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TO: Representative Susan Humphries, Chairperson
Representative Laura Williams, Vice-Chairperson
Representative Dan Osman, Ranking Minority Member
Members of the House Committee on Judiciary

FROM: Jeffrey A. Wilson, Individually and on behalf of the Kansas Trial Lawyers Association

DATE: March 10, 2026

RE: **SB 463 As Amended (OPPOSE)**

Chairperson Humphries, Vice-Chair Williams, Ranking Minority Member Osman, and Members of the Committee:

Thank you for the opportunity to provide testimony in strong opposition to Senate Bill 463 As Amended. My name is Jeffrey A. Wilson. I am a practicing attorney who has taken 13 cases to trial since 2021. I am testifying today on behalf of the Kansas Trial Lawyers Association to urge you to reject the current version of the bill and adopt the substitute bill that we propose.

To be clear, no legislation is needed in Kansas. Criminals do not recover damages in civil claims for injuries sustained during the course of their wrongdoing. However, our substitute bill is narrowly tailored to strictly bar recovery for those trespassing with the intent to commit a crime such as burglary or theft. It would address the concerns expressed in the Senate, and the goals of the proponent, without destabilizing the entirety of Kansas tort law.

SB 463 As Amended is being sold to this Committee as a common-sense measure to stop "porch pirates" and trespassing criminals from recovering civil damages. As an attorney who litigates these cases, I must be direct: this narrative is a legal fiction. Under well-settled Kansas common law, a property owner owes no duty of ordinary care to a trespasser; their only duty is to refrain from willfully, wantonly, or recklessly injuring them (but even then, there are robust protections of self-defense and similar doctrines). If a burglar trips on a loose floorboard or a porch pirate slips on an icy step, their claims are subject to immediate dismissal under existing Kansas law because the homeowner owed them no duty to repair the floorboard or salt the steps.

Kansas does not need a new law to protect homeowners from burglars. Burglars never have and never will recover against a homeowner for slipping on icy steps in Kansas. Even the Senate

amendments to SB 463 do not improve it or save it from being a Trojan Horse. It uses the universally despised "porch pirate" to sneak in massive, unworkable changes to Kansas negligent security and premises liability law that will shield unsafe businesses and construction sites from legitimate claims.

Here is what SB 463 actually does to Kansas law:

1. Eviscerates the "Attractive Nuisance" Doctrine to Shield Construction Companies

The bill defines "wrongful conduct" to include any state law or local ordinance that constitutes a Class B misdemeanor. Criminal trespass is a Class B misdemeanor.

- Under current Kansas law, the "attractive nuisance" doctrine requires property owners to exercise reasonable care to protect children from dangerous conditions—like unsecured construction sites or abandoned heavy machinery—because children cannot appreciate the danger and are drawn to them.

- Because a curious child wandering onto an unsecured construction site is technically committing a Class B misdemeanor trespass, SB 463 classifies the child as engaging in "wrongful conduct," barring any recovery.

- This effectively extinguishes the attractive nuisance doctrine, absolving construction companies and industrial operators of any legal duty to secure dangerous sites from children.

Should a child who wanders into his neighbor's yard looking for his lost ball only to be mauled by a dog with known dangerous tendencies be barred from recovery simply because the child was a "trespasser?" This bill would accomplish exactly that.

2. Rewards Willful Ignorance and Guts the *Seibert* Standard

In 1993, the Kansas Supreme Court correctly recognized that requiring "prior similar incidents" gave dangerous properties a "free pass" until someone was severely injured. *Seibert v. Vic Regnier Builders, Inc.* Prior to the 1993 *Seibert* ruling, some courts relied on the "prior similar incidents" (PSI) test to determine whether a business owed a duty to protect its patrons from criminal attacks. The PSI test held that a landowner had no duty to provide security unless there was a history of identical, or substantially similar, crimes occurring in the exact same location.

