



February 19, 1999

SENATE BILL No. 525

DIGEST OF SB 525 (Updated February 18, 1999 9:12 am - DI 76)

Citations Affected: IC 9-13; IC 9-24; IC 9-30; IC 34-24.

Synopsis: Operating while intoxicated and open containers. Makes it: (1) a Class C misdemeanor for a person to operate a vehicle with at least 0.10% by weight of alcohol in the person's blood or breath; and (2) a Class A misdemeanor for a person to operate a vehicle with at least 0.15% by weight of alcohol in the person's blood or breath. Requires a court to order a person who has been convicted of operating a vehicle while intoxicated: (1) to be imprisoned for at least five days or to perform at least 30 days of community service and to successfully complete an alcohol or a drug abuse deterrent program if the person has one previous conviction of operating a vehicle while intoxicated; and (2) to be imprisoned for at least ten days or to perform at least 60 days of community service and to successfully complete an alcohol or a drug abuse deterrent program if the person has at least two previous convictions of operating a vehicle while intoxicated. Requires a court
(Continued next page)

Effective: July 1, 1999.

Simpson

January 19, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
February 18, 1999, amended, reported favorably — Do Pass.

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to enter the either of the following orders if a person has at least two convictions for operating while intoxicated during a five year period: (1) That the person may not operate a motor vehicle after the person's driving privileges have been reinstated unless the motor vehicle is equipped with a functioning certified ignition interlock device. (2) That all motor vehicles owned by the person must be impounded or immobilized. Provides that whenever the court orders the impoundment or immobilization, the court shall order: (1) forfeiture; or (2) the revocation or suspension of each motor vehicle license plate or certificate of registration; pertaining to all motor vehicles exclusively owned by the person. Makes it a Class B infraction for the operator of a motor vehicle to, while the motor vehicle is in operation, knowingly allow an alcoholic beverage container that has been opened, that has a broken seal, or from which some of the contents have been removed to be in the passenger compartment of the motor vehicle. Provides an exemption for: (1) the passenger compartment of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; and (2) the living quarters of a motor home or house trailer.

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February 19, 1999

First Regular Session 111th General Assembly (1999)

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 a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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SENATE BILL No. 525

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

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

1 SECTION 1. IC 9-13-2-77.3 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 77.3. "Impoundment or immobilization", for
4 purposes of IC 9-30-5-16.5, means the removal of a motor vehicle
5 or the rendering inoperable of a motor vehicle.**

6 SECTION 1. IC 9-24-6-8 IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 1999]: Sec. 8. The following, if committed
8 while driving a commercial motor vehicle, are disqualifying offenses:

9 (1) Operating a vehicle while under the influence of alcohol in
10 violation of IC 9-30-5-1(a), **IC 9-30-5-1(b)**, **IC 9-30-5-1(c)**, or
11 section 15 of this chapter.

12 (2) Operating a vehicle while under the influence of a controlled
13 substance in violation of ~~IC 9-30-5-1(b)~~: **IC 9-30-5-1(d)**.

14 (3) Leaving the scene of an accident involving the driver's
15 commercial motor vehicle in violation of IC 9-26-1.

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- 1 (4) Conviction of a felony involving the use of a commercial
- 2 motor vehicle other than a felony described in subdivision (5).
- 3 (5) Use of a commercial motor vehicle in the commission of a
- 4 felony under IC 35-48 involving manufacturing, distributing, or
- 5 dispensing of a controlled substance.
- 6 (6) Violation of IC 9-30-5-2 through IC 9-30-5-8 involving
- 7 operating a vehicle while intoxicated.
- 8 (7) Refusing to undergo testing for the enforcement of
- 9 IC 9-30-5-1 or section 15 of this chapter.

10 SECTION 3. IC 9-30-4-6 IS AMENDED TO READ AS FOLLOWS

11 [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) Whenever the bureau
12 suspends or revokes the current driver's license upon receiving a record
13 of the conviction of a person for any offense under the motor vehicle
14 laws not enumerated under subsection (b), the bureau may also suspend
15 any of the certificates of registration and license plates issued for any
16 motor vehicle registered in the name of the person so convicted.
17 However, the bureau may not suspend the evidence of registration,
18 unless otherwise required by law, if the person has given or gives and
19 maintains during the three (3) years following the date of suspension
20 or revocation proof of financial responsibility in the future in the
21 manner specified in this section.

