

Healthy Nation Empowered Communities

A collaborative initiative in Southern African countries, SAAPA is a network which aims to ensure that civil society plays a role in addressing the challenge of harmonising and accelerating alcohol policy development in the region.



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Chairperson
Portfolio Committee on Transport
Parliament of South Africa
Cape Town

SUBMISSION IN RESPECT OF THE ROAD TRAFFIC AMENDMENT BILL 2016

Introduction

The Southern African Alcohol Policy Alliance South Africa (SAAPA SA) welcomes the release by Parliament of the Road Traffic Amendment Bill 2020 for public comment. We have long been calling for the Bill to be processed and passed because we believe it has the potential to reduce the number of alcohol-related traffic incidents and, consequently, the unacceptably high rate of trauma and deaths on the road.

SAAPA SA is a non-profit, non-governmental alcohol policy advocacy organisation working for an alcohol-safe South Africa. SAAPA SA is guided by the World Health Organisation (WHO) Global Strategy to reduce the harmful use of alcohol, 2016, and supports South Africa's Liquor Policy, 2016, which is based on the Global Strategy. That strategy promotes five SAFER 'best buys' for reducing alcohol-related harm, one of which is a reduction in the Blood Alcohol Content (BAC) and Breath Alcohol Content (BrAC) levels of drivers.

SAAPA SA has a number of Alliance Partners, the names of which appear at the bottom of the page. All Alliance Partners, also non-profit, non-governmental organisations, agree that there is a need for effective legislation to reduce alcohol-related harm. All Alliance Partners agree that there is a need to reduce the number of alcohol-related road incidents so as to lower the unacceptably high road death and injury rates in South Africa.

Caveat: *some Alliance Partners support the need for a reduction in the BAC and BrAC levels; however, some would be happy with a reduction from 0.05 to 0.02 rather than to zero.*

Alcohol-related clauses in the Road Traffic Amendment Bill, 2020

SAAPA SA and its associates have a particular interest in the section of the Bill that deals with the permitted levels of alcohol in the breath (BrAC) and the blood (BAC) of vehicle drivers. Section 65 of the current Road Traffic Act (93 of 1996) says that "the concentration of alcohol in any specimen of blood taken from any part of his or her body

SAAPA SA Alliance Partners: Cancer Association of South Africa; Children's Institute; Gateway Health Institute; Gun Free South Africa; Hlanganisa Institute for Development in Southern Africa; National Council Against Smoking; People's Health Movement; PRICELESS/SAMRC/Wits School of Public Health; SAHARA; Save the Children South Africa; Sonke Gender Justice; Sophiatown Community Psychological Services; South Africans Against Drunk Driving; Teddy Bear Foundation; Yeoville Bellevue Ratepayers Association

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(should be) less than 0,05 gram per 100 millilitres, or in the case of a professional driver less than 0,02 gram per 100 millilitres". It also says that "the concentration of alcohol in any specimen of breath exhaled by such person (should be) less than 0,24 milligrams per 1 000 millilitres, or in the case of a professional driver less than 0,10 milligrams per 1000 millilitres".

While the Road Traffic Amendment Bill of 2012 proposed a reduction of the BAC for general drivers to 0.02 and 0.00 for professional drivers, the 2015 and 2020 Bills have called for both the BAC and BrAC to be reduced to zero for all drivers.

Extract from the Road Traffic Amendment Bill, 2020, page 23

Amendment of section 65 of the Act 93 of 1996

46. Section 65 of the principal Act is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) No person shall on a public road—

(a) drive a vehicle; or

(b) occupy the driver’s seat of a motor vehicle the engine of which is running,

while **[the] there is any** concentration of alcohol in any specimen of blood taken from any part of his or her body **[is not less than 0,05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres]**.

(3) If, in any prosecution for an alleged contravention of a provision of subsection (2), it is proved that **[the] there was a** concentration of alcohol in any specimen of blood taken from any part of the body of the person concerned **[was not less than 0,05 gram] per 100 millilitres** at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that **there was** such concentration **[was not less than 0,05 gram per 100 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,02 gram per 100 millilitres at the time of the alleged contravention.]** of alcohol in contravention of subsection (2).”;

(b) by the substitution in subsection (5) for the words following paragraph (b) of the following words:

“while **[the] there is** any concentration of alcohol in any specimen of breath exhaled by such person **[is not less than 0,24 milligrams per 1000 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres]**.”;

(c) by the substitution for subsection (6) of the following subsection:

“(6) If, in any prosecution for a contravention of the provision of subsection (5), it is proved that **[the] there is a** concentration of alcohol in any specimen of breath of the person concerned **[was not less than 0,24 milligrams per 1000 millilitres of breath]** taken at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that **there was** such concentration of alcohol in contravention of subsection (5) **[was not less than 0,24 milligrams per 1000 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,10 milligrams per 1000 millilitres at the time of the alleged contravention]**.”.

SAAPA SA position on the Amendment of section 65 of the Act 93 of 1996

SAAPA SA is in full support of

1. the amendment of section 65 as set out in the Bill, and
2. the Amendment of section 28B of Act 93 of 1996, as inserted by section 17 of Act 21 of 1999 clause 33(d)(b).

