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HOUSE BILL 3032

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Robertson and Grant

Read first time 01/27/98. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to protection of railroad property; amending RCW  
2 81.60.090 and 9A.52.010; adding new sections to chapter 81.60 RCW;  
3 adding a new section to chapter 9A.52 RCW; repealing RCW 81.60.070 and  
4 81.60.080; and prescribing penalties.

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

6 **Sec. 1.** RCW 81.60.090 and 1961 c 14 s 81.60.090 are each amended  
7 to read as follows:

8 Every person who (~~shall~~) buys or receives any of the (~~property~~)  
9 railroad freight described in (~~RCW 81.60.080~~) section 2 of this act,  
10 knowing the same to have been stolen, (~~shall be~~) is guilty of a class  
11 C felony(~~, and upon conviction thereof shall be punished as provided~~  
12 ~~in RCW 81.60.080~~) punishable according to chapter 9A.20 RCW.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 81.60 RCW  
14 to read as follows:

15 Every person who willfully and with intent to permanently deprive  
16 the owner, takes or removes railroad freight from any freight car is  
17 guilty of a class C felony punishable according to chapter 9A.20 RCW.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 81.60 RCW  
2 to read as follows:

3        (1) Every person who commits an act which may cause damage to  
4 railroad property or bodily injury to another by:

5            (a) Placing an object in the path of a locomotive or train;

6            (b) Vandalizing railroad property;

7            (c) Shooting a firearm at a train or throwing a dangerous object  
8 onto a railroad right of way;

9            (d) Impairing the operation of any railroad signal system without  
10 consent of the railroad carrier involved;

11           (e) Interfering or tampering with in any way any switch, frog,  
12 rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment,  
13 structure, or appliance pertaining to or connected with any railroad  
14 carrier, without consent of the railroad carrier involved; or

15           (f) Taking, stealing, removing, changing, adding to, altering, or  
16 in any manner interfering with any journal bearing, brass, waste,  
17 packing, triple valve, pressure cock, brake, air hose, or any other  
18 part of the operating mechanism of any locomotive, engine, tender,  
19 coach, car, caboose, or motor car used or capable of being used by any  
20 railroad carrier in this state without the consent of the railroad  
21 carrier;

22 is guilty of an offense as provided for in subsections (2) and (3) of  
23 this section.

24        (2) Every person who commits an act in violation of subsection (1)  
25 of this section with reckless disregard for railroad property or the  
26 safety of others, is guilty of:

27           (a) A misdemeanor if railroad property damage does not exceed five  
28 hundred dollars and bodily injury to another does not result. Upon  
29 conviction, the person must pay the railroad carrier involved for any  
30 railroad property damaged. Additionally, if community service is  
31 available in the jurisdiction where the offense is committed, the  
32 person must perform community service for not more than one hundred  
33 twenty hours, and upon successful completion of community service, any  
34 portion of the term of confinement or fine may be waived by the court;

35           (b) A class C felony if railroad property damage exceeds five  
36 hundred dollars or bodily injury to another results. Upon conviction,  
37 in addition to the sentence imposed, the person may be required to pay  
38 the railroad carrier involved for the cost to repair any railroad  
39 property damaged;

1 (c) A class B felony if serious bodily injury or death results.  
2 Upon conviction, in addition to the sentence imposed, the person may be  
3 required to pay the railroad carrier involved for the cost to repair  
4 any railroad property damaged;

5 (3) Every person who commits an act in violation of subsection (1)  
6 of this section with willful intent to damage railroad property or  
7 endanger the safety of another, is guilty of:

8 (a) A class C felony if railroad property damage does not exceed  
9 five hundred dollars and no bodily injury to another results. Upon  
10 conviction, in addition to the sentence imposed, the person is required  
11 to pay the railroad carrier involved for the cost to repair any  
12 railroad property damaged;

13 (b) A class B felony if railroad property damage exceeds five  
14 hundred dollars or bodily injury or serious bodily injury to another  
15 results. Upon conviction, in addition to the sentence imposed, the  
16 person may be required to pay the railroad carrier involved for the  
17 cost to repair any railroad property damaged;

18 (c) A class A felony if death results. Upon conviction, in  
19 addition to the sentence imposed, the person may be required to pay the  
20 railroad carrier involved for the cost to repair any railroad property  
21 damaged.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 81.60 RCW  
23 to read as follows:

24 The definitions in this section apply throughout RCW 81.60.090 and  
25 sections 2 through 4 of this act unless the context clearly requires  
26 otherwise.

27 (1) "Bodily injury" means:

28 (a) A cut, abrasion, bruise, burn, or disfigurement;

29 (b) Physical pain;

30 (c) Illness;

31 (d) Impairment of the function of a bodily member, organ, or mental  
32 faculty; or

33 (e) Any other injury to the body, no matter how temporary.

