

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 160**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 160 would provide that a possessor of real property, including an owner, lessee, or other occupant, or an agent of such person or entity, does not owe a duty of care to trespassers, except to refrain from willfully or wantonly injuring the trespasser. Further, possessors would be allowed to use justifiable force to repel a trespasser who has entered the land or a building with the intent to commit a crime. However, the bill would provide that a possessor of real property could be liable for physical injury or death to a trespasser if:

- The trespasser was a child;
- The injury resulted from a dangerous artificial condition on the land;
- The possessor knows or, in the exercise of ordinary care, should know that young children are likely to trespass upon the land;
- The possessor knows or, in the exercise of ordinary care, should know the condition exists and involves an unreasonable risk of bodily harm to young children;
- The injured child, because of the child's youth, did not discover the condition or realize the risk

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

involved in intermeddling with the condition or of coming within the area made dangerous by it; and

- A possessor, using ordinary care, would not have maintained the condition when taking into consideration the usefulness of the condition and whether the expense or inconvenience to the possessor in remedying the condition would be slight in comparison to the risk of harm to children.

The bill would not create or increase the liability of any possessor of real property or affect any immunities from or defenses to liability established by another state law or available at common law to which a possessor would be entitled under circumstances not addressed by the bill.

Finally, the bill would clarify that current law limiting the liability of landowners who make land and water areas available to the public for recreational purposes would not be construed as granting an easement over the land by the owner or by adverse possession.

Background

SB 160 was introduced in 2011 as a bill regarding collection of child support payments. In the 2011 Senate Judiciary Committee, Douglas County District Court Trustee Katy Nitcher appeared in support of the bill.

At the request of Trustee Nitcher, the Senate Committee amended the bill to add a KSA 23-495 provision to the definition of “debtor” so that the statutory language would be consistent. The Committee recommended the bill be passed as amended.

The 2012 House Judiciary Committee recommended a substitute bill for HB 160 be passed, replacing its text with the text of HB 2106.

The fiscal note on SB 160, as introduced, states the Office of Judicial Administration and Social and Rehabilitation Services indicate the bill would have no fiscal effect on their operations.

Background of HB 2106

In the 2012 House Judiciary Committee, representatives of the Kansas Chamber, the Kansas Association of Realtors, and the National Federation of Independent Business offered testimony in support of HB 2106. A representative of the Kansas Association for Justice appeared as an opponent. The Committee amended the bill by adopting a substitute bill.

The House Committee of the Whole amended the bill to clarify that current law limiting the liability of landowners who make land and water areas available to the public for recreational purposes would not be construed as granting an easement over the land by the owner or adverse possession. On emergency final action, the House passed the substitute bill as amended by a vote of 119-5.

The fiscal note indicates passage of HB 2106, as introduced, has the potential of increasing litigation, but the precise impact is unknown. The Office of Judicial Administration indicates the cost would be accommodated within existing resources.