

Approved: 4-5-96  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 13, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Feleciano (excused)  
Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Rosalie Thornburgh, Kansas Department of Transportation  
David Debenham, Deputy Attorney General  
Roger Carlson, Kansas Health and Environment  
Lieutenant Sam Grant, Kansas Highway Patrol  
Gene Johnson, ADSAP  
Canda Byrne, KADACA  
Pat Stenger, MADD  
Frances Wood, Woman's Christian Temperance Union of  
Kansas and Kansans for Life at its Best  
Kathy Peterson, Century Council--Written testimony  
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

A motion was made to approve the minutes of February 15, and February 20, 1996. The motion carried.

### HB 2603--Drivers under 21 blood alcohol concentration of .02 or greater.

The Chair directed the Committee members' attention to HB 2603, and stated that there is a long list of conferees and would appreciate testimony be as brief as possible.

Rosalie Thornburgh, KDOT testified in support of HB 2603 and expressed the KDOT's concern regarding the reporting provisions of this bill. The conferee explained the federal requirements for this law and the federal compliance deadlines. The conferee discussed the DOT current compliance with federal law. The conferee discussed the National Highway Traffic Safety Administration (NHTSA) opinion that this bill is not in compliance with "zero tolerance" requirements because there is no language that makes it unlawful for a person under 21 to drive with a BAC of .02. The conferee stated that language appearing to bring Kansas in compliance with the "zero tolerance" requirements seems to be stricken from the bill on lines 31 through 42 of page 16. The conferee discussed a reporting exclusion of reporting to National Driver Register (NDR) of BAC of .02 to .04 and stated that this exclusion could be in noncompliance with the Commercial Motor Vehicle Safety Act, and thereby federal apportionment for certain highway funds will be lost. (Attachment 1)

Committee members discussed with the conferee the designation of .02 to .04 as being illegal.

David Debenham, Deputy Attorney General, testified in support of HB 2603 and referred to an amendment attached to his written testimony. The conferee stated that the amendment is supported by the Attorney General and the Kansas Organization for Victims Assistance (KOVA). The conferee stated that this amendment calls for double penalties and sanctions for persons who are convicted of a DUI if a child under the age of eighteen years was in the vehicle at the time of the operator's arrest. (Attachment 2)

Roger Carlson, Kansas Health and Environment testified in support of HB 2603. The conferee testified that this bill is meant to establish a deterrent against the consumption of alcohol by younger drivers through administrative suspension of license at the lowest level of alcohol which is technically and judicially defensible. The conferee discussed the operational changes that will be necessary for the law enforcement community to make, and the additional resources that will be needed. The conferee stated that implementation will also result in increased workloads for state agencies. The conferee also discussed the lack of funds for replacing outdated instruments within a reasonable time frame. (Attachment 3)

CONTINUATION SHEET

2

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S-S Statehouse, at 10:00 a.m. on March 13, 1996.

Lieutenant Sam Grant, Kansas Highway Patrol testified in support of **HB 2603** on behalf of Colonel Lonnie McCollum. The conferee stated that many states have already established lower blood alcohol concentrations for youthful drivers. The conferee continued by stating that the National Highway Traffic Safety Administration reports that a recent study of twelve states with lower limits for youth indicated a 20 % reduction in alcohol related fatal crashes among drivers under age 21. (Attachment 4)

The Committee members and conferee discussed that implementation will likely occur through traffic violations and observation.

Gene Johnson, ADSAP testified in support of **HB 2603**. The conferee cited a concern with stricken language on page 9, lines 8 and 9 and again lines 15 and 16. The conferee stated that striking this language would allow a person under age 21 to legally operate a commercial vehicle up to a .04% breath alcohol concentration, but that person could lose private driving privileges with a .02% breath alcohol concentration. (Attachment 5)

Canda Byrne, KADACA testified in support of **HB 2603** and in support of education about drinking and driving for those young drivers. (Attachment 6)

Pat Stenger spoke on behalf of MADD as a victim and a former law enforcement officer in support of **HB 2603**. The conferee referred to a map of the states showing the states that currently have "zero tolerance" laws. The conferee stated that there has been a 15-17% reduction in single vehicle nighttime fatalities. (Attachment 7)

Frances Wood, volunteer lobbyist for the Woman's Christian Temperance Union of Kansas and board member of Kansans for Life at its Best testified in support of **HB 2603**. The conferee stated that punishment for violators should be certain and enforced. The conferee referred to the results of a 1994 survey of the drinking habits of 46,372 Kansas students conducted by the Kansas SRS, Alcohol and Drug Abuse Services which is attached to her testimony. (Attachment 8)

The Chair referred to the written testimony of Kathy Peterson, of the Century Council in support of **HB 2603**. (Attachment 9)

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association testified in opposition to the passage of **HB 2603** at this time. The conferee stated that his industry has urged moderation, restraint and temperate use of its products. The conferee discussed problems with double sanctioning as purposed by the Attorney General. The conferee discussed concerns with this bill regarding probable cause in different jurisdictions. The conferee addressed the issue of refusals on page 9 of the bill. The conferee addressed concerns about increased insurance costs due to this bill. The conferee referred to the Garner amendment allowing that the Motor Vehicle Division can suppress certain driver's suspension. The conferee suggested suppressing records for .08 % and under. This bill could increase the number of uninsured drivers. The conferee expressed concern with the federal mandate of BAC .01 being reported as alcohol "unlawful" and requested time to look at that provision. The conferee stated that this bill does not need to be enacted this year that federal funds will not be lost until 1998. The conferee suggested that there are several issues contained in this bill that need further study. The conferee suggested reviewing this legislation during the interim to avoid unintended consequences. The conferee discussed issues concerning juveniles and the right of refusal being understood, as well as due process issues concerning juveniles. (Attachment 10)

Mr. Smith, Motor Vehicle Department discussed provisions of **HB 2603** regarding refusals and stated that the insurance company will find out about DUIs because the suspension show up on the National Drivers Register.

Committee members discussed issues concerning the fiscal impact of this bill on the Highway Patrol, local law enforcement and the Department of Health and Environment. The Committee members also discussed the 30 day driver license suspension and the 330 days of restricted driving privileges provisions contained in **HB 2603**. Issues concerning insurance problems were discussed by the Committee members and conferees.

In answer to the Chair's question regarding enacting this bill this year, Ms Thornburgh stated that the date for enactment needs to be October 1, 1998.

The Chair adjourned the meeting.

The next meeting is scheduled for March 14, 1996.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-13-96

NAME	REPRESENTING
Michelle A Dewitt	Leadership Hays
Belinda Olesinski	Leadership Hays
Jim Clark	KCPAA
Paul Shelley	UJA
Jene Johnson	Ks.A.S.A. Passn
Teri Condon	FHWA - OMC
Dianna Duclos	FHWA - OMC
Randall BEAVER	FHWA - OMC
Bob Fink	KS Sent. Comm
REBECCA URBAN	KS Sent. Comm.
Julie Meyer	KS Sent. Comm.
Patrick J. Stumpf	MADD
Kathy Kellerman	The Century Council
Kathleen Thorsburg	KDOT
Frances Wood	Women's Christian Temperance Union
Betty M. ...	KDOR DMV
John W. Smith	KDOR DMV
David Debrahan	Attorney General
CAVDA Byrne	KADACA / Ks. Alliance on A/D ... Inc





KANSAS DEPARTMENT OF TRANSPORTATION

E. Dean Carlson  
Secretary of Transportation

Docking State Office Building  
Topeka 66612-1568  
(913) 296-3566  
TTY (913) 296-3585  
FAX (913) 296-1095

Bill Graves  
Governor of Kansas

TESTIMONY BEFORE  
SENATE JUDICIARY COMMITTEE

REGARDING HOUSE BILL 2603  
MANDATORY ZERO TOLERANCE LAW FOR DRIVERS UNDER AGE 21

March 13, 1996

Mr. Chairman and Committee Members:

Mr. Chairman and members of the committee, thank you for the opportunity to come before you today. I am Rosalie Thornburgh, Bureau Chief of Traffic Safety. On behalf of the Department of Transportation, I am here today to testify in support of House Bill 2603 regarding the federal requirement to enact a "zero tolerance" law for individuals under the age of 21 and to address our concern regarding a reporting exclusion provision in the bill.

