

Approved 3-31-89 G. Barr, Chm.  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at  
Chairperson

1:45 ~~xxx~~ p.m. on March 15, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Cates - Excused  
Representative Gjerstad - Excused  
Representative Peterson  
Representative Schauf - Excused

Committee staff present:

Mary Torrence, Revisor of Statutes Office  
Mary Galligan, Kansas Department of Legislative Research  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Representative James Lowther  
Representative Donna Whiteman  
Shirley Fleener, Manhattan, KS  
Patricia Oppitz, Kansas Retail Liquor Dealers  
Frances Kastner, Kansas Food Dealers  
Rebecca Rice, Kansas Retail Liquor Dealers

Resource people available to the committee:

Mark Wettig, Kansas Department of Revenue (KDR)  
John West, Alcohol and Beverage Control Division of KDR

At the request of the Governmental Organizations Committee, Representative Sughrue presented a bill concerning water plans and practices, Attachment No. 1, to be introduced by this committee and then referred to the Governmental Organizations Committee. Representative Sughrue moved to introduce the bill, seconded by Representative Charlton. The motion carried.

HB 2292

Representative Lowther explained the bill would suspend the driving privileges of minors in violation of alcohol and drug laws, Attachment No. 2. He also submitted information on the 1983 Oregon law which included statistics and arguments in support of the law, Attachment No. 2A.

Committee discussion revealed:

1. Provisions of the Oregon law addressing dropping out of school were amended into a similar bill by Representative Whiteman last week.
2. Concern by at least one committee member regarding the automatic suspension and court discretion was suggested.
3. Several years after enactment, the constitutionality of the Oregon law was challenged and upheld.
4. Representative Lowther expressed no objection to a suggestion the committee further review the section applying to the 18-21 year age group.
5. If allowing judicial discretion on a first offense were the wisdom of the committee, Representative Lowther stated he would support it but would like the opportunity to discuss it further.

Representative Whiteman supported the concept of the bill and stated she had introduced a bill amending the statute raising the age for legal drinking, Attachment No. 3. She emphasized that in case law driving is a privilege not a right.

Representative Douville asked if the court deemed the individual a juvenile offender would it be limited to the provisions of this bill or would municipal jurisdictional law apply. Representative Whiteman responded that if it is filed in juvenile court, the jurisdictional alternatives in juvenile codes are usually applied. Larger jurisdictions do not usually process traffic offenses through a juvenile court but rather the municipal court.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 1:45 ~~am~~/p.m. on March 15, 1989.

Shirley Fleener appeared in as a proponent of the bill citing some facts about teen drinking and advocating any inconvenience caused parents by a teen's driver's license suspension is more effective if the parent is involved, Attachment No. 4. She also described several local incidents involving teen drinking, their punishment-being talked to - and their attitudes. She further advocated backing alcohol education with parental support.

Committee discussion revealed:

1. Mrs. Fleener supported treatment programs for the 10% of teens who have an alcohol problem. She stated the results of several studies revealed teen drinking patterns to be: 1. drink until it is all gone or 2. drink until they are drunk.
2. Regarding inconvenience to parents if a teen loses his license, Mrs. Fleener called it "not too much to emphasize the child's importance".
3. Mrs. Fleener would support a review of the penalty if the teen is in a recovery program, had completed the program and was demonstrably "clean".
4. Mrs. Fleener would support raising the age at which restoration of driving privileges could be sought from 16 to 18 years.

There were no opponents to the bill.

HB 2237

Patricia Oppitz explained that liquor dealers need protection from prosecution for unknowingly selling liquor to a youth with a false I.D. as the current law requires, Attachment No. 5.

Frances Kastner spoke as a proponent of the bill highlighting the "thriving business" of providing false I.D.s in Kansas, Attachment No. 6.

Questions from the committee established:

1. There appears to be no liability in the case of an I.D. not being requested.
2. Ms. Kastner did not support the idea that enactment of the bill would cause a retailer to be less observant in checking I.D.s.
3. The revisor stated that it may be possible to make HB 2292 applicable if a minor misrepresented himself with a false I.D. and classify the minor as a juvenile offender. It might be fitted to status offense.

Rebecca Rice explained CMB licensees are not held to the same level of liability as the retail liquor dealers. The strict liability standard is defined as being held liable regardless of the circumstances surrounding the situation (whether or not the person was underage and/or presented a false I.D.). The dealer would then be subject to whatever punishment the ABC would impose. This bill would change strict liability to a standard liability.

Ms. Rice described an incident involving a former client who obtained a false I.D, purchased liquor, and the resulting penalty to the liquor retailer, Attachment No. 7.

Representative Lowther restated the problem caused liquor dealers, Attachment No. 8.

When asked about amending the two bills (HB 2292 and HB 2237) together for reasons already given, in addition to: the offender being judged to be a juvenile, and for having presented a false I.D., Representative Lowther noted that most violators are 18-20 years of age.

There were no opponents to the bill.

The meeting adjourned at 3:42 p.m. The next meeting of the committee is scheduled for March 16, 1989, at 1:30 p.m. in Room 526-S.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE March 15, 1989

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
FRANCES KASTNER	TOPEKA	Ks Food Dealers Assn
Patricia Appitz	Topeka	Ks Retail Lign. Dealers
Joe Berger	Topeka	Ks Sunflower Club Assoc.
Albert D. Lollar	Topeka	Lollar Legion - Ks Retail Assoc.
Rebecca Rice	"	KRLDA
Rep Jim Lauth	Lejis	
Barbara Joseph	RP	
Heather Jump	RR 4 Clay Center "	
Shannon Belue	Clay Center "	
Marc Kuck	Clay Center, KS 67432	
Andy Heeren	Clay Center KS 67432	
JOEL RHODES	Lawrence	Intern (Roper)
Jim Claw	Topeka	KC DAA
John W. Smith	Topeka	K, D, O, R, Div of Veh
Mark W. H.	"	KDOR
Jack West	"	DDOR - ABC
Dean P. Reynoldson	Topeka	Dept. of Revenue
Christie M. Keckler	Topeka	Dept. of Revenue
Sueven Kropp	Manhattan	Little Apple Task Force
Shirley Fleener	Manhattan	Little Apple Task Force
Nancy Handberg	Topeka	Sen. James Francisca
Kevin Kelly	OP	Sen
Jon Brass	Topeka	Life at its Best
John Nuten	Tyrh	Smith's Egg

HOUSE BILL NO. \_\_\_\_\_

By

AN ACT relating to water use; concerning conservation plans and practices; amending K.S.A. 1988 Supp. 82a-732 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1988 Supp. 82a-732 is hereby amended to read as follows: 82a-732. (a) The owner of a water right or permit to appropriate water for beneficial use, except for domestic use, shall file an annual water use report on a form prescribed by the chief engineer of the division of water resources of the state board of agriculture on or before March 1 following the end of the previous calendar year. The report shall completely and accurately set forth such water use information as requested by the chief engineer.

