

HOUSE BILL REPORT

ESHB 2353

As Passed House:
February 17, 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:

Committee Activity:

Judiciary: 1/23/14, 1/30/14 [DPS].

Floor Activity:

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

Brief Summary of Engrossed Substitute Bill

- Creates a cause of action for trespass for a business owner against a person who intentionally enters or remains unlawfully upon the business owner's premises in violation of a written notice not to reenter the premises.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Edie Adams (786-7180).

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: (1) enters land in the possession of the another, or causes a thing or a third

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person to do so; or (2) remains on the land; or (3) fails to remove from the land a thing which he 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" if the person intentionally and unreasonably commits the act while knowing that he or she 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 he or she 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 Engrossed Substitute 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: (1) he or she is prohibited from reentering the premises; and (2) 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.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will provide an additional tool for business owners to enforce their property rights. Trespass is a common problem faced by business owners. They have issues with shoplifters returning after they have been notified that they are not allowed on the property. They also have problems with people bringing pets into their stores when not allowed, and with aggressive petition signature gatherers who do not comply with the rules established by the business. Trespass is a misdemeanor offense and not a high priority for law enforcement, and there is no meaningful recourse under the civil law. This bill will provide a tool for business owners to address the recurring trespass problems that they face, similar to the civil action for shoplifting. Adding a requirement of written notice before the

trespass penalty is imposed and changing the damages to "up to" the specified amount would more closely follow the shoplifting statute.

(With concerns) The bill creates a new cause of action that imposes liability without any proof of intent or knowledge. It is not appropriate to impose liability without some showing that the person intentionally or knowingly trespassed. The damages amount of \$2,500 seems excessive and should be lowered. The bill does not define "business owner" so there is some ambiguity as to the circumstances where this will apply. The bill allows an award of attorneys' fees to the prevailing party, but the general public policy in this state is that each side pays for its own attorneys' fees.

(Opposed) None.

Persons Testifying: (In support) Representative Rodne, prime sponsor; Mark Johnson, Washington Retail Association; Jan Gee, Washington Food Industry Association; and Holly Chisa, Northwest Grocery Association.

(With concerns) Kathryn Leathers, Real Property Section of the Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.