The establishment of a zero tolerance law supports the fact that current law, in all 50 states and the District of Columbia, prohibits the purchase and public possession of alcoholic beverages by those under the age of 21. Therefore, it would seem reasonable to expect drivers under the age of 21 to have no alcohol in their systems and the appropriate blood alcohol concentration (BAC) for these drivers would be zero. However, given the present level of technology, a BAC level of 0.02 is generally accepted as a zero tolerance level, indicating any measurable amount.

BACKGROUND/OVERVIEW

Section 320 of the National Highway System Designation Act (NHSDA) of 1995 (Public Law 104-59) contains a requirement for a state to enact and enforce a law that considers an individual under the age of 21 who has a blood concentration of .02 percent or greater while operating a motor vehicle in the state to be driving under the influence of alcohol (DUI).

A state that fails to adopt and enact this law before October 1, 1998 (the beginning of federal fiscal year 1999) is subject to a withholding of five percent of certain federal-aid highway construction funds. In each year thereafter, failure to comply by October 1 will result in the state being subject to 10 percent withholding of certain federal-aid highway construction funds.

SEN. JUD  
3-13-96  
ATTACH 1

#### PERIOD OF AVAILABILITY OF WITHHELD FUNDS

The withholding provision applies to the first two years of penalty. In other words, if compliance is reached by September 30, 2000 (the end of federal fiscal year 2000), the amounts withheld for federal fiscal year 1999 and federal fiscal year 2000 would be available to the state. Any funds withheld after September 30, 2000 (or October 1, 2000 - the beginning of federal fiscal year 2001) would be a loss to the state.

#### PENALTY AMOUNTS

Based upon current estimates of our federal fiscal year 1997 apportionments, the final year of authorization under ISTEA, the withholding amount for federal fiscal year 1999 would be \$6.9 million. The withholding amount in federal fiscal year 2000, and each year thereafter, would be \$13.9 million.

#### COMPLIANCE WITH THE FEDERAL LAW

The National Highway Traffic Safety Administration (NHTSA) has reviewed House Bill 2603. Their opinion states:

". . .that while this bill contains language changing the present implied consent law to facilitate both testing and administrative sanctions for either a refusal to take a test or a test revealing a BAC of .02 or higher, there is no language that makes it unlawful for a person under 21 to drive with a BAC of .02. Therefore, the passage of this bill in its present state would not bring Kansas into compliance with the zero tolerance requirements.

Language appearing to bring Kansas into compliance with the "zero tolerance" requirements seems to have been stricken from the bill. This language is at lines 31 through 42 at page 16 and would have amended the existing DUI law making operation of a motor vehicle by a person under 21 with a BAC of .02 or more unlawful. If this section were re-inserted into the proposal and adopted, Kansas would meet the "zero tolerance" criteria currently being proposed by NHTSA."

#### OTHER KEY FACTS/STATISTICS

Attachment 1 is a Legislative Fact Sheet, prepared by NHTSA, which provides pertinent information about the youth drinking and driving problem. The document shows the 27 states plus the District of Columbia that have set the BAC limit at .02 or lower for those under 21. It also describes positive outcomes of law changes in Maryland, Maine, New Mexico, North Carolina and Wisconsin.

Attachment 2 is a listing of the laws in the 27 states plus the District of Columbia, indicating the broad range of sanctions contained in the laws.

National findings show that more than 35 percent of all deaths of 15- to 20-year olds result from motor vehicle crashes. In 1994, 37.6 percent of the 6,226 traffic fatalities of this age group were alcohol-related. This translates to 2,343 fatalities nationally. The alcohol involvement rate for young drivers, based on the total licensed driver population, is about twice that of the over-21 age group.

In Kansas, in 1994, 17.4 percent of the 92 traffic fatalities of this age group were alcohol-related, as reported by police. This translates to 19 fatalities in Kansas. Other pertinent statistics are presented in Attachment 3.

#### REPORTING EXCLUSION FOR BAC TEST FAILURES UNDER .04

House Bill 2603, as passed by the House of Representatives, contains a provision which excludes required reporting by the Department of Revenue to the National Driver Register (NDR) system, also referred to as the Problem Driver Pointer System (PDPS). This reporting exclusion would mean that any individual driver license suspension or revocation resulting from a test failure over a .02 but less than a .04 BAC would not be reported to the NDR.

This reporting exclusion is a concern because it could result in the loss of certification to participate in the NDR which in turn could result in Kansas being found to be in non-compliance with the Commercial Motor Vehicle Safety Act (CMVSA). Non-compliance with the CMVSA can result in a withholding and loss of certain federal-aid highway construction funds.

KDOT has made inquiries to NHTSA and the Federal Highway Administration (FHWA) regarding the consequences of including the reporting exclusion language in HB 2603. NHTSA is responsible for administering the NDR. FHWA is responsible for administering the CMVSA. NHTSA has indicated that failure to transmit to the NDR a report regarding any individual who is denied a driver's license or whose driver's license has been canceled, revoked or suspended "for cause" would result in notification to that State that participation in the NDR will be withdrawn. FHWA has indicated that a State's failure to participate in the NDR will result in non-compliance with the CMVSA.

If the State is found to be in non-compliance with the CMVSA prior to October 1, 1996, the penalty is estimated to be the loss of approximately \$7 million of apportionment in federal fiscal year 1997 (October 1, 1996 to September 30, 1997) and \$14 million in federal fiscal 1998 (October 1, 1997 to September 30, 1998) and beyond.

In closing, I would ask that you reconsider the reporting exclusion provision when considering passage of House Bill 2603 and adjust the bill to meet federal compliance with the zero tolerance law. House Bill 2603, if amended, would meet the federal requirements contained in the National Highway System Designation Act for enacting a zero tolerance law and prevent the withholding of highway construction funds. I believe that this law would be an effective deterrent to underage drinking and driving, and support the state's comprehensive efforts to reduce the deaths and injuries among Kansas' youth.

# FACT SHEET

**SEPT  
1995**

## STATE LEGISLATIVE

National  
Highway  
Traffic Safety  
Administration  
U.S.  
Department of  
Transportation

### Zero-Tolerance Laws To Reduce Alcohol-Impaired Driving By Youth

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages States to enact zero tolerance laws designed to reduce drinking and driving among younger drivers. Such laws should:

- establish that any measurable amount (.02 maximum) of alcohol in the blood, breath, or urine of a driver under age 21 would be an "illegal per se" offense; and,
- provide for immediate driver license suspension periods for those under age 21 who exceed the applicable blood alcohol concentration (BAC) limit.

All 50 States and the District of Columbia now have laws that prohibit the purchase and public possession of alcoholic beverages by those under the age of 21. Therefore, it would seem reasonable to expect drivers under the age of 21 to have no alcohol in their systems, and the appropriate BAC for these drivers would be zero. However, NHTSA recognizes that, given the present level of technology of alcohol breath testing devices, it is difficult for law enforcement officers to detect extremely low amounts of alcohol in the body. It is for this reason that the agency generally supports States that have laws establishing a BAC level of 0.02, at which it is illegal for those under the age of 21 to operate a motor vehicle.

Younger drivers place a high value on their drivers' licenses, and the threat of license revocation has proved to be an especially effective sanction for this age group.

