

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 431**

Citations Affected: IC 9-27-5-1; IC 9-30-6-5; IC 10-20; IC 10-20.1; IC 21-45-3.

Synopsis: Department of toxicology. Conference committee report for ESB 431. Creates the department of toxicology as a state agency. (Currently, the department of toxicology is part of Indiana University.) Makes conforming changes. Creates the toxicology department advisory board. Repeals the law pertaining to the department of toxicology that is part of Indiana University. **(This conference committee report replaces the 11 member toxicology department advisory council with a three member advisory board to assist with the transition from Indiana University to a state agency.)**

Effective: Upon passage; July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 431 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 9-27-5-1 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The state, in recognition of
4 the need for and lack of adequate information regarding the role of
5 alcohol, carbon monoxide, and certain drugs in fatalities occurring as
6 a result of traffic accidents involving motor vehicles, requires specific
7 information pertaining to Indiana. The information, to be of value in
8 the evaluation of the traffic accident rate in Indiana, must be gathered,
9 prepared, and interpreted on the basis of local conditions. It is
10 recognized that the extrapolation of information gathered in other states
11 will not provide accurate information in view of the variables
12 introduced by demographic differences and a multitude of
13 environmental factors that differ from state to state.
14 (b) In recognition of the need for the information described in
15 subsection (a), the director of the state department of toxicology,
16 ~~Indiana University School of Medicine~~, in conjunction with the office
17 of traffic safety, shall conduct a study of the incidence and effect of
18 alcohol, carbon monoxide, and certain drugs in all motor vehicle traffic
19 accidents involving a fatality.
20 SECTION 2. IC 9-30-6-5 IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The director of the **state**
22 department of toxicology ~~of the Indiana University school of medicine~~

- 1 shall adopt rules under IC 4-22-2 concerning the following:
- 2 (1) Standards and regulations for the:
- 3 (A) selection;
- 4 (B) training; and
- 5 (C) certification;
- 6 of breath test operators.
- 7 (2) Standards and regulations for the:
- 8 (A) selection; and
- 9 (B) certification;
- 10 of breath test equipment and chemicals.
- 11 (3) The certification of the proper technique for administering a
- 12 breath test.
- 13 (b) Certificates issued in accordance with rules adopted under
- 14 subsection (a) shall be sent to the clerk of the circuit court in each
- 15 county where the breath test operator, equipment, or chemicals are used
- 16 to administer breath tests. However, failure to send a certificate does
- 17 not invalidate any test.
- 18 (c) Certified copies of certificates issued in accordance with rules
- 19 adopted under subsection (a):
- 20 (1) are admissible in a proceeding under this chapter, IC 9-30-5,
- 21 IC 9-30-9, or IC 9-30-15;
- 22 (2) constitute prima facie evidence that the equipment or
- 23 chemical:
- 24 (A) was inspected and approved by the **state** department of
- 25 toxicology on the date specified on the certificate copy; and
- 26 (B) was in proper working condition on the date the breath test
- 27 was administered if the date of approval is not more than one
- 28 hundred eighty (180) days before the date of the breath test;
- 29 (3) constitute prima facie evidence of the approved technique for
- 30 administering a breath test; and
- 31 (4) constitute prima facie evidence that the breath test operator
- 32 was certified by the **state** department of toxicology on the date
- 33 specified on the certificate.
- 34 (d) Results of chemical tests that involve an analysis of a person's
- 35 breath are not admissible in a proceeding under this chapter, IC 9-30-5,
- 36 IC 9-30-9, or IC 9-30-15 if:
- 37 (1) the test operator;
- 38 (2) the test equipment;
- 39 (3) the chemicals used in the test, if any; or
- 40 (4) the techniques used in the test;
- 41 have not been approved in accordance with the rules adopted under
- 42 subsection (a).
- 43 SECTION 3. IC 10-20 IS ADDED TO THE INDIANA CODE AS
- 44 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 45 2011]:
- 46 **ARTICLE 20. STATE DEPARTMENT OF TOXICOLOGY**
- 47 **Chapter 1. Definitions**
- 48 **Sec. 1. The definitions in this chapter apply throughout this**
- 49 **article.**
- 50 **Sec. 2. "Department" refers to the state department of**
- 51 **toxicology established by IC 10-20-2-1.**

1 **Sec. 3. "Director"** refers to the director of the state department
2 of toxicology appointed under IC 10-20-2-2.

3 **Chapter 2. State Department of Toxicology**

4 **Sec. 1.** The state department of toxicology is established as a
5 department of state government.

6 **Sec. 2.** The governor shall appoint a director of the department.
7 The director has the authority to carry out the responsibilities of
8 the department. The director:

- 9 (1) serves at the governor's pleasure;
10 (2) is entitled to receive compensation in an amount set by the
11 governor; and
12 (3) is qualified by education and experience to administer the
13 affairs of the department.

