Approved 4-11-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~a.m.~~/p.m. on February 28, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Parkinson, Lawrence and Heinemann who were excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Bill Williams, representing the Silver Haired Legislature, McPherson, Kansas
Arthur C. Waltner, Real Estate Salesman and Appraiser, Hutchinson, Ks.
Leonard and Lois Miller, McPherson, Ks.
Karen McClain France, Kansas Association of Realtors
Tom and Doris Cain, McPherson, Ks. (Written testimony only)
Representative Rex Crowell
Reverend Richard Taylor, representing Kansans for Life at It's Best
Theresa L. Hodges, Senior Public Health Laboratory Scientist, Department of Health and Environment
Leona Edwards, Mayetta, Kansas, victim and victim advocate, representing MADD (Mothers Against Drunk Driving
Andrew O'Donovan, Acting Commissioner of Alcohol and Drug Abuse Services, Dept. of Social and Rehabilitation Services
Gene Johnson, representing the Kansas Community Alcohol Safety Action Project Coordinators Assoc., The Kansas Association of Alcohol and Drug Program Directors and the Kansas Alcohol and Drug Addiction Counselors Association
Thomas Whitaker, representing Kansas Motor Carriers
Frances Wood, President of Capital City Women's Christian Temperance Union
John Smith, representing Division of Vehicles, Kansas Department of Revenue
Captain Terry Scott, representing the Kansas Highway Patrol
Ed Klumpp, representing Kansans for Highway Safety
Juliene A. Maska, Statewide Victims' Rights Coordinator, Office of the Attorney General
Jim Clark, Kansas County and District Attorneys Association
Shaun McGrath, Program Director, Kansas Natural Resource Council

The Chairman called the meeting to order and called for action on HB 2375, uniform Conservation Easement Act.

Representative Smith made a motion that HB 2375 be passed. Representative Garner seconded the motion. The motion carried.

The Chairman called for action on HB 2394, prejudgment interest in personal injury actions.

Representative Smith made a motion that HB 2394 be passed. Representative Everhart seconded the motion.

Committee discussion followed. It was noted some conferees had questioned language in Line 32.

Representative Macy made a substitute motion that HB 2394 be tabled. Representative Snowbarger seconded the motion. The motion carried.

The Chairman called for hearing on HB 2398, contract for deed sales.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 xxx./p.m. on February 28, 1991.

Bill Williams, representing the Silver Haired Legislature of McPherson, Kansas, appeared in support of HB 2389, and submitted Attachment # 1. Mr. Williams said HB 2389 was drafted by the Silver Haired Legislature and Revisor's Staff.

Committee questions followed.

The Chairman noted that written testimony had been submitted by Arthur C. Waltner, Real Estate Salesman and Appraiser, Hutchinson, Kansas, in support of HB 2398. (See Attachment # 2).

Leonard and Lois Miller, McPherson, Kansas, appeared to testify in support of HB 2398 and submitted written testimony. (See Attachment # 3).

Committee questions followed.

The Chairman noted that written testimony had been submitted by Tom and Doris Cain, McPherson, Kansas, in support of HB 2398. (See Attachment # 4).

Karen McClain France, Kansas Association of Realtors, appeared and noted problems in connection with HB 2398. (See Attachment # 4.5).

Committee questions followed.

There being no further conferees, the hearing on HB 2398 was closed.

The Chairman called for action on HB 2384, court fees for foreign judgments.

Representative Smith made a motion that HB 2384 be passed. Representative Carmody seconded the motion. The motion carried.

The Chairman called for action on HB 2397, cap on damages in wrongful death actions; jury instructions.

Representative Smith made a motion that HB 2397 be passed. Representative Everhart seconded the motion.
Representative Snowbarger made a substitute motion that HB 2397 be tabled. Representative O'Neal seconded the motion. The substitute motion failed.

The motion to pass HB 2397 carried.

The Chairman called for action on HB 2396, pure comparative negligence.

Representative Smith made a motion to amend HB 2396, to allow a party not more than 50% at fault from recovering damages. Representative Sebelius seconded the motion. The motion carried.

Representative Sebelius made a motion that HB 2396 be passed as amended. Representative Smith seconded the motion. The motion carried.

The Chairman called for action on HB 2395, SRS subrogation, attorney fees.

Representative Everhart made a motion to amend HB 2395 on Page 1, Line 26, before the comma where it appears for the first time, by inserting "unless otherwise agreed". Representative Smith seconded the motion. The motion carried.

Representative Snowbarger made a substitute motion to delete sub-section "c" of HB 2395. Representative O'Neal seconded the motion. The motion failed.

Representative Smith made a motion that HB 2395 be passed as amended. Representative Garner seconded the motion.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 28, 1991.

Representative O'Neal made a substitute motion that HB 2395 be tabled. Representative Snowbarger seconded the motion. The motion failed.

The motion to pass HB 2395, as amended, carried.

The Chairman called for hearing on HB 2353, blood alcohol content lowered to .08 for DUI.

Representative Rex Crowell a co-sponsor of HB 2353, appeared in support of HB 2353. (See Attachment # 5).

Committee questions followed.

Reverend Richard Taylor, representing Kansans for Life at It's Best, appeared in support of HB 2353. (See Attachments # 6 and #7).

There were no questions from the committee.

Theresa L. Hodges, Senior Public Health Laboratory Scientist, Department of Health and Environment, appeared in support of HB 2353 and to make recommendations. (See Attachment # 8).

Committee questions followed.

Leona Edwards, Mayetta, Kansas, appeared as a victim and victim advocate, representing MADD (Mothers Against Drunk Driving), in support of HB 2353. (See Attachment # 9). Mrs. Edwards testified that her son and family perished in an accident caused by a driver whose blood alcohol content, two hours after the accident, tested .07; yet his ability to drive safely was impaired.

There were no committee questions.

Andrew O'Donovan, Acting Commissioner of Alcohol and Drug Abuse Services, Department of Social Rehabilitation Services, appeared in support of HB 2353. (See Attachment # 10).

There were no committee questions.

Gene Johnson, representing the Kansas Community Safety Action Project Coordinators Association, the Kansas Association of Alcohol and Drug Program Directors and the Kansas Alcohol and Drug Addiction Counselors Association, appeared in support of HB 2353. (See Attachment # 11).

There were no committee questions.

Thomas Whitaker, representing the Kansas Motor Carriers, appeared to express concerns with certain provisions of HB 2353. Mr. Whitaker asked that language on Page 11 of the bill "greater than the legal limit" be clarified. (See Attachment # 12).

Committee questions followed.

Frances Wood, President of the Capital City Women's Christian Temperance Union, appeared in support of HB 2353. (See Attachment # 13).

John Smith, representing Division of Vehicles, Kansas Department of Revenue, appeared to support HB 2353 with some concerns. (See Attachment # 14). Mr. Smith said the law cannot be administered without additional resources; that the Department has prepared a fiscal note on the bill in the amount of $85,585.00.

Committee questions followed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 a.m./p.m. on February 28, 1991.

Captain Terry Scott, representing the Kansas Highway Patrol, appeared in support of HB 2353. (See Attachment # 15).

Committee questions followed.

Ed Klumpp, representing Kansans for Highway Safety, submitted written testimony in support of HB 2353. (See Attachment # 16).

Juliene A. Maska, Statewide Victims' Rights Coordinator, Office of the Attorney General, appeared in support of HB 2353. (See Attachment # 17).

There were no committee questions.

There being no further conferees, the hearing on HB 2353 was closed.
The Chairman called for hearing on HB 2383, littering a Class A misdemeanor.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of HB 2383. (See Attachment # 18).

Committee questions followed.

Shaun McGrath, Program Director, Kansas Natural Resource Council, appeared in support of HB 2383. (See Attachment # 19). Mr. McGrath encouraged the Committee to pass HB 2383 in conjunction with HB 2471, or amend such language into HB 2383.

Committee questions followed.

There being no further conferees, the hearing on HB 2383 was closed.

The Chairman called for consideration of committee minutes.

Representative Vancrum made a motion that the minutes of the meetings of February 4, 5, and 6, 1991, be approved as submitted. Representative Rock seconded the motion. The motion carried.

The meeting adjourned at 5:10 P.M. The next scheduled meeting is March 4, 1991, at 3:30 P.M. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/28/91

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| R. BILL WILLIAMS | Box 185 Inman | S.H.L. |
| Lois M. Miller | McPherson 312 Elm Ct. | [illegible] |
| Leonard L. Miller | McPherson 312 Elm Ct. | Retireed |
| Pat Cooper | 1301 N. ELM Apt A | McPherson Ks. |
| Frances Wood | Topeka, Ks 66605 4724 SE 37th | Capital City WCTU |
| RICHARD TAYLOR | TOPEKA | LIFE AT ITS BEST |
| Theresa Hodges | Topeka | KDHE |
| Andrew O'Donovan | Topeka | SRS/ADAS |
| Gene Johnson | Topeka | Ks. Com. ASAP |
| Jerry J. Scott | Topeka | Highway Patrol |
| Ruby M. [illegible] | Topeka | Self |
| Marvin Heidebrecht | Inman | Self |
| R. Frey | Topeka | KTLA. |
| Chiquita Cornelius | Topeka | Ks. BIRP. |
| [illegible] | Arkansas City | |
| Laura McClure | Glen Elder | self |
| Juliene Maska | Topeka | A.G. office |
| Robert A. Livingston | Golden, Colorado | Coors Brewing Co. |
| Chris Canfield | Topeka, Ks | KDOT |
| Jamie Corkhill | Topeka | SRS (CSE) |
| Michelle Liester | Topeka | John Peterson & Associates |
| [illegible] Burnett | Topeka | USD 501 |
| Brad Smoot | Topeka | KCLF |
| | | |
| | | |
| | | |

HOUSE JUDICIARY COMMITTEE TESTIMONY
HOUSE BILL NO. 2389 CONTRACT FOR DEED SALES
FEBRUARY 28, 1991

PRESENTED BY: R. "BILL" WILLIAMS
McPherson County Silver Haired Legislature Representative

Mr. Chairman and Members of the Committee: Thank you for the opportunity to present testimony before you today.

I URGE your support for House Bill 2389.

My involvement in the legislation began when Mr. & Mrs. Leonard Miller contacted me about the problems that they were experiencing with the sale of their home. Since the Millers are scheduled to testify, I will not get into the details of their case. I began to ask for other problems in this area when I visited senior centers; two other cases surfaced. Additional information was received that there are as many as 14 cases in Shawnee county; not all of these involved senior citizens. Who knows how many of these cases are out there. Most just accept their losses or allow the problem to continue. Most cannot afford the costs of foreclosure and the legal fees associated with the process. For example: You are a widow on fixed income and cannot stay alone in your home. So you sell the home on contract for deed sale and move to a nursing home. The monthly payments will be used to pay the monthly costs of the nursing home. Six months into the contract, the payments stop. Buyer continues to live in the home, paying no money. This leads to a situation where the widow has no income to help pay the cost of the nursing home and no money to go to foreclosure or eviction to gain possession of the home.

We are attempting to require some specific language in the contracts, that would provide protection for both parties. Documents could no longer be filed by title companies, agents and brokers without the knowledge of both parties and as stated in the contract. This bill also restricts agent, brokers, and salesmen from acting as escrow agents.

We feel that a third party such as independent escrow agents or financial institutions should fulfill this requirement. This bill is probably no panacea, however, with your support in committee and in the House, maybe, just maybe, we can begin to address some of the problems associated with contracts for deed sales. This would allow contracts to be judged on the

HJUD 2/28/91

HJUD Attachment #1 2-28-91

language agreed to in the contract by both parties. Please give this bill your support.

Thank you.

Arthur C. Waltner
2508-A N. Severance
Hutchinson, KS 67502

Hutchinson, Kansas
Feb. 26, 1991

Ref: House Bill # 2398

Because of my experience in selling Real Estate for the past 18½ years, I strongly favor the passing of House Bill #2398. The need for this type of financing has increased in the last ten years because most of the loan companies have elimenated a great number of Real Estate transactions from their finacing plans.

Contract for deed sales are good for both the buyer and the seller if it is properly prepared. I think House Bill # 2398 will set some needed guide lines that will protect, both buyer and seller, from controversy and misunderstandings in the completion and execution of the contract agreement.

Arthur C. Waltner -- Real Estate Salesman and Appraiser.
2508-A. No. Severance
Hutchinson, Kansas

HJUD
Attachment #2
2/28/91

To Whom it May Concern:

The Realtor asked if we would consider selling our house on a contract for deed sale. She had a buyer that was interested. She said the buyers had good jobs, and they would be an asset to the community and with the house sales slow it would be to our benefit to sell this way.

When we questioned the risk of this kind of sale the Broker said an attorney would write a contract, and assuring us the written contract would protect us in case of a buyer default. Also she is the escrow agent and would take care of the account. We finally agreed.

The Broker had an attorney write the contract. We and the buyer, after negotiations,agreed to the contract and the buyer expressed complete satisfaction with the terms.

We asked, "should we request mortgage insurance instead of title insurance?" We had signed an affidavit. The title was clear and the Broker said, "no we don't do it that way". She again said the contract would protect us in case of a buyer default. (Neither the Broker or the attorney told us the contract should be recorded and a registration fee paid or the contract wouldn't be enforced under Kansas laws in case of a buyer default).

At closing we were assured all documents were disclosed but twenty four months later and after the default we found an affadavit of equitable interest had been recorded by the broker for the buyer two days after closing date.

The buyers, being middle-aged newlyweds with three children, married two weeks before buying the house, began having job and family related problems a year and a half later. They put the house on the market wanting to move out of town as soon as possible. With their neglect and damage to the property, house market down and having a realtor commission to pay, they couldn't get enough money to pay off the principal left on the contract. After buying a new van, new car and taking numerous expensive trips it put them in a financial bind.

Their Realtor told them to ask us to take considerably less than they owed us so the realtor could get his commission fee, and for us to release them from the obligation of the contract, and if we refused they would take bankruptcy. They felt we could stand this loss better than they could as it would put a real hardship on their family.

We talked to the attorney that drew up the contract. He said, "Wait until they default." Two weeks later they stopped making payments and continued living in the house for three months. Cancelling their home insurance, shutting off the utilities, moving out and abandoning the property, they moved to another town in the state of Kansas.

We asked our attorney to keep on top of this when they stopped making payments and to do whatever was necessary according to the contract.

He told us to buy insurance on the house and to look after the property to mitigate our losses, but we couldn't sell it or rent it. He told us to have the locks changed on the doors, which we did. He told us to release them from their obligation of contract, take the house back and write it off as a loss for tax purposes, which I knew we couldn't do, and the IRS said so too.

HJUD
Attachment #3
2/28/91

We told him to start forclosure procedures after he advised it, but then he changed his mind on doing this. After five months of making payments to him while the house sat empty, we terminated him.

When talking to a second attorney about this in full detail of what happened, he said, "I've never heard of such stuff. I can take care of this in a few days, a week at the most, a couple trips to the courthouse and abstract office will take care of it." We hired him. After a few weeks, he said this matter couldn't be taken care of like he first thought.

He and his associate then began researching contract for deed sale laws and the various ways to handle default of contracts.

He too began stalling us and after two months passed, we asked him to foreclose on them. Twenty fourhours later we received a letter of untruthful excuses why he or his associate could no longer represent us in this legal matter.

A few weeks before this the attorney told us we could rent the house, so we did, after it had sat empty for seven months.

