

SENATE BILL REPORT

ESHB 2353

As Reported by Senate Committee On:
Law & Justice, February 28, 2014

Title: An act relating to actions for trespass upon a business owner's premises.

Brief Description: Concerning actions for trespass upon a business owner's premises.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Rodne and Haler).

Brief History: Passed House: 2/17/14, 95-2.

Committee Activity: Law & Justice: 2/26/14, 2/28/14 [DP, w/oRec].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Kline, Ranking Member; Pearson, Pedersen and Roach.

Minority Report: That it be referred without recommendation.

Signed by Senator Darneille.

Staff: Kelly Walsh (786-7755)

Background: Under the common law, trespass is an intrusion onto the property of another that interferes with the other person's right to exclusive possession of the property. A person is liable for trespass, even if no damage is caused, if the person, without a privilege to do so, intentionally:

- enters land in the possession of the another, or causes a thing or a third person to do so;
- remains on the land; or
- fails to remove from the land a thing which the person is under a duty to remove.

Statutory trespass actions have been established that authorize treble damages in certain cases. When a person willfully trespasses on another's land and injures or removes trees, timber, or shrubs, the owner of the land may bring an action for treble damages. A person who wrongfully causes waste or injury to personal property or improvements on another person's land is liable to the injured party for treble damages. The person acts wrongfully

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

if the person intentionally and unreasonably commits the act while knowing that the person lacks authority to act. In addition to treble damages, the person must pay the injured party's reasonable costs and attorney fees.

Under the criminal laws, a person may be guilty of criminal trespass if the person knowingly enters or remains unlawfully in a building or in or upon the premises of another. A person enters or remains unlawfully in or upon premises when the person is not then licensed, invited, or otherwise privileged to enter in or remain upon the premises.

Summary of Bill: A business owner has a cause of action for trespass against a person who intentionally enters or remains unlawfully upon the business owner's premises in violation of a written notice, provided by the business owner to the person, notifying the person that:

- the person is prohibited from reentering the premises; and
- any reentry of the person onto the premises in violation of the notice constitutes trespass and is subject to the penalty established in the act.

The business owner may recover actual damages, or may elect to recover statutory damages in the amount of \$250. The cause of action does not apply against an employee or government contractor performing duties pursuant to law on behalf of a governmental entity.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is intended to deal with the issue of individuals who have been repeatedly challenging to the business and its employees. Often times these people have stolen from the business in the past and as a result are not welcome in the store. Business owners would like to be able to civilly address their presence on the property. Grocers have large volumes of people in and out of the store every day and problems are bound to arise. These problems do not always rise to the level of needing law enforcement involvement, but the owner needs a tool to provide some deterrence without involving police. This is a priority for retailers.

CON: This is a solution in search of a problem. It is unnecessary and will do more harm than good. There are already criminal penalties for this and a common law right of action for trespass. When you move law enforcement responsibilities to the businesses themselves it invites abuse. If faced with a civil law suit, the person will not get an attorney as they would if charged with criminal trespass. There is no evidence that this will have any deterrent effect. However, there is evidence that these types of laws invite disproportionate enforcement based on race and economic status.

OTHER: Significant concerns were raised by the bar association in the House and those were addressed by the amendments. The biggest concern was creating a new cause of action

that imposed liability without a knowledge or intent component, which is now contained in the bill.

Persons Testifying: PRO: Holly Chisa, NW Grocery Assn.; Mark Johnson, WA Retail Assn.; Carolyn Logue, WA Food Industry Assn.

CON: Shankar Narayan, American Civil Liberties Union of WA.

OTHER: Kathryn Leathers, Real Property Section, WA State Bar Assn.