In a radio address to the nation on June 10, 1995, President Clinton stressed the importance of all states passing Zero Tolerance Laws. "Zero tolerance will save lives. It's already saving lives in 24 states, including my home state...it's time to have zero tolerance for under-age drunk driving all across America, not just in some states."

#### Key Facts

- More than 35 percent of all deaths of 15 to 20 year olds result from motor vehicle crashes. In 1994, 37.6 percent of the 6,226 traffic fatalities of 15 to 20 year olds were alcohol-related. The percentage translates to 2,343 traffic fatalities in this age group that were alcohol-related last year.

#### Contents

- **Key Facts**
- **States With Special Laws For Youth**
- **How The Laws Work**
- **Cost Benefit Estimates**
- **Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991**
- **Information Sources**





## How The Laws Work *(continued)*

the officer has probable cause to believe that the individual has been drinking (and should not require that the officer have probable cause to suspect actual impairment). Refusal to take such a test should result in license suspension under implied consent or administrative license revocation (ALR) laws. In the 38 States and the District of Columbia with ALR laws, providing a sample that is positive for alcohol should result in license suspension under that law. Currently, States vary in whether the special BAC level for underage drivers is included in their ALR law.

Other States have taken the approach of extending the period of license suspension and increasing other penalties for underage youth without changing the BAC definition of an offense. Many States have extended the period of license suspension and also changed the BAC definition.

## Cost Benefit Estimates

A NHTSA evaluation of the 0.02 law in Maryland has shown an 11 percent decrease in the number of drivers under age 21 involved in crashes who, police report, "had been drinking." A study of the four other States (Maine, New Mexico, North Carolina, and Wisconsin) revealed a 34 percent decline in adolescent night fatal crashes during the post-law years compared to only a 7 percent decrease in adult night fatal crashes.

Making any amount of alcohol in the body of an underage person an offense can make the enforcement effort easier. If the officer has any reason to suspect that the individual has been drinking, he or she can demand a breath test and take action to arrest the underage driver. Passive sensors, which can detect low BACs, permit the police to identify individuals with small amounts of alcohol in their bodies. This has the potential to reduce enforcement and adjudication time and expense, particularly if handled in an administrative process.

## Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991

ISTEA provides incentive grants to States that achieve at least five of the following six criteria:

- An expedited administrative procedure for suspending the license of drunk drivers;
- A law setting a 0.10 blood alcohol concentration as evidence of driving while intoxicated (after three years, it must drop to .08);
- A statewide sobriety checkpoint program;
- A self-sustaining drunk driving prevention program;
- A program to prevent drivers under age 21 from obtaining alcoholic beverages; and
- A mandatory sentence of 48 consecutive hours in jail or not less than 10 days of community service for any person convicted of DWI more than once in any five year period.

States can also earn supplemental grants, one of which is based on **adopting a 0.02 blood alcohol concentration limit for drivers under age 21.**

## Information Sources

A number of national organizations and reports have supported legislation of this type. The organizations and reports are as follows:

Lower BAC Limits For Youth: Evaluation of the Maryland .02 Law. NHTSA Report Number DOT HS 807 860, March 1992. (Technical Summary. DOT HS 807 859, March 1992.)

"Reduced BAC Limits for Young People (Impact on Night Fatal Crashes)", Alcohol, Drugs, and Driving. R. Hingson, et al., Vol. 7 No. 2, pp 117-127.

Lower Legal Blood Alcohol Limits for Young/ Drivers. R. Hingson, et. al., Vol 7 No. 2, pp 117-127.

"NHTSALINE - Zero Tolerance", 11-minute video produced by USAA.

***These reports and additional information are available through your State Office of Highway Safety, the NHTSA Regional Office serving your state, or from NHTSA Headquarters, Traffic Safety Programs, NTS-21, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-366-9588.***

## DRUNK DRIVING STATUTORY AND CASE LAW SUMMARY

.02 OR LOWER ALCOHOL CONCENTRATIONS FOR DUI OFFENDERS  
UNDER AGE 21

STATE	BAC	TYPE OF SANCTION			
		LICENSING	FINE	JAIL	COMMUNITY SERVICE
AZ	0.00		X	X	
AR	0.02	C	X		X
CA	0.01	A			
CT	0.02	A			
DE	(0.02) <sup>3</sup>	A & C			
DC	0.00	C	X	X	
ID	0.02	C	X	X <sup>1</sup>	
IL	0.00	A			
IA	0.02	A			
ME	0.00	A			
MD	0.02	C	X		
MA	0.02	A			
MI	(0.00) <sup>2</sup>	C	X		X
MN	0.00	C	X	X	
MT	0.02	C	X	X <sup>1</sup>	
NE	0.02	C	X		
NH	0.02	A & C	X	X	X
NJ	0.01	C			X
NM	0.02	A			
NC	0.00	C	X	X	

## DRUNK DRIVING STATUTORY AND CASE LAW SUMMARY

STATE	BAC	TYPE OF SANCTION			
		LICENSING	FINE	JAIL	COMMUNITY SERVICE
OH	0.02	C	X	X	
OR	0.00	A			
RI	0.02	C	X		X
TN	0.02	C	X		X
UT	0.00	A			
VA	0.02	C	X		
WA	0.02	A <sup>4</sup>	X	X	
WV	0.02	A <sup>4</sup>	X	X <sup>5</sup>	
<b>TOTAL = 28</b>		A (11) C (14) A & C (2)	17	10	6

A = Based on administrative procedure  
 C = based on a criminal conviction

<sup>1</sup>This sanction applies only for 3rd and subsequent offenses.

<sup>2</sup>The law prohibits operating a motor vehicle with "any bodily alcohol content" which means either (1) a BAC  $\geq 0.02$  but  $\leq 0.07$  or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony."

<sup>3</sup>A person <21 years old is prohibited from operating a motor vehicle either while or after consuming alcoholic beverages. An alcohol concentration  $\geq 0.02$  is *prima facie* evidence of such an offense.

<sup>4</sup>Licensing action is based on an administrative proceeding not related to a criminal conviction.

<sup>5</sup>This sanction applies only for subsequent offenses.

**KANSAS TRAFFIC SAFETY FACTS 1994  
YOUNG DRIVERS - 15-20 YEARS OLD**

- In 1994, young drivers accounted for 30 percent of all motor vehicle crashes while making up only 10 percent of the driving public. Young drivers were involved in almost 20,000 crashes.
- This age group accounted for 21 percent of all motor vehicle deaths. Of the 442 total fatalities in 1994, 92 were between the ages of 15 and 20 years.

**ALCOHOL RELATED**

- In 1994, young drivers accounted for 15 percent of all alcohol-related motor vehicle crashes, as reported by police. These young drivers were involved in more than 500 alcohol-related crashes.
- This age group accounted for 17 percent of all alcohol-related motor vehicle deaths. Of the 109 total alcohol-related fatalities in 1994, 19 fatalities were between the age of 15 and 20 years.
- 380 people in this age group were injured in alcohol-related motor vehicle crashes. This accounted for 12 percent of the total alcohol-related injuries, or 3,084.
- In 1994, the alcohol involvement rate for these young drivers, based on the total licensed driver population, was about twice that of the over 21 age driver.

**YOUNG DRIVER CRASH CAUSATION/CHARACTERISTICS**

- Most commonly reported driver error-related causes of crashes were carelessness or inattention, failure to yield right-of-way, and speed.
- Most crashes occurred between 2:00 P.M. and 6:00 P.M., on Friday or Saturday, on local streets, in an urban setting, and on dry pavement.
- Male drivers are more likely than female drivers to be involved.
- Most young drivers killed were not wearing safety belts.



State of Kansas

## Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

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

STATEMENT OF  
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM  
BEFORE THE SENATE JUDICIARY COMMITTEE  
RE: HOUSE BILL 2603  
MARCH 13, 1996

Dear Chairperson Tim Emert and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall to ask for your support of House Bill 2603. This bill would, in essence, create a zero alcohol tolerance level for drivers less than 21 years of age.

