First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

SENATE ENROLLED ACT No. 474

AN ACT to amend the Indiana Code concerning motor vehicles.

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

SECTION 1. IC 8-2.1-24-18, AS AMENDED BY P.L.92-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) 49 CFR Parts 382 ~~385~~ through 387, 390 through 393, and 395 through 398 is incorporated into Indiana law by reference, and, except as provided in subsections (d), (e), (f), and (g), must be complied with by an interstate and intrastate motor carrier of persons or property throughout Indiana. Intrastate motor carriers subject to compliance reviews under 49 CFR 385 shall be selected according to criteria determined by the superintendent which must include but is not limited to factors such as previous history of violations found in roadside compliance checks and other recorded violations. However, the provisions of 49 CFR 395 that regulate the hours of service of drivers, including requirements for the maintenance of logs, do not apply to a driver of a truck that is registered by the bureau of motor vehicles and used as a farm truck under IC 9-18, or a vehicle operated in intrastate construction or construction related service, or the restoration of public utility services interrupted by an emergency. Except as provided in subsection (i), intrastate motor carriers not operating under authority issued by the United States Department of Transportation shall comply with the requirements of 49 CFR 390.21(b)(3) by registering with the department of state revenue as an intrastate motor carrier and displaying the certification number

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issued by the department of state revenue preceded by the letters "IN". Except as provided in subsection (i), all other requirements of 49 CFR 390.21 apply equally to interstate and intrastate motor carriers.

(b) 49 CFR 107 subpart (F) and subpart (G), 171 through 173, 177 through 178, and 180, is incorporated into Indiana law by reference, and every:

(1) private carrier;
(2) common carrier;
(3) contract carrier;
(4) motor carrier of property, intrastate;
(5) hazardous material shipper; and
(6) carrier otherwise exempt under section 3 of this chapter;

must comply with the federal regulations incorporated under this subsection, whether engaged in interstate or intrastate commerce.

(c) Notwithstanding subsection (b), nonspecification bulk and nonbulk packaging, including cargo tank motor vehicles, may be used only if all the following conditions exist:

(1) The maximum capacity of the vehicle is less than three thousand five hundred (3,500) gallons.
(2) The shipment of goods is limited to intrastate commerce.
(3) The vehicle is used only for the purpose of transporting fuel oil, kerosene, diesel fuel, gasoline, gasohol, or any combination of these substances.

All additional federal standards for the safe transportation of hazardous materials apply until July 1, 2000. After June 30, 2000, the maintenance, inspection, and marking requirements of 49 CFR 173.8 and Part 180 are applicable. In accordance with federal hazardous materials regulations, new or additional nonspecification cargo tank motor vehicles may not be placed in service under this subsection after June 30, 1998.

(d) For the purpose of enforcing this section, only:

(1) a state police officer or state police motor carrier inspector who:
    (A) has successfully completed a course of instruction approved by the Federal Highway Administration; and
    (B) maintains an acceptable competency level as established by the state police department; or
(2) an employee of a law enforcement agency who:
    (A) before January 1, 1991, has successfully completed a course of instruction approved by the Federal Highway Administration; and
    (B) maintains an acceptable competency level as established

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by the state police department;

on the enforcement of 49 CFR, may, upon demand, inspect the books, accounts, papers, records, memoranda, equipment, and premises of any carrier, including a carrier exempt under section 3 of this chapter.

(e) A person hired before September 1, 1985, who operates a motor vehicle intrastate incidentally to the person's normal employment duties and who is not employed as a chauffeur (as defined in IC 9-13-2-21(a)) is exempt from 49 CFR 391 as incorporated by this section.

(f) Notwithstanding any provision of 49 CFR 391 to the contrary, a person at least eighteen (18) years of age and less than twenty-one (21) years of age may be employed as a driver to operate a commercial motor vehicle intrastate. However, a person employed under this subsection is not exempt from any other provision of 49 CFR 391.

