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SECOND SUBSTITUTE SENATE BILL 5108

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State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Mulliken, Stevens, Morton, Honeyford, Swecker, McCaslin and Parlette)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to criminal trespass; amending RCW 9A.52.010,  
2 9A.52.070, and 9A.52.080; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature declares that the people of  
5 this state have a right to a reasonable expectation of privacy on their  
6 private property. The legislature finds, however, that over time  
7 statutory authority for entry onto private property has expanded to the  
8 point where the people no longer feel secure from the unreasonable  
9 intrusion of government officials and others who have been granted  
10 special immunity from prosecution for trespass. The legislature  
11 further finds that this unnecessary erosion of the right of privacy  
12 creates dangerous tension between the people of the state and their  
13 government and jeopardizes the orderly resolution of issues.

14 **Sec. 2.** RCW 9A.52.010 and 1985 c 289 s 1 are each amended to read  
15 as follows:

16 The following definitions apply in this chapter:

17 (1) "Premises" includes any building, dwelling, structure used for  
18 commercial aquaculture, or any real property;

1 (2) "Enter". The word "enter" when constituting an element or part  
2 of a crime, shall include the entrance of the person, or the insertion  
3 of any part of his or her body, or any instrument or weapon held in his  
4 or her hand and used or intended to be used to threaten or intimidate  
5 a person or to detach or remove property;

6 (3) "Enters or remains unlawfully". A person "enters or remains  
7 unlawfully" in or upon premises when he or she is not then licensed,  
8 invited, or otherwise privileged to so enter or remain.

9 A license or privilege to enter or remain in a building which is  
10 only partly open to the public is not a license or privilege to enter  
11 or remain in that part of a building which is not open to the public.  
12 A person who enters or remains upon unimproved and apparently unused  
13 land, which is neither fenced nor otherwise enclosed in a manner  
14 designed to exclude intruders, does so with license and privilege  
15 unless notice against trespass is personally communicated to him or her  
16 by the owner of the land or some other authorized person, or unless  
17 notice is given by posting in a conspicuous manner. Land that is used  
18 for commercial aquaculture or for growing an agricultural crop or  
19 crops, other than timber, is not unimproved and apparently unused land  
20 if a crop or any other sign of cultivation is clearly visible or if  
21 notice is given by posting in a conspicuous manner. Similarly, a field  
22 fenced in any manner is not unimproved and apparently unused land;

23 (4) "Data" means a representation of information, knowledge, facts,  
24 concepts, or instructions that are being prepared or have been prepared  
25 in a formalized manner and are intended for use in a computer;

26 (5) "Computer program" means an ordered set of data representing  
27 coded instructions or statements that when executed by a computer cause  
28 the computer to process data;

29 (6) "Access" means to approach, instruct, communicate with, store  
30 data in, retrieve data from, or otherwise make use of any resources of  
31 a computer, directly or by electronic means;

32 (7) "Law enforcement officer" means a "general authority Washington  
33 peace officer," or "specially commissioned Washington peace officer,"  
34 or "federal peace officer" as defined in RCW 10.93.020;

35 (8) "State public official or employee of the state" means any  
36 elected or appointed official or employee of a state agency or  
37 department.

1           **Sec. 3.** RCW 9A.52.070 and 1979 ex.s. c 244 s 12 are each amended  
2 to read as follows:

3           (1) A person is guilty of criminal trespass in the first degree if  
4 he or she knowingly enters or remains unlawfully in a building.

5           (2) For the purposes of this section, a state public official or  
6 employee of the state "enters or remains unlawfully" under the same  
7 circumstances as any other person, except that it is not unlawful for  
8 such an official or employee to enter or remain in a building:

9           (a) When necessary to do so in response to a law enforcement, fire,  
10 or medical emergency;

11           (b) When acting under authority of a warrant or other court order  
12 that was obtained after a reasonable attempt to notify the owner and  
13 after a reasonable attempt to obtain the consent of such owner or the  
14 resident agent of any nonresident owner to allow the official or the  
15 employee to enter or remain in the building; or

16           (c) When the state public official, employee of the state, or law  
17 enforcement officer enters or remains in a building in a manner and  
18 under circumstances that are lawful pursuant to statutory authority or  
19 applicable case law. Even if such legal authority exists, prior to  
20 carrying out the purpose for which entry is made, the official or  
21 employee making such entry or someone on his or her behalf shall make  
22 a reasonable attempt to notify the owner of the building as to the  
23 purpose and need for the entry.

24           (3) Criminal trespass in the first degree is a gross misdemeanor.

25           **Sec. 4.** RCW 9A.52.080 and 1979 ex.s. c 244 s 13 are each amended  
26 to read as follows:

27           (1) A person is guilty of criminal trespass in the second degree if  
28 he or she knowingly enters or remains unlawfully in or upon premises of  
29 another under circumstances not constituting criminal trespass in the  
30 first degree.

31           (2) For the purposes of this section, a state public official or  
32 employee of the state "enters or remains unlawfully" under the same  
33 circumstances as any other person, except that it is not unlawful for  
34 such an official or employee to enter or remain in or upon premises of  
35 another:

36           (a) When necessary to do so in response to a law enforcement, fire,  
37 or medical emergency;

1       (b) When acting under authority of a warrant or other court order  
2 that was obtained after a reasonable attempt to notify the owner and  
3 after a reasonable attempt to obtain the consent of such owner or the  
4 resident agent of any nonresident owner to allow the official or the  
5 employee to enter or remain in or upon premises of another; or

6       (c) When the state public official, employee of the state, or law  
7 enforcement officer enters or remains in or upon premises of another in  
8 a manner and under circumstances that are lawful pursuant to statutory  
9 authority or applicable case law. Even if such legal authority exists,  
10 prior to carrying out the purpose for which entry is made, the official  
11 or employee making such entry or someone on his or her behalf shall  
12 make a reasonable attempt to notify the owner of the property as to the  
13 purpose and need for the entry.

14       (3) Criminal trespass in the second degree is a misdemeanor.

15       NEW SECTION. Sec. 5. If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

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