One of the most important dates in the life of the youth of our society is the day they have the ability to obtain their drivers license. Concurrent with this privilege is the duty and requirement to follow the traffic laws of this state. Unfortunately, our younger drivers do not always foresee the dangers of drinking and driving.

Those of us who have been driving for a number of years realize the dangers of drinking and driving. We have become aware of these dangers through the devastating effects that drinking and driving have had on the victims of automobile accidents.

According to the National Highway Traffic Safety Administration, more than 35% of all deaths of 15 to 20 year olds result from motor vehicle crashes. In 1994, 37.6% of the 6,226 traffic fatalities of 15 to 20 year olds were alcohol-related. What this means is that 2,343 traffic fatalities in this age group were alcohol-related last year. Quite frankly this is 2,343 deaths that could have been prevented.

The NHTSA also noted that in 1994, 22% of the 15 to 20 year old drivers involved in fatal crashes had some alcohol in their blood. This report further stated that, based on the total licensed driver population, the alcohol involvement rate for young drivers is about twice that of the over 21 age driver.

Over the last few years our society has started to change its outlook about drinking and driving. Education provided by groups such as MADD and SADD and the enactment of stricter DUI laws have seen the term "designated driver" used much more frequently than in the past.

We also owe it to our youth to make sure that they realize the dangers of drinking and driving. This bill addresses the youth of our society. It is already illegal for those under 21 years of age to consume or purchase alcoholic liquor or cereal malt beverages. This bill goes one step further and makes clear that it is also against the law to drive after drinking.

SEN. JUD.  
3-13-96  
ATTACH 2

In addition, I am appearing before you today and asking for your support to an **amendment to House Bill 2603**. It is supported by Attorney General Stovall and the Kansas Organization for Victims Assistance (KOVA). This amendment would double the available penalties and sanctions upon conviction of a DUI if a child under the age of eighteen years was in the vehicle at the time of the operator's arrest.

This amendment recognizes the importance of our children. It also provides an appropriate punishment for those individuals who fail to take into consideration the impact of their actions on the children who have no choice in deciding whether to ride in a vehicle with a drunk driver. The wording of this amendment is attached to my testimony.

On behalf of Attorney General Stovall, I urge your favorable consideration of House Bill 2603 and the proposed amendment to it. Thank you.

HOUSE BILL No. 2533

By Committee on Judiciary

2-27

8 AN ACT concerning driving under the influence; relating to man-  
9 datory sentences for persons driving with a child in the vehicle;  
10 amending K.S.A. 1990 Supp. 8-1567 and repealing the existing  
11 section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1990 Supp. 8-1567 is hereby amended to read  
15 as follows: 8-1567. (a) No person shall operate or attempt to operate  
16 any vehicle within this state while:

17 (1) The alcohol concentration in the person's blood or breath as  
18 shown by any competent evidence, including other competent evi-  
19 dence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013,  
20 and amendments thereto, is .10 or more, except that an alcohol  
21 concentration of .04 or more, shall be used for persons operating or  
22 attempting to operate commercial motor vehicles, as defined in  
23 K.S.A. ~~1989~~ 1990 Supp. 8-2,128, and amendments thereto;

24 (2) the alcohol concentration in the person's blood or breath, as  
25 measured within two hours of the time of operating or attempting  
26 to operate a vehicle, is .10 or more, except that an alcohol concen-  
27 tration of .04 or more, shall be used for persons operating or at-  
28 tempting to operate commercial motor vehicles, as defined in K.S.A.  
29 ~~1989~~ 1990 Supp. 8-2,128, and amendments thereto;

30 (3) under the influence of alcohol;

31 (4) under the influence of any drug or combination of drugs to  
32 a degree that renders the person incapable of safely driving a vehicle;  
33 or

34 (5) under the influence of a combination of alcohol and any drug  
35 or drugs to a degree that renders the person incapable of safely  
36 driving a vehicle.

37 (b) No person shall operate or attempt to operate any vehicle  
38 within this state if the person is a habitual user of any narcotic,  
39 hypnotic, somnifacient or stimulating drug.

40 (c) If a person is charged with a violation of this section involving  
41 drugs, the fact that the person is or has been entitled to use the  
42 drug under the laws of this state shall not constitute a defense against  
43 the charge.

2-3



(d) Any person operating or attempting to operate a commercial motor vehicle who refuses testing or submits to a test which discloses an alcohol concentration of .04, or more, the law enforcement officer shall submit a sworn report to the secretary certifying that the test was requested pursuant to subsection (a) and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of .04, or more.

(e) Upon receipt of the sworn report of the law enforcement officer submitted under subsection (d), the secretary shall disqualify the driver from driving a commercial motor vehicle under K.S.A. ~~1989~~ 1990 Supp. 8-2,142, and amendments thereto.

(f) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section: (1) A person shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole; or (2) if a child less than 18 years of age was in the vehicle at the time of arrest, a person shall be sentenced to not less than 96 consecutive hours nor more than one year's imprisonment, or in the court's discretion 200 hours of public service, and fined not less than \$400 nor more than \$1,000. Except as provided in subsection (i), the person convicted must serve at least 96 consecutive hours' imprisonment or 200 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(g) On a second conviction of a violation of this section: (1) A person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to confinement at the end of each day in the work release program. Except as provided in subsection (i), the person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released; or

(2) if a child less than 18 years of age was in the vehicle at the time of arrest, a person shall be sentenced to not less than 180 days nor more than two years' imprisonment and fined not less than \$1,000 nor more than \$2,000. The 10 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 96 consecutive hours' imprisonment, provided such work release program requires such person to confinement at the end of each day in the work release program. Except as provided in subsection (i), the person convicted must serve at least 10 consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(h) On the third or a subsequent conviction of a violation of this section: (1) A person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection (i), the person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment; or (2) if a child less than 18 years of age was in the vehicle at the time of arrest, a person shall be sentenced to not less than 180 days nor more than two years' imprisonment and fined not less than \$2,000 nor more than \$5,000. Except as provided in subsection (i), the person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 180 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 or 180 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(i) Pursuant to subsection (c)(2) or on a second or subsequent conviction of a violation of this section, the court may place the person convicted under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of minimum sentence only after such person has served 48 consecutive hours' imprisonment.

2-4

(j) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(k) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(l) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(m) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 1989 1990 Supp. 8-1014, and amendments thereto.

(o) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance or resolution exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(q) The alternatives set out in subsections (a)(1) and (2) may be pleaded in the alternative, and the state, city or county may, but shall not be required to, elect one of the two prior to submission of the case to the fact finder.

(r) For the purpose of this section, "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

Sec. 2. K.S.A. 1990 Supp. 8-1567 is hereby repealed.

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

4  
B

State of Kansas

Bill Graves



Governor

---

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to  
Senate Judiciary Committee  
by

The Kansas Department of Health and Environment  
House Bill 2603

The intent of HB2603 is to establish a deterrent against the consumption of alcohol by younger drivers through administrative suspension of license at the lowest level of alcohol which is technically and judicially defensible.

Currently, twenty-nine states and the District of Columbia have established lower alcohol tolerance limits for drivers younger than 21, and the experience of these states has generally been favorable in reducing alcohol-related highway deaths and injuries. In addition, some epidemiologic evidence published in the Journal of the U.S. Public Health Service shows a lower incidence of alcohol-related fatalities in younger drivers in states which have established zero alcohol tolerance statutes.

Implementation of this deterrent effort will require some operational changes by the law enforcement community. Although traditional roadside sobriety tests which are used to indicate alcohol impairment will not be applicable to the detection of very low alcohol levels, physical evidence and the use of preliminary breath test devices may help to establish probable cause for arrest. Implementation will also result in increased workloads for some state agencies which include the Department of Revenue, the Department of Health and Environment and the Kansas Highway Patrol. This need for additional resources from all program components comes at a time of fiscal restraint and this funding is not included with FY97 agency budgets.

