

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 471

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-24-3-1, AS AMENDED BY P.L.97-2011, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. If a person has an unpaid claim on a liability that is covered by IC 24-4.6-5 or suffers a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3, IC 35-42-3-4, ~~or~~ IC 35-45-9, **or IC 35-46-10**, the person may bring a civil action against the person who caused the loss for the following:

- (1) An amount not to exceed three (3) times:
 - (A) the actual damages of the person suffering the loss, in the case of a liability that is not covered by IC 24-4.6-5; or
 - (B) the total pump price of the motor fuel received, in the case of a liability that is covered by IC 24-4.6-5.
- (2) The costs of the action.
- (3) A reasonable attorney's fee.
- (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to:
 - (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) provide witnesses to testify in court proceedings related to

SEA 471 — Concur



the recovery of a judgment under this chapter.

(5) A reasonable amount to compensate the person suffering loss for time used to:

(A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or

(B) travel to and from activities described in clause (A).

(6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to:

(A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or

(B) travel to and from activities described in clause (A).

(7) All other reasonable costs of collection.

SECTION 2. IC 35-31.5-2-79.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 79.5. "Critical infrastructure facility", for purposes of IC 35-43-4-2 and IC 35-46-10, has the meaning set forth in IC 35-46-10-1(a).**

SECTION 3. IC 35-31.5-2-79.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 79.7. "Critical infrastructure utility", for purposes of IC 35-46-10, has the meaning set forth in IC 35-46-10-1(b).**

SECTION 4. IC 35-31.5-2-179 IS REPEALED [EFFECTIVE JULY 1, 2019]. **Sec. 179. "Key facility" means any of the following:**

(1) A chemical manufacturing facility;

(2) A refinery;

(3) An electric utility facility, including:

(A) a power plant;

(B) a power generation facility peaker;

(C) an electric transmission facility;

(D) an electric station or substation; or

(E) any other facility used to support the generation, transmission, or distribution of electricity.

However, the term does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

(4) A water intake structure or water treatment facility.

(5) A natural gas utility facility, including:

(A) an age station;

(B) a compressor station;

(C) an odorization facility;



- (D) a main line valve;
- (E) a natural gas storage facility; or
- (F) any other facility used to support the acquisition, transmission, distribution, or storage of natural gas. However, the term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.
- (6) A gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.
- (7) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal. However, the term does not include a railroad track that is not part of a railroad switching yard.
- (8) A pulp or paper manufacturing facility.
- (9) A pharmaceutical manufacturing facility.
- (10) A hazardous waste storage, treatment, or disposal facility.
- (11) A telecommunications facility, including a central office or cellular telephone tower site.
- (12) A facility:
 - (A) that is substantially similar to a facility, structure, or station listed in this section; or
 - (B) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)).

SECTION 5. IC 35-43-2-2, AS AMENDED BY P.L.181-2018, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) As used in this section, "authorized person" means a person authorized by an agricultural operation to act on behalf of the agricultural operation.

- (b) A person who:
 - (1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;
 - (2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;
 - (3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

SEA 471 — Concur



- (4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;
- (5) not having a contractual interest in the property, knowingly or intentionally enters the:
 - (A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person; or
 - (B) dwelling of another person without the person's consent;
- (6) knowingly or intentionally:
 - (A) travels by train without lawful authority or the railroad carrier's consent; and
 - (B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;
- (7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:
 - (A) vacant real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6); or
 - (B) designated by a municipality or county enforcement authority to be abandoned property or an abandoned structure (as defined in IC 36-7-36-1);
- (8) not having a contractual interest in the property, knowingly or intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:
 - (A) the owner of or a person having a contractual interest in the agricultural operation;
 - (B) the operator of the agricultural operation; or
 - (C) a person having personal property located on the property of the agricultural operation; or
- (9) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by



conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure (as defined in IC 36-7-36-1);

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, ~~on a key facility~~, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). The offense is a Level 5 felony, for purposes of subdivision (8), if the property damage is at least fifty thousand dollars (\$50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

- (1) personal communication, oral or written;
- (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public;
- (3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or
- (4) posting the property by placing identifying purple marks on trees or posts around the area where entry is denied.

(d) For the purposes of subsection (c)(4):

- (1) each purple mark must be readily visible to any person approaching the property and must be placed:
 - (A) on a tree:
 - (i) as a vertical line of at least eight (8) inches in length and with the bottom of the mark at least three (3) feet and not more than five (5) feet from the ground; and
 - (ii) not more than one hundred (100) feet from the nearest other marked tree; or
 - (B) on a post:
 - (i) with the mark covering at least the top two (2) inches of the post, and with the bottom of the mark at least three (3) feet and not more than five (5) feet six (6) inches from the ground; and
 - (ii) not more than thirty-six (36) feet from the nearest other marked post; and
- (2) before a purple mark that would be visible from both sides of



a fence shared by different property owners or lessees may be applied, all of the owners or lessees of the properties must agree to post the properties with purple marks under subsection (c)(4).

(e) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(f) A person described in subsection (b)(7) violates subsection (b)(7) unless the person has the written permission of the owner, the owner's agent, an enforcement authority, or a court to come onto the property for purposes of performing maintenance, repair, or demolition.

(g) A person described in subsection (b)(9) violates subsection (b)(9) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(h) Subsections (b), (c), and (g) do not apply to the following:

(1) A passenger on a train.

(2) An employee of a railroad carrier while engaged in the performance of official duties.

(3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.

(4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.

(5) A person on the station grounds or in the depot of a railroad carrier:

(A) as a passenger; or

(B) for the purpose of transacting lawful business.

(6) A:

(A) person; or

(B) person's:

(i) family member;

(ii) invitee;

(iii) employee;

(iv) agent; or

(v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.