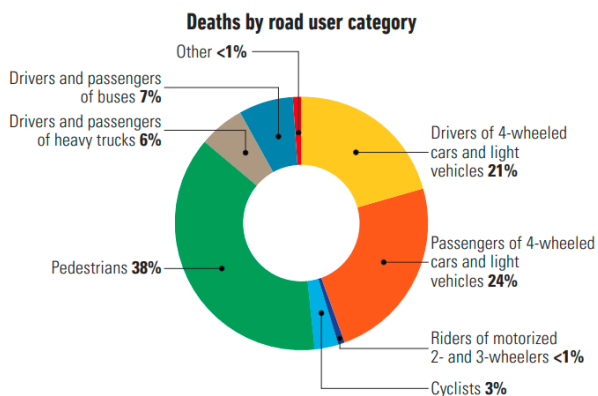
Why SAAPA SA supports the alcohol clauses in the Bill

SAAPA SA supports the proposals for the following reasons:

- South Africa has an unacceptably high road death rate and anything that can be done to reduce it is welcome. At 25.9 per 100 000 people, South Africa's road death rate is ranked 40 out of 175, where the lowest is 0 (San Marino) and the highest is 35.9 (Liberia).¹
- Alcohol contributes unnecessarily to this figure. While different studies advance different figures, the World Health Organisation (WHO) Global Status Report of Road Safety suggests that up to 58% of road deaths are alcohol-related. Another study has a lower figure, but implicates alcohol in what they say are the two highest causes of road deaths, namely speeding and overtaking.
- The victims of road traffic incidents are often innocent people – children, other passengers, cyclists, pedestrians – who fall victim to the dangerous practices of some drivers. It is important for government to do whatever it can to ensure that road travel is as safe as it can be for all road users.
- Not all road incidents end in death – many people survive but suffer injuries and disabilities, which can result in lifelong suffering and economic strain. Less alcohol-related road traffic incidents will help to reduce the number of such cases.
- It will contribute to a reduction in the economic cost to the country of alcohol-related road traffic incidents which some reports put as high as R18bn per annum.²
- According to the World Health Organization (WHO), the risk of a fatal crash for a vehicle driver who has been drinking can be 17 times higher than that of a driver who is completely sober. This is a clear indication that strong action is necessary.

Rationale

There is no *need* for anyone to drink and drive. It is perfectly possible for someone who is driving to avoid drinking and someone who is drinking to avoid driving. There should, indeed, be no choice in the matter, despite the protestations of those who claim that any law that restricts their right to drink when and where they want to is an infringement of their rights. Organisations like SADD and Arrive Alive know why this is important – because people who drink and then drive are at risk of injuring, disabling or killing themselves or other people. By way of example, the chart below shows that a greater number of passengers (including children) than drivers are killed in road traffic incidents. The rights of those passengers must take priority over the claimed right of drivers to drink before or while they are driving.



Source: 2016, Road Traffic Management Corporation (RTMC), Traffic calendar report 2016

Passengers, children especially, generally have no control over the vehicle they are in and need to be afforded particular protection. This is particularly pertinent in the case of private vehicles and of taxis, especially minibus taxis.

¹ Global status report on road safety, 2018 <https://apps.who.int/iris/rest/bitstreams/1164010/retrieve>

² Driver intoxication and fatal crashes RTMC 2019 <https://tinyurl.com/y3hgzr6y>

One of the benefits of a no drinking and driving policy rather than one that says that some drinking and driving is tolerated as long it doesn't go above a certain level is that it makes it less easy for passengers to assert their right to a safe journey. If a child, for example, says to an adult driver that they should not be drinking before or while driving, it's easy for that adult to dismiss the child's concerns by saying "one drink is not a problem, I will be below the limit". If, however, the law says "no drinking at all if you are going to be driving", that argument cannot be used and the child or any non-driver in the car will be able more easily to assert their right to a safe journey.

The above applies to private cars as well as to taxis and buses. Taxi drivers and bus drivers are responsible for the lives and well-being of a number of people, but often react aggressively when asked by passengers not to drink or to drive safely, disempowering them and holding them hostage to their unprofessional and dangerous practices. They must be subject to a zero-tolerance policy which should ideally result in them being stripped permanently of their professional driver accreditation and licence if they are found guilty of driving under the influence of alcohol.

Professor Charles Parry of the SAMRC said in an article in 2019 that "not permitting any drinking and driving is a logical step to take the guesswork out of having to calculate if we are over or under the legal limit. Yes, it would cramp our drinking lifestyles a little, but so it should. We would experience fewer fatalities on our roads, lower insurance premiums, and a reduced drain on the fiscus. Drivers need to be aware of and understand the law. They also need to believe that they are likely to be detected and punished for breaking the law."³

Thanks to COVID-19, South Africans have had direct experience of how limiting access to alcohol can contribute to a decrease in the number of car crashes. Conversely, since the lifting of the more stringent restrictions on alcohol, there have been numerous reports of fatal road incidents ending the lives of drivers, passengers, motorcyclists, cyclists, pedestrians and Metro police officers as a result of drivers being under the influence of alcohol. The Road Traffic Amendment Bill offers the country the chance of moving to a new 'normal', of a permanent reduction in the risk of alcohol-related traffic incidents.

