

HOUSE BILL No. 1315

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-30; IC 35-46-9.

Synopsis: Impaired driving standards. Specifies, for purposes of operating while intoxicated, a minimum amount of delta-9-tetrahydrocannabinol (THC) and the manner in which a chemical test for THC must be conducted. Requires the state department of toxicology to adopt rules relating to the administration of a chemical test for THC.

Effective: July 1, 2020.

VanNatter

January 14, 2020, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1315

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-30-5-0.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2020]: **Sec. 0.3. For purposes of sections 1, 4, and 5 of this**
4 **chapter, the amount of delta-9-tetrahydrocannabinol (THC) in a**
5 **person's whole blood may be established only by use of a chemical**
6 **test that specifically tests for the presence of delta-**
7 **9-tetrahydrocannabinol (THC) in the person's blood. The**
8 **confirmatory test may be preceded by an initial screening chemical**
9 **test.**

10 SECTION 2. IC 9-30-5-1, AS AMENDED BY P.L.63-2018,
11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2020]: Sec. 1. (a) A person who operates a vehicle with an
13 alcohol concentration equivalent to at least eight-hundredths (0.08)
14 gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol
15 per:

- 16 (1) one hundred (100) milliliters of the person's blood; or
- 17 (2) two hundred ten (210) liters of the person's breath;



- 1 commits a Class C misdemeanor.
- 2 (b) A person who operates a vehicle with an alcohol concentration
- 3 equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:
- 4 (1) one hundred (100) milliliters of the person's blood; or
- 5 (2) two hundred ten (210) liters of the person's breath;
- 6 commits a Class A misdemeanor.
- 7 (c) A person who operates a vehicle with:
- 8 (1) a controlled substance listed in schedule I or II of IC 35-48-2,
- 9 **other than delta-9-tetrahydrocannabinol (THC), marijuana,**
- 10 **hash oil, or hashish,** or its metabolite in the person's body; **or**
- 11 **(2) at least four (4) nanograms of delta-9-**
- 12 **tetrahydrocannabinol (THC) per milliliter of the person's**
- 13 **whole blood;**
- 14 commits a Class C misdemeanor.
- 15 (d) It is a defense to subsection (c) that the accused person
- 16 consumed the controlled substance in accordance with a valid
- 17 prescription or order of a practitioner (as defined in IC 35-48-1) who
- 18 acted in the course of the practitioner's professional practice.
- 19 SECTION 3. IC 9-30-5-4, AS AMENDED BY P.L.184-2019,
- 20 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2020]: Sec. 4. (a) A person who causes serious bodily injury
- 22 to another person when operating a vehicle:
- 23 (1) with an alcohol concentration equivalent to at least
- 24 eight-hundredths (0.08) gram of alcohol per:
- 25 (A) one hundred (100) milliliters of the person's blood; or
- 26 (B) two hundred ten (210) liters of the person's breath;
- 27 (2) with:
- 28 (A) a controlled substance listed in schedule I or II of
- 29 IC 35-48-2, **other than delta-9-tetrahydrocannabinol**
- 30 **(THC), marijuana, hash oil, or hashish,** or its metabolite in
- 31 the person's blood; or
- 32 **(B) at least four (4) nanograms of delta-9-**
- 33 **tetrahydrocannabinol (THC) per milliliter of the person's**
- 34 **whole blood; or**
- 35 (3) while intoxicated;
- 36 commits a Level 5 felony. However, the offense is a Level 4 felony if
- 37 the person has a previous conviction of operating while intoxicated
- 38 within the five (5) years preceding the commission of the offense.
- 39 (b) A person who violates subsection (a) commits a separate offense
- 40 for each person whose serious bodily injury is caused by the violation
- 41 of subsection (a).
- 42 (c) It is a defense under subsection (a)(2) that the accused person



1 consumed the controlled substance in accordance with a valid
 2 prescription or order of a practitioner (as defined in IC 35-48-1) who
 3 acted in the course of the practitioner's professional practice.