14 **Sec. 3.** The director may appoint employees in the manner
15 provided by IC 4-15-2 and fix their compensation, subject to the
16 approval of the budget agency under IC 4-12-1-13.

17 **Sec. 4. (a)** The department shall do the following:

- 18 (1) Conduct analyses for poisons, drugs, and alcohols upon
19 human tissues and fluids submitted by:
20 (A) Indiana coroners, prosecuting attorneys, and sheriffs;
21 (B) authorized officials of the Indiana state police and
22 Indiana city police departments; and
23 (C) officials of hospitals;

24 in cases of suspected poisoning or intoxication of human
25 beings.

- 26 (2) Report the analytical findings of the department to the
27 official requesting the analyses.
28 (3) Consult with Indiana coroners and coroner's physicians
29 regarding the interpretation of the analytical findings.

30 **(b)** The personnel of the department shall furnish expert
31 testimony regarding the department's analytical findings in all
32 legal hearings, including criminal prosecutions related to the
33 findings.

34 **Sec. 5.** The department has the following duties:

- 35 (1) Provide instruction in toxicology to law enforcement
36 officers and certify law enforcement officers as required by
37 the statutes for the administration of breath and other
38 chemical tests.
39 (2) Provide instruction and technical assistance as needed to
40 prosecutors and defense counsel for the proper:
41 (A) administration of test results into evidence; or
42 (B) exclusion of test results from evidence.
43 (3) Provide instruction to judges concerning toxicology and
44 the science of alcohol and drug testing as needed to improve
45 the administration of justice.
46 (4) Provide information to the public concerning chemical
47 testing and the science of toxicology to advance a better
48 understanding of the system of justice in Indiana.

49 **Sec. 6.** The department shall conduct research on the following:

- 50 (1) The detection of toxic compounds that may be components
51 of drugs or medicines or may be present in pesticides used for

1 agricultural or other purposes.

2 (2) The treatment of poisoning from toxic substances.

3 Sec. 7. (a) After June 30, 2011, a reference in any law, rule,
4 contract, or other document or record to the state department of
5 toxicology established under IC 21-45-3 shall be treated as a
6 reference to the department.

7 (b) On July 1, 2011, the property and obligations of the state
8 department of toxicology established under IC 21-45-3 are
9 transferred to the department.

10 (c) Money that is in any fund or account administered by the
11 state department of toxicology established under IC 21-45-3 on
12 June 30, 2011, shall be transferred to the department.

13 (d) This section expires July 1, 2012.

14 SECTION 4. IC 10-20.1 IS ADDED TO THE INDIANA CODE AS
15 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
16 PASSAGE]:

17 **ARTICLE 20.1. TOXICOLOGY DEPARTMENT ADVISORY**
18 **BOARD**

19 **Chapter 1. Toxicology Department Advisory Board**

20 Sec. 1. (a) As used in this section, "board" means the toxicology
21 advisory board established by subsection (b).

22 (b) The toxicology advisory board is established to assist in the
23 transition of the state department of toxicology from the Indiana
24 University School of Medicine to the state department of toxicology
25 under IC 10-20. The board shall provide guidance on:

26 (1) the transition to the department;

27 (2) obtaining accreditation by a nationally recognized
28 organization that sets toxicology standards; and

29 (3) recommendations for additional legislation needed
30 regarding the ongoing operations of the department of
31 toxicology.

32 (c) The board consists of three (3) members appointed by the
33 governor. Each member must have expertise and experience in
34 toxicology. One (1) of the members must be a judge or retired
35 judge who is knowledgeable in the area of toxicology and in
36 training in toxicology issues.

37 (c) Service on the board does not constitute holding a public
38 office.

39 (d) Each member of the board is not entitled to the minimum
40 salary per diem provide by IC 4-10-11-2.1(b). A member is entitled
41 to reimbursement for traveling expenses as provided under
42 IC 4-13-1-4 and other expenses actually incurred in connection
43 with the member's duties as provided in the state policies and
44 procedures established by the Indiana department of
45 administration and approved by the budget agency.

46 (e) The affirmative votes of a majority of the members are
47 required for the board to take action on any measure, including
48 final report.

49 (f) The board shall deliver a report to the governor and the
50 legislative council by September 1, 2012. The report to the
51 legislative council must be in an electronic format under IC 5-14-6.

1 **(g) This article expires December 21, 2012.**
2 SECTION 5. IC 21-45-3 IS REPEALED [EFFECTIVE JULY 1,
3 2011].
4 SECTION 6. **An emergency is declared for this act.**
 (Reference is to ESB 431 as reprinted April 8, 2011.)

Conference Committee Report
on
Engrossed Senate Bill 431

Signed by:

Senator Wyss
Chairperson

Representative Foley

Senator Arnold

Representative Lawson L

Senate Conferees

House Conferees