

Fall 1985

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### Recommended Citation

Lu Ann Snider, *The Politics and Consequences of the New Drinking Age Law*, 13 Fla. St. U. L. Rev. 847 (1985).

<https://ir.law.fsu.edu/lr/vol13/iss3/14>

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# THE POLITICS AND CONSEQUENCES OF THE NEW DRINKING AGE LAW

COMMENT BY  
LU ANN SNIDER\*

## I. INTRODUCTION

In 1984, accidents on Florida's highways totaled 237,511.<sup>1</sup> Sixteen percent of these accidents were alcohol-related.<sup>2</sup> Of the 2,856 fatalities on Florida's highways, forty-seven percent were alcohol-related.<sup>3</sup> Nationwide statistics also indicate that approximately fifty percent of all highway deaths involve the use of alcohol.<sup>4</sup>

The magnitude of the problem of drunk driving has become the source of much public concern, media attention, and political activity. In 1982, in response to public demand, a Presidential Commission was formed to study the problem of drunk driving.<sup>5</sup> In Florida, a Task Force on Dram Shop Responsibility, appointed by the Governor's Highway Safety Council, recently studied problems relating to drunk driving.<sup>6</sup> Groups such as Mothers Against Drunk Drivers (MADD) and Students Against Drunk Drivers (SADD) have done much to bring the problem before the public eye.

During the 1985 Regular Session, the Florida Legislature responded to concerns about the problem of drunk driving by passing Senate Bill 1, which increased the minimum legal drinking age from nineteen to twenty-one.<sup>7</sup> This Comment traces the drinking age bills considered by the legislature and analyzes key provisions of the new law.

## II. PRIOR STATE OF THE LAW

During the early 1970's, twenty-nine states lowered their minimum legal drinking age, generally from twenty-one to eighteen.<sup>8</sup> In

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1. DEPT OF HIGHWAY SAFETY & MOTOR VEHICLES, FLORIDA TRAFFIC ACCIDENT FACTS (1984) (available at Fla. Dep't of Highway Safety & Motor Vehicles, Tallahassee, Fla.).

2. *Id.*

3. *Id.*

4. 130 CONG. REC. S8207 (June 26, 1984) (comments of Sen. Danforth).

5. See AN INTERIM REPORT TO THE NATION FROM THE PRESIDENTIAL COMMISSION ON DRUNK DRIVING (Dec. 13, 1982).

6. See GOV.'S TASK FORCE ON DRAM SHOP RESPONSIBILITY, FINAL REPORT (Mar. 1, 1985) (available at Governor's Highway Safety Council Offices, Tallahassee, Fla.).

7. Ch. Law 85-285, 1985 Fla. Laws 1769 (to be codified at FLA. STAT. §§ 322.141, 561.15, 562.11, 562.111, 562.51).

8. A. WILLIAMS, P. ZADOR, S. HARRIS & R. KARPF, THE EFFECT OF RAISING THE LEGAL

1973, Florida joined these states by lowering its drinking age to eighteen.<sup>9</sup> Several social factors touched off this wave of reductions in the legal drinking age.<sup>10</sup> Large numbers of men younger than the age of twenty-one were being drafted by the military to serve in the Vietnam War.<sup>11</sup> The intellectual community supported a lower minimum drinking age, arguing that the change would merely legitimize existing behavior.<sup>12</sup> Additionally, in 1971 the twenty-sixth amendment was passed, giving eighteen-year-olds the right to vote in national elections.<sup>13</sup> These factors brought abstract issues of the legal rights of eighteen to twenty-year-olds to the forefront of debate on the minimum drinking age. It seemed only logical to extend to those persons who had adult rights and responsibilities the privilege of purchasing alcohol.

By 1980, however, public attention shifted to the more pragmatic concern of stemming the tide of alcohol-related traffic accidents.<sup>14</sup> Some fourteen states had raised their minimum legal drinking age by 1981,<sup>15</sup> including Florida, which raised the drinking age to nineteen in 1980.<sup>16</sup>

Prior to July 1, 1985, Florida law provided that selling, giving, serving or permitting to be served alcoholic beverages to a person under nineteen, or the possession of alcoholic beverages by one under the age of nineteen constituted a second degree misdemeanor.<sup>17</sup> Additionally, beverage licensees were required to be at least nineteen years of age.<sup>18</sup> A statutory exception allowed any person on active duty in the armed forces of the United States eighteen or older to purchase alcoholic beverages.<sup>19</sup> Persons eighteen or older who were employed by certain beverage vendors were exempted from the provision regarding possession of alcoholic bev-

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MINIMUM DRINKING AGE ON FATAL CRASH INVOLVEMENT (1981) (available from Insurance Institute for Highway Safety, Washington, D.C.) [hereinafter cited as A. WILLIAMS].

