

IC 9-30-10

Chapter 10. Habitual Violator of Traffic Laws

IC 9-30-10-1

"Judgment"

Sec. 1. As used in this chapter, "judgment" means:

- (1) a judgment of conviction against the defendant in a felony or misdemeanor case; or
- (2) a civil judgment against the defendant in an infraction or ordinance proceeding.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-2

"License"

Sec. 2. As used in this chapter, "license" includes any type of license or permit to operate a motor vehicle issued by the bureau.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-3

"Violation"

Sec. 3. As used in this chapter, "violation" means:

- (1) a felony, a misdemeanor, or an infraction under the Indiana Code; or
- (2) a violation of an ordinance of an Indiana political subdivision.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-4

Habitual violators

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, and before July 1, 2001, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

- (A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;
resulting in death.

(7) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol 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, and before July 1, 2001, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

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

(B) two hundred ten (210) liters of the breath.

(4) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

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

(B) two hundred ten (210) liters of the breath.

(5) 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), IC 9-24-18-5(b) (repealed July 1, 2000), IC 9-24-19-3, or IC 9-24-19-5.

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

(7) Reckless driving.

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

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

(10) 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.

(11) 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.

As added by P.L.2-1991, SEC.18. Amended by P.L.1-1992, SEC.62; P.L.1-1993, SEC.61; P.L.33-1997, SEC.13; P.L.1-2000, SEC.13; P.L.32-2000, SEC.3; P.L.175-2001, SEC.12.

IC 9-30-10-5

Notice of suspension; term; relief for judicial review

Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

- (1) except as provided in subdivision (2), ten (10) years if the person is a habitual violator under section 4(a) of this chapter;
- (2) life if the person is a habitual violator under section 4(a) of this chapter and has at least two (2) violations under section 4(a)(4) through 4(a)(7) of this chapter;
- (3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or
- (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter.

As added by P.L.2-1991, SEC.18. Amended by P.L.82-2004, SEC.3.

IC 9-30-10-6

Notification of material error in record; determination of error; effect; judicial review

Sec. 6. (a) A person who has received a notice under section 5 of this chapter may notify the bureau, in writing on forms provided by the bureau, that the bureau's records contain a material error with respect to the person's driving record. If a person so notifies the bureau, the bureau shall, within thirty (30) days after the date the notice was received by the bureau, determine whether a material error was made with respect to the person's driving record.

(b) If the bureau determines that a material error was made with respect to the person's driving record, the bureau shall:

- (1) prevent the suspension of; or
- (2) reinstate;

the person's driving privileges.

(c) The bureau shall notify the prosecuting attorney of the county where the record originated that the bureau has determined that a material error exists. The prosecuting attorney is entitled to respond to the bureau's determination.

(d) An action taken or a determination made by the bureau under this chapter is not subject to IC 4-21.5. However, the person may file a petition for judicial review under this chapter.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-7

Petition for judicial review; summons; burden of proof; rules of procedure; county prosecuting attorney to represent state; costs

Sec. 7. (a) A petition for judicial review under this chapter must:

- (1) be verified by the petitioner;
- (2) state the petitioner's age, date of birth, place of residence, and driver's license identification number;
- (3) state the grounds for relief and the relief sought;
- (4) be filed in the county in which the petitioner resides; and
- (5) be filed in a circuit, superior, county, or municipal court.

(b) A summons in an action under this chapter shall be issued and served in the manner provided for civil actions. The prosecuting attorney of the county in which the petition is filed and the bureau shall be served with the summons and a copy of the petition.

(c) In an action under this chapter, the petitioner must bear the burden of proof by a preponderance of the evidence to prevail.

(d) IC 9-30-3-15 and the rules of trial procedure apply in a proceeding under this chapter. However, a responsive pleading is not required when a petition for review has been filed, and a person is not entitled to a change of venue from the county.

(e) The prosecuting attorney of the county in which the petition is filed shall represent the state in relation with the bureau.

