

PROPOSED AMENDMENT

HB 1156 # 1

DIGEST

Portable test. Changes the term "portable breath test" to "portable test" and amends the definition of "portable test".

- 1 Page 3, after line 17, begin a new paragraph and insert:
2 "SECTION 2. IC 9-30-6-2 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) A law
4 enforcement officer who has probable cause to believe that a person
5 has committed an offense under this chapter, ~~IC 9-30-5~~, **IC 9-30-5-2**,
6 or IC 9-30-9, or a violation under IC 9-30-15 shall offer the person the
7 opportunity to submit to a chemical test.
8 (b) A law enforcement officer:
9 (1) is not required to offer a chemical test to an unconscious
10 person; and
11 (2) may offer a person more than one (1) chemical test under this
12 chapter.
13 (c) A test administered under this chapter must be administered
14 within three (3) hours after the law enforcement officer had probable
15 cause to believe the person committed an offense under ~~IC 9-30-5~~
16 **IC 9-30-5-2** or a violation under IC 9-30-15.
17 (d) A person must submit to each chemical test offered by a law
18 enforcement officer in order to comply with the implied consent
19 provisions of this chapter.
20 SECTION 3. IC 9-30-6-15 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. (a) At any
22 proceeding concerning an offense under IC 9-30-5 or a violation under
23 IC 9-30-15, evidence of the alcohol concentration that was in the blood
24 of the person charged with the offense:
25 (1) at the time of the alleged violation; or
26 (2) within the time allowed for testing under section 2 of this
27 chapter;

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

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

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

8 (2) the person charged with the offense had an alcohol
9 concentration equivalent to at least eight-hundredths (0.08) gram
10 of alcohol per:

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

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

14 the trier of fact shall presume that the person charged with the offense
15 had an alcohol concentration equivalent to at least eight-hundredths
16 (0.08) gram of alcohol per one hundred (100) milliliters of the person's
17 blood or per two hundred ten (210) liters of the person's breath at the
18 time the person operated the vehicle. However, this presumption is
19 rebuttable.

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

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

25 (2) the person charged with the violation:

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

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

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

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

32 at the time the test sample was taken;

33 the trier of fact shall presume that the person charged with the violation
34 had an alcohol concentration equivalent to at least two-hundredths
35 (0.02) gram of alcohol per one hundred (100) milliliters of the person's
36 blood or per two hundred ten (210) liters of the person's breath at the
37 time the person operated the vehicle. However, the presumption is
38 rebuttable.

39 (d) If, in an action for a violation under IC 9-30-15 **or**
40 **IC 9-24-6.1-6**, evidence establishes that:

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

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

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

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

9 at the time the test sample was taken;

10 the trier of fact shall presume that the person charged with the offense
 11 had an alcohol concentration equivalent to at least four-hundredths
 12 (0.04) gram of alcohol by weight in grams per one hundred (100)
 13 milliliters of the person's blood or per two hundred ten (210) liters of
 14 the person's breath at the time the person operated the vehicle.
 15 However, this presumption is rebuttable.

16 SECTION 4. IC 9-30-7-1 IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) As used in this chapter,
 18 "portable ~~breath~~ test" means a ~~hand held~~ **mobile** apparatus that
 19 measures ~~the for~~ alcohol concentration **or the presence of alcohol, a**
 20 **controlled substance or its metabolite, or a drug or its metabolite**
 21 in a breath **or oral fluid** sample. ~~delivered by a person into the~~
 22 ~~mouthpiece of the apparatus.~~

23 (b) As used in this chapter, "fatal accident" means an accident, a
 24 collision, or other occurrence that involves at least one (1) vehicle and
 25 that results in:

26 (1) death; or

27 (2) bodily injury that gives a law enforcement officer reason to
 28 believe that the death of at least one (1) person is imminent.