34 (2) "Railroad" means any form of nonhighway ground transportation  
35 that runs on rails or electromagnetic guideways, including:

36 (a) Commuter or other short-haul railroad passenger service in a  
37 metropolitan or suburban area; and

1 (b) High-speed ground transportation systems that connect  
2 metropolitan areas;

3 but does not include rapid transit operations in an urban area that are  
4 not connected to the general railroad system of transportation;

5 (3) "Railroad carrier" means a person providing railroad  
6 transportation.

7 (4) "Railroad property" means all property owned, leased, or  
8 operated by a railroad carrier, but does not include administrative  
9 buildings, administrative offices, or administrative office equipment.

10 (5) "Right of way" means the track or roadbed owned, leased, or  
11 operated by a railroad carrier which is located on either side of its  
12 tracks and which is readily recognizable to a reasonable person as  
13 being railroad property or is reasonably identified as such by fencing  
14 or appropriate signs.

15 (6) "Serious bodily injury" means bodily injury which involves:

16 (a) A substantial risk of death;

17 (b) Extreme physical pain;

18 (c) Protracted and obvious disfigurement; or

19 (d) Protracted loss or impairment of the function of a bodily  
20 member, organ, or mental faculty.

21 (7) "Yard" means a system of parallel tracks, crossovers, and  
22 switches where railroad cars are switched and made up into trains, and  
23 where railroad cars, locomotives, and other rolling stock are kept when  
24 not in use or when awaiting repairs.

25 NEW SECTION. **Sec. 5.** The following acts or parts of acts are each  
26 repealed:

27 (1) RCW 81.60.070 and 1992 c 7 s 60 & 1961 c 14 s 81.60.070; and

28 (2) RCW 81.60.080 and 1992 c 7 s 61 & 1961 c 14 s 81.60.080.

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

31 The following definitions apply in this chapter:

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

34 (2) "Enter". The word "enter" when constituting an element or part  
35 of a crime, shall include the entrance of the person, or the insertion  
36 of any part of his body, or any instrument or weapon held in his hand

1 and used or intended to be used to threaten or intimidate a person or  
2 to detach or remove property;

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

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

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

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

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

29 (7) "Passengers" means persons who are traveling by train with  
30 lawful authority and who do not participate in the train's operation.  
31 The term "passengers" does not include stowaways;

32 (8) "Railroad" means any form of nonhighway ground transportation  
33 that runs on rails or electromagnetic guideways, including:

34 (a) Commuter or other short-haul railroad passenger service in a  
35 metropolitan or suburban area; and

36 (b) High-speed ground transportation systems that connect  
37 metropolitan areas;

38 but does not include rapid transit operations in an urban area that are  
39 not connected to the general railroad system of transportation;

1       (9) "Railroad carrier" means a person providing railroad  
2 transportation;

3       (10) "Railroad property" means all property owned, leased, or  
4 operated by a railroad carrier, but does not include administrative  
5 buildings, administrative offices, or administrative office equipment;

6       (11) "Right of way" means the track or roadbed owned, leased, or  
7 operated by a railroad carrier which is located on either side of its  
8 tracks and which is readily recognizable to a reasonable person as  
9 being railroad property or is reasonably identified as such by fencing  
10 or appropriate signs;

11       (12) "Yard" means a system of parallel tracks, crossovers, and  
12 switches where railroad cars are switched and made up into trains, and  
13 where railroad cars, locomotives, and other rolling stock are kept when  
14 not in use or when awaiting repairs.

15       NEW SECTION. Sec. 7. A new section is added to chapter 9A.52 RCW  
16 to read as follows:

17       (1) Every person who, without lawful authority or the railroad  
18 carrier's consent, enters or remains upon railroad property except for  
19 the purpose of crossing such property at a public highway or other  
20 authorized crossing is guilty of a misdemeanor.

21       (2) Every person who, without lawful authority or the railroad  
22 carrier's consent, knowingly rides on the outside or inside of a train  
23 is guilty of a misdemeanor.

24       (3) Subsections (1) and (2) of this section do not apply to:

25       (a) Passengers on trains, or employees of a railroad carrier while  
26 engaged in the performance of official duties;

27       (b) Police officers, fire fighters, peace officers, and emergency  
28 response personnel, while engaged in the performance of their official  
29 duties;

30       (c) A person going upon the railroad property in an emergency to  
31 rescue a person or animal or to remove an object that the person  
32 reasonably believes to pose an imminent threat to life or limb;

33       (d) A person on the station ground or in the depot of the railroad  
34 carrier as a passenger, or for the purpose of transacting business;

35       (e) A person, or the person's family, invitee, employee, or  
36 independent contractor going upon a railroad's right of way for the  
37 purpose of crossing at a private crossing site approved by the railroad

1 carrier to obtain access to a land that the person owns, leases, or  
2 operates;

3 (f) A person having written permission from the railroad carrier to  
4 go upon the property in question;

5 (g) Representatives of the state department of transportation or  
6 state utilities and transportation commission, the federal railroad  
7 administration, or the national transportation safety board while  
8 engaged in official duties.

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