(f) Court costs shall be assessed and paid by the petitioner at the time of filing in an amount equal to the costs assessed in the enforcement of infractions. However, a petitioner who has the petitioner's driving privileges reinstated under section 8 of this chapter is entitled to a refund of all costs paid.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-8

Hearing; reinstatement; suspension

Sec. 8. (a) If a person files a petition for judicial review under section 6 of this chapter, the court shall promptly hold a hearing. The petition must be filed and the hearing must be held in accordance with section 7 of this chapter.

(b) If the court finds that the petitioner is not a habitual violator, the court shall order the bureau to reinstate the driving privileges of the person.

(c) If the court finds that the petitioner is a habitual violator, the person's driving privileges remain suspended, unless the court places the person on probation under section 9 of this chapter.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-9

Probation; findings, restrictions, and conditions

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:
 - (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 (d).

(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 (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 (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.

(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;
- (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.

(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 (d).
As added by P.L.2-1991, SEC.18. Amended by P.L.2-1992, SEC.93; P.L.40-1994, SEC.5; P.L.101-1997, SEC.1; P.L.33-1997, SEC.14; P.L.1-1999, SEC.32; P.L.10-2000, SEC.2; P.L.215-2001, SEC.18; P.L.175-2001, SEC.13; P.L.219-2003, SEC.9.

Findings to constitute final judgment

Sec. 10. The court's findings under sections 8 and 9 of this chapter constitute a final judgment from which either party may appeal. An appeal does not act as a stay of the court's findings and orders.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-11**Petition for revocation of probation**

Sec. 11. A petition for revocation of probation granted under section 9 of this chapter must:

- (1) be filed in the court that placed the person on probation;
- (2) be filed by the prosecuting attorney for the county in which the court is located;
- (3) state the alleged violation; and
- (4) be served upon the probationer in the manner provided for the service of summons in a civil action.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-12**Hearing; procedure; burden of proof; findings; final judgment**

Sec. 12. (a) Upon the filing of a petition for revocation of probation, the court shall do the following:

- (1) Set a date for a hearing upon the petition that is not earlier than twenty (20) days nor later than forty-five (45) days from the date of the filing of the petition for review.
- (2) Hold a hearing on the date set, unless the proceeding is continued by order of the court.
- (3) Cause notice of the hearing date to be sent to all parties.

(b) At the hearing, the prosecuting attorney must bear the burden of proof by a preponderance of the evidence to prevail.

(c) If the court finds that the person has violated any terms of the probation, the court shall do the following:

- (1) Record each of its findings in writing.
- (2) Obtain the person's license.
- (3) Order the bureau to suspend the person's driving privileges for a period equal to the period of suspension originally imposed under section 5 of this chapter.
- (4) Not place the person on probation under section 9 of this chapter.

(d) If the court finds that the person has not violated any of the terms of the person's probation, the court shall do the following:

- (1) Record each of the court's findings in writing.
- (2) Continue the person on probation for the remainder of the probationary period.

(e) The court's findings under subsection (c) or (d) constitute a final judgment from which either party may appeal. An appeal does not act as a stay of the court's findings and orders.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-13

Habitual violator; restrictions on issuance; hardship license

Sec. 13. (a) The bureau may issue a license to operate a motor vehicle to a habitual violator whose driving privileges are suspended under section 5(b) of this chapter if the following conditions exist:

- (1) The time specified for the person's probation or the restriction or suspension of the person's license has elapsed.
- (2) The person has met all the requirements of all applicable statutes and rules relating to the licensing of motor vehicle operators.
- (3) The person files with the bureau and maintains for three (3) years after filing proof of financial responsibility in accordance with IC 9-25.

(b) The bureau may issue a license to operate a motor vehicle to a habitual violator whose driving privileges have been suspended for life if the following conditions exist:

- (1) The bureau has received an order for rescission of suspension and reinstatement issued under section 15 of this chapter.
- (2) The person to whom the license is to be issued has never been convicted of a violation described in section 4(a) or 17 of this chapter.
- (3) The person has not been convicted of an offense under section 16 of this chapter more than one (1) time.
- (4) The person has met all the requirements of all applicable statutes and rules relating to the licensing of motor vehicle operators.
- (5) The person files with the bureau, and maintains for three (3) years after filing proof of financial responsibility in accordance with IC 9-25.

