

2 **SHB 2059** - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED 4/15/97

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.56 RCW
8 to read as follows:

9 (1) A person who, with intent to deprive the owner or owner's
10 agent, wrongfully obtains, or exerts unauthorized control over, or by
11 color or aid of deception gains control of personal property that is
12 rented or leased to the person, is guilty of theft of rental, leased,
13 or lease-purchased property.

14 (2) The finder of fact may presume intent to deprive if the finder
15 of fact finds either of the following:

16 (a) That the person who rented or leased the property failed to
17 return or make arrangements acceptable to the owner of the property or
18 the owner's agent to return the property to the owner or the owner's
19 agent within seventy-two hours after receipt of proper notice following
20 the due date of the rental, lease, or lease-purchase agreement; or

21 (b) That the renter or lessee presented identification to the owner
22 or the owner's agent that was materially false, fictitious, or not
23 current with respect to name, address, place of employment, or other
24 appropriate items.

25 (3) As used in subsection (2) of this section, "proper notice"
26 consists of a written demand by the owner or the owner's agent made
27 after the due date of the rental, lease, or lease-purchase period,
28 mailed by certified or registered mail to the renter or lessee at: (a)
29 The address the renter or lessee gave when the contract was made; or
30 (b) the renter or lessee's last known address if later furnished in
31 writing by the renter, lessee, or the agent of the renter or lessee.

32 (4) The replacement value of the property obtained must be utilized
33 in determining the amount involved in the theft of rental, leased, or
34 lease-purchased property. Theft of rental, leased, or lease-purchased
35 property is a: Class B felony if the rental, leased, or lease-
36 purchased property is valued at one thousand five hundred dollars or
37 more; class C felony if the rental, leased, or lease-purchased property

1 is valued at two hundred fifty dollars or more but less than one
2 thousand five hundred dollars; and gross misdemeanor if the rental,
3 leased, or lease-purchased property is valued at less than two hundred
4 fifty dollars.

5 (5) This section applies to rental agreements that provide that the
6 renter may return the property any time within the rental period and
7 pay only for the time the renter actually retained the property, in
8 addition to any minimum rental fee, to lease agreements, and to lease-
9 purchase agreements as defined under RCW 63.19.010. This section does
10 not apply to rental or leasing of real property under the residential
11 landlord-tenant act, chapter 59.18 RCW.

12 **Sec. 2.** RCW 9A.56.010 and 1995 c 92 s 1 are each amended to read
13 as follows:

14 The following definitions are applicable in this chapter unless the
15 context otherwise requires:

16 (1) "Appropriate lost or misdelivered property or services" means
17 obtaining or exerting control over the property or services of another
18 which the actor knows to have been lost or mislaid, or to have been
19 delivered under a mistake as to identity of the recipient or as to the
20 nature or amount of the property;

21 (2) "By color or aid of deception" means that the deception
22 operated to bring about the obtaining of the property or services; it
23 is not necessary that deception be the sole means of obtaining the
24 property or services;

25 (3) "Access device" means any card, plate, code, account number, or
26 other means of account access that can be used alone or in conjunction
27 with another access device to obtain money, goods, services, or
28 anything else of value, or that can be used to initiate a transfer of
29 funds, other than a transfer originated solely by paper instrument;

30 (4) "Deception" occurs when an actor knowingly:

31 (a) Creates or confirms another's false impression which the actor
32 knows to be false; or

33 (b) Fails to correct another's impression which the actor
34 previously has created or confirmed; or

35 (c) Prevents another from acquiring information material to the
36 disposition of the property involved; or

37 (d) Transfers or encumbers property without disclosing a lien,
38 adverse claim, or other legal impediment to the enjoyment of the
39 property, whether that impediment is or is not valid, or is or is not
40 a matter of official record; or

1 (e) Promises performance which the actor does not intend to perform
2 or knows will not be performed.

3 (5) "Deprive" in addition to its common meaning means to make
4 unauthorized use or an unauthorized copy of records, information, data,
5 trade secrets, or computer programs;

6 (6) "Obtain control over" in addition to its common meaning, means:

7 (a) In relation to property, to bring about a transfer or purported
8 transfer to the obtainer or another of a legally recognized interest in
9 the property; or

10 (b) In relation to labor or service, to secure performance thereof
11 for the benefits of the obtainer or another;

12 (7) "Wrongfully obtains" or "exerts unauthorized control" means:

13 (a) To take the property or services of another;

14 (b) Having any property or services in one's possession, custody or
15 control as bailee, factor, lessee, pledgee, renter, servant, attorney,
16 agent, employee, trustee, executor, administrator, guardian, or officer
17 of any person, estate, association, or corporation, or as a public
18 officer, or person authorized by agreement or competent authority to
19 take or hold such possession, custody, or control, to secrete,
20 withhold, or appropriate the same to his or her own use or to the use
21 of any person other than the true owner or person entitled thereto; or