The buyer default of contract with the affadavit of equitable interest put a cloud on the title of our property with them showing no intention of redeeming it. They admitted we are owners of the house and are responsible for all bills and taxes, but demanded we release them from all liabilities and obligation of contract, which has cost a tremendous amount of money already. We have heard of numerous cases like this the past few years.

We took our mess to the Silver Haired Legislature and this is what brought about House Bill 2398.

The support of House Bill 2398 will be a step in the right direction to stop the loss of Federal and State revenue that these defaulter's are causing.

This is a condensed version of the facts in our case, but I will be willing to answer any questions in this regard.

Thank you for your time and concern.

Leonard L. Miller & Lois M. Miller

Leonard L. Miller & Lois M. Miller

February 27, 1991

February 26, 1991

Representative John Solbach

We, Tom and Doris Cain of McPherson, Kansas, have been victims of the "buying on contract" of homes. We were the sellers of a home in wichita, Kansas, in December, 1987. We have since lost $14,000 in the equity of our home as well as $3000.00 in attorneys fees to fight for what was legally ours or else we would have obtained a bad credit rating and in our 30 years of marriage we have never had a bad credit rating against our names.

In December of 1987, we needed to sell a house which was built for us in January, 1987. We were moving to McPherson, Kansas, to begin new jobs. A couple liked the house and wanted to buy it. They could not pay the full equity that we had put into the home so we made a deal with them through a realtor. The couple bought our home on contract and then agreed to pay us monthly payments with a final balloon payment in January, 1989, for our equity. Everything was fine until the couple separated. Payments stopped coming to us after August, 1988. We contacted both people with no success on payments to us. After the man stated that he was probably headed for bankruptcy (which he has since done and been cleared) we then contacted an attorney. The women remarried shortly after her divorce. We had conferred with the man several times during the whole procedure with no success.

Our complaint is that it seems quite unfair for someone who has lived in a home for over 10 months and not made any payments to the loan company can still be given a 6 month redemption period after a sheriffs sale. By the time they are out of the house it will have been approximately 18 months of free living. Is it fair to us as law abiding citizens who have always paid our bills on time and have also paid off alot of loans over the past 30 years, and struggled with it at times, to be penalized by people such as this and also the law? How can we protect our rights and the property from their possible vandalism during the time they live in the house until they are moved out? There is no insurance coverage we can obtain to cover any loses.

We feel that the proposed bill would help protect the sellers from situations such as this, especially when the deal was made in good faith.

Tom Cain

Doris Cain

HJUD
2/28/91
Attachment #4

KANSAS AS[...]IATION OF REALTORS

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: THE HOUSE JUDICIARY COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 28, 1991

SUBJECT: HB 2398, CONTRACTS FOR DEED

Thank you for this opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to provide commentary on HB 2398 which I hope will be helpful.

We tried to work with the Silver Haired Legislative Committee which studied this bill in order to get it into a workable solution to the problem which brought it to their attention. While this bill is an improvement over the original version, it still appears to have some problems.

New Section 1(a) appears to apply to contracts for deed drawn after the effective date of this act. However, without specifically stating that as paragraph (b) does, it appears to have an impact on all contracts for deed in existence. It raises the question of whether a judge could find an equitable interest for contracts written prior to July 1. If not then it would appear this language would remove equitable interests in contracts which might have intended it all along, given the status of the law when contracts were written.

Even if a date were injected into this paragraph, we have a strong suspicion, that, given the nature of equitable interests at common law, it would seem very likely that judges will continue to find equitable interests in contract for deed situations, regardless of this statute.

H JUD
2/28/91
Attachment 4.5

REALTOR®—is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS.

Section 2 of the bill amends the Real Estate Brokers' and Salespersons' License Act by prohibiting real estate licensees from acting as escrow agents in contract for deed sales. While we understand the general intent of this prohibition and we agree that a real estate agent may be an inappropriate person to hold contracts for deed in escrow for great lengths in time, this language poses two problems. First, would this prevent licensees from holding any earnest money deposits in contract for deed transactions? These earnest money deposits are generally short term deposits which are held until the details of the contract are worked out. Under this language it appears this would be prohibited.

Second, what are our members supposed to do with the contracts for deed which they are now holding in escrow? My members tell me that it is often times very difficult to get both parties to agree to move the escrow to another location such as an attorney or a bank. Sometimes it is hard to locate the sellers, as they are living out of state. At what point will our members be penalized for holding this escrow, since the practice was perfectly legal when they agreed to act as the escrow agent.

While we appreciate the gravity of the situation which gave rise to this proposal, this bill raises many more questions which need to be answered.

State of Kansas

REX CROWELL
REPRESENTATIVE, SEVENTY-SIXTH DISTRICT
GREENWOOD, ELK, CHAUTAUQUA,
MONTGOMERY AND BUTLER COUNTIES

TOPEKA

COMMITTEE ASSIGNMENTS
RANKING REPUBLICAN: TRANSPORTATION
MEMBER: TAXATION
CLAIMS AGAINST THE STATE

House of Representatives

DATE: February 28, 1991

TO: House Judiciary Committee

FROM: Representative Rex Crowell

RE: HB 2353

1) HB 2353, with 36 co-sponsors, would lower the illegal per se limit for purposes of DUI from the current.10 to .08.

2) At least five other states have an illegal per se limit of .08, those being California, Maine, Oregon, Utah and Vermont.

3) Driving requires a person to coordinate visual, cognitive and psychomotor abilities at the same time. Many driving functions are adversely affected by even low blood alcohol content levels. Some examples are: reaction time, ability to steer, driver concentration, muscular movement and vision.

4) Make technical amendments in all places necessary to replace "greater than the legal limit" with "of the legal limit or greater".

HJUD
Attachment 5
2-28-91

bruary 28, 1991
House Bill 2353
Hearing in House Judiciary Committee

Rev. Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

This bill will encourage persons to drink less before driving. Our concern is prevention, not punishment.

If penalities are swift, sure, and severe, intelligent persons will choose to obey the law.

Serving my first church in Salina, one of my leading members was an AA member. Another man came to me seeking help for his drinking problem. One evening I sat for hours listening to my AA friend talk to the other man. At one point the drunk sobbed and said he was going to committ suicide.

My AA friend immediately said, "You aren't man enough to take your own life. You don't have the guts to kill yourself."

It startled me greatly - no mercy or sympathy. When we left the house, I expressed surprise to my AA friend that he totally lacked compassion.

His response was firm and direct. SO LONG AS YOU HAVE MERCY AND SYMPATHY FOR A DRUNK YOU KEEP HIM DRUNK!

So long as we have mercy and sympathy for the drinking driver, we keep the killer behind the wheel.

During Senate debate on .08 last year, the same old worn our arguments used by the beer lobby in Oregon, Utah, Maine, Vermont, and California were presented by Senators who defend and promote alcohol consumption.

THIS IS A DRASTIC CHANGE. WHAT WILL BE THE IMPACT ON LAW ENFORCEMENT?
According to charts distributed in every state by groups working for safer highways, a 160 pound person can drink 5 beers or 5 glasses of wine or 5 mixed drinks in <u>one hour</u> and drive away at .10% BAC. At .08% BAC that person may consume only 4 beers or 4 glasses of wine or 4 mixed drinks in <u>one hour</u> and drive away at .08% BAC. Is that a drastic change? One less drink before driving can be the difference between life and death.

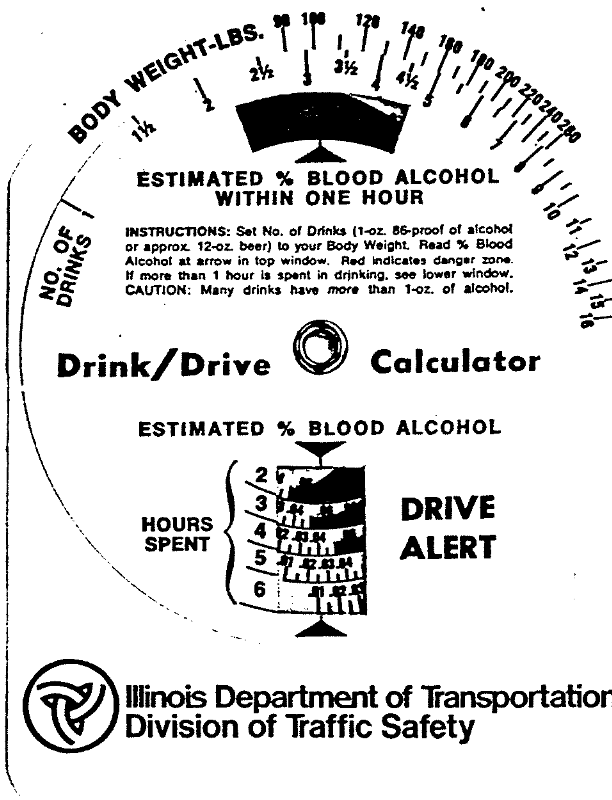
TESTING DEVICES ARE NOT ACCURATE BELOW .10% BAC.
Norway and Sweden have been at .05% for 40 years. Canada has been at .08% for many years. Five states now have .08% BAC. If they have instruments to do it, why can't Kansas?

OUR JAILS ARE CROWDED NOW WITH TOO MANY DUI'S.
The more a person drinks, the less is their ability to make responsible decisions. Because .08% requires drivers to drink less before driving, more of them will have the ability to know when to say when. At .10% fewer persons have the ability to know when to say when. A lower BAC ought to <u>reduce</u> the number of DUI persons in jails.

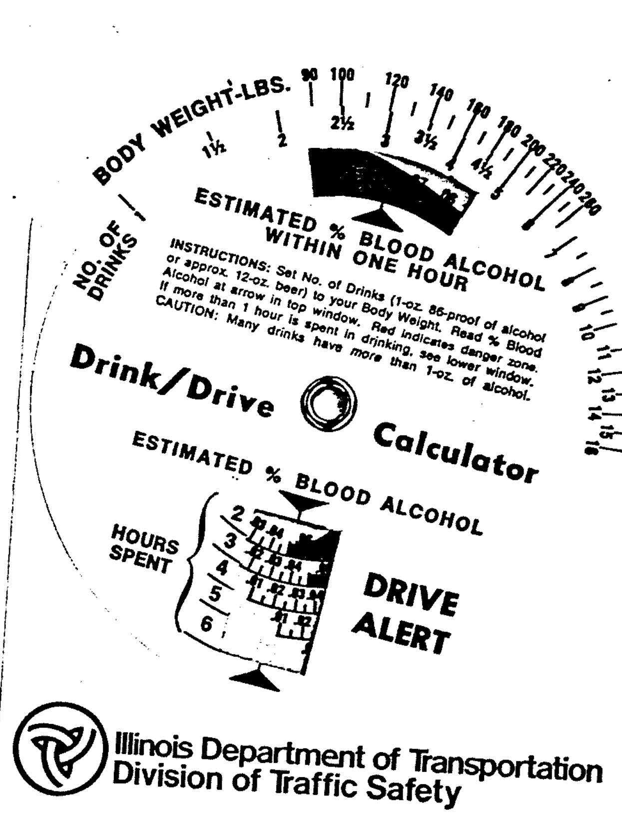
DRUG PUSHERS AND DRUG DEALERS ARE TURNED LOOSE NOW TO MAKE ROOM FOR DUI CONVICTIONS.
Alcohol causes more human misery than all other drugs combined. What an odd statement for a Senator to make.

HJUD
Attachment #6
2-28-91

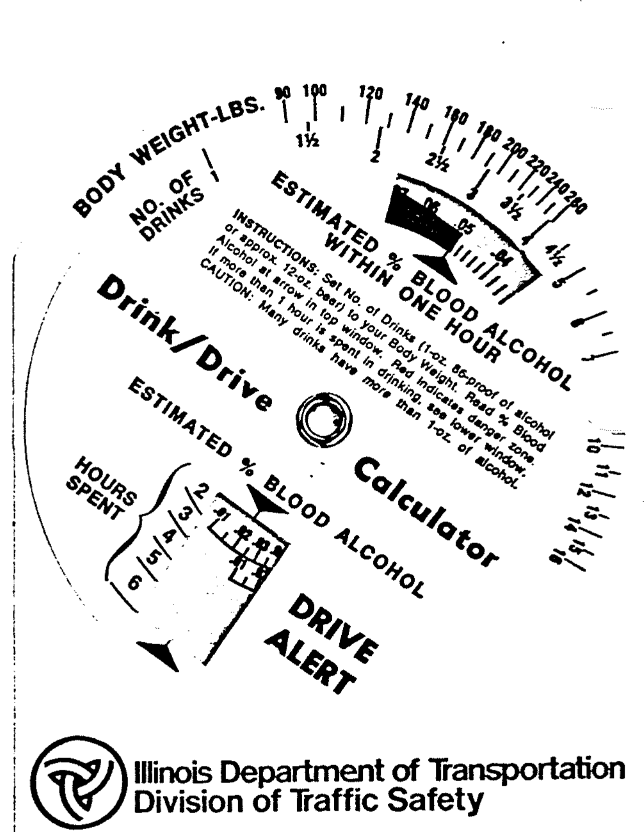
Set at .10% BAC




Set at .08% BAC




Set at .05% BAC




Blood Alcohol Content depends on body weight, number of drinks, and time spent drinking. This chart is distributed by highway safety groups in every state. Because the part showing BAC of .05% or higher is in red, it comes out totally black on a copy machine.

.08% BAC is a step in the right direction but still permits a generous amount of drinking. .05% would permit a 160 pound person to drink 2½ glasses of wine in one hour and legally drive.

One average drink is a 12 ounce can of 3.2 beer or a 4 ounce glass of average wine or a mixed drink with a 1 ounce shot of distilled spitits. Beer that is 3.2% alcohol by weight is 4% alcohol by volume. 4% of 12 is .48 ounce absolute alcohol. Non-fortified wine is around 12% alcohol by volume. 12% of 4 is .48 ounce absolute alcohol. 96 proof is 48% alcohol by volume. A 1 ounce shot of distilled spirits in a mixed drink contains .48 ounce absolute alcohol.

.10% permits a 160 pound person to consume 5 drinks in one hour and legally drive.

.08% permits a 160 pound person to consume 4 drinks in one hour and legally drive.

.05% permits a 160 pound person to consume 2½ drinks in one hour and legally drive.

Reprinted from the JAMA® Journal of the American Medical Association
January 24/31, 1986, Volume 255
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AMERICAN MEDICAL ASSOCIATION

535 NORTH DEARBORN STREET • CHICAGO, ILLINOIS 60610

AA63-SEE

Richard E. Taylor, Jr.
Kansans For Life at Its Best
Box 888
Topeka, Kansas 66601

# Alcohol and the Driver

Council on Scientific Affairs

**• Scientific investigations have produced 50 years of accumulated evidence showing a direct relationship between increasing blood alcohol concentration (BAC) in drivers and increasing risk of a motor vehicle crash. There is scientific consensus that alcohol causes deterioration of driving skills beginning at 0.05% BAC or even lower, and progressively serious impairment at higher BACs. Drivers aged 16 to 24 years have the highest representation of all age groups in alcohol-related road crashes; young drivers involved in alcohol-related fatal crashes have lower average BACs than older drivers. Alcohol impairs driving skills by its effects on the central nervous system, acting like a general anesthetic. It renders slower and less efficient both information acquisition and information processing, making divided-attention tasks such as steering and braking more difficult to carry out without error. The influence of alcohol on emotions and attitudes may be a crash risk factor related to driving style in addition to driving skill. Biologic variability among humans produces substantial differences in alcohol influencé and alcohol tolerance, making virtually useless any attempts to fix a "safe" drinking level for drivers. The American Medical Association supports a policy recommending (1) public education urging drivers not to drink, (2) adoption by all states of 0.05% BAC as per se evidence of alcohol-impaired driving, (3) 21 years as the legal drinking age in all states, (4) adoption by all states of administrative driver's license suspension in driving-under-the-influence cases, and (5) encouragement for the automobile industry to develop a safety module that thwarts operation of a motor vehicle by an intoxicated person.**

**(*JAMA* 1986;255:522-527)**

THREE resolutions relating to alcohol and driving were referred to the Board of Trustees at the 1984 Annual Meeting of the House of Delegates. The House requested that a comprehensive report on alcohol and its effects be prepared for the 1985 Annual Meeting.