SEN. JUD.  
3-13-96

ATTACH 3

1. To accomplish the quality assurance components managed by the Department of Health and Environment, additional operator training will be required to ensure that low level alcohol tests are court defensible. It will also be necessary to prepare an increased amount of standards for use in the continuing calibration of each evidential instrument. The certification officer will be required to spend an estimated 20% additional time at each of the instrument sites to ensure proper calibration, and breath alcohol program record keeping and reporting will increase as well. Together, these additions to program operation will require an estimated one-half of an FTE.

Finally, Kansas evidential instruments which are operating under favorable conditions can be expected to detect ethyl alcohol at a level of  $0.02\% \pm 0.005\%$ . This level may be difficult to achieve routinely with some older models of the 182 evidential instruments which are currently in operation throughout the state. A new evidential instrument costs approximately \$6,000. The 1995 legislature created an instrument/equipment fee fund to assist with program operation, but as of October 1, 1995, the fund had only \$3,000 dollars accumulated. The amount of dollars directed into this fund may be insufficient to replace outdated instruments within a reasonable time frame.

The Kansas Department of Health and Environment supports the deterrent concept which is proposed in HB2603.

Testimony presented by: Roger H. Carlson, Ph.D., Director  
Kansas Health and Environmental Laboratory  
March 13, 1996

#4

Kansas Highway Patrol  
Summary of Testimony  
1996 House Bill 2603  
before the  
Senate Judiciary Committee  
March 13, 1996

Good afternoon Mr. Chairman and members of the Committee. My name is Lieutenant Sam Grant and I appear before you on behalf of Colonel Lonnie McCollum, Superintendent of the Kansas Highway Patrol, in support of HB 2603. HB 2603 lowers the blood alcohol concentration threshold for those under 21 to .02%.

As a traffic safety agency, the Patrol is concerned about safety on our state's highways. Each year impaired driving causes many problems and results in many deaths and injuries across Kansas. Unfortunately, as noted by other conferees, youthful drivers are involved in many alcohol related crashes.

Many states throughout the country have already established lower blood alcohol concentrations for youthful drivers. Studies show that these laws coupled with public information and enforcement can lead to a reduction in total alcohol related fatalities. In fact, the National Highway Traffic Safety Administration reports that a recent study of twelve states with lower limits for youth indicated a 20% reduction in alcohol related fatal crashes among drivers under age 21.

Much has been done in recent years to combat the drinking driver problem in Kansas and we feel that the .02% provision contained in House Bill 2603 is the next logical step in that progression. In addition to laws making it illegal for persons under 21 to purchase and publicly possess alcoholic beverages, the provisions of HB 2603 will improve highway safety by making it clear that drinking and driving by those under 21 is not acceptable in Kansas.

I would be glad to answer any questions the committee may have.

#####

SEN. JUD  
3-13-96  
ATTACH 4

#5

Testimony  
Senate Judiciary Committee  
March 13, 1996

House Bill 2603

Good morning Chairman Emert and Members of the Committee,

My name is Gene Johnson and I am the Legislative Liaison for the Kansas Community Alcohol Safety Action Project Coordinators Association. It is my pleasure to appear before you this afternoon in support of HB 2603.

The Kansas Community Alcohol Safety Action Project Coordinators Association is composed of members throughout the State of Kansas who conduct the pre-sentence alcohol and drug evaluations for those persons convicted of or who receive a diversion from, the charge of DUI, under K.S.A. 8-1567. In addition we conduct alcohol and drug evaluations for the courts throughout the State for those persons under the age of 21 who have violated our Kansas Alcohol and Drug Laws.

HB 2603 is another measure designed to save lives and prevent alcohol related crashes in the State of Kansas.

The International Association of Chiefs of Police report that 15 to 20 year olds, throughout the United States, make up 7% of the National driving population and are involved in 14% to 16% of all fatal accidents. This Association also found that 25% to 30% of fatalities involving 15 to 20 year olds, are alcohol related.

The 1994 report on Kansas Communities That Care Survey indicated that by age 12, 40.5% have tried alcohol at least on one occasion.

By age 14, (limited driving privileges are possible at this age) 66.2% have tried alcohol at least on one occasion.

By age 16, 80% of all Kansas teenagers( full driving privileges) have tried alcohol at least once.

SEN. JUD.  
3-13-96  
ATTACH 5

Testimony  
HB 2603  
page 2

HB 2603 will be an excellent intervention measure to deter our young Kansas drivers, under the age of 21, from breaking the alcohol and drug laws of our State. In lowering the BAC level to .02% on this age group we clarify that any alcohol consumption by persons under the age of 21 who attempt to operate a motor vehicle, is illegal in the State of Kansas. Offenders will lose their driving privileges for a period of time and very well could be prosecuted for DUI with the accumulation of other evidence.

We have some difficulty in understanding the rationale of the changes on Page 9, lines 8 and 9 and again lines 15 and 16. It appears by striking this language, a person under age 21 could legally operate a commercial vehicle up to a .04% breath alcohol concentration. Yet, if that same person was operating their own private vehicle, their point of losing their driving privileges would be .02% breath alcohol concentration.

Again, Mr. Chairman, and members of the Committee, we support HB 2603 as a positive traffic safety measure and ask this committee to act favorably on this bill.

I will attempt to answer any questions at this time.

Respectfully submitted,



Gene Johnson

Legislative Liaison

Kansas Community Alcohol Safety Action Project Coordinators Association

# 6  
**KADACA**

**Kansas Alcoholism and Drug Addiction Counselors Association**

For More Information Contact:  
Canda Byrne, MSN, ARNP,CS  
Legislative Representative  
P. O Box 1732  
Topeka, Kansas 66601  
(913) 233-0755  
March 13, 1996

**HB 2603 An Act Concerning the Blood Alcohol  
Concentration of Persons Under 21**

Senator Emert and members of the Judiciary Committee, my name is Canda Byrne. I am here representing the Kansas Alcoholism and Drug Addictions Counselors Association and the Kansas Alliance on Alcohol and Other Drug Services, Inc. The Kansas Alcoholism and Drug Addictions Counselors Association (KADACA) is a membership organization that represents over 500 alcoholism and drug addiction counselors around the state of Kansas, their primary task is the certification of addiction counselors. The Kansas Alliance on Alcohol and Other Drug Services, Inc. Is representative of groups including the Kansas Multi-Cultural Association on Substance Abuse, The Regional Prevention Center Directors Association, Mother's Against Druck Drivers and KADACA.

I am here today to provide support for HB 2603 which changes the blood alcohol concentration level to .02 for persons under the age of 21.

We know that by the time the alcohol blood level reaches .05 thought, judgement and restraint are effected. There is decreased reflex action and changes in depth perception leading to increased risk for accident involvement.

In 1994, our most recent statistics, there were a total of 1,794 DUI arrests of persons 21 years of age and younger, 273 of those were children 17 years old and younger and 1,521 were between the ages of 18 and 20. That same year there were 543 alcohol related traffic accidents involving young adults age 21 and younger (131

P.O. BOX 1732  
TOPEKA, KS 66601  
(913) 235-2400

SEN. JUD.  
3-13-96  
ATTACH 6



age 15-17 and 412 age 18-20). Of those 543 accidents 13 caused a death and 231 led to injuries.

One would assume that with the passage of this bill the number of DUI arrests will increase for those under the age of 21. Hopefully, this also will mean the number of young drivers under the age of 21 who will receive education about drinking and driving will increase, and the 543 alcohol related car accidents reported in 1994 with 13 deaths will dramatically decrease.

