

Approved: May 4, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on February 15, 1991 in room 514-S of the Capitol.

All members were present except: Senators Yost, Moran, Gaines, Kerr, Martin and Rock, who were excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Frances Wood, Capital City Woman's Christian Temperance Union
Theresa L. Hodges, Kansas Department of Health and Environment
Ed Klump, Kansans for Highway Safety
John Smith, Kansas Department of Revenue
Tom Whitaker, Kansas Motor Carriers Association
Reverend Richard Taylor, Kansans for Life at its Best

Chairman Winter called the meeting to order by reopening the hearing continued from February 14, 1991 on SB 125.

SB 125 - lower blood alcohol levels for DUI convictions.

Frances Wood, Capital City Woman's Christian Temperance Union, testified in support of SB 125. (ATTACHMENT 1) Ms. Wood also presented the Committee a petition support passage of SB 125, signed by 70 individuals. (ATTACHMENT 2)

Theresa L. Hodges, Kansas Department of Health and Environment Health and Environmental Laboratory, testified in support of SB 125. (ATTACHMENT 3)

Ed Klump, Kansans for Highway Safety, testified in support of SB 125. (ATTACHMENT 4)

John Smith, Kansas Department of Revenue, testified in support of SB 125 and expressed concerns about additional administrative costs. (ATTACHMENT 5) Mr. Smith concluded his prepared remarks by expressing support for SB 124 that was heard on February 14, 1991.

SB 124 - suspension and restriction of driver's license on conviction of DUI or refusal to take blood alcohol test.

Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association, testified in support of DUI convictions but with concerns with the commercial drivers license portion of SB 125. (ATTACHMENT 6)

Reverend Richard Taylor, Kansans for Life at its Best, testified in support of SB 124 and SB 125. (ATTACHMENT 7)

Written testimony in support of SB 124 and SB 125 was submitted by Attorney General Robert T. Stephan. (ATTACHMENT 8)

This concluded the hearings for both SB 124 and SB 125.

The meeting was adjourned.

Date 15 February 1991

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company	Name/Company
Mary Davenport	Ks Motor Carriers Assn.
Tom Whitaker	Ks Motor Carriers Assn
LT. BILL JACOBS	KS HIGHWAY PATROL
Shera Hodges	Ks Dept. of Health & Environment
Nancy Lindberg	Office of A.H. Gron.
Michelle Gustin	John Peterson + Associates
Chris Canfield	Office of Traffic Safety
Max Sutherland	Mothers Vs Drunk Driving
Ed Kurpp	KANSAS FOR HIGHWAY SAFETY
John W. Smith	Div of Vehicles

Frances Wood, 4724 S. E. 37th, Topeka, Ks. 66605
President of Capital City Woman's Christian Temperance Union -

Speaking in favor of Senate Bill # 125

My Senator tells me she relies heavily on the feelings of her constituents. I have signatures of 70 people obtained from a limited source to present to you. Some of you will be receiving additional signatures from your district. They represent a number of individual voters who are all in favor of .08 maximum Blood Alcohol content for drivers in Kansas.

I also speak for the ninety-five members of the Capital City WCTU, some of whom have signed this petition. This, coupled with your own good reasoning, should make voting in favor of Senate Bill #125 compelling.

Senate Judiciary Committee
2-15-91
Attachment 1

A PETITION TO MEMBERS OF THE KANSAS LEGISLATURE

We, the undersigned, love Kansas and want less drinking and less gambling. Please vote NO on all measures that encourage drinking and gambling, such as Sunday carry-out beer sales, credit card sales in liquor stores, simulcast and casino gambling. Please vote for .08% maximum Blood Alcohol Content for drivers in Kansas.