22 (b) The bureau shall suspend or revoke without notice or hearing the
23 current driver's license and all certificates of registration and license
24 plates issued or registered in the name of a person who is convicted of
25 any of the following:

- 26 (1) Manslaughter or reckless homicide resulting from the
- 27 operation of a motor vehicle.
- 28 (2) Perjury or knowingly making a false affidavit to the
- 29 department under this chapter or any other law requiring the
- 30 registration of motor vehicles or regulating motor vehicle
- 31 operation upon the highways.
- 32 (3) A felony under Indiana motor vehicle laws or felony in the
- 33 commission of which a motor vehicle is used.
- 34 (4) Three (3) charges of criminal recklessness involving the use
- 35 of a motor vehicle within the preceding twelve (12) months.
- 36 (5) Failure to stop and give information or assistance or failure to
- 37 stop and disclose the person's identity at the scene of an accident
- 38 that has resulted in death, personal injury, or property damage in
- 39 excess of two hundred dollars (\$200).
- 40 (6) Possession, distribution, manufacture, cultivation, transfer,
- 41 use, or sale of a controlled substance or counterfeit substance, or
- 42 attempting or conspiring to possess, distribute, manufacture,

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1 cultivate, transfer, use, or sell a controlled substance or
2 counterfeit substance.

3 **(c) The bureau shall revoke or suspend any certification of**
4 **registration and license plate in the name of a person who has at**
5 **least two (2) convictions of operating a motor vehicle while**
6 **intoxicated under IC 9-30-5 within a five (5) year period if the**
7 **court orders the suspension or revocation under IC 9-30-5-16.5.**
8 **The court shall set the time that any suspension under this**
9 **subsection must remain in effect.**

10 ~~(c)~~ **(d)** The license of a person shall also be suspended upon
11 conviction in another jurisdiction for any offense described in
12 subsections (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5), except if property
13 damage is less than two hundred dollars (\$200), the bureau may
14 determine whether the driver's license and certificates of registration
15 and license plates shall be suspended or revoked. The license of a
16 person shall also be suspended upon conviction in another jurisdiction
17 for any offense described in subsection (b)(6).

18 ~~(d)~~ **(e)** A suspension or revocation remains in effect and a new or
19 renewal license may not be issued to the person and a motor vehicle
20 may not be registered in the name of the person as follows:

21 (1) Except as provided in subdivisions (2) and (3), for six (6)
22 months from the date of conviction or on the date on which the
23 person is otherwise eligible for a license, whichever is later.
24 Except as provided in IC 35-48-4-15, this includes a person
25 convicted of a crime for which the person's license is suspended
26 or revoked under subsection (b)(6).

27 (2) Upon conviction of an offense described in subsection (b)(1),
28 for a fixed period of not less than two (2) years and not more than
29 five (5) years, to be fixed by the bureau based upon
30 recommendation of the court entering a conviction. A new or
31 reinstated license may not be issued to the person unless that
32 person, within the three (3) years following the expiration of the
33 suspension or revocation, gives and maintains in force at all times
34 during the effective period of a new or reinstated license proof of
35 financial responsibility in the future in the manner specified in
36 this chapter. However, the liability of the insurance carrier under
37 a motor vehicle liability policy that is furnished for proof of
38 financial responsibility in the future as set out in this chapter
39 becomes absolute whenever loss or damage covered by the policy
40 occurs, and the satisfaction by the insured of a final judgment for
41 loss or damage is not a condition precedent to the right or
42 obligation of the carrier to make payment on account of loss or



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1 damage, but the insurance carrier has the right to settle a claim
 2 covered by the policy. If the settlement is made in good faith, the
 3 amount shall be deductive from the limits of liability specified in
 4 the policy. A policy may not be canceled or annulled with respect
 5 to a loss or damage by an agreement between the carrier and the
 6 insured after the insured has become responsible for the loss or
 7 damage, and a cancellation or annulment is void. The policy may
 8 provide that the insured or any other person covered by the policy
 9 shall reimburse the insurance carrier for payment made on
 10 account of any loss or damage claim or suit involving a breach of
 11 the terms, provisions, or conditions of the policy. If the policy
 12 provides for limits in excess of the limits specified in this chapter,
 13 the insurance carrier may plead against any plaintiff, with respect
 14 to the amount of the excess limits of liability, any defenses that
 15 the carrier may be entitled to plead against the insured. The policy
 16 may further provide for prorating of the insurance with other
 17 applicable valid and collectible insurance. An action does not lie
 18 against the insurance carrier by or on behalf of any claimant under
 19 the policy until a final judgment has been obtained after actual
 20 trial by or on behalf of any claimant under the policy.

