

SB

628

"An Act relating to driving a motor vehicle while under the influence of intoxicating liquor."

### COMMITTEE REPORT

3/1/76

HOUSE

JUDICIARY

Mr. Speaker:

Date May 14, 1976

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had SB 628

under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS
- "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

Susan Sullivan \_\_\_\_\_

Tommy Doherty \_\_\_\_\_

John J. Stroh \_\_\_\_\_

\_\_\_\_\_

Members NOT concurring in the Majority report:

- \_\_\_\_\_ recommends:
- \_\_\_\_\_ recommends:
- \_\_\_\_\_ recommends:
- \_\_\_\_\_ recommends:
- \_\_\_\_\_ recommends:

Susan Sullivan Chairman

A M E N D M E N T

Offered in the HOUSE

By House HESS

To: \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

\_\_\_\_\_ SENATE BILL NO. SB 629

AMENDMENT: Page \_\_\_\_\_ Line \_\_\_\_\_

Page 1, Line 20 after "chapter" put a comma and add "and that his refusal may be used as evidence in a court of law".

Page 2, Line 1 add a new subsection as follows

Sec. 4. ~~24.35.030~~ is amended by adding a new subsection to read:

(e) If a person under arrest refuses to submit to a chemical test under the provisions of this chapter, witnesses of refusal shall be admissible in a civil or criminal proceeding or in any other proceeding of which refusal to take such a test is an element of the offense.



JUNEAU ALASKA

# Alaska State Legislature House

HOUSE HESS COMMITTEE MEETING

MAY 13, 1976

Present: Beirne      Ostrosky      Sullivan  
          Davis        Hackney

HCR 143 - Study of Housing for Aged & Disabled

Ostrosky amendment to change the title of this study amendment adopted

bill passed out of committee

SB 628 - Driving while under the influence - Ziegler

Dennis Robertson testified about how this bill affects things, also proposes an amendment which was worked up by the task force group he sits on

Amendments proposed were adopted, he will give me the detailed information on amendments tomorrow.

Bill moved out as amended.

SB 716am - Funderal and Mortuary Science

Sharon Andrews, licensing, has dept's amendments, quite extensive each committee member recieved a copy.

Lisa Rudd testimony about the whole pre-need issue, also related to the committee the testimony received by the commerce committee. Handed out statistical information regarding pre-need and what other states have done. Over 1/2 states have 100% refund on pre need.

Helen will get legality of the bill from Bill Berrier. Bill is looking at the 17 page amendment to see if it can be incorporated in regulations rather than as an amendment.

Sharon Andrews also doing research with Dick Block, Ins. regarding the suirty bonding issue.

Helen would like to include a higher educational standard in this bill, as the original S.B. stated.

Also would like to have the following people testifyon this bill if heard again soon. Mr. Peters, Mr. Block, ask Helen for more names.

LAW OFFICES OF  
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A. H. ZIEGLER  
1915-1972 (DECEASED)

April 29, 1976

Representative Susan  
Sullivan  
Chairman, House of  
Representatives  
Hess Committee  
Pouch Y  
Juneau, Alaska 99802

Re: SB-628.

Dear Ms. Sullivan:

I was advised by Terry Gardiner on March 18, 1976 that Senate Bill 628, regarding an amendment to the implied consent law had been referred to your committee, after which time the bill would be sent to the house judiciary committee.

I am writing this letter in the hopes that something can be done on this bill during this legislature because of what I think to be an area of abuse in the present interpretation of our present implied consent law. AS 28.35.032 states in pertinent part that if a person refuses to submit to a chemical test after arrested for driving while under the influence, he shall be advised by the officer that his refusal will result in suspension, denial or revocation of his license. That portion of the statute has been interpreted by the Alaska State Troopers, including the Ketchikan District Attorney's office to mean that no advice of a persons right to refuse to take the test need be given until the person actually refuses to take the test. After arrest he is immediately hustled to the State Office Building where he is placed on video tape and told to submit to a breathalyzer examination. This procedure, I believe, does not reflect the intent of the legislature. The implied consent statute was meant to impress the stamp of

SB 628  
Lil

Representative Susan  
Sullivan  
April 29, 1976  
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validity upon use of certain chemical tests and to promote their use upon penalty of loss of license in the event refusal occurred. It was not the intent of the legislature to require submission to the breathalyzer examination, otherwise the legislature would simply have so provided.

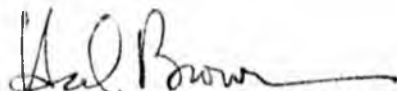
The intent of the amendment is to provide clearly that police officers are to inform defendants of their right to refuse to take the breathalyzer and the results of their refusal, should they choose to do so. In other words they should be advised of their right to refuse and the consequences of refusal before the test is administered.

