



# STATE OF INDIANA

Michael R. Pence, Governor

Donald M. Snemis, Commissioner  
Bureau of Motor Vehicles  
100 North Senate Avenue  
Indianapolis, Indiana 46204  
888-692-6841

June 24, 2014

[REDACTED]  
[REDACTED]  
[REDACTED] 46304

Re: DLN [REDACTED]; HTV review for material error

Dear Mr. [REDACTED]:

The Indiana Bureau of Motor Vehicles ("BMV") received a request for review for material error from your attorney, [REDACTED], related to the BMV's determination that you are a habitual traffic violator ("HTV") and must serve a ten (10) year driving privilege suspension (suspension ID 12). Following the receipt of the request, a review of the BMV's records was conducted pursuant to Ind. Code § 9-30-10-6 to determine whether a material error currently exists. Upon a review of the BMV's records, the BMV finds no material error with respect to the determination that you qualify as an HTV and must serve a ten (10) year suspension (suspension ID 12).

There is no requirement in Ind. Code § 9-30-10-1 *et. seq.* that one of the qualifying violations occur on or after July 1, 2012 in order to apply the current version of the statute to HTV determinations. Ind. Code § 9-30-10-4(e) was added July 1, 2012. Prior to that statutory amendment, judgment date was used to determine the number of judgments accumulated within a ten (10) year period. In the request, you cite Craig v. State ex. rel. VanNatta, 322 N.E.2d 400 (Ind. Ct. App. 1975) in support of your argument that one violation must be committed on or after the effective date of the statute. At the time Craig was decided, Ind. Code § 9-4-13-3 was the applicable HTV statute. Ind. Code § 9-4-13-3 specifically required that one of the violations must have occurred on or after the effective date of the chapter (September 1, 1972). This language does not appear in Ind. Code § 9-30-10, which was enacted April 1, 1984. Beginning April 1, 1984, the responsibility for determining whether an individual is an HTV moved from the courts to the BMV. Ind. Code § 9-30-10-0.3 provides that all crimes committed before April 1, 1984 shall remain punishable under Ind. Code § 9-4-13. All of your qualifying violations were committed after April 1, 1984, the enactment date of Ind. Code § 9-30-10. In addition, operating a vehicle while intoxicated has been an HTV qualifying violation since September 1, 1972.

To evaluate whether a law passed by the Legislature is an *ex post facto* law, courts use a two-part "intent-effects" test. Seales v. State, 4 N.E.3d 821, 823 (Ind. Ct. App. 2014)(citing Lemmon v. Harris, 949 N.E.2d 803, 807 (Ind. 2011)). First, courts must determine whether the Legislature



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intended for the law to be civil in nature. *Id.* If the law is civil, the court then examines the law's effects to determine whether it is "so punitive so as to transform the regulatory scheme into a criminal penalty . . . ." *Id.* If the effects of the law are punitive, retroactive application of the law violates the *ex post facto* clause of the Constitution. *Id.*; *see also Smith v. Doe*, 538 U.S. 84, 92 (2003) (describing similar intent-effects test).

The HTV law is not an *ex post facto* law. "[D]riving privileges are an entitlement that may be withheld, suspended, or revoked by the State for reasons of public safety." *Hazelwood v. State*, 3 N.E.3d 39, 43 (Ind. Ct. App. 2014) (citing *Schrefler v. State*, 660 N.E.2d 585, 587-88 (Ind. Ct. App. 1996)). Moreover, "[I]t is well settled that a suspension of driving privileges is not a punishment." *Id.* In *State ex rel. Van Natta v. Rising*, the Indiana Supreme Court concluded that the purpose of the HTV law is to classify those individuals who should be prohibited from using the highways, and "[a] classification based upon conditions existing prior to the statute, although retrospective in application, is not constitutionally infirm when the classification is relevant to the objective of the statute, in this case, public safety and health." 310 N.E. 873, 875 (Ind. 1974) (citing *Kirtley v. State*, 84 N.E.2d 712 (Ind. 1949); *State Board of Barber Examiners v. Cloud et. al.*, 44 N.E.2d 972 (Ind. 1942); *Blue v. Beach et. al.*, 56 N.E. 89 (Ind. 1900)); *see also Doe*, 538 U.S. at 103 ("The Ex Post Facto Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences.").

You are an HTV, as defined by Ind. Code § 9-30-10-4(b): Ind. Code § 9-30-10-4(b) provides that a person who has accumulated at least three (3) judgments for any violation listed in Ind. Code § 9-30-10-4(a) or (b) within a ten (10) year period, is an HTV. Ind. Code § 9-30-10-4(e) provides that offense date must be used to determine the number of judgments accumulated within a ten (10) year period. According to the BMV's records, you have accumulated judgments for violations enumerated in Ind. Code § 9-30-10-4(b). Three (3) of these violations were committed within a ten (10) year period. The violations include the following:

- Operating a vehicle while intoxicated ("OVWI") on 01/04/2004
- OVWI endangering a person on 02/19/2008
- OVWI with a prior OVWI judgment within 5 years on 11/14/2008

According to BMV records, you were not convicted of the last two (2) qualifying violations until March 14, 2014. On or about May 13, 2014, the BMV made its determination that you are an HTV, and a notice of suspension was mailed to you on or about May 14, 2014. The BMV based its determination on the version of Ind. Code § 9-30-10-4 in effect on May 13, 2014.

Ind. Code § 9-30-10-5(b)(3) provides that if an individual is an HTV under Indiana Code § 9-30-10-4(b), the BMV must suspend that individual's driving privileges for a period of ten (10) years. Because you are an HTV, as defined by Ind. Code § 9-30-10-4(b), the BMV was required



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to impose a ten (10) year suspension. Therefore, suspension ID 12 will remain on your driver record. Ind. Code § 9-30-10-6(d) provides that you may file a petition for judicial review of the BMV's action in the circuit, superior, county, or municipal court in the county in which you reside as set out in Ind. Code § 9-30-10-7.

Sincerely,

Patrick Price  
General Counsel  
Indiana Bureau of Motor Vehicles

cc: Credential Management Department



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