(c) A habitual violator is not eligible for relief under the hardship provisions of IC 9-24-15.

As added by P.L.2-1991, SEC.18.

IC 9-30-10-14

Rescission of order suspending driving privileges for life; petition for rescission and reinstatement

Sec. 14. (a) Except as provided in subsection (e), a person whose driving privileges have been suspended for life may petition a court in a civil action for a rescission of the suspension order and reinstatement of driving privileges if the following conditions exist:

- (1) Ten (10) years have elapsed since the date on which an order for the lifetime suspension of the person's driving privileges was issued.
- (2) The person has never been convicted of a violation described in section 4(a) of this chapter.
- (3) The person has never been convicted of an offense under section 17 of this chapter.
- (4) The person has not been convicted of an offense under section 16 of this chapter more than one (1) time.

(b) A petition for rescission and reinstatement under this section

must meet the following conditions:

- (1) Be verified by the petitioner.
- (2) State the petitioner's age, date of birth, and place of residence.
- (3) Describe the circumstances leading up to the lifetime suspension of the petitioner's driving privileges.
- (4) Aver a substantial change in the petitioner's circumstances of the following:
 - (A) That indicates the petitioner would no longer pose a risk to the safety of others if the petitioner's driving privileges are reinstated.
 - (B) That makes the lifetime suspension of the petitioner's driving privileges unreasonable.
 - (C) Indicates it is in the best interests of society for the petitioner's driving privileges to be reinstated.
- (5) Aver that the petitioner has never been convicted of an offense under section 17 of this chapter.
- (6) Aver that the petitioner has not been convicted of an offense under section 16 of this chapter more than one (1) time.
- (7) Aver that the petitioner has never been convicted of a violation described in section 4(a) of this chapter.
- (8) Be filed in a circuit or superior court having jurisdiction in the county where the petitioner resides.
- (9) If the petition is being filed under subsection (e), aver the existence of the conditions listed in subsection (e)(1) through (e)(3).

(c) The petitioner shall serve the prosecuting attorney of the county where the petitioner resides and the bureau with a copy of the petition described in subsection (b). A responsive pleading is not required.

(d) The prosecuting attorney of the county where the petitioner resides shall represent the state in the matter.

(e) A person whose driving privileges have been suspended for life may petition a court in a civil action for a rescission of the suspension order and reinstatement of driving privileges if all of the following conditions exist:

- (1) Three (3) years have elapsed since the date on which the order for lifetime suspension of the petitioner's driving privileges was issued.
- (2) The petitioner's lifetime suspension was the result of driving on a suspended license that was suspended for commission of infractions only or for driving on a suspended license.
- (3) The petitioner has never been convicted of a violation described in section 4(a) or 4(b) of this chapter, with the exception of a judgement or conviction under section 4(b)(3) of this chapter.
- (4) The petitioner has never been convicted of an offense under section 17 of this chapter.
- (5) The petitioner has not been convicted of an offense under section 16 of this chapter more than one (1) time.

As added by P.L.2-1991, SEC.18. Amended by P.L.101-1997, SEC.2.

IC 9-30-10-15

Rescission of order suspending driving privileges for life; hearing on petition; findings; order for reinstatement

Sec. 15. (a) Upon receiving a petition filed under section 14 of this chapter, a court shall set a date for hearing the matter and direct the clerk of the court to provide notice of the hearing date to the following:

- (1) The petitioner.
- (2) The prosecuting attorney of the county where the petitioner resides.
- (3) The bureau.

