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Beginning of the Next BAC Revolution?

By: Ginny Hogan*

The beginning of the new year brought with it a wide variety of laws that will come into play during 2019. Among laws regarding the use of plastic straws in California and tighter restrictions on buying fire arms in Washington,¹ one of the most controversial changes took place in Utah: the lowering of legal blood alcohol content (BAC) levels from 0.08 percent to 0.05 percent.² With the implementation of this law, Utah will have the strictest DUI law in the nation.³ On average, a 160-pound man would be able to consume about three alcoholic beverages in one hour before reaching the new limit, and just one alcoholic beverage could put a 120-pound women over the legal limit.⁴

Setting the legal BAC limit to 0.05 percent has been championed by the National Transportation Safety Board (NTSB) for years, including the issuance of a formal recommendation in 2013.⁵ The NTSB cited European BAC studies that found the reduction of the BAC limit from 0.08 percent to 0.05 percent reduced traffic deaths in the eighteen to forty-nine age group by eight to twelve percent.⁶ The NTSB has argued that the reduction of the

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¹ Jacob Gershman, *New for 2019: Laws on Guns, Harassment, Cannabis-Spiked Drinks*, Wall Street Journal, (January 2, 2018), <https://www.wsj.com/articles/new-for-2019-laws-on-guns-harassment-cannabis-spiked-drinks-11546377708>.

² Nicole Nixon, *Utah First In The Nation To Lower Its DUI Limit To .05 Percent*, NPR, (Dec. 26, 2018), <https://www.npr.org/2018/12/26/679833767/utah-first-in-the-nation-to-lower-its-dui-limit-to-05-percent>.

³ *Id.*

⁴ Dan Levin, *Utah to Begin Enforcing Strictest D.U.I. Law in Country*, The New York Times, (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/us/utah-blood-alcohol-limit-drunken-driving.html>.

⁵ National Transportation Safety Board, *Safety Report on Eliminating Impaired Driving - Frequently Asked Questions*, https://www.nts.gov/news/events/Pages/2013_Impaired_Driving_BMG-FAQs.aspx. (last visited Jan. 2, 2019).

⁶ *Id.*

BAC limit by 0.03 percent would save 1,800 lives each year⁷ and reduce the annual cost of impaired driving, estimated to be \$130 billion.⁸

Even with positive statistics pushed by the NTSB, Utah's new law has been met with strong opposition by a number of groups, including The American Beverage Institute. In response to the arguments made by Utah legislators and the NTSB, the American Beverage Institute stated in a press release last year that "common claims made by .05 supporters are misleading and promote traffic safety policies that will do little to save lives."⁹ The spokesperson for the ABI went on to cite their own statistics from the National Center for Statistics and Analysis, arguing that "nearly seventy percent of alcohol-related fatalities in this country are caused by someone with a BAC of 0.15 and above."¹⁰ Many believe the new law would fail to target the heavy drinkers and repeat offenders of alcohol related accidents, instead impacting casual, lower risk alcohol consumers.¹¹

Utah's new BAC law is notable not only for being the strictest in the nation but also due to Utah's history of leading the charge when it comes setting to BAC limits. In 1983, Utah was the first state to move from a 0.10 percent BAC limit to 0.08 percent.¹² It took more than twenty years, but eventually all remaining states dropped to a 0.08 percent legal BAC.¹³ Now there are

⁷ Dan Levin, *Utah to Begin Enforcing Strictest D.U.I. Law in Country*, The New York Times, (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/us/utah-blood-alcohol-limit-drunken-driving.html>.

⁸ National Transportation Safety Board, *Safety Report on Eliminating Impaired Driving - Frequently Asked Questions*, https://www.nts.gov/news/events/Pages/2013_Impaired_Driving_BMG-FAQs.aspx. (last visited Jan. 2, 2019).

⁹ Press Release, American Beverage Institute, *American Beverage Institute Addresses Myths About .05* (Jan. 31, 2018).

¹⁰ Nicole Nixon, *Utah First In The Nation To Lower Its DUI Limit To .05 Percent*, NPR, (Dec. 26, 2018), <https://www.npr.org/2018/12/26/679833767/utah-first-in-the-nation-to-lower-its-dui-limit-to-05-percent>.

