



April 9, 2013

ENGROSSED SENATE BILL No. 373

DIGEST OF SB 373 (Updated April 8, 2013 4:16 pm - DI 107)

Citations Affected: IC 35-43.

Synopsis: Trespass and application fraud. Provides that a person who knowingly or intentionally: (1) submits an application to a prospective employer to secure employment; and (2) makes a false statement about a material fact or conceals a material fact in the application in order to secure employment, commits application fraud, a Class A misdemeanor. Provides that for the purposes of criminal trespass, a person has been denied entry to property when the person has been denied entry by means of a fence, wall, or other constructed barrier that reasonably implies entry is prohibited. Provides that a person making a false or misleading written statement with the intent to obtain employment is excluded from the deception statute.

Effective: July 1, 2013.

Holdman, Steele

(HOUSE SPONSORS — FRIEND, LEHE)

January 8, 2013, read first time and referred to Committee on Corrections & Criminal Law.
February 14, 2013, amended, reported favorably — Do Pass.
February 19, 2013, read second time, amended, ordered engrossed.
February 20, 2013, engrossed.
February 21, 2013, returned to second reading.
February 25, 2013, re-read second time, amended, ordered engrossed.
February 26, 2013, engrossed. Read third time, passed. Yeas 30, nays 20.

HOUSE ACTION

March 12, 2013, read first time and referred to Committee on Agriculture and Rural Development.
April 1, 2013, amended, reported — Do Pass; recommitted to Committee on Judiciary.
April 9, 2013, amended, reported — Do Pass.

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April 9, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 373

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

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

1 SECTION 1. IC 35-43-2-2, AS AMENDED BY P.L.88-2009,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 2. (a) A person who:

4 (1) not having a contractual interest in the property, knowingly or
5 intentionally enters the real property of another person after
6 having been denied entry by the other person or that person's
7 agent;

8 (2) not having a contractual interest in the property, knowingly or
9 intentionally refuses to leave the real property of another person
10 after having been asked to leave by the other person or that
11 person's agent;

12 (3) accompanies another person in a vehicle, with knowledge that
13 the other person knowingly or intentionally is exerting
14 unauthorized control over the vehicle;

15 (4) knowingly or intentionally interferes with the possession or
16 use of the property of another person without the person's consent;

17 (5) not having a contractual interest in the property, knowingly or

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intentionally enters the 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 or designated by a municipality or county enforcement authority to be abandoned property; and

(B) subject to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or

(8) 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:

(A) has been designated by a municipality or county enforcement authority to be a vacant property or an abandoned property; and

(B) is subject to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Class D 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.

(b) A person has been denied entry under subdivision (a)(1) of this section 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; ~~or~~

(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~~



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(4) a fence, a wall, or other constructed barrier that reasonably implies entry is prohibited.

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

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

(e) A person described in subsection (a)(8) violates subsection (a)(8) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(f) Subsections (a), (b), and (e) 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

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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 2. IC 35-43-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) A person who:

(1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;

(2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property ~~employment~~, or an educational opportunity;

(3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;

(4) knowingly or intentionally, in the regular course of business, either:

(A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or

(B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;

(5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;

(6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;

(7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;

(8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;

(9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;

(10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5; or

(11) knowingly and intentionally defrauds another person

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1 furnishing cable TV service by avoiding paying compensation for
2 that service by any scheme or device or by tampering with
3 facilities or equipment of the person furnishing the service;
4 commits deception, a Class A misdemeanor.

5 (b) In determining whether an advertisement is false, misleading, or
6 deceptive under subsection (a)(9), there shall be considered, among
7 other things, not only representations contained or suggested in the
8 advertisement, by whatever means, including device or sound, but also
9 the extent to which the advertisement fails to reveal material facts in
10 the light of the representations.

11 SECTION 3. IC 35-43-5-21 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2013]: **Sec. 21. A person who knowingly or intentionally:**

14 **(1) submits an application to a prospective employer to secure**
15 **employment with the prospective employer; and**
16 **(2) makes a false statement about a material fact or conceals**
17 **a material fact in the application in order to secure**
18 **employment with the prospective employer;**
19 commits employment application fraud, a Class A misdemeanor.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 373, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 4 and 5, begin a new line block indented and insert:

"(3) An employee of an agricultural or industrial operation who is acting within the scope of the employee's employment."

Page 2, line 19, after "who" insert **", with intent to harass, defame, annoy, or harm,"**.

Page 2, line 23, delete "and".

Page 2, line 29, after "property;" insert **"and**

(3) distributes, disseminates, or transfers the image, photograph, video recording, or motion picture;".

Page 2, line 33, delete "misdemeanor." and insert **"infraction. However, the offense is a Class B misdemeanor if it is committed knowingly or intentionally and the person has a prior unrelated judgment or conviction for a violation of this section."**

and when so amended that said bill do pass.

(Reference is to SB 373 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 7, Nays 2.

