Approved: February 28, 1992
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 January 29, 1992 in room 514-S of the Capitol.

All members were present except:
Senator Gaines who was 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:
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association,
Kansas Association of Alcohol and Drug Program Directors and
Kansas Alcohol and Drug Addition Counselors Association
Rosalie Thornburg, Kansas Highway Traffic Safety Administrator, Kansas Department of Transportation
Captain Terry Scott, Kansas Highway Patrol
Ed Klump, Kansans for Highway Safety
Bruce Beal, Kansas Community Alcohol Safety Action Program
Stacy Hoogstraten, Mothers Against Drunk Driving
John Smith, Vehicle Administrator for the Kansas Department of Revenue
Reverend Richard Taylor, Kansans for Life at Its Best

Chairman Winter called the meeting to order by opening the hearings for:

SB 124 - suspension and restriction of driver's license on conviction of DUI or refusal to take blood alcohol test.
SB 125 - lower blood alcohol levels for DUI convictions.
HB 2353 - blood alcohol content lowered to .08 for DUI.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association, Kansas Association of Alcohol and Drug Program Directors and the Kansas Alcohol and Drug Addition Counselors Association, testified in support of parts of the bills, especially to lowering DUI convictions to .08. (ATTACHMENTs 1 and 2) He concluded that they would be supportive of SB 195 which passed the full Senate and is currently in the House Judiciary Committee. He opposed the .05 proposal in HB 2353 and favored the Senate version of .08 presumption.

Rosalie Thornburg, Kansas Highway Traffic Safety Administrator, Kansas Department of Transportation, reviewed the current Kansas status in relationship with federal programs and monies presented their understanding of the recently passed federal highway program. She noted that there is work remaining to be done at the federal level to clarify definitions and compliance requirements. (ATTACHMENT 3)

Captain Terry Scott, Kansas Highway Patrol, spoke on behalf of Colonel Cantwell in support of the Senate version of .08. He added their support for retaining the .04 alcohol level for commercial drivers, maintaining a national uniform compliance.

Ed Klump, Kansans for Highway Safety, testified in support of reducing the per se legal blood/breath alcohol limit for DUI to .08. (ATTACHMENT 4)

Bruce Beal, Kansas Community Alcohol Safety Action Program, testified in support of lowering per se DUI limits to .08 and agreed with the previous statements of conferees.

Stacy Hoogstraten, Mothers Against Drunk Driving, testified in support of lowering the tolerances for DUI convictions, particularly of lowering .10 to .08. (ATTACHMENT 5)

John Smith, Vehicle Administrator for the Kansas Department of Revenue, stated drivers license suspensions on DUIs is not automatic, those convictions have a right to request a hearing on the matter within ten days. His department has difficulties in enforcing those suspensions due to a lack of hearing officers.

Chairman Winter request Mr. Smith to prepare a memorandum addressed to the Committee stating their problems in complying with the hearing requirements, what they would need to comply with aa 30-day requirement, and

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:05 a.m. on January 29, 1992.

specifying the current level of personnel and how they are utilized. He further requested Mr. Smith present a memorandum addressed to the costs associated with a .00 blood alcohol drivers license suspension for those under 21 years of age.

Reverend Richard Taylor, Kansans for Life at Its Best, noted his concurrence with testimony supporting lowering DUI convictions to .08.

Written testimony was received by the Committee from Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association, in opposition to lowering the blood alcohol content for commercial vehicle drivers from .04 to .00. (ATTACHMENT 6)

The meeting was adjourned at 11:14 a.m.

