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Insights

Governor Holcomb Signs Legislation Modifying Indiana's Zero Tolerance Per Se Driving Law for Marijuana or Marijuana Metabolite

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On April 15, 2021, Governor Eric Holcomb signed **Indiana Senate Bill 201** (the "SB 201") into law, modifying the state's zero tolerance per se law concerning marijuana and its metabolites codified at Indiana Code Section 9-30-5-1. SB 201 provides an affirmative defense for drivers operating a motor vehicle with marijuana or a marijuana metabolite in the person's blood if: (i) the person was not intoxicated; and (ii) the person did not cause a traffic accident. [Read More]

Background

Currently, Indiana is one of sixteen states with a zero tolerance per se law for anyone driving with the presence of tetrahydrocannabinol ("THC") in their system. Under the law currently in effect, a driver in Indiana with any amount of THC (or THC metabolites) in their system is considered to have committed a misdemeanor for driving impaired regardless of the amount of THC or THC metabolites found in their system, and regardless of whether the driver was exhibiting evidence of impairment. Unlike laws dealing with alcohol-impaired driving, these zero tolerance state laws addressing "drugged driving" vary substantially by state and have been difficult to enforce and prosecute.

The imposition of THC per se limits have frequently been questioned by proponents of legalization who suggest that thresholds are not evidence-based and that can lead to the criminal prosecution of people who consumed cannabis several days before being stopped but are no longer under its influence. The National Highway Traffic Safety Administration (NHTSA) publicly recognized the need for a change to such laws in a 2017 report to Congress.[1] Specifically, the report stated that the "poor correlation of THC level in the blood or oral fluid with impairment precludes using THC blood or oral fluid levels as an indicator of driver impairment."[2]

Senate Bill 201

SB 201, sponsored by Rep. Jim Lucas (R), Rep. Cindy Ledbetter (R), and Rep. Heath VanNatter (D), passed the Indiana House with ease but had a narrower victory in the Senate before ultimately being signed by Governor Holcomb on April 15, 2021. The new law, which takes effect on July 1, 2021, provides an affirmative defense for motorists who test positive for the presence of either THC or its metabolite, but who are not responsible for a traffic accident and who show no evidence of intoxication. In light of this change in the law, Indiana employers may want to review their employee drug testing policies to determine whether updates are needed.

If you have questions about SB 201, or any other legal issues related to cannabis considerations in Indiana, please contact **Kate E. Trinkle**, **Kendall A. Schnurpel** or your regular Krieg DeVault attorney.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have. In addition, marijuana remains a federally illegal Class I drug. All activities related to marijuana are currently illegal under the federal laws of the United States and nothing contained on this alert is intended to assist in any way with violation of applicable law.

[1] https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf
[2] *Id.* at 27.