



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>Panning Garcia</u>
Time	<u>2:25 p.m.</u>
Date	<u>2-17-98</u>

FEB 16 1998

Refer to
Legislative Secretary

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 369 (COR), "AN ACT TO REPEAL AND REENACT §18201, TO AMEND §§18203(a) AND (g) OF ARTICLE 2, CHAPTER 18 OF TITLE 16 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE IMPLIED CONSENT LAW AND SURRENDER OF A DRIVER'S LICENSE", which I have signed into law today as **Public Law No. 24-122**.

Thank you to Senator Elizabeth Barrett-Anderson for assisting to make needed changes in Guam's law relative to Driving Under the Influence. This particular legislation brings Guam into conformity with other jurisdictions where a concerted effort is being made to discourage the public from driving after drinking or being under the influence of any substance which impairs the ability to drive safely.

This legislation also broadens the types of tests which can be used to detect various substances which impair driving ability. A correction needs to be made to the legislation, however, by changing the phrase "blood and urine test" to "blood or urine test". This would make it clear that both tests do not have to be done at the same time.

Very truly yours,

Carl T. C. Gutierrez

Attachment

80643

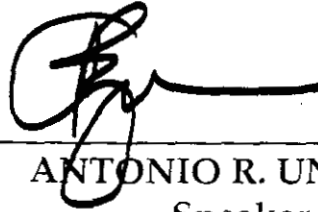
cc: The Honorable Joanne M. S. Brown
Legislative Secretary

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 2-17-98
Time: 10:25
Rec'd by: [Signature]
Print Name: CHARLES DUNN

TWENTY-FOURTH GUAM LEGISLATURE
1998 (SECOND) Regular Session

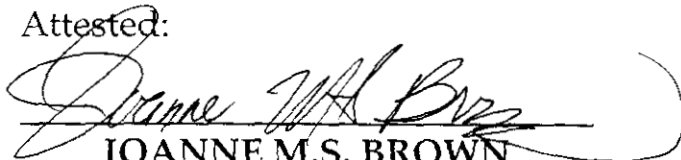
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 369 (COR), "AN ACT TO REPEAL AND REENACT §18201, TO AMEND §§18203(a) AND (g) OF ARTICLE 2, CHAPTER 18 OF TITLE 16 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE IMPLIED CONSENT LAW AND SURRENDER OF A DRIVER'S LICENSE," was on the 5th day of February, 1998, duly and regularly passed.



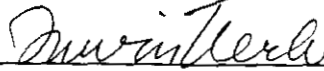
ANTONIO R. UNPINGCO
Speaker

Attested:



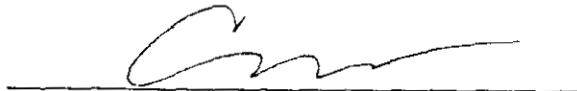
JOANNE M.S. BROWN
Senator and Legislative Secretary

.....
This Act was received by the Governor this 6th day of February, 1998, at
11:00 o'clock a.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 2-16-98

Public Law No. 24-122

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

Bill No. 369 (COR)

As amended by the Author, further
substituted and amended on the Floor.

Introduced by:

E. Barrett-Anderson
T. C. Ada
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
W. B.S.M. Flores
Mark Forbes
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
L. Leon Guerrero
V. C. Pangelinan
J. C. Salas
A. L.G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

**AN ACT TO REPEAL AND REENACT §18201, TO
AMEND §§18203(a) AND (g) OF ARTICLE 2, CHAPTER
18 OF TITLE 16 OF THE GUAM CODE ANNOTATED,
RELATIVE TO THE IMPLIED CONSENT LAW AND
SURRENDER OF A DRIVER'S LICENSE.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** Section 18201 of Article 2, Chapter 18 of Title 16 of the Guam
3 Code Annotated is hereby repealed and reenacted to read as follows:

4 **“Section 18201. Implied Consent of Driver of Motor Vehicle to**
5 **Submit to Blood and Urine, or Breath Testing to Determine Alcohol or**
6 **Controlled Substances Content of Blood and Urine. (a) Any**

7 person who operates a motor vehicle on the public highways or
8 roadways of Guam shall be deemed to have given consent to a blood
9 and urine, or breath test for the purpose of determining the alcohol or
10 controlled substance content of the person's blood and urine.

