control of alcoholic beverages is a power that the states did not relinquish to the federal government.<sup>28</sup> The national interest in saving lives should outweigh the states' rights issue, thus allowing the federal government indirect control over an historically state-dominated area.<sup>29</sup>

A more pertinent issue, apparently not raised in debate on the bill, relates to the limited withholding period provided in the Act. The Act and the legislative history clearly indicate that the withholding provisions operate for only two years.<sup>30</sup> Thus, states with a drinking age below twenty-one may attempt to "hold out" the two years, thereby exposing a potential loophole. State utilization of this apparent oversight may have deleterious ramifications for the Act's uniformity goal.

Despite these questions it appears unlikely that any significant challenge, constitutional or otherwise, will develop.<sup>31</sup> The wellspring of public support for the Act suggests that any challenge would not be well received.<sup>32</sup> Admittedly, the Uniform Minimum Drinking Age Act will not totally alleviate the problem of the drinking driver.<sup>33</sup> Indeed, it is the alcohol abuser, not a specific age group, that is the drunk driver.<sup>34</sup> The computerized

<sup>27</sup> 130 CONG. REC. S-8245 (daily ed. June 26, 1984) (statement of Sen. Thurmond).

<sup>28</sup> See generally 76 CONG. REC. S-4142-45 (1933) (Senate debate on repeal of eighteenth amend. which established Prohibition); 130 CONG. REC. S-8234 (daily ed. June 26, 1984) (statement of Sen. Pressler); *Ziffrin, Inc. v. Reeves*, 308 U.S. 132 (1939); *State Board of Equalization v. Youngs Market Co.*, 299 U.S. 59 (1936).

<sup>29</sup> See generally 130 CONG. REC. S-8209-12 (daily ed. June 26, 1984) (Senate debate over The Act).

<sup>30</sup> The Act, *supra* note 2, at § 158(a)(1) and (2).

<sup>31</sup> A December 1982 Gallup Poll reported that 77% of the American people favor a national drinking age of twenty-one years. Moreover, the Act overwhelmingly passed both Houses and was signed by President Reagan in a reversal of policy. See *Rewriting a Writ of Passage*, *Time*, Vol. 124, No. 2, July 2, 1984. See also 130 CONG. REC. S-8233 (daily ed. June 26, 1984) (The same Gallup Poll indicates that 58% of the nation's 18-21 year olds favor a minimum age of twenty-one). In further support of the Act's constitutionality, proponents cite the national speed limit legislation as an example. 23 U.S.C. § 154 (1974). The speed limit legislation, like the drinking legislation, provides for withholding funds to states that do not comply, thus indirectly legislating in areas of state control.

<sup>32</sup> *Id.*

<sup>33</sup> Presidential Commission Report, *supra* note 19, at 1.

<sup>34</sup> 130 CONG. REC. S-8238 (daily ed. June 26, 1984) (statement by Sen. Durenberger).

traffic safety recordkeeping system and the suggested mandatory penalty provisions of the Act will facilitate this effort. Increased education and rehabilitation programs are also logical steps toward a solution. Most importantly, strict enforcement of existing laws will help to effectively eradicate the problem of drunk driving.

Public awareness, however, is the most powerful weapon available in the war against drunk driving. The Act illustrates the effect of public outcry. Grass-roots organizations have been demanding "21" legislation for years.<sup>35</sup> The Uniform Minimum Drinking Age Act is an attempted answer to those demands. Ideally, by 1986, every state will have enacted, or have taken steps to enact, a drinking age of twenty-one years. Faced with the prospect of losing millions of dollars in federal highway aid, it seems likely that most states will comply. The states that presently have a drinking age of twenty-one years can only benefit by receiving additional funds through implementing the other provisions of the Act.

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<sup>35</sup> Mothers Against Drunk Driving (MADD); Students Against Drunk Driving (SADD); Remove Intoxicated Drivers (RID); and the National Parent-Teachers Association (PTA).