(b) Any person failing to file a water use report or other documents required under the provisions of subsection (a) shall be subject to a civil penalty in an amount not to exceed \$250. The chief engineer upon a finding that the owner of a water right or permit to appropriate water for beneficial use has failed to file such a report may impose a civil penalty as provided in this section. Any person filing a document knowing it to contain any false information as to a material matter shall be guilty of a class C misdemeanor. (c) All fines collected by the chief engineer pursuant to this section subsection shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(c) The chief engineer may require the owner of a water right or permit to appropriate water for beneficial use to adopt and implement conservation plans and practices. Such plans and practices shall be consistent with the guidelines for

conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. The chief engineer, in consultation with the director of the Kansas water office, shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

Sec. 2. K.S.A. 1988 Supp. 82a-732 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

JAMES E. LOWTHER  
 REPRESENTATIVE, SIXTEENTH DISTRICT  
 LYON COUNTY  
 1549 BERKELEY ROAD  
 EMPORIA, KANSAS 66801



TOPEKA

HOUSE OF  
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 TAXATION COMMITTEE  
 LEGISLATIVE EDUCATIONAL PLANNING  
 COMMITTEE

House Federal & State Affairs Committee

Testimony in Support of HB 2292

March 15, 1989

To those of you who served on this committee in the 1988 Session, HB 2292 will be familiar as it is the current version of 1988 HB 2819 which was passed by this committee and by the House as well.

This bill would suspend the driving privileges of teenagers who violate alcohol and drug laws. I have correspondence from a judge stating that he has had several lengthy arguments in court with attorneys arguing that the court does not have the authority to suspend the minor's license under KSA 38-1663. The statute should be amended to provide the license suspension as a dispositional alternative for juvenile offenders involved in possession, use or abuse of alcoholic beverages or drugs.

This idea is not new. It was proposed by a school principal in Oregon in 1983, to the Oregon State Legislature and passed as the "Oregon Denial Law". The results in Oregon indicate the law caused a sharp decline in liquor and drug use. The reason is simple: The penalty hits the juvenile violator where it hurts the most -- the loss of driving privileges. Other States have enacted similar legislation, including Missouri with their "Abuse and Lose" law.

Under provisions of HB 2292, if a juvenile has been found to be guilty of any alcohol or drug law, the juvenile must surrender their driver's license to the court. The juvenile offender will have driving privileges revoked. Restoration can be sought if the juvenile is 16 or older and 90 days have elapsed since driving privileges were revoked, if it was a first offense. If it was a second or subsequent offense, one year must elapse. The court may restore the driving privileges subject to the completion of a driver's license examination as required for original license. I would point out that, as the bill is drafted, it would prohibit reinstatement of driving privileges for persons under the age of 16.

I call your attention to the concept in the idea Oregon Law which appears to be more stringent and according to 1986 statistics showed sharp reductions in DUI & open container arrest and drug violations. Also, I refer you to two other bills now pending in other committees that treat this subject similiarly: SB 219 and HB 2356 by Rep. Whiteman. Rep. Whiteman's bill adds new language and amends different KSA, KSA 8-2117 which is the juvenile traffic offense law. Obviously, there are several approaches and any or all may be valid amendments that you should consider.

The problem of teenage drinking is a real one. In my home town the Alcohol and Drug services of the community Mental Health Center is working with several school districts in prevention, education and then also in treatment of teenage alcohol and drug abuse. I've not noticed any real improvement. The faces change -- the problem does not abate. I wish I had more time to provide you with the facts on this problem.

I will close by calling your attention to the persuasive arguments given for passage of Oregon's law. Thank you for your consideration.

# Oregon Says "No" To Driving By Minors Who Use Drugs

By H. Wesley Smith

*When H. Wesley Smith was a school principal in Albany, Oregon, he led the movement to enact the 1983 Oregon law that suspended the driving privileges of teenagers who violated alcohol and drug laws.*