Date Jan 29, 1992

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company	Name/Company
Stacy Hoogstraten, MADD	
Sarpie Hartman KBA	
Richard Wagstaff	KTCA
Neal Whitaker	KBWA
Jim Clark - KCDAA	
George Puckett - KRHA	
Marty Kennedy DOB	
Perry Scott	Highway Patrol
Gene Johnson	KS Comm on J.J. & P. Conf
Ed Kuppe	Kansans for Highway Safety
Shelly Smith	KDOR
Rosalie Stanley	KDOT
Nancy Boyda	KDOT
Brad Beale	DCCCA Center
Jim Wagnet	KTKA-TV - Ch. 49
R Frey	K.T.L.A. Topeka
Whitney B. Damron	Pete McGill & Associates
Jeff DeGraffenreid	
Ron Miller	SRS/ADAS
Sydney Hardman	KS Action for Children
Linda Bartlett	CWA of KS
Dick Taylor	Life at the Best
John Selbach	Legislature
Helen Stephens	KPOA
M. Haver	Topeka Cap-Journal
Michelle Lester	KGC
TUCK DUNCAN	KWSWA

TO: Senate Judiciary Committee
RE: SB 124, 125, 195 & HB 2353
DATE: January 29, 1992 - 10:00 a.m.

Mr. Chairman and Members of the Committee:

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

We are here today to make some comments on some pending DUI legislation in this particular committee and in the House Judiciary Committee. We had asked this Committee to introduce SB 124 and 125 last session. Both of those issues did not move out after Committee hearings. We would like to make some suggestions concerning those two particular bills and other matters are which are important to the traffic safety in the State of Kansas.

In SB 124 we have come to believe that it will be impossible to get a 90-day Administrative Suspension for the first time offenders of our DUI laws. However, we would support amending the language on page 4 line 42 to "whenever the Division is notified by the Alcohol and Drug Safety Action Program that conducted the evaluation as provided for at KSA8-1008, that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a Court, for conviction of violation of KSA8-1567 and the amendments thereto, that the Division shall suspend the person's driving privileges until the Division receives notice of the person's completion of such program."

At the present time it the Alcohol Safety Action Projects and the Courts responsibility to report to the Division of Motor Vehicles a satisfactory completion of an alcohol/drug safety action education or a treatment program ordered by the Court. This means for everyone who completes, a form must be sent to the Division acknowledging successful completion of that education or treatment program.

Senate Judiciary Committee
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Attachment 1

Only sending notification to the Division of those who failed to complete the program would reduce the amount of paperwork involved both by the local Courts and the Alcohol Safety Action Projects and the Division, by approximately 75%.

Regarding Senate Bill #125 our organizations are very strongly in support of reducing the legal limit to operate a motor vehicle in the State of Kansas from .10 to .08. Look at the reduction in the alcohol related fatalities in our State since 1982. In 1982 there was 177 fatalities resulting from alcohol related accidents. In 1990 there were 127 fatalities from alcohol related accidents. This is a reduction in eight years of 50 lives per year, due to the stricter DUI laws which this legislature in their wisdom initiated in the legislative session of 1982.

By lowering the .10 legal limit to .08, we are sending a message to those people who operate a motor vehicle after drinking, that Kansas still is concerned about the safety of their citizens. Keeping in mind that lowering of this legal limit to .08 probably would mean less than 2 drinks over a four hour period for the average size individual. We do not think that that's too much to ask of those people who consume alcoholic beverages for their own enjoyment, in regards to their own safety and the safety of the citizens in Kansas who drive our roads and highways.

We have also suggested in SB 125 that there would be zero tolerance for those people under age 21, and anybody with a measurable level of alcohol in their system, could be charged with DUI. We realize that even though our legal limit at the present time is .10 that those individuals who have less than .10 can be found guilty of DUI upon the showing of other competent evidence to the Courts.

Keeping this in mind, we suggest to this Committee that those people who are under age 21, for whom it is illegal to have or consume alcoholic beverages, that the Division of Motor Vehicles be notified and their driving privileges be suspended for a minimum of one year or until they would reach the legal age of consumption or possession. For those young adults this would serve as a warning that it is not socially acceptable to operate a

motor vehicle after consuming intoxicating beverages. Taking their license for a period of one year without any formal charges being brought against them, may save them some DUI problems in the future.

Our remarks on HB 2353 have not changed too much since last year when we appeared before this Committee on March 27, 1991. We, at that point, suggested we were much more in favor of SB 195 which had cleared this committee and the full Kansas Senate. The floor amendments which occurred in the House on March 13, did nothing but create a new crime on page 16, starting with line 8 under New Section 7. We are really concerned about the driving while impaired. This would totally undermine our current DUI laws and create the probability of plea bargaining to a lesser and included offense. There is no drivers license sanctions and no enhancement provisions. There are no jail times imposed so there is little or nothing to hold over the offender's head to complete an alcohol and drug program as suggested by the Court. If he pays the maximum fines as set forth by the Statute, which is $200, there is nothing the Court can force him to do.