22 (c) Having any property or services in one's possession, custody,
23 or control as partner, to secrete, withhold, or appropriate the same to
24 his or her use or to the use of any person other than the true owner or
25 person entitled thereto, where such use is unauthorized by the
26 partnership agreement;

27 (8) "Owner" means a person, other than the actor, who has
28 possession of or any other interest in the property or services
29 involved, and without whose consent the actor has no authority to exert
30 control over the property or services;

31 (9) "Receive" includes, but is not limited to, acquiring title,
32 possession, control, or a security interest, or any other interest in
33 the property;

34 (10) "Services" includes, but is not limited to, labor,
35 professional services, transportation services, electronic computer
36 services, the supplying of hotel accommodations, restaurant services,
37 entertainment, the supplying of equipment for use, and the supplying of
38 commodities of a public utility nature such as gas, electricity, steam,
39 and water;

40 (11) "Stolen" means obtained by theft, robbery, or extortion;

1 (12) "Subscription television service" means cable or encrypted
2 video and related audio and data services intended for viewing on a
3 home television by authorized members of the public only, who have
4 agreed to pay a fee for the service. Subscription services include but
5 are not limited to those video services presently delivered by coaxial
6 cable, fiber optic cable, terrestrial microwave, television broadcast,
7 and satellite transmission;

8 (13) "Telecommunication device" means (a) any type of instrument,
9 device, machine, or equipment that is capable of transmitting or
10 receiving telephonic or electronic communications; or (b) any part of
11 such an instrument, device, machine, or equipment, or any computer
12 circuit, computer chip, electronic mechanism, or other component, that
13 is capable of facilitating the transmission or reception of telephonic
14 or electronic communications;

15 (14) "Telecommunication service" includes any service other than
16 subscription television service provided for a charge or compensation
17 to facilitate the transmission, transfer, or reception of a telephonic
18 communication or an electronic communication;

19 (15) Value. (a) "Value" means the market value of the property or
20 services at the time and in the approximate area of the criminal act.

21 (b) Whether or not they have been issued or delivered, written
22 instruments, except those having a readily ascertained market value,
23 shall be evaluated as follows:

24 (i) The value of an instrument constituting an evidence of debt,
25 such as a check, draft, or promissory note, shall be deemed the amount
26 due or collectible thereon or thereby, that figure ordinarily being the
27 face amount of the indebtedness less any portion thereof which has been
28 satisfied;

29 (ii) The value of a ticket or equivalent instrument which evidences
30 a right to receive transportation, entertainment, or other service
31 shall be deemed the price stated thereon, if any; and if no price is
32 stated thereon, the value shall be deemed the price of such ticket or
33 equivalent instrument which the issuer charged the general public;

34 (iii) The value of any other instrument that creates, releases,
35 discharges, or otherwise affects any valuable legal right, privilege,
36 or obligation shall be deemed the greatest amount of economic loss
37 which the owner of the instrument might reasonably suffer by virtue of
38 the loss of the instrument.

39 (c) Whenever any series of transactions which constitute theft,
40 would, when considered separately, constitute theft in the third degree
41 because of value, and said series of transactions are a part of a

1 common scheme or plan, then the transactions may be aggregated in one
2 count and the sum of the value of all said transactions shall be the
3 value considered in determining the degree of theft involved.

4 (d) Whenever any person is charged with possessing stolen property
5 and such person has unlawfully in his possession at the same time the
6 stolen property of more than one person, then the stolen property
7 possessed may be aggregated in one count and the sum of the value of
8 all said stolen property shall be the value considered in determining
9 the degree of theft involved.

10 (e) Property or services having value that cannot be ascertained
11 pursuant to the standards set forth above shall be deemed to be of a
12 value not exceeding two hundred and fifty dollars;

13 (16) "Shopping cart" means a basket mounted on wheels or similar
14 container generally used in a retail establishment by a customer for
15 the purpose of transporting goods of any kind;

16 (17) "Parking area" means a parking lot or other property provided
17 by retailers for use by a customer for parking an automobile or other
18 vehicle.

19 NEW SECTION. **Sec. 3.** The following acts or parts of acts are each
20 repealed:

21 (1) RCW 9.45.062 and 1971 c 61 s 2; and

22 (2) RCW 9A.56.095 and 1977 ex.s. c 236 s 1."

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26 On page 1, line 1 of the title, after "property;" strike the
27 remainder of the title and insert "amending RCW 9A.56.010; adding a new
28 section to chapter 9A.56 RCW; repealing RCW 9.45.62 and 9A.56.095; and
29 prescribing penalties."

30 EFFECT: Removes artificial legal distinction between rental,
31 lease, and lease-purchase property which had been created by original
32 bill. Makes technical corrections.

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