(g) Notwithstanding subsection (b), the following provisions of 49 CFR do not apply to private carriers of property operated only in intrastate commerce or any carriers of property operated only in intrastate commerce while employed in construction or construction related service:

(1) Subpart 391.41 as it applies to physical qualifications of drivers hired before September 1, 1985.

(2) Subpart 391.41(b)(3) as it applies to physical qualifications of a driver who has held a commercial driver's license (as defined in IC 9-13-2-29) before April 1, 1992, diagnosed as an insulin dependent diabetic, if the driver has filed an annual statement with the bureau of motor vehicles completed and signed by a certified endocrinologist attesting that the driver:

(A) is otherwise physically qualified under Subpart 391.41 to operate a motor vehicle and is not likely to suffer any diminution in driving ability due to the driver's diabetic condition;

(B) is free of severe hypoglycemia or hypoglycemia unawareness and has had less than one (1) documented, symptomatic hypoglycemic reaction per month;

(C) has demonstrated the ability and willingness to properly monitor and manage the driver's diabetic condition;

(D) has agreed to and, to the endocrinologist's knowledge, has carried a source of rapidly absorbable glucose at all times while driving a motor vehicle, has self monitored blood glucose levels one (1) hour before driving and at least once every four (4) hours while driving or on duty before driving using a portable glucose monitoring device equipped with a computerized memory; and

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(E) has submitted the blood glucose logs from the monitoring device to the endocrinologist at the time of the annual medical examination.

A copy of the blood glucose logs shall be filed along with the annual statement from the endocrinologist with the bureau of motor vehicles for review by the driver licensing advisory committee established under IC 9-14-4. A copy of the annual statement shall also be provided to the driver's employer for retention in the driver's qualification file, and a copy shall be retained and held by the driver while driving for presentation to an authorized federal, state, or local law enforcement official.

(3) Subpart 396.9 as it applies to inspection of vehicles carrying or loaded with a perishable product. However, this exemption does not prohibit a law enforcement officer from stopping these vehicles for an obvious violation that poses an imminent threat of an accident or incident. The exemption is not intended to include refrigerated vehicles loaded with perishables when the refrigeration unit is working.

(4) Subpart 396.11 as it applies to driver vehicle inspection reports.

(5) Subpart 396.13 as it applies to driver inspection.

(h) For purposes of 49 CFR 395.1(l), "planting and harvesting season" refers to the period between January 1 and December 31 of each year. The intrastate commerce exception set forth in 49 CFR 395.1(l), as it applies to the transportation of agricultural commodities and farm supplies, is restricted to single vehicles and cargo tank motor vehicles with a capacity of not more than five thousand four hundred (5,400) gallons.

(i) The requirements of 49 CFR 390.21 do not apply to an intrastate carrier or a guest operator not engaged in interstate commerce and operating a motor vehicle as a farm vehicle in connection with agricultural pursuits usual and normal to the user's farming operation or for personal purposes unless the vehicle is operated either part time or incidentally in the conduct of a commercial enterprise.

(j) The superintendent of state police may adopt rules under IC 4-22-2 governing the parts and subparts of 49 CFR incorporated by reference under this section.

SECTION 2. IC 9-13-2-161 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 161. (a) "School bus" means, except as provided in subsection (b), a:

(1) bus;

(2) hack;

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(3) conveyance;

(4) commercial motor vehicle; or

(5) motor vehicle;

used to transport **preschool, elementary, or secondary** school children to and from school and to and from school athletic games or contests or other school functions. The term does not include a privately owned automobile with a capacity of not more than five (5) passengers that is used for the purpose of transporting school children to and from school.

(b) "School bus", for purposes of IC 9-21, means a motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, including project headstart, or privately owned and operated for compensation for the transportation of children to and from school, including project headstart.

SECTION 3. IC 9-24-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Except as provided in subsection (c), this chapter does not apply to a motor vehicle that meets the following conditions:

(1) Is used in the transportation of hazardous materials.

(2) Is not defined as a commercial motor vehicle.