Resolution 18 called for the American Medical Association (AMA) to study methodology intended to deter the use of an automobile by an intoxicated person. Resolution 64 asked the AMA to urge Americans to refrain from driving under the influence of alcohol, asked the AMA to conduct an education campaign on this subject, and asked the AMA to support mandatory suspension of a driver's license for one year for any conviction for a moving violation if any alcohol is found in the driver's blood. Resolution 83 urged an AMA study of recent legislation among the states on driving while impaired, with incorporation of the effective elements into model legislation for distribution to the membership.

In addressing the concerns cited in the resolutions, reviews were undertaken of current literature on (1) the relationship between blood alcohol levels and driver impairment, (2) scientific issues regarding the reliability of methods to test blood alcohol levels in drivers, and (3) alcohol-impaired driving countermeasures.

**See also pp 450 and 529.**

## Epidemiology of Alcohol in Road Crashes

Studies carried out in the United States and other developed nations since the 1930s indicate a strong, direct relationship between increasing blood alcohol concentration (BAC) in a motor vehicle driver and increasing risk of his involvement in a road crash.[1,2]

A driver's relative risk of having a road crash shows a dramatic rise as

From the Council on Scientific Affairs, Division of Personal and Public Health Policy, American Medical Association, Chicago.

Report A of the Council on Scientific Affairs, adopted by the House of Delegates of the American Medical Association of the Annual Meeting, June 1984.

This report is not intended to be construed or to serve as a standard of medical care. Standards of medical care are determined on the basis of all of the facts and circumstances involved in an individual case and are subject to change as scientific knowledge and technology advance and patterns of practice evolve. This report reflects the views of the scientific literature as of June 1984.

Reprint requests to Division of Personal and Public Health Policy, Council on Scientific Affairs, American Medical Association, 535 N Dearborn St, Chicago, IL 60610 (John C. Ballin, PhD).

Members of the Council on Scientific Affairs include the following: John R. Beljan, MD, Philadelphia; George M. Bohigian, MD, St Louis; William D. Dolan, MD, Arlington, Va; E. Harvey Estes, Jr, MD, Durham, NC; Ira R. Friedlander, MD, Chicago; Ray W. Gifford, Jr, MD, Cleveland, Chairman; John H. Moxley III, MD, Beverly Hills, Calif, Vice-Chairman; Peter H. Sayre, Boston, Medical Student; William C. Scott, MD, Tucson; Joseph H. Skom, MD, Chicago; Rogers J. Smith, MD, Portland, Ore; James B. Snow, Jr, MD, Philadelphia; John C. Ballin, PhD, Chicago, Secretary; James L. Breeling, Staff Author.



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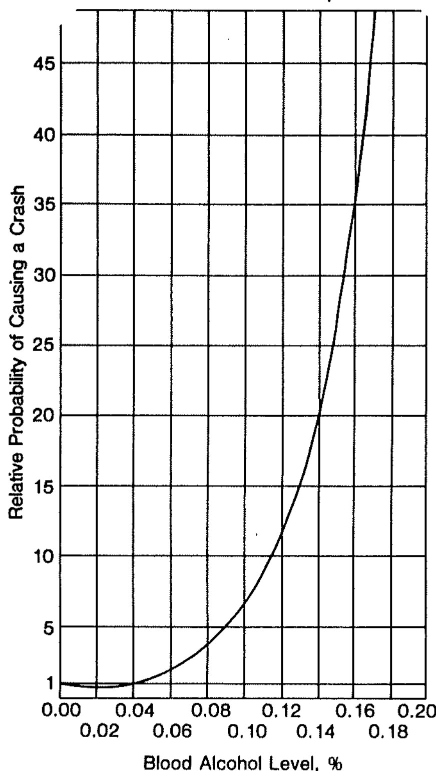

Fig 1.—Relative probability of causing crash rises with rising blood alcohol levels.

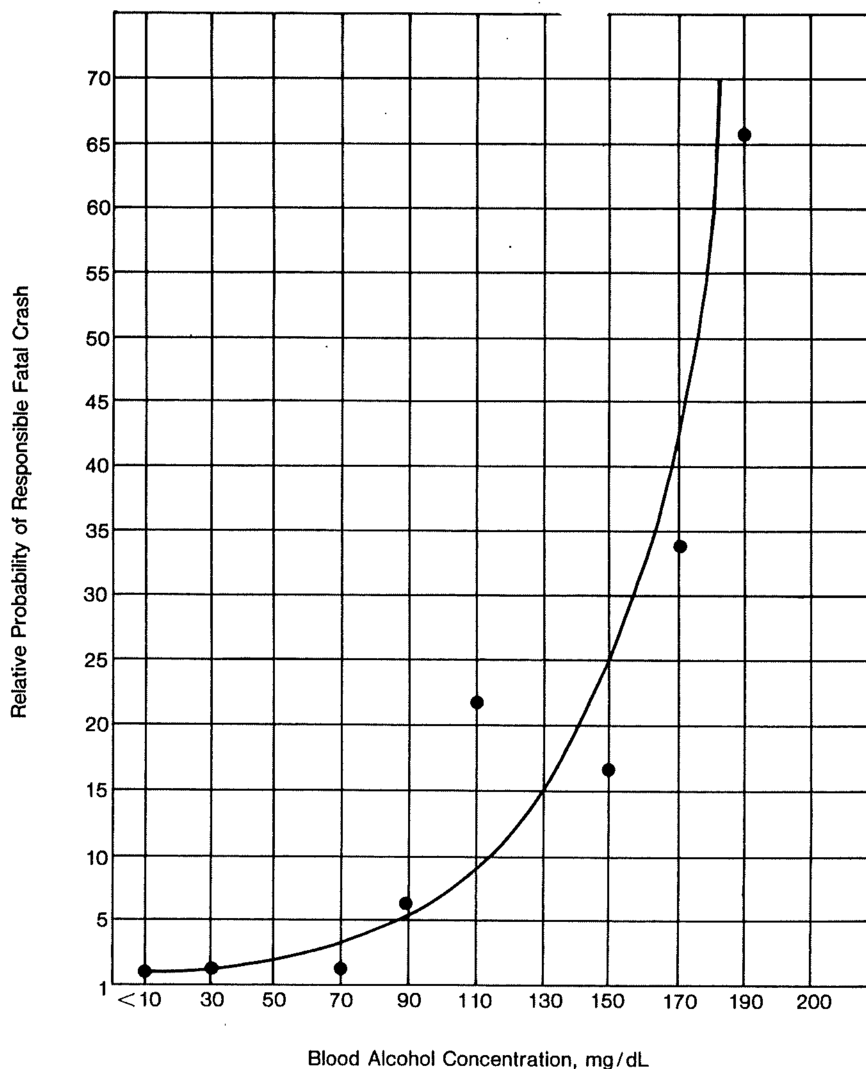

Fig 2.—Relative probability of being responsible for fatal crash rises with rising blood alcohol concentrations.

the driver's BAC increases (Figs 1 and 2).[3,4] Alcohol-impaired drivers are believed to be responsible for 25% to 35% of all crashes causing serious injury and 6% of all crashes. In single-vehicle crashes, 55% to 65% of fatally injured drivers have BACs of 0.10% or greater.[3]

In most states of the United States, a BAC of 0.10% is the legal definition of being under the influence of alcohol for driving-under-the-influence (DUI) prosecution. Since 1960 the AMA has recommended that a blood alcohol level of 0.10% be accepted as prima facie evidence of being under the influence, a position that the Council on Scientific Affairs believes should be revised to a lower BAC in light of scientific evidence. Significant alcohol involvement in injury-causing road crashes begins at a driver BAC of 0.05%. In a recent review, Johnston[5] concluded that 10% of drivers in crashes that cause property damage had BACs of 0.05% or greater and that 16% to 38% of drivers in injury-causing crashes had BACs of 0.05% or greater (Table 1).

In 1982, one in three persons killed in Australian road crashes and one in five injured had a BAC of 0.05% or more.[5] McDermott and Strong[6] found that drivers with alcohol levels of 0.05% or more have a greatly increased risk of being involved in a road crash causing injury or death. In the first three years of compulsory BAC testing of adult road crash victims in Australia's Victoria State, 27.1% of 21,863 male driver casualties and 8.7% of 9,187 female driver casualties had BACs exceeding the Victoria legal limit of 0.05%. Soderstrom et al[7] reported that of 413 road crash victims with measurable BACs at an emergency medical services center in Maryland, 91 had BACs of less than 0.10%.

Alcohol involvement in crashes had been called an epidemic, with little diminution in its proportions despite heightening of public consciousness by the activities of various community groups and anti-drunk-driving campaigns.[8] Ravages of the epidemic have been greater among the young. Fatal Accident Reporting System (FARS) data show, from 1977 to 1981, a steady increase in the overall proportion of measureable blood alcohol levels in drivers aged 16 to 25 years involved in fatal crashes.[9] The authors believed the data to be more representative of patterns of alcohol use in that age group than improvement in BAC testing and reporting.

Drivers aged 16 to 19 years have the highest rate of alcohol-involved fatal crashes per unit of travel.[8] Epidemiologic data from FARS also indicate over a number of years that younger drivers involved in fatal crashes have lower average BACs than older drivers.[10] Previous reviews of biographical variables in alcohol-



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Table 1.—Incidence of Blood Alcohol Concentrations of 50 mg/dL, by Crash Severity and Type of Road User

| Type of Road User | Crash Severity, % | | |
|---|---|---|---|
| | Property Damage | Injury | Fatal |
| Driver | ≃10 | 16-38 | 45-55 |
| Passenger* | ... | 25 | 25-35 |
| Motorcyclist | ... | 22-25 | 35 |
| Pedestrian* | ... | 19-25 | 30 |

*Percentage shown is of those older than 14 years.

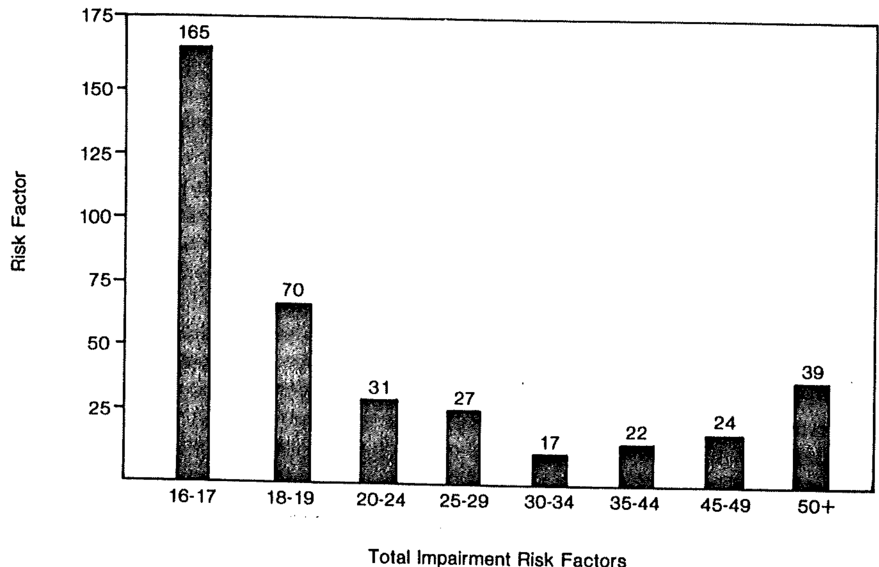

Fig 3.—Age group and risk of fatal collision if impaired.

related crashes furnished the same finding.

The role of alcohol in crashes of teenage drivers also is indicated in FARS data for 1981 showing that twice as many with positive BACs were involved in single-vehicle crashes as opposed to multiple-vehicle fatal crashes. A driver in a single-vehicle accident is presumed responsible for his own crash. In the same data, five times more male than female teenage drivers were involved in single-vehicle fatal accidents, bearing out by trend if not by precise ratio another consistent biographical finding.[9]

Analysis of 1983 FARS data showed that 33% (17,764) of all drivers in fatal road crashes that year were 16 to 24 years old. Of that number, 38% (6,833) were alcohol involved, compared with 26% in all other age groups. Fatalities in road crashes involving drinking drivers aged 16 to 24 years numbered 7,784 in 1983, of whom 51% (3,992) were the drivers themselves.[11]

A model developed by Simpson[12] (Fig 3) shows the relative risk by age group of having a fatal crash if drivers were impaired by BACs of 0.08% or greater. With the risk of a sober driver having a fatal crash set at 1, the risk for impaired 16- to 17-year-olds is 165.

Young drivers are overrepresented in crashes and also in alcohol-involved crashes when BACs are low to moderate. Overrepresentation may include exposure (miles driven) as a component. Overrepresentation at low BACs may be a function of younger drinkers having less alcohol tolerance than experienced drinkers and younger drivers having less experience than older drivers.[10]

**The Effects of Alcohol**

One effect of alcohol in road crashes is its contribution to enhancement of injury in alcohol-impaired victims. Prevention or limitation of trauma is less likely in alcohol-impaired drivers because they are less likely to use seat belts.[13,14] Contrary to the popular belief in being "too drunk to get hurt," more alcohol-impaired crash victims suffer serious injury than sober victims.[15] Alcohol complicates the physician's task of treating trauma: neurologic injury may be masked by drunkenness, and acute and/or chronic intoxication may be linked to a considerable range of metabolic disturbances, as well as to altered responses to anesthesia and alterations in host defenses against infection.[7] Experimentally controlled injuries to laboratory animals result in lower survival rates for animals first given alcohol and more extensive intracranial hemorrhage in alcohol-impaired animals after experimental penetration of brain tissue.[16,17]

The influence of alcohol related to driving behavior and driving skills is mediated through its effects on the central nervous system, similar to those of general anesthetic. Alcohol in small doses may cause performance of driving-related skills to fall off; in moderate to high amounts, alcohol diminishes performance across the board with general impairment of nervous function. Effects may vary with psychological profiles, tolerance to alcohol, and experience with the drug.

Dose/weight charts may not be appropriate guides to drinking behavior.[18] Biologic variability of response to alcohol has been demonstrated under controlled experimental conditions with both male and female subjects: in single-dose drinking tests the elapsed time from end of drinking to peak BAC varied from 14 to 138 minutes in one group, and in a follow-up study the same investigator found a 14-fold variation between absorption times in different subjects.[19,20] Women achieve higher peak BACs than men when given identical weight-adjusted doses.

A review of seven studies spanning a 50-year period (Table 2) indicates that at BACs of up to 0.05%, 0% to 10% of persons were considered to be "drunk"; at levels of 0.05% to 0.10%, 14% to 68% of persons were considered to be "drunk"; and at levels of 0.10% to 0.15%, 83% to 97% were considered to be drunk.[21]

The deleterious effect of alcohol at BAC levels of 0.05% to 0.06% is seen in persons performing curve-negotiating "driving" tasks under laboratory conditions. Verhaegen et al[22] concluded that at BACs between 0.05% and 0.06%, performance in information processing and curve-negotiation skill deteriorated in test subjects. Burns and Moskowitz[23] observed a 10% to 15% degree of impairment at BACs of 0.05% to 0.08% when subjects had to perform a divided-attention task of tracking and reaction.

