

IC 35-43-4

Chapter 4. Theft, Conversion, and Receiving Stolen Property

IC 35-43-4-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

- (1) The amendments made to section 4 of this chapter by P.L.84-2001 are intended to specify that the scope of the amended terms includes retail sales receipts, universal product codes (UPC), and other product identification codes. The amendment of these definitions shall not be construed to mean that these terms did not cover retail sales receipts, universal product codes (UPC), and other product identification codes before July 1, 2001.
- (2) The addition of section 2.7 of this chapter by P.L.143-2005 applies to offenses committed after June 30, 2005.
- (3) The amendments made to section 3 of this chapter by P.L.143-2005 apply to offenses committed after June 30, 2005.
- (4) The amendments made to section 2 of this chapter by P.L.158-2009 apply only to crimes committed after June 30, 2009.

As added by P.L.220-2011, SEC.598.

IC 35-43-4-1

Definitions

Sec. 1. (a) As used in this chapter, "exert control over property" means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property.

(b) Under this chapter, a person's control over property of another person is "unauthorized" if it is exerted:

- (1) without the other person's consent;
- (2) in a manner or to an extent other than that to which the other person has consented;
- (3) by transferring or encumbering other property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of that other property;
- (4) by creating or confirming a false impression in the other person;
- (5) by failing to correct a false impression that the person knows is influencing the other person, if the person stands in a relationship of special trust to the other person;
- (6) by promising performance that the person knows will not be performed;
- (7) by expressing an intention to damage the property or impair the rights of any other person; or
- (8) by transferring or reproducing:
 - (A) recorded sounds; or
 - (B) a live performance;

without consent of the owner of the master recording or the live performance, with intent to distribute the reproductions for a profit.

(c) As used in this chapter, "receiving" means acquiring possession or control of or title to property, or lending on the security of property.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.44; Acts 1979, P.L.300, SEC.1; P.L.180-1991, SEC.7.

IC 35-43-4-2

Theft; receiving stolen property

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 D felony. However, the offense is a Class C felony if:

(1) the fair market value of the property is at least one hundred thousand dollars (\$100,000); or

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

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;

(ii) telecommunications provider;

(iii) public utility (as defined in IC 32-24-1-5.9(a)); or

(iv) key facility;

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

(b) A person who knowingly or intentionally receives, retains, or disposes of the property of another person that has been the subject of theft commits receiving stolen property, a Class D felony. However, the offense is a Class C felony if:

(1) the fair market value of the property is at least one hundred thousand dollars (\$100,000); or

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

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;

(ii) telecommunications provider;

(iii) public utility (as defined in IC 32-24-1-5.9(a)); or

(iv) key facility;

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

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.45; Acts 1979, P.L.300, SEC.2; P.L.320-1985, SEC.1; P.L.158-2009, SEC.8.

IC 35-43-4-2.3

Dealing in altered property

Sec. 2.3. (a) As used in this section, "dealer" means a person who buys or sells, or offers to buy or sell, personal property. The term does not include the original retailer of personal property.

(b) A dealer who recklessly, knowingly, or intentionally buys or sells personal property in which the identification number or manufacturer's serial number has been removed, altered, obliterated, or defaced commits dealing in altered property, a Class A misdemeanor. However the offense is a Class D felony if the dealer has a prior conviction of an offense under this chapter or if the fair market value of the property is at least one thousand dollars (\$1,000).
As added by P.L.294-1989, SEC.2.

IC 35-43-4-2.5

Auto theft; receiving stolen auto parts

Sec. 2.5. (a) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

(b) A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of:

- (1) the vehicle's value or use; or
- (2) a component part (as defined in IC 9-13-2-34) of the vehicle;

commits auto theft, a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection or subsection (c).

(c) A person who knowingly or intentionally receives, retains, or disposes of a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts, a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection or subsection (b).

As added by P.L.321-1985, SEC.1. Amended by P.L.136-1987, SEC.6; P.L.2-1991, SEC.106.

IC 35-43-4-2.7

Unlawful entry of motor vehicle; defense; rebuttable presumption

Sec. 2.7. (a) This section does not apply to the following:

- (1) A public safety officer (as defined in IC 35-47-4.5-3) or state police motor carrier inspector acting within the scope of the officer's or inspector's duties.
- (2) A motor vehicle that must be moved because the motor vehicle is abandoned, inoperable, or improperly parked.
- (3) An employee or agent of an entity that possesses a valid lien on a motor vehicle who is expressly authorized by the lienholder to repossess the motor vehicle based upon the failure of the owner or lessee of the motor vehicle to abide by the terms and conditions of the loan or lease agreement.

(b) As used in this section, "authorized operator" means a person who is authorized to operate a motor vehicle by an owner or a lessee of the motor vehicle.

(c) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

(d) A person who:

(1) enters a motor vehicle knowing that the person does not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle; and

(2) does not have a contractual interest in the motor vehicle; commits unauthorized entry of a motor vehicle, a Class B misdemeanor.

