
HOUSE BILL No. 1362

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-13-2; IC 9-24-6-15; IC 9-30; IC 14-15-8; IC 35-33-1-6.

Synopsis: Blood and breath alcohol concentrations. Reduces from 0.10% to 0.08% the percentage of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute prima facie evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. Reduces the range of the percentage of alcohol concentration equivalent in a person's blood or breath to at least 0.05% but less than 0.08% that is necessary to constitute relevant evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. (Current law provides that the range for relevant evidence of intoxication is at least 0.05% but less than 0.10%.) Makes conforming amendments.

Effective: July 1, 2000.

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January 11, 2000, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

HOUSE BILL No. 1362



A BILL FOR AN ACT to amend the Indiana Code concerning blood and breath alcohol concentrations.

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

- 1 SECTION 1. IC 9-13-2-131, AS AMENDED BY P.L.1-2000,
- 2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2000]: Sec. 131. "Prima facie evidence of intoxication"
- 4 includes evidence that at the time of an alleged violation the person had
- 5 an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~
- 6 **eight-hundredths (0.08)** gram of alcohol per:
- 7 (1) one hundred (100) milliliters of the person's blood; or
- 8 (2) two hundred ten (210) liters of the person's breath.
- 9 SECTION 2. IC 9-13-2-151, AS AMENDED BY P.L.1-2000,
- 10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 11 JULY 1, 2000]: Sec. 151. "Relevant evidence of intoxication" includes
- 12 evidence that at the time of an alleged violation a person had an alcohol
- 13 concentration equivalent to at least five-hundredths (0.05) gram, but
- 14 less than ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of
- 15 alcohol 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.



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1 SECTION 3. IC 9-24-6-15, AS AMENDED BY P.L.1-2000,
 2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2000]: Sec. 15. A person who operates a commercial motor
 4 vehicle with an alcohol concentration equivalent to at least
 5 four-hundredths (0.04) gram but less than ~~ten-hundredths (0.10)~~
 6 **eight-hundredths (0.08)** gram of alcohol per:

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

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

9 commits a Class C infraction.

10 SECTION 4. IC 9-30-5-1, AS AMENDED BY P.L.1-2000,
 11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2000]: Sec. 1. (a) A person who operates a vehicle with an
 13 alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~
 14 **eight-hundredths (0.08)** gram of alcohol but less than
 15 fifteen-hundredths (0.15) gram of alcohol 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;

18 commits a Class C misdemeanor.

19 (b) A person who operates a vehicle with an alcohol concentration
 20 equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

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

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

23 commits a Class A misdemeanor.

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

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

31 SECTION 5. IC 9-30-5-4, AS AMENDED BY P.L.1-2000,
 32 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2000]: Sec. 4. (a) A person who causes serious bodily injury
 34 to another person when operating a motor vehicle:

35 (1) with an alcohol concentration equivalent to at least
 36 ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol
 37 per:

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

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

40 (2) with a controlled substance listed in schedule I or II of
 41 IC 35-48-2 or its metabolite in the person's body; or

42 (3) while intoxicated;



1 commits a Class D felony. However, the offense is a Class C felony if,
 2 within the five (5) years preceding the commission of the offense, the
 3 person had a prior unrelated conviction under this chapter.

4 (b) A person who violates subsection (a) commits a separate offense
 5 for each person whose serious bodily injury is caused by the violation
 6 of subsection (a).

7 (c) It is a defense under subsection (a)(2) that the accused person
 8 consumed the controlled substance under a valid prescription or order
 9 of a practitioner (as defined in IC 35-48-1) who acted in the course of
 10 the practitioner's professional practice.

11 SECTION 6. IC 9-30-5-5, AS AMENDED BY P.L.1-2000,
 12 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2000]: Sec. 5. (a) A person who causes the death of another
 14 person when operating a motor vehicle:

15 (1) with an alcohol concentration equivalent to at least
 16 ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol
 17 per:

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

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

20 (2) with a controlled substance listed in schedule I or II of
 21 IC 35-48-2 or its metabolite in the person's blood; or

22 (3) while intoxicated;

23 commits a Class C felony. However, the offense is a Class B felony if,
 24 within the five (5) years preceding the commission of the offense, the
 25 person had a prior unrelated conviction under this chapter.

