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# HOUSE BILL No. 1738

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-30-21; IC 35-43-2-2.

**Synopsis:** Trespass. Grants immunity from civil liability for a person who owns, leases, or otherwise legally occupies real property for an injury or damage sustained by another person who: (1) enters or remains on the real property without consent; or (2) refuses to leave the real property after being asked to leave; unless the injury or damage is caused by an act or omission of the person that constitutes a criminal offense, gross negligence, or willful or wanton misconduct. Makes it criminal trespass, a Class A misdemeanor, for a person to knowingly or intentionally enter or remain on the real property of another person without the consent of the other person. Provides a defense for an accused person who had express, legal, or implied consent to enter or remain on the real property. Provides exceptions for certain persons who are not specifically forbidden to enter or remain on real property.

**Effective:** July 1, 2005.

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### Robertson

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January 19, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## HOUSE BILL No. 1738



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

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

1 SECTION 1. IC 34-30-21 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2005]:

4 **Chapter 21. Immunity for Certain Owners, Lessees, and**  
5 **Occupiers of Real Property**

6 **Sec. 1. A person who owns, leases, or otherwise legally occupies**  
7 **real property is immune from civil liability for an injury or**  
8 **damage sustained by another person who:**

9 (1) **enters or remains on the real property without the express,**  
10 **legal, or implied consent of the person; or**

11 (2) **refuses to leave the real property after having been asked**  
12 **to leave by the person;**

13 **unless the injury or damage is caused by an act or omission of the**  
14 **person who owns, leases, or otherwise legally occupies the real**  
15 **property that constitutes a criminal offense, gross negligence, or**  
16 **willful or wanton misconduct.**

17 SECTION 2. IC 35-43-2-2 IS AMENDED TO READ AS



1       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A person who:  
2           (1) not having a contractual interest in the property, knowingly or  
3           intentionally enters the real property of another person ~~after~~  
4           ~~having been denied entry by~~ **without the consent of the** other  
5           person or that person's agent;  
6           **(2) not having a contractual interest in the property,**  
7           **knowingly or intentionally remains on the real property of**  
8           **another person without the consent of the other person or that**  
9           **person's agent;**  
10          ~~(2)~~ **(3)** not having a contractual interest in the property, knowingly  
11          or intentionally refuses to leave the real property of another  
12          person after having been asked to leave by the other person or that  
13          person's agent;  
14          ~~(3)~~ **(4)** accompanies another person in a vehicle, with knowledge  
15          that the other person knowingly or intentionally is exerting  
16          unauthorized control over the vehicle;  
17          ~~(4)~~ **(5)** knowingly or intentionally interferes with the possession  
18          or use of the property of another person without the person's  
19          consent;  
20          ~~(5)~~ **(6)** not having a contractual interest in the property, knowingly  
21          or intentionally enters the dwelling of another person without the  
22          person's consent; or  
23          ~~(6)~~ **(7)** knowingly or intentionally:  
24                (A) travels by train without lawful authority or the railroad  
25                carrier's consent; and  
26                (B) rides on the outside of a train or inside a passenger car,  
27                locomotive, or freight car, including a boxcar, flatbed, or  
28                container without lawful authority or the railroad carrier's  
29                consent;  
30        commits criminal trespass, a Class A misdemeanor. However, the  
31        offense is a Class D felony if it is committed on a scientific research  
32        facility, on school property, or on a school bus or the person has a prior  
33        unrelated conviction for an offense under this section concerning the  
34        same property.  
35        (b) ~~A person has been denied entry~~ **It is a defense** under subdivision  
36        **subsection (a)(1) of this section when the and (a)(2) that the accused**  
37        **person has been denied entry by means of:**  
38                ~~(1) personal communication, oral or written; or~~  
39                ~~(2) posting or exhibiting a notice at the main entrance in a manner~~  
40                ~~that is either prescribed by law or likely to come to the attention~~  
41                ~~of the public.~~ **had the express, legal, or implied consent of the**  
42                **other person or the other person's agent to enter or remain on**

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**the real property of the other person.**

(c) Subsections (a) and (b) 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.
- (11) The following persons unless the owner of the real property or the owner's agent specifically forbids the person, either orally or in writing, to enter or remain on the real property:**
  - (A) A person who:
    - (i) is making a delivery, soliciting, selling a product or service, or conducting a survey or poll, or has another legitimate reason for communicating with the owner,**

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lessee, occupant, or resident of the real property; and  
(ii) immediately upon entering the real property seeks to  
make the delivery, conduct business, or conduct the  
communication.

(B) The owner of domestic livestock or the owner's  
employees or agents while retrieving the owner's domestic  
livestock from the real property.

(C) The owner of a domestic animal while retrieving the  
owner's domestic animal from the real property.

(D) A:

(i) candidate; or

(ii) person working on behalf of a candidate;  
for political office.

SECTION 3. [EFFECTIVE JULY 1, 2005] IC 35-43-2-2, as  
amended by this act, applies only to offenses committed after June  
30, 2005.

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