Table 2.– ..elation Between Blood Alcohol Level and Drunkenness

| % of Persons Found to Be Drunk | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 0.00-0.05* | 0.051-0.10 | 0.101-0.15 | 0.151-0.20 | 0.201-0.25 | 0.251-0.30 | 0.301-0.35 | 0.351-0.40 | 0.401 | Total Persons Examined | Investigators† |
| 0 | 19 | 50 | 83 | 93 | 98 | 100 | 100 | ... | 1,984 | Widmark 221 |
| 2 | 38 | 93 | 97 | 99 | 100 | 100 | ... | ... | 950 | Schwarz 195 |
| 10 | 18 | 47 | 83 | 90 | 95 | 96 | 93 | 100 | 1,000 | Jetter 133 |
| 10 | 68 | 81 | 92 | 97 | 100 | ... | ... | ... | 1,712 | Andersen 9 |
| 0 | 46 | 50 | 92 | 100 | 100 | 100 | 100 | 100 | 140 | Harger 111 |
| 0 | 14 | 69 | 90 | 94 | 94 | 100 | 100 | 100 | 100 | Prag 186 |
| 7 | 25 | 49 | 85 | 93 | 97 | 98 | 100 | 99 | 750 | Hine 123 |
| 4 | 32 | 62 | 89 | 95 | 98 | 99 | 99 | 100 | 6,594 | ... |

*Percent weight by volume (0.05% w/v=50 mg/dL; 0.15% w/v=150 mg/dL) of blood alcohol.
†Numbers under names of investigators are reference citations in reference 35, source of Table 2.

Attwood et al[24] tested drivers on closed-course conditions and using a multivariate analysis technique found that drivers with BACs of 0.06% to 0.08% exhibited more variability than alcohol-free drivers in lane position, brake use, and steering controls. Impairment of judgment by alcohol was demonstrated at BACs as low as 0.04% when skilled bus drivers misjudged their ability to drive a vehicle through a space as much as 12 in narrower than the bus.[25]

Johnston[5] states that many tests of alcohol use and skills relevant to driving show that both information acquisition and information processing are rendered slower and less efficient, and the ability to carry out a divided-attention task that requires intellectual time sharing is impaired. He hypothesizes that when impaired drivers enter curves, they devote so much attention to the steering task that other perception of cues related to road curvature suffers, and they fail to reduce speed adequately.

### Chemical Tests for BAC

Determination of BAC is made directly by chemical testing of blood drawn from the subject or indirectly by testing of expired breath or urine. More and more, breath-alcohol analysis is performed for the purpose of determining the concentration of alcohol in breath, rather than for attempted conversion to blood-alcohol concentration. Other fluids and tissues may be tested but usually are not in the living subject; recently, there has been a revival of interest in saliva-alcohol testing.

Laboratory methods for analysis of blood samples include (1) chemical reduction of acid dichromate, (2) enzymatic oxidation by alcohol dehydrogenase with colorimetric determination of NADH (the reduced form of nicotinamide - adenine - dinucleotide) conversion, and (3) gas-liquid chromatography. Choice of the method used by a laboratory may be influenced by the size and sophistication of the facility and the reliability of the method for confirmation of roadside breath analyses. All three methods have strengths and weaknesses, but gas chromatography is the most accurate and best suited for handling large numbers of samples. It also has the advantage of sensitivity to other aliphatic alcohols or volatile toxins that a suspect may have been ingesting with, or without, ethanol.[26]

Breath analysis is by far the most common method of measuring BAC. The concentration of ethanol in one volume of blood is stated in most textbooks and highway safety regulations to be equivalent to that in 2,100 volumes of alveolar air.[27]

Dubowski[28] challenges the 2,100:1 conversion factor on the basis of sophisticated chemical analyses of blood and breath alcohol. He and O'Neill place the mean alcohol partition factor between blood and breath, in the postabsorptive phase in healthy adult males, at approximately 2,300:1, with a range of 1,797:1 to 2,763:1 for 95% of a population of 393 healthy adult men and a range of 1,555:1 to 3,005:1 for 99.7%. Quantitative breath-alcohol analyzers are all currently factory calibrated to a conversion factor of 2,100:1 to meet official guidelines of the National Highway Traffic Safety Administration. Dubowski questions whether the conversion of breath alcohol concentration to BAC should be retained for forensic purposes and recommends that breath alcohol concentration alone be used for statutory definition of DUI.

That the 2,100:1 ratio is too low has been raised as a possibility to explain why breath analysis values from one well-regarded instrument are on the average 10% to 15% lower than alcohol concentration in blood samples taken at the same time.[29]

In a seven-month trial in London of three types of breath-testing instruments used in the United States, the breath-testing instruments tended to underread actual blood alcohol levels by 0 to 20 mg/dL in the BAC range of 0.05% to 0.10%.[30]

The US National Highway Traffic Safety Administration publishes model specifications for the performance, calibration, and testing of breath alcohol testing devices to ensure their reliability.

### DUI Countermeasures

Strengthening of state DUI laws has been a trend over the past several years.

State legislators are apparently recognizing that a growing national



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consensus against driving under the influence must be backed by specific laws needed by police, courts, and licensing agencies to get alcohol-impaired drivers off the road.

The AMA in May 1982 issued to state and medical specialty societies a document titled "Drunk Driving Laws" and urged state medical associations to consider seeking enactment of legislation to strengthen DUI laws in their respective states.

The AMA House of Delagates at its 1983 Annual Meeting (Resolution 95, A-83) reaffirmed AMA policy to encourage each state medical society to seek and support legislation to raise the minimum drinking age to 21 years, and it urged all physicians to educate their patients about the dangers of alcohol abuse in general and operating a motor vehicle while under the influence of alcohol in particular.

Among the more visible and easily identified strengthening of state DUI laws is the replacement of "presumptive" by "per se" laws. The latter laws make it illegal in and of itself to drive with a BAC over certain specified limits. In states with "illegal per se" laws, proof of driving under the influence of alcohol is automatic when a properly administered test of the specified type shows the driver's BAC to be over a specified limit. Most states with illegal per se laws set the BAC limit at 0.10%, but the range among all such state laws is from 0.08% to 0.15%.

A variation on the illegal per se law is a two-step law adopted in some states: (1) illegal per se set at a specified BAC, and (2) presumption of driving under the influence set at a lower BAC, requiring supporting evidence other than breath or blood test for prosecution.

The Highway Users Federation recommends an illegal per se law as one provision in any driving legislative package. Provisions include (1) administrative driver's license suspension, whereby the license of any driver arrested for driving under the influence is suspended for a specified period, with harsh penalties imposed for driving while the license is suspended (the measure is aimed at the repeat offender); and (2) recording of all alcohol-related arrests, a provision meant to identify repeat offenders and particularly those whose alcohol-related arrests are frequently plea bargained to a lesser charge not related to alcohol.

In reviewing the recent records of control measures, Waller[31] identified two as being associated with positive results: (1) An increase in the age at which one can be issued a driver's license or can drink legally seems to have a positive effect in reducing the number of alcohol-related crashes by 16- and 17-year-olds. (2) License suspension or revocation is the most cost-effective countermeasure yet identified for reducing driving by drunk driving offenders. Arrest, trial, and imprisonment are far more expensive in public servant time and public funds. Revocation of a license for driving under the influence may be mandatory on conviction or may occur administratively upon evidence that the person committed the offense. Waller noted that several investigators have reported that one third to two thirds of persons with revoked licenses continued to drive while the revocation or suspension was in effect but were driving less often and more carefully; multiple DUI offenders who were suspended had better subsequent records than comparable convictees whose licenses were not suspended.

The impact of per se legislation upon deterrence of alcohol-impaired driving was unclear in four reviews of the data, according to Waller. A difficulty often encountered was the inability of the reviewer to separate the effect of per se laws from that of other countermeasures instituted at about the same time in the same states.[31]

Comparison of mandatory licensing sanctions with education and rehabilitation programs for DUI offenders in four states demonstrated clear superiority of the licensing sanctions in reducing DUI recidivism and subsequent crash involvement.[32]

### Research and Human-Related Risk Factors

Multidisciplinary investigations of driving and drinking are rare to nonexistent. Multiple foci of research interest—eg, highway and auto safety, pharmacology, alcohol and substance abuse, trauma treatment, legislation, and regulation—have tended to operate without strong linkages.

On three occasions, in 1972, 1978, and 1983, large assemblies of North American investigators ranked human-related risk factors at or near the top of DUI research needs. In each instance, the group asked for multivariate studies that incorporate human-related variables of an attitudinal-personality nature and a long-term research strategy coordinated through some central organization.[33]

Youthful driving and drinking is an area where research on multicausality seemed urgently warranted to investigators, in light of the peculiarly high risk of death and injury from alcohol-related crashes in this group.[34] Some suggestive research indicates that drinking and driving populations contain drinking/driving/crash-prone subpopulations in whom the influence of alcohol on emotions and attitudes may be an important causative factor.[35] The influence of alcohol on an emotionally charged driving style may be as important as its influence on driving skill.[30]

Social and cultural factors that influence the magnitude, characteristics, and persistence of the drinking and driving problem are not yet defined. Whether sustained shifts in social norms related to drinking and driving can be brought about—as they were in relation to littering, smoking, and diet/fitness/heart disease—is a question yet to be answered.[36]

### Conclusions

1. Alcohol causes deterioration of driving skills beginning at 0.05% BAC (50 mg of ethanol per deciliter of blood) or even lower. Deterioration progresses rapidly with rising BAC to serious impairment of driving skills at BACs of 0.10% and above, according to scientific consensus.

2. Drivers with BACs of 0.05% to 0.10% are significantly represented in road crash statistics.

3. Drivers aged 16 to 21 years have the highest rate of alcohol-involved fatal crashes per mile, with lower average BACs than older drivers.

The Council on Scientific Affairs recommends that the AMA (1) direct public information and education against *any* drinking by drivers and encourage other organizations to do the same; (2) adopt a position sup-

pc g a 0.05% BAC as per se illegal for driving and urge incorporation of that position into all state DUI laws; (3) reaffirm the position supporting 21 years as the legal drinking age, strong penalties for providing alcohol persons younger than 21 years, and stronger penalties for providing alcohol to drivers younger than 21 years; (4) urge adoption by all states of an administrative suspension or revocation of driver licenses after DUI conviction a. .nandatory revocation after a specified number of repeat offenses; (5) encourage automobile industry efforts to develop a safety module that thwarts operation of a car by an intoxicated person.

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7-6

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Testimony presented to

House Judiciary Committee

by

The Kansas Department of Health and Environment

House Bill 2353

By statute, the KDHE has the responsibility of administering the statewide breath alcohol program. The program, in its present form, has been operational since 1973. In the past two years, with the aid of a federal alcohol traffic safety grant, an additional 50 breath alcohol instruments have been purchased and placed throughout the state. The breath test program is well established and widely accepted throughout the judicial system.

We support the lowering of the legal level from 0.10 to 0.08. We recognize that the consumption of alcohol impairs one's ability to maintain judgement and response time which is critical in the operation of a motor vehicle. National studies have shown that a person is about six to seven times more likely to be involved in an accident with an alcohol content of .10 than a person with no alcohol; a person with an alcohol concentration of 0.08 is about four times more likely to be involved in an accident. Four states, California, Maine, Oregon, and Utah, currently have a "per se" level of 0.08. Several other states have plans to introduce similar legislation. I have attached to the testimony some information relating to consumption and relative alcohol concentrations.

There are two recommendations that we offer to this bill:

1) Throughout the statutes, reference is made to "greater than the legal limit." It should be clearly understood that the current language will not result in enforcement of a per se level of 0.08 and 0.04. To establish a per se level of 0.08 and 0.04, the legal limit should be defined as an alcohol concentration less than 0.08 and less than 0.04.

2) On page 8, lines 35 and 40, reference is made to "secretary." The term should be defined for clarification.

Testimony presented by: Theresa L. Hodges, M.A.,M(ASCP)
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Kansas Health and Environmental Laboratory
February 28, 1991

HJUD
Attachment 8
2-28-91


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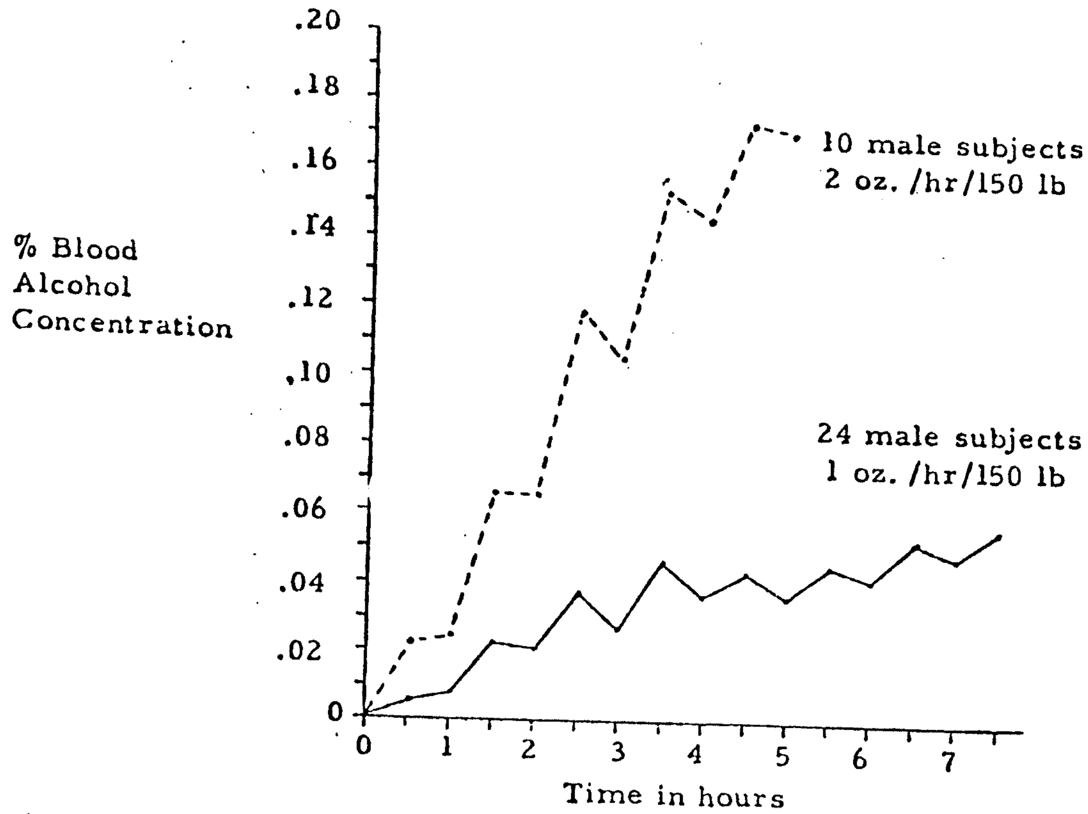
FIGURE 2

The BAC curve when drinks are consumed successively over time




Mean blood alcohol levels in male subjects consuming 1 or 2 ounces of 100-proof whiskey per hour per 150 pounds of body weight. First drink at time 0 with 1 drink each hour thereafter. Adapted from a figure in Forney, R. N. and Hughes, F. W. Combined effects of alcohol and other drugs. Springfield, Illinois: Charles C. Thomas, 1968, p. 16. (Originally printed in Clin. Pharmacol. Ther., 4:619, 621, 1963.)