26 (b) A person who violates subsection (a) commits a separate offense
 27 for each person whose death is caused by the violation of subsection
 28 (a).

29 (c) It is a defense under subsection (a)(2) that the accused person
 30 consumed the controlled substance under a valid prescription or order
 31 of a practitioner (as defined in IC 35-48-1) who acted in the course of
 32 the practitioner's professional practice.

33 SECTION 7. IC 9-30-5-8.5, AS AMENDED BY P.L.1-2000,
 34 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2000]: Sec. 8.5. (a) A person who:

36 (1) is less than twenty-one (21) years of age; and

37 (2) operates a vehicle with an alcohol concentration equivalent to
 38 at least two-hundredths (0.02) gram but less than ~~ten-hundredths~~
 39 ~~(0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

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

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

42 commits a Class C infraction.

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1 (b) In addition to the penalty imposed under this section, the court
 2 may recommend the suspension of the driving privileges of the
 3 operator of the vehicle for not more than one (1) year.

4 SECTION 8. IC 9-30-6-15, AS AMENDED BY P.L.1-2000,
 5 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2000]: Sec. 15. (a) At any proceeding concerning an offense
 7 under IC 9-30-5 or a violation under IC 9-30-15, evidence of the
 8 alcohol concentration that was in the blood of the person charged with
 9 the offense:

10 (1) at the time of the alleged violation; or

11 (2) within the time allowed for testing under section 2 of this
 12 chapter;

13 as shown by an analysis of the person's breath, blood, urine, or other
 14 bodily substance is admissible.

15 (b) If, in a prosecution for an offense under IC 9-30-5, evidence
 16 establishes that:

17 (1) a chemical test was performed on a test sample taken from the
 18 person charged with the offense within the period of time allowed
 19 for testing under section 2 of this chapter; and

20 (2) the person charged with the offense had an alcohol
 21 concentration equivalent to at least ~~ten-hundredths (0.10)~~
 22 **eight-hundredths (0.08)** gram of alcohol per:

23 (A) one hundred (100) milliliters of the person's blood at the
 24 time the test sample was taken; or

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

26 the trier of fact shall presume that the person charged with the offense
 27 had an alcohol concentration equivalent to at least ~~ten-hundredths~~
 28 ~~(0.10)~~ **eight-hundredths (0.08)** gram of alcohol per one hundred (100)
 29 milliliters of the person's blood or per two hundred ten (210) liters of
 30 the person's breath at the time the person operated the vehicle.
 31 However, this presumption is rebuttable.

32 (c) If evidence in an action for a violation under IC 9-30-5-8.5
 33 establishes that:

34 (1) a chemical test was performed on a test sample taken from the
 35 person charged with the violation within the time allowed for
 36 testing under section 2 of this chapter; and

37 (2) the person charged with the violation:

38 (A) was less than twenty-one (21) years of age at the time of
 39 the alleged violation; and

40 (B) had an alcohol concentration equivalent to at least
 41 two-hundredths (0.02) gram of alcohol per:

42 (i) one hundred (100) milliliters of the person's blood; or

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1 (ii) two hundred ten (210) liters of the person's breath;
 2 at the time the test sample was taken;
 3 the trier of fact shall presume that the person charged with the violation
 4 had an alcohol concentration equivalent to at least two-hundredths
 5 (0.02) gram of alcohol per one hundred (100) milliliters of the person's
 6 blood or per two hundred ten (210) liters of the person's breath at the
 7 time the person operated the vehicle. However, the presumption is
 8 rebuttable.

