

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.

SENATE ENROLLED ACT No. 1

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

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

SECTION 1. IC 4-31-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A permit holder shall provide an alcohol breath-testing device that is approved by the commission and operated by a person certified to use such a device. All drivers, jockeys, judges, starters, assistant starters, and drivers of starting gates shall submit to a breath test at each racing program in which they participate. In addition, the secretary of the commission, a member of the commission, a commission investigator, the stewards, or the track chief of security may order a licensee to submit to a breath test at any time there is reason to believe the licensee may have consumed sufficient alcohol to cause the licensee to fail a breath test.

(b) A person whose breath test shows a reading of **an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to more than five-hundredths of one percent (~~0.05%~~) (0.05) gram of alcohol by weight in grams in one hundred (~~100~~) milliliters of the person's blood; or in per two hundred ten (210) liters of the person's breath, is subject to the following sanctions:**

- (1) A driver or jockey may not be permitted to drive or ride and shall be suspended under the rules of the commission.
- (2) A judge, a starter, an assistant starter, or a driver of the starting gate shall be relieved of all duties for that program, and a report shall be made to the commission for appropriate action.

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(3) Any other licensee shall be suspended, beginning that day, under the rules of the commission.

(c) The stewards and judges shall, on behalf of the commission, impose the following sanctions against a licensee who refuses to submit to a breath test:

(1) For the first refusal, a civil penalty of one hundred dollars (\$100) and a seven (7) day suspension.

(2) For a second refusal, a civil penalty of two hundred fifty dollars (\$250) and a thirty (30) day suspension.

(3) For any additional refusals to submit to a breath test, a civil penalty of two hundred fifty dollars (\$250), a sixty (60) day suspension, and referral of the case to the commission for any further action that the commission considers necessary.

(d) A sanction under subsection (c) may be appealed to the commission. An appeal stays the sanction until further action by the commission. The appeal must be heard by the commission within thirty (30) days after the date of the appeal.

SECTION 2. IC 9-13-2-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.4. "Alcohol concentration equivalent" means the alcohol concentration in a person's blood or breath determined from a test of a sample of the person's blood or breath.**

SECTION 3. IC 9-13-2-131 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 131. "Prima facie evidence of intoxication" includes evidence that at the time of an alleged violation ~~there was~~ **the person had an alcohol concentration equivalent to** at least ten-hundredths percent (~~0.10%~~) **(0.10) gram** of alcohol ~~by weight in grams in per:~~

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

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

SECTION 4. IC 9-13-2-151 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 151. "Relevant evidence of intoxication" includes evidence that at the time of an alleged violation ~~there was~~ **a person had an alcohol concentration equivalent to** at least five-hundredths percent (~~0.05%~~) **(0.05) gram**, but less than ten-hundredths percent (~~0.10%~~) **(0.10) gram** of alcohol ~~by weight in grams in per:~~

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

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

SECTION 5. IC 9-24-6-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. A person who operates a commercial motor vehicle with **an alcohol concentration**

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equivalent to at least four-hundredths ~~percent (0.04%)~~ **(0.04) gram** but less than ten-hundredths ~~percent (0.10%)~~ **(0.10) gram** of alcohol **by weight in grams in per:**

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

commits a Class C infraction.

SECTION 6. IC 9-30-5-1(CURRENT VERSION) IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.

(a) A person who operates a vehicle with **an alcohol concentration equivalent to** at least ten-hundredths ~~percent (0.10%)~~ **(0.10) gram** of alcohol **by weight in grams in: per:**

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

commits a Class C misdemeanor.

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

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

SECTION 7. IC 9-30-5-1, AS AMENDED BY P.L.266-1999, SECTION 2 (DELAYED VERSION), IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) A person who operates a vehicle with **an alcohol concentration equivalent to** at least ten-hundredths ~~percent (0.10%)~~ **(0.10) gram** of alcohol **by weight in grams** but less than fifteen-hundredths ~~percent (0.15%)~~ **(0.15) gram** of alcohol **by weight in grams in per:**

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

commits a Class C misdemeanor.

(b) A person who operates a vehicle with **an alcohol concentration equivalent to** at least fifteen-hundredths ~~percent (0.15%)~~ **(0.15) gram** of alcohol **by weight in grams in per:**

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

commits a Class A misdemeanor.

