



CASE STUDY

Per Se BLOOD ALCOHOL CONCENTRATION AND MOTOR VEHICLE SAFETY

Issue

Enacting and enforcing state legislation to prohibit alcohol-impaired driving by mandating that a blood alcohol concentration (BAC) of 0.08 g/dL is *per se* evidence of driving while impaired.

ACEP Position

“The American College of Emergency Physicians urges the enactment of state laws to mandate that a BAC of 0.08 g/dL is *per se* evidence of driving while impaired.”

Background Information

Intoxicated driving is the most frequently committed violent crime in America. Every 30 minutes, someone in this country dies in an alcohol-related crash. Over the last decade, however, alcohol-related traffic deaths decreased significantly, dropping from 24,050 in 1986 to 17,126 in 1996.

Just one alcohol-related fatality is estimated to cost society \$950,000. Eventually, all citizens bear the costs of these deadly actions, through taxpayer supported services and programs, higher insurance costs, and even higher prices on goods and services, since employers pick up about half the costs associated with motor vehicle crashes.

There are several key laws that have been proven effective against impaired driving (see appendix one). Two of the most important are *per se* illegal and 0.08 BAC.

Virtually all drivers are substantially impaired at BACs of 0.08 g/dL. Braking, steering, lane changing, judgment, and divided attention, among other measures, are affected significantly at 0.08 BAC. Research by the Institute for Highway Safety indicates that the relative risk of being killed in a single vehicle crash at 0.08 BAC is eleven times that of motorists with no alcohol on board. Fifteen states have established 0.08 BAC as the legal limit.

An illegal *per se* law makes it illegal in and of itself to drive with an alcohol concentration measured at or above the established legal level. Only two states (South Carolina and Massachusetts) have not established *per se* laws. This was a wake up call for the South Carolina Chapter and a strong motivation to seriously address the issue in our state.

Legislative History in South Carolina

The illegal *per se bill* had been introduced and considered by the South Carolina Legislature for over 15 years. Advocates for the measure had indicated for years that the legislation would save at least 20 lives each year and prevent hundreds of injuries.

The three factors in our successful legislative effort to establish a 0.08 BAC as *per se* evidence of driving while impaired were:

1. Persistence;
2. Coalition building; and
3. Use and timing of media to influence legislative action.

1. Persistence

The successful effort to pass *per se* 0.08 BAC was an ongoing battle for our highway safety coalition partners for fifteen years. Patience and persistence paid off. After many years of advocating for a law that has been proven effective in the fight against impaired driving, we successfully convinced the South Carolina Legislature that *per se* 0.08 is a reasonable BAC standard. We also persuaded lawmakers that the BAC that can be easily determined with modern breath analysis equipment during routine law enforcement roadside stops. We also convinced our state lawmakers that a 0.08 BAC is not reached with a couple of beers after work or a glass of wine or two with dinner. We also continually communicated to our legislators that if every state enacted a 0.08 *per se* law, hundreds of lives would be saved every year with thousands of injuries

prevented and millions of dollars saved. The lesson learned here was don't be discouraged if you fail in your first or even second try to pass legislation—persistence leads to success.

2. Coalition Building

It was not until a large coalition of advocacy groups was developed and a cohesive, organized lobbying effort was launched that the 0.08 BAC legislation had even a chance of passage over the powerful opposition of criminal defense attorneys and the restaurant and hospitality industries. Mothers Against Drunk Driving (MADD), state and local law enforcement organizations, the medical community, and other grass roots supporters greatly expanded the influence of our advocacy efforts with state lawmakers. Data from the National Highway Traffic Safety Administration, and the South Carolina Department of Transportation were also invaluable in helping us build our case that South Carolinians overwhelmingly support legislation and programs to curb impaired driving. With our coalition partners, we were able to show legislators that our citizens consider drunk driving a major highway safety problem and that most support tough laws and sanctions to reduce impaired driving. We found that the 0.08 BAC *per se* law had many allies and resources to call upon that greatly enhanced our ability to influence this public health policy debate.

3. Timely Use of the Media

Timely news conferences and report cards that educated the media, legislators, and ultimately, South Carolina citizens about the shocking percentage of state fatalities that were alcohol-related (42.4 per cent) were critical to our legislative success. The media responded to South Carolina's lack of action on our issue and substantially increased the public pressure on state lawmakers to do the right thing. South Carolina is now one of the most progressive states in the nation in addressing alcohol-related crashes.

Arguments in Favor of this Position

Bringing the state into the mainstream with 48 other states in making it illegal in and of itself to drive with an alcohol concentration measured at or above the established legal level.