9 (d) If, in an action for a violation under IC 9-30-15, evidence
 10 establishes that:

11 (1) a chemical test was performed on a test sample taken from the
 12 person charged with the offense within the time allowed for
 13 testing under section 2 of this chapter; and

14 (2) the person charged with the offense had an alcohol
 15 concentration equivalent to at least four-hundredths (0.04) gram
 16 of alcohol per:

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

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

19 at the time the test sample was taken;

20 the trier of fact shall presume that the person charged with the offense
 21 had an alcohol concentration equivalent to at least four-hundredths
 22 (0.04) gram of alcohol by weight in grams per one hundred (100)
 23 milliliters of the person's blood or per two hundred ten (210) liters of
 24 the person's breath at the time the person operated the vehicle.
 25 However, this presumption is rebuttable.

26 SECTION 9. IC 9-30-10-4, AS AMENDED BY P.L.1-2000,
 27 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2000]: Sec. 4. (a) A person who has accumulated at least two
 29 (2) judgments within a ten (10) year period for any of the following
 30 violations, singularly or in combination, not arising out of the same
 31 incident, and with at least one (1) violation occurring after March 31,
 32 1984, is a habitual violator:

33 (1) Reckless homicide resulting from the operation of a motor
 34 vehicle.

35 (2) Voluntary or involuntary manslaughter resulting from the
 36 operation of a motor vehicle.

37 (3) Failure of the driver of a motor vehicle involved in an accident
 38 resulting in death or injury to any person to stop at the scene of
 39 the accident and give the required information and assistance.

40 (4) Operation of a vehicle while intoxicated resulting in death.

41 (5) Before July 1, 1997, operation of a vehicle with at least
 42 ten-hundredths percent (0.10%) alcohol in the blood resulting in

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- 1 death.
- 2 (6) After June 30, 1997, **and before July 1, 2000**, operation of a
- 3 vehicle with an alcohol concentration equivalent to at least
- 4 ten-hundredths (0.10) gram of alcohol per:
- 5 (A) one hundred (100) milliliters of the blood; or
- 6 (B) two hundred ten (210) liters of the breath;
- 7 resulting in death.
- 8 **(7) After June 30, 2000, operation of a vehicle with an alcohol**
- 9 **concentration equivalent to at least eight-hundredths (0.08)**
- 10 **gram of alcohol per:**
- 11 (A) **one hundred (100) milliliters of the blood; or**
- 12 (B) **two hundred ten (210) liters of the breath;**
- 13 **resulting in death.**
- 14 (b) A person who has accumulated at least three (3) judgments
- 15 within a ten (10) year period for any of the following violations,
- 16 singularly or in combination, not arising out of the same incident, and
- 17 with at least one (1) violation occurring after March 31, 1984, is a
- 18 habitual violator:
- 19 (1) Operation of a vehicle while intoxicated.
- 20 (2) Before July 1, 1997, operation of a vehicle with at least
- 21 ten-hundredths percent (0.10%) alcohol in the blood.
- 22 (3) After June 30, 1997, **and before July 1, 2000**, operation of a
- 23 vehicle with an alcohol concentration equivalent to at least
- 24 ten-hundredths (0.10) gram of alcohol per:
- 25 (A) one hundred (100) milliliters of the blood; or
- 26 (B) two hundred ten (210) liters of the breath.
- 27 **(4) After June 30, 2000, operation of a vehicle with an alcohol**
- 28 **concentration equivalent to at least eight-hundredths (0.08)**
- 29 **gram of alcohol per:**
- 30 (A) **one hundred (100) milliliters of the blood; or**
- 31 (B) **two hundred ten (210) liters of the breath.**
- 32 **(5) Operating a motor vehicle while the person's license to do so**
- 33 **has been suspended or revoked as a result of the person's**
- 34 **conviction of an offense under IC 9-1-4-52 (repealed July 1,**
- 35 **1991) or IC 9-24-18-5(b).**
- 36 ~~(5)~~ **(6) Operating a motor vehicle without ever having obtained a**
- 37 **license to do so.**
- 38 ~~(6)~~ **(7) Reckless driving.**
- 39 ~~(7)~~ **(8) Criminal recklessness involving the operation of a motor**
- 40 **vehicle.**
- 41 ~~(8)~~ **(9) Drag racing or engaging in a speed contest in violation of**
- 42 **law.**