9. Ch. 73-334, § 49, 1973 Fla. Laws 906, 956.

10. Douglass, *The Legal Age and Traffic Casualties: A Special Case of Changing Alcohol Availability in a Public Health Context*, in MINIMUM-DRINKING-AGE LAWS 93, 93 (H. Wechsler ed. 1980).

11. *Id.* at 93-94.

12. Mosher, *The History of Youthful-Drinking Laws: Implications for Current Policy*, in MINIMUM-DRINKING-AGE LAWS 11, 11 (H. Wechsler ed. 1980).

13. *Id.*

14. *Id.*

15. A. WILLIAMS, *supra* note 8, at 1.

16. Act of June 9, 1980, Ch. 80-74, 1980 Fla. Laws 254.

17. FLA. STAT. §§ 562.11(1)(b), (2) (1983).

18. FLA. STAT. § 561.15(1) (1983).

19. FLA. STAT. § 562.113 (1983).

erages in the course of their employment.<sup>20</sup>

Legislative attempts over the past several years to raise Florida's minimum drinking age to twenty-one had failed to gain the necessary support to succeed.<sup>21</sup> While supporters of an increased drinking age argued that the number of alcohol-related traffic fatalities necessitated such a change,<sup>22</sup> opponents countered that drivers under the age of twenty-one are no more blameworthy than any other age group.<sup>23</sup>

In 1984, however, Congress enacted legislation which encouraged the states to increase their minimum drinking ages.<sup>24</sup> The Act contains a provision which requires the Secretary of Transportation to withhold five percent of a state's federal highway funds under the primary, secondary, interstate, and urban construction programs for fiscal year 1987 if the state fails to establish, by October 1, 1986, a minimum age of twenty-one for the purchase or public possession of alcoholic beverages. Ten percent of a state's federal highway funds will be withheld for fiscal year 1988 if the state fails to adopt a minimum drinking age of twenty-one by October 1, 1987. Any funds withheld will be retroactively apportioned to the state if it establishes twenty-one as the minimum drinking age in any succeeding fiscal year.<sup>25</sup> Florida would suffer an estimated loss of \$81.5 million in federal highway funds for the two-year period if the drinking age were not raised to twenty-one.<sup>26</sup> The federal law also provides incentive grants to any state which adopts programs specifying mandatory jail terms and license suspensions for persons convicted of driving under the influence of alcohol.<sup>27</sup>

20. FLA. STAT. § 562.13 (1983).

21. Tallahassee Democrat, May 18, 1985, at B1, col. 1.

22. *21 or Else Mandate Angers States*, STATE GOVERNMENT NEWS 4, 10 (Aug. 1984).

23. *Id.*

24. Act of July 17, 1984, Pub. L. No. 98-363, §§ 6-7, 98 Stat. 435, 437-39 (to be codified at 23 U.S.C. §§ 158, 408).

25. Pub. L. No. 98-363, § 6, 98 Stat. 435, 437.

26. Staff of Fla. S. Comm. on Com., CS for SB 1 (1985) Staff Analysis 2 (final June 10, 1985) (on file with committee).

27. Any state is eligible for a special grant not to exceed 5% of the amount apportioned to the state for the fiscal year 1984 if the state enacts a statute which provides:

(A) Any person convicted of a first violation of driving under the influence of alcohol shall receive—

(i) a mandatory license suspension for a period of not less than ninety days; and either

(ii)(I) an assignment of one hundred hours of community service; or

(II) a minimum sentence of imprisonment for forty-eight consecutive hours;

(B) any person convicted of a second violation of driving under the influence of alcohol within five years after a conviction for the same offense, shall receive a

## III. LEGISLATIVE HISTORY

Senate Bill 1 and House Bill 54, which proposed raising the legal drinking age to twenty-one, were introduced during the 1985 Regular Session.<sup>28</sup> The bills also proposed raising from nineteen to twenty-one the age at which one may obtain a liquor license.<sup>29</sup> The original Senate and House bills differed primarily in two respects. The House bill contained a "grandfather" provision that would exempt persons born on or before September 30, 1965, from the minimum drinking age provision.<sup>30</sup> This provision would have allowed persons who were twenty by September 30, 1985, the effective date of the legislation, to continue to purchase alcohol. Further, the House bill would have removed the existing exemption from the minimum drinking age for military personnel on active duty.<sup>31</sup> The Senate bill contained neither of these provisions.