We feel there are much better ways to promote public safety on the highways then to create another crime which would totally devastate our DUI laws.

Thank you for your time and I will attempt to answer any questions.

Respectfully,

Gene Johnson

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

D.U.I. Related Bills
Introducced in 1991 legislature

Bill No.	Committee Assignment	Hearing Date	Bill Summary	Action	Current Status
SB 124	Senate Judiciary	2-14-91	Increases administrative suspension of driving priviledges for chemical test failure in excess of legal limit from 30 days to 90 days. Changes method of reporting alcohol education or treatment from those who have completed treatment to those offenders who haven't completed treatment to the Driver Control Bureau.	none	Senate Judiciary
SB 125	Senate Judiciary	2-14-91	Lowers BAC to .08 per se from .10 per se. Lowers BAC to .00 on persons driving commercial motor vehicles including taxi cabs. Lowers BAC to .00 on all persons under the age of 21. Authorizes the Secretary of Revenue to suspend the commercial driver's license of those individuals who fail the test or refuse to take the test after receiving sworn statement of the law enforcement officer.	none	Senate Judiciary

Att 2 -

Senate Judiciary Com
January 29, 1992
Attachment 2

D.U.I. Related Bills
Introduced in 1991 Legislature

Bill No.	Committee Assignment	Hearing Date	Bill Summary	Action	Current Status
SB 195	Senate Judiciary	2-14-91 (?)	Authorizes the Secretary of Revenue to suspend the commercial driver's license of those individuals who fail the test or refuse to take the test after receiving sworn statement of the law enforcement officer. Lowers BAC to .08 per se from .10 per se. Authorizes .04 presumptive level for commercial operators.	Struck .08 per se Authorizes .08 as prima facie Struck .04 presumptive level for commercial operators.	House Judiciary
HB 2353	House Judiciary	2-27-91	Established legal limit at .08 per se. Commercial operators at .04 per se. Authorizes the Secretary of Revenue to suspend the commercial driver's license of those individuals who fail the test or refuse to take the test after receiving the sworn statement of the law enforcement officer.	Struck .08 as per se Struck .08 as prima facia Returned to .10 as per se and prima facia Struck .04 as per se for Commercial operators Establishes new crime of driving while impaired BAC of .05 or greater but less than .10.	Senate Judiciary

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Kansas Department of Transportation
January 29, 1992

SECTION 410 ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES:

The Anti-Drug Abuse Act of 1988 created the program, which was re-authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, but because of its strict criteria no state could qualify for it. New Mexico and Indiana just recently qualified as the first in the nation.

Availability of Funds

Five year program with funding FY 92 - FY 97.

Basic Grant Eligibility:

A state is eligible if four of five following criteria is met:

l) Prompt license suspension: requires administrative revocation of drivers license and the arrest to suspension time of an average of 30 days. Establishes suspension periods.
**2) Per Se law: requires .10 BAC first three years of program, 08 BAC by the 4th year of the grant program
**3) Roadside sobriety checks - statewide program
4) Self-sustaining drunk driving prevention program - requires significant portion of fines/surcharges (or equiv. amt.) collected from those apprehended and convicted be returned to communities with comprehensive programs
**5) Underage 21 prevention program: requires "effective system" for prevention of purchasing by under 21, e.g. distinguishable licenses

**indicates current eligibility.

Amount of Basic Grant:

65% of the amount of funds apportioned to such state in such fiscal under this section.
Estimated annual amount $228,000.