Additional measures

SAAPA SA understands that the change in BAC and BrAC levels is not going to solve the problem of driving under the influence on its own. There will need to be effective law enforcement, increased visibility of traffic police, random testing and strict consequences for those caught driving under the influence.

By way of example, the UK has a higher BAC level (0.08) than both South Africa (0.05) and Brazil (0.00). Yet their road traffic death rate is 3.1 per 100 000 people, while South Africa's is 25.9 and Brazil's 19.7. Factors other than lowering the BAC in the UK have resulted in a much lower rate in the UK. This could be because they have a good public transport system, their policing is more efficient, they have managed to inculcate better practices amongst drivers through education programmes etc. Brazil, on the other hand, reduced their BAC rate and has managed to achieve a lower rate than South Africa, but not as low as the UK. It is therefore important to recognize that, while lowering the BAC level will have a beneficial impact, it must be backed up by other measures, including additional legislation to manage the use of alcohol generally. An example is the pending Liquor Amendment Bill of 2016.

The Liquor Amendment Bill, 2016, is the responsibility of the Department of Trade, Industry and Competition (DTIC). According to the Genesis Analytics report commissioned by the National Economic, Development and Labour Council (NEDLAC), implementation of the Bill will lead to 185 less road traffic deaths.⁴ The Bill proposes a variety of measures, including curbing alcohol advertising, increasing the drinking age to 21, limiting operating hours of alcohol outlets and prohibiting the location of outlets close to schools and other public facilities. The Liquor Policy of 2016 makes additional recommendations for measures which should be contained in future laws.

SAAPA SA believes that is a combination of these and other interventions that will contribute to the creating of an alcohol-safe South Africa and to less injuries and deaths on our roads. Passing the Road Traffic Amendment Bill with its clause on reducing the BAC and BrAC of drivers is an important step in this process.

³ Daily Maverick 24 October 2019 Toughen the law: one drink is too many if you're driving <https://bit.ly/3kHINcE>

⁴ <https://www.genesis-analytics.com/uploads/downloads/Genesis-Analytics-NEDLAC-Impact-of-amendments-to-Liquor-Act-Final-Report-31-October-2017.pdf>

Some concerns being expressed by others

Concerns have been raised in many quarters that the reduction of the BAC and the BrAC to zero will have unintended consequences. That is, that people who have not been drinking alcoholic beverages may still test positive for alcohol because they have used a product – for example, a medicine or even a mouthwash – which has alcohol in it. This could result in people being unfairly charged and convicted for driving under the influence, thus getting a criminal record.

SAAPA SA accepts this could be a challenge, but does not see this as a reason not to adopt the new measures. There are steps that can be taken to mitigate the possibility of this happening. For example, drivers can be encouraged to carry the medication they are using so as to be able to show that any traces of alcohol in their breath or blood come from the medication. Police officers can be trained to distinguish between someone who has been drinking and someone who tests positive because of the use of a product other than an alcoholic beverage.

Furthermore, one could argue, as Professor Parry did in his article, that if there is less than 0.02mg/100ml in a driver's blood, they might only get a warning, but that anyone testing above 0.02mg/100ml is duly charged, with only those who testing 0.05mg/100ml or above getting a criminal record and perhaps losing their licence.⁵

SAAPA SA's position is that this concern is not so critical that it could constitute a reason for not adopting the legislation. It is important that the message sent by the legislation is clear – drinking and driving don't mix at all. Allowing even 0.02, as the 2012 Bill sought to do, will dilute that message and give those guilty of drinking and driving an escape route from having to face the consequences of their actions. A complete ban on the use of alcohol by drivers will help to 'denormalise' the use of alcohol and contribute to the overall project of reducing alcohol-related harm in South Africa.

By way of illustration, one can compare the use of tobacco products today with the situation just over 20 years ago, before the introduction of the 1999 tobacco legislation. Before then, the use of cigarettes was normalized and ubiquitous, with people smoking anywhere and anytime. Since then, smokers continue to smoke, but they do so under very controlled conditions with particular benefits for the safety and wellbeing of others around them.

To summarise: SAAPA SA acknowledges the need to address these concerns, but nevertheless reiterates the organisations' support for the amendment of section 65 as set out in the Bill, and the Amendment of section 28B of Act 93 of 1996, as inserted by section 17 of Act 21 of 1999 clause 33(d)(b).

Conclusion

Targeted legislation, effective law enforcement and appropriate messaging will all contribute to a change in the drinking habits of the country, just as changes in tobacco legislation led to a change in smoking habits. The message must be clear: people can drink if they wish, but not in a way that compromises their own health, safety and wellbeing and certainly not in such a way that threatens the health, safety and wellbeing of others. A zero tolerance approach to drinking before or while driving will play an important complementary role in achieving this.

We thank you

Yours



Maurice Smithers, Director
20 November 2020

⁵ Daily Maverick 24 October 2019 Toughen the law: one drink is too many if you're driving <https://bit.ly/3kHINcE>