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SENATE BILL 5438

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Nelson, Owen, Talmadge and Moore.

Read first time January 31, 1991. Referred to Committee on Law & Justice.

1            AN ACT Relating to increasing stolen property values for  
2 determining degree of theft; amending RCW 9A.56.010, 9A.56.030,  
3 9A.56.040, 9A.56.050, 9A.56.060, 9A.56.150, 9A.56.160, and 9A.56.170;  
4 and prescribing penalties.

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

6            **Sec. 1.** RCW 9A.56.010 and 1987 c 140 s 1 are each amended to read  
7 as follows:

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

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

1 (2) "By color or aid of deception" means that the deception  
2 operated to bring about the obtaining of the property or services; it  
3 is not necessary that deception be the sole means of obtaining the  
4 property or services;

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

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

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

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

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

17 (d) Transfers or encumbers property without disclosing a lien,  
18 adverse claim, or other legal impediment to the enjoyment of the  
19 property, whether that impediment is or is not valid, or is or is not  
20 a matter of official record; or

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

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

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

27 (a) In relation to property, to bring about a transfer or purported  
28 transfer to the obtainer or another of a legally recognized interest in  
29 the property; or

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

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

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

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

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

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

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

25 (10) "Services" includes, but is not limited to, labor,  
26 professional services, transportation services, electronic computer  
27 services, the supplying of hotel accommodations, restaurant services,  
28 entertainment, the supplying of equipment for use, and the supplying of  
29 commodities of a public utility nature such as gas, electricity, steam,  
30 and water;

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

2 (12) Value. (a) "Value" means the market value of the property or  
3 services at the time and in the approximate area of the 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

1 possessed may be aggregated in one count and the sum of the value of  
2 all said stolen property shall be the value considered in determining  
3 the degree of theft involved.

4 (e) Property or services having value that cannot be ascertained  
5 pursuant to the standards set forth above shall be deemed to be of a  
6 value not exceeding (~~two hundred and fifty~~) one thousand dollars;

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

10 (14) "Parking area" means a parking lot or other property provided  
11 by retailers for use by a customer for parking an automobile or other  
12 vehicle.

13 **Sec. 2.** RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are  
14 each amended to read as follows:

15 (1) A person is guilty of theft in the first degree if (~~he~~) the  
16 person commits theft of:

17 (a) Property or services which exceed(s) (~~one thousand five~~  
18 ~~hundred~~) two thousand dollars in value; or

19 (b) Property of any value taken from the person of another.

20 (2) Theft in the first degree is a class B felony.

21 **Sec. 3.** RCW 9A.56.040 and 1987 c 140 s 2 are each amended to read  
22 as follows:

23 (1) A person is guilty of theft in the second degree if (~~he~~) the  
24 person commits theft of:

25 (a) Property or services which exceed(s) (~~two hundred and fifty~~)  
26 one thousand dollars in value, but does not exceed (~~one thousand five~~  
27 ~~hundred~~) two thousand dollars in value; or

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

4 (c) An access device; or

5 (d) A motor vehicle, of a value less than (~~one thousand five~~  
6 ~~hundred~~) two thousand dollars; or

7 (e) A firearm, of a value less than (~~one thousand five hundred~~)  
8 two thousand dollars.

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

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

12 (1) A person is guilty of theft in the third degree if (~~he~~) the  
13 person commits theft of property or services which does not exceed  
14 (~~two hundred and fifty~~) one thousand dollars in value.

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

16 **Sec. 5.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read  
17 as follows:

18 (1) Any person who shall with intent to defraud, make, or draw, or  
19 utter, or deliver to another person any check, or draft, on a bank or  
20 other depository for the payment of money, knowing at the time of such  
21 drawing, or delivery, that he or she has not sufficient funds in, or  
22 credit with said bank or other depository, to meet said check or draft,  
23 in full upon its presentation, shall be guilty of unlawful issuance of  
24 bank check. The word "credit" as used herein shall be construed to  
25 mean an arrangement or understanding with the bank or other depository  
26 for the payment of such check or draft, and the uttering or delivery of  
27 such a check or draft to another person without such fund or credit to  
28 meet the same shall be prima facie evidence of an intent to defraud.

1 (2) Any person who shall with intent to defraud, make, or draw, or  
2 utter, or deliver to another person any check, or draft on a bank or  
3 other depository for the payment of money and who issues a stop-payment  
4 order directing the bank or depository on which the check is drawn not  
5 to honor said check, and who fails to make payment of money in the  
6 amount of the check or draft or otherwise arrange a settlement agreed  
7 upon by the holder of the check within twenty days of issuing said  
8 check or draft shall be guilty of unlawful issuance of a bank check.

9 (3) When any series of transactions which constitute unlawful  
10 issuance of a bank check would, when considered separately, constitute  
11 unlawful issuance of a bank check in an amount of (~~two hundred fifty~~)  
12 one thousand dollars or less because of value, and the series of  
13 transactions are a part of a common scheme or plan, the transactions  
14 may be aggregated in one count and the sum of the value of all of the  
15 transactions shall be the value considered in determining whether the  
16 unlawful issuance of a bank check is to be punished as a class C felony  
17 or a gross misdemeanor.

18 (4) Unlawful issuance of a bank check in an amount greater than  
19 (~~two hundred fifty~~) one thousand dollars is a class C felony.

20 (5) Unlawful issuance of a bank check in an amount of (~~two hundred~~  
21 ~~fifty~~) one thousand dollars or less is a gross misdemeanor and shall  
22 be punished as follows:

23 (a) The court shall order the defendant to make full restitution;

24 (b) The defendant need not be imprisoned, but the court shall  
25 impose a minimum fine of five hundred dollars. Of the fine imposed, at  
26 least fifty dollars shall not be suspended or deferred. Upon  
27 conviction for a second offense within any twelve-month period, the  
28 court may suspend or defer only that portion of the fine which is in  
29 excess of five hundred dollars.

1       **Sec. 6.** RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are  
2 each amended to read as follows:

3       (1) A person is guilty of possessing stolen property in the first  
4 degree if ((he)) the person possesses stolen property which exceeds  
5 ((~~one thousand five hundred~~)) two thousand dollars in value.

6       (2) Possessing stolen property in the first degree is a class B  
7 felony.

8       **Sec. 7.** RCW 9A.56.160 and 1987 c 140 s 4 are each amended to read  
9 as follows:

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

12       (a) ((He)) Possesses stolen property which exceeds ((~~two hundred~~  
13 ~~fifty~~)) one thousand dollars in value but does not exceed ((~~one~~  
14 ~~thousand five hundred~~)) two thousand dollars in value; or

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

17       (c) ((He)) Possesses a stolen access device; or

18       (d) ((He)) Possesses a stolen motor vehicle of a value less than  
19 ((~~one thousand five hundred~~)) two thousand dollars; or

20       (e) ((He)) Possesses a stolen firearm.

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

23       **Sec. 8.** RCW 9A.56.170 and 1975 1st ex.s. c 260 s 9A.56.170 are  
24 each amended to read as follows:

25       (1) A person is guilty of possessing stolen property in the third  
26 degree if ((he)) the person possesses stolen property which does not  
27 exceed ((~~two hundred fifty~~)) one thousand dollars in value.



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