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

(d) It is a defense to subsection (c) that the accused person consumed the controlled substance under a valid prescription or order

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of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 8. IC 9-30-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with **an alcohol concentration equivalent to** at least ten-hundredths percent ~~(0.10%)~~ **(0.10) gram** of alcohol ~~by weight~~ **in grams in per:**

- (A) one hundred (100) milliliters of the person's blood; or
- (B) two hundred ten (210) liters of the person's breath;

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

(3) while intoxicated;

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

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

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

SECTION 9. IC 9-30-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with **an alcohol concentration equivalent to** at least ten-hundredths percent ~~(0.10%)~~ **(0.10) gram** of alcohol ~~by weight~~ **in grams in per:**

- (A) one hundred (100) milliliters of the person's blood; or
- (B) two hundred ten (210) liters of the person's breath;

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

(3) while intoxicated;

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

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

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order

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of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 10. IC 9-30-5-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. (a) A person who:

- (1) is less than twenty-one (21) years of age; and
- (2) operates a vehicle with **an alcohol concentration equivalent to at least two-hundredths percent (~~0.02%~~) (0.02) gram** but less than ten-hundredths **percent (~~0.10%~~) (0.10) gram** of alcohol **by weight in grams in per:**
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

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

SECTION 11. IC 9-30-6-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) At any proceeding concerning an offense under IC 9-30-5 or a violation under IC 9-30-15, evidence of the **amount by weight of alcohol concentration** that was in the blood of the person charged with the offense:

- (1) at the time of the alleged violation; or
- (2) within the time allowed for testing under section 2 of this chapter;

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

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

- (1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and
- (2) the person charged with the offense had **an alcohol concentration equivalent to at least ten-hundredths percent (~~0.10%~~) (0.10) gram** of alcohol **by weight in grams in per:**

- (A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or
- (B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had **an alcohol concentration equivalent to at least ten-hundredths percent (~~0.10%~~) (0.10) gram** of alcohol **by weight in grams in per** one hundred (100) milliliters of the person's blood or **in per** two hundred

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ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

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

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

(2) the person charged with the violation:

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

(B) had **an alcohol concentration equivalent to** at least two-hundredths ~~percent (0.02%)~~ **(0.02) gram of alcohol by weight in grams in per:**

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

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

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the violation had **an alcohol concentration equivalent to** at least two-hundredths ~~percent (0.02%)~~ **(0.02) gram of alcohol by weight in grams in per** one hundred (100) milliliters of the person's blood or **in per** two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, the presumption is rebuttable.

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

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

(2) the person charged with the offense had **an alcohol concentration equivalent to** at least four-hundredths ~~percent (0.04%)~~ **(0.04) gram of alcohol by weight in grams in per:**

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

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

at the time the test sample was taken;

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

SECTION 12. IC 9-30-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. An ignition interlock device shall be set to render a motor vehicle inoperable if the

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ignition interlock device detects **an alcohol concentration equivalent to at least two-hundredths percent (~~0.02%~~) (0.02) gram of alcohol by weight in grams in per:**

- (1) one hundred (100) milliliters of the blood of the person; or
 - (2) two hundred ten (210) liters of the breath of the person;
- who offers a breath sample.

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

- (1) Reckless homicide resulting from the operation of a motor vehicle.
- (2) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.
- (3) Failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.
- (4) Operation of a vehicle while intoxicated resulting in death.
- (5) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood resulting in death.
- (6) After June 30, 1997, operation of a vehicle with **an alcohol concentration equivalent to at least ten-hundredths percent (~~0.10%~~) (0.10) gram of alcohol by weight in grams in per:**
 - (A) one hundred (100) milliliters of the blood; or
 - (B) two hundred ten (210) liters of the breath;

resulting in death.

(b) A person who has accumulated at least three (3) judgments within a ten (10) year period for any of the following violations, singularly or in combination, not arising out of the same incident, and with at least one (1) violation occurring after March 31, 1984, is a habitual violator:

- (1) Operation of a vehicle while intoxicated.
- (2) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood.
- (3) After June 30, 1997, operation of a vehicle with **an alcohol concentration equivalent to at least ten-hundredths percent (~~0.10%~~) (0.10) gram of alcohol by weight in grams in per:**
 - (A) one hundred (100) milliliters of the blood; or
 - (B) two hundred ten (210) liters of the breath.

