

February 4, 1992 LB 291

SENATOR WARNER: The call is raised. Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. Mr. Clerk, could you...what page is that?

CLERK: 615, Senator, of the Journal.

SENATOR HALL: Thank you. Mr. President and members, this is the amendment, if you turn to page 13 of the white copy, the committee amendments that are offered to 291. It strikes the language beginning with "the" in line 16 so it says, the result of any test administered within 90 minutes after the termination of the operation or actual physical control of a motor vehicle shall be presumed to accurately reflect the alcohol concentration or the presence of drugs in the blood, breath or urine tested at the time such operation or actual physical control terminated if the test is administered in accordance with methods approved by the Department of Health. What we do in this amendment is strike the presumption of accuracy with regard to the test that is laid out based on a time table, if you will. What the bill does, and Senator Kristensen in his opening stated that there were those that wanted three hours. They were prosecutors that testified and again, it's the prosecutors who are asking the Legislature to statutorily do their job for them, and that's exactly what this is all about. It is a presumption that no matter how things are handled that if the issue of the test is taken within 90 minutes of the stop, and that's what it amounts to, at the time such operation or actual physical control terminated if the test is administered in accordance with methods approved by the Department of Health, that it's going to be accurate, that there would be a presumption of accuracy. In other words, it would have to be rebutted, as Senator Kristensen said. I don't know. I'm not an attorney, but it would be a little difficult I think to...if you brought a test in and it came in at 60 minutes or it came in at 88 minutes to rebut the statute when the statute says 90 minutes. I mean the only argument is what time were you stopped or what time did you cease control of the vehicle? Has nothing to say about the test itself. The only argument for the test is that in accordance with methods approved by the Department of Health and it says methods, it doesn't specific types of tests, it doesn't say how the procedures are handled. It doesn't go to the issue of who did it, where it was done, how it was done, just says methods that have been approved by the Department of Health. Well, the methods or the standards that