(b) Except as provided in subsection (c), this chapter does not apply to a motor vehicle that meets any of the following conditions:

(1) Is registered as a recreational vehicle.

(2) Is used primarily to transport the owner's family members or guests and their possessions for nonbusiness purposes.

(3) Is registered under IC 9-18 as a farm vehicle or is a farm vehicle that is exempt under 49 U.S.C. 521, 49 U.S.C. ~~2304,~~ **31104,** and 49 U.S.C. ~~2701~~ **31301** through ~~2716 as in effect January 1, 1991.~~ **31306.**

(4) Is utilized as a:

~~(A) school bus;~~

~~(B)~~ **(A)** church bus; or

~~(C)~~ **(B)** bus operated by a nonprofit benevolent or charitable agency;

that is designed to carry more than fifteen (15) passengers, including the driver, if the vehicle is exempt under 49 U.S.C. 521, 49 U.S.C. ~~2304,~~ **31104,** and 49 U.S.C. ~~2701~~ **31301** through ~~2716 as in effect January 1, 1991,~~ **31306,** or applicable federal regulations.

(c) The bureau may remove the exemptions granted under subsections (a) and (b) if the bureau, upon notice and public hearing,

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determines that the waiver is in the interest of safety or of keeping Indiana in compliance with federal law, subject to section 3 of this chapter.

SECTION 4. IC 9-24-6-2, AS AMENDED BY P.L.123-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The bureau shall adopt rules under IC 4-22-2 to regulate persons required to hold a commercial driver's license.

(b) The rules must carry out 49 U.S.C. 521, 49 U.S.C. 31104, 49 U.S.C. 31301 through 31306, 49 U.S.C. 31308 through 31317, and 49 CFR 383 **through 384, and may not be more restrictive than the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).**

(c) Rules adopted under this section must include the following:

(1) Establishment of classes and periods of validation of commercial driver's licenses.

(2) Standards for commercial driver's licenses, including suspension and revocation procedures.

(3) Requirements for documentation of eligibility for legal employment, as set forth in 8 CFR 274a.2, and proof of residence in Indiana.

(4) Development of written or oral tests, driving tests, and fitness requirements.

(5) Defining the commercial driver's licenses by classification and the information to be contained on the licenses, including the Social Security number and a unique identifier of the holder.

(6) Establishing fees for the issuance of commercial driver's licenses, including fees for testing and examination.

(7) Procedures for the notification by the holder of a commercial driver's license to the bureau and the driver's employer of pointable traffic offense convictions.

(8) Conditions for reciprocity with other states, including requirements for a written commercial driver's license test and operational skills test, and a hazardous materials endorsement written test and operational skills test, before a license may be issued.

(9) Other rules necessary to administer this chapter.

(d) 49 CFR 383 **through 384** ~~is~~ **are** adopted as Indiana law.

SECTION 5. IC 9-24-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to the following:

(1) A suspension of a driving license upon the failure of an

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individual to file security or proof of financial responsibility following an accident as required by or upon the failure of any individual to satisfy a judgment for damages arising out of the use of a motor vehicle on a public highway as provided for in IC 9-25.

(2) When suspension is by reason of physical, mental, or emotional instability, or if the applicant has been convicted of involuntary manslaughter or reckless homicide as a result of an automobile accident.

(3) A suspension of the license of an applicant whose license has been previously suspended.

(4) A suspension of the license of an applicant who has failed to use timely appeal procedures provided by the bureau.

(5) After June 30, 2005, a suspension of the license of an applicant whose commercial driver's license has been disqualified under 49 CFR 383.51 or other applicable federal or state law, including an alcohol or a controlled substance conviction under IC 9-30-5-4 or 49 CFR 391.15.

(b) A court may grant a petition for a restricted driving permit from an individual who:

(1) received a request for evidence of financial responsibility after:

(A) an accident under IC 9-25-5-2; or

(B) a conviction of a motor vehicle violation under IC 9-25-9-1; and

(2) failed to provide proof of financial responsibility under IC 9-25-6;

if the individual shows by a preponderance of the evidence that the failure to maintain financial responsibility was inadvertent.