11 (b) The blood and urine, or breath tests shall be administered at
12 the request of the peace officer having reasonable cause to believe the
13 person driving or in actual physical control of a motor vehicle upon the
14 public highways or roadways is under the influence of alcohol or
15 controlled substances only after: (1) a lawful arrest, and (2) the person
16 has been informed by a peace officer of the sanctions that may result
17 from his or her refusal to be tested.

18 (c) If there is probable cause to believe that a person is in
19 violation of §18102 of this Chapter, then the person shall have the option
20 of using a blood and urine, or breath test for the purpose of determining
21 the alcohol or controlled substance content of that person's blood and
22 urine.

23 (d) No person other than a physician, registered nurse, or
24 person licensed in a clinical laboratory, may withdraw blood and urine
25 for the purpose of determining the alcohol or controlled substance

1 content thereof. This limitation shall not apply to the taking of a breath
2 specimen. As soon as the results of a blood and urine test performed
3 pursuant to this Section are available, the custodian of the record of the
4 test shall provide, without subpoena, a true copy of the results of the
5 test to the Guam Police Department or criminal prosecutors. No
6 physician, nurse, hospital, clinical laboratory, or any employee thereof,
7 shall be subject to civil liability or suit for providing blood and urine test
8 results as required by this Subsection.

9 (e) The implied consent of a person to be tested shall not be
10 withdrawn by reason of the person's being dead, unconscious or in any
11 other state which renders the person incapable of consenting or refusing
12 to be tested. In such event, a test of the person's blood and urine shall
13 be administered.

14 (f) If a person under arrest refuses to submit to a breath or
15 blood and urine test, none shall be given. The person shall be warned,
16 however, that his or her failure to be tested may be used in evidence
17 against him or her in any charge arising from the arrest.

18 (g) In addition to the warnings provided in Subsection (f) of this
19 Section, the arresting officer shall warn the person that refusal to submit
20 to a blood and urine, or breath test will result also in the following:

21 (1) the person must immediately surrender his or her
22 driver's license to the officer;

23 (2) the officer will take custody of the license and will
24 forward it to the Department of Revenue and Taxation, Motor
25 Vehicles Division, along with the officer's sworn statement,

1 affidavit or written declaration as required by §18202 of Title 16 of
2 the Guam Code Annotated; and

3 (3) the driver's license will not be returned and the
4 person's driving privileges restored until completion of all
5 administrative and court proceedings against the person, and it is
6 so ordered by the Director of Revenue and Taxation or the courts."

7 **Section 2.** Section 18203(a) of Article 2, Chapter 18 of Title 16 of the
8 Guam Code Annotated is hereby amended to read as follows:

9 "(a) If a person is arrested for a violation of §18102 of this
10 Chapter, on a determination by the police officer that there was
11 reasonable cause for the arrest then: (1) the police officer shall inform
12 the person that he or she has the option of taking a blood and urine, or
13 breath test, (2) the police officer shall also inform the person that a
14 refusal to submit to or a failure to complete the blood and urine, or
15 breath test may be used in evidence against him or her in criminal
16 proceedings, and that he or she may be subject to administrative
17 suspension or revocation by the Department of his or her privileges and
18 license or permit to operate a motor vehicle, (3) the officer also shall
19 inform the person that a refusal to take the test or a failure to complete
20 the test requires the officer to immediately take custody of the person's
21 driver's license for forwarding to the Department."

22 **Section 3.** Section 18203(g) of Article 2, Chapter 18 of Title 16 of the
23 Guam Code Annotated is hereby amended to read as follows:

24 "(g) At the commencement of the initial or continued hearing, if
25 for any reason the person who is alleged to have refused to submit to or

1 failed to complete blood and urine, or breath testing did not surrender
2 his or her driver's license to the arresting officer, the person shall
3 surrender to the Department any license or permit issued in the name of
4 the person which authorizes the person to drive and be in physical
5 control of a vehicle and which license or permit was not previously
6 suspended or revoked."

7 **Section 4.** Section 18203(h) of Article 2, Chapter 18 of Title 16 of the
8 Guam Code Annotated is hereby amended to read as follows:

9 "(h) At the hearing the driver has the burden of proof to show by
10 the preponderance of the evidence that the requirements of this §18203
11 were not met. If the hearing is continued to another date and time by
12 the Director, or the Director's designee, or if at the conclusion of the
13 initial or continued hearing, the Director, or the Director's designee,
14 dismisses the administrative action, then the Department shall return
15 the person's driver's license or permit to him or her."

