

HB 2704 - S COMM AMD
By Committee on Judiciary

NOT ADOPTED 03/03/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9A.48.070 and 1983 1st ex.s. c 4 s 1 are each amended
4 to read as follows:

5 (1) A person is guilty of malicious mischief in the first degree if
6 he or she knowingly and maliciously:

7 (a) Causes physical damage to the property of another in an amount
8 exceeding (~~(one)~~) two thousand five hundred dollars;

9 (b) Causes an interruption or impairment of service rendered to the
10 public by physically damaging or tampering with an emergency vehicle or
11 property of the state, a political subdivision thereof, or a public
12 utility or mode of public transportation, power, or communication; or

13 (c) Causes an impairment of the safety, efficiency, or operation of
14 an aircraft by physically damaging or tampering with the aircraft or
15 aircraft equipment, fuel, lubricant, or parts.

16 (2) Malicious mischief in the first degree is a class B felony.

17 **Sec. 2.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read
18 as follows:

19 (1) A person is guilty of malicious mischief in the second degree
20 if he or she knowingly and maliciously:

21 (a) Causes physical damage to the property of another in an amount
22 exceeding (~~(two)~~) seven hundred fifty dollars; or

23 (b) Creates a substantial risk of interruption or impairment of
24 service rendered to the public, by physically damaging or tampering
25 with an emergency vehicle or property of the state, a political
26 subdivision thereof, or a public utility or mode of public
27 transportation, power, or communication.

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

1 **Sec. 3.** RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read
2 as follows:

3 (1) A person is guilty of malicious mischief in the third degree if
4 he or she:

5 (a) Knowingly and maliciously causes physical damage to the
6 property of another, under circumstances not amounting to malicious
7 mischief in the first or second degree; or

8 (b) Writes, paints, or draws any inscription, figure, or mark of
9 any type on any public or private building or other structure or any
10 real or personal property owned by any other person unless the person
11 has obtained the express permission of the owner or operator of the
12 property, under circumstances not amounting to malicious mischief in
13 the first or second degree.

14 ~~(2)((a)) Malicious mischief in the third degree ((under~~
15 ~~subsection (1)(a) of this section is a gross misdemeanor if the damage~~
16 ~~to the property is in an amount exceeding fifty dollars.~~

17 ~~(b) Malicious mischief in the third degree under subsection (1)(a)~~
18 ~~of this section is a misdemeanor if the damage to the property is fifty~~
19 ~~dollars or less.~~

20 ~~(c) Malicious mischief in the third degree under subsection (1)(b)~~
21 ~~of this section)) is a gross misdemeanor.~~

22 **Sec. 4.** RCW 9A.56.010 and 2002 c 97 s 1 are each amended to read
23 as follows:

24 The following definitions are applicable in this chapter unless the
25 context otherwise requires:

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

31 (2) "Appropriate lost or misdelivered property or services" means
32 obtaining or exerting control over the property or services of another
33 which the actor knows to have been lost or mislaid, or to have been
34 delivered under a mistake as to identity of the recipient or as to the
35 nature or amount of the property;

36 (3) "Beverage crate" means a plastic or metal box-like container
37 used by a manufacturer or distributor in the transportation or

1 distribution of individually packaged beverages to retail outlets, and
2 affixed with language stating "property of," "owned by
3," or other markings or words identifying ownership;

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

8 (5) "Deception" occurs when an actor knowingly:

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

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

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

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

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

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

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

29 (8) "Obtain control over" in addition to its common meaning, means:

30 (a) In relation to property, to bring about a transfer or purported
31 transfer to the obtainer or another of a legally recognized interest in
32 the property; or

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

35 (9) "Owner" means a person, other than the actor, who has
36 possession of or any other interest in the property or services
37 involved, and without whose consent the actor has no authority to exert
38 control over the property or services;

1 (10) "Parking area" means a parking lot or other property provided
2 by retailers for use by a customer for parking an automobile or other
3 vehicle;

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

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

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

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

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

24 (16) "Telecommunication device" means (a) any type of instrument,
25 device, machine, or equipment that is capable of transmitting or
26 receiving telephonic or electronic communications; or (b) any part of
27 such an instrument, device, machine, or equipment, or any computer
28 circuit, computer chip, electronic mechanism, or other component, that
29 is capable of facilitating the transmission or reception of telephonic
30 or electronic communications;

31 (17) "Telecommunication service" includes any service other than
32 subscription television service provided for a charge or compensation
33 to facilitate the transmission, transfer, or reception of a telephonic
34 communication or an electronic communication;

35 (18) Value. (a) "Value" means the market value of the property or
36 services at the time and in the approximate area of the criminal act.

