WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

ENROLLED

House Bill No. 3076
(By Delegates Webster, Manuel, Wills, Amores, Hrutkay and Craig)

Passed March 9, 2002
In Effect Ninety Days from Passage
AN ACT to amend and reenact section eight, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to evidence addressing when a person is under the influence of alcohol, controlled substances or drugs; and adding a formula for determining the percent, by weight, of alcohol in the blood.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-8. Interpretation and use of chemical test.

1 (a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal
action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person’s blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood, breath or urine, is admissible, if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged. The evidence gives rise to the following presumptions or has the following effect:

(1) Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

(2) Evidence that there was, at that time, more than five hundredths of one percent and less than ten hundredths of one percent, by weight, of alcohol in the person’s blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

(3) Evidence that there was, at that time, ten hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

(b) A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of:

(1) The number of grams of alcohol per one hundred cubic centimeters of blood;

(2) The number of grams of alcohol per two hundred ten liters of breath;

(3) The number of grams of alcohol per sixty-seven milliliters of urine; or
(4) The number of grams of alcohol per eighty-six milliliters of serum.

(c) A chemical analysis of a person’s blood, breath or urine, in order to give rise to the presumptions or to have the effect provided for in subsection (a) of this section, must be performed in accordance with methods and standards approved by the state division of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the West Virginia state police.

(d) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 2nd day of April, 2002.

Governor