Supplemental Grant:

1) Per se law for under 21: requires .02 BAC for persons under age 21
**2) Open container law
3) Suspension of registration and return of license plates: requires susp of regis. and plates, applies to repeat offenders in addition to driving on susp or revoked license
**4) Mandatory blood alcohol testing programs
5) Drugged driving prevention: requires DUI laws to apply to controlled substances, plus enhances penalties beyond for both on 3rd or subsequent offenses. Provides for effective system, including prosecution, training, and rehab and treatment.
6) Per se law: .08 BAC first three years of program
7) Video equipment for detection of drunk and drugged drivers: state provides a program to acquire equipment for detection and prosecution with training.

**indicates current eligibility.

Senate Judiciary Committee
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Attachment 3

Amount of Supplemental Grant:

Each supplemental grant criteria provides 5% of the amount apportioned to the state in the fiscal year under this section.
Estimated annual amount based on two qualifying criteria $35,200.

Total Estimated Annual Amount $264,000.

Reapportionment of Noneligible State Funds:

The amount(s) not apportioned to a state(s) because of non-eligibility shall be reapportioned to the other states eligible to receive a grant. This shall be made on the first day of the succeeding fiscal year.

NOTE: The estimated grant amounts were derived from the allocation formula received from the National Highway Traffic Safety Administration (NHTSA) Headquarters as of this date. This formula has not been officially approved.

Kansans for Highway Safety

January 29, 1992

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

REFERENCE REDUCING THE LEGAL BLOOD/BREATH ALCOHOL LIMIT FOR DUI TO .08 AND ZERO TOLERANCE FOR DRIVERS UNDER THE AGE OF 21.

Kansans for Highway Safety supports reducing the per se legal blood/breath alcohol limit for DUI to .08. We believe that this reduction to the .08 level will save many lives by reducing the alcohol related collisions on Kansas highways. We also firmly feel that this should be a per se limit, the same as the current .10 law. Establishing two types of alcohol limits (.10 per se and .08 presumptive) would only serve to create confusion and will not increase the deterrent effect of this law.

There is an enormous amount of study documentation that conclude that nearly all drivers would be impaired at the .08 level. During the last two years about 5.5% of all breath tests given by law enforcement officers in the state resulted in tests of .08 or .09.[1] Many prosecutors refuse to prosecute under the provisions of the current law when the test shows less than .10 regardless of the effects of the alcohol on the driver. These driver's are escaping prosecution in most cases even though the impairment was obvious enough that the officer felt they were over the .10 limit of current law. During 1990 4.3% of the fatal accidents in Kansas involved at least one driver with a blood alcohol level of .08 or .09.[2] These statistics reflect a legitimate concern for enforcement in this BAC range.

The key to rehabilitating any person with an alcohol dependency is to force the person to see the reality of the dependency. This lower BAC may allow that to take place at an earlier phase of the dependency which should yield a higher rehabilitation success rate.

We also support some form of zero BAC tolerance for those drivers under the age of 21 who are not allowed to legally consume alcohol. Attaching the DUI stigma on a young persons driving record for lower BAC levels may not be the best approach. However, administrative action against these drivers would produce a reduction in the number of young drinking drivers. If an administrative action suspending the license can be accomplished without charging the under 21 driver with DUI in these cases it might be a sound approach.

It is our belief that the passage of a bill with these provisions will result in the reduction of needless deaths and injuries suffered on our state highways at the hands of the drinking driver. In a recent survey our members overwhelmingly placed lowering the BAC level for DUI as one of their highest priorities for passage.

Ed Klumpp
4339 SE 21st St.
Topeka, Kansas 66607
Home:(913)235-5619
Work:(913)354-9227

1 From statistics provided by the Kansas Department of Health and Environment, Breath alcohol unit. Includes breath testing results from Jan 1989 to July 1991.

2 Data provided by Kansas Department of Transportation. 1991 statistics were not available.

Senate Judiciary Committee
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Attachment 4

.08 Per Se

Mr. Chairman, members of the committee, thank you for this opportunity to speak on a subject of vital concern to everyone interested in traffic safety.

Here in Kansas nearly 200 individuals lose their lives each year because of drinking and driving. Since 1980, we have all become more aware of this horrendous waste. Progress has been made in combatting DUI crime; however, in spite of the passage of dozens of new laws, DUI still takes a terrible toll in Kansas and across the country every year.

