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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# 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

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### H. B. 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
- 2 this state while under the influence of alcohol, controlled
- 3 substances or drugs, or upon the trial of any civil or criminal

4 action arising out of acts alleged to have been committed by  
5 any person driving a motor vehicle while under the influence of  
6 alcohol, controlled substances or drugs, evidence of the amount  
7 of alcohol in the person's blood at the time of the arrest or of  
8 the acts alleged, as shown by a chemical analysis of his or her  
9 blood, breath or urine, is admissible, if the sample or specimen  
10 was taken within two hours from and after the time of arrest or  
11 of the acts alleged. The evidence gives rise to the following  
12 presumptions or has the following effect:

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

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

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

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

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

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

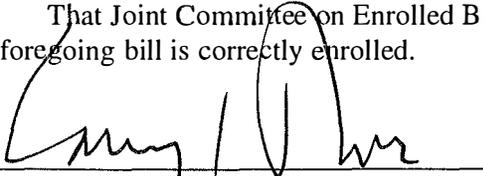
32 (3) The number of grams of alcohol per sixty-seven  
33 milliliters of urine; or

34       (4) The number of grams of alcohol per eighty-six millili-  
35       ters of serum.

36       (c) A chemical analysis of a person's blood, breath or urine,  
37       in order to give rise to the presumptions or to have the effect  
38       provided for in subsection (a) of this section, must be per-  
39       formed in accordance with methods and standards approved by  
40       the state division of health. A chemical analysis of blood or  
41       urine to determine the alcoholic content of blood shall be  
42       conducted by a qualified laboratory or by the state police  
43       scientific laboratory of the criminal identification bureau of the  
44       West Virginia state police.

45       (d) The provisions of this article do not limit the introduc-  
46       tion in any administrative or judicial proceeding of any other  
47       competent evidence bearing on the question of whether the  
48       person was under the influence of alcohol, controlled sub-  
49       stances or drugs.

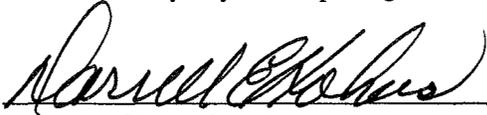
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

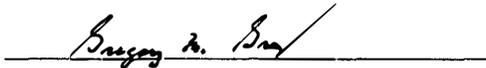
  
Chairman Senate Committee

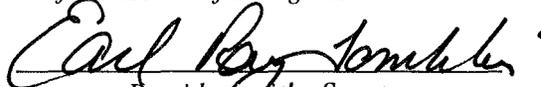
  
Chairman House Committee

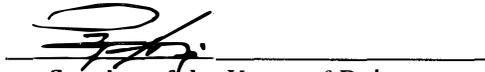
Originating in the House.

In effect ninety days from passage.

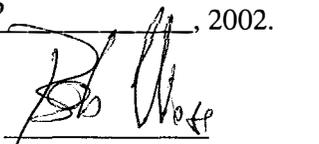
  
Clerk of the Senate

  
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

PRESENTED TO THE

GOVERNOR

Date 3/27/02

Time 10:00am