The difficulties that the drinking age bills would encounter during the session became apparent after the Senate Commerce Committee, the first committee to consider the Senate bill, substantially altered it.<sup>32</sup> The first change incorporated a broad grandfather provision which would have allowed anyone nineteen or older by September 30, 1986 to continue to purchase alcoholic beverages. Supporters of the provision were concerned about disenfranchising persons currently allowed to purchase alcohol who would not be able to do so under the new law. Opponents argued that the provision would not comply with the federal legislation and would thus cause Florida to lose a portion of its federal high-

mandatory minimum sentence of imprisonment for ten days and license revocation for not less than one year;

(C) any person convicted of a third or subsequent violation of driving under the influence of alcohol within five years after a prior conviction for the same offense shall—

(i) receive a mandatory minimum sentence of imprisonment for one hundred and twenty days; and

(ii) have his license revoked for not less than three years- . . . .

28. Fla. SB 1 (1985), sponsored by Sens. Don Childers, Dem., W. Palm Beach, and Pat Neal, Dem., Bradenton; Fla. HB 54 (1985), sponsored by Rep. Fran Carlton, Dem., Orlando, and others (for complete list of sponsors, see FLA. H. JOUR. 13 (Reg. Sess. Apr. 2, 1985)).

29. Fla. SB 1, sec. 1 (1985); Fla. HB 54, sec. 1 (1985).

30. Fla. HB 54, sec. 5 (1985).

31. *Id.* sec. 4. Other differences in the bills included: SB 1 contained a provision requiring all drivers licenses issued to persons under the age of 21 to have a photographic backdrop of a different color from all other drivers licenses. HB 54 provided that no beverage license issued prior to the change in law to a person under the age of 21 would be revoked by virtue of the licensee's age.

32. Fla. CS for SB 1 (1985).

way funds.<sup>33</sup>

A far more controversial change in the Senate bill was the addition of an antidiscrimination provision. The provision, offered by Senator Jack Gordon,<sup>34</sup> denied to any person, firm, or corporation licensed under Florida's beverage laws the right to "withhold membership, its facilities, or services to any person on account of race, religion, sex, or national origin, except such organizations which are oriented to a particular religion or which are ethnic in character."<sup>35</sup> Although opponents denounced the Gordon amendment as an attempt to kill the bill, the amendment passed the Commerce Committee by an 11-0 vote.<sup>36</sup>

Resentment over the tactics employed by the federal government to persuade states to adopt a minimum drinking age of twenty-one prompted the Senate Commerce Committee to adopt a "court of last resort" amendment.<sup>37</sup> The amendment provided that if a court of last resort should hold the federal legislation which would withhold highway funds unconstitutional, any change in Florida's drinking age would be repealed.<sup>38</sup>

The Senate bill was further altered by the Senate Committee on Finance, Taxation and Claims.<sup>39</sup> In an effort to appease certain organizations, such as the Moose and Elks clubs, which would have been affected by the antidiscrimination provision, Senator W.D. Childers<sup>40</sup> offered an amendment exempting any "nationally recognized fraternal organization which by its nature is all of one gender."<sup>41</sup> Committee members stated that the antidiscrimination amendment was intended to affect private clubs and not fraternal organizations.<sup>42</sup> In addition, the Committee added provisions to repeal the military exemption and limit the grandfather provision to

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33. Fla. S. Comm. on Com., tape recording of proceedings (Apr. 8, 1985) (on file with committee). The amendment was offered by Sen. Timothy Deratany, Repub., Indiatlantic.

34. Dem., Miami Beach.

35. Fla. CS for SB 1, sec. 7 (1985).

36. Fla. S. Comm. on Com., tape recording of proceedings (Apr. 8, 1985) (on file with committee).

37. *Id.*; see Fla. CS for SB 1, sec. 8 (1985).

38. Fla. CS for SB 1, sec. 8 (1985). A further change adopted by the Senate Comm. on Com. provided an increased penalty for the selling of alcoholic beverages to a minor by a licensee and added a \$10 thousand penalty for possession of a controlled substance with intent to sell by the licensee or his employee.

39. Fla. CS for CS for SB 1 (1985).

40. Dem., Pensacola.

41. Fla. S., Comm. on Fin. & Tax, tape recording of proceedings (Apr. 10, 1985) (amendment by Sen. Childers) (on file with committee).

42. Fla. S., Comm. on Fin., Tax. & Claims, tape recording of proceedings (May 8, 1985) (on file with committee).

those persons twenty years or older on September 30, 1985.<sup>43</sup> Another amendment was added to provide that a license issued prior to the change in law to anyone under the age of twenty-one would not be revoked.<sup>44</sup>

The House drinking age bill also encountered problems. The House Committee on Regulated Industries and Licensing amended the original House bill to remove the repeal of the military exemption and increase the civil penalty against a licensee for selling alcohol to a minor.<sup>45</sup> Additionally, the Committee eliminated the grandfather provision and made the effective date of the Act September 30, 1986. However, the next Committee to consider House Bill 54, the House Finance and Taxation Committee, reinstated both the grandfather provision and the provision eliminating the military exemption.<sup>46</sup>