In *Seibert*, the plaintiff was the victim of an armed robbery and shooting in a subterranean parking garage at a shopping center. The plaintiff presented evidence of poor lighting, a lack of security personnel, and general criminal activity in the area, but under the strict PSI test, the shopping center argued it owed no duty because a shooting had never occurred in that specific subterranean garage before. The Kansas Supreme Court explicitly rejected the PSI test, adopting instead the "totality of the circumstances" test.

The Court's reasoning was firmly rooted in public policy. The Court noted that the PSI test was becoming increasingly disfavored "on the ground that application of [the prior similar incidents] test contravened the policy of preventing future harm by forestalling a duty to safeguard until someone was injured." The PSI test effectively guaranteed every negligent business "one free crime" before a legal duty attached, invading the province of the jury to determine foreseeability from all the facts, and erroneously equating the foreseeability of a particular act exclusively with previous occurrences of similar acts.

Under the totality of the circumstances test adopted in *Seibert*, foreseeability of criminal conduct may be established by the place and character of the business, even in the absence of a prior identical incident. The Court noted that "one should not be able to open an all-night, poorly lit parking lot in a dangerous high crime area of an inner city with no security and have no legal foreseeability until after a substantial number of one's own patrons have fallen victim to violent crimes. Criminal activity in such circumstances is not only foreseeable but virtually inevitable." This standard aligns perfectly with the Restatement (Second) of Torts § 344, which Kansas courts have historically embraced. Comment *f* to § 344 explicitly provides that a possessor of land "may... know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of a visitor, even though he has no reason to expect it on the part of any particular individual." The Kansas Supreme Court later reaffirmed its commitment to this Restatement principle in *South ex rel. South v. McCarter*, 280 Kan. 85 (2005).

SB 463 reverts Kansas law to a standard that is even more draconian and restrictive than the pre-1993 PSI test.

- SB 463 overrides the Supreme Court and dictates that an owner has no duty to protect an invitee unless they have *actual knowledge* of *substantially similar* wrongful conduct strictly within the immediately preceding 365 days.

By requiring "actual knowledge" of "substantially similar" conduct strictly within the "immediately preceding year," the bill creates an overwhelming financial incentive for willful ignorance on the part of commercial property owners. If a hotel experiences a severe, highly publicized sexual assault in its unlit parking lot thirteen months prior, SB 463 dictates that the hotel officially has "no duty" to protect current patrons from similar attacks today, because the incident occurred outside the arbitrary 365-day window. If a business operates an unsecured establishment in an area renowned for rampant violent crime, it has no duty to implement basic security measures until one of its own patrons is specifically victimized. This framework does not deter crime; it subsidizes the facilitation of crime by insulating negligent commercial operators from the economic consequences of their unsafe premises.

3. Illogically Forces the Comparing of "Fault" to Intentional Criminals:

Kansas operates under a modified comparative negligence system (K.S.A. 60-258a). "Fault" is defined as negligence that causes injury. An intentional act is not negligence, so it cannot be fault by definition.

Further, for forty years, the Kansas Supreme Court has ruled that the intentional acts of a third party cannot be compared with the negligent acts of a defendant whose duty it was to protect the plaintiff from the intentional acts. The foundational logic for this prohibition was established in *M. Bruenger & Co. v. Dodge City Truck Stop, Inc.*, 234 Kan. 682 (1984). In that case, a plaintiff left his truck at a repair lot. The repair lot employees negligently left the truck unlocked with the keys in the ignition. Predictably, the truck was stolen by a thief. At trial, the court allowed the jury to compare the negligence of the repair lot with the intentional, criminal act of the thief under the doctrine of comparative negligence. The jury assigned 50% fault to the thief, and 10% to the repair lot. The Kansas Supreme Court reversed the decision, holding that it was reversible error to compare negligence with an intentional tort. The logic is deeply rooted in the nature of legal duty: the repair lot had a specific, recognized duty to exercise reasonable care to *prevent* the theft. It defies the fundamental logic of tort law to reduce the liability of a negligent party by pointing to the exact intentional harm they had an affirmative duty to guard against.