SECTION 6. IC 9-24-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The following information must be included in a petition filed under section 2 of this chapter:

(1) The petitioner's age, place of residence, and occupation.

(2) That the petitioner has never been convicted of a similar offense or been suspended for a similar reason.

(3) The reason and nature of the hardship or burden upon the petitioner's family or dependents.

(4) The nature of and the necessity of the use of a motor vehicle in the petitioner's employment.

(5) The petitioner's place of employment, hours worked, and route to be traveled for employment purposes.

(6) After June 30, 2005, a certified copy of the petitioner's

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driving record in Indiana and other states in which the petitioner has held driving privileges, including all states in which the petitioner has held a commercial driver's license.

(7) After June 30, 2005, a verified statement that the petitioner meets eligibility requirements for a restricted license as set forth in section 6.5 of this chapter.

SECTION 7. IC 9-30-5-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9.5. After June 30, 2005, probationary driving privileges under this chapter do not apply to a person who holds a commercial driver's license in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).**

SECTION 8. IC 9-30-9-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. After June 30, 2005, this chapter does not apply to a person who:**

(1) holds a commercial driver's license; and

(2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

SECTION 9. IC 9-30-10-9, AS AMENDED BY P.L.175-2001, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) **After June 30, 2005, this section does not apply to a person who:**

(1) holds a commercial driver's license; and

(2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

(b) If a court finds that a person:

(1) is a habitual violator under section 4(c) of this chapter;

(2) has not been previously placed on probation under this section by a court;

(3) operates a vehicle for commercial or business purposes, and the person's mileage for commercial or business purposes:

(A) is substantially in excess of the mileage of an average driver; and

(B) may have been a factor that contributed to the person's poor driving record; and

(4) does not have:

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(A) a judgment for a violation enumerated in section 4(a) of this chapter; or

(B) at least three (3) judgments (singularly or in combination and not arising out of the same incident) of the violations enumerated in section 4(b) of this chapter;

the court may place the person on probation in accordance with subsection ~~(c).~~ **(d).**

~~(b)~~ **(c)** If a court finds that a person:

(1) is a habitual violator under section 4(b) of this chapter;

(2) has not been previously placed on probation under this section by a court;

(3) does not have a judgment for any violation listed in section 4(a) of this chapter;

(4) has had the person's driving privileges suspended under this chapter for at least five (5) consecutive years; and

(5) has not violated the terms of the person's suspension by operating a vehicle;

the court may place the person on probation in accordance with subsection ~~(c).~~ **(d).** However, if the person has any judgments for operation of a vehicle before July 1, 2001, while intoxicated or with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per one hundred (100) milliliters of the blood or two hundred ten (210) liters of the breath, or for the operation of a vehicle after June 30, 2001, while intoxicated or with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the blood or two hundred ten (210) liters of the breath, the court, before the court places a person on probation under subsection ~~(c),~~ **(d),** must find that the person has successfully fulfilled the requirements of a rehabilitation program certified by one (1) or both of the following:

(A) The division of mental health and addiction.

(B) The Indiana judicial center.

~~(c)~~ **(d)** Whenever a court places a habitual violator on probation, the court:

(1) shall record each of the court's findings under this section in writing;

(2) shall obtain the person's driver's license or permit and send the license or permit to the bureau;

(3) shall direct the person to apply to the bureau for a restricted driver's license;

(4) shall order the bureau to issue the person an appropriate license;

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(5) shall place the person on probation for a fixed period of not less than three (3) years and not more than ten (10) years;

(6) shall attach restrictions to the person's driving privileges, including restrictions limiting the person's driving to:

(A) commercial or business purposes or other employment related driving;

(B) specific purposes in exceptional circumstances; and

(C) rehabilitation programs;

(7) shall order the person to file proof of financial responsibility for three (3) years following the date of being placed on probation; and

(8) may impose other appropriate conditions of probation.