NAME MAILING ADDRESS ZIP

Francis J. Wood	4724 S.E. 37 th	Topeka, Ks 66605
Nelda Sidesinger	5633 W18	Topeka Ks 66604
Vernon A. Dickson	700 SE 35	Topeka, Ks. 66605
Mary Lee Herman	2233 Sunnyside	Topeka, Ks. 66605
Fidelia G. Alanson	116 Country Club	Topeka, Ks 66611
Dawn Bartlett	3725 S. Long	Topeka, Ks 66609
Margaret Robinson	3041 Kentucky	Topeka, Ks. 66605
Ethene M. Durr	5313 S.W. 27 th Terr.	Topeka, KS 66614
Mary L. Hartman	2627 S.E. Pennsylvania	Topeka, Ks. 66605
Evelyn M. Cripp	1726 Meadow Lane	Topeka Ks 66604
Ray W. Cripp	1726 Meadow Lane	Top. Ks. 66604
Marjorie R. Hentzler	2700 Kansas Ave	Top Ks 66611
Jack Hentzler	2700 Kansas Ave.	Topeka, Ks. 66611
Edward R. Bush	7036 TOWA	Topeka, K 66607
Edson E. Wood	4724 SE 37	Topeka, Ks 66605
Daniel K. Caryl	2627 SW Western	Topeka Ks 66611
James K. Caryl	2527 SW Clay	Topeka Ks 66612
Dwaine M. Johnson	908 SW 32 nd	Topeka, Ks. 66611
Locher R. Johnson	908 SW 32 nd	Topeka Ks 66611
Alton Sieffert	3408 SW 34 th Ct	Topeka Ks 66619
Richard Swigg	4930 SE Paulen Rd	Berryton KS
Clifford W. Jurg	4930 S.E. Paulen Rd.	Berryton Ks.
Wayne Davis	7021 S.E. 61	Topeka Ks 66605
Elonna K. Kozja	3433 SE 36	Topeka Ks 66605
Paul H. Hartman	2627 Pennsylvania	Topeka Ks. 66605

Senate Judiciary Committee
2-15-91
attachment 2

Houn

A PETITION TO MEMBERS OF THE KANSAS LEGISLATURE

We, the undersigned, love Kansas and want less drinking and less gambling. Please vote NO on all measures that encourage drinking and gambling, such as Sunday carry-out beer sales, credit card sales in liquor stores, simulcast and casino gambling. Please vote for .08% maximum Blood Alcohol Content for drivers in Kansas.

NAME	MAILING ADDRESS	ZIP
John East	2312 S.E. Gemini	66605
Mac Hoover	3445 Burlington Rd #A	66611
Malini Burgess	RR1, Box 383, Perry, KS	66073
Jeanne Hurr	3215 Keystone, Topeka, KS	66605
John Hurr	3215 Keystone, Topeka, KS	66605
Terri Carlson	1212 SE 36 Terrace	66605
Chris Carlson	1212 SE 36 Terrace	66605
Diane Shumak	1705 SE Lott St.	66605
Norman Marcum	3890 SE FAIRMARROWS	66605
John W. Fisher	3010 Avenue J	66614

Anna Bayne	5977 SW 23rd TERR	66614
Martha Perkins	6018 NW 57th #8	66609
Russell Perkins	3200 SW Bristol RD #13	66614
Baile Scott	4221 SE Duffman	66542
Kathy Walker	5841 Candletree Dr #8	66614
Jayne Anger	5621 SW Glendale Ct	Topeka KS 66606
Neva Buttermore	1667 W. Orchard Rd.	Topeka, KS. 66606
Krista Symonds	1833 LAKE	TOPEKA, KS 66604
Wm. D. Humphreys	4834 S.E. 37th	TOPEKA, KS 66605
Diana M. Humphreys	3200 NW 54th St	Topeka KS 66617
Marlene Hoffmann	3009 W. Rochester	KS 66617
Robert & Racan	11316 SW 17th TERR	TOPEKA KS 66604
Betty Sue Fluke	1608 Burnett St.	66604
Ann Melcher	600 SW Terrace Ave	Topeka KS 66611