When the bill reached the House Appropriations Committee, the Committee considered two of the amendments previously added to the Senate drinking age bill. The Committee adopted an antidiscrimination amendment which was identical to Senator Gordon's amendment to Senate Bill 1.<sup>47</sup> Additionally, the Committee added a "court of last resort" amendment.<sup>48</sup> The Committee also changed the definition of "legal age" to include anyone nineteen years or older on September 30, 1986, thus allowing anyone who could legally purchase alcohol prior to the change in law to continue to do so.<sup>49</sup>

The drinking age bills encountered more difficulty upon reaching the floor of each chamber. On first reading of House Bill 54, the House rejected the Senate's antidiscrimination amendment and adopted its own version which provided, "Licensed retail alcoholic beverage establishments open to the public are private enterprises and may refuse service to any person who is objectionable or undesirable to the licensee, but such right to refuse service shall not be

43. Fla. CS for CS for SB 1 (1985).

44. *Id.*

45. Staff of Fla. H.R. Comm. on Reg'd Indus. & Lic., HB 54 (1985) Staff Analysis 2 (Apr. 4, 1985) (on file with committee). The committee also adopted a provision, similar to an amendment to SB 1, to increase the penalty for selling alcohol to a minor by a licensee and to impose a \$10 thousand fine for possession of a controlled substance with intent to sell by the licensee or an employee.

46. Staff of Fla. H.R. Comm. on Fin., Tax. & Claims, CS for HB 54 (1985) Fiscal Note (Apr. 9, 1985) (on file with committee).

47. Staff of Fla. H.R. Comm on Approp., CS for HB 54 Fiscal Note (Apr. 26, 1985) (on file with committee).

48. *Id.*

49. *Id.*

in violation of s. 2, Art. I of the State Constitution.”<sup>50</sup> Additionally, the full House rejected the court of last resort amendment and the provision increasing civil penalties for licensees who violated the beverage laws.<sup>51</sup>

Before the Senate drinking age bill passed out of that chamber, the Senate rejected the court of last resort amendment.<sup>52</sup> However, upon reconsideration, the amendment was adopted by a 20-19 vote.<sup>53</sup> Upon motion by Senator Dempsey Barron,<sup>54</sup> the Senate reinstated the exemption for certain military personnel.<sup>55</sup> The Senate also considered, but rejected, an amendment providing for an annual survey to establish which age group had the highest percentage of alcohol-related traffic fatalities and prohibiting anyone in that age group from possessing alcoholic beverages for one year.<sup>56</sup> A proposed amendment which would have established a study commission on government-abetted discrimination was also rejected.<sup>57</sup>

The Senate twice sent its version of the bill to the House.<sup>58</sup> The House rejected it both times, reinstated the weaker antidiscrimination amendment, and returned it to the Senate.<sup>59</sup> Ultimately, House and Senate sponsors of the bill succeeded in forcing it into a conference committee.<sup>60</sup> The resulting recommendation of the Conference Committee reflected compromises on key issues.<sup>61</sup> First, the Conference Committee rejected the Senate’s antidiscrimination provision and adopted the weaker House provision. Second, the conferees adopted the Senate’s court of last resort amendment, but made it applicable only to federal courts. Third, the Committee adopted a broad grandfather provision that allows anyone who could legally purchase alcoholic beverages prior to the

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50. FLA. H.R. JOUR. 388 (Reg. Sess. May 16, 1985).

51. *Id.* at 388-89.

52. FLA. S. JOUR. 398-99 (Reg. Sess. May 23, 1985) (Amendment 2C).

53. *Id.* at 399.

54. Dem., Panama City.

55. *Id.*

56. *Id.* The amendment was offered by Sen. Gordon presumably in an attempt to point out the arbitrariness of focusing on 19 and 21-year-olds rather than on empirical evidence of which age groups contribute most to the problem of alcohol-related accidents. See Fla. S., tape recording of proceedings (May 23, 1985) (CS for CS for SB 1) (on file with Secretary).

57. FLA. S. JOUR. 399-400 (Reg. Sess. May 23, 1985).

58. *Id.* at 400, 594-96 (Reg. Sess. May 29, 1985).

59. FLA. H.R. JOUR. 716 (Reg. Sess. May 28, 1985); *id.* at 829 (Reg. Sess. May 29, 1985).

60. FLA. S. JOUR. 700 (Reg. Sess. May 30, 1985); FLA. H.R. JOUR. 829 (Reg. Sess. May 29, 1985).

61. FLA. S. JOUR. 932 (Reg. Sess. May 30, 1985).



enactment of the new law on July 1, 1985 to continue to do so. Fourth, the report provided for severability: if any section of the Act were determined to be unconstitutional by a Florida or federal court, the validity or application of any other provision of the Act should not be affected. Finally, the Conference Committee left intact the military exemption.

