
SUBSTITUTE SENATE BILL 5108

State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 02/26/03.

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.** (1) The legislature declares that the people
5 of this state have a right to a reasonable expectation of privacy on
6 their 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 (2) The legislature intends, with certain limited and necessary
15 exceptions, that all persons, whether government employees or private
16 persons, be made subject to the same restrictions with regard to
17 entering upon the property of another. It is the intent of the
18 legislature to eliminate special immunities from prosecution for
19 trespass, whether those immunities have been legislatively granted to

1 government or to private persons or entities. It is not the intent of
2 the legislature to change the elements of the crime of trespass, but
3 only to make all persons subject to the same law with exceptions from
4 uniform application of that law only for the kinds of entries onto
5 property by law enforcement officers that are lawful as of the
6 effective date of this act and those entries onto property by
7 government personnel that are specified in this act.

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

10 The following definitions apply in this chapter:

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

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

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

21 A license or privilege to enter or remain in a building which is
22 only partly open to the public is not a license or privilege to enter
23 or remain in that part of a building which is not open to the public.
24 A person who enters or remains upon unimproved and apparently unused
25 land, which is neither fenced nor otherwise enclosed in a manner
26 designed to exclude intruders, does so with license and privilege
27 unless notice against trespass is personally communicated to him or her
28 by the owner of the land or some other authorized person, or unless
29 notice is given by posting in a conspicuous manner. Land that is used
30 for commercial aquaculture or for growing an agricultural crop or
31 crops, other than timber, is not unimproved and apparently unused land
32 if a crop or any other sign of cultivation is clearly visible or if
33 notice is given by posting in a conspicuous manner. Similarly, a field
34 fenced in any manner is not unimproved and apparently unused land;

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

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

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

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

10 (8) "State public official or employee of the state" means any
11 elected or appointed official or employee of a state agency or
12 department.

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

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

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

21 (a) When necessary to do so in response to a fire or a medical
22 emergency;

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

28 (c) When the official or employee is a law enforcement officer
29 entering or remaining in a building in a manner and under circumstances
30 that are lawful pursuant to statutory authority elsewhere in this code
31 or applicable case law; or

32 (d) When the official or employee is acting under the express
33 statutory authority granted to such official or employee elsewhere in
34 this code to enter and remain in a building. Even if such express
35 statutory authority exists, prior to carrying out the statutory purpose
36 for which entry is made, the official or employee making such entry or
37 someone on his or her behalf shall make a reasonable attempt to notify

1 the owner of the building as to the purpose and need for the entry.
2 Civil liability for negligence shall lie in any case in which entry and
3 any of the activities connected therewith are not undertaken with
4 reasonable care.

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

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

8 (1) A person is guilty of criminal trespass in the second degree if
9 he or she knowingly enters or remains unlawfully in or upon premises of
10 another under circumstances not constituting criminal trespass in the
11 first degree.

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

17 (a) When necessary to do so in response to a fire or a medical
18 emergency;

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

24 (c) When the official or employee is a law enforcement officer
25 entering or remaining in or upon premises of another in a manner and
26 under circumstances that are lawful pursuant to statutory authority
27 elsewhere in this code or applicable case law; or

28 (d) When the official or employee is acting under the express
29 statutory authority granted to such official or employee elsewhere in
30 this code to enter and remain in or upon premises of another. Even if
31 such express statutory authority exists, prior to carrying out the
32 statutory purpose for which entry is made, the official or employee
33 making such entry or someone on his or her behalf shall make a
34 reasonable attempt to notify the owner of the property as to the
35 purpose and need for the entry. Civil liability for negligence shall
36 lie in any case in which entry and any of the activities connected
37 therewith are not undertaken with reasonable care.

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

2 NEW SECTION. **Sec. 5.** If any provision of this act or its
3 application to any person or circumstance is held invalid, the
4 remainder of the act or the application of the provision to other
5 persons or circumstances is not affected.

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