Donna and Larry Freel 5740 SW Wanamaker 66610

Fred & Marjorie Fisher 3634 S. Lincoln 66601

Milo and Leona Fulz - 4741 Paulen - Buxton, KS 66409

Janice Palmer 2520 SE Fulton Ct Topeka, Ks. 66605

John & Lois Brown 3340 70 Terrace Rd Topeka, Ks 66602

Helen Dahlgren 3200 Kismet Rd Topeka 66614

Calvin & Elaine Ott 937 Mill View Topeka 66606

Stella Huffing 3624 Louis Silver Lake Rd Topeka

Willard G. Duffey 3624 Louis Silver Lake Rd Topeka KS 66618

Susan Segalquist 808 SW 12th Topeka KS 66604

Karen Vaughn 2915 SW Lincoln Topeka, KS 66611

Janet Vaughn 2915 SW Lincoln Topeka, Ks. 66611

Herald L. Vaughn 2915 S.W. Lincoln Topeka Ks. 66611

Forest Bernkopf 2521 Sunset Rd Topeka KS 66614

Alvin E. Melcher 608 S.W. Terrace Ave Topeka, Ks 66611

Larry E. Ehsam 119 SW Buchanan Topeka, Ks 66606

Ernest Howard 1710 S. Quincy Topeka Kans 66612

Kemie J. Bacon 1112 High 66604

Gonie Vannallegam 5417 SW 24th 66614

Milo D. Fulz 4741 SE Paulen Rd Buxton 66409

Ernest Howard 1710 S. Quincy Topeka Kans. 66612



State of Kansas

Joan Finney, Governor

Department of Health and Environment
Kansas Health and Environmental Laboratory

Forbes Field, Bldg. 740, Topeka, KS 66620-0002

(913) 296-1620

FAX (913) 296-6247

Stanley C. Grant, Ph.D.,
Acting Secretary

Testimony presented to
Senate Judiciary Committee

by

The Kansas Department of Health and Environment

Senate Bill 125

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.

We also support the lowering of the alcohol level for commercial driver's license from 0.04 to 0.00. The adjudication of the 0.04 level presents several problems. A major problem is the officer's probable cause for arrest. To enforce the Commercial Driver's License (CDL) level, an officer will need to test any driver who has the odor of alcohol. He may not have observed any driving violations. To decide whether or not to arrest the driver, the officer may conduct field sobriety tests and utilize a preliminary breath test device. The field sobriety tests lack the acuteness to discern a 0.04 level; they are designed to indicate overt physical impairment. The results of the preliminary breath test device are not admissible in court. In court, it can be argued to suppress the evidence for lack of probable cause for the arrest. The officer really has no admissible evidence to support his belief that the driver was over 0.04. He does, however, have sufficient probable cause to support the fact there has been

Senate Judiciary Committee

Charles Konigsberg, Jr., M.D., M.P.H.,
Director of Health
(913) 296-1343

Ronald Hammerschmidt, Ph.D.,
Acting Director of Environment
(913) 296-1535

Lorne Phillips, Ph.D.,
Director of Information
Systems
(913) 296-1415

Roger Carlson, Ph.D.,
Director of the Kansas Health
and Environmental Laboratory
(913) 296-1619

2-15-91
Attachment 3

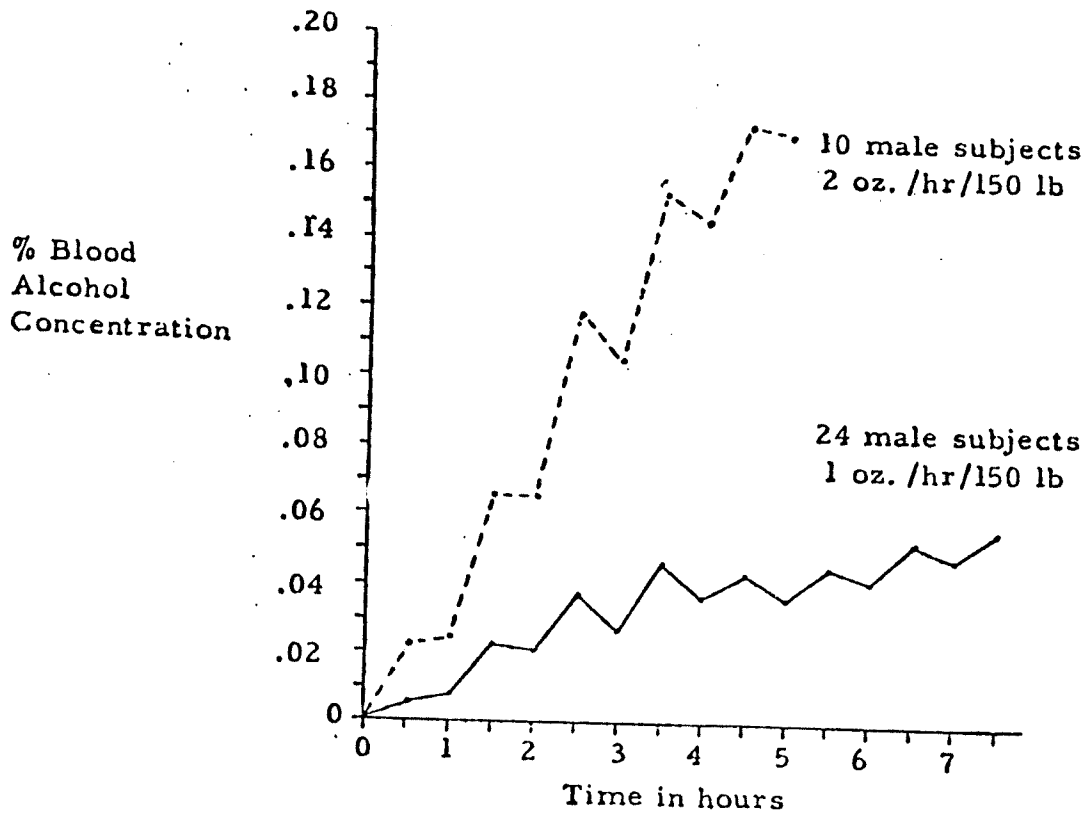
consumption of alcohol. If the intent of the 0.04 is to not allow persons with commercial driver's licenses to drink and drive, we feel 0.00 is appropriate.