4 SECTION 4. IC 9-30-5-5, AS AMENDED BY P.L.184-2019,
 5 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2020]: Sec. 5. (a) A person who causes the death or
 7 catastrophic injury of another person when operating a vehicle:

8 (1) with an alcohol concentration equivalent to at least
 9 eight-hundredths (0.08) gram of alcohol per:

10 (A) one hundred (100) milliliters of the person's blood; or

11 (B) two hundred ten (210) liters of the person's breath;

12 (2) with:

13 (A) a controlled substance listed in schedule I or II of
 14 IC 35-48-2, **other than delta-9-tetrahydrocannabinol**
 15 **(THC), marijuana, hash oil, or hashish**, or its metabolite in
 16 the person's blood; or

17 **(B) at least four (4) nanograms of delta-9-**
 18 **tetrahydrocannabinol (THC) per milliliter of the person's**
 19 **whole blood; or**

20 (3) while intoxicated;

21 commits a Level 4 felony.

22 (b) A person who causes the death of a law enforcement animal (as
 23 defined in IC 35-46-3-4.5) when operating a vehicle:

24 (1) with an alcohol concentration equivalent to at least
 25 eight-hundredths (0.08) gram of alcohol per:

26 (A) one hundred (100) milliliters of the person's blood; or

27 (B) two hundred ten (210) liters of the person's breath; or

28 (2) with:

29 (A) a controlled substance listed in schedule I or II of
 30 IC 35-48-2, **other than delta-9-tetrahydrocannabinol**
 31 **(THC), marijuana, hash oil, or hashish**, or its metabolite in
 32 the person's blood; or

33 **(B) at least four (4) nanograms of delta-9-**
 34 **tetrahydrocannabinol (THC) per milliliter of the person's**
 35 **whole blood;**

36 commits a Level 6 felony.

37 (c) A person who commits an offense under subsection (a) or (b)
 38 commits a separate offense for each person or law enforcement animal
 39 whose death (or catastrophic injury, in the case of a person) is caused
 40 by the violation of subsection (a) or (b).

41 (d) It is a defense under subsection (a) or (b) that the person accused
 42 of causing the death or catastrophic injury of another person or the



1 death of a law enforcement animal when operating a vehicle with a
 2 controlled substance listed in schedule I or II of IC 35-48-2 or its
 3 metabolite in the person's blood consumed the controlled substance in
 4 accordance with a valid prescription or order of a practitioner (as
 5 defined in IC 35-48-1) who acted in the course of the practitioner's
 6 professional practice.

7 SECTION 5. IC 9-30-6-5, AS AMENDED BY P.L.38-2017,
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2020]: Sec. 5. (a) The director of the state department of
 10 toxicology shall adopt rules under IC 4-22-2 concerning the following:

11 (1) Standards and regulations for the:

12 (A) selection;

13 (B) training; and

14 (C) certification;

15 of breath test operators.

16 (2) Standards and regulations for the:

17 (A) selection; and

18 (B) certification;

19 of breath test equipment and chemicals.

20 (3) The certification of the proper technique for administering a
 21 breath test.

22 **(4) Standards and regulations for the administration of a**
 23 **chemical test described in IC 9-30-5-0.3 to determine the**
 24 **presence and amount of delta-9-tetrahydrocannabinol (THC)**
 25 **in a person's blood.**

26 (b) A certification in accordance with rules adopted under
 27 subsection (a) shall be:

28 (1) sent in writing to the clerk of the circuit court in each county
 29 where the breath test operator, equipment, or chemicals are used
 30 to administer breath tests; or

31 (2) published on the Internet web site of the **state** department of
 32 toxicology.