Although Senate members protested the elimination of the strong antidiscrimination provision, the Conference Committee's report passed the Senate by a 31-6 vote.<sup>62</sup> The report passed the House by unanimous vote,<sup>63</sup> was signed by the Governor on June 20, 1985,<sup>64</sup> and became effective July 1, 1985.<sup>65</sup>

#### IV. ANALYSIS OF THE LEGISLATION

Ironically, the drinking age legislation may not accomplish the two goals sought by its supporters; that is, to reduce the number of alcohol-related traffic accidents on Florida's Highways and to ensure that Florida is not denied federal highway monies as a result of noncompliance with federal law.

##### A. *Effect on Alcohol-Related Traffic Accidents*

Studies on the effect of raising the minimum drinking age on accident statistics vary from reporting collision decreases of up to seventy-five percent to reporting an increase in collisions.<sup>66</sup> Opponents of an increased drinking age argue that such widely varying statistics indicate that any projection of change in accident statistics attributable to an increased drinking age is purely speculative.<sup>67</sup>

One Florida study reported an overall increase in the number of eighteen-year-old drivers involved in fatal accidents after Florida's drinking age was raised to nineteen.<sup>68</sup> The study indicated that the number of eighteen-year-old drivers involved in fatal accidents in

62. Fla. S., tape recording of proceedings (May 30, 1985) (on file with Secretary); FLA. S. JOUR. 932 (Reg. Sess. May 30, 1985).

63. FLA. H.R. JOUR. 1039, 1041 (Reg. Sess. May 30, 1985).

64. Ch. 85-285, 1985 Fla. Laws 1798, 1801. Although Gov. Graham signed the drinking age legislation, he protested the action of the federal government in withholding state highway funds, stating, "I don't think Congress ought to be imposing its will on the states on an issue . . . that's traditionally been a state concern." *Graham makes 21-year-old drinking age the law in Florida*, Tallahassee Democrat, June 24, 1985, at B15, col. 3.

65. Ch. 85-285, § 8, Fla. Laws 1769, 1801.

66. See *infra* notes 68-78 and accompanying text.

67. 130 CONG. REC. S8221 (June 26, 1984) (comments of Sen. Symms).

68. M. MORRIS, DRINKING-DRIVING BEHAVIOR IN FLORIDA, 1983 UPDATE (1985).

Florida decreased for the first year after the change in the law.<sup>69</sup> However, the number increased by forty-five percent from 1980 to 1983. During that period, the number of eighteen-year-old licensed drivers decreased by ten thousand.<sup>70</sup>

The most often cited study on the effect of raising the drinking age is a survey prepared for the Insurance Institute for Highway Safety.<sup>71</sup> The survey studied nine states which had increased the minimum legal drinking age. The study concluded that any state which raised its drinking age from eighteen to twenty-one could expect a twenty-eight percent decline in nighttime fatal crashes of drivers in that age group.<sup>72</sup> Of the nine states surveyed, eight experienced reductions in nighttime fatal crashes, the most frequent of all alcohol-related crashes.<sup>73</sup> However, the reductions ranged from six percent to seventy-five percent, and one of the nine states actually experienced a fourteen percent increase in nighttime fatal accidents.<sup>74</sup> The study offered no explanation of the disparities in the statistics.

A study involving a single state which lowered its drinking age found no difference in the number of fatal collisions among young drivers.<sup>75</sup> Wisconsin, the study state, changed its drinking age law from allowing eighteen to twenty-year-olds to purchase only beer to making all alcoholic beverages available to that age group. The study reported that eighteen to twenty-year-olds were not involved in a significantly greater proportion of alcohol-related fatal collisions after the change in the law.<sup>76</sup> However, because beer was legally available to that age group prior to the change in law, the study is flawed. Inasmuch as beer is the most popular alcoholic beverage among young people, making other alcoholic beverages available to eighteen to twenty-year-olds is not likely to have a significant effect on drinking behavior or accident statistics.<sup>77</sup>

Conversely, a single state study in Massachusetts, where the

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69. *Id.*

70. *Id.*

71. A. WILLIAMS, *supra* note 8.

72. *Id.* at 12.

73. *Id.* at table 4.

74. *Id.*

75. Noar & Nashold, *Teenage Driver Fatalities Following Reduction in the Legal Drinking Age*, 7 J. SAFETY RESEARCH 74-79 (1975), cited in Whitehead, *Research Strategies to Evaluate the Impact of Changes in the Legal Drinking Age*, in MINIMUM-DRINKING-AGE LAWS 80 (H. Wechsler ed. 1980)).