(e) The offense under subsection (d) is:

(1) a Class A misdemeanor if the motor vehicle has visible steering column damage or ignition switch alteration as a result of an act described in subsection (d)(1); or

(2) a Class D felony if a person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime, if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.

(f) It is a defense to a prosecution under this section that the accused person reasonably believed that the person's entry into the vehicle was necessary to prevent bodily injury or property damage.

(g) There is a rebuttable presumption that the person did not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle if the motor vehicle has visible steering column damage or ignition switch alteration.

As added by P.L.143-2005, SEC.1.

IC 35-43-4-3

Conversion

Sec. 3. (a) A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.

(b) The offense under subsection (a) is a Class D felony if committed by a person who exerts unauthorized control over the motor vehicle of another person with the intent to use the motor vehicle to assist the person in the commission of a crime.

(c) The offense under subsection (a) is a Class C felony if:

(1) committed by a person who exerts unauthorized control over the motor vehicle of another person; and

(2) the person uses the motor vehicle to assist the person in the commission of a felony.

(d) The offense under subsection (a) is a Class D felony if:

(1) the person acquires the property by lease;

(2) the property is a motor vehicle;

(3) the person signs a written agreement to return the property to a specified location within a specified time; and

(4) the person fails to return the property:

(A) within thirty (30) days after the specified time; or

(B) within three (3) days after a written demand for return of the property is either:

(i) personally served on the person; or

(ii) sent by registered mail to the person's address that is provided by the person in the written agreement.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.46; P.L.143-2005, SEC.2; P.L.227-2011, SEC.1.

IC 35-43-4-3.5

Failure to return or pay for articles borrowed from library, gallery, museum, collection, or exhibition

Sec. 3.5. (a) If a person:

- (1) borrows any article which belongs to or is in the care of any library, gallery, museum, collection, or exhibition;
- (2) borrows the article under an agreement to return the article within a specified period of time; and
- (3) fails to return the article within that specified period of time;

then the lender shall comply with subsection (b).

(b) If a person commits those acts specified in subsection (a), the lender shall:

- (1) send written notification of the violation of the agreement to the borrower;
- (2) attach a copy of this section to the notice;
- (3) include in the notice a request for return of the article within fifteen (15) days of receipt of the notice; and
- (4) mail the notice to the last known address of the borrower or deliver it to the borrower in person.

The lender shall send the notice required by this subsection by certified or registered mail, return receipt requested.

(c) If the borrower willfully or knowingly fails to return the article, or reimburse the lender for the value of the article, within thirty (30) days of receipt of the notice required in subsection (b), he commits a Class C infraction.

(d) A person who commits an offense under this section may not be charged with an offense under section 2 or 3 of this chapter for the same act.

As added by Acts 1980, P.L.206, SEC.1.

IC 35-43-4-4

Evidence

Sec. 4. (a) The price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value and ownership of the property.

(b) Evidence that a person:

- (1) altered, substituted, or transferred a universal product code (UPC) or another product identification code, label, price tag, or price marking on property displayed or offered for sale or hire; or
 - (2) transferred property displayed or offered for sale or hire from the package, bag, or container in or on which the property was displayed or offered to another package, bag, or container;
- constitutes prima facie evidence of intent to deprive the owner of the property of a part of its value and that the person exerted

unauthorized control over the property.

(c) Evidence that a person:

- (1) concealed property displayed or offered for sale or hire; and
- (2) removed the property from any place within the business premises at which it was displayed or offered to a point beyond that at which payment should be made;

constitutes prima facie evidence of intent to deprive the owner of the property of a part of its value and that the person exerted unauthorized control over the property.

(d) Except as provided in subsection (e) of this section, evidence of failure to perform as promised, by itself, does not constitute evidence that the promisor knew that the promise would not be performed.

(e) Except as provided in section 5(b) of this chapter, a person who has insufficient funds in or no account with a drawee credit institution and who makes, draws, or utters a check, draft, or order for payment on the credit institution may be inferred:

- (1) to have known that the credit institution would refuse payment upon presentment in the usual course of business; and
- (2) to have intended to deprive the owner of any property acquired by making, drawing, or uttering the check, draft, or order for payment of a part of the value of that property.

(f) Evidence that a person, after renting or leasing any property under a written agreement providing for the return of the property to a particular place at a particular time, failed to return the property to the place within seventy-two (72) hours after the agreed time constitutes prima facie evidence that he exerted unauthorized control over the property.

(g) A judge may find that a photograph of property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully is competent evidence, if the photograph:

- (1) will serve the purpose of demonstrating the nature of the property; and
- (2) is otherwise admissible into evidence under all other rules of law governing the admissibility of photographs into evidence.

The fact that it is impractical to introduce into evidence the actual property for any reason, including its size, weight, or unavailability, need not be established for a judge to find a photograph of that property to be competent evidence. If a photograph is found to be competent evidence under this subsection, it is admissible into evidence in place of the property and to the same extent as the property itself.