Mothers Against Drunk Driving

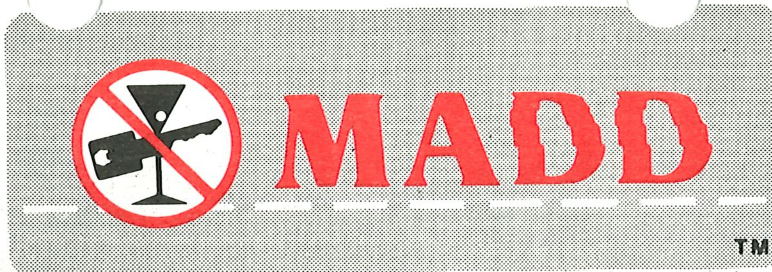
3601 SW 29th Street • Suite 244 • Topeka, KS 66614 • (913) 271-7525 • 1-(800) 228-6233
KANSAS STATE OFFICE

TESTIMONY IN FAVOR OF HOUSE BILL 2353

2/28/91

Presented by Leona Edwards, Mayetta, Kansas.
Victim and Victim Advocate.

HJUD
Attachment #9
2-28-91

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KANSAS STATE OFFICE

2/28/91

POSITION STATEMENT

On behalf of Kansas Mothers Against Drunk Driving, I wish to submit to the House Judiciary Committee, our full support of House Bill 2353. Passage of House Bill 2353, lowering the legal limits for Blood Alcohol Content, supports MADDS' position and the Attorney General's Victims' Rights Task Force 1991 Legislative Recommendations.

Wanda Stewart, Chairperson
Kansas State Committee,
Mothers Against Drunk Driving

9-2

# .08 Per Se .05 Presumptive Legal Blood Alcohol Content Limit

## POSITION

*MADD supports setting the legal Blood Alcohol Content (BAC) limits for drivers at .08 per se and .05 presumptive.*.

## BACKGROUND

The *"illegal per se"* concept is that operation of a vehicle by a person with a BAC at or above a legally defined numerical threshold (e.g. 0.08) constitutes an offense per se of drunk driving. Illegal *per se* is not rebuttable, except on grounds such as illegal arrest procedure or breath analysis machine error.

The *"presumptive"* concept states that a BAC between the numerical threshold and the per se level may be considered with other competent facts in determining whether a person was under the influence of alcohol. It is rebuttable.

Even though impairment theoretically begins with the first bit of alcohol, research has clearly shown measurable impairment occurs in most people at .05 BAC.[1] A recent study by the Transportation Research Board supported lowering the BAC limit for commercial drivers to .04 or lower.[2]

Reliable studies show that for all people, important driving skills are impaired at .08 BAC.[3]

Because measurable impairment in most people occurs at .05 BAC and because everyone is impaired at .08, MADD believes that states should enact drunk driving laws making a BAC of .05 *presumptive* evidence of intoxication and a .08 BAC *per se* evidence of intoxication.

In most industrialized nations, the legal BAC is lower than the 0.10 level which prevails in the United States. MADD believes that lowering the BAC to .05 *presumptive* and .08 *per se* will reduce drunk driving by:

- Increasing the likelihood of convicting suspected drunk drivers.
- Increasing a person's perceptions that he or she will get caught for driving after drinking, and
- Expanding the universe of arrestable impaired drivers.

---

1. Moscowitz and Robinson, "Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence," July 1987.
2. Zero Alcohol and Other Options: Limits for Truck and Bus Drivers, Special Report 216, Transportation Research Board, National Research Council, Washington. DC, August 1987.
3. Moskowitz et al.

**MADD**

# .08 Illegal Per Se Laws

## What is an illegal per se law?

An "illegal per se" law makes it illegal to drive or to be in control of a motor vehicle with an illegal alcohol concentration, as prescribed by State law. Unlike most driving while intoxicated (DWI) statutes wherein alcohol concentration, along with other factors such as slurred speech, unsteady gait, etc., are used as evidence to prove that a driver was intoxicated, with an "illegal per se" law, driving while at or above a specified alcohol concentration constitutes the violation in and of itself.

"Illegal per se" laws are similar to (but should not be confused with) administrative license suspension laws which are frequently called "administrative per se" laws. An "illegal per se" law specifies the violation of driving or being in control of a vehicle while at or above a specified alcohol concentration. This charge is a criminal charge which would normally be adjudicated in a court of law and a conviction would be followed by a number of appropriate sanctions or combinations of sanctions.

An "administrative per se" license suspension law provides that if a person drives or is in control of a vehicle while at or above a presecribed alcohol concentration, an administrative (as opposed to a judicial) license suspension or revocation will result. Such a law is similar to an "illegal per se" law in that it is based solely on the alcohol concentration of the driver. It differs from an "illegal per se" law in that it invokes an "administrative," rather than a "judicial" process and prescribes specifically what the administrative penalty (e.g. a 90-day license suspension) will be.

## Why is an "Illegal per se" law needed?

Illegal per se laws greatly increase the probability of conviction for an alcohol-related offense. They increase the certainty of conviction and reduce litigation time and costs. Because they increase the certainty of conviction (and therefore the certainty of punishment), illegal per se laws are more effective in deterring drunk driving and in reducing alcohol-related crashes.

This is because under an "illegal per se" law, the definition of the offense is not driving while intoxicated (a less than precise term). Rather, it is driving (or being in physical control of a vehicle) while having an illegal alcohol concentration which the law defines. In such case, the prosecutor is significantly less burdened to establish additional evidence (usually behavioral) which demonstrates intoxication or impairment. Therefore, the "burden of proof" for a conviction is less for the prosecutor under a "per se" law than under a "presumptive" law where alcohol concentration is only one of several factors used to establish guilt.

It should be noted that often the police officer must collect the same type of evidence (e.g. behavioral signs of intoxication) required under a "presumptive" law in order to show the "articulable suspicion" necessary for making the stop and the "probable cause" necessary for making the arrest. Still, however, the "illegal per se" law increases the probability of a conviction and decreases the prosecutor's requirement to provide additional, less objective evidence.

## How do we know that intoxication or impairment is directly related to alcohol concentration? At what level is a person impaired?

Scores of laboratory studies have been conducted over the past three decades to determine the extent to which alcohol impairs the skills and/or judgment which are related to driving (e.g. reaction time, vision, risk taking behavior, etc.).

Such studies have indicated that impairment effects are seen in some persons at alcohol concentrations below .04 and that all persons are impaired to some extent at .08 percent (Moskowitz and Robinson, 1987). Complex tracking tasks, complex reaction time and divided attention tasks, where subjects must attend to multiple stimuli at the same time, appear to show the most degradation and onset appears to begin at very low alcohol concentrations.

More importantly, a number of "real world" (epidemiological) studies have been conducted

which have attempted to relate involvement in (and causation of) alcohol-related crashes to factors such as alcohol concentration. All such studies have shown an increased risk of involvement and causation of such crashes which is directly correlated with alcohol concentration. Most of such studies (Perrine, 1976, Borkenstein, 1968) have indicated that the risk of crash involvement begins to rise after .04 alcohol concentration and rises rapidly after .08 alcohol concentration.

## What is the current status of "illegal per se" laws in the U.S.?

As of January 1, 1988, 44 States had passed "illegal per se" laws. Most such laws have been enacted since 1980 and most (41) have established .10 as the illegal alcohol concentration. Two States, Idaho and Oregon, established .08 as the illegal concentration. Two States established a higher level (i.e. Colorado @ .15 and Georgia @ .12).

During the 1988 legislative session, several States have already changed their "per se" laws. Maryland passed such a law for the first time and established the illegal concentration at .10 and Maine lowered its illegal concentration from .10 to .08.

Thus, as of July 1, 1988, there were 45 states plus D.C. with illegal per se laws, 41 States with a .10 limit; 3 states with a .08 limit and two states with a limit greater than .10.

**Five states remain without a per se law.They are: Wyoming, Kentucky, Tennessee, Massachusetts and South Carolina.** Colorado and Georgia have illegal per se laws but an alcohol concentration greater than 0.10.

## How effective have "illegal per se" laws been?

Illegal per se laws are only part of a total system of laws, enforcment, license actions, prosecution, adjudication, sanctioning, education and treatment that contribute to significant reductions in alcohol-related crashses. Very often such laws have been passed and enacted as a part of comprehensive legislative packages. This has made it difficult to evaluate the effectiveness of such laws, in and of themselves.

In 1988, however, the Insurance Institute for Highway Safety (IIHS) released the results of a study which evaluated the effectiveness of "illegal per se" laws, "administrative per se" laws and mandatory jail / community service laws. The study revealed that illegal per se laws significantly reduced fatal crashes. Since more States had enacted "illegal per se" laws, more lives had been saved due to such laws than by either of the other types of laws.

## Why use .08 rather than .10 as the illegal alcohol concentration for "illegal per se" laws?

As has already been pointed out, laboratory research has indicated that virtually all drivers are impaired to some extent at an alcohol concentration of .08. Most persons show impairment in some critical tasks such as divided attention at much lower levels. Furthermore, epidemiological studies have shown that the risk of crash involvment begins to rise significantly after an alcohol concentration of .05.

A summary of both laboratory and epidemiological research can be found in the resource materials. The report entitled Alcohol and Highway Safety 1984: A Review of the State of Knowledge, and the report entitled Low BAC Impairment (Moskowitz and Robinson, 1987) should be reviewed for a thorough understanding of the effects of alcohol at low alcohol concentrations.

Most foreign nations have alcohol concentrations at .08 or lower. These include Canada, Great Britain, the Scandinavian countries, Australia and New Zealand.

## Who supports lowering the alcohol concentration limit below .10?

The **National Safety Council's** (NSC) Committee on Alcohol and Drugs has thoroughly reviewed the evidence regarding driving impairment and the epidemiology of crashes relative to alcohol concentration. It has resolved that all persons are impaired at an alcohol concentration of .08 and supports the lowering of "per se" limits to that level.

The **American Medical Association** (AMA) advocates an even lower .05 alcohol concentration limit.

The **National Committee on Uniform Traffic Laws and Ordinances** (NCUTLO) advocates an illegal per se limit of .08 in its most recent edition of the Uniform Vehicle Code (UVC).

Other organizations which advocate illegal per se laws at levels below .10 include: **The American Spinal Injury Association** (ASIA) and the States of **Utah, Maine and Oregon,** which have .08 per se limits.

## What provisions of an illegal per se law are desirable?

Immediately following this section is a copy of the provisions of the new Uniform Vehicle Code (UVC) which relate to an "illegal per se" law.

As is apparent, the primary provision in Section 11-902 is that:

> *"(a) A person shall not drive or be in actual physical control of any vehicle while:*
>
> *1. The alcohol concentration in his blood or breath is 0.08 or more..."*

Note that the (new) term "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. This definition of alcohol concentration replaces the (old) term of blood alcohol concentration (BAC) which was expressed in terms of a percent (e.g. .08% BAC). The new term is simply "an alcohol concentration of 0.08." This definition is appropriate whether blood or breath tests are taken with no need to convert one to the other (i.e. no need to convert breath alcohol concentration [BAC] to blood alcohol concentration [BAC]).

## Are illegal per se laws constitutional?

Yes, they are constitutional. Although the U.S. Supreme Court has consistently refused to hear "illegal per se" cases, every State appellate or high court which has ruled on illegal per se laws has found such laws to be constitutional so long as adequate notice is given as to what constitutes the illegal behavior.

In order to be clearer as to what constitutes illegal behavior, some states have written in their legislation requirements for providing alcohol concentration information to the public.

## Are there any other changes that should be made to illegal per se laws?

Besides lowering the alcohol concentration limits of existing per se laws, it is important to review the "presumptive" laws which may also exist within the State which, in some cases, state that a person is *"presumed not to be under the influence of alcohol at an alcohol concentration of .05 or less."* Such a provision should be removed. Given recent research findings, it is clear that there is no positive (non-zero) alcohol concentration level where it can be presumed that a person is not under the influence of alcohol.

# Points Often Raised

## How many lives will be saved by lowering the limit from 0.10 to 0.08?

There are no scientific research studies which show the impact of reducing an illegal per se limit from 0.10 to 0.08. However, Scandinavian countries which have lower alcohol concentration limits also have fewer drivers on the road at high alcohol concentrations and a lower portion of their fatally-injured drivers have high alcohol concentrations. These lower levels are likely due to a combination of factors such as enhanced enforcement, use of roadside sobriety checkpoints, swift and sure license and jail penalties, as well as lower alcohol concentration limits. Such a (lower) limit must be viewed as an element of a total package aimed at reducing impaired driving.

In addition to the foreign experience, those states which have had lower alcohol concentration limits in the U.S. are among the states with the lowest nighttime proportion of fatal crashes and the lowest alcohol-related proportion of fatal crashes. Again, there are many factors in operation in such states. However, the lower illegal per se limits are considered to be an important such factor.

One researcher (Hurst) re-analyzed the data from the classic Grand Rapids, Michigan, study (Borkenstein, 19 ). Hurst developed a procedure for estimating what the impact of a complete enforcement of various alcohol concentration limits would be (i.e. the effect of keeping all persons above a specified alcohol concentration off the road). He estimated that a complete enforcement of a 0.08 limit would be significantly more effective in reducing serious alcohol-related crashes than a complete enforcement of a 0.10 limit. Although a complete enforcement effort may not be realistic, Hurst's analysis indicated that significant potential gains are available by reducing the alcohol concentration limit from 0.10 to 0.08.

## Will reducing the limit from 0.10 to 0.08 likely make a difference?

If the police and the courts actually carry out the intent of the law, such a reduction can make an important difference. Currently, many drivers apprehended at borderline alcohol concentrations (e.g., 0.11) are not vigorously prosecuted and may be allowed to plead to a reduced charge. Lowering the limit to .08 should increase the frequency of prosecution of this group. It should also result in the more frequent arrest and conviction of persons at .08 and .09 who are at least 2 to 3 times as likely to be involved in a serious crash as someone at .00.

## Isn't it fairer and more accurate to use appearance and behavior as an indicator of impairment or intoxication than to use an alcohol concentration?

No, it is not. Alcohol concentration is the most scientific and objective measure we can use to determine impairment or increased probability of involvement in a serious or fatal crash. That is because nearly all impairment which has been measured in laboratory situations and all risk estimates from "real world" epidemiological studies have been established relative to alcohol concentration levels.

Appearance is often misleading. Individuals who show little evidence of intoxication may still be significantly impaired in their ability to react to complex situations on the roadway.

We must rely on what we have learned from laboratory and real world studies to estimate what impact alcohol is likely to have in driving situations. Furthermore, studies have shown that both physicians and police fail to identify up to half of the drivers who are above 0.10 alcohol concentrations (NSC, 1970; NHTSA, 1984). Yet, research demonstrates that at these alcohol concentrations the ability of all drivers to react to complex situations is significantly impaired and evidence from epidemiological studies indicates that the probability of involvement in a serious injury or fatal crash is 5-6 times that of a person with a 0.00 alcohol concentration.

The most accurate and objective indicator of increased crash risk is a measure of alcohol concentration.

### If a State enacts an "illegal per se" law, should the old law(s), which are based on behavioral evidence, as well as on alcohol concentration, be discarded?