¹¹ Kristin Lam, *First days of Utah's New DUI Law: Highway Patrol Hasn't Made Any Arrests Under .08 Yet*, USA Today, (Jan. 1, 2019), <https://www.usatoday.com/story/news/2019/01/01/utah-dui-law-highway-patrol-arrests-under-08-yet/2460209002/>.

¹² *Id.*

¹³ Jorge L. Ortiz, *Utah Ready to Lower Its Drunken-Driving Threshold to .05, The Strictest Standard in The Nation. Will Other States Follow?*, USA Today, (Dec. 19, 2018),

hints that Utah will once again be leading the pack in the fight against drunk-driving. Oregon, the first state to follow Utah in dropping their BAC limit from 0.10 percent to 0.08 percent, currently has a proposed bill that would adopt the 0.05 limit.¹⁴ In Texas, a new study released last year found that nationally, fifty-four percent of Americans favored lowering the legal BAC to .05 percent and sixty percent of Texas residents favored the decrease.¹⁵ In Hawaii, Delaware, New York, and Washington, state legislators have attempted to make 0.05 percent the legal BAC in the past couple of years but have been unsuccessful.¹⁶ Some have attributed Utah's success in passing the law to the large number of citizens who are members of The Church of Jesus Christ of Latter-day Saints, which urges its members to abstain from consuming alcohol.¹⁷ Many have criticized Rep. Norm Thurston, the Republican lawmaker who sponsored Utah's new law, who is also Mormon, of "trying to legislate drinkers and non-Mormons."¹⁸

Even with the implementation of this controversial law, the question remains as to whether it will result in any substantial number of drunk driving arrest for individuals with a BAC below 0.08 percent. With Utah implementing the law on December 30, 2018, just one day before New Years Eve, a holiday known for large amounts of alcohol consumption and drunk driving enforcement, many watched to see if the new law would result in any significant impact.¹⁹ However, by January 1, there had been no arrests

<https://www.usatoday.com/story/news/2018/12/19/utah-lower-drunk-driving-limit-05-other-states/2358649002/>.

¹⁴ Kristin Lam, *Oregon Proposes Lowering Drunken-Driving Limit to .05, Following Utah*, USA Today, (Dec. 30, 2018), <https://www.usatoday.com/story/news/2018/12/30/oregon-bill-could-lower-drunken-driving-limit-05-following-utah/2447392002/>.

¹⁵ John Austin, *Texas Wants to Lower Legal Blood Alcohol Limits to .05*, Weatherford Democrat, (Oct. 31, 2018),

https://www.weatherforddemocrat.com/news/local_news/texas-wants-to-lower-legal-blood-alcohol-limits-to/article_c143d408-b168-5b2a-8844-171ad9ba9660.html.

¹⁶ Jorge L. Ortiz, *Utah Ready to Lower Its Drunken-Driving Threshold to .05, The Strictest Standard in The Nation. Will Other States Follow?*, USA Today, (Dec. 19, 2018),

<https://www.usatoday.com/story/news/2018/12/19/utah-lower-drunk-driving-limit-05-other-states/2358649002/>.

¹⁷ *Id.*

¹⁸ Nicole Nixon, *Utah First In The Nation To Lower Its DUI Limit To .05 Percent*, NPR, (Dec. 26, 2018), <https://www.npr.org/2018/12/26/679833767/utah-first-in-the-nation-to-lower-its-dui-limit-to-05-percent>.

¹⁹ *Id.*

by the Utah Highway Patrol between the newly adopted 0.05 percent limit and the previous and nationally adopted 0.08 percent limit.²⁰ Rep. Thurston of Utah has stated it will take three to five years understand the full effect of this new law.²¹

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²⁰ Kristin Lam, *First days of Utah's New DUI Law: Highway Patrol Hasn't Made Any Arrests Under .08 Yet*, USA Today, (Jan. 1, 2019), <https://www.usatoday.com/story/news/2019/01/01/utah-dui-law-highway-patrol-arrests-under-08-yet/2460209002/>.

²¹ Kathy Stephenson, *Utah Now Has the Strictest Drunken Driving Limit In the Nation. Here Are 9 Things to Know About the New State Law*, The Salt Lake Tribune, (Dec. 30, 2018), <https://www.sltrib.com/news/2018/12/30/utah-now-has-strictest/>.