There is one change to SB125 that we would offer. Throughout the statutes where reference is made to "greater than the legal limit," we suggest that it read "equal to or greater than the legal limit." However, in the case of 0.00 we might be better leaving it simply "greater than." We would hope that most drivers operate with a blood level equal to 0.00 most of the time.

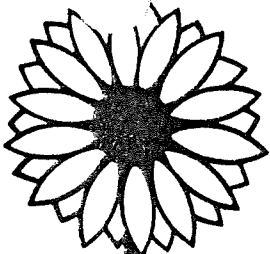
Testimony presented by: Theresa L. Hodges, M.A.,M(ASCP)
Senior Public Health Laboratory Scientist
Kansas Health and Environmental Laboratory
February 14, 1991

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.)



Kansans for Highway Safety

FEBRUARY 14, 1991

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
REFERENCE SENATE BILL NO. 125

Kansans for Highway Safety supports Senate Bill 125. 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 1989 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.

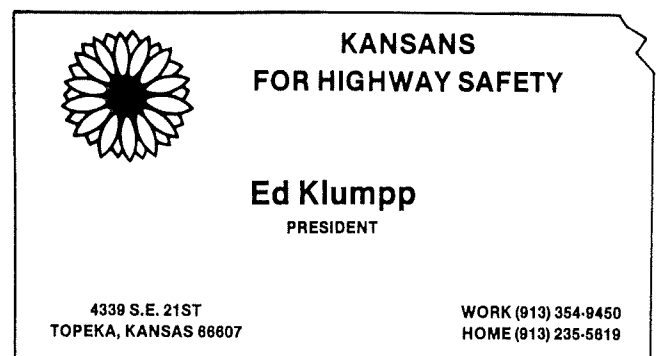
We also support the zero tolerance legal limit for commercial vehicle operators, taxicab drivers and drivers under the age of 21. Operators of large vehicles and vehicles carrying potentially hazard loads certainly should be as physically alert and unimpaired as possible. There should be no alcohol use by these drivers who are operating vehicles with the size, weight and load types that carry with them the high potential of catastrophic accidents if there is any impairment of judgement or reaction abilities. Likewise, the operators of any vehicle transporting passengers for hire should be expected to be at the highest possible level of alertness and reaction capabilities. Fare paying passengers should not be unsuspectingly subjected to anything less. Currently taxi operators are not included in any of the provisions of the Commercial Drivers License laws and the related more restrictive legal limits of blood

alcohol. However, **we believe that this should be expanded to include any person operating any vehicle used to transport passengers for hire.** This could be easily accomplished by changing the term "passenger car" on page 12 line 7 to "motor vehicle." We feel that the current wording of the bill may not cover vehicles such as the shuttle vans driven between hotels and airports, or driven from Topeka and Manhattan to KCI. And of course this bill would further discourage the drivers under 21 years of age from any alcohol consumption particularly while operating a motor vehicle. Our youth under the age of 21 can not legally purchase, possess or consume alcohol and this change in the legal limit would further emphasize the importance of that law. Most importantly, the zero tolerance takes away the miscalculation that some drivers allegedly make in how much they can drink and still be under the legal limit. Under the proposal in this bill it will be clear that no alcohol consumption will be tolerated by these drivers.