29 SECTION 5. IC 9-30-7-2 IS AMENDED TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2023]: Sec. 2. A person who operates a vehicle
 31 impliedly consents to submit to the portable ~~breath~~ test or chemical test
 32 under this chapter as a condition of operating a vehicle in Indiana. A
 33 person must submit to each portable ~~breath~~ test or chemical test offered
 34 by a law enforcement officer under this chapter to comply with this
 35 chapter.

36 SECTION 6. IC 9-30-7-3 IS AMENDED TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) A law enforcement officer
 38 shall offer a portable ~~breath~~ test or chemical test to any person who the
 39 officer has reason to believe operated a vehicle that was involved in a
 40 fatal accident or an accident involving serious bodily injury. If:

1 (1) the results of a portable ~~breath~~ test indicate the presence of
 2 alcohol, **a controlled substance or its metabolite, or a drug or**
 3 **its metabolite;**

4 (2) the results of a portable ~~breath~~ test do not indicate the
 5 presence of alcohol but the law enforcement officer has probable
 6 cause to believe the person is under the influence of a controlled
 7 substance or another drug; or

8 (3) the person refuses to submit to a portable ~~breath~~ test;
 9 the law enforcement officer shall offer a chemical test to the person.

10 (b) A law enforcement officer may offer a person more than one (1)
 11 portable ~~breath~~ test or chemical test under this section. However, all
 12 chemical tests must be administered within three (3) hours after the
 13 fatal accident or the accident involving serious bodily injury.

14 (c) It is not necessary for a law enforcement officer to offer a
 15 portable ~~breath~~ test or chemical test to an unconscious person.

16 SECTION 7. IC 9-30-7-5, AS AMENDED BY P.L.85-2013,
 17 SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2023]: Sec. 5. (a) A person who refuses to submit to a portable
 19 ~~breath~~ test or chemical test offered under this chapter commits a Class
 20 C infraction. However, the person commits a Class A infraction if the
 21 person has at least one (1) previous conviction for operating while
 22 intoxicated.

23 (b) In addition to any other penalty imposed, the court shall suspend
 24 the person's driving privileges:

25 (1) for one (1) year; or

26 (2) if the person has at least one (1) previous conviction for
 27 operating while intoxicated, for two (2) years.

28 (c) During the three (3) years following the termination of the
 29 suspension, the person's driving privileges remain suspended until the
 30 person provides proof of future financial responsibility in force under
 31 IC 9-25.

32 SECTION 8. IC 35-31.5-2-239.5 IS ADDED TO THE INDIANA
 33 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2023]: **Sec. 239.5. "Portable test", for**
 35 **purposes of IC 35-46-9-10, has the meaning set forth in IC 9-30-7-**
 36 **1.**

37 SECTION 9. IC 35-46-9-10, AS ADDED BY P.L.40-2012,
 38 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2023]: Sec. 10. (a) A law enforcement officer shall offer a
 40 portable ~~breath~~ test or chemical test to any person if the officer has

- 1 reason to believe the person operated a motorboat that was involved in
2 a fatal accident or an accident involving serious bodily injury. If:
- 3 (1) the results of a portable ~~breath~~ test indicate the presence of
4 alcohol;
- 5 (2) the results of a portable ~~breath~~ test do not indicate the
6 presence of alcohol but the law enforcement officer has probable
7 cause to believe the person is under the influence of a controlled
8 substance or another drug; or
- 9 (3) the person refuses to submit to a portable ~~breath~~ test;
- 10 the law enforcement officer shall offer a chemical test to the person.
- 11 (b) A law enforcement officer may offer a person more than one (1)
12 portable ~~breath~~ test or chemical test under this section. However, all
13 chemical tests must be administered within three (3) hours after the
14 fatal accident or the accident involving serious bodily injury.
- 15 (c) It is not necessary for a law enforcement officer to offer a
16 portable ~~breath~~ test or chemical test to an unconscious person."
- 17 Renumber all SECTIONS consecutively.
(Reference is to HB 1156 as printed January 24, 2023.)