Kansas laws are reactive and only require alcohol and drug education after an arrest. Laws do not stop young people from drinking or even from drinking and driving but hopefully the education that follows an arrest through diversion programs and the loss of driving privileges at an .02 alcohol level will stop our young folks from driving after drinking.

Thank you for allowing me to speak in support of HB 2603. I would be glad to answer any questions.



## Mothers Against Drunk Driving

---

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

KANSAS STATE OFFICE

March 13, 1996

Dear Senate Judiciary Committee Members:

My name is Pat Stenger and I'm here on behalf of MADD in support of HB 2603, commonly known as the "0" Tolerance Bill.

As a victim, a former law enforcement officer whose responsibility included fatality investigations, and owner/operator of an insurance adjusting company, I have seen first hand the deaths, injuries and financial hardships caused by drunk drivers.

The bill in front of you today is easy to understand. It is illegal for anyone under the age of 21 to possess, consume, obtain or purchase alcoholic beverages, but yet under the current law we are allowing our youth to have the same BAC (Blood Alcohol Content) (.08) as adults. I believe it should be illegal for any driver under the age of 21 to drive with any measurable amount of alcohol, but I do endorse the tolerance level being dropped to .02.

Statistics provided to me by the state office of Mothers Against Drunk Driving shows the need for HB 2603.

In 1994 there were 542 drinking drivers ages 15-20 involved in an alcohol-related crash. Out of those crashes 13 were killed and 221 were injured. The "Societal Cost" of injuries to the drinking driver under the age of 21 exceeded \$20,000,000 in Kansas during 1994. The National Highway Transportation Safety Administration estimates that nearly 30% of the first-year medical costs will be paid by tax dollars.

During the same year 783 passengers age 19 and under were involved in an alcohol-related crash while riding in a drinking driver's vehicle. Out of those crashes 11 were killed and 308 were injured.

SEN. JUD.  
3-13-96  
ATTACH 7

March 13, 1996

Page -2-

In short, there were 24 deaths and 529 injuries to our Kansas youths!

I have attached a map showing the states that currently have "0" Tolerance laws. These states have indicated that since the inception of "0" Tolerance laws there has been a 15-17% reduction in single vehicle nighttime fatalities.

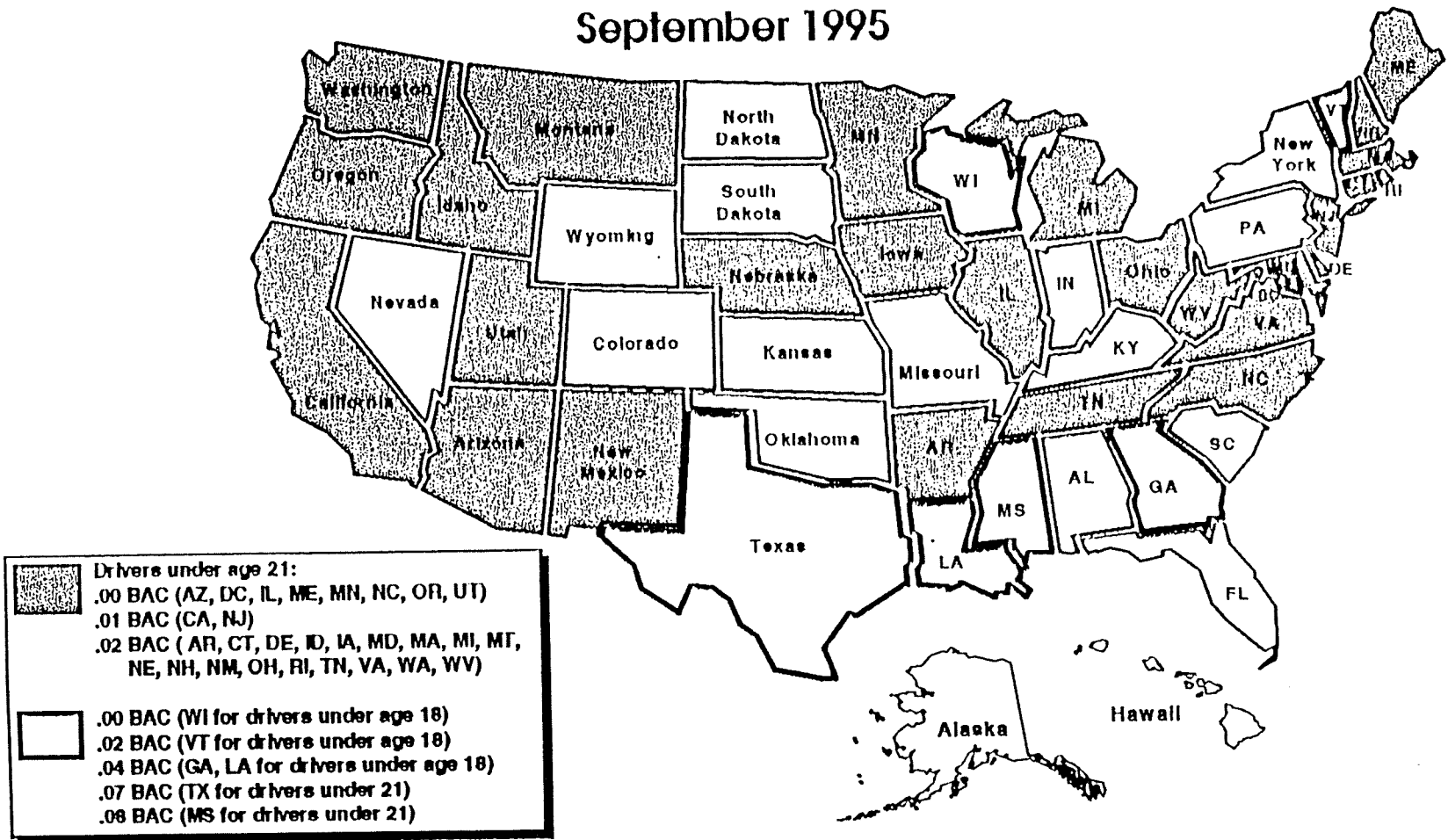
It has been calculated that in Kansas a "0" Tolerance law could save approximately 6 - 7 lives per year and this does not include the passengers or other victims. I could go on giving this committee statistics on what is happening to our youth regarding drinking and driving, but I believe you have a good idea as to what is happening. We as adults must send a strong message to these young people that drinking and driving will not be tolerated.

With this law we will be discouraging under age drinkers, force adults who fail to see the potential dangers of allowing these underage youth to drink and drive to take another look at allowing this to happen and most of all possibly saving 6 - 7 young people a year, and countless injuries.

Please vote in favor of this bill and help to save our young people. Thank you.

Pat Stenger

# States with Lower BAC Levels for Youthful DWI Offenders September 1995



SOURCE: NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION (SEPT. 1995)

## .00 TOLERANCE

### 1. PRESENT KANSAS LAW

- A. Illegal for anyone under the age of 21 to possess, consume, obtain, or purchase alcoholic beverage.
- B. Under Kansas DUI laws, drivers under the age of 21 are allowed the same BAC limit (.08) as adults.
  - (1) It should be illegal for drivers under the age of 21 to drive with any measurable amount of alcohol.
  - (2) HB 2603 establishes a separate threshold (BAC) for drivers under the age of 21 at .02 BAC.

### 2. THE NEED FOR .02 BAC

- A. 74% of drivers ages 15-20 involved in alcohol-related crashes in Kansas are drinking drivers. (KDOT)
- B. 66% of drivers ages 15-20 involved in alcohol-related fatality crashes are drinking drivers. (KDOT)
- C. 74% of drivers ages 15-20 involved in alcohol-related injury crashes are drinking drivers. (KDOT)

### 3. KANSAS 1994 STATISTICS

- A. 1,800 drivers under the age of 21 were arrested for DUI during 1994. (KBI)
- B. 542 drinking drivers ages 15-20 were involved in an alcohol-related crash. (KDOT)
  - (1) 13 killed.
  - (2) 221 injured.
- C. 783 passengers under the age of 19 were involved in an alcohol-related crash while riding in a drinking drivers vehicle. (KDOT)
  - (1) 11 killed.
  - (2) 308 injured.