21 (3) For the period ordered by a court under IC 35-48-4-15.

22 **(4) For the period ordered by a court under subsection (c).**

23 ~~(e)~~ **(f)** The bureau may take action as required in this section upon
 24 receiving satisfactory evidence of a conviction of a person in another
 25 state.

26 ~~(f)~~ **(g)** For the purpose of this chapter, "conviction" includes any of
 27 the following:

28 (1) A conviction upon a plea of guilty.

29 (2) A determination of guilt by a jury or court, even if:

30 (A) no sentence is imposed; or

31 (B) a sentence is suspended.

32 (3) A forfeiture of bail, bond, or collateral deposited to secure the
 33 defendant's appearance for trial, unless the forfeiture is vacated.

34 (4) A payment of money as a penalty or as costs in accordance
 35 with an agreement between a moving traffic violator and a traffic
 36 violations bureau.

37 ~~(g)~~ **(h)** A suspension or revocation under this section or under
 38 IC 9-25-6-8 stands pending appeal of the conviction to a higher court
 39 and may be set aside or modified only upon the receipt by the bureau
 40 of the certificate of the court reversing or modifying the judgment that
 41 the cause has been reversed or modified. However, if the suspension or
 42 revocation follows a conviction in a court of no record in Indiana, the



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1 suspension or revocation is stayed pending appeal of the conviction to
2 a court of record.

3 ~~(h)~~ (i) A person aggrieved by an order or act of the bureau under this
4 section or IC 9-25-6-8 may file a petition for a court review.

5 SECTION 2. IC 9-30-5-1 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who operates a
7 vehicle with at least ten-hundredths percent (0.10%) of alcohol by
8 weight in grams in:

9 (1) one hundred (100) milliliters of the person's blood; or

10 (2) two hundred ten (210) liters of the person's breath;

11 commits a Class C misdemeanor.

12 (b) **A person who operates a vehicle with at least**
13 **fifteen-hundredths percent (0.15%) of alcohol by weight in grams**
14 **in:**

15 (1) **one hundred (100) milliliters of the person's blood; or**

16 (2) **two hundred ten (210) liters of the person's breath;**

17 **commits a Class A misdemeanor.**

18 ~~(b)~~ (c) A person who operates a vehicle with a controlled substance
19 listed in schedule I or II of IC 35-48-2 or its metabolite in the person's
20 body commits a Class C misdemeanor.

21 ~~(c)~~ (d) It is a defense to subsection ~~(b)~~ (c) that the accused person
22 consumed the controlled substance under a valid prescription or order
23 of a practitioner (as defined in IC 35-48-1) who acted in the course of
24 the practitioner's professional practice.

25 SECTION 5. IC 9-30-5-15 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) In addition to
27 any criminal penalty imposed for an offense under this chapter, the
28 court shall:

29 (1) order:

30 (A) that the person be imprisoned for **at least** five (5) days; or
31 ~~order~~

32 (B) the person to perform at least ~~eighty (80) hours~~ **thirty (30)**
33 **days** of community service; **and**

34 (2) **order the person to successfully complete an alcohol or a**
35 **drug abuse deterrent program approved by the court;**

36 if ~~(1)~~ the person has a **one (1)** previous conviction of operating while
37 intoxicated. ~~and~~

38 (2) ~~the previous conviction of operating while intoxicated~~
39 ~~occurred within the five (5) years immediately preceding the~~
40 ~~occurrence of the offense for which the five (5) day mandatory~~
41 ~~sentence is imposed.~~

42 (b) **In addition to any criminal penalty imposed for an offense**

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1 under this chapter, the court shall:

2 (1) order:

3 (A) that the person be imprisoned for at least ten (10) days;

4 or

5 (B) the person to perform at least sixty (60) days of
6 community service; and

7 (2) order the person to successfully complete an alcohol or a
8 drug abuse deterrent program;

9 if the person has at least two (2) previous convictions of operating
10 while intoxicated.