16 **Section 5.** This Act shall become effective six (6) months from
17 enactment. The Guam Police Department is mandated to develop an
18 education program, and such general orders as are necessary to properly
19 implement this Act.



Committee on Judiciary, Public Safety and Consumer Protection

Twenty-Fourth Guam Legislature

Senator
Elizabeth Barrett-Anderson
Chairperson

January 20, 1998

Senator
John C. Salas
Vice-Chairman

SPEAKER ANTONIO R. UNPINGCO
Twenty-Fourth Guam Legislature
155 Hesler St.
Agana, Guam 96910

Senator
Anthony C. Blaz
Member

Dear Mr. Speaker:

Senator
Joanne M.S. Brown
Member

The Committee on Judiciary, Public Safety and Consumer Protection, to which was referred **BILL NO. 369**, wishes to report back to the Legislature with its recommendation **TO DO PASS BILL NO. 369 AS AMENDED BY THE AUTHOR.**

Senator
Mark Forbes
Member

The voting record is as follows:

Senator
Edwardo J. Cruz, M.D.
Member

6 TO PASS

Senator
Vicente C. Pangelinan
Member

0 NOT TO PASS

Senator
Frank Blas Aguon, Jr.
Member

0 ABSTAIN

0 TO PLACE IN INACTIVE FILE

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

Sincerely,

E. Barrett-Anderson
ELIZABETH BARRETT-ANDERSON
Chairperson

Attachments

**COMMITTEE ON JUDICIARY, PUBLIC SAFETY AND
C O N S U M E R P R O T E C T I O N
T W E N T Y - F O U R T H G U A M L E G I S L A T U R E**

173 ASPINALL AVENUE, ADA PLAZA CENTER SUITE 108A, AGANA, GUAM 96910


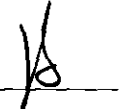
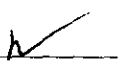

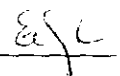
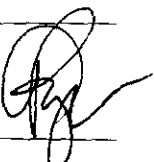
SENATOR ELIZABETH BARRETT-ANDERSON
Chairperson

SENATOR JOHN C. SALAS
Vice-Chairperson

SPEAKER ANTONIO R. UNPINGCO
Ex-Officio Member

VOTING SHEET

Bill No. 369: As amended by the Author. An act to add a new 16 GCA §18201(g), to amend 16 GCA §18203(a) & (g), relative to implied consent law and surrender of driver's license and to Amend 16 GCA §18203 (h), relative to burden of proof.

<u>COMMITTEE MEMBERS</u>	<u>INITIALS</u>	<u>TO DO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>
1). Sen. Elizabeth Barrett-Anderson Chairperson		✓		
2). Sen. John C. Salas Vice-Chairperson		✓		
3). Sen. Frank B. Aguon, Jr. Member				
4). Sen. Anthony C. Blaz Member		✓		
5). Sen. Joanne M.S. Brown Member		✓		
6). Sen. Eduardo J. Cruz M.D. Member		✓		
7). Sen. Mark Forbes Member				
8). Sen. Vicente C. Pangelinan Member				
9). Speaker Antonio Unpingco Ex-Officio Member		✓		

**COMMITTEE ON JUDICIARY, PUBLIC SAFETY AND
COMSUMER PROTECTION**

**ELIZABETH BARRETT-ANDERSON
CHAIRPERSON**

Twenty-Fourth Guam Legislature

REPORT

on

**Bill 369. As amended by the Author.
An act to add a new 16 GCA
§18201(g), to amend 16GCA
§18203(a) & (g), relative to implied
consent law and surrender of
driver's license and to Amend 16
GCA §18203 (h), relative to burden
of proof.**

I. SUMMARY

The Committee on Judiciary, Public Safety and Consumer Protection held a public hearing on Bill No. 369 at the Legislative Public Hearing Room at 2:00 PM, Tuesday, October 21, 1997. Public Notice was published in the October 14 and October 21, 1997 editions of the Pacific Daily News.

Committee Members Present:

Senator Elizabeth Barrett-Anderson, Chairperson
Senator John C. Salas, Vice Chairperson
Senator Vicente C. Pangelinan
Senator Frank B. Aguon, Jr.

Senators Present:

Senator Lawrence F. Kasperbauer

II. Purpose:

The purpose of this bill is to amend the implied consent statutes to provide for additional mandatory warnings the arresting officer is to give regarding the immediate surrender to the officer of the driver's license of a person arrested for Driving Under the Influence (DUI) who refuses to submit to a breath or blood test to determine the level of intoxicants in the drivers blood, and to authorize the officer to take custody of the license at the time of the driver's arrest for forwarding to the Department of Revenue & Taxation. Additionally the Bill shifts the burden of proof to the driver to prove that the Government did not meet all the requirements of the law.

