

2 **ESSB 5033** - S AMD - 581
3 By Senator Roach

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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 possesses a stolen check or draft; or

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

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

23 **Sec. 2.** RCW 9A.56.140 and 1987 c 140 s 3 are each amended to read
24 as follows:

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

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

32 (3) When a person (~~((not an issuer or agent thereof))~~) has in his or
33 her possession, or under his or her control, or stolen access devices
34 issued in the names of two or more persons, he (~~((shall be))~~) or she is
35 presumed to know that they are stolen.

1 (~~This~~) (4) When a person has in his or her possession, or under
2 his or her control, two or more stolen checks with different account
3 numbers, he or she is presumed to know that they are stolen.

4 (5) The presumptions (~~(may be rebutted)~~) in subsections (3) and (4)
5 of this section are rebuttable by evidence raising a reasonable
6 inference that the possession of such stolen access devices, checks, or
7 drafts was without knowledge that they were stolen.

8 **Sec. 3.** RCW 9A.56.010 and 1997 c 346 s 2 are each amended to read
9 as follows:

10 The following definitions are applicable in this chapter unless the
11 context otherwise requires:

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

17 (2) "By color or aid of deception" means that the deception
18 operated to bring about the obtaining of the property or services; it
19 is not necessary that deception be the sole means of obtaining the
20 property or services;

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

26 (4) "Check" and "draft" each have the meanings given in RCW 62A.3-
27 104;

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

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

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

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

35 (d) Transfers or encumbers property without disclosing a lien,
36 adverse claim, or other legal impediment to the enjoyment of the
37 property, whether that impediment is or is not valid, or is or is not
38 a matter of official record; or

1 (e) Promises performance which the actor does not intend to perform
2 or knows will not be performed(~~(-)~~);

3 (~~(+5)~~) (6) "Deprive" in addition to its common meaning means to
4 make unauthorized use or an unauthorized copy of records, information,
5 data, trade secrets, or computer programs;

6 (~~(+6)~~) (7) "Obtain control over" in addition to its common
7 meaning, means:

8 (a) In relation to property, to bring about a transfer or purported
9 transfer to the obtainer or another of a legally recognized interest in
10 the property; or

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

13 (~~(+7)~~) (8) "Wrongfully obtains" or "exerts unauthorized control"
14 means:

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

16 (b) Having any property or services in one's possession, custody or
17 control as bailee, factor, lessee, pledgee, renter, servant, attorney,
18 agent, employee, trustee, executor, administrator, guardian, or officer
19 of any person, estate, association, or corporation, or as a public
20 officer, or person authorized by agreement or competent authority to
21 take or hold such possession, custody, or control, to secrete,
22 withhold, or appropriate the same to his or her own use or to the use
23 of any person other than the true owner or person entitled thereto; or

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

29 (~~(+8)~~) (9) "Owner" means a person, other than the actor, who has
30 possession of or any other interest in the property or services
31 involved, and without whose consent the actor has no authority to exert
32 control over the property or services;

33 (~~(+9)~~) (10) "Receive" includes, but is not limited to, acquiring
34 title, possession, control, or a security interest, or any other
35 interest in the property;

36 (~~(+10)~~) (11) "Services" includes, but is not limited to, labor,
37 professional services, transportation services, electronic computer
38 services, the supplying of hotel accommodations, restaurant services,
39 entertainment, the supplying of equipment for use, and the supplying of

1 commodities of a public utility nature such as gas, electricity, steam,
2 and water;

3 ~~((11))~~ (12) "Stolen" means obtained by theft, robbery, or
4 extortion;

5 ~~((12))~~ (13) "Subscription television service" means cable or
6 encrypted video and related audio and data services intended for
7 viewing on a home television by authorized members of the public only,
8 who have agreed to pay a fee for the service. Subscription services
9 include but are not limited to those video services presently delivered
10 by coaxial cable, fiber optic cable, terrestrial microwave, television
11 broadcast, and satellite transmission;

12 ~~((13))~~ (14) "Telecommunication device" means (a) any type of
13 instrument, device, machine, or equipment that is capable of
14 transmitting or receiving telephonic or electronic communications; or
15 (b) any part of such an instrument, device, machine, or equipment, or
16 any computer circuit, computer chip, electronic mechanism, or other
17 component, that is capable of facilitating the transmission or
18 reception of telephonic or electronic communications;

19 ~~((14))~~ (15) "Telecommunication service" includes any service
20 other than subscription television service provided for a charge or
21 compensation to facilitate the transmission, transfer, or reception of
22 a telephonic communication or an electronic communication;

23 ~~((15))~~ (16) Value. (a) "Value" means the market value of the
24 property or services at the time and in the approximate area of the
25 criminal act.

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

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

34 (ii) The value of a ticket or equivalent instrument which evidences
35 a right to receive transportation, entertainment, or other service
36 shall be deemed the price stated thereon, if any; and if no price is
37 stated thereon, the value shall be deemed the price of such ticket or
38 equivalent instrument which the issuer charged the general public;

1 (iii) The value of any other instrument that creates, releases,
2 discharges, or otherwise affects any valuable legal right, privilege,
3 or obligation shall be deemed the greatest amount of economic loss
4 which the owner of the instrument might reasonably suffer by virtue of
5 the loss of the instrument.

6 (c) Whenever any series of transactions which constitute theft,
7 would, when considered separately, constitute theft in the third degree
8 because of value, and said series of transactions are a part of a
9 common scheme or plan, then the transactions may be aggregated in one
10 count and the sum of the value of all said transactions shall be the
11 value considered in determining the degree of theft involved.

12 (d) Whenever any person is charged with possessing stolen property
13 and such person has unlawfully in his possession at the same time the
14 stolen property of more than one person, then the stolen property
15 possessed may be aggregated in one count and the sum of the value of
16 all said stolen property shall be the value considered in determining
17 the degree of theft involved.

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

21 (~~(16)~~) (17) "Shopping cart" means a basket mounted on wheels or
22 similar container generally used in a retail establishment by a
23 customer for the purpose of transporting goods of any kind;

24 (~~(17)~~) (18) "Parking area" means a parking lot or other property
25 provided by retailers for use by a customer for parking an automobile
26 or other vehicle.

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

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

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

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

37 (c) An access device; or

1 (d) A motor vehicle, of a value less than one thousand five hundred
2 dollars; or
3 (e) A check or draft.
4 (2) Theft in the second degree is a class C felony.

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

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12 On page 1, line 1 of the title, after "drafts;" strike the
13 remainder of the title and insert "amending RCW 9A.56.160, 9A.56.140,
14 9A.56.010, and 9A.56.040; prescribing penalties; and declaring an
15 emergency."

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