11 ~~(b)~~ (c) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a ~~five (5)~~
12 ~~day~~ sentence **imposed** under this section may not be suspended. The
13 court may require that the person serve the ~~five (5) day~~ term of
14 imprisonment in an appropriate facility at whatever time or intervals
15 (consecutive or intermittent) determined appropriate by the court.
16 However:

17 (1) at least forty-eight (48) hours of the sentence must be served
18 consecutively; and

19 (2) the entire ~~five (5) day~~ sentence must be served within six (6)
20 months after the date of sentencing.

21 ~~(c)~~ (d) Notwithstanding IC 35-50-6, a person does not earn credit
22 time while serving a ~~five (5) day~~ sentence **imposed** under this section.

23 SECTION 6. IC 9-30-5-16 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Except as
25 provided in subsection (b) **and section 16.5 of this chapter**, the court
26 may, in granting probationary driving privileges under this chapter,
27 also order that the probationary driving privileges include the
28 requirement that a person may not operate a motor vehicle unless the
29 vehicle is equipped with a functioning certified ignition interlock
30 device under IC 9-30-8.

31 (b) A court may not order the installation of an ignition interlock
32 device on a vehicle operated by an employee to whom any of the
33 following apply:

34 (1) Has been convicted of violating IC 9-30-5-1 or IC 9-30-5-2.

35 (2) Is employed as the operator of a vehicle owned, leased, or
36 provided by the employee's employer.

37 (3) Is subject to a labor agreement that prohibits an employee who
38 is convicted of an alcohol related offense from operating the
39 employer's vehicle.

40 SECTION 7. IC 9-30-5-16.5 IS ADDED TO THE INDIANA CODE
41 AS NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 1999]: **Sec. 16.5. (a) This section applies if:**

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- 1 **(1) a person has at least two (2) convictions of operating while**
 2 **intoxicated; and**
 3 **(2) the person's driving privileges have been suspended for at**
 4 **least one (1) year following the person's most recent**
 5 **conviction of operating while intoxicated.**
 6 **(b) The court shall order:**
 7 **(1) that the person may not operate a motor vehicle after the**
 8 **person's driving privileges have been reinstated unless the**
 9 **motor vehicle is equipped with a functioning certified ignition**
 10 **interlock device under IC 9-30-8; or**
 11 **(2) the impoundment or immobilization of all motor vehicles**
 12 **owned by the person, subject to subsection (c).**
 13 **(c) Whenever the court orders the impoundment or**
 14 **immobilization under subsection (b)(2), the court shall order:**
 15 **(1) forfeiture under IC 34-24-1; or**
 16 **(2) the revocation or suspension of each motor vehicle license**
 17 **plate or registration pertaining to;**
 18 **all motor vehicles exclusively owned by the person. The court shall**
 19 **order the impoundment or immobilization of each motor vehicle**
 20 **during the person's one (1) year license suspension for a period to**
 21 **be set by the court.**
 22 SECTION 8. IC 9-30-8-1 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 1999]: Sec. 1. **(a)** If a court orders the
 24 installation of a certified ignition interlock device under IC 9-30-5-16
 25 on a motor vehicle that a person whose license is restricted owns or
 26 expects to operate, the court shall set the time that the installation must
 27 remain in effect. However, the term may not exceed the maximum term
 28 of imprisonment the court could have imposed. The person shall pay
 29 the cost of installation.
 30 **(b) If a court orders a person to install a certified ignition**
 31 **interlock device on motor vehicles operated by the person under**
 32 **IC 9-30-5-16.5, the court shall set the time that the installation**
 33 **must remain in effect. The person shall pay the cost of installation.**
 34 SECTION 9. IC 9-30-8-3 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 1999]: Sec. 3. The bureau shall adopt rules
 36 under IC 4-22-2 to establish standards and specifications for an ignition
 37 interlock device, the installation of which the courts may mandate
 38 under IC 9-30-5-16 **and IC 9-30-5-16.5**. The standards and
 39 specifications must require at a minimum that the device meets the
 40 following requirements:
 41 (1) Is accurate.
 42 (2) Does not impede the safe operation of a vehicle.



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1 (3) Provides a minimum opportunity to be bypassed.

2 (4) Shows evidence of tampering if tampering is attempted.

3 (5) Has a label affixed warning that a person tampering with or
4 misusing the device is subject to a civil penalty.

