

IC 35-46-9

Chapter 9. Operating a Motorboat While Intoxicated

IC 35-46-9-1

"Chemical test"

Sec. 1. As used in this chapter, "chemical test" means an analysis of an individual's:

- (1) blood;
- (2) breath;
- (3) urine; or
- (4) other bodily substance;

for the determination of the presence of alcohol or a controlled substance.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-2

"Intoxicated"

Sec. 2. As used in this chapter, "intoxicated" means under the influence of:

- (1) alcohol;
- (2) a controlled substance;
- (3) any drug (as defined in IC 9-13-2-49.1) other than alcohol or a controlled substance;
- (4) any combination of alcohol, controlled substances, or drugs;
- or
- (5) any other substance, not including food and food ingredients (as defined in IC 6-2.5-1-20), tobacco (as defined in IC 6-2.5-1-28), or a dietary supplement (as defined in IC 6-2.5-1-16);

so that there is an impaired condition of thought and action and the loss of normal control of an individual's faculties.

As added by P.L.40-2012, SEC.21. Amended by P.L.196-2013, SEC.19.

IC 35-46-9-3

"Motorboat"

Sec. 3. (a) As used in this chapter, "motorboat" means a watercraft (as defined in IC 14-8-2-305) propelled by:

- (1) an internal combustion, steam, or electrical inboard or outboard motor or engine; or
- (2) any mechanical means.

(b) The term includes the following:

- (1) A sailboat that is equipped with a motor or an engine described in subsection (a) when the motor or engine is in operation, whether or not the sails are hoisted.
- (2) A personal watercraft (as defined in IC 14-8-2-202.5).

As added by P.L.40-2012, SEC.21.

IC 35-46-9-4

"Prima facie evidence of intoxication"

Sec. 4. 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 eight-hundredths (0.08) gram of alcohol per:

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

As added by P.L.40-2012, SEC.21.

IC 35-46-9-5

"Relevant evidence"

Sec. 5. 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 (0.05) gram and less than eight-hundredths (0.08) gram of alcohol per:

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

As added by P.L.40-2012, SEC.21.

IC 35-46-9-6

Operating a motorboat while intoxicated

Sec. 6. (a) Except as provided in subsections (b) and (c), a person who operates a motorboat while:

- (1) having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;
- (2) having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or
- (3) intoxicated;

commits a Class C misdemeanor.

(b) The offense is a Level 6 felony if:

- (1) the person has a previous conviction under:
 - (A) IC 14-1-5 (repealed);
 - (B) IC 14-15-8-8 (repealed);
 - (C) this chapter; or
- (2) the offense results in serious bodily injury to another person.

(c) The offense is a Level 5 felony if the offense results in the death of another person.

(d) It is a defense to a prosecution 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 35-48-1-24) who acted in the course of the practitioner's professional practice.

As added by P.L.40-2012, SEC.21. Amended by P.L.168-2014,

SEC.87; P.L.26-2016, SEC.3.

IC 35-46-9-7

Violation of an order not to operate a motorboat

Sec. 7. A person who operates a motorboat after the person has been ordered not to operate a motorboat under:

- (1) IC 14-15-8 (repealed); or
- (2) this chapter;

commits a Class A misdemeanor.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-8

Implied consent

Sec. 8. (a) A person who operates a motorboat in water over which Indiana has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a motorboat in Indiana.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of operating privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting law enforcement officer shall do the following:

- (1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter is held under IC 35-33-7-1.
- (2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.
- (3) Send a copy of the probable cause affidavit submitted under subdivision (2) to the bureau of motor vehicles.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-9

Opportunity to submit to a chemical test

Sec. 9. (a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person.

(b) A law enforcement officer may offer a person more than one (1) chemical test under this chapter. However, all tests must be administered within three (3) hours after the officer had probable cause to believe the person violated this chapter.

(c) A person must submit to each chemical test offered by a law enforcement officer to comply with the implied consent provisions of this chapter.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-10

Chemical test required if accident results in serious bodily injury or death

Sec. 10. (a) A law enforcement officer shall offer a portable breath test or chemical test to any person if the officer has reason to believe the person operated a motorboat that was involved in a fatal accident or an accident involving serious bodily injury. If:

- (1) the results of a portable breath test indicate the presence of alcohol;
 - (2) the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or
 - (3) the person refuses to submit to a portable breath test;
- the law enforcement officer shall offer a chemical test to the person.

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

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

As added by P.L.40-2012, SEC.21.

IC 35-46-9-11

Arrest based on the results of a chemical test; refusal

Sec. 11. (a) If a chemical test results in relevant evidence that the person is intoxicated, the person may be arrested for an offense under this chapter.

(b) If a chemical test results in prima facie evidence that the person is intoxicated, the person shall be arrested for an offense under this chapter.

(c) A person who refuses to submit to a chemical test may be arrested for an offense under this chapter.

(d) At a proceeding under this chapter, a person's refusal to submit to a chemical test is admissible into evidence.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-12

Certification of chemical tests

Sec. 12. (a) The provisions of IC 9-30-6-5 concerning the certification and use of chemical breath tests apply to the use of chemical breath tests in a prosecution under this chapter.

(b) IC 9-30-6-6 applies to chemical tests performed under this chapter.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-13

Suspension of license for refusal to submit to a chemical test

Sec. 13. If a person refuses to submit to a chemical test under this

chapter, the law enforcement officer shall inform the person that the person's refusal will result in the suspension of the person's motorboat and motor vehicle operation privileges.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-14

Duties of prosecuting attorney

Sec. 14. The prosecuting attorney of the county in which an alleged violation of this chapter occurs shall represent the state in a proceeding under this chapter.

As added by P.L.40-2012, SEC.21.

IC 35-46-9-15

Results of a chemical test admissible as evidence

Sec. 15. (a) At a proceeding concerning an offense under this chapter, evidence of the 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 sections 9 and 10 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 this chapter, 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 sections of 9 and 10 this chapter; and
- (2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

- (A) one hundred (100) milliliters of the person's blood; 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 eight-hundredths (0.08) 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 at the time the person operated the motorboat. However, this presumption is rebuttable.

As added by P.L.40-2012, SEC.21.