As a public health initiative and traffic safety policy, 0.08 BAC limit works. A 0.08 BAC *per se* law will:

- Increase the arrest and conviction rates for impaired drivers at 0.10 and above;
- Raise the perceived risk of arrest for driving after drinking;
- Improve public awareness about how much alcohol it takes to be dangerously impaired; and
- Bring South Carolina closer to *per se* limits of most other progressive states and most industrialized nations.

Legislative History in Other States

Forty-eight states (now 49!) had BAC *per se* level laws. Fifteen states (now 16!) had progressive 0.08 BAC laws to define intoxication for all drivers (see appendix 1).

Potential Proponent Organizations

(National organizations--most with state allied organizations)

- Advocates for Highway and Auto Safety
- American Alliance for rights and Responsibilities
- American Association of Motor Vehicle Administrators
- American Association of Neurological Surgeons
- American Automobile Association
- American Coalition for Traffic Safety
- American Insurance Association
- American Medical Association (and allied state medical societies)
- American Spinal Cord Injury Association
- American Spinal Injury Association

- American Trucking Associations
- Association for the Advancement of Automotive Medicine
- Insurance Information Institute
- Insurance Institute for Highway Safety
- International Association of Chiefs of Police
- Mothers Against Drunk Driving (MADD)
- National Association of Governors' Highway Safety Representatives
- National Commission Against Drunk Driving
- National Institute for Alcohol Abuse and Alcoholism
- National Safety Council
- National Sheriff's Association
- Operation Lifesaver
- Remove Intoxicated Drivers
- Students Against Drunk Driving (SADD)
- U.S. Department of Justice
- U.S. Surgeon General

Potential Opponent Organizations

South Carolina opponents argued that the bill is unconstitutional. Since the illegal *per se* law defines any person with a BAC level above .08 as being intoxicated, there is nothing for a judge or jury to decide. Therefore the accused with a BAC over the legal limit is presumed guilty and has been deprived of their right to a jury trial. Fortunately for proponents, illegal *per se* laws have been challenged on these and other grounds in many of the other states that have enacted the standard. In virtually every instance the law has been held constitutional, and remains in effect. It is also likely to face a court challenge in South Carolina in the next few years.

Possible opposition could come from the following:

Criminal defense attorney organizations
 Plaintiffs and personal injury attorneys
 Beer wholesalers
 Distilled spirits industry

American Restaurant Association (and state
allied societies)
Bar and liquor store owners
Hospitality industry

**For more information on this issue, please contact Craig Price in the State Legislative
Office at 800/798-1822, ext. 3236 or e-mail cprice@acep.org**

*On July 20, 2000 South Carolina ACEP President Tommy Gibbons, MD, FACEP, was
presented with a “Highway Safety Hero” award by the South Carolina Chapter of Mothers
Against Drunk Driving for his leadership role in enacting the 0.08 per se blood alcohol
concentration standard. The presentation was made during a luncheon held after the bill
signing ceremony at the South Carolina State Capitol.*

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APPENDIX #1

State *Per Se* 0.08 g/dL Blood Alcohol Concentration Driving Laws

State	BAC <i>per se</i> level	0.08 BAC Limit
Alabama	yes	yes
Alaska	yes	no
Arizona	yes	no
Arkansas	yes	no
California	yes	yes
Colorado	yes	no
Connecticut	yes	no
Delaware	yes	no
D.C.	yes	no
Florida	yes	yes
Georgia	yes	no
Hawaii	yes	yes
Idaho	yes	yes
Illinois	yes	yes
Indiana	yes	no
Iowa	yes	no
Kansas	yes	yes
Kentucky	yes	no
Louisiana	yes	no
Maine	yes	yes
Maryland	yes	no
Massachusetts	no	no
Michigan	yes	no
Minnesota	yes	no
Mississippi	yes	no
Missouri	yes	no
Montana	yes	no

State	BAC <i>per se</i> Level	0.08 BAC Limit
Nebraska	yes	no
Nevada	yes	no
New Hampshire	yes	yes
New Jersey	yes	no
New Mexico	yes	yes
New York	yes	no
North Carolina	yes	yes
North Dakota	yes	no
Ohio	yes	no
Oklahoma	yes	no
Oregon	yes	yes
Pennsylvania	yes	no
Rhode Island	yes	no
South Carolina	YES!	YES
South Dakota	yes	no
Tennessee	yes	no
Texas	yes	no
Utah	yes	yes
Vermont	yes	yes
Virginia	yes	yes
Washington	yes	no
West Virginia	yes	no
Wisconsin	yes	no
Wyoming	yes	no