5 SECTION 10. IC 9-30-8-5 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. If a court orders a
7 person under IC 9-30-5-16 or **IC 9-30-5-16.5** to operate only a vehicle
8 that is equipped with an ignition interlock device, the bureau shall
9 include that condition when issuing a license.

10 SECTION 4. IC 9-30-15-3 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) **This section
12 does not apply to:**

13 (1) **the passenger compartment of a motor vehicle designed,
14 maintained, or used primarily for the transportation of
15 persons for compensation; and**

16 (2) **the living quarters of a motor home or house trailer.**

17 (b) The operator of a motor vehicle ~~who has at least four-hundredths~~
18 ~~percent (0.04%) of alcohol by weight in grams in one hundred~~
19 ~~milliliters of the blood; or two hundred ten (210) liters of the breath;~~
20 ~~and~~ who, while the motor vehicle is in operation, knowingly allows a
21 container:

22 (1) that has been opened;

23 (2) that has a broken seal; or

24 (3) from which some of the contents have been removed;

25 to be in the passenger compartment of the motor vehicle commits a
26 Class B infraction. If a person is found to have a previous unrelated
27 judgment under this section or a previous unrelated conviction or
28 judgment under IC 9-30-5 within twelve (12) months before a violation
29 that results in a judgment under this chapter, the court may recommend
30 the person's driving privileges be suspended for not more than one (1)
31 year.

32 SECTION 12. IC 34-24-1-1 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The following
34 may be seized:

35 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
36 intended for use by the person or persons in possession of them to
37 transport or in any manner to facilitate the transportation of the
38 following:

39 (A) A controlled substance for the purpose of committing,
40 attempting to commit, or conspiring to commit any of the
41 following:

42 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

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- 1 (ii) Dealing in a schedule I, II, or III controlled substance (IC
2 35-48-4-2).
- 3 (iii) Dealing in a schedule IV controlled substance (IC
4 35-48-4-3).
- 5 (iv) Dealing in a schedule V controlled substance (IC
6 35-48-4-4).
- 7 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- 8 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
- 9 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- 10 (viii) Dealing in marijuana, hash oil, or hashish (IC
11 35-48-4-10).
- 12 (B) Any stolen (IC 35-43-4-2) or converted property (IC
13 35-43-4-3) if the retail or repurchase value of that property is
14 one hundred dollars (\$100) or more.
- 15 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 16 (2) All money, negotiable instruments, securities, weapons,
17 communications devices, or any property commonly used as
18 consideration for a violation of IC 35-48-4 (other than items
19 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
20 before its repeal):
- 21 (A) furnished or intended to be furnished by any person in
22 exchange for an act that is in violation of a criminal statute;
- 23 (B) used to facilitate any violation of a criminal statute; or
- 24 (C) traceable as proceeds of the violation of a criminal statute.
- 25 (3) Any portion of real or personal property purchased with
26 money that is traceable as a proceed of a violation of a criminal
27 statute.
- 28 (4) A vehicle that is used by a person to:
- 29 (A) commit, attempt to commit, or conspire to commit;
- 30 (B) facilitate the commission of; or
- 31 (C) escape from the commission of;
- 32 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
33 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
34 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
- 35 (5) Real property owned by a person who uses it to commit any of
36 the following as a Class A felony, a Class B felony, or a Class C
37 felony:
- 38 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- 39 (B) Dealing in a schedule I, II, or III controlled substance (IC
40 35-48-4-2).
- 41 (C) Dealing in a schedule IV controlled substance (IC
42 35-48-4-3).