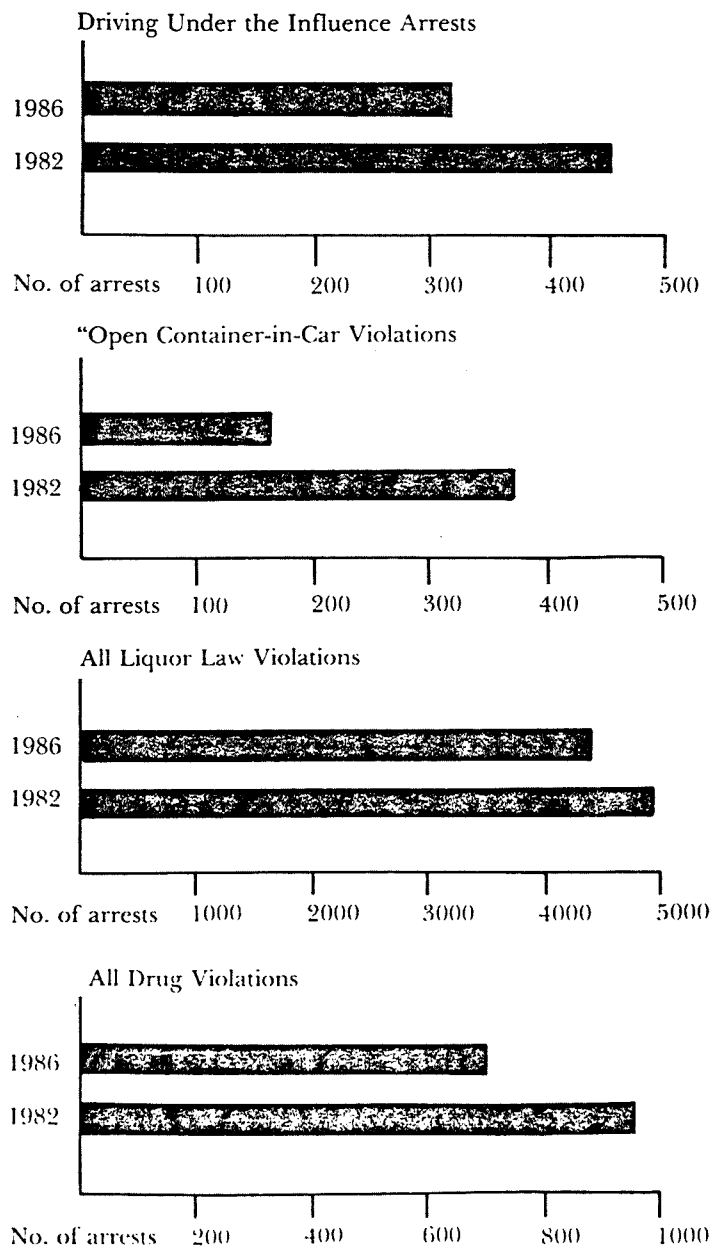
In 1983 I was principal of a school that was considered to have an outstanding drug education program. And yet, the students were still using drugs.

I felt there had to be a way to motivate young people to stop using drugs. I thought that students might be encouraged to stay away from drugs to protect their privilege of driving. Receiving a driver's license is important to a teenager.

With this in mind, I exercised my right as an Oregonian to submit a proposal to the state legislature. My proposal stipulated that 13- to 17-year-olds found in violation of any drug or alcohol laws would lose their driving privileges for 1 year or until age 17, whichever was longer. The violator would be unable to apply for a license during the penalty period. In the case of a 13-year-old violator, the youth would have to wait until age 17 to apply, invoking the 1-year penalty after the youth became eligible at the age of 16. This penalty would be imposed whether or not a motor vehicle was involved. A second violation would require the suspension of driving privileges for 2 years or until age 18, whichever was longer. The proposal also provided an appeals procedure.

After much deliberation, the "Oregon Denial Law" was passed in 1983. The law was credited with

## Denial Law Causes Sharp Decline in Drug Use





reducing juvenile drug arrests 22 percent by the end of 1984 and an additional 7 percent by the end of 1986. Open-container-in-vehicle violations were reduced 45 percent by the end of 1984 and an additional 19 percent by the end of 1986.

The most persuasive arguments in favor of the law's concept were:

- It helped youth by giving them a reason to say "no" which was acceptable to their peers.
- It gave judges an effective tool to use in responding to drug violators.
- In contrast to traditional prevention programs, this penalty program was nearly cost-free to the state.
- It provided positive reinforcement to drug-free teenagers by maintaining their eligibility to drive.
- It demonstrated society's commitment to fight drug use by taking firm legal action.
- It provided an absolute consequence to drug violations.
- The law supported parents, schools, and others fighting drug abuse.

Passage of the law was not without struggle. Although opponents of the bill criticized it as harsh, and possibly in violation of the state constitution, we answered those criticisms. Oregon courts have upheld the law.

Public response to the law has been overwhelmingly positive. To obtain more information about the law, write to H. Wesley Smith, Assistant to the Superintendent, Greater Albany Public Schools, 718 Seventh Avenue, S.W., Albany, OR 97321 or telephone (503) 967-4515.

## Oregon Denial Law Upheld

In April 1987, the Oregon Court of Appeals upheld that state's "Denial Law," which had been challenged on state constitutional grounds. In affirming the constitutionality of the statute, the court held that:

- The law meets its two intended goals—deterrence of drug and alcohol possession and use and promotion of highway safety; and
- A teenager's interest in possessing a driver's license is outweighed by the state's goals in this instance.

The court also rejected the claim that enforcement of the law constituted cruel and unusual punishment, that it treated minors unconstitutionally as a "suspect class," and that the license suspension penalty is out of proportion to more serious conduct.

The statute also survived an earlier court challenge based on arguments that it denied students their rights to equal protection under the state constitution.

## States Follow Oregon's Lead

Several states have been actively considering proposals similar to Oregon's "denial" law. Here's a progress report from around the country:

**New Jersey's** new anti-drug law, effective since July 1987, contains provisions that relate drug use to driving privileges. New Jersey minors face a \$550 fine and a 6-month license suspension if caught with even one marijuana cigarette. Students found in possession of drugs before receiving a driver's license will have to wait 6 months past the normal date of eligibility before applying for a driver's license.

**Missouri** students will be subject to provisions of that state's new "abuse and lose" law scheduled to take effect on September 28, 1987. In Missouri, students under age 21 who are convicted of drunk driving or drug violations stand to lose their driving privilege for 1 year. Those under 16 would face a 1 year suspension beginning on their 16th birthday. These strict penalties also apply to students convicted of falsifying identification cards or carrying such cards.

The **California** legislature is considering a bill that would suspend or delay driving privileges of residents under 21 who are convicted of drug violations. Conviction for any drug or alcohol violation would result in a mandatory 1-year suspension of driving privileges for those with licenses. Students under 16 would be penalized by delaying their eligibility to drive for 1 year. The bill passed the California Senate by a vote of 21 to 4 and has been forwarded to the Assembly for further consideration.

In **Georgia**, Representative Thomas E. Wilder has introduced a bill in the General Assembly to deny auto licenses until the age of 17 to persons convicted of misdemeanors while under the influence of alcohol or drugs.

Wilder plans to seek passage of the bill in the next session of the General Assembly.

