

2 EHB 1085 - S COMM AMD
3 By Committee on Judiciary

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

7 "Sec. 1. RCW 9A.56.160 and 1995 c 129 s 15 are each amended to
8 read as follows:

9 (1) A person is guilty of possessing stolen property in the second
10 degree if:

11 (a) He or she possesses stolen property other than a firearm as
12 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in
13 value but does not exceed one thousand five hundred dollars in value;
14 or

15 (b) He or she possesses a stolen public record, writing or
16 instrument kept, filed, or deposited according to law; or

17 (c) He or she possesses a stolen access device; or

18 (d) He or she is not a financial institution and possesses a stolen
19 check or draft; or

20 (e) He or she possesses a stolen motor vehicle of a value less than
21 one thousand five hundred dollars.

22 (2) Possessing stolen property in the second degree is a class C
23 felony.

24 **Sec. 2.** RCW 9A.56.140 and 1998 c 236 s 3 are each amended to read
25 as follows:

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

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

33 (3) When a person has in his or her possession, or under his or her
34 control, stolen access devices issued in the names of two or more
35 persons, or ten or more stolen merchandise pallets, or ten or more

1 stolen beverage crates, or a combination of ten or more stolen
2 merchandise pallets and beverage crates, as defined under RCW
3 9A.56.010, he or she is presumed to know that they are stolen.

4 (4) When a person other than a financial institution has in his or
5 her possession, or under his or her control, two or more stolen checks
6 with different account numbers, he or she is presumed to know that they
7 are stolen.

8 (5) The presumptions in subsections (3) and (4) of this section
9 ((is)) are rebuttable by evidence raising a reasonable inference that
10 the possession of such stolen access devices, merchandise pallets,
11 ((or)) beverage crates, checks, or drafts was without knowledge that
12 they were stolen.

13 **Sec. 3.** RCW 9A.56.010 and 1999 c 143 s 36 are each amended to read
14 as follows:

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

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

22 (2) "Appropriate lost or misdelivered property or services" means
23 obtaining or exerting control over the property or services of another
24 which the actor knows to have been lost or mislaid, or to have been
25 delivered under a mistake as to identity of the recipient or as to the
26 nature or amount of the property;

27 (3) "Beverage crate" means a plastic or metal box-like container
28 used by a manufacturer or distributor in the transportation or
29 distribution of individually packaged beverages to retail outlets, and
30 affixed with language stating "property of," "owned by
31," or other markings or words identifying ownership;

32 (4) "By color or aid of deception" means that the deception
33 operated to bring about the obtaining of the property or services; it
34 is not necessary that deception be the sole means of obtaining the
35 property or services;

36 (5) "Check" and "draft" each have the meanings given in RCW
37 62A.3-104;

38 (6) "Deception" occurs when an actor knowingly:

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

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

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

7 (d) Transfers or encumbers property without disclosing a lien,
8 adverse claim, or other legal impediment to the enjoyment of the
9 property, whether that impediment is or is not valid, or is or is not
10 a matter of official record; or

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

13 (~~(6)~~) (7) "Deprive" in addition to its common meaning means to
14 make unauthorized use or an unauthorized copy of records, information,
15 data, trade secrets, or computer programs;

16 (~~(7)~~) (8) "Financial institution" means a business that as a
17 regular aspect of its operation participates in the check collection or
18 check clearing process, including but not limited to a person doing
19 business under the laws of the state of Washington, any other state or
20 territory of the United States, or the United States relating to
21 commercial banks, bank holding companies, savings banks, trust
22 companies, savings and loan associations, credit unions, clearing
23 houses, and the affiliates, subsidiaries, and service corporations of
24 them. "Financial institution" also means a person or entity employed
25 by or acting on behalf of a financial institution, when acting in that
26 capacity.

27 (9) "Merchandise pallet" means a wood or plastic carrier designed
28 and manufactured as an item on which products can be placed before or
29 during transport to retail outlets, manufacturers, or contractors, and
30 affixed with language stating "property of . . .," "owned by . . .," or
31 other markings or words identifying ownership;

32 (~~(8)~~) (10) "Obtain control over" in addition to its common
33 meaning, means:

34 (a) In relation to property, to bring about a transfer or purported
35 transfer to the obtainer or another of a legally recognized interest in
36 the property; or

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

1 (~~(9)~~) (11) "Owner" means a person, other than the actor, who has
2 possession of or any other interest in the property or services
3 involved, and without whose consent the actor has no authority to exert
4 control over the property or services;

5 (~~(10)~~) (12) "Parking area" means a parking lot or other property
6 provided by retailers for use by a customer for parking an automobile
7 or other vehicle;

8 (~~(11)~~) (13) "Receive" includes, but is not limited to, acquiring
9 title, possession, control, or a security interest, or any other
10 interest in the property;