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(4) Operating a motor vehicle while the person's license to do so has been suspended or revoked as a result of the person's conviction of an offense under IC 9-1-4-52 (repealed July 1, 1991) or IC 9-24-18-5(b).

(5) Operating a motor vehicle without ever having obtained a license to do so.

(6) Reckless driving.

(7) Criminal recklessness involving the operation of a motor vehicle.

(8) Drag racing or engaging in a speed contest in violation of law.

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

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

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

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

SECTION 14. IC 9-30-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The operator of a motor vehicle who has **an alcohol concentration equivalent to** at least four-hundredths ~~percent (0.04%)~~ **(0.04) gram** of alcohol ~~by weight in grams in per~~ **(100)** milliliters of the blood, or **per** two hundred ten (210) liters of the breath, and who, while the motor vehicle is in operation, knowingly allows a container:

(1) that has been opened;

(2) that has a broken seal; or

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

to be in the passenger compartment of the motor vehicle commits a Class B infraction. If a person is found to have a previous unrelated judgment under this section or a previous unrelated conviction or

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judgment under IC 9-30-5 within twelve (12) months before a violation that results in a judgment under this chapter, the court may recommend the person's driving privileges be suspended for not more than one (1) year.

SECTION 15. IC 14-15-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. As used in this chapter, "prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was **an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least ten-hundredths percent (~~0.10%~~) (0.10) gram of alcohol by weight in grams in per:**

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

SECTION 16. IC 14-15-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "relevant evidence" includes evidence that at the time of the alleged violation there was **(~~+~~) an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least five-hundredths percent (~~0.05%~~); (0.05) gram and (~~-~~) less than ten-hundredths percent (~~0.10%~~); (0.10) gram of alcohol by weight in grams in per:**

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

SECTION 17. IC 14-15-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as provided in subsections (b) and (c), a person who operates a motorboat:

- (1) with **an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least ten-hundredths percent (~~0.10%~~) (0.10) gram of alcohol by weight in grams in per:**

- (A) one hundred (100) milliliters of the person's blood; or
- (B) two hundred ten (210) liters of the person's breath; or

- (2) while intoxicated;

commits a Class C misdemeanor.

- (b) The offense is a Class D felony if:

- (1) the person has a previous conviction under:
 - (A) IC 14-1-5 (repealed); or
 - (B) this chapter; or

- (2) the offense results in serious bodily injury to another person.

(c) The offense is a Class C felony if the offense results in the death of another person.

SECTION 18. IC 35-33-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A law enforcement agency may use the following chart to determine the minimum number of hours that a person arrested for an alcohol-related

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offense should be detained before his release pending trial:

PERCENTAGE

BLOOD OR HOURS AFTER INITIAL READING

BREATH IS TAKEN

ALCOHOL

LEVEL IN

GRAMS	1	2	3	4	5	6	7	8	9	10	11	12	13	14
.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00	.000	.00
.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00
.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00
.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00
.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00
.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00
.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00
.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00
.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00
.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00
.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00
.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01
.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02
.24	.225	.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03
.25	.235	.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04
.26	.245	.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05

Note: In order to find when a person will reach the legal blood or breath alcohol level, find the blood or breath alcohol level reading in the left hand column, go across and find where the blood or breath alcohol level reading is **an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to below $\pm 10\%$, ten-hundredths (0.10) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath,** then read up that column to find the minimum number of hours before the person can be released.

SECTION 19. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 4-22-2, to implement this act, the director of the department of toxicology of the Indiana University school of medicine may adopt a rule required under IC 9-30-6-5 or IC 9-30-6-6, or both, in the manner provided for emergency rules under IC 4-22-2-37.1.

(b) A rule adopted under this SECTION is effective when it is filed with the secretary of state and expires on the latest of the following:

- (1) The date that the director adopts another emergency rule**

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under this SECTION to amend, repeal, or otherwise supersede the previously adopted emergency rule.

(2) The date that the director adopts a permanent rule under IC 4-22-2 to amend, repeal, or otherwise supersede the previously adopted emergency rule.

(3) July 1, 2001.

(c) For the purposes of IC 9-30-7-4, IC 14-15-8-14, and other statutes, the provisions of a rule adopted under this SECTION shall be treated as a requirement under IC 9-30-6-5 or IC 9-30-6-6, or both, as appropriate.

SECTION 20. An emergency is declared for this act.

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President of Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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