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TOPEKA

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CONGRESSIONAL APPORTIONMENT  
GOVERNOR'S ADVISORY COMMISSION  
ON JUVENILE OFFENDERS

TESTIMONY BEFORE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

ON HOUSE BILL 2292

CURRENT STATUTE:

Juvenile offender is defined in K.S.A. 38-1602(b). However K.S.A. 38-1602 (b) (1) excludes persons 14 or more years of age who commit a Chapter 8 traffic offense or city traffic ordinance or county traffic resolution.

K.S.A. 8-2117 provides that children under 18 can be prosecuted for traffic offenses in a court of competent jurisdiction. The court is authorized to impose any fines or penalties authorized by law including the fines imposed in K.S.A. 8-1567 (driving under the influence) plus they may be placed in a juvenile detention facility for 10 days.

K.S.A. 8-1014 Suspension or restriction of driving privileges on an alcohol or drug related conviction, the court can:

1. First occurrence - suspend license for 30 days or until completed education program - restrict for additional 330 days.
2. 2nd conviction - suspend for 1 year or until completed treatment program required by court.

K.S.A. 8-1567 - provides the penalties for a DUI.

Conviction:

1st offense	48 hours - 6 months	\$200 to \$500
2nd offense	90 days - 1 year (5 day mandatory)	\$500 to \$1,000
3rd offense	90 days - 1 year (mandatory)	\$1,000 to \$2,500

PROPOSED CHANGE:

1. HB 2292 deals with juvenile offender in juvenile court. K.S.A. 38-1663 (Dispositional Alternatives) is amended to add section (c) (1) to permit the judge to require the juvenile offender to surrender their driver's license if there is a finding that the juvenile was involved in an act involving the possession, use or abuse of any alcoholic beverage or controlled substance, or both, the juveniles driving privileges will be revoked.

2. K.S.A. (C) (2) is added to provide that the juvenile offender may petition the court to restore their driving privileges if the juvenile is 16 years old and:
  - a. 90 days have elapsed if it was 1st offense or
  - b. 1 year has elapsed since 2nd offense
  - c. For good cause shown the court may restore the juveniles driver's license after the juvenile completes a driver's license examination.

BENEFITS:

1. May be effective in reaching the 14 - 16 year olds who go through juvenile court.
2. Driving is a privilege and there is tremendous peer pressure towards getting and retaining a driver's license.
3. SB 219 in the Senate Judiciary Committee has the same concept. SB 219 provides as follows:

Subsection (b) - exempts traffic offenses involving any alcoholic beverage or controlled substances or both from the current suspension or revocation of driving privileges.

Subsection (d) - creates a new provision for having the juvenile surrender their license and the Department of Motor Vehicles shall revoke the license. The juvenile may petition the court to have them restored if she/he is 16 and 90 days have elapsed if it was a first conviction, 1 year has elapsed if it was a second conviction. The petition for restoration must show good cause and is subject to the completion of a driver's license examination.

FRIDAY  
July 22, 1988

RE: HOUSE BILL 2292

## METRO

SECTION  
B

## In two months, 1,290 youths lose licenses over alcohol

By Robert Zausner  
Inquirer Harrisburg Bureau

HARRISBURG — A new state law that slaps underage drinkers with suspension of their drivers' licenses has produced 1,290 suspensions in less than two months on the books, and officials predict the number will exceed 50,000 in the first year.

"It shows that law enforcement is using the law. Hopefully, it will make some of the kids think twice," said Rep. Kevin Blaum (D., Luzerne), sponsor of the measure, which went into effect May 24.

"That's an awfully good sign," agreed Steven Schmidt, executive director of a group called Pennsylvania Driving Under the Influence Association. "Those are very consistent and excellent numbers this early on."

The latest statistics show there were 1,290 underage-drinking convictions across the state through July 20, before the law had been in effect even two months, according to Philip VanBriggle, manager of the Department of Transportation's license control division.

Using state police statistics and information from the initial round of convictions, PennDOT spokeswoman Susan Bertone said the department is projecting that there will be 51,000 cases within the law's first year.

Officials said the figures from the first two months were lower than those they expect in the future because PennDOT had to distribute the forms and alleviate other start-up problems for reporting license suspensions under the new law.

"Anytime you come out with a new piece of legislation there is uncer-

tainty around it, new responsibilities for law enforcement," Schmidt said. "We were somewhat concerned that uncertainty might cause a dip in arrests. It didn't."

The recently enacted law, which had failed twice before to make it onto the state's books, sets a mandatory 90-day license suspension for anyone younger than 21 convicted of purchasing, consuming, possessing or transporting alcohol.

The law also incorporated the summary-offense penalty of a \$25 to \$300 fine that had been contained in the

previous statute.

A second conviction under the new law would result in license suspension for one year, while subsequent convictions would revoke driving privileges for two years.

"It's a tool for law enforcement, and evidently they're using it," said Blaum, adding, "That was the last piece of the puzzle we were waiting to see — enforcement. This says that police departments and magistrates across the state are enforcing the law to the letter."

Blaum said that prior to the law's

enactment, police would arrest underage drinkers, but "it was like a turnstile: They were out with nothing happening to them."

"If we can suspend 20 to 30 licenses per high school across Pennsylvania, then maybe we can change the way underclassmen think about drinking," he said. "If they can see the seniors coming back on Monday without their licenses, I think then we begin to chip away at the 'cool' [image] we see around underage drinking. It's no longer going to be

(See SUSPENSIONS on 4-B)

## Law nets 1,290 licenses

SUSPENSIONS, from 1-B  
the neat thing to do."

"It is a good way to deter our young people from getting into the habit of drinking and driving. The younger we can reach that market, the better off we are," said Sherry Walker, executive director for the Pennsylvania chapter of Mothers Against Drunk Driving.

"Previously there wasn't very much that could happen to them in the way of punishment. This is a good deterrent to them because no young person wants to lose their license."

Despite some opposition to the measure in the General Assembly by those who said it was unfair to tie driver's licenses to criminal penalties, Blaum said he does not expect any legal challenges to the law.

"I don't see any grounds for a court challenge. A driver's license is not a right, but a privilege, and the state can take it away when it wishes," he said.

Civil Liberties Union said that organization had no plans to challenge the law.