Relationship to Existing Law:

The implied consent statutes are part of Chapter 18 of Title 16 GCA, the "Safe Streets Act", enacted by P.L 22-20:2, amended by P.L. 22-146.

6 GCA §18201(f) provides:

"If a person under arrest refuses to submit to a breath or blood test, none shall be given. The person shall be warned, however, that his or her failure to be tested may be used in evidence against him or her in any charge arising from the arrest."

The existing statutory sanctions for refusal to take a test are detailed under 16 GCA §18202 *et seq.* and provide for submission by the arresting officer of a "sworn statement, affidavit or written declaration under penalty of perjury that the

officer had reasonable cause to believe the person had been operating and in physical control of a motor vehicle in violation of [DUI statute and failed or refused to submit to the required test after having been informed by the officer of the consequences, etc.]" The Department of Revenue and Taxation then is to take the necessary action to administratively suspend the license, notifying the person of his right to a hearing, etc.

The provisions in the bill are new and have no counterparts in existing law.

Bill 369 was developed with the cooperation of the Attorney General's Office and the Guam Police Department as a result of the Spring DUI conference. Section 4 was added to Bill 369 at the request of the Governor and upon the recommendation of the Attorney General.

III. FINDINGS and RECOMMENDATIONS

The Committee on Judiciary, Public Safety and Consumer Protection finds support for the passage of Bill No. 369 as amended by the Author, Senator Barrett-Anderson and the Committee presents this report to the Twenty-Fourth Guam Legislature with its recommendation **TO DO PASS**.

LAW OFFICES
HOGAN & BRONZE
A PROFESSIONAL CORPORATION

SUITE 105F ADA'S COMMERCIAL & PROFESSIONAL CENTER
215 CHALAN SANTO PAPA
AGAÑA, GUAM 96910

TELEPHONE:
(671) 472-8067
TELECOPIER:
(671) 472-2957

J. E. HOGAN
JACQUES G. BRONZE

October 21, 1997

RECEIVED

24th Guam Legislature
Committee on Judiciary, Public
Safety and Consumer Protection
Date: 10/21/97 *J.C.*

Senator Elizabeth Barrett-Anderson
Suite 108-A
Ada's Plaza Center
173 Aspinall Ave.
Agana, Guam 96910

Re: Bill 369 - Testimony

Dear Senator Anderson:

Bill 369 revokes the driver's license of any person who refuses to take a blood alcohol test either by breath testing or blood analysis. The suspension stays in effect until all administrative and court proceedings against the person are completed.

This law violates due process as it punishes a person without a hearing. In effect it states, if you won't give evidence against yourself, you will be punished until such time as you receive a hearing. Isn't this putting the cart in front the carabao? The accused must be given a hearing on the simple issue of whether he or she consented to the test or did not consent.

At law, driving is considered a privilege, not a right. This legal axiom is wrong. Driving is a fundamental right as it is necessary, not only for economic reasons, but for life itself in emergency situations.

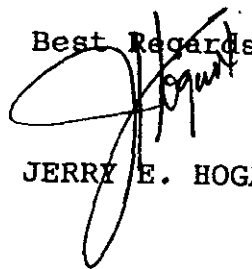
Can one imagine the writers of the Constitution declaring that riding a horse or driving wagons was a privilege - - a blessing only received from the government? That driving is a legal privilege is a reflection of government's need to control.

Bill 369 does not fund Revenue & Taxation to hold administrative hearings. The hearings won't happen.

Several years ago a law was passed requiring liability insurance for automobiles. Revenue & Taxation was given the responsibility to hold hearings on violators to revoke registrations. A little over a year ago, I inquired about a

case. I was informed by Revenue & Taxation that no hearing had ever been held because of lack of funding and appropriate staffing.