76. *Id.*

77. Whitehead, *supra* note 75, at 80-81.

drinking age was lowered to eighteen, found significant increases in collisions following the change.<sup>78</sup> Increases ranged from twenty-four percent for collisions involving only property damage to seventy-five percent for fatal accidents.<sup>79</sup>

The diversity in the findings of these studies is due in part to the varying methodologies that each has employed. Additionally, many circumstances may influence accident statistics.<sup>80</sup> For example, assessments of the condition of the driver may be subjective and may inflate estimates of alcohol involvement.<sup>81</sup> Measurements of the blood alcohol level of drivers killed in collisions may be subject to greater inaccuracy than breath tests of live drivers.<sup>82</sup> States employ varying methods in collecting data regarding traffic accidents.<sup>83</sup> Enforcement policies regarding driving under the influence may vary between teenagers and older drivers.<sup>84</sup>

The complexity of the issue suggests there may never be agreement on the effect of Florida's increased drinking age on accident statistics. Certainly any positive effect which may result from the change will be limited so long as the grandfather provision is in effect because nineteen and twenty-year-olds are still allowed to purchase alcohol.

### B. Compliance with Federal Law

Two provisions of the 1985 Florida Act, the grandfather clause and the exemption of certain military personnel, potentially conflict with the federal legislation. It is arguable, therefore, that Florida is not in compliance with the federal law and thus will not be entitled to its full apportionment of federal highway funds.

The Florida Act contains a declaration that the minimum legal age for the possession or consumption of alcohol is twenty-one.<sup>85</sup> However, the grandfather provision, allowing those who were nineteen or twenty before July 1, 1985 to continue to drink, may

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78. Cucchiaro, Ferreira, & Sicherman, *The Effect of the 18-Year-Old Drinking Age on Auto Accidents* (Massachusetts Institute of Technology, Operations Research Center, Working Paper 034-746, May 1974), cited in Whitehead, *supra* note 75, at 81.

79. *Id.*

80. Whitehead, *supra* note 75, at 81.

81. *Id.* at 74.

82. *Id.*

83. *Id.* at 75

84. R. Voas & J. Moulden, *Historical Trends in Alcohol Use and Driving by Young Americans*, in *MINIMUM-DRINKING-AGE LAWS* 59, 69 (H. Wechsler ed. 1980).

85. Ch. 85-285, § 2, 1985 Fla. Laws 1798, 1799 (amending FLA. STAT. § 562.11(1)(a) (1983)); *id.* § 3, 1985 Fla. Laws at 1800 (amending FLA. STAT. § 562.111 (1983)).

pose a problem. The federal law provides that funds shall be withheld for any state "in which the purchase or public possession . . . of any alcoholic beverage by a person who is less than twenty-one years of age is lawful" after September 30, 1986.<sup>86</sup> Therefore, Florida will not be in compliance as of October 1, 1986, the beginning of the fiscal year. However, because those persons who were grandfathered in will reach age twenty-one by July 1, 1987, Florida will be in compliance before the end of that fiscal year. This fact, coupled with the provision authorizing retroactive apportionment of federal funds to any state which subsequently complies with the federal law, may permit Florida to receive its entire apportionment of funds without any withholding. At worst, the grandfather provision may cause Florida a delay in receiving its full apportionment.

A more serious conflict with the federal legislation may lie in the Florida Act's exemption for anyone on active duty in the military who is eighteen or older. Although this affects only a small number of persons, so long as this provision exists, Florida will not be in compliance with the plain language of the federal statute. The federal Department of Transportation is currently promulgating guidelines for implementing the federal legislation.<sup>87</sup> Although they are not yet available, these guidelines will assist in determining compliance with federal law as well as how funds will be processed.<sup>88</sup> If it is determined that either the grandfather provision or the military exemption jeopardizes federal funding, the legislature will have the opportunity to make the necessary changes during the 1986 Regular Session and still meet the October 1, 1986 deadline imposed by the federal law.

### C. *Court of Last Resort Provision*

As adopted, the Florida Act provides that should a federal court of last resort determine that the federal government may not constitutionally withhold funds from a state which does not raise its drinking age to twenty-one, Florida's minimum drinking age will revert to nineteen.<sup>89</sup> To date, one state has challenged the federal legislation on constitutional grounds.<sup>90</sup> However, it does not appear

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86. Pub. L. No. 98-363, § 6, 98 Stat. 435, 437.

87. Staff of Fla. S. Comm. on Com., CS for SB 1, Staff Analysis 3 (final June 10, 1985) (on file with committee).

88. *Id.*

89. Ch. 85-285, § 6, 1985 Fla. Laws 1798, 1801 (to be codified at FLA. STAT. § 322.141).

90. Staff of Fla. H.R. Comm. on Reg. Indus. & Lic., HB 54 (1985) Staff Analysis 3 (rev. Apr. 4, 1985) (on file with committee). South Dakota has challenged the federal legislation.

likely that such a challenge will succeed.

