



719 SW Van Buren St., Ste. 222, Topeka KS 66603
Phone: 785-232-7756
Fax: 785-232-7730
www.ksaj.org

To: Senator Tim Owens, Chairman
Members of the Senate Judiciary Committee

From: Callie Jill Denton
Director of Public Policy

Date: March 6, 2012

RE: Sub for HB 2106 Concerning trespass and liability; exceptions (OPPOSED)

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes Sub for HB 2106. Instead of creating clarity, Sub for HB 2106 will disrupt Kansas' well-established case law regarding the rights and duties of landowners. Passage of Sub for HB 2106 will conflict with well-established case law. Inevitably, Sub for HB 2106 will create confusion with the public and in the courts, not simplicity.

Kansas' law of trespass has been settled through reported case decisions, and the courts have adopted sections of the *Restatement 2nd of the Law of Torts*, published by the American Law Institute (ALI). Proponents of Sub for HB 2106 oppose the latest edition of the *Restatement 3rd*. Although the *Restatement 3rd* does not have the force of law, proponents seek to preempt Kansas courts from being influenced by it in any way.

Proponents' concern is unfounded. Kansas case law and precedent carry greater weight with the courts. There is no indication that Kansas courts are deviating from established Kansas case law or are relying on the *Restatement 3rd*.

A greater concern is the confusion that Sub for HB 2106 will cause, if enacted. It is highly doubtful that all nuances of Kansas' case law relating to trespass may be so seamlessly codified in Sub for HB 2106. Much of Kansas' case law relating to trespass will be ambiguous under Sub for HB 2106.

Sub for HB 2106 relies on Kansas Pattern Jury Instructions (PIK) for certain definitions. However, PIK is not a codified statement of the law; in a particular case, PIK instructions may be modified to reflect the facts of a particular case before the jury is instructed. Reflecting PIK in Sub for HB

2106 is not reassurance that current Kansas law, including case law, has been "frozen" and the status quo has truly been preserved.

KsAJ respectfully requests that the Senate Judiciary Committee take no action on Sub for HB 2106.