One aspect of the continuing problem has to do with our definition of drunk driving. In such countries as Sweden, Norway and parts of Australia, the law recognizes the fact that drinking drivers become dangerously impaired at blood alcohol levels as low as .05. In countries such as Canada and GReat Britain, the limit is set at .08 BAC. But here in America, most states with a BAC limit set it at .10, a concentration at which one is six to seven times more likely to be in a crash than when sober. Only eight states so far have acknowledged the increased risk by reducing their BAC limit to .08.

Most states long ago recognized that an objective measure of alcohol in the body is a more accurate indicator of alcohol impairment than observable behavior. Many times, drivers with a BAC level approaching .15 or higher would not be caught based solely on their behavior.

Nevertheless, reliable research has confirmed that almost everyone will experience impairment of vital driving skills at BAC levels as low as .05. For many, especially younger drivers, impairment may begin at even lower levels. By the time a person reaches a BACof .08, virtually everyone experiences dangerous driving skill impairment, even those who are experienced or habitual drinkers.

Reducing the illegal intoxication limit to .08 will also put Kansas law in line with the best scientifically proven evidence concerning impaired driving skills and will aid in detecting and convicting drivers who drink and then endanger themselves and others by driving.

Here in Kansas, we need to lower the recognized illegal intoxication limit to .08, not because the federal government will give us money, but because it will save lives.

Lowering the limit from the current level of .10 to .08 would set a boundary ata level at which driving skills are proven to be compromised for the vast majority of drivers. It is a limit which is reasonable and necessary for the driving safety of us all.

Thank you

Stacy Hoogstraten
President
MADD, Kansas Capital Chapter
Topeka, Kansas

Senate Judiciary Committee
January 29, 1992
Attachment 5

# of Agencies Reporting By Quarter	Number of Certified Operators	Number Tested	Number of Operators Testing	Number Attempted	Number Refusals	Number Per Number Per Operator
175 1st. qtr.	1824	4118	776	115	550	5.3
164 2nd. qtr.	1991	4665	939	123	349	5.0
210 3rd. qtr.	2220	4716	1052	124	555	4.5
215 4th. qtr.	2130	4440	982	172	707	4.5
Total		17939		534	2161	

Total Number Tested	17939
Total Attempted	534
Total Refusals	2161
Total	20634

SUBJECTS - PERCENT BLOOD ALCOHOL
1990 TOTALS

Reason for Administration of Test	.00 .04	.05 .07	.08 .09	.10 .14	.15 .19	.20 .24	.25 .29	.30
Accident	63	48	81	465	519	322	101	38
Fatalities	3	1	1	3	2	3	0	0
Erratic Driving	262	237	603	3382	3523	1593	409	101
Miscellaneous	427	229	349	1890	1851	978	338	87
1990 Totals	755	515	1034	5740	5895	2896	848	226
Percentages	4.2	2.9	5.8	32.0	32.9	16.1	4.7	1.3

.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.

MADD

5-6/13

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.

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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.

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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,

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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.)

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.08 Per Se

In Rapid City, South Dakota, a young resident was engaged to be married when he was struck by a car whose driver had been drinking, but whose blood alcohol test was below the legal intoxication limit.

Even though Ricky was hospitalized five months and in a coma more than a month, no charges were filed. Because of this paralysis, he will live in a nursing home for the rest of his life.

Arlene Feuerback had just celebrated her 4Oth wedding anniversary in August, 1987, reflecting on her years of happiness. She had recently been named one of five "Master Homemakers" in Iowa. She was a hospital volunteer, a leader in her church, an active Farm Bureau woman, and coordinator of a food pantry for the needy.

As she rode her bicycle along the highway she was hit and killed by an offender who fell asleep at the wheel. Because his blood alcohol level tested at .053, he was charged only with reckless driving and fined $30 plus court costs.

A study was made of 388 drunk driving cases dropped by the State Attorney's office in West Palm Beach. Florida revealed that 75 (19%) were dropped because of blood alcohol levels of less than .10. Officers say they continue to file charges against offenders who register below .10 because they fear the offenders will have fatal crashes if let go.