(b) A court may order the rescission of the order that required the suspension of the petitioner's driving privileges for life and may order the bureau to reinstate the driving privileges of a petitioner whose driving privileges have been suspended for life if, after the hearing of the matter, the court makes the following written findings and conclusions, based on clear and convincing evidence:

- (1) That the petitioner has never been convicted of a violation described in section 4(a) of this chapter.
- (2) That the petitioner has never been convicted of an offense under section 17 of this chapter.
- (3) That the petitioner has not been convicted of an offense under section 16 of this chapter more than one (1) time.
- (4) If the person is petitioning the court under section 14(a) of this chapter that ten (10) years have elapsed since the date on which an order was issued that required the suspension of the petitioner's driving privileges for life.
- (5) That there has been a substantial change in the petitioner's circumstances indicating the petitioner would no longer pose a risk to the safety of others if the petitioner's driving privileges were reinstated.
- (6) That there has been a substantial change in the petitioner's circumstances indicating that the suspension of the petitioner's driving privileges for life has become unreasonable.
- (7) That it is in the best interests of society for the petitioner's driving privileges to be reinstated.
- (8) If the person is petitioning the court under section 14(e) of this chapter:
 - (A) that three (3) years have elapsed since the date the order was issued that required the suspension of the petitioner's driving privileges for life; and
 - (B) that the conditions listed under section 14(e) of this chapter are satisfied.

(c) The petitioner has the burden of proof under this section and an order issued under subsection (b) is a final order, appealable by any party to the action.

(d) In an order for reinstatement of driving privileges issued under this section, the court may require the bureau to issue to the

prevailing petitioner:

(1) a license to operate a motor vehicle under section 13(b) of this chapter; or

(2) a restricted driving license for a time and subject to conditions specified by the court.

(e) If a court orders the bureau to issue a restricted driving license to a petitioner under subsection (d), the court shall specify the conditions under which the petitioner may be issued a license to operate a motor vehicle under section 13(b) of this chapter. After the expiration date of the restricted license and upon:

(1) fulfillment by the petitioner of the conditions specified by the court; and

(2) the expiration of the restricted license issued under subsection (d)(2);

the bureau shall issue to the petitioner a license to operate a motor vehicle under section 13(b) of this chapter.

As added by P.L.2-1991, SEC.18. Amended by P.L.101-1997, SEC.3.

IC 9-30-10-16

Operating a motor vehicle while privileges are suspended; Class D felony; Class A misdemeanor

Sec. 16. (a) A person who operates a motor vehicle:

(1) while the person's driving privileges are validly suspended under this chapter or IC 9-12-2 (repealed July 1, 1991) and the person knows that the person's driving privileges are suspended; or

(2) in violation of restrictions imposed under this chapter or IC 9-12-2 (repealed July 1, 1991) and who knows of the existence of the restrictions;

commits a Class D felony.

(b) Service by the bureau of notice of the suspension or restriction of a person's driving privileges under subsection (a)(1) or (a)(2):

(1) in compliance with section 5 of this chapter; and

(2) by first class mail to the person at the last address shown for the person in the bureau's records;

establishes a rebuttable presumption that the person knows that the person's driving privileges are suspended or restricted.

(c) In addition to any criminal penalty, a person who is convicted of a felony under subsection (a) forfeits the privilege of operating a motor vehicle for life. However, if judgment for conviction of a Class A misdemeanor is entered for an offense under subsection (a), the court may order a period of suspension of the convicted person's driving privileges that is in addition to any suspension of driving privileges already imposed upon the person.

As added by P.L.2-1991, SEC.18. Amended by P.L.1-1993, SEC.62; P.L.1-1994, SEC.41; P.L.120-2000, SEC.2; P.L.1-2001, SEC.9.

IC 9-30-10-17

Operating motor vehicle while privileges are forfeited for life; Class C felony

Sec. 17. A person who operates a motor vehicle after the person's driving privileges are forfeited for life under section 16 of this chapter, IC 9-4-13-14 (repealed April 1, 1984), or IC 9-12-3-1 (repealed July 1, 1991) commits a Class C felony.

As added by P.L.2-1991, SEC.18. Amended by P.L.1-1993, SEC.63.

IC 9-30-10-18

Defenses; extreme emergency; burden of proof

Sec. 18. In a criminal action brought under section 16 or 17 of this chapter, it is a defense that the operation of a motor vehicle was necessary to save life or limb in an extreme emergency. The defendant must bear the burden of proof by a preponderance of the evidence to establish this defense.

As added by P.L.2-1991, SEC.18.