37 (b) Whether or not they have been issued or delivered, written

1 instruments, except those having a readily ascertained market value,
2 shall be evaluated as follows:

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

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

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

18 (c) Except as provided in (f) of this subsection, whenever any
19 series of transactions which constitute theft, would, when considered
20 separately, constitute theft in the third degree because of value, and
21 said series of transactions are a part of a criminal episode or a
22 common scheme or plan, then the transactions may be aggregated in one
23 count and the sum of the value of all said transactions shall be the
24 value considered in determining the degree of theft involved.

25 For purposes of this subsection, "criminal episode" means a series
26 of thefts committed by the same person from one or more mercantile
27 establishments on three or more occasions within a five-day period.

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~~) seven hundred and fifty dollars.

37 (f) A series of thefts committed by the same person from one or
38 more mercantile establishments over a period of one hundred eighty days

1 may be aggregated in one count and the sum of the value of all of the
2 property shall be the value considered in determining the degree of the
3 theft;

4 (19) "Wrongfully obtains" or "exerts unauthorized control" means:

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

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

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

19 **Sec. 5.** RCW 9A.56.030 and 2005 c 212 s 2 are each amended to read
20 as follows:

21 (1) A person is guilty of theft in the first degree if he or she
22 commits theft of:

23 (a) Property or services which exceed(s) (~~one~~) two thousand five
24 hundred dollars in value other than a firearm as defined in RCW
25 9.41.010;

26 (b) Property of any value other than a firearm as defined in RCW
27 9.41.010 taken from the person of another; or

28 (c) A search and rescue dog, as defined in RCW 9.91.175, while the
29 search and rescue dog is on duty.

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

31 **Sec. 6.** RCW 9A.56.040 and 1995 c 129 s 12 are each amended to read
32 as follows:

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

35 (a) Property or services which exceed(s) (~~two~~) seven hundred and

1 fifty dollars in value other than a firearm as defined in RCW 9.41.010,
2 but does not exceed (~~one~~) two thousand five hundred dollars in value;
3 or

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

7 (c) An access device; or

8 (d) A motor vehicle, of a value less than (~~one~~) two thousand five
9 hundred dollars.

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

11 **Sec. 7.** RCW 9A.56.050 and 1998 c 236 s 4 are each amended to read
12 as follows:

13 (1) A person is guilty of theft in the third degree if he or she
14 commits theft of property or services which (a) does not exceed (~~two~~)
15 seven hundred and fifty dollars in value, or (b) includes ten or more
16 merchandise pallets, or ten or more beverage crates, or a combination
17 of ten or more merchandise pallets and beverage crates.

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

19 **Sec. 8.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read
20 as follows:

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

33 (2) Any person who shall with intent to defraud, make, or draw, or
34 utter, or deliver to another person any check, or draft on a bank or
35 other depository for the payment of money and who issues a stop-payment
36 order directing the bank or depository on which the check is drawn not

1 to honor (~~said~~) the check, and who fails to make payment of money in
2 the amount of the check or draft or otherwise arrange a settlement
3 agreed upon by the holder of the check within twenty days of issuing
4 (~~said~~) the check or draft (~~shall be~~) is guilty of unlawful issuance
5 of a bank check.

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

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

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

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

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

29 **Sec. 9.** RCW 9A.56.096 and 2003 c 53 s 77 are each amended to read
30 as follows:

31 (1) A person who, with intent to deprive the owner or owner's
32 agent, wrongfully obtains, or exerts unauthorized control over, or by
33 color or aid of deception gains control of personal property that is
34 rented or leased to the person, is guilty of theft of rental, leased,
35 or lease-purchased property.

36 (2) The finder of fact may presume intent to deprive if the finder
37 of fact finds either of the following:

1 (a) That the person who rented or leased the property failed to
2 return or make arrangements acceptable to the owner of the property or
3 the owner's agent to return the property to the owner or the owner's
4 agent within seventy-two hours after receipt of proper notice following
5 the due date of the rental, lease, or lease-purchase agreement; or

6 (b) That the renter or lessee presented identification to the owner
7 or the owner's agent that was materially false, fictitious, or not
8 current with respect to name, address, place of employment, or other
9 appropriate items.

10 (3) As used in subsection (2) of this section, "proper notice"
11 consists of a written demand by the owner or the owner's agent made
12 after the due date of the rental, lease, or lease-purchase period,
13 mailed by certified or registered mail to the renter or lessee at: (a)
14 The address the renter or lessee gave when the contract was made; or
15 (b) the renter or lessee's last known address if later furnished in
16 writing by the renter, lessee, or the agent of the renter or lessee.