### 4. STATES WITH .00 TOLERANCE LAWS AT .02 BAC

- A. 27 states and the District of Columbia have set BAC limits at .02 or lower for drivers under age 21.

### 5. COST BENEFIT ESTIMATES - STATES WITH .02

- A. Maryland has shown an 11% decrease in number of alcohol-related crashes involving drivers under 21. (NHTSA)
- B. Maine, New Mexico, North Carolina and Wisconsin revealed a 34% decline in adolescent night fatal crashes during post laws years compared to only a 7% decrease in adult night fatal crashes. (NHTSA)

11  
#8

HB 2603

I am Frances Wood, volunteer lobbyist for the Woman's Christian Temperance Union of Kansas, and board member of Kansans For Life At Its Best. Our groups support HB 2603, the lowering of blood-alcohol concentration to 0.02 for drivers under 21. (Actually, we support this amount for all drivers.)

Statistics tell us that every two weeks an estimated 40% of high school seniors consume five or more drinks in one sitting.<sup>1</sup> Judgment of drivers become impaired with very little alcohol.

I have included the results of a 1994 survey of the drinking habits of 46,372 Kansas students. This survey was conducted by the Kansas SRS, Alcohol and Drug Abuse Services. You will notice the amount of alcohol consumed by high school students.

Punishment for violators should be certain and enforced. Teenagers do not like to be without a driver's license. If driving on a revoked license occurs, there should be stiff penalties so that it sends a clear message that this activity will not be tolerated.

Thank you for your support of HB 2603.

1. Tufts University Diet and Nutrition Letter as quoted in the Health Hints published by Blue Cross and Blue Shield.

Frances Wood  
4724 S. E. 37th St.  
Topeka, Kansas 66605  
Phone 913-379 -5529

SEN. JUD  
3-13-96  
ATTACH 8

# 1994 Student Survey

## Alcohol, Tobacco and Other Drug Usage

The school survey collected information based on incidence and prevalence of drug usage for several drugs. Both lifetime and 30-day usage was asked in order to separate out incidence and prevalence.

As Table 4 indicates, there are a number of gender differences in substance use. Males are overwhelmingly more likely to use smokeless tobacco, marijuana, LSD, cocaine/crack, and inhalants. Although males also indicate a higher use of cigarettes and alcohol, female usage is not significantly lower.

<b>Substance Use by Gender (Percentage)</b>								
	6th		8th		10th		12th	
	Male	Female	Male	Female	Male	Female	Male	Female
<b>Smokeless Tobacco</b>								
<i>Lifetime</i>	20.3	4.3	38.6	10.8	53.2	16.1	63.7	18.2
<i>Past Month</i>	2.2	0.5	7.4	1.0	15.5	1.7	22.3	1.0
<b>Cigarettes</b>								
<i>Lifetime</i>	25.0	17.5	48.7	41.5	59.1	55.7	66.2	61.0
<i>Past Month</i>	2.9	1.4	10.0	7.0	17.4	16.4	22.0	20.9
<b>Alcohol</b>								
<i>Lifetime</i>	43.7	30.9	67.6	60.6	80.1	79.7	88.0	86.2
<i>Past Month</i>	4.3	1.8	14.8	9.6	28.4	21.9	40.6	28.3
<b>Marijuana</b>								
<i>Lifetime</i>	4.2	1.9	15.1	10.2	24.7	19.2	30.9	23.0
<i>Past Month</i>	1.5	0.6	6.8	3.5	11.8	6.5	13.0	7.3
<b>LSD/Psychadellcs</b>								
<i>Lifetime</i>	1.9	0.7	5.9	2.6	9.1	5.2	11.5	5.9
<i>Past Month</i>	1.0	0.3	2.8	0.9	3.8	1.2	3.6	1.0
<b>Crack/Cocaine</b>								
<i>Lifetime</i>	2.1	0.9	5.7	2.7	7.3	4.5	8.6	4.1
<i>Past Month</i>	1.0	0.3	2.7	0.7	3.6	1.1	3.3	0.8
<b>Inhalants</b>								
<i>Lifetime</i>	13.0	7.0	21.7	16.1	21.0	15.7	18.2	10.5
<i>Past Month</i>	3.3	1.2	6.4	3.2	6.1	2.3	4.2	1.1

Table 4

The survey collected information based on incidence and prevalence of drug usage for several drugs.

Ka #9  
Peterson

(913) 235-2525  
(913) 435-3390 FAX

Mercantile Bank  
800 Jackson, Suite 1120

Topeka, Kansas 66612

M E M O R A N D U M

TO: The Honorable Tim Emert  
Chairman  
Senate Judiciary Committee

FROM: Kathy Peterson  
The Century Council

DATE: March 13, 1996

RE: A zero tolerance for underage drivers, HB <sup>2603</sup>~~2306~~

The Century Council is a national, not-for-profit organization dedicated to reducing alcohol abuse and is supported by more than 900 concerned distillers, vintners, brewers and wholesalers in the beverage alcohol industry. On behalf of the Century Council, I urge you to vote in favor of House Bill No. 2306 to establish a zero tolerance BAC (blood alcohol concentration) for underage drivers.

This is a measure proven to save lives in other states by deterring teen drinking and driving crashes. It will do the same in Kansas.

Although the law sets penalties for violations of the new low underage BAC, the true power of this measure rests more in the fact that it helps prevent teen drinking and driving before it happens rather than punish teens after tragic deaths and injuries occur.

There would be at least **5 fewer fatal teen drinking and driving crashes in Kansas** -- but more than 5 lives saved because such accidents often involve more than one person - according to estimates by one the nation's leading experts on underage drinking and driving, Dr. Ralph Hingson of Boston University. He bases this projection, made at the Council's request, on a major study he conducted that showed an average 20 percent drop in teen alcohol-related fatal crashes in the first 12 states to enact underage BAC's of .00 to .02.

SEN. JUD.  
3-13-96  
ATTACH 9



The Honorable Tim Emert  
March 13, 1996  
Page 2

Why would a low teen BAC linked to our state's current administrative license suspension law be the single most powerful preventative law against underage drinking and driving that you could enact? Parents know the answer -- the vital importance of driving privileges to young people. A national poll conducted by the Council revealed **90 percent of teens said they would not drink and drive at all if there was a threat of losing their licenses if caught.**

It is not unfair or discriminatory to set a zero tolerance alcohol limit targeted specifically to young drivers; it is clearly beneficial to them and all other motorists. Study after study shows teen drinking drivers pose a far greater danger to kill and maim themselves and innocent victims than sober young drivers. For example, **a teen-age girl who drives at a BAC of .05 to .10 is 54 times more likely to die in a crash caused by her drinking.**

Thank you for considering the Council's views. Please accept my best wishes for continued success in public service as you deliberate on this vital issue and others before the Senate this year.

# 10

K · A · N · S · A · S  
**WINE & SPIRITS**  
WHOLESALE ASSOCIATION, INC.

TO: Senate Judiciary Committee  
FROM: R.E. "Tuck" Duncan  
Kansas Wine & Spirits Wholesalers Association  
RE: H.B. #2603

Congress enacted and the President approved the National Highway System Designation Act of 1995 wherein it provides at 161 the following:

Operation of motor vehicles by intoxicated minors.

(a) Withholding of apportionments for noncompliance.

(1) Fiscal Year 1999. The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5)(B) of section 104(b) on October 1, 1998, if the State does not meet the requirement of paragraph (3) on that date.