This exact principle was subsequently cemented in the specific context of negligent security in *Gould v. Taco Bell*, 239 Kan. 564 (1986). In *Gould*, a restaurant patron was violently assaulted by other patrons inside the establishment. The restaurant manager watched the assault unfold and explicitly refused to intervene or call the police. During litigation, Taco Bell attempted to argue that its own fault should be compared to the intentional fault of the attackers, thereby drastically reducing Taco Bell's financial liability under K.S.A. 60-258a. The Kansas Supreme Court flatly rejected this argument, ruling unequivocally that "the intentional acts of a third party cannot be compared with the negligent acts of a defendant whose duty it is to protect the plaintiff from the intentional acts committed by the third party." The Court recognized that allowing such a comparison would essentially nullify the duty of premises owners to provide security, as the intentional tortfeasor would always bear the vast majority of the "fault" for an assault.

SB 463 statutorily overrides the logic of *Gould* and *M. Bruenger*. By forcing the jury to compare the negligent security failure of a commercial business with the malice of an intentional criminal, SB 463 effectively grants blanket immunity to negligent property owners, achieving through mathematical dilution what it could not achieve through a direct elimination of the cause of action.

Consider the practical application: If a hotel management company ignores repeated warnings about broken locks on guest room doors, and a violent assailant subsequently enters a room and attacks a sleeping patron, the hotel is undoubtedly negligent. However, under Section 1(c)(5)(A) of SB 463, the jury is *required* to apportion "fault" on a percentage basis between the hotel that forgot to fix a lock and the criminal who committed a premeditated, violent assault. Faced with this mandated comparison, a jury will inevitably assign the vast majority of the "fault" (e.g., 95%) to the individual who actually committed the violent crime.

Because Kansas imposes joint and several liability only in highly restricted scenarios (which do not apply here due to K.S.A. 60-258a's individual proportionate liability framework) , the hotel would only be liable for its 5% share of the damages. The remaining 95% is assigned to an "empty chair" criminal who is almost certainly judgment-proof, incarcerated, or entirely unidentified.

The practical effect of this provision is the total, functional nullification of negligent security law in Kansas. It creates a paradigm where businesses are financially incentivized

to abandon security measures entirely, knowing that any resulting civil liability will simply be shifted onto the ledgers of the criminals who exploit the very vulnerabilities the business created.

4. Creates Doctrinal Impossibilities and Procedural Chaos

The drafters of this bill fundamentally do not understand how a Kansas courtroom operates. If passed, this bill will create endless judicial gridlock:

- **Mandatory Mistrials and the Kansas Tort Claims Act:** The bill forces juries to apportion fault to any government agency that failed to "maintain law and order." Yet, police departments have absolute immunity under the Kansas Tort Claims Act (K.S.A. 75-6104(c)). If a jury logically refuses to apportion fault to the immune local police department for a crime on private commercial property, SB 463 mandates that the judge *must* declare a mistrial and order a complete retrial.

- **The "Gag Rule" vs. The Pattern Jury Instructions:** The bill statutorily gags attorneys from discussing the effect of fault apportionment with the jury. Yet, Kansas trial judges are mandatorily required to read PIK Civ. 4th 105.01 to the jury, explicitly detailing the very mathematical effect the attorneys were just forbidden from mentioning.

- **Absurd "Safe Harbors":** A business is presumed to have met its duty if it "requested the assistance of law enforcement." The statute is entirely silent on when. A business could trigger this blanket liability shield merely by having called the police regarding an unrelated shoplifting incident three months prior. Furthermore, stripping protections from anyone "outside of posted business hours" ignores reality. Does a patron violently assaulted in a bar's parking lot at 2:15 AM—fifteen minutes after last call—lose all protection?