(h) A law enforcement agency that is holding as evidence property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, may return that property to its owner if:

- (1) the property has been photographed in a manner that will serve the purpose of demonstrating the nature of the property,

and if these photographs are filed with or retained by the law enforcement agency in place of the property;

(2) receipt for the property is obtained from the owner upon delivery by the law enforcement agency;

(3) the prosecuting attorney who is prosecuting a case that involves the property has not requested the law enforcement agency to decline requests for return of the property to its owner; and

(4) the property may be lawfully possessed by the owner.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.47; Acts 1980, P.L.200, SEC.2; P.L.322-1985, SEC.1; P.L.84-2001, SEC.1.

IC 35-43-4-5

Defenses

Sec. 5. (a) An owner in possession of encumbered property does not commit a crime under this chapter, as against a person having only a security interest in the property, by removing or otherwise dealing with the property contrary to the terms of the security agreement, even if title is in the credit institution under a mortgage, conditional sales contract, or bailment lease.

(b) It is a defense under this chapter if a maker or drawer:

(1) who has an account in a credit institution but does not have sufficient funds in that account; and

(2) who makes, draws, or utters a check, draft, or order for payment on the credit institution;

pays the credit institution the amount due, together with protest fees, within ten (10) days after receiving notice that the check, draft, or order has not been paid by the credit institution. Notice sent to either (i) the address printed or written on the check, draft, or order or (ii) the address given in writing to the recipient at the time the check, draft, or order was issued or delivered constitutes notice that the check, draft, or order has not been paid by the credit institution.

(c) A person who transfers or reproduces recorded sounds in connection with a broadcast or telecast, or for archival purposes, does not commit a crime under this chapter, even if he does not have the consent of the owner of the master recording.

(d) A person who receives, retains, or disposes of personal property that has been the subject of theft with the purpose of restoring it to the owner, does not commit a crime under this chapter.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.48; Acts 1979, P.L.300, SEC.3; P.L.323-1985, SEC.1.

IC 35-43-4-6

Unauthorized control over property of benefit provider; prima facie evidence

Sec. 6. (a) As used in this section:

"Benefit" includes any accident, sickness, or other health care or reimbursement therefor to which a person is entitled.

"Benefit identification card" means a writing that identifies a

person, his spouse, or his dependent as being entitled to a benefit.

"Benefit provider" includes an employer, insurer, or health care provider who has agreed to provide or has provided a benefit to a person who has a benefit identification card.

(b) Evidence that a person:

(1) permitted a person who was not entitled to a benefit to use his benefit identification card to obtain a benefit; or

(2) uses his benefit identification card to obtain a benefit for a person who was not entitled to the benefit;

constitutes prima facie evidence that such person exerted unauthorized control over property of the benefit provider.

As added by P.L.327-1983, SEC.1.

IC 35-43-4-7

Vending machine vandalism

Sec. 7. (a) As used in this section, "vending machine" means a mechanical or an electronic device or a receptacle designed:

(1) to receive a coin, bill, or token made for that purpose; and

(2) to automatically dispense goods, wares, merchandise, or other property in return for the insertion or deposit of a coin, bill, or token.

(b) A person who knowingly or intentionally:

(1) damages a vending machine; or

(2) removes goods, wares, merchandise, or other property from a vending machine without:

(A) inserting or depositing a coin, bill, or token made for that purpose; or

(B) the consent of the owner or operator of the vending machine;

commits vending machine vandalism, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the amount of the damage or the value of the goods, wares, merchandise, or other property removed from the vending machine is at least two hundred fifty dollars (\$250).

As added by P.L.299-1995, SEC.1.

IC 35-43-4-8

Suspension of driving privileges for fuel theft

Sec. 8. (a) A conviction for an offense under section 2 of this chapter or section 3 of this chapter that involves exerting unauthorized control over gasoline or motor vehicle fuel:

(1) by operation of a motor vehicle to leave the premises of an establishment at which gasoline or motor vehicle fuel is offered for sale after the gasoline or motor vehicle fuel has been dispensed into the fuel tank of the motor vehicle; and

(2) without payment or authorization of payment by a credit card, debit card, charge card, or similar method of payment;

shall result in the suspension of the driving privileges of the person.

(b) The court imposing sentence for a violation under subsection

(a) shall issue an order to the bureau of motor vehicles:

(1) stating that the person has been convicted of an offense under section 2 of this chapter or section 3 of this chapter involving the unauthorized taking of gasoline or motor vehicle fuel; and

(2) ordering the suspension of the person's driving privileges under IC 9-25-6-21.

The suspension of a person's driving privileges under this section is in addition to other penalties prescribed by IC 35-50-3-2 for a Class A misdemeanor or by IC 35-50-2-7 for a Class D felony.

As added by P.L.117-2001, SEC.6.