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1 ~~(9)~~ **(10)** Violating IC 9-4-1-40 (repealed July 1, 1991),
 2 IC 9-4-1-46 (repealed July 1, 1991), IC 9-26-1-1(1),
 3 IC 9-26-1-1(2), IC 9-26-1-1(4), IC 9-26-1-2(1), IC 9-26-1-2(2),
 4 IC 9-26-1-3, or IC 9-26-1-4.

5 ~~(10)~~ **(11)** Any felony under an Indiana motor vehicle statute or
 6 any felony in the commission of which a motor vehicle is used.

7 A judgment for a violation enumerated in subsection (a) shall be added
 8 to the violations described in this subsection for the purposes of this
 9 subsection.

10 (c) A person who has accumulated at least ten (10) judgments
 11 within a ten (10) year period for any traffic violation, except a parking
 12 or an equipment violation, of the type required to be reported to the
 13 bureau, singularly or in combination, not arising out of the same
 14 incident, and with at least one (1) violation occurring after March 31,
 15 1984, is a habitual violator. However, at least one (1) of the judgments
 16 must be for a violation enumerated in subsection (a) or (b). A judgment
 17 for a violation enumerated in subsection (a) or (b) shall be added to the
 18 judgments described in this subsection for the purposes of this
 19 subsection.

20 SECTION 10. IC 9-30-10-9, AS AMENDED BY P.L.1-1999,
 21 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2000]: Sec. 9. (a) If a court finds that a person:

- 23 (1) is a habitual violator under section 4(c) of this chapter;
 24 (2) has not been previously placed on probation under this section
 25 by a court;
 26 (3) operates a vehicle for commercial or business purposes, and
 27 the person's mileage for commercial or business purposes:
 28 (A) is substantially in excess of the mileage of an average
 29 driver; and
 30 (B) may have been a factor that contributed to the person's
 31 poor driving record; and
 32 (4) does not have:
 33 (A) a judgment for a violation enumerated in section 4(a) of
 34 this chapter; or
 35 (B) at least three (3) judgments (singularly or in combination
 36 and not arising out of the same incident) of the violations
 37 enumerated in section 4(b) of this chapter;

38 the court may place the person on probation in accordance with
 39 subsection (c).

40 (b) If a court finds that a person:

- 41 (1) is a habitual violator under section 4(b) of this chapter;
 42 (2) has not been previously placed on probation under this section

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- 1 by a court;
- 2 (3) does not have a judgment for any violation listed in section
- 3 4(a) of this chapter;
- 4 (4) has had the person's driving privileges suspended under this
- 5 chapter for at least five (5) consecutive years; and
- 6 (5) has not violated the terms of the person's suspension by
- 7 operating a vehicle;
- 8 the court may place the person on probation in accordance with
- 9 subsection (c). However, if the person has any judgments for operation
- 10 of a vehicle **before July 1, 2000**, while intoxicated or with **an alcohol**
- 11 **concentration equivalent to** at least ten-hundredths ~~percent (0.10%)~~
- 12 **(0.10) gram of alcohol by weight in grams in per** one hundred (100)
- 13 milliliters of the blood, or two hundred ten (210) liters of the breath, **or**
- 14 **for the operation of a vehicle after June 30, 2000, while intoxicated**
- 15 **or with an alcohol concentration equivalent to at least**
- 16 **eight-hundredths (0.08) gram of alcohol per one hundred (100)**
- 17 **milliliters of the blood, or two hundred ten (210) liters of the**
- 18 **breath**, the court, before the court places a person on probation under
- 19 subsection (c), must find that the person has successfully fulfilled the
- 20 requirements of a rehabilitation program certified by the division of
- 21 mental health.
- 22 (c) Whenever a court places a habitual violator on probation, the
- 23 court:
- 24 (1) shall record each of the court's findings under this section in
- 25 writing;
- 26 (2) shall obtain the person's driver's license or permit and send the
- 27 license or permit to the bureau;
- 28 (3) shall direct the person to apply to the bureau for a restricted
- 29 driver's license;
- 30 (4) shall order the bureau to issue the person an appropriate
- 31 license;
- 32 (5) shall place the person on probation for a fixed period of not
- 33 less than three (3) years and not more than ten (10) years;
- 34 (6) shall attach restrictions to the person's driving privileges,
- 35 including restrictions limiting the person's driving to:
- 36 (A) commercial or business purposes or other employment
- 37 related driving;
- 38 (B) specific purposes in exceptional circumstances; and
- 39 (C) rehabilitation programs;
- 40 (7) shall order the person to file proof of financial responsibility
- 41 for three (3) years following the date of being placed on
- 42 probation; and