The federal legislation is an exercise of the Congressional spending power.<sup>91</sup> The Supreme Court has interpreted this power broadly, noting that it "is quite expansive, particularly in view of the enlargement of power by the Necessary and Proper Clause."<sup>92</sup> One limitation on the spending power is that federal legislation must promote the "general welfare."<sup>93</sup> However, Congress has broad discretion in determining what constitutes the general welfare.<sup>94</sup> The intent of the legislation, which is to save lives and reduce injuries resulting from alcohol-related traffic accidents,<sup>95</sup> is general in scope. Of particular concern to Congress was the problem of accidents resulting from teenagers' driving to and from neighboring states with differing minimum drinking ages.<sup>96</sup> This would appear to make the establishment of a national minimum drinking age of benefit to the general public.

Although the federal legislation does not appear to violate the "general welfare" provision, Congress, in exercising its spending power, is limited by other constitutionally-imposed restraints.<sup>97</sup> One basis of attack on the legislation might be that it violates the twenty-first amendment.<sup>98</sup> Section 2 of that amendment, which repealed prohibition, states: "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."<sup>99</sup> This language is susceptible to two different interpretations.<sup>100</sup> The first is that this section of the amendment grants to the states exclusive regulatory power over the use of alcohol within their borders.<sup>101</sup> However, even under this interpretation, the federal legislation does not violate or change

South Dakota v. Dole, No. 84-5137 (D.S.D. dismissed May 3, 1985), appeal docketed, No. 85-5223-SD (8th Cir. June 26, 1985). Nine states have joined in a brief *amicus curiae* to the Eight Circuit.

91. U.S. CONST. art. I, § 8.

92. *Buckley v. Valeo*, 424 U.S. 1, 90 (1976) (per curiam).

93. U.S. CONST. art. I, § 8.

94. *Buckley*, 424 U.S. at 90-91.

95. See 130 CONG. REC. S8206-07 (June 26, 1984) (comments of Sen. Danforth).

96. *Id.* at S8212 (comments of Sen. Heinz).

97. *Buckley*, 424 U.S. at 90-91.

98. See CONSTITUTIONALITY OF LEGISLATION LINKING FEDERAL HIGHWAY FUNDS TO CERTAIN MEASURES TO COMBAT DRUNK DRIVING (1984) (memorandum prepared by Hogan & Hartson, Attorneys at Law) (available from National Beer Wholesalers' Ass'n, Falls Church, Virginia) [hereinafter cited as Memorandum].

99. U.S. CONST. amend. XXI, § 2.

100. Memorandum, *supra* note 98, at 38-39.

101. *Id.*

the laws of any state because it does not mandate a national minimum drinking age. Rather, it merely encourages such a change by conditioning distribution of federal highway funds upon adoption of a minimum drinking age.

A second interpretation of section 2 is that it merely permits states that wish to remain "dry" to do so.<sup>102</sup> In light of the limited scope of the amendment as defined by the Court, the second interpretation is more cogent. The Supreme Court has noted that "important federal interests in liquor matters survived the ratification of the Twenty-first Amendment."<sup>103</sup> The Court has held that the federal government retains authority to regulate interstate commerce in liquor<sup>104</sup> as well as to control liquor shipments to and from federal enclaves.<sup>105</sup> Additionally, the Court has defined the amendment as creating an exception to the normal operation of the commerce clause and stated that its relevance to other constitutional provisions is "increasingly doubtful."<sup>106</sup>

A second possible line of attack on the federal legislation is that it constitutes an invasion of state sovereignty in violation of the tenth amendment by in effect requiring states to adopt a minimum drinking age of twenty-one.<sup>107</sup> However this argument encounters two difficulties. First, the legislation is not mandatory. A state may forego a percentage of its federal highway funds if it desires to retain a minimum drinking age of less than twenty-one. Courts have frequently upheld such use of the spending power when Congress attempts to achieve broad policy objectives.<sup>108</sup>

A second difficulty with this argument lies in the Court's recent interpretation of the tenth amendment in *Garcia v. San Antonio Metropolitan Transit Authority*.<sup>109</sup> Although the Court in *Garcia* was dealing with the tenth amendment in terms of its limitation on the commerce clause, implications arise in relation to the spending power because of its similarly broad scope. The Court stated that

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102. *Id.*

103. *California Retail Liquor Dealers Ass'n v. Midcal Aluminium, Inc.*, 445 U.S. 97, 108 (1980).

104. *Capital Cities Cable, Inc. v. Crisp*, 104 S. Ct. 2694, 2707 (1984).