Best Regards,



JERRY E. HOGAN

JEH:jcm
BILL369.JEH

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

Bill Number: 369(COR)
 Amendatory Bill: Yes

Date Received: 9/25/97
 Date Reviewed: 10/20/97

Department/Agency Affected: Guam Police Department
 Department/Agency Head: James Marquez, Chief of Police
 Total FY Appropriation to Date: \$27,500,000

Bill Title (preamble): *An act to add a new 16 GCA subsection 18201(g), and to amend 16 GCA subsection 18203(a) & (g), relative to implied consent law and surrender of driver's license.*

Change in Law: Yes

Bill's Impact on Present Program Funding:
 Increase _____ Decrease _____ Reallocation _____ No Change x

Bill is for:
 Operations x Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Public Safety			

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL						
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? - IF NO, ADD'L AMOUNT REQUIRED \$ _____
 AGENCY/PERSON/DATE CONTACTED: _____

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						
OTHER						
TOTAL						

ANALYST Christine Quichocho DATE 10/21/97 DIRECTOR Joseph E. Rivera, Acting DATE OCT 22 1997

FOOTNOTES: *The proposed legislation is an amendment relative to implied consent law and surrender of driver's license. This legislation is primarily administrative in nature and will not impact the general fund.*

Carl T.C. Gutierrez
Maga'láhi
Governor



Gus F. Diaz
Hinirát Abugao, Akto
Attorney General, Acting

Madeleine Z. Bordallo
Tifente Gubetnadora
Lt. Governor

Ufisinan Hinirát Abugao
Guáhan
Office of the Attorney General
Guam

December 15, 1997

The Honorable Elizabeth Barrett-Anderson
Senator, Twenty-Fourth Guam Legislature
Chairperson, Committee on Judiciary, Public Safety
and Consumer Protection
Ada Plaza Center, Suite 108-A
173 Aspinal Avenue
Agana, Guam 96910

RECEIVED

24th Guam Legislature
Committee on Judiciary, Public
Safety and Consumer Protection
Date: 12/15/97

Re: Amendment of Safe Streets Act

Dear Senator Barrett-Anderson:

Please find enclosed a copy of the transmittal letter from the Governor to the Speaker of the Legislature dated May 28, 1997, with a copy of our proposed amendment to the Safe Streets Act. The current statute, Title 16, Section 18203(h), places on the government a burden of proof for proving that a driver refused a chemical test when stopped for a DUI violation. Our research indicated that this is an unheard burden on the government, in any jurisdiction. We see amendment of this section as the last impediment preventing the Department of Revenue and Taxation from carrying out the legislative intent of the statute.

We thank you in advance for any assistance in setting up a hearing and promoting it's passage. Please contact me if I can provide any additional information.

Dangkolo Na Agradesimiento --- Thank You Very Much!

Sincerely,


GUS F. DIAZ
Attorney General, Acting



Commonwealth Now!



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAY 28 1997

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Speaker Unpingco:


Enclosed please find a copy of a draft Bill entitled: " AN ACT TO AMEND SUBSECTION (h) OF SECTION 18203 OF TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING BURDEN OF PROOF FOR ADMINISTRATIVE HEARING ON REFUSAL TO COMPLETE BLOOD OR BREATH TEST."

The safety of our island's residents on the roadways is of the utmost concern. While the Safe Streets Act addresses this concern, more is needed to keep unsafe motorists off Guam's roadways. This amendment would make it more difficult for a person suspected of driving while under the influence, who refuses to take a blood or breath test, to keep a license.

Presently, the law requires the Department of Revenue and Taxation to prove for each case that the driver has refused to take a blood or breath test as stated in the police report. The burden of proof at the hearing, to prove that the police report indicating a refusal to take a blood or a breath test is correct, is shifted away from the Director or the Director's designee to the driver. If a police report is incorrect, it will not prevent a person from proving the true facts.

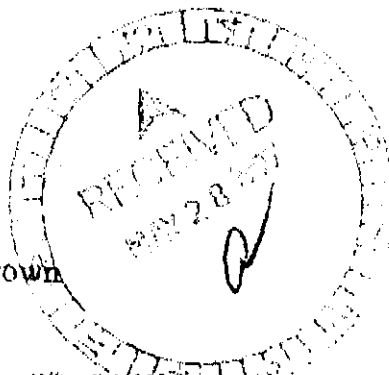
The amendment will not only promote safety, it will deter future drivers from operating a vehicle while under the influence. Please forward this draft bill through the legislative process for enactment into law.

Very truly yours,


Carl T. C. Gutierrez
Governor of Guam

Attachment

cc: Senator Joanne M. S. Brown
Legislative Secretary



Office of the Speaker
ANTONIO R. UNPINGCO

Date: 5/28/97

Time: 1:45

Rec'd by: [Signature]

Print Name: [Signature]