

March 19, 1982

LB 870

SENATOR NICHOL: Senator Sieck, very simply, ex post facto law is one which renders an act punishable in a manner in which it was not punishable when committed. Now the Legislature can change trial procedure and a new procedure may be made applicable to offenses previously committed without violation of this constitutional provision. But what we cannot do is impose additional punishment for an act already committed. The committee gets around this provision by changing trial procedure to allow courts to take into consideration prior convictions during sentencing. We do not enhance present penalties in the law. What we do is make mandatory those penalties that are applicable to the various offenses now. This is a very important distinction and it is what saves the committee draft from violating this particular section of the Constitution. What Senator Stoney's draft does is escalate penalties beyond what present law provides for and attempts to use prior convictions to attain those enhanced penalties. This you cannot do. As I mentioned previously, the only way the courts can continue this section to be constitutional would be to wipe the slate clean for all drunk drivers in the state. Can't have it both ways. Thank you.

SENATOR SIECK: Members of the body, do you want to wipe the slate clean? I say, no. We have got people out there that are driving on second and third offenses. Even though they may be only on the first offense, we have got to catch them, we can't wipe that clean and I think this will do a lot more good as far as the drunken driving. Those first offenders, if we hit them pretty hard the first time, I think that is going to stop a lot of them. But our problem is with those that are constant alcoholics as you might say, and we have got to catch them and we have got to stop them. So I am going to ask you to vote against raising this bill, 870. Thank you.

PRESIDENT: The Chair recognizes Senator Marsh.

SENATOR MARSH: I call the question.

PRESIDENT: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate will vote aye, opposed nay. The question is, shall debate cease? Have you all voted? The question is, shall debate cease? Record the vote.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: The motion carries, debate ceases. Senator Beyer,