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- 1 (8) may impose other appropriate conditions of probation.
 2 (d) If a court finds that a person:
 3 (1) is a habitual violator under section 4(b) or 4(c) of this chapter;
 4 (2) does not have any judgments for violations under section 4(a)
 5 of this chapter;
 6 (3) does not have any judgments or convictions for violations
 7 under section 4(b) of this chapter, except for judgments or
 8 convictions under section 4(b)(4) of this chapter that resulted
 9 from driving on a suspended license that was suspended for:
 10 (A) the commission of infractions only; or
 11 (B) previously driving on a suspended license;
 12 (4) has not been previously placed on probation under this section
 13 by a court; and
 14 (5) has had the person's driving privileges suspended under this
 15 chapter for at least three (3) consecutive years and has not
 16 violated the terms of the person's suspension by operating a
 17 vehicle for at least three (3) consecutive years;
 18 the court may place the person on probation under subsection (c).
 19 SECTION 11. IC 14-15-8-5, AS AMENDED BY P.L.1-2000,
 20 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2000]: Sec. 5. As used in this chapter, "prima facie evidence
 22 of intoxication" includes evidence that at the time of an alleged
 23 violation there was an alcohol concentration equivalent (as defined in
 24 IC 9-13-2-2.4) to at least ~~ten-hundredths (0.10)~~ **eight-hundredths**
 25 **(0.08)** gram of alcohol per:
 26 (1) one hundred (100) milliliters of the person's blood; or
 27 (2) two hundred ten (210) liters of the person's breath.
 28 SECTION 12. IC 14-15-8-6, AS AMENDED BY P.L.1-2000,
 29 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2000]: Sec. 6. As used in this chapter, "relevant evidence"
 31 includes evidence that at the time of the alleged violation there was an
 32 alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at
 33 least five-hundredths (0.05) gram and less than ~~ten-hundredths (0.10)~~
 34 **eight-hundredths (0.08)** gram of alcohol per:
 35 (1) one hundred (100) milliliters of the person's blood; or
 36 (2) two hundred ten (210) liters of the person's breath.
 37 SECTION 13. IC 14-15-8-8, AS AMENDED BY P.L.1-2000,
 38 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2000]: Sec. 8. (a) Except as provided in subsections (b) and
 40 (c), a person who operates a motorboat:
 41 (1) with an alcohol concentration equivalent (as defined in
 42 IC 9-13-2-2.4) to at least ~~ten-hundredths (0.10)~~ **eight-hundredths**



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1 breath alcohol level, find the blood or breath alcohol level reading in
2 the left hand column, go across and find where the blood or breath
3 alcohol level reading is an alcohol concentration equivalent (as defined
4 in IC 9-13-2-2.4) to below ~~ten-hundredths (0.10)~~ **eight-hundredths**
5 **(0.08)** gram of alcohol per one hundred (100) milliliters of the person's
6 blood or per two hundred ten (210) liters of the person's breath, then
7 read up that column to find the minimum number of hours before the
8 person can be released.

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