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.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

Consultants

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UNC Highway Safety Research Center
CTP. 197A
Chapel Hill, NC 27514

John V. Moulden, Advisory
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

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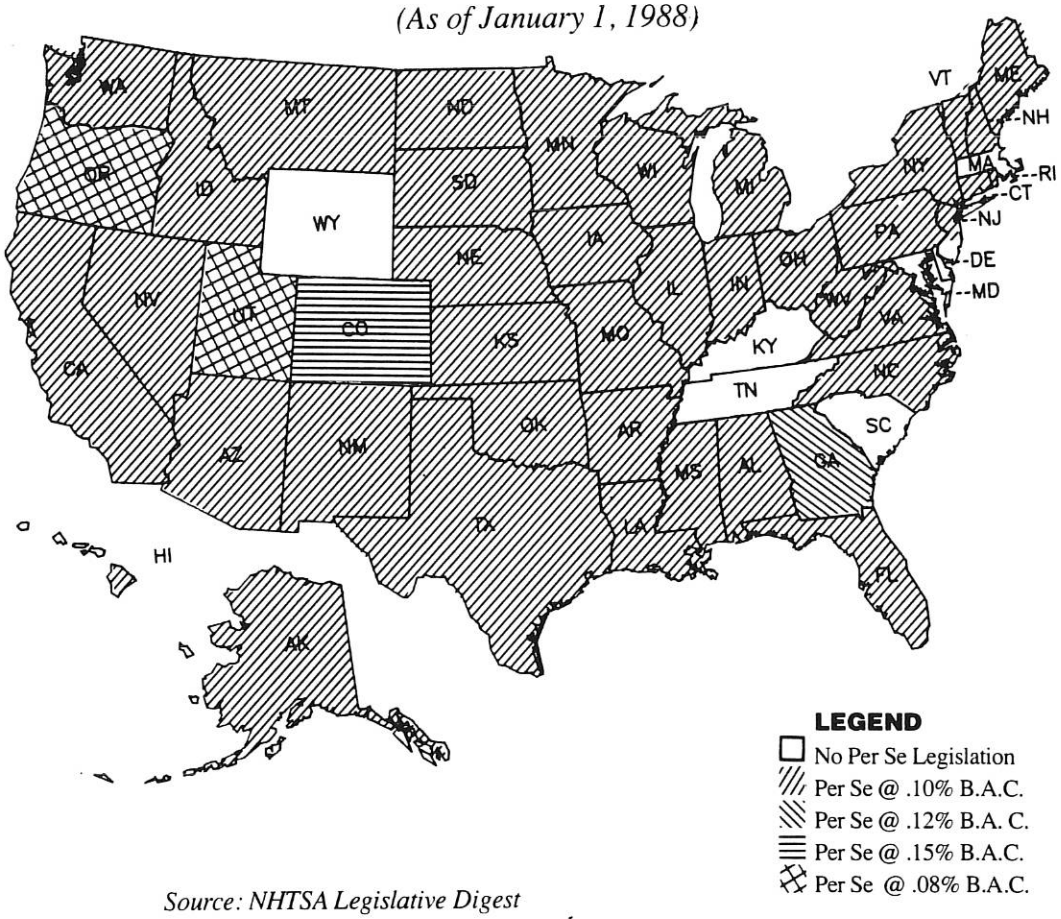
States With Illegal PerSe Laws

44 States and Washington, D.C.

(As of January 1, 1988)



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

STATEMENT

by the

KANSAS MOTOR CARRIERS ASSOCIATION

Concerning Senate Bill 125 relating to alcohol-related offenses involving motor vehicles.

Presented to the Senate Judiciary Committee, Senator Wint Winter, Jr., Chairman; Statehouse, Topeka, January 29, 1992.

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 line no. 24 of Senate Bill 125. This provision would reduce the blood alcohol content for commercial vehicle drivers from .04 BAC to .00 BAC thereby making Kansas law inconsistent with federal regulations.

KMCA strongly supports a unified effort by the federal government, the states and the industry to establish a commercial driver's license system that assures that only qualified persons can obtain a commercial driver's 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
January 29, 1992
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 driver's 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 driver's 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 "hazaardous 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.

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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 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

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