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- 1 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 2 (6) Equipment and recordings used by a person to commit fraud
- 3 under IC 35-43-5-4(11).
- 4 (7) Recordings sold, rented, transported, or possessed by a person
- 5 in violation of IC 24-4-10.
- 6 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
- 7 defined by IC 35-45-6-1) that is the object of a corrupt business
- 8 influence violation (IC 35-45-6-2).
- 9 (9) Unlawful telecommunications devices (as defined in
- 10 IC 35-45-13-6) and plans, instructions, or publications used to
- 11 commit an offense under IC 35-45-13.
- 12 **(10) Motor vehicles owned by a person who has at least two**
- 13 **(2) convictions of operating while intoxicated under IC 9-30-5**
- 14 **within a five (5) year period if the court orders the forfeiture**
- 15 **under IC 9-30-5-16.5.**
- 16 (b) A vehicle used by any person as a common or contract carrier in
- 17 the transaction of business as a common or contract carrier is not
- 18 subject to seizure under this section, unless it can be proven by a
- 19 preponderance of the evidence that the owner of the vehicle knowingly
- 20 permitted the vehicle to be used to engage in conduct that subjects it to
- 21 seizure under subsection (a).
- 22 (c) Money, negotiable instruments, securities, weapons,
- 23 communications devices, or any property commonly used as
- 24 consideration for a violation of IC 35-48-4 found near or on a person
- 25 who is committing, attempting to commit, or conspiring to commit any
- 26 of the following offenses shall be admitted into evidence in an action
- 27 under this chapter as prima facie evidence that the money, negotiable
- 28 instrument, security, or other thing of value is property that has been
- 29 used or was to have been used to facilitate the violation of a criminal
- 30 statute or is the proceeds of the violation of a criminal statute:
- 31 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
- 32 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
- 33 substance).
- 34 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- 35 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
- 36 as a Class B felony.
- 37 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a
- 38 Class A felony, Class B felony, or Class C felony.
- 39 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
- 40 a Class C felony.

COPY



COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 525, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-13-2-77.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 77.3. "Impoundment or immobilization", for purposes of IC 9-30-5-16.5, means the removal of a motor vehicle or the rendering inoperable of a motor vehicle.**"

Page 2, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 3. IC 9-30-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) Whenever the bureau suspends or revokes the current driver's license upon receiving a record of the conviction of a person for any offense under the motor vehicle laws not enumerated under subsection (b), the bureau may also suspend any of the certificates of registration and license plates issued for any motor vehicle registered in the name of the person so convicted. However, the bureau may not suspend the evidence of registration, unless otherwise required by law, if the person has given or gives and maintains during the three (3) years following the date of suspension or revocation proof of financial responsibility in the future in the manner specified in this section.

(b) The bureau shall suspend or revoke without notice or hearing the current driver's license and all certificates of registration and license plates issued or registered in the name of a person who is convicted of any of the following:

- (1) Manslaughter or reckless homicide resulting from the operation of a motor vehicle.
- (2) Perjury or knowingly making a false affidavit to the department under this chapter or any other law requiring the registration of motor vehicles or regulating motor vehicle operation upon the highways.
- (3) A felony under Indiana motor vehicle laws or felony in the commission of which a motor vehicle is used.
- (4) Three (3) charges of criminal recklessness involving the use of a motor vehicle within the preceding twelve (12) months.
- (5) Failure to stop and give information or assistance or failure to

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stop and disclose the person's identity at the scene of an accident that has resulted in death, personal injury, or property damage in excess of two hundred dollars (\$200).

(6) Possession, distribution, manufacture, cultivation, transfer, use, or sale of a controlled substance or counterfeit substance, or attempting or conspiring to possess, distribute, manufacture, cultivate, transfer, use, or sell a controlled substance or counterfeit substance.

(c) The bureau shall revoke or suspend any certification of registration and license plate in the name of a person who has at least two (2) convictions of operating a motor vehicle while intoxicated under IC 9-30-5 within a five (5) year period if the court orders the suspension or revocation under IC 9-30-5-16.5. The court shall set the time that any suspension under this subsection must remain in effect.

(c) (d) The license of a person shall also be suspended upon conviction in another jurisdiction for any offense described in subsections (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5), except if property damage is less than two hundred dollars (\$200), the bureau may determine whether the driver's license and certificates of registration and license plates shall be suspended or revoked. The license of a person shall also be suspended upon conviction in another jurisdiction for any offense described in subsection (b)(6).

(c) (e) A suspension or revocation remains in effect and a new or renewal license may not be issued to the person and a motor vehicle may not be registered in the name of the person as follows:

(1) Except as provided in subdivisions (2) and (3), for six (6) months from the date of conviction or on the date on which the person is otherwise eligible for a license, whichever is later. Except as provided in IC 35-48-4-15, this includes a person convicted of a crime for which the person's license is suspended or revoked under subsection (b)(6).

