Before the Senate Committee On Judiciary and
Ballot Measure 110 Implementation
Senate Bill 201

Testimony of Jana Jarvis, President
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Thank you for the opportunity to testify before you today regarding Senate Bill 201. First, let me say that the top priorities for the members of the Oregon Trucking Associations are highway and employee safety. It is a principle that does not allow for compromise. Our members cannot and will not support anyone operating a motor vehicle on Oregon's highways, streets or roads in an impaired condition.

Having said that, we carefully scrutinize any legislation pertaining to impaired driving because the consequences for our truck drivers is so severe. Commercial drivers do not qualify for diversion if they are impaired and driving either a commercial motor vehicle or their personal vehicle. The arrest itself disqualifies a commercial driver from further driving. In other words, they lose their job and their driver's license. Commercial drivers are also held to a lower BAC at 0.04. These are the federal drug and alcohol regulations and we support them.

Our first concern with Senate Bill 201 is the treatment of the term "statutory counterpart." The bill includes convictions of a "statutory counterpart" to Oregon's laws when calculating penalties for repeat offenders. In this context,

convictions of impairment while operating a boat or airplane are also included. The language used in the definition of "statutory counterpart" found at Section 2 of the bill seems overly broad and clearly open to interpretation. The definition includes language like **"notwithstanding differences in substantive scope"** and **"Another jurisdictions statute need not be the same or nearly the same…"** This language is sufficiently vague that you could drive a big truck through it - pun intended. We recognize that the provisions using the definition would not apply to a commercial driver often. However, it seems questionable to increase penalties if a driver has been convicted of operating a boat, under the influence, in another jurisdiction and is then charged with driving a motor vehicle while impaired in Oregon.

Our other concern with Senate Bill 201 is the language in Section 3(d) that allows an alcohol test to be administered within two hours of driving. If the test shows 0.08 BAC, there is a presumption that the person operated a motor vehicle while impaired. This language is also overly broad because it is silent as to what may have occurred between the time the person drove and the expiration of the 2 hour limit. It is certainly possible that a person could consume alcohol during this window of time resulting in a 0.08 test result.

The author of the bill attempted to remedy this shortcoming by providing an affirmative defense in Section 3(8). However, this affirmative defense may not be used unless the defendant notifies the prosecutor, in writing, that he or she intends to use the affirmative 21 days prior to the first trial. Generally speaking, we are not big fans of affirmative defenses because a person has to know about them in order to use them. Certainly, it would be rare that a normal citizen is aware of an affirmative defense or the requirement to provide notice 21 days in advance on their own. In our opinion, affirmative defenses are particularly egregious when a person does not hire or cannot afford a lawyer. Although, hiring a lawyer is not guarantee that a person will be counseled that an affirmative defense is available.

In light of the above concerns, the members of the Oregon Trucking Associations respectfully request that you not move this bill forward. In the event that the Chair wishes to form a workgroup to address these concerns, we would very much like to be part of that effort.

Thank you.

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