5. Unconstitutional Retroactivity

Finally, Section 1(e) dictates the bill applies to claims that are *pending*. The Kansas Supreme Court definitively settled this in *Resolution Trust Corp. v. Fleischer*: accrued tort actions are vested property rights. The legislature cannot retroactively apply substantive changes in tort law to pending claims without violating Section 18 of the Kansas Bill of Rights. If enacted, this provision guarantees immediate appellate invalidation.

SB 463 is a labyrinth of unworkable mandates, contradictory doctrines, and unconstitutional retroactivity. It does not protect Kansas homeowners; it dismantles the rights of legitimate invitees and vulnerable children to seek redress when commercial entities negligently fail to provide reasonable security. I urge the Committee to reject SB 463 and advance the Substitute Bill if you wish to specifically address trespassing criminals.

Respectfully,

Jeffrey A. Wilson, KS Bar No. 26527

SUBSTITUTE BILL PROPOSED BY KTLA/JEFF WILSON
House Judiciary 3/10/2026

Session of 2026

SENATE BILL No. 463

By Committee on Judiciary

3-10

AN ACT concerning civil actions; relating to actions in negligence; prohibiting certain persons from recovering damages in such actions; creating requirements for actions involving negligent security.

Be it enacted by the Legislature of the State of Kansas:

Section 1(a) Notwithstanding any other provision of law, no person shall bring a negligence claim against the owner or occupier of property if the injury that is basis of the claim occurred when the person was unlawfully trespassing on the property, without any legal right or privilege to do so, and with the intent to commit a crime. The party against whom a negligent security claim is made has the burden of proving, by a preponderance of the evidence, that the person making the claim was injured while unlawfully trespassing with the intent to commit a crime.

(b) (1) In an action for negligent security, an owner or occupier of property owes a duty of reasonable care to an invitee or licensee to protect them from the conduct of a third person, when the owner or occupier knows or has reason to foresee, based on the totality of the circumstances, that violent criminal actions may occur on the property, placing persons on the property in peril above and beyond ordinary.

(2) There is a rebuttable presumption that the owner or occupier of property has met the requisite standard of care if they implement reasonable security measures, which may include (A) Timely requesting law enforcement assistance during the incident giving rise to the claim; (B) Engaging a licensed security contractor; or (C) Adopting and substantially complying with recommended security guidelines.

(3) An owner or occupier of property has no duty to protect a person from their own conduct or the conduct of a third person that is reckless, negligent or wrongful if the person bringing the action is unlawfully trespassing on the premises, without any legal right or privilege to do so, and with the intent to commit a crime.

(4) Nothing in this section shall prevent any person who lawfully enters and remains on the premises from bringing a claim to recover damages for negligence or negligent security against an owner or occupier of the property.

(d) Nothing in this section shall prevent a victim of a crime from recovering restitution.

(e) As used in this section:

(1) "Negligent security" means any claim against an owner or occupier that sounds in tort or nuisance arising from an alleged failure to provide adequate security measures to protect against the reckless, negligent or wrongful conduct of third persons but shall not include claims arising solely from the physical maintenance or condition of the property unrelated to security.

(2) "Owner or occupier" means any person that owns, leases, subleases, occupies, operates, maintains or manages real property or any director, officer, employee or agent of such person, provided that such person possesses the legal right or the actual authority to control the security and maintenance of the premises and approaches;

(3) "Third person" means any person other than an owner or occupier, or a person under the direction, control or supervision of an owner or occupier.

(f) The provisions of this act are severable. If any portion of this act is held by a court to be unconstitutional or invalid, or the application of any portion of this act to any person or circumstance is held by a court to be unconstitutional or invalid, the invalidity shall not affect other portions of this act that can be given effect without the invalid portion or application, and the applicability of such other portions of this act to any person or circumstance remains valid and enforceable.

(g) The provisions of this section shall apply to causes of action accruing on or after July 1, 2026.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.