105. *United States v. State Tax Comm'n*, 412 U.S. 363 (1973); *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518 (1938).

106. *Craig v. Boren*, 429 U.S. 190, 206 (1976).

107. *See* 130 CONG. REC. S8213 (June 26, 1984) (comments of Sen. Baucus).

108. *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980).

109. 105 S. Ct. 1005 (1985). *See generally* Comment, National League of Cities Overruled—Supreme Court Rejects Tenth Amendment As An Affirmative Limitation On Congress' Power Under The Commerce Clause, 13 FLA. ST. U.L. REV. 277 (1985).

the "principal and basic limit on the federal commerce power is that inherent in all congressional action—the built-in restraints that our system provides through state participation in federal governmental action. The political process ensures that laws that unduly burden the States will not be promulgated."<sup>110</sup> In light of this interpretation, a tenth amendment challenge to the federal legislation is not likely to succeed.

#### *D. Antidiscrimination Provision*

The antidiscrimination provision adopted by the Florida Legislature is broader in scope than the amendment originally proposed in the House and more narrow than the amendment originally proposed in the Senate. The Act provides that a retail beverage establishment open to the public may not discriminate in service on the basis of race, creed, color, religion, sex, national origin, marital status, or physical handicap.<sup>111</sup> The original House amendment provided that refusal of service must not be in violation of article I, section 2 of the Florida Constitution.<sup>112</sup> The original Senate amendment applied to all persons licensed under the Florida beverage laws and would thus have included private clubs.<sup>113</sup> Further, the original Senate amendment would have applied to withholding of "membership, facilities, and service."<sup>114</sup>

The antidiscrimination provision of the Florida drinking age Act may be amended as early as the 1986 Regular Session. Senate Bill 1 (1986), containing the provisions of Senator Gordon's original antidiscrimination amendment, has been prefiled with the legislature.<sup>115</sup> The bill, with twenty-six named sponsors, has broad support in the Senate. Although a majority of House members were not receptive to the provision in the 1985 Regular Session, this may have resulted from pressure to keep the legislation as uncontroversial as possible in order for it to pass. The absence of this

110. *Id.* at 1020.

111. Ch. 85-285, § 4, 1985 Fla. Laws 1798, 1800 (to be codified at FLA. STAT. § 562.51).

112. FLA. H.R. JOUR. 388 (Reg. Sess. May 16, 1985). FLA. CONST. art. I, § 2 provides in part: "No person shall be deprived of any right because of race, religion or physical handicap."

113. Fla. CS for SB 1 (1985).

114. *Id.*

115. Fla. SB 1 (1986). Although the bill will not be available until November 1985, the language of the bill will be identical to the original amendment to SB 1 (1985) as offered by Sen. Jack Gordon. Letter from Amy Young, Legislative Assistant, Akerman, Senterfitt & Eidson, to Aubrey King, National Club Association (July 24, 1985) (discussing SB 1 (1986)) (on file, *Florida State University Law Review*).

pressure may result in increased support for the provision in the 1986 Regular Session. However, lobbyists for groups opposed to the bill will have considerable time to organize their efforts.

## V. CONCLUSION

Two significant factors contributed to the Florida Legislature's passage of the drinking age bill. The first was federal pressure to raise the drinking age, which Florida would have felt through withholding of highway funds. The second was mounting public concern about the number of alcohol-related traffic accidents. Although the primary aim of the drinking age legislation was to reduce accidents, it is difficult to predict how effective the legislation will be in meeting this goal. Studies of states that have raised their drinking ages have reached inconsistent conclusions. In addition, ascertainment of the effect of Florida's drinking age bill may be further obscured by some nineteen and twenty-year-olds' being able to purchase alcohol. Notwithstanding the legislature's concern about complying with federal pressure to raise the drinking age, two features of the drinking age bill may conflict with the federal law: the exemption for certain military personnel and the grandfather clause.

Florida's new law contains a provision which allows the drinking age to revert to nineteen if a federal court of last resort determines that Congress may not constitutionally withhold funds from states that do not raise their drinking age to twenty-one. However, it is unlikely that the federal law will be overturned. Due to broad support in the Florida Senate for a stronger antidiscrimination provision, the legislature is likely to revisit the new law in the near future.

While opponents and supporters of an increased drinking age disagree as to the effects of the change in the law, all agree that it is not a complete solution to the problem of drunk driving. The problem is societal, and every age group contributes to it. A subtle danger exists in focusing concern merely on the drinking age in that raising the drinking age may be viewed as a panacea. Now that the goal of raising the drinking age in an attempt to comply with federal law has been accomplished, lawmakers should not be lulled into complacency, but rather should be encouraged to work for more practical, far-reaching solutions to the problem of drunk driving.



