

2 SSB 5769 - S AMD - 748
3 By Senator S. Johnson

4 ADOPTED 2/16/98

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

7 "Sec. 1. RCW 9A.56.010 and 1997 c 346 s 2 are each amended to read
8 as follows:

9 The following definitions are applicable in this chapter unless the
10 context otherwise requires:

11 (1) "Appropriate lost or misdelivered property or services" means
12 obtaining or exerting control over the property or services of another
13 which the actor knows to have been lost or mislaid, or to have been
14 delivered under a mistake as to identity of the recipient or as to the
15 nature or amount of the property;

16 (2) "By color or aid of deception" means that the deception
17 operated to bring about the obtaining of the property or services; it
18 is not necessary that deception be the sole means of obtaining the
19 property or services;

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

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

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

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

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

32 (d) Transfers or encumbers property without disclosing a lien,
33 adverse claim, or other legal impediment to the enjoyment of the
34 property, whether that impediment is or is not valid, or is or is not
35 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) "Merchandise pallet" means a wood or plastic carrier designed
28 and manufactured as an item on which products can be placed prior to or
29 during transport to retail outlets, manufacturers, or contractors, and
30 affixed with language stating "property of . . . ," "owned by . . . ,"
31 or other markings or words identifying ownership;

32 (9) "Beverage crate" means a plastic or metal box-like container
33 used by a manufacturer or distributor in the transportation or
34 distribution of individually packaged beverages to retail outlets, and
35 affixed with language stating "property of," "owned by
36," or other markings or words identifying ownership;

37 (10) "Owner" means a person, other than the actor, who has
38 possession of or any other interest in the property or services

1 involved, and without whose consent the actor has no authority to exert
2 control over the property or services;

3 ~~((+9))~~ (11) "Receive" includes, but is not limited to, acquiring
4 title, possession, control, or a security interest, or any other
5 interest in the property;

6 ~~((+10))~~ (12) "Services" includes, but is not limited to, labor,
7 professional services, transportation services, electronic computer
8 services, the supplying of hotel accommodations, restaurant services,
9 entertainment, the supplying of equipment for use, and the supplying of
10 commodities of a public utility nature such as gas, electricity, steam,
11 and water;

12 ~~((+11))~~ (13) "Stolen" means obtained by theft, robbery, or
13 extortion;

14 ~~((+12))~~ (14) "Subscription television service" means cable or
15 encrypted video and related audio and data services intended for
16 viewing on a home television by authorized members of the public only,
17 who have agreed to pay a fee for the service. Subscription services
18 include but are not limited to those video services presently delivered
19 by coaxial cable, fiber optic cable, terrestrial microwave, television
20 broadcast, and satellite transmission;

21 ~~((+13))~~ (15) "Telecommunication device" means (a) any type of
22 instrument, device, machine, or equipment that is capable of
23 transmitting or receiving telephonic or electronic communications; or
24 (b) any part of such an instrument, device, machine, or equipment, or
25 any computer circuit, computer chip, electronic mechanism, or other
26 component, that is capable of facilitating the transmission or
27 reception of telephonic or electronic communications;

28 ~~((+14))~~ (16) "Telecommunication service" includes any service
29 other than subscription television service provided for a charge or
30 compensation to facilitate the transmission, transfer, or reception of
31 a telephonic communication or an electronic communication;

32 ~~((+15))~~ (17) Value. (a) "Value" means the market value of the
33 property or services at the time and in the approximate area of the
34 criminal act.

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

38 (i) The value of an instrument constituting an evidence of debt,
39 such as a check, draft, or promissory note, shall be deemed the amount

1 due or collectible thereon or thereby, that figure ordinarily being the
2 face amount of the indebtedness less any portion thereof which has been
3 satisfied;

4 (ii) The value of a ticket or equivalent instrument which evidences
5 a right to receive transportation, entertainment, or other service
6 shall be deemed the price stated thereon, if any; and if no price is
7 stated thereon, the value shall be deemed the price of such ticket or
8 equivalent instrument which the issuer charged the general public;

9 (iii) The value of any other instrument that creates, releases,
10 discharges, or otherwise affects any valuable legal right, privilege,
11 or obligation shall be deemed the greatest amount of economic loss
12 which the owner of the instrument might reasonably suffer by virtue of
13 the loss of the instrument.