(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

SECTION 6. IC 35-43-4-2, AS AMENDED BY P.L.176-2018, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class A misdemeanor. However, the offense is:

(1) a Level 6 felony if:

(A) the value of the property is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000);

(B) the property is a:

(i) firearm;

(ii) motor vehicle (as defined in IC 9-13-2-105(a)); or

(iii) component part (as defined in IC 9-13-2-34) of a motor vehicle; or

(C) the person has a prior unrelated conviction for

(i) theft under this section; or

(ii) criminal conversion under section 3 of this chapter; and

(2) a Level 5 felony if:

(A) the value of the property is at least fifty thousand dollars (\$50,000);

(B) the property that is the subject of the theft is a valuable metal (as defined in IC 25-37.5-1-1) and:

(i) relates to transportation safety;

(ii) relates to public safety; or

(iii) is taken from a hospital or other health care facility, telecommunications provider, public utility (as defined in IC 32-24-1-5.9(a)), or ~~key facility~~; **critical infrastructure facility**;

and the absence of the property creates a substantial risk of bodily injury to a person; or

(C) the property is a:

(i) motor vehicle (as defined in IC 9-13-2-105(a)); or

(ii) component part (as defined in IC 9-13-2-34) of a motor vehicle; and

the person has a prior unrelated conviction for theft of a motor vehicle (as defined in IC 9-13-2-105(a)) or theft of a component part (as defined in IC 9-13-2-34).

(b) For purposes of this section, "the value of property" means:

SEA 471 — Concur



- (1) the fair market value of the property at the time and place the offense was committed; or
- (2) if the fair market value of the property cannot be satisfactorily determined, the cost to replace the property within a reasonable time after the offense was committed.

A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property.

SECTION 7. IC 35-46-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 10. Offenses Involving Critical Infrastructure

Sec. 0.5. This chapter does not apply to conduct protected under the Constitution of the United States, the Constitution of the State of Indiana, or a state or federal law or rule, including rights under:

- (1) the federal National Labor Relations Act (29 U.S.C. 151 et seq.);
- (2) the federal Railway Labor Act (45 U.S.C. 151 et seq.);
- (3) IC 22-7; or
- (4) a collective bargaining agreement.

Sec. 1. (a) As used in this chapter, "critical infrastructure facility" means any of the following:

- (1) A chemical manufacturing facility.
- (2) A refinery.
- (3) A steelmaking facility.
- (4) An aluminum manufacturing facility.
- (5) An electric utility facility, including:
 - (A) a power plant;
 - (B) a power generation facility peaker;
 - (C) an electric transmission facility;
 - (D) an electric station or substation; or
 - (E) any other facility used to support the generation, transmission, or distribution of electricity.

However, the term does not include electric transmission land or right-of-way that is not completely enclosed, posted, and maintained by the electric utility.

- (6) A water intake structure or water treatment facility.
- (7) A natural gas utility facility, including:
 - (A) an age station;
 - (B) a compressor station;
 - (C) an odorization facility;
 - (D) a main line valve;
 - (E) a natural gas storage facility; or



- (F) any other facility used to support the acquisition, transmission, distribution, or storage of natural gas. However, the term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility.
- (8) A gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.
- (9) A transportation facility, including, but not limited to, a port, railroad switching yard, or trucking terminal. However, the term does not include a railroad track that is not part of a railroad switching yard.
- (10) A pulp or paper manufacturing facility.
- (11) A pharmaceutical manufacturing facility.
- (12) A hazardous waste storage, treatment, or disposal facility.
- (13) A crude oil exploration and production equipment or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, a pump station, a metering station, below or aboveground pipeline or piping, and a truck loading or offloading facility.
- (14) A communications services facility, including a central office, cable head end, cable node, or cellular telephone tower site.
- (15) A dam that is regulated by the department of natural resources.
- (16) A facility:
- (A) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)); or
 - (B) identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program.
- (17) Any aboveground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or other storage facility that is completely enclosed, posted, and maintained by the critical infrastructure utility.
- (18) A facility that is substantially similar to a facility, structure, or station listed in this subsection.
- (b) As used in this chapter, "critical infrastructure utility" means a person that owns or operates, for public use, any plant, equipment, property, franchise, or license for the production,



storage, transmission, sale, or delivery of the items listed in subsection (a).

(c) As used in this chapter, "person" has the meaning set forth in IC 35-31.5-2-234(a).

Sec. 2. A person who, not having a contractual interest in the property, knowingly or intentionally enters the real property of a critical infrastructure facility without the permission of the owner of the critical infrastructure facility or an authorized person commits critical infrastructure facility trespass, a Level 6 felony.

Sec. 3. A person who recklessly, knowingly, or intentionally damages or defaces property of a critical infrastructure facility commits critical infrastructure facility mischief, a Level 5 felony. However, the offense is a Level 4 felony if:

- (1) the pecuniary loss is at least fifty thousand dollars (\$50,000); or
- (2) the damage causes a substantial interruption or impairment of a critical infrastructure utility service rendered to the public.

Sec. 4. Except as provided in IC 35-50-2, if a person commits the offense of conspiracy (as described in IC 35-41-5-2) to commit an offense described in section 2 or 3 of this chapter with a person who commits an offense described under section 2 or 3 of this chapter, the conspiring person shall be punished by a fine not to exceed one hundred thousand dollars (\$100,000).

Sec. 5. (a) A person aggrieved by a violation under this chapter may recover damages sustained under IC 34-24-3-1.

(b) Any person that compensates, provides consideration to, or remunerates a person for committing an offense under sections 2, 3, or 4 of this chapter may be held liable for civil damages imposed under this chapter.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 471 — Concur