(2) Upon conviction of an offense described in subsection (b)(1), for a fixed period of not less than two (2) years and not more than five (5) years, to be fixed by the bureau based upon recommendation of the court entering a conviction. A new or reinstated license may not be issued to the person unless that person, within the three (3) years following the expiration of the suspension or revocation, gives and maintains in force at all times during the effective period of a new or reinstated license proof of financial responsibility in the future in the manner specified in this chapter. However, the liability of the insurance carrier under

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a motor vehicle liability policy that is furnished for proof of financial responsibility in the future as set out in this chapter becomes absolute whenever loss or damage covered by the policy occurs, and the satisfaction by the insured of a final judgment for loss or damage is not a condition precedent to the right or obligation of the carrier to make payment on account of loss or damage, but the insurance carrier has the right to settle a claim covered by the policy. If the settlement is made in good faith, the amount shall be deductive from the limits of liability specified in the policy. A policy may not be canceled or annulled with respect to a loss or damage by an agreement between the carrier and the insured after the insured has become responsible for the loss or damage, and a cancellation or annulment is void. The policy may provide that the insured or any other person covered by the policy shall reimburse the insurance carrier for payment made on account of any loss or damage claim or suit involving a breach of the terms, provisions, or conditions of the policy. If the policy provides for limits in excess of the limits specified in this chapter, the insurance carrier may plead against any plaintiff, with respect to the amount of the excess limits of liability, any defenses that the carrier may be entitled to plead against the insured. The policy may further provide for prorating of the insurance with other applicable valid and collectible insurance. An action does not lie against the insurance carrier by or on behalf of any claimant under the policy until a final judgment has been obtained after actual trial by or on behalf of any claimant under the policy.

(3) For the period ordered by a court under IC 35-48-4-15.

(4) For the period ordered by a court under subsection (c).

~~(e)~~ **(f)** The bureau may take action as required in this section upon receiving satisfactory evidence of a conviction of a person in another state.

~~(f)~~ **(g)** For the purpose of this chapter, "conviction" includes any of the following:

- (1) A conviction upon a plea of guilty.
- (2) A determination of guilt by a jury or court, even if:
 - (A) no sentence is imposed; or
 - (B) a sentence is suspended.
- (3) A forfeiture of bail, bond, or collateral deposited to secure the defendant's appearance for trial, unless the forfeiture is vacated.
- (4) A payment of money as a penalty or as costs in accordance with an agreement between a moving traffic violator and a traffic violations bureau.



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~~(g)~~ **(h)** A suspension or revocation under this section or under IC 9-25-6-8 stands pending appeal of the conviction to a higher court and may be set aside or modified only upon the receipt by the bureau of the certificate of the court reversing or modifying the judgment that the cause has been reversed or modified. However, if the suspension or revocation follows a conviction in a court of no record in Indiana, the suspension or revocation is stayed pending appeal of the conviction to a court of record.

~~(h)~~ **(i)** A person aggrieved by an order or act of the bureau under this section or IC 9-25-6-8 may file a petition for a court review."

Page 2, line 8, delete "but less than fifteen-hundredths percent (0.15%)".

Page 2, line 9, delete "of alcohol by weight in grams".

Page 2, delete line 15.

Page 2, line 16, delete "weight in grams".

Page 2, line 19, delete "Class B" and insert "**Class A**".

Page 2, delete lines 20 through 25.

Page 2, line 26, delete "(d)" and insert "**(c)**".

Page 2, line 29, delete "(e)" and insert "**(d)**".

Page 2, line 29, delete "(d)" and insert "**(c)**".

Page 2, delete lines 33 through 42.

Page 3, delete lines 1 through 24, begin a new paragraph and insert:
 "SECTION 5. IC 9-30-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for **at least** five (5) days; or
~~order~~

(B) the person to perform at least ~~eighty (80) hours~~ **thirty (30) days** of community service; **and**

(2) order the person to successfully complete an alcohol or a drug abuse deterrent program approved by the court;

if ~~(†)~~ the person has a **one (1)** previous conviction of operating while intoxicated. ~~and~~

~~(2) the previous conviction of operating while intoxicated occurred within the five (5) years immediately preceding the occurrence of the offense for which the five (5) day mandatory sentence is imposed.~~

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

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**(A) that the person be imprisoned for at least ten (10) days;
or**

**(B) the person to perform at least sixty (60) days of
community service; and**

**(2) order the person to successfully complete an alcohol or a
drug abuse deterrent program;**

**if the person has at least two (2) previous convictions of operating
while intoxicated.**

~~(b)~~ **(c)** Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a ~~five (5)~~
~~day~~ sentence **imposed** under this section may not be suspended. The
court may require that the person serve the ~~five (5) day~~ term of
imprisonment in an appropriate facility at whatever time or intervals
(consecutive or intermittent) determined appropriate by the court.
However:

(1) at least forty-eight (48) hours of the sentence must be served
consecutively; and

(2) the entire ~~five (5) day~~ sentence must be served within six (6)
months after the date of sentencing.