The group had opposed the measure in 1986 when it was before the General Assembly, but the basis of that opposition was an anti-abortion amendment that had been included. That bill passed the House and Senate but was vetoed by Gov. Dick Thornburgh. A similar bill introduced in the 1983-84 session never passed the legislature.

Blaum said that although Pennsylvania's law is the first in the nation to suspend drivers' licenses for underage drinking, a New Jersey court recently upheld a local magistrate's decision to lift a teenager's license as punishment for the same offense.

Blaum also said he did not believe parents would want to press a legal challenge for a teenager caught drinking illegally, but instead would welcome the disciplinary measure.

"I hope," he said, "that parents of teens who lose their licenses say,

RE: HOUSE BILL 2292

October 31, 1988

# Teen-Driver Law's Success Touted

By Kathi Thacker  
Staff Writer

An Oregon official predicts that Oklahoma's new law withholding driver's licenses for youths convicted of alcohol or drug violations will reduce the problem in this state.

Effective Tuesday, the Oklahoma Denial Law will withhold teen-agers' most prized privilege — driving — from youths 17 and under who are convicted of drug- or alcohol-related offenses.

The law, based on a 5-year-old

Oregon statute, delays the granting of a driver's license to youths convicted of violating any laws governing drugs or alcohol for one year or until they are 17, whichever is later.

Teen-agers who already have their licenses face one-year driving suspensions.

A second or subsequent conviction postpones the granting of licenses for two years or until the person is 18, whichever is later.

An Oregon official says the law's

stiff penalties have reduced teenage drug and alcohol abuse in that state.

"We have never had a more effective program in Oregon on drug and alcohol abuse — not one. This law is worth having. It can enhance Oklahoma's reputation around the country as being forward-looking and willing to try something new," said Gil Bellamy, administrator of the Oregon Traffic Safety Commission.

The law works because many

teen-agers do not want to risk losing or delaying the long-anticipated possession of a driver's license, he said.

"A driver's license is no less than a rite of passage. It is a very desirable item, and teens will do a lot to protect it, as we have proved in Oregon," he said.

The concept was developed by Wes Smith, an Oregon school superintendent, and state legislators picked up on it, Bellamy said.

Oregon became the first state to

enact such a law, in August 1981, and alcohol or drug arrests of juveniles began dropping, he said.

A total of 969 juveniles were arrested for drug violations in 1982, the last full year without the law, he said.

In 1984, the first full year under the law, the number of juveniles arrested for drug violations decreased to 755, a reduction of 22 percent, he said.

Total juvenile arrests for liquor

See DRIVERS, Page 2

## Drivers

Continued

offenses decreased from 4,496 in 1982 to 3,970 in 1984, a 12 percent drop, he said.

Arrests for transporting an open container went down 45 percent, from 373 in 1982 to 205 in 1984, he said.

Driving-under-the-influence arrests also decreased, he said. A total of 456 juveniles were arrested for DUI violations in 1982, compared with 378 in 1984, a 17 percent decrease.

"This was in the early '80s, before the 'Just Say No' campaigns. We had an explosive growth in the early '80s in drug problems. I don't know of any other reason the arrests should have gone down except that law," Bellamy said.

The statistics for juvenile ar-

rests for drug and alcohol offenses have remained roughly the same since the improvements seen in 1984, he said.

Arrest numbers have not continued to drop, but arrests have not increased, either, he said.

The law not only has been effective, but it also has been inexpensive to administer, he said.

"The entire cost of the law was \$5,000 to send a letter to every high school and junior high kid in Oregon. There was no new money committed, and no new people were hired, yet it had a tremendously good effect."

Bellamy said he believes the letters sent to students through

the schools helped the state avoid legal problems and increased the law's effectiveness. He encouraged Oklahoma to make a similar attempt to inform juveniles.

Oklahoma officials plan a press conference and media campaign sometime this week, said Bruce Schults, spokesman for the state Highway Safety Office.

Bellamy said the law has survived court challenges in several states, and its popularity in Oregon is high.

"It has overwhelming support here. It isn't even controversial. Every legislative session, somebody will mumble about repealing it, but they don't get anywhere. The Legislature is not interested at all in repealing the law."

**38-1602. Definitions.** (a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who does an act while a juvenile which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto or who violates the provisions of K.S.A. 41-715, 41-2721 or subsection (i) of K.S.A. 1987 Supp. 74-8810, and amendments thereto, but does not include:

(1) A person 14 or more years of age who commits a traffic offense in violation of chapter 8 of the Kansas Statutes Annotated or any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated;

(3) a person 16 years of age or over who is charged with a felony or with more than one offense of which one or more is a felony after having been adjudicated in two separate prior juvenile proceedings as having committed an act which would constitute a felony if committed by an adult and the adjudications occurred prior to the date of the commission of the new act charged;

(4) a person who has been prosecuted as an adult by reason of subsection (b)(3) and whose prosecution results in conviction of a crime;

(5) a person whose prosecution as an adult is authorized pursuant to K.S.A. 38-1636 and amendments thereto; or

(6) a person who has been convicted of aggravated juvenile delinquency as defined by K.S.A. 21-3611 and amendments thereto.

(c) "Parent," when used in relation to a juvenile or a juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

(d) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and

which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which, if in a city or county jail, must be in quarters separate from adult prisoners.

(g) "State youth center" means a facility operated by the secretary for juvenile offenders.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(i) "Secretary" means the secretary of social and rehabilitation services.

History: L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; May 28.

**Attorney General's Opinions:**

Kansas safety belt use act. 86-95.

**CASE ANNOTATIONS**

4. Cited: failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" examined. *Reubke v. State*, 11 K.A.2d 353, 720 P.2d 1141 (1986).

5. Two prior adjudications as juvenile offender made in one hearing is one proceeding. *State v. Magness*, 240 K. 719, 720, 721, 722, 732 P.2d 747 (1987).

## STATED BRIEFLY

## New Leadership

■ Lt. Gov. Robert J. Miller became Nevada's acting chief executive Jan. 3 when Gov. Richard Bryan, a fellow Democrat, was sworn in as U.S. senator.