14 (c) Whenever any series of transactions which constitute theft,
15 would, when considered separately, constitute theft in the third degree
16 because of value, and said series of transactions are a part of a
17 common scheme or plan, then the transactions may be aggregated in one
18 count and the sum of the value of all said transactions shall be the
19 value considered in determining the degree of theft involved.

20 (d) Whenever any person is charged with possessing stolen property
21 and such person has unlawfully in his possession at the same time the
22 stolen property of more than one person, then the stolen property
23 possessed may be aggregated in one count and the sum of the value of
24 all said stolen property shall be the value considered in determining
25 the degree of theft involved.

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

29 (~~((16))~~) (18) "Shopping cart" means a basket mounted on wheels or
30 similar container generally used in a retail establishment by a
31 customer for the purpose of transporting goods of any kind;

32 (~~((17))~~) (19) "Parking area" means a parking lot or other property
33 provided by retailers for use by a customer for parking an automobile
34 or other vehicle.

35 **Sec. 2.** RCW 9A.56.170 and 1975 1st ex.s. c 260 s 9A.56.170 are
36 each amended to read as follows:

37 (1) A person is guilty of possessing stolen property in the third
38 degree if he or she possesses stolen property which does not exceed two

1 hundred fifty dollars in value including possession of ten or more
2 stolen merchandise pallets, or ten or more stolen beverage crates, or
3 a combination of ten or more stolen merchandise pallets and beverage
4 crates, as defined under RCW 9A.56.010.

5 (2) Possessing stolen property in the third degree is a gross
6 misdemeanor.

7 **Sec. 3.** RCW 9A.56.140 and 1987 c 140 s 3 are each amended to read
8 as follows:

9 (1) "Possessing stolen property" means knowingly to receive,
10 retain, possess, conceal, or dispose of stolen property knowing that it
11 has been stolen and to withhold or appropriate the same to the use of
12 any person other than the true owner or person entitled thereto.

13 (2) The fact that the person who stole the property has not been
14 convicted, apprehended, or identified is not a defense to a charge of
15 possessing stolen property.

16 (3) When a person (~~((not an issuer or agent thereof))~~) has in his or
17 her possession, or under his or her control, stolen access devices
18 issued in the names of two or more persons, or ten or more stolen
19 merchandise pallets, or ten or more stolen beverage crates, or a
20 combination of ten or more stolen merchandise pallets and beverage
21 crates, as defined under RCW 9A.56.010, he (~~((shall be))~~) or she is
22 presumed to know that they are stolen.

23 (~~((This))~~) (4) The presumption (~~((may be rebutted))~~) in subsection (3)
24 of this section is rebuttable by evidence raising a reasonable
25 inference that the possession of such stolen access devices,
26 merchandise pallets, or beverage crates was without knowledge that they
27 were stolen.

28 **Sec. 4.** RCW 9A.56.050 and 1975 1st ex.s. c 260 s 9A.56.050 are
29 each amended to read as follows:

30 (1) A person is guilty of theft in the third degree if he or she
31 commits theft of property or services which does not exceed two hundred
32 and fifty dollars in value including ten or more merchandise pallets,
33 or ten or more beverage crates, or a combination of ten or more
34 merchandise pallets and beverage crates, as defined under RCW
35 9A.56.010.

36 (2) Theft in the third degree is a gross misdemeanor."

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4 On page 1, line 1 of the title, after "property;" strike the
5 remainder of the title and insert "amending RCW 9A.56.010, 9A.56.170,
6 9A.56.140, and 9A.56.050; and prescribing penalties."

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