33 However, failure to send or publish a certification as required by this
 34 subsection does not invalidate any test.

35 (c) A certification in accordance with rules adopted under
 36 subsection (a) that is sent in writing under subsection (b)(1) or
 37 published on the Internet web site of the **state** department of
 38 **toxicology** under subsection (b)(2) and obtained from the **state**
 39 **department of toxicology** as an electronic record bearing an electronic
 40 signature:

41 (1) is admissible in a proceeding under this chapter, IC 9-30-5,
 42 IC 9-30-9, or IC 9-30-15;



- 1 (2) constitutes prima facie evidence that the equipment or
 2 chemical:
- 3 (A) was inspected and approved by the state department of
 4 toxicology on the date specified on the writing or electronic
 5 record; and
- 6 (B) was in proper working condition on the date the breath test
 7 was administered if the date of approval is not more than one
 8 hundred eighty (180) days before the date of the breath test;
- 9 (3) constitutes prima facie evidence of the approved technique for
 10 administering a breath test; and
- 11 (4) constitutes prima facie evidence that the breath test operator
 12 was certified by the state department of toxicology on the date
 13 specified on the writing or electronic record.
- 14 (d) Results of chemical tests that involve an analysis of a person's
 15 breath are not admissible in a proceeding under this chapter, IC 9-30-5,
 16 IC 9-30-9, or IC 9-30-15 if:
- 17 (1) the test operator;
- 18 (2) the test equipment;
- 19 (3) the chemicals used in the test, if any; or
- 20 (4) the techniques used in the test;
- 21 have not been approved in accordance with the rules adopted under
 22 subsection (a).
- 23 **(e) Results of a chemical test described in IC 9-30-5-0.3 are**
 24 **admissible in a proceeding under IC 9-30-5 if the test is conducted**
 25 **in compliance with rules adopted under this section.**
- 26 SECTION 6. IC 35-46-9-6, AS AMENDED BY P.L.184-2019,
 27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2020]: Sec. 6. (a) Except as provided in subsections (b) and
 29 (c), a person who operates a motorboat while:
- 30 (1) having an alcohol concentration equivalent (as defined in
 31 IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol
 32 per:
- 33 (A) one hundred (100) milliliters of the person's blood; or
 34 (B) two hundred ten (210) liters of the person's breath;
- 35 (2) having:
- 36 (A) a controlled substance listed in schedule I or II of
 37 IC 35-48-2, **other than delta-9-tetrahydrocannabinol**
 38 **(THC), marijuana, hash oil, or hashish**, or its metabolite in
 39 the person's body; or
- 40 (B) **at least four (4) nanograms of delta-9-**
 41 **tetrahydrocannabinol (THC) per milliliter of the person's**
 42 **whole blood; or**



- 1 (3) intoxicated;
 2 commits a Class C misdemeanor.
 3 (b) The offense is a Level 6 felony if:
 4 (1) the person has a previous conviction under:
 5 (A) IC 14-1-5 (repealed);
 6 (B) IC 14-15-8-8 (repealed); or
 7 (C) this chapter; or
 8 (2) the offense results in serious bodily injury to another person.
 9 (c) The offense is a Level 5 felony if the offense results in the death
 10 or catastrophic injury of another person.
 11 (d) It is a defense to a prosecution under subsection (a)(2) that the
 12 accused person consumed the controlled substance in accordance with
 13 a valid prescription or order of a practitioner (as defined in
 14 IC 35-48-1-24) who acted in the course of the practitioner's
 15 professional practice.
 16 SECTION 7. IC 35-46-9-12, AS ADDED BY P.L.40-2012,
 17 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2020]: Sec. 12. (a) The provisions of IC 9-30-6-5 concerning
 19 the certification and use of chemical breath tests apply to the use of
 20 chemical breath tests in a prosecution under this chapter.
 21 (b) **IC 9-30-5-0.3 and IC 9-30-6-6 apply to chemical tests**
 22 **performed under this chapter, and the amount of**
 23 **delta-9-tetrahydrocannabinol (THC) in a person's whole blood**
 24 **may be determined only in accordance with IC 9-30-5-0.3.**