11 (~~(12)~~) (14) "Services" includes, but is not limited to, labor,
12 professional services, transportation services, electronic computer
13 services, the supplying of hotel accommodations, restaurant services,
14 entertainment, the supplying of equipment for use, and the supplying of
15 commodities of a public utility nature such as gas, electricity, steam,
16 and water;

17 (~~(13)~~) (15) "Shopping cart" means a basket mounted on wheels or
18 similar container generally used in a retail establishment by a
19 customer for the purpose of transporting goods of any kind;

20 (~~(14)~~) (16) "Stolen" means obtained by theft, robbery, or
21 extortion;

22 (~~(15)~~) (17) "Subscription television service" means cable or
23 encrypted video and related audio and data services intended for
24 viewing on a home television by authorized members of the public only,
25 who have agreed to pay a fee for the service. Subscription services
26 include but are not limited to those video services presently delivered
27 by coaxial cable, fiber optic cable, terrestrial microwave, television
28 broadcast, and satellite transmission;

29 (~~(16)~~) (18) "Telecommunication device" means (a) any type of
30 instrument, device, machine, or equipment that is capable of
31 transmitting or receiving telephonic or electronic communications; or
32 (b) any part of such an instrument, device, machine, or equipment, or
33 any computer circuit, computer chip, electronic mechanism, or other
34 component, that is capable of facilitating the transmission or
35 reception of telephonic or electronic communications;

36 (~~(17)~~) (19) "Telecommunication service" includes any service
37 other than subscription television service provided for a charge or
38 compensation to facilitate the transmission, transfer, or reception of
39 a telephonic communication or an electronic communication;

1 (~~(18)~~) (20) Value. (a) "Value" means the market value of the
2 property or services at the time and in the approximate area of the
3 criminal act.

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

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

12 (ii) The value of a ticket or equivalent instrument which evidences
13 a right to receive transportation, entertainment, or other service
14 shall be deemed the price stated thereon, if any; and if no price is
15 stated thereon, the value shall be deemed the price of such ticket or
16 equivalent instrument which the issuer charged the general public;

17 (iii) The value of any other instrument that creates, releases,
18 discharges, or otherwise affects any valuable legal right, privilege,
19 or obligation shall be deemed the greatest amount of economic loss
20 which the owner of the instrument might reasonably suffer by virtue of
21 the loss of the instrument.

22 (c) Whenever any series of transactions which constitute theft,
23 would, when considered separately, constitute theft in the third degree
24 because of value, and said series of transactions are a part of a
25 common scheme or plan, then the transactions may be aggregated in one
26 count and the sum of the value of all said transactions shall be the
27 value considered in determining the degree of theft involved.

28 (d) Whenever any person is charged with possessing stolen property
29 and such person has unlawfully in his possession at the same time the
30 stolen property of more than one person, then the stolen property
31 possessed may be aggregated in one count and the sum of the value of
32 all said stolen property shall be the value considered in determining
33 the degree of theft involved.

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

37 (~~(19)~~) (21) "Wrongfully obtains" or "exerts unauthorized control"
38 means:

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

1 (b) Having any property or services in one's possession, custody or
2 control as bailee, factor, lessee, pledgee, renter, servant, attorney,
3 agent, employee, trustee, executor, administrator, guardian, or officer
4 of any person, estate, association, or corporation, or as a public
5 officer, or person authorized by agreement or competent authority to
6 take or hold such possession, custody, or control, to secrete,
7 withhold, or appropriate the same to his or her own use or to the use
8 of any person other than the true owner or person entitled thereto; or

9 (c) Having any property or services in one's possession, custody,
10 or control as partner, to secrete, withhold, or appropriate the same to
11 his or her use or to the use of any person other than the true owner or
12 person entitled thereto, where the use is unauthorized by the
13 partnership agreement.

14 **Sec. 4.** RCW 9A.56.040 and 1995 c 129 s 12 are each amended to read
15 as follows:

16 (1) A person is guilty of theft in the second degree if he or she
17 commits theft of:

18 (a) Property or services which exceed(s) two hundred and fifty
19 dollars in value other than a firearm as defined in RCW 9.41.010, but
20 does not exceed one thousand five hundred dollars in value; or

21 (b) A public record, writing, or instrument kept, filed, or
22 deposited according to law with or in the keeping of any public office
23 or public servant; or

24 (c) An access device; or

25 (d) A motor vehicle, of a value less than one thousand five hundred
26 dollars; or

27 (e) A check or draft.

28 (2) Theft in the second degree is a class C felony.

29 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately."

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4 On page 1, line 1 of the title, after "drafts;" strike the
5 remainder of the title and insert "amending RCW 9A.56.160, 9A.56.140,
6 9A.56.010, and 9A.56.040; prescribing penalties; and declaring an
7 emergency."

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