Bryan, president of The Council of State Governments in 1987, unseated Republican incumbent Chic Hecht.

Miller will serve the remaining two years of the unfinished gubernatorial term. He took office in January 1987 after serving two terms as Las Vegas district attorney. He is a graduate of Loyola Law School, Los Angeles.

## Law Enforcement

■ Teens in Oklahoma and West Virginia will find themselves relinquishing their drivers licenses if they run afoul of new laws. The laws were enacted to curb the dropout rate in West Virginia and teenage use of drugs and alcohol in Oklahoma.

West Virginia is the first state to adopt a law allowing the Department of Motor Vehicles to revoke the driver's licenses of students aged 16 to 18 who drop out before graduating. Since July, the department has notified 353 dropouts that their licenses will be revoked if they do not enroll in school or a GED (General Equivalency Diploma) program. About one-fourth of those teens have gone back to school, according to Cindy Hunt of the department's safety and enforcement division.

She estimated that some 5,000 students or 19 percent drop out of West Virginia high schools annually. Not all are licensed drivers. The law, which is retroactive two years, requires that students show proof of enrollment when applying for a learner's permit.

Hunt said most of the teens who have called about the program are willing to re-enroll or get a GED. About 20 hardship cases have been

excused. These require a letter from the school district superintendent stating the necessity of a dropout keeping a license.

★ Oklahoma's new law takes away licenses of drivers under age 17 who are convicted for possession, use or abuse of drugs or alcohol. "It gives them a reason to say 'no,'" explained state Rep. Carolyn Thompson, House author of the legislation.

Under the law, which took effect Nov. 1, 1988, the licenses of first-time offenders could be suspended for up to one year (three months is mandatory for all offenders), and a second offense could result in a two-year suspension. A drug- or alcohol-related conviction can mean a minimum one-year delay in getting a license. Oklahoma allows learner's permits at age 15.

The Oklahoma law is patterned after a similar measure in Oregon which became law in 1983. Doug Allen, with Oklahoma's attorney general's office, said a study in Oregon showed a 17 percent reduction in alcohol-related driving arrests for juveniles under 18 from 1982 to 1984. The study showed a 12 percent reduction overall in liquor law violations in that age group and a 22 percent reduction in drug arrests.

## Legal services

■ Maryland's assistant attorneys general are providing free legal help for some of the state's poor under a new program thought to be unique in the country.

Maryland Attorney General J. Joseph Curran Jr. partially lifted a longstanding ban on the private practice of law by assistant attorneys general to allow creation of the *pro bono* program. *Pro bono*, an abbreviated version of the Latin legal term *pro bono publico* which means "in the public interest," is often used to describe free legal services.

Creation of the program was prompted by a Maryland legal panel's call for more lawyers to donate

services to the poor. Of the 300 eligible attorneys, 125 have volunteered.

An eight-member committee headed by Deputy Attorney General Dennis M. Sweeney is screening the legal cases sent to the attorney general's office and referring them to attorneys who have volunteered to handle them. Cases — all civil — will include those for which poor people frequently seek legal help, such as court protection for a battered spouse, wills and powers of attorney, landlord-tenant disputes, AIDS-related cases and uncontested divorce cases that don't involve requests for financial support.

Sweeney said about 10 clients have been assigned to attorneys thus far. In the next six months, he expects the caseload to level out between 50 and 100 cases at a time.

The *pro bono* representation must be undertaken in addition to full-time responsibilities. Secretaries and other support staff may assist lawyers volunteering their time within carefully observed limits. The program was set up to avoid any apparent or actual conflicts of interest, according to Sweeney.

## FYI

■ The Advisory Council on Historic Preservation will be offering 14 training sessions in 13 cities this year. The course teaches federal, state, local and tribal officials and contractors the basics of the federal historic preservation project review process.

The sessions are scheduled: Jan. 24-26, Washington D.C.; Feb. 7-9, Dallas; Feb. 28-March 2, Mobile, AL; March 14-16, Santa Fe; April 4-6, Boise, ID; April 25-27, Raleigh, NC; May 2-4, Anchorage, AK; May 16-18, San Bernardino, CA; May 31-June 2, Boston; June 13-15, Omaha; June 27-29, San Francisco; July 12-14, Washington D.C.; Aug. 1-3, Portland, OR; Sept. 11-13, Chicago.

For information, write GSA Training Center, Box 15608, Arlington, VA 22215. Attention: Peggy Sheelor. □



TOPEKA

HOUSE OF  
REPRESENTATIVES

March 3, 1989

## SENATE BILL 219

## COMMITTEE ASSIGNMENTS

\* MEMBER: JUDICIARY  
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ON JUVENILE OFFENDERS

DONNA L. WHITEMAN

MINORITY WHIP

REPRESENTATIVE, 102ND DISTRICT

RENO COUNTY

401 W. FIRST, P.O. BOX 1224

HUTCHINSON, KANSAS 67504-1224

HUTCHINSON NUMBER: (316) 669-0467

TOPEKA: (913) 296-7630

1-800-432-3924

CURRENT STATUTE: K.S.A. 8-2117 provides that children under 18 can be prosecuted for traffic offenses in a court of competent jurisdiction. The court is authorized to impose any fines or penalties authorized by law including the fines imposed in K.S.A. 8-1567 (driving under the influence) plus they may be placed in a juvenile detention facility for 10 days.

K.S.A. 8-1014 Suspension or restriction of driving privileges on an alcohol or drug related conviction, the court can:

1. First occurrence - suspend license for 30 days or until completed education program - restrict for additional 330 days.
2. 2nd conviction - suspend for 1 year or until completed treatment program required by court.

K.S.A. 8-1567 - provides the penalties for a DUI.

Conviction:

1st offense	48 hours - 6 months	\$200 to \$500
2nd offense	90 days - 1 year (5 day mandatory)	\$500 to \$1,000
3rd offense	90 days - 1 year (mandatory)	\$1,000 to \$2,500

PROPOSED CHANGE:

Subsection (b) - exempts traffic offenses involving any alcoholic beverage or controlled substances or both from the current suspension or revocation of driving privileges.