No, the older driving while intoxicated (DWI) or driving under the influence (DUI) laws should be retained for those cases in which no chemical test is available. This can occur either when an offender refuses to take a chemical test or when some problem develops with the test result. Often, an offender is charged under both the "per se" and "presumptive" laws and one of the charges is dropped at a later date.

### With all the current emphasis being placed on alcohol concentration as measured by breath testing devices, how accurate are such devices in measuring alcohol concentration?

Modern breath test devices are extremely accurate and reliable when maintained and operated according to State guidelines. All States have detailed requirements for

(1) the qualifications of breath testing equipment,
(2) the training of breath test operators and
(3) the procedures to be used in conducting breath tests.

Only when all of these requirements are met are tests admitted as evidence.

Most of the errors which can be made in collecting breath tests provide a result which is favorable to the accused (e.g., the devices are calibrated to read lower, rather than higher).

The principal risk in administering a breath test is failure to wait 15-20 minutes before administering the test. This must be done to ensure that any alcohol residue in the mouth from the person's last drink is gone. Such "mouth alcohol" could result in an erroneously high alcohol concentration reading. All States require at least a 15-20 minute wait before an evidential breath test can be conducted.

### Isn't blood alcohol, rather than breath alcohol, a more accurate measure on which to base impairment?

No. Most of the laboratory research which has measured impairment relative to alcohol concentrations has employed the use of breath test devices to measure alcohol concentration. In addition, most of the evidence gathered from roadside surveys (a critical element of epidemiological studies) has been based on the administration of breath tests.

Since it is alcohol in the brain which presumably causes impairment, perhaps the best measure of alcohol impairment would be the alcohol concentration of the brain. Such a measure, however, is not practical to collect.

There is no evidence that blood alcohol concentration provides any better measure of impairment than does breath alcohol concentration. Defense lawyers would like to make a judge and jury believe that blood is a better measure, but it is not.

The dependence on blood alcohol concentration (BAC) began decades ago when blood provided the primary means for determining alcohol concentration. When breath test devices were first developed, they were based on a conversion factor (i.e. 2100:1) to convert the breath alcohol readings to blood alcohol equivalents. That was unfortunate and defense lawyers began to challenge the 2100:1 conversion ratio. **Newer State legislation is progressing beyond that stage by defining violations in terms of the more general term "alcohol concentration" (not blood alcohol concentration) which means either grams of alcohol per 100 milliters of blood or grams of alcohol per 210 liters of breath.**

### Isn't it unfair to define an alcohol-related (per se) offense in terms of alcohol concentration when an individual has no direct way of determining what his or her alcohol concentration is?

It is true that a precise measure of one's alcohol concentration is difficult to obtain unless the person has his or her own breath test device. However, a person can use simple guidelines such as no more than a drink in an hour or "know your limit" cards to estimate his or her alcohol concentration. Furthermore, the legal limit of .08 is sufficiently high that more than just a moderate amount of drinking is necessary to reach the legal limit.

A person would have to drink more than just a drink an hour to reach such a limit. An average 160 lb. male would have to drink more than 3 drinks in the first hour to reach that limit and could have nearly one additional drink for each additional hour of drinking without exceeding the limit.

**MADD**

# Illegal Per Se at .08% Law

*Uniform Vehicle Code*

## I. Criminal offenses

**§ 11-902--Driving while under the influence of alcohol or drugs**

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.08 or more based on the definition of blood and breath units in § 11-903 (a)(5); (New, 1971; Revised, 1979, 1984.)
2. Under the influence of alcohol; (Revised, 1971.)
3. Under the influence of any other drug or combination of other drugs to a degree which renders him incapable of safely driving; or (Formerly §11-902.1; Revised, 1971, 1979, & 1984.)
4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving. (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drug shall not constitute a defense against any charge of violating this section. (Formerly §11-902.1; Revised, 1971, 1984.)

(c) In addition to the provisions of §11-904, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days or more than one year, or by fine of not less than $100 nor more than $1,000, or by both such fine and imprisonment and on a second or subsequent conviction, he shall be punished by imprisonment for not less that 90 days nor more than one year, and, in the discretion of the court, a fine of not more than $1,000. (Formerly §11-902.2; Revised, 1971, 1984.)

## II. Admissibility of chemical tests for intoxication

**§11-903--Chemical and other tests**

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or other drugs, evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a test is made the following provisions shall apply; (New, 1971; Revised, 1979, 1984.)

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the (State department of health) and by an individual possessing a valid permit issued by the (State department of health) for this purpose. The (State department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the (State department of health). (Formerly §11-902 (c).)
2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of §6-207 or §6-209, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic or other drug content therein. This limitation shall not apply to the taking of breath or urine specimens. (Formerly § 11-902 (d).)
3. The person tested may have a physician, or a qualified technician, chemist, registered nurse,

or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. (Formerly §112-902(e).)

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. (Formerly §11-902 (f).)

## III. Definition of alcohol concentration

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (Formerly §11-902(b)4; Revised, 1979.)

## IV. Presumptions for under the influence alcohol offense

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions: (Revised, 1979.)

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol. (Revised, 1979.)
2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol. (Revised, 1979, 1984.)
3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol. (Revised, 1979, 1984.)
4. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol. (Formerly § 11-902(b).)

(c) If a person under the arrest refuses to submit to a chemical test under the provisions of §6-207, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs. (Formerly §11-902 (g), Revised, 1984; Section Renumbered, 1986.)

# .08 Per Se Resources

## Agencies

**National Transportation Safety Board**
Washington, DC 20594
(202) 382-6572

**National Highway Traffic Safety Administration**
Office of Alcohol and State Programs
400 - 7th Street, S.W., Suite 5130
Washington, DC 20590
(202) 366-9550

**National Safety Council**
Committee on Alcohol and Drugs
444 N. Michigan Ave.
Chicago, IL 60616
(312) 527-4800

**National Committee on Uniform Traffic Laws and Ordinances**
The Traffic Institute -
Northwestern University
405 Church Street
Evanston, IL 60201
(312) 491-5280

**Mothers Against Drunk Driving**
National Office
669 Airport Freeway, Suite 310
Hurst, TX 76053
(817) 268-6233

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National Transportation Safety Board
Washington, DC 20594

**Robert B. Voas**, PhD.
Pyramid Planning
7315 Wisconsin Avenue
Bethesda, MD 20814

## References


"Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence," Moscowitz, Herbert and Robinson, Christopher D., National Technical Information Service, Springfield, VA, for the U.S. Department of Transportation, July 1987.

Zero Alcohol and Other Options, Special Report 216, Transportation Research Board, National Research Council, Washington, DC, 1987.

"A Study of the Feasibility of Establishing Lower Blood Alcohol Content Limits in Sections of the Wisconsin Statutes Related to Operating a Vehicle While Intoxicated," contract study for Council on Highway Safety, Wisconsin Department of Transportation, 1984.

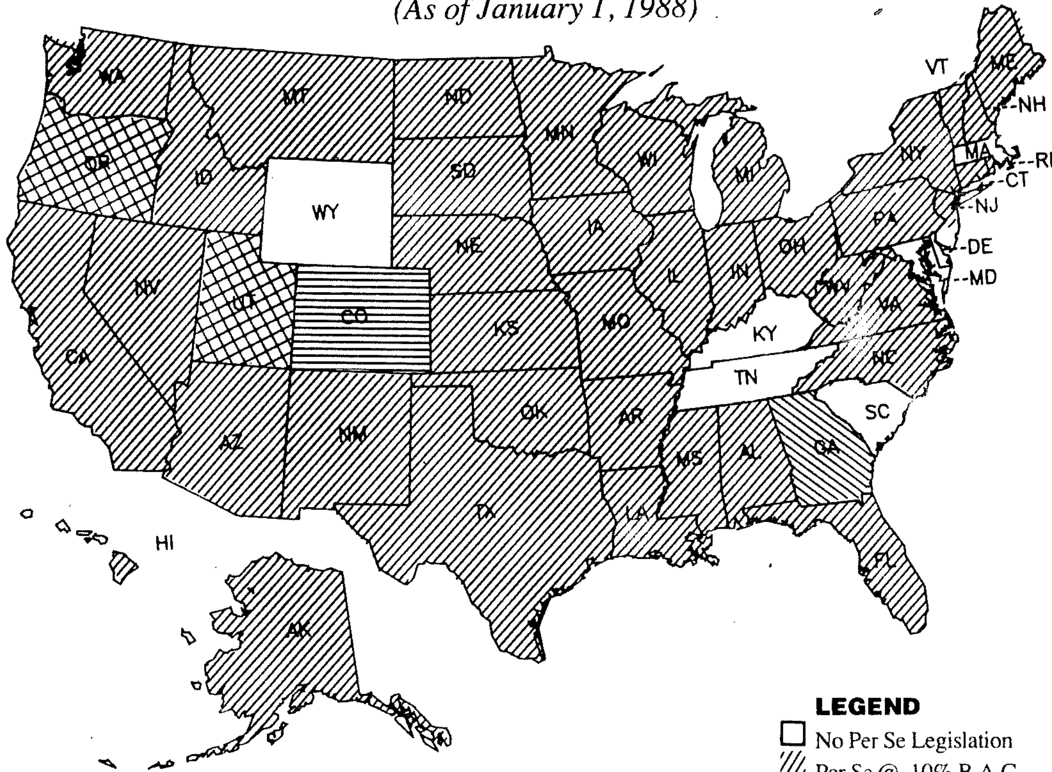
"Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving," Zador, P. L. ; Lund, A. K. ; Fields, M.; and Weinberg, K.; Insurance Institute for Highway Safety, Washington, D.C., February, 1988.


MADD

# States With Illegal PerSe Laws

## 44 States and Washington, D.C.

*(As of January 1, 1988)*




**LEGEND**

- No Per Se Legislation
- Per Se @ .10% B.A.C.
- Per Se @ .12% B.A. C.
- Per Se @ .15% B.A.C.
- Per Se @ .08% B.A.C.

*Source: NHTSA Legislative Digest*

Alabama
Alaska
Arizona
California
Colorado*
Connecticut
Delaware
District of Columbia
Florida
Georgia**
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Louisiana
Maine***
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon***
Pennsylvania
Rhode Island
South Dakota
Texas
Utah***
Vermont
Virginia
Washington
West Virginia
Wisconsin

**Total = 44**
*BAC = 0.15
**BAC = 0.12
***BAC = 0.08

KANSAS 1989 FACT SHEET
(reported in 1990)

1. 6.98% (4,443) of all accidents in Kansas in 1989 were alcohol related.

2. 30.73% (114) of all fatality accidents were alcohol related.

3. 11.68% (2,557) of all injury accidents were alcohol related.

ALCOHOL RELATED MOTOR VEHICLE ACCIDENTS COMPARED TO ALL MOTOR VEHICLE ACCIDENTS IN KANSAS

| YEAR | ALL ALCOHOL RELATED ACCIDENTS | ALL ACCIDENTS | % OF ALL ALCOHOL RELATED | ALCOHOL RELATED FATALITY ACCIDENTS | ALL FATALITY ACCIDENTS | % OF ALL FATALITY ACCIDENTS | ALCOHOL RELATED INJURY ACCIDENTS | ALL INJURY ACCIDENTS | % OF A INJU ACCIDENT |
|---|---|---|---|---|---|---|---|---|---|
| 1989 | 4,443 | 63,642 | 6.98% | 114 | 371 | 30.73% | 2,557 | 21,885 | 11.68% |
| 1988 | 4,607 | 63,256 | 7.28% | 159 | 406 | 39.16% | 2,602 | 21,461 | 12.12% |
| 1987 | 4,559 | 64,431 | 7.08% | 182 | 415 | 43.86% | 2,459 | 21,582 | 11.39% |
| 1986 | 4,759 | 61,984 | 7.68% | 182 | 413 | 44.07% | 2,551 | 20,973 | 12.15% |
| 1985 | 4,740 | 72,677 | 6.52% | 135 | 429 | 31.47% | 2,362 | 21,907 | 10.78% |
| 1984 | 5,083 | 69,880 | 7.27% | 155 | 452 | 34.29% | 2,586 | 21,595 | 11.07% |

SOURCE: Geometric and Accident Data Unit
Bureau of Transportation Planning
KS. Department of Transportation
Topeka, KS
(913)-296-7452

*1989 statistics reported in 1990.

*1990 statistics not yet available.

# ALCOHOL & DRUG INVOLVEMENT

## ALCOHOL & DRUG INVOLVED DRIVERS

| AGE | MALE | FEMALE |
|---|---|---|
| (10-14) | 2 | 1 |
| 15 | 10 | 3 |
| 16 | 61 | 15 |
| 17 | 98 | 28 |
| 18 | 171 | 22 |
| 19 | 212 | 30 |
| (15-19) | 552 | 98 |
| 20 | 182 | 29 |
| 21 | 184 | 42 |
| 22 | 188 | 28 |
| 23 | 157 | 37 |
| 24 | 146 | 25 |
| (20-24) | 857 | 161 |
| 25 | 154 | 27 |
| 26 | 146 | 42 |
| 27 | 140 | 33 |
| 28 | 153 | 36 |
| 29 | 124 | 40 |
| (25-29) | 717 | 178 |
| (30-34) | 555 | 106 |
| (35-39) | 331 | 66 |
| (40-44) | 228 | 46 |
| (45-49) | 141 | 27 |
| (50-54) | 90 | 10 |
| (55-59) | 59 | 15 |
| (60-64) | 61 | 9 |
| (65-69) | 33 | 8 |
| (70-74) | 26 | 7 |
| 75 AND OVER | 21 | 8 |
| UNKNOWN | 7 | 1 |
| TOTAL | 3682 | 741 |

Driver sex was uncoded for 50 drivers.

### TYPE OF INVOLVEMENT (ACCIDENT)

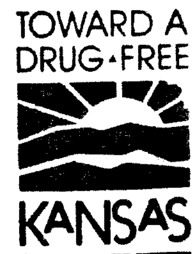
| Percent Accidents Involving Alcohol/ Drugs | |
|---|---|
| ALCOHOL | 6.90% |
| DRUGS | 0.20% |
| UNKNOWN | 11.80% |
| NONE USED | 81.10% |
| TOTAL | 100% |

### TEST ADMINISTERED AND RESULTS

| Drivers Tested for Sobriety | | Test Results | |
|---|---|---|---|
| TEST TYPE | NUMBER | | No. |
| BREATH | 1785 | BAL=0 | 62 |
| BLOOD | 303 | BAL<0.05 | 27 |
| TEST NOT GIVEN | 2256 | 0.05-0.09 | 96 |
| REFUSED | 129 | 0.10-0.14 | 327 |
| | | 0.15-0.19 | 553 |
| | | BAL>0.20 | 638 |

Test results were uncoded for 385 drivers.