17 (4) The replacement value of the property obtained must be utilized
18 in determining the amount involved in the theft of rental, leased, or
19 lease-purchased property.

20 (5)(a) Theft of rental, leased, or lease-purchased property is a
21 class B felony if the rental, leased, or lease-purchased property is
22 valued at (~~(one))~~ two thousand five hundred dollars or more.

23 (b) Theft of rental, leased, or lease-purchased property is a class
24 C felony if the rental, leased, or lease-purchased property is valued
25 at (~~(two))~~ seven hundred fifty dollars or more but less than (~~(one))~~
26 two thousand five hundred dollars.

27 (c) Theft of rental, leased, or lease-purchased property is a gross
28 misdemeanor if the rental, leased, or lease-purchased property is
29 valued at less than (~~(two))~~ seven hundred fifty dollars.

30 (6) This section applies to rental agreements that provide that the
31 renter may return the property any time within the rental period and
32 pay only for the time the renter actually retained the property, in
33 addition to any minimum rental fee, to lease agreements, and to lease-
34 purchase agreements as defined under RCW 63.19.010. This section does
35 not apply to rental or leasing of real property under the residential
36 landlord-tenant act, chapter 59.18 RCW.

1 **Sec. 10.** RCW 9A.56.150 and 1995 c 129 s 14 are each amended to
2 read as follows:

3 (1) A person is guilty of possessing stolen property in the first
4 degree if he or she possesses stolen property other than a firearm as
5 defined in RCW 9.41.010 which exceeds (~~(one)~~) two thousand five hundred
6 dollars in value.

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

9 **Sec. 11.** RCW 9A.56.160 and 1995 c 129 s 15 are each amended to
10 read as follows:

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

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

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

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

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

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

24 **Sec. 12.** RCW 9A.56.170 and 1998 c 236 s 2 are each amended to read
25 as follows:

26 (1) A person is guilty of possessing stolen property in the third
27 degree if he or she possesses (a) stolen property which does not exceed
28 (~~(two)~~) seven hundred fifty dollars in value, or (b) ten or more stolen
29 merchandise pallets, or ten or more stolen beverage crates, or a
30 combination of ten or more stolen merchandise pallets and beverage
31 crates.

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

34 NEW SECTION. **Sec. 13.** A new section is added to chapter 9A.48 RCW
35 to read as follows:

1 (1) When any series of acts which constitute malicious mischief
2 would, when considered separately, constitute malicious mischief in the
3 second degree or third degree because of the value of the damages, and
4 the series of acts are a part of a common scheme or plan, the acts may
5 be aggregated in one count and the sum of the value of the damages of
6 all of the acts shall be the value considered in determining the degree
7 of the malicious mischief involved.

8 (2) Any series of acts committed by the same person in different
9 counties that have been aggregated in one county may be prosecuted in
10 any county in which one of the acts occurred.

11 NEW SECTION. **Sec. 14.** A new section is added to chapter 9A.56 RCW
12 to read as follows:

13 Any series of thefts committed by the same person in different
14 counties that have been aggregated in one county may be prosecuted in
15 any county in which one of the thefts occurred.

16 **Sec. 15.** RCW 9A.82.050 and 2003 c 53 s 86 are each amended to read
17 as follows:

18 (1) A person who:

19 (a) Knowingly initiates, organizes, plans, finances, directs,
20 manages, or supervises the theft of property for sale to others((~~r~~
21 or));

22 (b) Who knowingly traffics in stolen property; or

23 (c) Commits a series of thefts from one or more mercantile
24 establishments over a period of one hundred eighty days that have been
25 aggregated in one count under section 14 of this act,
26 is guilty of trafficking in stolen property in the first degree.

27 (2) Trafficking in stolen property in the first degree is a class
28 B felony.

29 NEW SECTION. **Sec. 16.** Any series of acts of trafficking in stolen
30 property committed by the same person in different counties that have
31 been aggregated in one county may be prosecuted in any county in which
32 one of the acts occurred."

NOT ADOPTED 03/03/2006

1 On page 1, line 1 of the title, after "Relating to" strike the
2 remainder of the title and insert "crimes against personal property;
3 amending RCW 9A.48.070, 9A.48.080, 9A.48.090, 9A.56.010, 9A.56.030,
4 9A.56.040, 9A.56.050, 9A.56.060, 9A.56.096, 9A.56.150, 9A.56.160,
5 9A.56.170, and 9A.82.050; adding a new section to chapter 9A.48 RCW;
6 adding a new section to chapter 9A.56 RCW; creating a new section; and
7 prescribing penalties."

EFFECT: Permits the prosecution of aggregated acts of trafficking
in stolen property to be prosecuted in any county where at least one of
the acts occurred.

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