Subsection (d) - creates a new provision for having the juvenile surrender their license and the Department of Motor Vehicles shall revoke the license. The juvenile may petition the court to have them restored if she/he is 16 and 90 days have elapsed if it was a first conviction, 1 year has elapsed if it was a second conviction. The petition for restoration must show good cause and is subject to the completion of a driver's license examination.



STATEMENT IN SUPPORT OF HOUSE BILL 2292

March 15, 1989

I am Shirley Fleener from Manhattan, Kansas. For the past 5 years I have worked with a grass roots volunteer organization, The Little Apple Task Force On Alcohol and Drug Abuse, whose concern is the consumption of alcohol by minors. Thank you for the opportunity to appear before this committee in support of House Bill 2292.

SOME SOBERING FACTS

1. The average age to begin regular use of alcohol is 13 years.
2. There are over 3 million teenage alcoholics in the United States.
3. Young people make up 20% of all licensed drivers but they account for 42% of all alcohol-related accidents.
4. Alcohol is a factor in 50% of all accidents involving young people.
5. Youth are alcoholically impaired at one-half the legal limit of blood-alcohol ratios.
6. 17% of fatally injured youth have blood-alcohol levels below the legal limit.

We, as a state and nation, are spending great amounts of time and money educating our children to the dangers of drugs and alcohol. In Manhattan we have had education for several years in high school, then it moved into the middle school and now the program has reached the elementary schools. That is fine and as it should be but these programs so far have not had a great impact on our teenagers -- they still consume alcohol.

Part of the solution is to reach the parents and community leaders so they will support this education the children are receiving. It is time for us to stop sending mixed messages to our young.

There had been for several years the idea that "kids are going to drink anyway, we can't stop them so why try?" Then came the increase in the number of teenagers getting in trouble with alcohol and another idea was added. "Kids are going to drink anyway, we can't stop them so we will teach them to drink responsibly." As time passed and the situation became worse the researchers began to study the young and consumption of alcohol and soon found out that alcohol beverages effect the young differently than the mature adult. There is no such thing as responsible drinking for the young person. Drinking is a health and safty risk for them.

I'm glad to say that this approach is not being taught in our schools anymore. Our education programs have gone from "responsible drinking" to "Just Say No."

But few adults have been exposed to this same education even though attempts are being made to reach them. Adults don't give the children an educational program the support and reinforcement needed. Parents and community leaders must be made aware of this need for their support and become involved.

Through legislation you have told the young people that Kansas thinks they should abstain from the consumption of alcohol until age 21. House Bill 2292 will back that up and reach the young in a very sensitive area -- their driving privilege.

I support House Bill 2292 for two reasons. The teenager who has been in trouble with alcohol will be removed from the road for his/her own protection and for the protection of the general public. But it will also cause the parent to sit up and take notice at just what is going on.

Our high schools are surrounded by cars driven by the students so mom or dad doesn't have to interrupt their day to take the students to and from school, various activities, doctor appointment, jobs, ballgames, etc., etc. If the teenager loses his/her driving privileges he/she must once again depend on mom and dad for transportation. So in a sense the parent now is being penalized for the actions of the teen. This could be very confining and time consuming for the parent but because of this intrusion on their life the parent may finally take the time to really look at the problem of teenage consumption, educate themselves, and take appropriate action.

In House Bill 2292 you not only remove those young people who are high risk on the road but you also are reaching the adults who should be involved in the problem of the consumption of alcohol by minors. Both of these results are most positive.

I would like to close by reading a quote from the Daily Oklahoman when Oklahoma passed a similar law last summer. The Oklahoma law was copied from one that had been passed in Oregon 5 years previous. Gil Bellamy, administrator of the Oregon Traffic Safty Commission stated, "We have never had a more effective program in Oregon on drug and alcohol abuse - not one. The law not only has been effective, but it also has been inexpensive to administer. The entire cost of the law was \$5,000 to send a letter to every high school and junior high kid in Oregon. There was no new money committed, and no new people were hired, yet it had a tremendously good effect."

Thank you for the opportunity to speak. Thank you for your consideration of House Bill 2292. I respectfully request the passage of this bill.

Shirley Fleener  
2026 Parkway Dr.  
Manhattan, Ks. 66502

913-537-0472

# K R I D A KANSAS RETAIL LIQUOR DEALERS ASSOCIATION INC.

400 SW CROIX  
TOPEKA, KS. 66611  
(913) 266-3963

PATRICIA A. OPPITZ  
PRESIDENT

TRACY MOODY, *1st Vice-President*  
ALBERT LOLLAR, *2nd Vice-President*  
MAXINE STROTHMAN, *Secretary-Treasurer*

MADAME CHAIRMAN, MEMBERS OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE, I AM PATRICIA OPPITZ, PRESIDENT OF THE KANSAS RETAIL LIQUOR DEALERS ASSOCIATION. I AM HERE TO SPEAK IN FAVOR OF HOUSE BILL NO. 2237. REPRESENTATIVE JAMES LOWTHER OF EMPORIA HAD THIS BILL DRAFTED FOR US, AND I WISH TO THANK HIM. HOUSE BILL 2237 ALLOWS RETAIL LIQUOR STORES TO HAVE A DEFENSE AGAINST PROSECUTION IF A MINOR BUYS AN ALCOHOLIC BEVERAGE FROM US AND USES A FALSE I.D.. PERSONS UNDER THE AGE OF 21 GO TO GREAT LENGTHS TO OBTAIN FALSE IDENTIFICATION IN ORDER TO BUY OUR PRODUCTS. THESE FALSE DOCUMENTS ARE VERY REAL--LOOKING AND HARD TO DETECT. THEREFORE IN THESE CASES, WE ARE GUILTY, EVEN IF WE ASKED FOR IDENTIFICATION. THIS HARDLY SEEMS FAIR. WE DO NEED SOME PROTECTION IN THESE CASES. PLEASE VOTE IN THE AFFIRMITIVE TO PASS THIS BILL ON TO THE FULL HOUSE FOR CONSIDERATION.



# Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

March 14, 1989

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FRANCES KASTNER

## HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

### SUPPORTING HB 2237

EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes wholesalers, distributors and retailers of food products throughout the State.