**A Challenge and Commitment for every Caring Kansan.**



## GENERAL STATISTICS (National Statistics)

- During the period 1982 through 1989, approximately 188,470 persons lost their lives in alcohol-related traffic crashes. (NHTSA, 1990)
- Traffic crashes are the greatest single cause of death for every age between the ages of five and thirty-two. Almost half of these fatalities are a result of alcohol-related crashes. (NHTSA, 1990)
- Each year, about 600,000 --10%-- of all police reported motor vehicle crashes are alcohol related. (NHTSA, 1990)
- About two in every five Americans will be involved in an alcohol-related crash at some time in their lives. (NHTSA, 1990)
- The proportion of fatal crashes that are alcohol related is about three times greater at night than during the day. (NHTSA, 1990)
- More than half of all alcohol related fatalities occur in single vehicle crashes. (NHTSA, 1990)
- In 1989 there were 12,997 fatally injured drivers in single vehicle crashes. About 52.9% were intoxicated. (NHTSA, 1990)
- Arrests for DUI/DWI accounted for the highest (1.7 million) arrest count among the specific categories in 1989, followed by larceny-theft (1.6 million) and drug abuse violations (1.4 million). (FBI, 1990)
- About 48% of persons jailed for DWI had previous DWI convictions. (FBI, 1989)
- Males were most often arrested for driving under the influence. (FBI, 1989)
- Estimates of the economic costs of drunk driving range from $11 billion (NHTSA 1985) to $24 billion (FBI, 1989) each year.
- The National Highway Traffic Safety Administration estimates that perhaps as many as a quarter of a million persons were killed in alcohol-related crashes over the last 10 years. (FBI, 1989)
- Prior to their arrest for DWI, convicted offenders had consumed a median of 6 ounces of pure alcohol (about equal to the alcoholic content of 12 bottles of beer or 8 mixed drinks) in a median of 4 hours. About 26% consumed at least 10 ounces of pure alcohol (equivalent to 20 beers or 13 mixed drinks). (FBI, 1989)

MAD... K...NSAS
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Topek... ...s 66614
Phone (913) 271-7525
1-800-228-6233

9-16

(National Statistics)

**ALCOHOL-RELATED TRAFFIC FATALITIES**

Number Alcohol Related:

| Age Group | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|---|---|---|---|---|---|---|---|
| 0-14 | 950 | 890 | 825 | 745 | 810 | 849 | 825 | 790 |
| 15-19 | 4,135 | 3,575 | 3,520 | 3,115 | 3,540 | 3,259 | 3,158 | 2,775 |
| 20-24 | 5,840 | 5,505 | 5,600 | 5,140 | 5,400 | 4,880 | 4,895 | 4,215 |
| 25-64 | 12,750 | 12,320 | 12,385 | 11,985 | 12,830 | 13,248 | 13,056 | 13,200 |
| 65- | 1,345 | 1,255 | 1,290 | 1,195 | 1,250 | 1,307 | 1,314 | 1,345 |
| Unknown | 150 | 105 | 140 | 180 | 160 | 91 | 103 | 90 |
| Totals | 25,170 | 23,650 | 23,760 | 22,360 | 23,990 | 23,632 | 23,351 | 22,415 |
| Total Traffic Fatalities | 43,945 | 42,589 | 44,257 | 43,825 | 46,056 | 46,386 | 47,093 | 45,555 |
| Percentage Alcohol-Related | 57.3% | 55.5% | 53.7% | 51.0% | 52.1% | 50.9% | 49.6% | 49.2% |

COMPARISONS

| | 82-89 | 85-86 | 86-87 | 87-88 | 88-89 |
|---|---|---|---|---|---|
| | -17% | + 8.7% | + 4.8% | - 2.8% | - 3.0% |
| | -33% | +13.6% | - 7.9% | - 3.1% | -11.7% |
| | -28% | + 5.0% | - 9.6% | + .3% | -13.7% |
| | +.4% | + 7.0% | + 3.2% | - 1.4% | + 1.2% |
| | --- | + 4.6% | + 4.5% | + .5% | + 2.7% |
| | -40% | -11.0% | -43.1% | +11% | -12.6% |
| Totals | -11% | + 5% | - 1.5% | - 1.2% | - 3.8% |
| Total Traffic Fatalities | +3.7% | - 5% | + .5% | + 1.5% | - 3.3% |

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9-17

## BACs For All Drivers Involved in Fatal Crashes

### Percent of Drivers With BAC

### 82-87

| BAC | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | |
|---|---|---|---|---|---|---|---|
| .00% | 61 | 62 | 64 | 66 | 66 | 67 | |
| .01-.09% | 9 | 9 | 9 | 8 | 8 | 8 | (4,916) |
| ≥.10% | 30 | 29 | 27 | 26 | 26 | 25 | |
| N | 56,029 | 54,656 | 57,512 | 57,883 | 60,297 | 61,434 | |

*Source: FARS, NHTSA*

## BACs For Teenaged (16-19) Drivers Involved in Fatal Crashes

### Percent of Drivers with BAC

### 82-87

| BAC | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | Change |
|---|---|---|---|---|---|---|---|
| .00% | 58 | 61 | 63 | 67 | 66 | 69 | |
| .01-.09% | 13 | 13 | 13 | 11 | 13 | 12 | |
| ≥.10 | 29 | 27 | 24 | 22 | 21 | 19 | -34% |
| N | 7,467 | 7,050 | 7,366 | 7,151 | 7,854 | 7,769 | |

*Source: FARS, NHTSA*

Department of Social and Rehabilitation Services

**House Bill 2353**

Before the House Judiciary Committee
February 28, 1991

I am Andrew O'Donovan, Acting Commissioner of Alcohol and Drug Abuse Services within the Kansas Department of Social and Rehabilitation Services, testifying in support of House Bill 2353. This Bill proposes to lower the legal blood alcohol content level at which a driver operating a motor vehicle is considered to be impaired.

The Kansas Alcohol and Drug Safety Action Programs and groups such as MADD and SADD have been significant forces in increasing public awareness and in changing attitudes about the risks and consequences associated with "drunken driving". Even that term is outdated because the major challenge now is to change the social norms that imply any use of alcohol is acceptable when driving.

A recent national study indicated that nearly one-third of the men and 14 percent of the women surveyed occasionally drive after drinking. All tests conclude that any drinking impairs a persons judgment and coordination. It is a well-known fact that impairment can occur long before a person is intoxicated. The "one drink for the road" may seem harmless but when confronted with an emergency or unusual situation it can be deadly. Alcohol's involved in half of all fatal auto crashes and is still the number one cause of death for 15-24 year olds.

HB 2353 is another important step in changing behaviors and in reducing alcohol impaired crashes, and fatalities. We encourage your support.

If you have further questions, please contact me at 296-3925.

HJUD
Attachment # 10
2-28-91

**TO:** House Judiciary Committee

**RE:** HB 2353

**DATE:** February 27, 1991 - 3:30 p.m.

Mr. Chairman and Members of the Committee:

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Association of Alcohol and Drug Program Directors and the Kansas Alcohol and Drug Addiction Counselors Association.

We support HB 2353 as a step forward in removing the drinking driver from the highways of Kansas. Since 1982 when this Legislature made some of the most drastic changes in our DUI laws in reducing the number of alcohol related crashes and the number of alcohol related fatalities in our state. The 1982 figures furnished by the Kansas Department of Transportation, Safety Division would indicate that there were 5,284 identifiable accidents that were classified as alcohol related. During that same year 177 fatalities resulted from those accidents. During 1989 the Kansas Department of Transportation's Safety Division indicated that there were 4,443 alcohol related crashes and 134 fatalities in those crashes. The National Highway Safety Commission estimated in 1990 that each alcohol related crash resulted in property damage of $3,000. Based on the 841 reduction in accidents in 1989 we are talking about a total of property damage saved to the citizens of Kansas of $1,523,000. The same National Highway Safety Commission estimates each fatality or the loss to society at $290,000. Based on those 177 fatalities in 1982 to a reduction of 134 fatalities in 1989 would see a reduction in lives lost of 43 in one year. That loss to society in one year alone can be measured at $12,470,000. A reduction in the blood alcohol concentration from .10 to .08 certainly would have an impact on those figures.

By reducing the .10 to .08 we are sending a definite message to those individuals who have thought in the past that it is okay to have a few drinks and operate

HJUD
Attachment #11
2-28-91

a motor vehicle in an impaired fashion. If it means that the blue collar worker who stops by to have a cool one after work, that he will only drink maybe two and then resume his journey home in a slightly impaired fashion rather than drinking his normal four to six. We also mean for that while collared worker who stops at his club or favorite bar that maybe one or two mixed drinks is all he should have before he operates his motor vehicle to drive home to his family. If the reduction of the legal limit to operate a motor vehicle to .08 saves one life or prevents one serious alcohol related crash that produces injury we have accomplished our purpose.

We would suggest that this committee research an area in the present law which is causing some problems in their judicial system in the state. I refer to page 13, line 43, subsection (4) "it is irrelevant whether an offense occurred before or after conviction for a previous offense." In some instances the offender may be charged with DUI and while waiting for that charge to come to court may be picked up for a second DUI or even a third or fourth before the court has ruled on the initial number one arrest. Some of our courts have taken the position that because a conviction had not occurred on that first arrest that if he is convicted and sentenced on multiple arrests at the same time they should stand as a first conviction. Therefore, we consider him as a first offender on the multiple convictions. We would hope that the staff could research that statement to determine whether it could be clarified in order for our courts to have better guidance that even though the offender stands before the court not being convicted but having two or more convictions at that time would not suffer the minimum penalty as set forth by statute.

Our organizations supported SB 125 in the Senate Judicial Committee hearing on February 14, 1991. That proposed legislation also calls for zero tolerance or no measurable alcohol in the offenders system for drivers under the age of 21 and those drivers who operate as commercial operators, including taxicab operators.

I might add at this time that other states are lowering their breath alcohol content to a .08. Those states in the past few years are Utah, Idaho, Oregon, Maine

and this past legislative session the State of California. We would hope that this committee would act favorably on HB 2353 in order to ensure the citizens of Kansas added safety on their streets and highways from the drinking driver.

Thank you.

Respectfully,

Gene Johnson
Legislative Lobbyist
Kansas Community Alcohol Safety Action Project Coordinators Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Alcohol and Drug Addiction Counselors Association

STATEMENT

by the

KANSAS MOTOR CARRIERS ASSOCIATION

- - - - - - - - - - -

Concerning House Bill No. 2353 relating to alcohol-related offenses involving motor vehicles.

- - - - - - - - - - -

Presented to the House Judiciary Committee, Rep. John Solbach, Chairman; Statehouse, Topeka, February 28, 1991.

- - - - - - - - - - -

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here today representing our 1,550 member-firms and the highway transportation industry to express our concerns with certain provisions of House Bill No. 2353.

KMCA strongly supports a unified effort by the federal government, the states and the industry to establish a commercial drivers' license system that assures that only qualified persons can obtain a commercial drivers' license, and that drivers who engage in unsafe driving practices can be identified through their license record and have their driving privilege suspended or revoked.

HJOD
Attachment #12
2-28-91

We have worked with the Legislature to assure that Kansas law is uniform with the federal regulations in 49 CFR Part 383 concerning the commercial drivers' license. Attached to our statement is a copy of the FEDERAL REGISTER, published November 6, 1989. The publication states:

> "On October 4, 1988, FHWA issued regulations whereby a commercial motor vehicle (CMV) driver found to have a blood alcohol concentration level of .04 or above shall be deemed to be DUI. States are required to adopt this standard for CMV operators, or face loss of highway funding. They also require commercial motor vehicle operators with any measured BAC to be placed out-of-service for a 24 hour period."

Federal law requires states to adopt the .04 standard prior to September 30, 1993. Current Kansas law meets those federal requirements. We ask that you maintain the .04 standard in current law to assure uniformity among states concerning commercial drivers' license requirements.

The penalties for operating a commercial motor vehicle (CMV) with a BAC of .04 or more are severe. A driver of a CMV, transporting any commodity, is suspended for one year upon the first conviction. If the commodity being transported is considered a "hazardous material," the suspension for the first conviction is three years. Any subsequent conviction will result in a life-time suspension from operating a CMV.

Thank you, Mr. Chairman and members of the Committee, for the opportunity to bring this matter to your attention. We will be pleased to respond to any questions.

# # # # #

duty. Crewmembers are prohibited from operating a vessel while intoxicated, drinking on duty or assuming duties within four hours of consuming alcohol. The rule covers U.S. vessels operating anywhere, foreign vessels operated in U.S. waters and individuals with an essential role in operating a vessel, but not when they are on shore. It provides for licensed personnel to seek voluntary rehabilitation prior to being subject to a suspension or revocation proceeding for intoxicant-related incompetence; allows Coast Guard officers to terminate the use of certain vessels when the operator appears to be under the influence of an intoxicant so that further operation creates an unsafe condition; and requires employers' reports on marine casualties to include specific information on the role of intoxicants in the accident.

The rule allows post-accident and reasonable cause testing for intoxicants by employers and State law enforcement officials. Where practicable, the marine employer's determination of reasonable cause should be based on observation of the individual's behavior and demeanor by two persons. Refusal by commercial mariners to submit to a test is presumptive of intoxication (if State law permits such a presumption; this is true for recreational boaters as well). Individuals determined to be intoxicated will have the opportunity during judicial or administrative hearings to dispute the charge.

In addition, the Coast Guard has instructed its casualty investigators to be closely attuned to the possibility of drug or alcohol involvement in marine casualties and is training investigators to look for and recognize alcohol or drug ties to accidents. The Coast Guard, in cooperation with the National Association of State Boating Law Administrators, and the National Transportation Safety Board (NTSB), has developed and distributed to the states a set of guidelines for states to use in developing state legislation addressing the drug and alcohol problem. Among other concerns, the guidelines address restrictions and prohibitions that should be considered, testing, evidentiary requirements, penalties, and education.

Independent of present regulations, the master of a vessel traditionally has had plenary disciplinary authority aboard his vessel. Even today, a master may, and often does, deal with alcohol-related problems by logging individuals who are intoxicated and docking their pay.

Upon completion of the voyage, a Coast Guard marine investigator reviews the ship's log. In addition to the shipboard punishment imposed by the master, the investigator normally will charge a mariner with misconduct for failure to perform due to intoxication, subjecting the mariner to a suspension and revocation proceeding before an Administrative Law Judge. Depending on the circumstances of the incident, the mariner may be given a letter of admonishment, a suspension under probation, or outright suspension or revocation of his license and/or document. The Administrative Law Judge also may direct the mariner to enter a rehabilitation program.

The Coast Guard also has internal procedures that address alcohol problems and drug use by its military employees.

b. *Federal Aviation Administration.* The Federal Aviation Administration (FAA) is charged with regulating air commerce. This includes programs governing safety, airspace and air traffic management, air navigation facilities, research, engineering, development, testing and evaluation of systems needed for a safe and efficient system, airport development and aircraft registration.

FAA alcohol regulations cover pilots, flight engineers, and other crewmembers. For example, they prohibit any pilot from acting or attempting to act as a crewmember if he or she is under the influence of alcohol, or has consumed any alcoholic beverage within 8 hours of reporting for duty. FAA regulations also prohibit a pilot from flying with a blood alcohol concentration (BAC) of .04 or higher. The FAA can suspend or revoke a certificate or assess penalties for failure to comply with its regulations.

The FAA requires pilots to have medical examinations (private and recreational pilots—once every 2 years; commercial pilots—once every year; airline transport pilots—once every 6 months). If a history of drug dependence, alcoholism, or mental problems is discovered, the FAA may disqualify the pilot. The FAA also uses a "driving while intoxicated" (DWI) or a "driving under the influence" (DUI) conviction as an indication of a possible alcohol or drug problem. The FAA recently issued a notice of proposed rulemaking designed to identify those pilots that are convicted of driving while intoxicated or driving under the influence and review their medical qualifications in light of such convictions.

Finally, the FAA requires crewmembers to submit to an alcohol test on request of a law enforcement officer who has a reasonable basis to believe that the crewmember may have violated state alcohol rules. The law enforcement officer must be authorized under State or local law to obtain such tests. State law and practices vary; only six states give explicit authority to obtain such tests.

