
ENGROSSED HOUSE BILL 1085

State of Washington

56th Legislature

1999 Regular Session

By Representatives Dunn, Conway, Lambert and Esser

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1 AN ACT Relating to possession of stolen checks or drafts; amending
2 RCW 9A.56.160, 9A.56.140, 9A.56.010, 9A.56.110, and 9A.56.040;
3 prescribing penalties; and declaring an emergency.

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

5 **Sec. 1.** RCW 9A.56.160 and 1995 c 129 s 15 are each amended to read
6 as follows:

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

9 (a) He or she possesses stolen property other than a firearm as
10 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in
11 value but does not exceed one thousand five hundred dollars in value;
12 or

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

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

16 (d) He or she is not a financial institution and possesses a stolen
17 check or draft; or

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

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

3 **Sec. 2.** RCW 9A.56.140 and 1998 c 236 s 3 are each amended to read
4 as follows:

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

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

12 (3) When a person has in his or her possession, or under his or her
13 control, stolen access devices issued in the names of two or more
14 persons, or ten or more stolen merchandise pallets, or ten or more
15 stolen beverage crates, or a combination of ten or more stolen
16 merchandise pallets and beverage crates, as defined under RCW
17 9A.56.010, he or she is presumed to know that they are stolen.

18 (4) When a person other than a financial institution has in his or
19 her possession, or under his or her control, two or more stolen checks
20 with different account numbers, he or she is presumed to know that they
21 are stolen.

22 (5) The presumptions in subsections (3) and (4) of this section
23 (~~is~~) are rebuttable by evidence raising a reasonable inference that
24 the possession of such stolen access devices, merchandise pallets,
25 (~~or~~) beverage crates, checks, or drafts was without knowledge that
26 they were stolen.

27 **Sec. 3.** RCW 9A.56.010 and 1998 c 236 s 1 are each amended to read
28 as follows:

29 The following definitions are applicable in this chapter unless the
30 context otherwise requires:

31 (1) "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 (2) "By color or aid of deception" means that the deception
37 operated to bring about the obtaining of the property or services; it

1 is not necessary that deception be the sole means of obtaining the
2 property or services;

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

8 (4) "Check" and "draft" each have the meanings given in RCW
9 62A.3-104;

10 (5) "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)~~) (6) "Deprive" in addition to its common meaning means to
24 make unauthorized use or an unauthorized copy of records, information,
25 data, trade secrets, or computer programs;

26 (~~(+6)~~) (7) "Financial institution" means a business that as a
27 regular aspect of its operation participates in the check collection or
28 check clearing process, including but not limited to a person doing
29 business under the laws of the state of Washington, any other state or
30 territory of the United States, or the United States relating to
31 commercial banks, bank holding companies, savings banks, trust
32 companies, savings and loan associations, credit unions, clearing
33 houses, and the affiliates, subsidiaries, and service corporations of
34 them. "Financial institution" also means a person or entity employed
35 by or acting on behalf of a financial institution, when acting in that
36 capacity.

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

1 (a) In relation to property, to bring about a transfer or purported
2 transfer to the obtainer or another of a legally recognized interest in
3 the property; or

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

6 (~~(7)~~) (9) "Wrongfully obtains" or "exerts unauthorized control"
7 means:

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

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

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

22 (~~(8)~~) (10) "Merchandise pallet" means a wood or plastic carrier
23 designed and manufactured as an item on which products can be placed
24 prior to or during transport to retail outlets, manufacturers, or
25 contractors, and affixed with language stating "property of . . .,"
26 "owned by . . .," or other markings or words identifying ownership;

27 (~~(9)~~) (11) "Beverage crate" means a plastic or metal box-like
28 container used by a manufacturer or distributor in the transportation
29 or distribution of individually packaged beverages to retail outlets,
30 and affixed with language stating "property of," "owned by
31," or other markings or words identifying ownership;

32 (~~(10)~~) (12) "Owner" means a person, other than the actor, who has
33 possession of or any other interest in the property or services
34 involved, and without whose consent the actor has no authority to exert
35 control over the property or services;

36 (~~(11)~~) (13) "Receive" includes, but is not limited to, acquiring
37 title, possession, control, or a security interest, or any other
38 interest in the property;

1 (~~(12)~~) (14) "Services" includes, but is not limited to, labor,
2 professional services, transportation services, electronic computer
3 services, the supplying of hotel accommodations, restaurant services,
4 entertainment, the supplying of equipment for use, and the supplying of
5 commodities of a public utility nature such as gas, electricity, steam,
6 and water;

7 (~~(13)~~) (15) "Stolen" means obtained by theft, robbery, or
8 extortion;

9 (~~(14)~~) (16) "Subscription television service" means cable or
10 encrypted video and related audio and data services intended for
11 viewing on a home television by authorized members of the public only,
12 who have agreed to pay a fee for the service. Subscription services
13 include but are not limited to those video services presently delivered
14 by coaxial cable, fiber optic cable, terrestrial microwave, television
15 broadcast, and satellite transmission;

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

23 (~~(16)~~) (18) "Telecommunication service" includes any service
24 other than subscription television service provided for a charge or
25 compensation to facilitate the transmission, transfer, or reception of
26 a telephonic communication or an electronic communication;

27 (~~(17)~~) (19) Value. (a) "Value" means the market value of the
28 property or services at the time and in the approximate area of the
29 criminal act.

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

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

38 (ii) The value of a ticket or equivalent instrument which evidences
39 a right to receive transportation, entertainment, or other service

1 shall be deemed the price stated thereon, if any; and if no price is
2 stated thereon, the value shall be deemed the price of such ticket or
3 equivalent instrument which the issuer charged the general public;

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

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

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

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

24 ~~((18))~~ (20) "Shopping cart" means a basket mounted on wheels or
25 similar container generally used in a retail establishment by a
26 customer for the purpose of transporting goods of any kind;

27 ~~((19))~~ (21) "Parking area" means a parking lot or other property
28 provided by retailers for use by a customer for parking an automobile
29 or other vehicle.

30 **Sec. 4.** RCW 9A.56.110 and 1983 1st ex.s. c 4 s 2 are each amended
31 to read as follows:

32 "Extortion" means knowingly to obtain or attempt to obtain by
33 threat property or services of the owner, ~~((as defined in RCW~~
34 ~~9A.56.010(8))~~) and specifically includes sexual favors.

35 **Sec. 5.** RCW 9A.56.040 and 1995 c 129 s 12 are each amended to read
36 as follows:

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

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

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

9 (c) An access device; or

10 (d) A motor vehicle, of a value less than one thousand five hundred
11 dollars; or

12 (e) A check or draft.

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

14 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 immediately.

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