I would appreciate anything you can do to cause this bill to be reported out favorably. If you need any more information please let me know. I do believe that the problem is important enough to cause the present implied consent law to be amended.

Sincerely

ZIEGLER, ZIEGLER & CLOUDY

By

  
Harold M. Brown

HMB:if

SECOND SESSION / NINTH STATE LEGISLATURE  
1976

BILL NO.

HB  
(circle one)

SB

628

**SUBSTANCE OF BILL:** Establishes a right to refuse breathalyzer test when arrested for driving while intoxicated (dwi) and requires that officer's advisement include the driver's right to refuse testing at the officer's direction and to have additional tests as prescribed by AS 28.35.033(e).

**BACKGROUND OF BILL:** Sponsored by Sen. Ziegler. (The Senator is out of town until next week and no meeting of Sen. Judiciary are scheduled until then)

- RECOMMENDATION:**
- (1) Wherever the Senator proposes to add the word "right", add an 's' to pluralize the word because the current and proposed law speak of the right to 'refuse' and the right to have additional tests made. [However, if Sen. Ziegler's proposal is for one conjunctive right wherein a person may refuse-and-be additionally tested, may allow the allegedly 'guilty' person to await sobriety before having the additional tests; thus affecting considerably the potential for conviction.
  - (2) Like in the AS 28 interim committee draft (which addresses a problem of the Alaska Court System), the officer's advisement should also include a statement that a person's refusal to submit to testing at the direction of the officer may be used as evidence in a court of law.
  - (3) Although Senator Ziegler would expectedly oppose a broadening of the implied consent law (as ascertained in conversations with him about AS 28 interim committee's thinking to also include tests of blood, urine, and other bodily substances), this may be the proper time and place to suggest legislative consideration of broadening 'implied consent' to cover driving under the influence of drugs (which society may only expect to increase in all probability) and therefore proper methods of collecting urine samples (in that urinalysis is currently the only reliable testing procedure for presence of drugs in the body

NOTE. Dr. Louis Nauman of Alaska Medical Laboratories (Anch.) should perhaps testify on this bill and the general subject (as he did before the interim committee in Dec. 75)

ASSIGNED TO: Dennis Robertson *DR* Division: ~~XXXXXXXXXX~~ Date: 11 Feb. 76

PLEASE NOTE, EVEN IF YOU DO NOT HAVE COMMENTS, PLEASE RETURN THIS FORM TO US SO WE CAN KEEP OUR RECORDS STRAIGHT.

Distribution: 1 copy for writer's files  
1 copy for commissioner's office, Juneau

SUPPLEMENTAL BILL ANALYSIS

SB 628

HISTORY: Implied consent, refusal to submit to chemical testing, chemical analysis of blood, and the period of revocation sections of the current statutes (AS 28.35.031-034) were all enacted as \*Sec. 1 of ch. 83, SLA 1969. None of these sections have been amended since that time.

CURRENT LAW: The right of refusal to chemical testing exists already in the current law by virtue of the presence and substance of AS 28.35.032 which provides that upon driver-refusal, a police officer is to advise that refusal will result in loss of driving privileges, and then the test 'shall not' be given [NOTE that use of 'shall not' prohibits mandatory testing, but that tests may still be administered at officer's discretion if driver changes his position in that the words 'may not' are unused]. The remainder of this section governs loss of license, court appeal, and situations involving OMVI conviction within previous two years. AS 28.35.034 provides for surrender of license and for court modification/nullification of license suspension/revocation.

Subsection (e) of AS 28.35.033 establishes a driver's right to additional tests (current law). Failure or inability to obtain such additional tests does not preclude admission of evidence pertaining to test taken at direction of police officer; failure/inability to obtain additional tests is admissible in court proceeding. The remainder of this section provides for presumptions, reporting and introduction of evidence, supply of information to driver/his attorney upon driver-request, and presumption of validity of tests if tests are shown to comply with standards/methods prescribed by the Department of Health & Social Services.

SB 628: Senator Ziegler's bill (passed Senate unanimously) simply requires the additional officer-advisement that a person has the right to refuse the 'implied consent test' and has a right to additional tests when driver refuses to submit to chemical testing and officer advises that his license will be suspended/revoked/denied. SB 628 amends both the implied consent and the 'refusal' sections of the current law (including the subsection on scope of judicial review of loss-of-license appeal). Conceivably, SB 628 has no other affect than to broaden the advisement given by a police officer during arrest for driving/operating motor vehicle while intoxicated (OMVI).

See bill analysis submitted with respect to SB 628, dated 11 Feb 76 (submitted to commissioner's office).

*... of his right to refuse the test and that, having taken a breath test, he should not have additional tests administered ---- (SYDNAM'S suggested wording)*

*J.R.*