

---

HOUSE BILL 1453

---

State of Washington

57th Legislature

2001 Regular Session

By Representatives Fisher, Hankins, Lovick, Mitchell and Cooper; by request of Utilities & Transportation Commission

Read first time 01/26/2001. Referred to Committee on Transportation.

1 AN ACT Relating to railroad right of way trespassing; amending RCW  
2 9A.52.010; adding a new section to chapter 9A.52 RCW; and prescribing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.52.010 and 1985 c 289 s 1 are each amended to read  
6 as follows:

7 The ~~((following))~~ definitions in this section apply ~~((in))~~  
8 throughout this chapter~~((+))~~ unless the context clearly requires  
9 otherwise.

10 (1) "Premises" includes any building, dwelling, structure used for  
11 commercial aquaculture, or any real property~~((+))~~.

12 (2) "Enter~~((+))~~." The word "enter" when constituting an element or  
13 part of a crime, shall include the entrance of the person, or the  
14 insertion of any part of his or her body, or any instrument or weapon  
15 held in his or her hand and used or intended to be used to threaten or  
16 intimidate a person or to detach or remove property~~((+))~~.

17 (3) "Enters or remains unlawfully~~((+))~~." A person "enters or  
18 remains unlawfully" in or upon premises when he or she is not then  
19 licensed, invited, or otherwise privileged to so enter or remain.

1 A license or privilege to enter or remain in a building (~~which~~)  
2 that is only partly open to the public is not a license or privilege to  
3 enter or remain in that part of a building (~~which~~) that is not open  
4 to the public. A person who enters or remains upon unimproved and  
5 apparently unused land, which is neither fenced nor otherwise enclosed  
6 in a manner designed to exclude intruders, does so with license and  
7 privilege unless notice against trespass is personally communicated to  
8 him or her by the owner of the land or some other authorized person, or  
9 unless notice is given by posting in a conspicuous manner. Land that  
10 is used for commercial aquaculture or for growing an agricultural crop  
11 or crops, other than timber, is not unimproved and apparently unused  
12 land if a crop or any other sign of cultivation is clearly visible or  
13 if notice is given by posting in a conspicuous manner. Similarly, a  
14 field fenced in any manner (~~is~~) or a railroad right of way on which  
15 rails exist are not unimproved and apparently unused lands(~~(+)~~).

16 (4) "Data" means a representation of information, knowledge, facts,  
17 concepts, or instructions that are being prepared or have been prepared  
18 in a formalized manner and are intended for use in a computer(~~(+)~~).

19 (5) "Computer program" means an ordered set of data representing  
20 coded instructions or statements that when executed by a computer cause  
21 the computer to process data(~~(+)~~).

22 (6) "Access" means to approach, instruct, communicate with, store  
23 data in, retrieve data from, or otherwise make use of any resources of  
24 a computer, directly or by electronic means.

25 (7) "Railroad" means any form of nonhighway ground transportation  
26 that runs on rails.

27 (8) "Railroad carrier" means a person providing railroad  
28 transportation.

29 (9) "Railroad right of way" means the rails over which a railroad  
30 can operate, structures that support the rails, the land within ten  
31 feet of a rail, and the land outside that area that is owned, leased,  
32 or operated by a railroad carrier and that is readily recognizable to  
33 a reasonable person as being railroad property or is reasonably  
34 identified as such by fencing or appropriate signs. "Railroad right of  
35 way" does not include formerly used rights of way that have been  
36 abandoned or converted to a nonrailroad use under orders of the United  
37 States Surface Transportation Board.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 9A.52 RCW  
2 to read as follows:

3        (1) Every person who enters or remains unlawfully upon a railroad  
4 right of way is guilty of a misdemeanor.    The only circumstances in  
5 which a person may lawfully enter a railroad right of way are specified  
6 in subsections (2) and (3) of this section.    RCW 9A.52.090 does not  
7 apply to this section.

8        (2) The following persons have lawful authority to enter a railroad  
9 right of way while engaged in the performance of their official duties:  
10 Employees of a railroad carrier, police officers, fire fighters, peace  
11 officers, emergency response personnel, representatives of the state  
12 department of transportation, representatives of the state utilities  
13 and transportation commission, representatives of the federal railroad  
14 administration, representatives of the national transportation safety  
15 board, and union representatives of the railroad who are present on the  
16 railroad's right of way for official union or railroad business.

17        (3) A person may enter railroad rights of way under the following  
18 circumstances:

19        (a) When a person enters the right of way at a public crossing for  
20 the purpose of crossing the right of way at that location;

21        (b) When a person has the consent or written permission of the  
22 railroad carrier to enter or remain on the right of way in question.  
23 This includes passengers, who are persons traveling by rail with the  
24 express consent of the railroad carrier, and have consent to be on the  
25 train and in areas designated by the railroad carrier.    The public has  
26 consent to be on the grounds of a railroad station in those areas and  
27 at those times designated by the railroad carrier;

28        (c) When a person or the person's family, invitee, employee, or  
29 independent contractor enters the right of way at a private crossing  
30 site approved by the railroad carrier for the purpose of crossing the  
31 right of way at the approved crossing to obtain access to land that the  
32 person owns, leases, or operates; or

33        (d) When a person enters or remains on the right of way in an  
34 emergency to rescue a person or animal or to remove an object that the  
35 person reasonably believes to pose an imminent threat to life or limb.

--- END ---