We appreciate your efforts in trying to eliminate the flagrant abuse of using false ID's for purchasing cereal malt beverages and alcohol.

HB 2237 provides that it shall be a defense to a prosecution if the defendant is a retailer of cereal malt beverage and UNKNOWINGLY sold cereal malt beverage to a minor who used a false ID to make the purchase. The bill also makes that same reference to a defendant holding a license to sell alcoholic beverages when a minor uses false IDs.

As you have heard in years past, providing false driver's licenses, non-driver's identification cards, and other ID's is a thriving business in Kansas. Those of you who were on this committee in previous years have seen some really good documents, and detection is becoming more difficult as technology improves. We believe it is absolutely necessary to make the users and sellers of false ID's responsible for their actions.

We have never objected to any laws passed by the Legislature providing stiffer penalties for selling CMB or alcoholic beverages to a minor, or laws which place a greater penalty on those under-aged who try to purchase CMB or alcoholic beverages. Our members support SB 152 and SB 153 which passed the Senate and is now in this committee.

I appreciate the opportunity of appearing before you today, and urge your support for HB 2237.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 6  
3/15/89

Frances Kastner, Director  
Governmental Affairs, KFDA  
(913) 232-3310

TESTIMONY TO THE  
HOUSE FEDERAL & STATE AFFAIRS COMMITTEE  
ON  
Wednesday, March 15, 1989  
HOUSE BILL 2237

Madam Chairman and Members of the Committee:

My name is Rebecca Rice and I appear before you representing the Kansas Retail Liquor Dealers Association. The Association is supportive of this legislation due to the present imposition of strict liability for the retail liquor dealer. As the law is currently being enforced, a retail liquor dealer is strictly liable for selling alcohol to an underaged individual regardless of the circumstances surrounding that sale and is subject to penalty imposed by Alcohol Beverage Control.

I appear before you today primarily to recount my experience with this law as a practicing attorney. Prior to representing the Liquor Dealers as a lobbyist, I was made aware of this law while representing an underaged individual who purchased alcohol from a store in Topeka. This particular individual was approximately nineteen or twenty years old, male, approximately six foot three and weighed approximately 180-200 pounds. He was from a middle income family, a college student, well dressed and presented himself in a very mature and positive manner.

This individual, utilizing his education, conceived the plan of borrowing a friend's birth certificate who was over the age of twenty-one, and taking it to a driver's license outlet in Manhattan where he presented the birth certificate and had his picture taken. The driver's license was produced for him that day and, in my opinion, was a valid identification which had been

fraudulently obtained.

In any event, the native Topekan then made the mistake of utilizing the I.D. in Topeka. The liquor store employee did not recognize the individual and had no idea how old he was when the I.D. was presented to him. However, the law enforcement officer who was setting in the parking lot watching the liquor store transactions realized the individuals in the car appeared to be underaged and thought he recognized this native Topekan. The result was that the individual was caught and charged.

The ABC, as the story was recounted to me and as I recall, gave the liquor store the option of closing down for a period of time or firing the employee. My client's concern was that the employee would possibly take action against him for the loss of his job, which possibly could have been successfully litigated on the part of the employee. In any event, this was an employee who had worked at this store for many years, had been presented a valid I.D., however fraudulently obtained, which had not been tampered with, which was not out-of-state, which presented no evidence of being false, and who lost his job due to the fact that the ABC believes it is given little leeway on the strict liability imposed by the statute.

It is for these types of cases which I have just told you that the retail liquor dealers are asking this Legislature to loosen the strict liability of unknowingly selling to minors in order that the ABC can exercise a greater measure of judgment in applying penalties when a liquor store has unknowingly sold alcohol to minors.

Thank you, Madam Chairman.

JAMES E. LOWTHER  
 REPRESENTATIVE, SIXTEENTH DISTRICT  
 LYON COUNTY  
 1549 BERKELEY ROAD  
 EMPORIA, KANSAS 66801



TOPEKA

## COMMITTEE ASSIGNMENTS

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 COMMITTEE

HOUSE OF

REPRESENTATIVES

House Federal &amp; State Affairs Committees

Testimony in Support of HB 2237

March 15, 1989

There are many reasons we introduce legislation -- some more laudable than others, I readily admit. In the case of HB 2237, the reason is that our current law is not just, the scales are tipped in favor of the violators. I introduced the bill to support the honest retail liquor dealer, club owner, restaurant owner or caterer, to provide a measure of defense when they are charged with selling alcoholic liquor to a minor -- unknowingly. Under present law, the forgers, cheaters and users of fraud who are caught buying liquor illegally are charged with being underaged and if convicted, are assessed penalties that probably are not severe enough to act as a deterrent and there are bills under consideration to increase the fines.

In the meantime the honest retailer who is charged with selling to a minor, because the minor used a false, borrowed or altered I.D., has no defense. He might as well have sold to the minor knowing that he was doing so, the offense is the same and the fine is \$200.

I know there are efforts -- increased efforts -- to prevent sales to minors on the part of many businesses. The penalties including temporary closing, and fines are too expensive. Some businesses are promoting their effort with ideas such as, "We'll give you \$5.00 if you are not asked to show your I.D." This is designed to put pressure on employees to check I.D.'s at the time of purchase. Such efforts go for naught if a rule is made due to false I.D.

The situation has developed to the point that minors use false I.D.'s to gain entry to a clubs or restaurants and then if discovered later by the owner, they simply dare the owner to call the police or turn them in. They know the negative ramifications to the owner is so severe that they are safe! In one instance, a retailer didn't know he had sold to a minor until he tried to prosecute for bad checks. In another case, a retailer was suprised to be charged and ended up with several hundred dollars of fines and a three day closing.

HOUSE FEDERAL & STATE AFFAIRS  
 Attachment No. 8  
 3/15/89

March 15, 1989

Page Two

If a retailer catches a minor in the process of buying liquor and before the sale is completed, he is a hero to the law. Once the sale is made there is no incentive to turn in the minor or file a complaint. I submit this is not just. The least that can be done is to provide a defense to selling to a minor unknowingly when a false I.D. is used.