~~(c)~~ **(d)** Notwithstanding IC 35-50-6, a person does not earn credit
time while serving a ~~five (5) day~~ sentence **imposed** under this section.

SECTION 6. IC 9-30-5-16 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Except as
provided in subsection (b) **and section 16.5 of this chapter**, the court
may, in granting probationary driving privileges under this chapter,
also order that the probationary driving privileges include the
requirement that a person may not operate a motor vehicle unless the
vehicle is equipped with a functioning certified ignition interlock
device under IC 9-30-8.

(b) A court may not order the installation of an ignition interlock
device on a vehicle operated by an employee to whom any of the
following apply:

(1) Has been convicted of violating IC 9-30-5-1 or IC 9-30-5-2.

(2) Is employed as the operator of a vehicle owned, leased, or
provided by the employee's employer.

(3) Is subject to a labor agreement that prohibits an employee who
is convicted of an alcohol related offense from operating the
employer's vehicle.

SECTION 7. IC 9-30-5-16.5 IS ADDED TO THE INDIANA CODE
AS NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 1999]: **Sec. 16.5. (a) This section applies if:**

**(1) a person has at least two (2) convictions of operating while
intoxicated; and**

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(2) the person's driving privileges have been suspended for at least one (1) year following the person's most recent conviction of operating while intoxicated.

(b) The court shall order:

(1) that the person may not operate a motor vehicle after the person's driving privileges have been reinstated unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8; or

(2) the impoundment or immobilization of all motor vehicles owned by the person, subject to subsection (c).

(c) Whenever the court orders the impoundment or immobilization under subsection (b)(2), the court shall order:

(1) forfeiture under IC 34-24-1; or

(2) the revocation or suspension of each motor vehicle license plate or registration pertaining to;

all motor vehicles exclusively owned by the person. The court shall order the impoundment or immobilization of each motor vehicle during the person's one (1) year license suspension for a period to be set by the court.

SECTION 8. IC 9-30-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) If a court orders the installation of a certified ignition interlock device under IC 9-30-5-16 on a motor vehicle that a person whose license is restricted owns or expects to operate, the court shall set the time that the installation must remain in effect. However, the term may not exceed the maximum term of imprisonment the court could have imposed. The person shall pay the cost of installation.

(b) If a court orders a person to install a certified ignition interlock device on motor vehicles operated by the person under IC 9-30-5-16.5, the court shall set the time that the installation must remain in effect. The person shall pay the cost of installation.

SECTION 9. IC 9-30-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. The bureau shall adopt rules under IC 4-22-2 to establish standards and specifications for an ignition interlock device, the installation of which the courts may mandate under IC 9-30-5-16 and IC 9-30-5-16.5. The standards and specifications must require at a minimum that the device meets the following requirements:

- (1) Is accurate.
- (2) Does not impede the safe operation of a vehicle.
- (3) Provides a minimum opportunity to be bypassed.
- (4) Shows evidence of tampering if tampering is attempted.



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(5) Has a label affixed warning that a person tampering with or misusing the device is subject to a civil penalty.

SECTION 10. IC 9-30-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. If a court orders a person under IC 9-30-5-16 or **IC 9-30-5-16.5** to operate only a vehicle that is equipped with an ignition interlock device, the bureau shall include that condition when issuing a license."

Page 3, line 26, after "3." insert "**(a) This section does not apply to:**

(1) the passenger compartment of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; and

(2) the living quarters of a motor home or house trailer."

Page 3, line 26, before "The" begin a new paragraph and insert: "**(b)**".

Page 3, after line 40, begin a new paragraph and insert:

"SECTION 12. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
- (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- (viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

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(2) All money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Motor vehicles owned by a person who has at least two (2) convictions of operating while intoxicated under IC 9-30-5 within a five (5) year period if the court orders the forfeiture under IC 9-30-5-16.5.

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(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony, Class B felony, or Class C felony.
- (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 525 as introduced.)

MEEKS R, Chairperson

Committee Vote: Yeas 7, Nays 3.

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