 SENATE MOTION

Madam President: I move that Senate Bill 373 be amended to read as follows:

Page 2, after line 40, begin a new paragraph and insert:

"(e) It is a defense to an action or prosecution under this section that the person:

- (1) had a good faith belief that the person was photographing, recording, or filming evidence of illegal activity;**
- (2) provided the photograph, recording, or motion picture to:**
 - (A) a law enforcement agency; or**
 - (B) an agency with regulatory oversight of the industrial or**

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agricultural operation;
 not later than forty-eight (48) hours after the person left the
 property or premises of the agricultural or industrial
 operation; and
 (3) did not distribute or disseminate the photograph,
 recording, or motion picture to a person that is not a law
 enforcement officer or an agency with regulatory oversight of
 the industrial or agricultural operation."

(Reference is to SB 373 as printed February 15, 2013.)

HOLDMAN

SENATE MOTION

Madam President: I move that Engrossed Senate Bill 373, which is
 eligible for third reading, be returned to second reading for purposes of
 amendment.

HOLDMAN

SENATE MOTION

Madam President: I move that Senate Bill 373 be amended to read
 as follows:

Page 2, line 21, delete "harass,".

Page 2, line 21, delete ", annoy,".

Page 2, line 22, delete "harm," and insert "**directly or indirectly
 harm the business relationship between an agricultural operation
 and its customers or an industrial operation and its customers,**".

Page 3, after line 13, begin a new line blocked left and insert:
**"An employer who retaliates against an employee for making a
 good faith report concerning illegal activities may be subject to
 liability under IC 22-8-1.1-38.1 (IOSHA whistleblower protection),
 IC 5-11-5.5 (state false claims and whistleblower protection), or
 another state or federal whistleblower protection statute, rule, or
 regulation."**

(Reference is to SB 373 as reprinted February 20, 2013.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 373, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 28, after "conducted;" insert "**and**".

Page 2, line 29, after "(2)" insert "**without the written consent of the owner of the real property or an authorized representative of the owner,**".

Page 2, line 34, delete "and".

Page 2, delete lines 35 through 37.

Page 2, line 38, delete "authorized representative of the owner".

Page 2, line 39, after "Class A" insert "**misdemeanor.**".

Page 2, delete lines 40 through 42.

Page 3, line 4, after "activity;" insert "**and**".

Page 3, line 10, after "industrial" insert "**operation.**".

Page 3, delete lines 11 through 15.

Page 3, after line 21, begin a new paragraph and insert:

"SECTION 4. IC 35-43-2-2, AS AMENDED BY P.L.88-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) 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;

(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 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,

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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 or designated by a municipality or county enforcement authority to be abandoned property; and

(B) subject to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; **or**

(8) 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:

(A) has been designated by a municipality or county enforcement authority to be a vacant property or an abandoned property; and

(B) is subject to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; **or**

(9) knowingly or intentionally:

(A) enters real property that is owned by another person without the other person's consent; and

(B) with intent to defame, takes a digital or an analog photograph or makes a digital or an analog video recording or motion picture while on the real property;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Class D 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.

(b) A person has been denied entry under subdivision (a)(1) of this section 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; or

(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.

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

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

(e) A person described in subsection (a)(8) violates subsection (a)(8) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(f) Subsections (a), (b), and (e) 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

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while engaged in the performance of official duties.

SECTION 5. IC 35-43-5-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 21. A person who, with intent to defame or directly or indirectly harm the business relationship between a prospective employer and the customers of the prospective employer, knowingly or intentionally:**

(1) submits an application to a prospective employer to secure employment with the prospective employer; and

(2) makes a false statement or conceals a material fact in the application in order to secure employment with the prospective employer;

commits employment application fraud, a Class A misdemeanor."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 373 as reprinted February 26, 2013.)

LEHE, Chair

Committee Vote: yeas 9, nays 3.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 373, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 13.

Page 4, line 6, after "IC 36-7-36;" reset in roman "or".

Page 4, line 16, after "IC 36-7-36;" delete "or".

Page 4, delete lines 17 through 22.

Page 4, line 34, strike "or".

Page 4, line 36, delete "." and insert "; **or**".

Page 4, between lines 36 and 37, begin a new line block indented and insert:

"(4) a fence, a wall, or other constructed barrier that reasonably implies entry is prohibited."

Page 5, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 6. IC 35-43-5-3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) A person who:

- (1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;
- (2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property ~~employment~~, or an educational opportunity;
- (3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;
- (4) knowingly or intentionally, in the regular course of business, either:
 - (A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or
 - (B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;
- (5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;
- (6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;
- (7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;
- (8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;
- (9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;
- (10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5; or
- (11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service;

commits deception, a Class A misdemeanor.

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(b) In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations."

Page 5, line 40, delete ", with intent to defame or directly".

Page 5, delete lines 41 through 42.

Page 6, line 4, after "statement" insert "**about a material fact**".

and when so amended that said bill do pass.

(Reference is to ESB 373 as printed April 2, 2013.)

STEUERWALD, Chair

Committee Vote: yeas 7, nays 3.

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