~~(d)~~ **(e)** If a court finds that a person:

(1) is a habitual violator under section 4(b) or 4(c) of this chapter;

(2) does not have any judgments for violations under section 4(a) of this chapter;

(3) does not have any judgments or convictions for violations under section 4(b) of this chapter, except for judgments or convictions under section 4(b)(5) of this chapter that resulted from driving on a suspended license that was suspended for:

(A) the commission of infractions only; or

(B) previously driving on a suspended license;

(4) has not been previously placed on probation under this section by a court; and

(5) has had the person's driving privileges suspended under this chapter for at least three (3) consecutive years and has not violated the terms of the person's suspension by operating a vehicle for at least three (3) consecutive years;

the court may place the person on probation under subsection ~~(c)~~ **(d).**

SECTION 10. IC 12-23-5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. After June 30, 2005, this chapter does not apply to a person who:**

(1) holds a commercial driver's license; and

(2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

SECTION 11. IC 33-14-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) **After June 30, 2005, this section does not apply to a person who:**

(1) holds a commercial driver's license; and

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(2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

(b) A prosecuting attorney may withhold prosecution against an accused person if:

(1) the person is charged with a misdemeanor;

(2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; and

(3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

~~(b)~~ **(c)** An agreement under subsection ~~(a)~~ **(b)** may include conditions that the person:

(1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-19-5-1;

(2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;

(3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;

(4) support the person's dependents and meet other family responsibilities;

(5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;

(6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;

(7) report to the prosecuting attorney at reasonable times;

(8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; and

(9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

~~(c)~~ **(d)** An agreement under subsection ~~(a)(2)~~ **(b)(2)** may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

~~(d)~~ **(e)** The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

~~(e)~~ **(f)** All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

~~(f)~~ **(g)** If a court withholds prosecution under this section and the

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terms of the agreement contain conditions described in subsection ~~(b)(6).~~ **(c)(6):**

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 12. IC 9-24-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. **(a)** Notwithstanding any other provision of this chapter, an individual may not receive a restricted driver's license to operate a commercial motor vehicle if the individual's driving privileges are suspended for an alcohol or drug violation under IC 9-30-5 or 49 CFR 391.15.

(b) This section expires July 1, 2005.

SECTION 13. [EFFECTIVE JULY 1, 2003] **(a) Notwithstanding IC 8-2.1-24-18, as amended by this act, the requirement that 49 CFR 383 and 384 be incorporated into Indiana law by reference, as provided by IC 8-2.1-24-18, as amended by this act, does not apply before July 1, 2005.**

(b) Notwithstanding IC 9-13-2-161, as amended by this act, the inclusion of "commercial motor vehicle" within the definition of "school bus" and the specification that a school bus may be used to transport preschool, elementary, or secondary school children, as provided by IC 9-13-2-161, as amended by this act, does not apply before July 1, 2005.

(c) Notwithstanding IC 9-24-6-1, as amended by this act, IC 9-24-6 does not apply to a motor vehicle that is used as a school bus, that is designed to carry more than fifteen (15) passengers, including the driver, and that is exempt under 49 U.S.C. 521, 49 U.S.C. 31104, and 49 U.S.C. 31301 through 31306, or applicable federal regulations, as provided by IC 9-24-6-1, as amended by this act, before July 1, 2005.

(d) Notwithstanding IC 9-24-6-2, as amended by this act:

(1) the requirement that the rules adopted by the bureau of motor vehicles to regulate persons required to hold a commercial driver's license shall carry out 49 CFR 384;

(2) the prohibition against the rules adopted by the bureau of motor vehicles to regulate persons required to hold a commercial driver's license being more restrictive than the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748); and

(3) the adoption of 49 CFR 384 as Indiana law;

as provided by IC 9-24-6-2, as amended by this act, do not apply

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before July 1, 2005.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved:

Governor of the State of Indiana

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