(2) Thereafter. The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1) of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5)(B) of section 104(b) on October 1, 1999, and on October 1 of each fiscal year thereafter, if the State does not meet the requirement of paragraph (3) on that date.

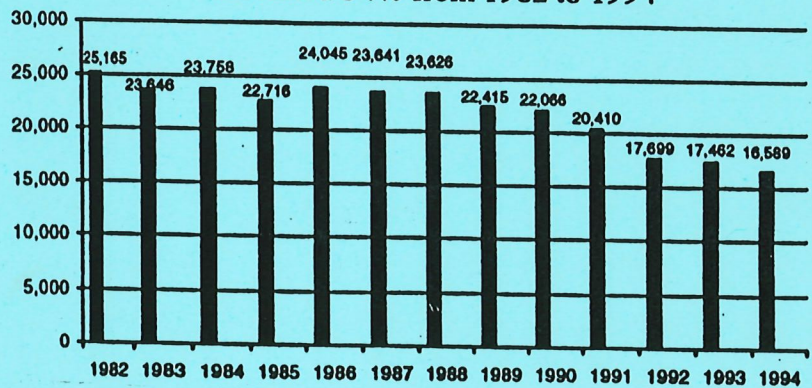
(3) Requirement. A State meets the requirement of this paragraph if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

Long before the term "social responsibility" became fashionable in the lexicons of academia, our industry has urged moderation, restraint and temperate use of its products. State and local officials and leaders of the public and private groups must continue with a systematic view of the problem recognizing the inter-relationships between legal, health, public information, educational and technological responses to the problem.

Progress has been made in the last decade, namely impressive reductions in alcohol related fatalities and significant reductions in highway fatalities involving young teenage drivers. (Reference: National Highway Traffic Safety Administration).

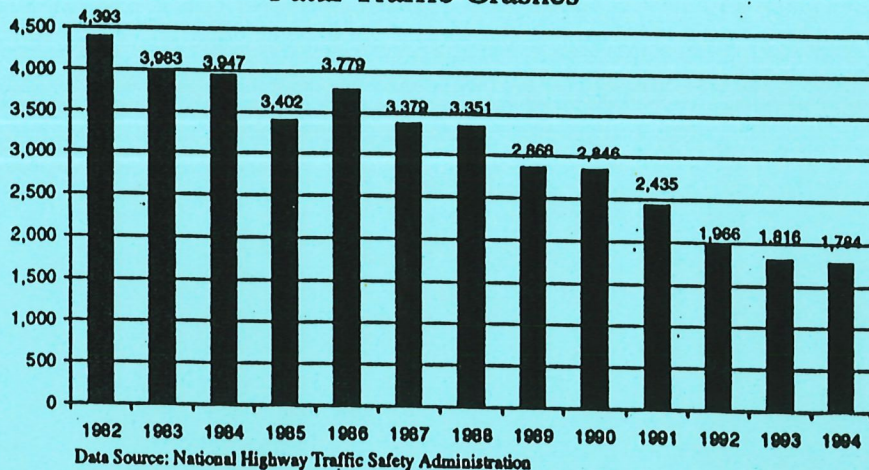
Even as the number of miles driven in the U.S. has increased, the number of alcohol-related fatalities has declined by a dramatic 34% from 1982 to 1994. While the 1994 figure remains unacceptably high, it does

Alcohol-Related Traffic Fatalities Declined 34% from 1982 to 1994



SEN. JUD.  
3-13-96  
ATTACH 10

## Drivers Under 21 Involved in Alcohol-Related Fatal Traffic Crashes



reflect the results of anti-drunk driving programs sponsored by government, prevention groups and the licensed beverage alcohol industry. The federal guidelines used to collect these data define "alcohol-related" as an accident in which anyone involved had a BAC of .01 (one-one hundredth of one percent). The number of young drivers (under 21) involved in alcohol-related fatal traffic crashes declined 59% from 4,393 in 1982 to 1,784 in 1994.

As many members of the Committee are aware our association has for years been actively engaged in efforts to deter purchases by underage persons at retail liquor stores. Some of the materials used in that effort are provided herewith.

We recognize that some form of this enactment will become law because of the pressure to receive highway funds. We would hope that state and local officials will use some of the funds received for enforcement and deterrent purposes for programs such as "Cops-in-Shop." These efforts in the long run will do more than arrests of persons under the legal drinking age.

Another concern we have is one that I addressed to this committee in 1993.

Typically a first offender will receive a diversion and a fine. However, when you take a breath test and fail or refuse to take such a test, a suspension of one's license results. As a result, pursuant to K.S.A. 40-277 (copy provided herewith), an insurance company may cancel it's policy where "the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy (a) has had such persons driver's license suspended or revoked during the policy period," or "(c)...is or has been convicted...for: (3) operating a motor vehicle while in an intoxicated condition..." A .02 for a child under these bills could cause their family disastrous financial hardship in securing a new policy, most likely through the Kansas Automobile Insurance Plan (KAIP).

You might say, "Well, that's his problem, he shouldn't have gotten the DUI." Unfortunately, it becomes all of our problem. It is my understanding that over 5% of motorists are uninsured. These lower limits of the BAC level could increase the percentage of uninsured and underinsured motorists in Kansas. It is reasonable to project that as the number of uninsured motorists become greater, uninsured motorist losses will increase and thus premiums for the rest of us may likewise increase. This new BAC level for this special class of individuals will probably cause more people to become part of the KAIP, and the



limits of coverage will generally decrease, which means fewer insured drivers and lower average coverage limits to protect the rest of us. Thus, what looks like a minor revision with negative effects for the few in this special class and positive effects for the many, may become a negative policy for all unless consideration is given to not applying the provisions of K.S.A. 44-277 to first time offenses.

Another issue that must be explored in further detail is the impact this new level will have on the employment prospects for these new offenders. Certain jobs in clubs, drinking establishments, and CMB restaurants might be unavailable. *Do we want to eliminate eligibility for certain employment when implementing the .02 threshold?* I suggest that the committee explore this area as well.

We must redouble our educational efforts, for as we have seen there have been dramatic reductions in the instances of alcohol related accidents and fatalities as a result of private and public efforts in the past decade. Please do not misunderstand – the loss of one life due to abuse of beverage alcohol cannot be tolerated. We merely ask that some of the unintended effects on the insurance and employment matters we have discussed be explored and attended to before implementing this law.

*Thank you for your kind attention to and consideration of these matters.*

**40-277.** Automobile liability insurance policies; limitations on policy conditions for cancellation. No insurance company shall issue a policy of automobile liability insurance in this state unless the cancellation condition of the policy or endorsement thereon includes the following limitations pertaining to cancellation by the insurance company:

After this policy has been in effect for 60 days, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the insurance afforded under (here insert the appropriate coverage references) solely because of age or unless

1. The named insured fails to discharge when due any obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or

2. the insurance was obtained through fraudulent misrepresentation; or

3. the insured violates any of the terms and conditions of the policy; or

4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,

(a) has had such person's driver's license suspended or revoked during the policy period, or

(b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to

such person's ability to operate a motor vehicle, or

(c) is or has been convicted during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

(1) Any felony, or

(2) criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or

(3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or

(4) leaving the scene of an accident without stopping to report, or

(5) theft of a motor vehicle, or

(6) making false statements in an application for a driver's license, or

(7) a third moving violation, committed within a period of 18 months, of (i) any regulation limiting the speed of motor vehicles, (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor or traffic infraction, or (iii) any ordinance traffic infraction, or ordinance which prohibits the same acts as a misdemeanor statute of the uniform act regulating traffic on highways, whether or not the violations were repetitious of the same offense or were different offenses.

History: L. 1967, ch. 271, § 2; L. 1984, ch. 39, § 47; Jan. 1, 1985.