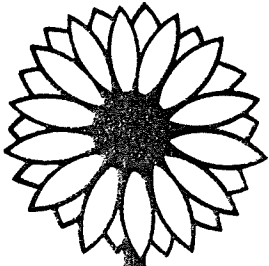
One wording change that we would recommend is that all references to "greater than the legal limit" be changed to "equal to or greater than the legal limit." Current wording may not include those testing at .10 BAC.

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.

The passage of this bill will further the cause of traffic safety by reducing the carnage on our highways of innocent motorists, assist those with alcohol dependency problems recognize and treat that dependency, 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.



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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 impaired 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 adversely 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

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

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

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

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

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



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Wint Winter, Chairman
Senate Committee on Judiciary

From: Mark Beshears
Secretary of Revenue

Date: February 14, 1991

Subject: S.B. 125

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 Senate Bill 125 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 suspension to restrictions and eventual reinstatement.

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.

General Information (913) 296-3909
Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381
Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081
Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077

Senate Judiciary Committee
2-15-91
Attachment 5

STATEMENT

by the

KANSAS MOTOR CARRIERS ASSOCIATION

- - - - -

Concerning Senate Bill No. 125 relating to alcohol-related offenses involving motor vehicles.

- - - - -

Presented to the Senate Judiciary Committee, Senator Wint Winter Jr., Chairman; Statehouse, Topeka, February 14, 1991.

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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 Senate Bill No. 125.

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.

Senate Judiciary Committee
2-15-91
Attachment 6

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 the requirements of the federal government. We ask that you amend Senate Bill No. 125 to reflect the federal mandate of a blood alcohol concentration (BAC) of .04 or more and maintain uniformity between states concerning commercial drivers' license requirements.

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.

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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 8 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

February 15, 1991
SB 124, 125
Senate Judiciary Committee Hearing

Reverend Richard Taylor
KANSANS FOR LIFE AT ITS BEST

We strongly support both measures. Since I am now an old man, may you grant me the freedom to do a bit of remembering.

On October 3, 1971 a car load of Kansas State students was hit head on in Trego County as they returned from a Colorado football game. Five died. Warren Hardin of Wakeeney lost his son Greg and Greg's bride to be, Linda Henry of Big Springs, along with three other friends. The drunk also died.

The crusade of Warren Hardin began. During the 1972 session we worked to pass legislation to reduce the tragedy caused by the drinking driver. In the House gallery, I remember the debate. One member acknowledged that after the third DUI, the state ought to start getting tough.

Then Senator Bennett wrote a letter to Mr. Hardin and said the death of his son could no more be blamed on alcohol than on the automobile. Year after year we tried, but no success.

Then during the 1982 session, Senator Jan Meyers introduced SB 699. We supported her in every way with petitions and letters and personal testimony.

Before SB 699, Kansas and other states prohibited driving under the influence of alcoholic liquors or intoxicating liquors or alcoholic beverages. When introduced, SB 699 prohibited driving under the influence of intoxicating liquor. I pointed out this implies cereal malt beverages are safe and asked that intoxicating liquor be changed to alcohol so persons who drink 3.2 beer to make them feel good could not claim the law does not apply to them. Because no person will admit to being drunk or intoxicated, this new law never talks about driving while intoxicated. Driving under the influence of alcohol is a crime. Drivers need not be drunk or intoxicated to be convicted. DWI, driving while intoxicated became DUI, driving under the influence. I have the pen that Governor Carlin used to sign SB 699.

Yesterday Senator Morris asked a good question. How can we keep them from driving with a suspended license? Maybe we should put restrictions, not on their license, but on their car by impounding it for 90 days.

Some will say that would place a severe hardship on the family. But somehow we must make punishment so sure, swift, and severe that persons will choose to drink less or not drink before driving. We are concerned for prevention, not punishment.

My first experience with Alcoholics Anonymous was as a Salina pastor when I took my AA member to the home of a drunk who called me for help. The drunk in the course of the evening cried and slobbered out the words that he was going to commit suicide. My AA friend without hesitation said, "You aren't men enough to take your own life, you don't have the guts to kill yourself." I cringed!

