

SENATOR CHAMBERS: If you did not have this presumption, what is the difference in circumstances that would exist if the evidence is admissible without the presumption being there? What does the presumption add?

SENATOR KRISTENSEN: You're asking very precise...okay, here's what the presumption adds. Once the test is admitted, once it has been offered, objections were made as to the machine wasn't maintained, let's say they didn't follow those procedure, the machine was off, not calibrated, but you make those objections, judge rules on those and the test is admitted. Okay, then it is into evidence. Once it is into evidence the presumption attaches that that is the test result that occurred at the time of the operation. Common defense...stop me if you want me to take the time.

SENATOR CHAMBERS: What does that add to what exists now?

SENATOR KRISTENSEN: It adds, now is that the defense, you would argue, you'd stand up and say, ladies and gentlemen of the jury, this individual was stopped at 12:05 a.m. and the law says that at the time of operation you had to be over .10, this test was taken a half an hour later by the time they transported him to the jail and he tested .20, and, ladies and gentlemen, this isn't a valid test, that is what it was a half hour after he was driving, that wasn't what he driving at the time and gee, I wish we had the technology to convict this person, but we just don't have it and short of having a machine that monitors your blood level at every moment that you could pull out and record what the actual time was, it's a matter in aiding that prosecution. There are some people who buy that argument, that's not the intent of law, and if it is, you'll render all drunk driving laws ineffective.

SENATOR CHAMBERS: Senator Kristensen, and I'm allowing you to take the time that you need to develop your answer because I'll put my light on again. I want some things in the record. I want a legislative history and that's why I'm trying not to interrupt you as you, the introducer of the amendment, explain what it is you're after and what you purport to accomplish by it. The test has been admitted now. Under the present law if a test is admitted, why is that not sufficient to obtain a conviction?

SENATOR KRISTENSEN: It is sufficient to maintain the conviction