It is also important to note the role of international conventions in this area. Annex 2 to the Convention on International Civil Aviation (the Chicago Convention), section 2.5, of which the United States is a contracting state, provides that no person shall pilot or act as a flight crewmember while impaired by an intoxicating liquor or narcotic drug.

c. *Federal Highway Administration.* The Federal Highway Administration (FHWA) is involved in a variety of areas such as financial assistance, highway construction and motor carrier safety. It has the authority to establish medical/physical qualification requirements for truck and bus drivers and has had regulations on this subject for over 30 years. Within the context of a comprehensive, nationwide revamping of testing, licensing and disqualification procedures for commercial motor vehicle (CMV) operators, the FHWA recently established stringent regulations defining driving under the influence of alcohol (DUI) for commercial drivers. However, enforcement of the DUI standard continues to be primarily the responsibility of the States in the motor carrier field.

FHWA regulations require that commercial drivers submit to a medical examination once every two years. A driver will not be considered physically qualified to drive a motor vehicle if, among other things, the driver is currently a practicing alcoholic.

FHWA regulations prohibit the use of alcoholic beverages within four hours of reporting to work, and prohibit a driver from working while having any measured BAC or any detected presence of alcohol in his or her system. These and related infractions carry a 24-hour out-of-service penalty.

The CDL regulations and the FMCSRs also require that a driver be disqualified for one year if the driver is convicted of a DUI offense at the .04 percent BAC level or greater, or for a drug offense. The offenses must have occurred while the driver was driving a CMV or a vehicle subject to the FMCSRs. Second offenses, or offenses involving the movement of hazardous materials, carry longer disqualification penalties, ranging from three years to life.

The Commercial Driver's License Information System (CDLIS), implemented under the Commercial Motor Vehicle Safety Act of 1986, will constitute a useful tool for identifying and removing from the road problem drinkers who drive CMVs. After March 31, 1992, every driver of a CMV nationwide will be required to hold a CDL from his or her state of domicile, issued according to FHWA standards. Since the CDLIS will be the nationwide clearinghouse for driving record information for all CDL holders, and since states must check with the CDLIS to yield important highway safety benefits in the alcohol area.

On October 4, 1988, FHWA issued regulations whereby a commercial motor vehicle (CMV) driver found to have a blood alcohol concentration level of .04 or above will be deemed to be DUI. States are required to adopt this standard for CMV operators, or face the loss of highway funding. They also require commercial motor vehicle operators with any measured BAC to be placed out-of-service for a 24 hour period.

The new DUI standard has not as yet been applied by the States. Under the statutory mandate that authorized the Department to set the DUI standard, Congress recognized that it would take some time for the States to implement the program. Therefore, States have until September 30, 1993 to adopt these standards. The States are rapidly enacting legislation to implement the entire CDL program, including its BAC provisions; over half the States had enacted the .04 percent BAC level for CMV drivers by late summer 1989. The FHWA program thus establishes a DUI standard for a CMV driver, and sets penalties, which are to be enforced by the States. Currently, alcohol testing is done by the States, but the new provisions mandate a lower and uniform BAC, as well as penalties.

d. *Federal Railroad Administration.* The Federal Railroad Administration (FRA) is involved in areas such as railroad safety, financial assistance, and national rail transportation policy. Since 1970, FRA has

12-3

February 28, 1991
House Bill 2353
House Judiciary Committee Hearing
Frances Wood, President
Capital City Women's Christian Temperance Union

Our organization in Kansas is over 100 years old. We have always worked for less suffering caused by drinking alcohol. This measure should help make our highways safer. We hope you will vote YES.

HJUD
Attachment #13
2-28-91

KANSAS DEPARTMENT OF REVENUE
*Division of Vehicles*
Robert B. Docking State Office Building
Topeka, Kansas 66626-0001

# MEMORANDUM

TO: The Honorable John M. Solbach, Chairman
House Committee on Judiciary

FROM: Mark Beshears
Secretary of Revenue

DATE: February 28, 1991

SUBJECT: H.B. 2353

The department supports all efforts to ensure that our highways are free of drivers who are under the influence of alcohol or drugs.

Our concern with House Bill 2353 is the additional work and expense needed to properly administer the law. Both the departments legal services and driver control bureaus are operating at capacity.

In calendar year 1990, approximately 25,000 chemical test refusals and failures and 16,000 DUI convictions and DUI diversions were processed in addition to approximately 50,000 other suspensions for lapses of insurance, failing to comply with traffic citation and other types of violations. Each suspension involves several steps from notice to suspensions to restrictions and eventual reinstatement. In addition, at least 50% of the drivers request time consuming administrative hearings. Many of the departments decisions are also appealed to the courts. This could result in the departments failure to meet federal alcohol guidelines which require an average of 45 days from arrest to driver license suspensions.

Due to the complexity of administering the DUI laws, the driver control bureau had to create a separate section consisting of eight personnel drawn from existing staff.

Over the past 10 years driver license suspensions have grown while during the same period staffing of the control bureau has been reduced by over 40 positions.

We do not oppose the concept of this bill but the department cannot absorb the additional impact without additional resources.

If we cannot effectively administer the law, there is, in fact, no law.



HJUD
Attachment #14
2-28-91

Before the House Judiciary Committee
Kansas Highway Patrol
Colonel Bert Cantwell
Represented by Captain Terry J. Scott

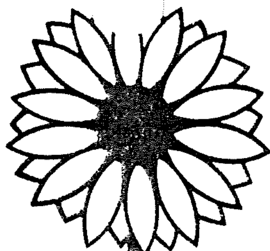
The Patrol is a professional law enforcement agency dedicated to providing for the safe, efficient movement of traffic on the highways of Kansas.

The Patrol supports adoption of proposed legislation reducing the alcohol concentration in a defendant's blood, urine, breath or other bodily substance from .10 to .08 to provide prima facie evidence of driving while under the influence.

It is a medically accepted fact that alcohol in a person's system adversely affects driving ability. It is a statistically supported fact that alcohol is involved in a disproportionate number of fatal accidents which occur in Kansas and in the U.S. each year.

For these reasons, the Patrol would ask favorable consideration of House Bill 2353.

HJUD
Attachment # 15
2-28-91



# Kansans for Highway Safety

FEBRUARY 27, 1991

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
REFERENCE HOUSE BILL NO. 2353
REDUCING THE LEGAL BLOOD/BREATH ALCOHOL LIMIT FOR DUI TO .08

Kansans for Highway Safety supports House Bill 2353. The reduction of the legal limit to .08 BAC will further decrease the alcohol related accidents in Kansas. During 1989 there were a total of 14,280 breath tests given in Kansas and approximately 770 individuals were administered breath tests that showed results of .08 or .09 BAC. During the first half of 1990 there were 8783 tests administered and 550 showed results of .08 or .09. This indicates that the increase in DUI cases would be at least 5.7% if the legal limit is reduced to .08 BAC. It should be noted that these 1320 drivers that tested .08 or .09 were tested by law enforcement personnel for a reason. That reason in nearly all cases was the belief that the person was under the influence under current law based on driving characteristics and physical coordination. There would undoubtedly be additional testing in this BAC range if the legal limit was lowered. It is our belief that this would not be substantially higher but possibly going as high as a ten percent increase. It should also be noted that during 1990 4.3% of the fatal accidents in which blood alcohol contents of the drivers were reported in Kansas a driver had a blood alcohol concentration of .08 or .09. Certainly this reflects a legitimate concern for the DUI problem in this area of BAC.

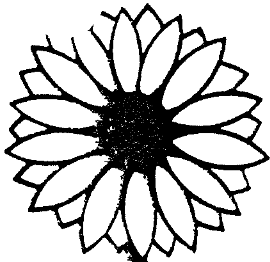
**One wording change that we would recommend is that all references to "greater than the legal limit" be changed to "equal to or greater than the legal limit." Current wording may not include those testing at .08 BAC.**

We also encourage consideration to assure that the Driver Control Bureau receive adequate funding to administer the increased case load resulting from these changes. The effects of these programs will be diminished without the efficient administrative handling of the cases.

It is our belief that the passage of this bill will further the cause of traffic safety and reduce the carnage on our highways, reaffirm the position of Kansans that drinking and driving will not be toerated on our highways, and provide another tool for our youth to beat the peer pressure of alcohol use. We strongly urge the committee to pass this bill favorably after consideration of our recommendations.

Ed Klumpp
4339 SE 21st
Topeka, Kansas 66607
Home:913-235-5619
Work:913-354-9450

HJUD
Attachment #16
2-28-91



# Kansans for Highway Safety

JANUARY 1990

## POSITION STATEMENT

Reference: Driving Under the Influence laws

REDUCE LEVEL OF PRESUMPTION TO .08 BAC.

Statistics show us that there is a real problem with drivers who have consumed alcohol but are at blood alcohol levels (BAC) below .10. At a national level, from 1985 to 1988 the percentage of drivers involved in fatal collisions with a BAC of .10 or higher has dropped 1.1 percentage points while the percentage of drivers involved in fatal collisions with a BAC of .01 through .09 has dropped only .2 of a percentage point. Yet these drivers with a BAC of .01 through .09 are involved in more than 20% of all alcohol related fatal crashes.[1]

While these are reflective of the national problem, Kansas is not exempt from this problem. Similar statistical data by BAC is not available for Kansas but over 25% of all drivers involved in fatal collisions in Kansas have been drinking and over 7% of all drivers involved in injury accidents have been drinking.[2]

During 1990, law enforcement officers in Kansas administered breath tests to nearly one thousand drivers who had a BAC of .08 or .09. These drivers apparently displayed signs of impairment, either in driving or in physical coordination, to a degree to warrant the officer to take the time to administer this testing.[3]

Although Kansas law allows for the prosecution of persons for DUI who are under .10, in practice this is rarely done. Most officers are reluctant to arrest and most prosecutors are reluctant to prosecute when a blood or breath test is below .10 BAC, regardless of other signs of impared driving.

Studies have shown that **a driver with a BAC of .08 is four times as likely to cause a fatal accident** as a non drinker.[4] Studies also show that at .08 BAC critical driving skills are adversly effected. For example, tracking of the vehicle upon the roadway, the ability to see details of objects in motion, comprehension of road hazards, response to emergencies,judgement of speed and distance, and driving accuracy of steering, braking, and speed control.[5]

[1]FATAL ACCIDENT REPORTING SYSTEM 1988, US Department of Transportation, pgs. 2-4 and 2-5.

[2]AGE, ALCOHOL and TRAFFIC ACCIDENTS, 1981 to 1988, Kansas Department of Transportation, pgs. 49 and 53.

[3]Based on information provided by the Kansas Department of Health and Environment, Breath testing unit.

[4]Alcohol and the Driver, JOURNAL of the AMERICAN MEDICAL ASSOCIATION, Jan. 24-31, 1986, Vol. 255, No. 4, pgs 522-527.

[5]ALCOHOL IMPAIRMENT AND ITS EFFECTS ON DRIVING, US Department of Transportation.

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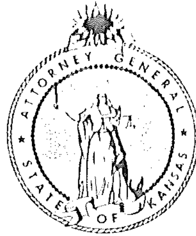

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the House Judiciary Committee
RE: House Bill 2353
February 28, 1991

Attorney General Robert T. Stephan has asked that I speak to you today about House Bill 2353.

In February 1988, Attorney General Stephan formed a 50-member Victims' Rights Task Force. The purpose of the task force was and still is to insure that the rights and needs of Kansas crime victims are not neglected. The Victims' Rights Task Force continues to look at the needs of crime victims.

The task force has taken a stand to support legislation which lowers the legal limit of blood alcohol level to .08 for drunk drivers. House Bill 2353 lowers the legal limit from .10 to .08.

National statistics show that approximately 22,000 people are killed and 345,000 injured in the United States each year due to drunk driving. In 1989, 4,443 accidents in Kansas were alcohol-related. A frightening number of Kansans are still drinking and driving.

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There have been many studies done to determine the extent which alcohol impairs the person who drives. The National Technical Information Service of Springfield, Virginia, did a study for the U.S. Department of Transportation. This study revealed that all persons to some extent are impaired at .08. In fact, some studies have shown an impact on driving ability after an alcohol concentration of .05.

We believe by passing House Bill 2353 you will be providing law enforcement another means to remove alcohol impaired drivers from our streets and highways.

On behalf of the Attorney General Stephan and his Victims' Rights Task Force, I strongly urge your support of House Bill 2353.

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Testimony in Support of

**House Bill No. 2383**

The Kansas County and District Attorneys Association requested House Bill No. 2383, and we are grateful to the House Judiciary Committee for introducing it and giving us the opportunity to be heard.

The bill simply amends the littering statute, K.S.A. 21-3722, by making a violation a class A misdemeanor, rather than the present unclassified misdemeanor. Such an amendment would allow a court to sentence the offender to up to one year in the county jail, and/or assess a fine of up to $2500, instead of the present maximum of $500.

The reason for requesting the bill is because of the increasing incidents of littering along roadways in rural areas and in vacant lots or undeveloped areas in urban areas. The result of such dumping is readily apparent to anyone who has observed it. What is not so apparent is that there are a few commercial trash haulers who are making a conscious business decision to dump in these areas rather than face the ever increasing regulations and expenses involved in use of landfills. Because of new regulations, which restrict the types of materials allowed in landfills, and the resulting costs to landfill operators which are passed on to trash hauling companies, we can only expect violations of this statute to increase. If certain materials, such as tires, are harmful to landfills, we certainly don't need them deposited along our roadways or vacant lots. By increasing the fine, and making it possible to actually put a truck driver in jail, we think such illegal practices will be discouraged.

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# Kansas Natural Resource Council

February 28, 1991

Testimony before the House Judiciary Committee

Re: HB2383 Concerning Littering

From: Shaun McGrath, Program Director

My name is Shaun McGrath, and I represent the Kansas Natural Resource Council, a private, non-profit, organization which advocates sustainable resource policies for the state. Our membership is over 850 statewide.

HB2383 would raise the penalty for littering from the current fine of $10-500 to a class A misdemeanor. The apparent goal of the bill is to reduce litter by placing a stiffer penalty on littering which would act as a stronger deterrent to littering.

KNRC supports the concept of creating disincentives to litter. We are concerned, though, that penalties alone are ineffective in meeting the goal of reducing litter, because it is so difficult to actually catch someone in the act of littering. A proven means of effectively reducing a very significant portion of litter, which is compatible to this bill, is the use of beverage container deposits.

A 1990 study by the U.S. General Accounting Office found that beverage containers account for between 40 and 60 percent of litter by volume. This inordinate share has resulted from the proliferation of convenient, "no-deposit, no-return", disposable beverage containers since 1960. According to a 1981 study conducted by the California Public Interest Group and Stanford Environmental Law School, beverage container litter increased 459 percent between 1966 and 1978.

Since 1972, nine states have enacted beverage container deposit laws (BCDL), mandating a minimum deposit of five cents on every container of soda, beer and mineral water. BCDLs have proven very effective in these nine states in reducing beverage container litter. The CalPIRG study found that in every case where there is a BCDL, beverage container litter was reduced 77-86 percent. Further, in every case, total litter volume was reduced by 35-45 percent. Similar rates of litter reduction are reported in the US GAO report.

KNRC supports passage of HB2383. We encourage the Committee to consider passing HB2383 in conjunction with HB2471, which would mandate a beverage container deposit in Kansas, or by amending language into HB2383 which would mandate beverage container deposits in Kansas.

H JUD

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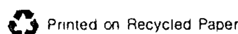


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