

SENATOR KRISTENSEN: I don't believe that is a legitimate argument. I think that is a misstatement of what the law is. I want to put the law back to where I think it was intended to be and that that the test results, if you violate the test results, that is evidence of driving while intoxicated.

SENATOR CHAMBERS: If there is a jury trial, does the judge instruct the jury before he releases them to consider the case?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Why is he not able in his instruction to properly state the law to the jurors?

SENATOR KRISTENSEN: He does properly state the way the law is today.

SENATOR CHAMBERS: Then why are you telling this body that the defense attorney can confuse the jury as to the law, but indicate that the judge cannot correct that misperception by properly stating the law? That's what you're saying, that the judge cannot make the law clear to the jury.

SENATOR KRISTENSEN: No...

SPEAKER BAACK: Time. Senator Kristensen, you're next.

SENATOR KRISTENSEN: Senator Chambers, I'll continue on with this. I may not give you the dialogue but I'll continue on with that point. The point being here, and Senator Hall raises an issue of presumption, don't be confused here because this is kind of what happens in a jury trial is this confusion that may occur. If you want to contest the test results, you can do so. You can say, well the machine wasn't properly maintained, it wasn't calibrated correctly, it's an old machine, we didn't take the right numbers of breaths to do it, the machine has all these problems, we weren't properly advised. There are a number of defenses to the test itself. This presumption has nothing to do with that. You still get to argue that the test wasn't properly taken. Once the test is admitted into evidence, the jury can then consider that. What this provisions says is once the test result is admitted into evidence properly, it is presumed that that can relate back to the time of the offense. The Nebraska Supreme Court has given us a latitude and I think it has been two to three hours, I think it is closer to three hours, saying