When leaving the house, my first question was how could he be so lacking in sympathy and mercy. SO LONG AS YOU HAVE MERCY AND SYMPATHY FOR A DRUNK, YOU KEEP HIM DRUNK, was the immediate response.

As long as we have mercy and sympathy for drinking drivers, we will keep them on the road.

Senate Judiciary Committee
2-15-91
Attachment 7

Yesterday there was some discussion on why .08? Why not some other amount? During the 1989 session, we worked hard for .05% that was supported by four full pages of research from the Journal of the American Medical Association.

We had 50 House members supporting the measure but the leadership would not bring it to a vote because so many members did not want a NO vote on their record. This committee also rejected .05 that year.

The Scandanavian nations have been at .05% for some 40 years. .08 is a good step in the right direction. Take a bigger step in the right direction and make it .05%. According to the charts, a 160 pound person could consume 4 drinks in one hour and be legal at .08%. That same person could consume 2½ drinks in one hour and be legal at .05%. Isn't that enough?

For 20 years I have told people that what I try to do in the Statehouse ought to get done without me being here. After 20 years, what joy is mine as yesterday and today all these wonderful and dedicated persons and groups are supporting measures to encourage persons to drink less before driving.

My desire seems to be fulfilled. You will get the job done without me being here.

NETWORK NEWSNOTES from the NATIONAL COMMISSION AGAINST DRUNK DRIVING came in the mail last Saturday. Board members of NCADD include leaders in business and industry plus persons who produce and sell beer, wine, and spirits. This latest word calls upon all states to make .08% BAC the per se law. On Monday I hand delivered the attached letter to Governor Hayden. Monday morning I asked Senator Francisco if he would present an amendment to SB 803 making Kansas the sixth state to pass .08% BAC.

Because I respect all lawmakers, even those who always vote to help the beer lobbyist, I asked all Senators to encourage drivers to drink less before driving by supporting .08% BAC. The beer lobbyist was immediately informed of our effort by some Senators. He went to work with great zeal to kill .08% BAC. Selling beer is more important than saving lives.

At 3.45 p.m. Monday on the Senate floor, the amendment for .08% failed by a vote of 17 to 16. Three Senators who strongly supported .05% last year and would have voted for .08% this year failed to do so. One was out of town, one was on the telephone, and one was off the floor.

During Senate debate, the same old worn out 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 one hour 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 one hour 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 reduce 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.

WE OUGHT TO DO THIS NEXT SESSION AND NOT START CHANGING LAWS ON THE LAST DAYS OF THIS SESSION.
If during the next year one death is prevented, if Kansas has one less auto crash causing injury to many persons, the few moments taken now to vote on .08% is worth it.

WHEN THE TIME COMES THAT WE WOULD LOSE FEDERAL FUNDS, THEN WE SHOULD GO TO .08%.
Death and injury on our highways should be our motive for passing .08%, not the loss of federal funds.

Respectfully yours,

Reverend Richard Taylor

7-3/3



STATE OF KANSAS

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February 14, 1991

Senator Wint Winter, Jr.
Chairperson, Senate Judiciary Committee
State Capitol, Room 120-S
Topeka, Kansas 66612

RE: Senate Bills 125 and 124

Dear Senator Winter:

My Victims' Rights Task Force has taken a stand to support legislation which lowers the legal limit of blood alcohol level to .08 for drunk drivers. Senate Bill 125 lowers the legal limit from .10 to .08.

National statistics show that 22,000 people are killed and 345,000 injured in the United States each year due to drunk driving. In 1989, 4,443 of all accidents in Kansas were alcohol related. A frightening number of Kansans are still drinking and driving. We believe that in passing Senate Bill 125, you will be providing law enforcement another means to remove drunk drivers from our streets and highways.

It is imperative that we enhance sanctions against those who drive while under the influence. Senate Bill 124 would allow stiffer penalties to the first time offender. This is necessary so the message is clear that driving drunk is a crime that will not be tolerated.

Thank you for your consideration. I ask you to support Senate Bills 125 and 124.

Very truly yours,

Robert T. Stephan
Attorney General

Senate Judiciary Committee

2-15-91

Attachment 8