

March 30, 1976

SENATOR DeCAMP: This was the issue that came up yesterday. The Section that it strikes is the one that says the changes in the law shall apply to cases on appeal, or that haven't reached final judgement. I said that I thought that made it unconstitutional. I suggested that we had checked with the Attorney General and he indicated that. We confirmed that information again yesterday. What you do with the amendment doesn't matter to me. I just don't think you should jeopardize the bill. The explanation on "increase in penalty", the Department of Motor Vehicles was assessing two points for .10 offenses. This, in complying with a court decision, runs up to six points, so that constitutes an increase. Senator Kremer consulted with the Department of Motor Vehicles and he can give you further information on it.

PRESIDENT: Senator Cavanaugh.

SENATOR CAVANAUGH: Mr. President, members of the Legislature. I'd just like to clarify Senator DeCamp's position because it's not completely accurate. What we are talking about here is apparently the courts had been saying that the assessment of influence for ten one-hundredths of one percent by weight of alcohol was not influence of alcoholic liquor so they were assessing under the two point penalty. But in July, as I understand it, of '75 the court said that that was incorrect and that those two phrases should be construed to be the same. Since then everyone has been assessed at six points. So we're not increasing the penalty. The problem with Section 2 is not so much a problem with constitutionality as one of policy. My discussion with the Attorney General was that they simply didn't like the policy. They felt that there might be some concern about the constitutionality, but they weren't prepared to say that it was unconstitutional in that it provides that the act shall apply to pending cases. With the absence of that Section the act would only apply to those cases which arose after we enact the legislation and not those that are pending at the time that we enact legislation. In neither case will it be retroactive. Mainly this relates to the one point ... the reducing of the two points to the one point. What the Attorney General is saying is that he doesn't think that it's quite fair to allow that break to a person whose case is pending or who has taken it on appeal when you're not allowing it to all other cases. But that's a quite different matter than saying that we are granting or increasing the penalty retroactively for some offense. That's not what this bill does at all. There's no problem with that. The court has already declared that. We assess six points for influence of .10 of one percent. The sole question is whether or not you want to grant the privilege of reducing this set of offenses in Section 11 from two points to one point in the case of those cases that are pending or on appeal. Personally, that doesn't bother me. I don't think that there is a constitutional problem there. I would oppose the DeCamp amendment.

PRESIDENT: Senator DeCamp, do you wish to close debate on this matter?