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To: Representative Lance Kinzer, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton
Director of Public Policy

Date: February 8, 2012

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

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes HB 2106 because instead of creating clarity, it will disrupt Kansas' well-established case law regarding the rights and duties of landowners.

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). Passage of HB 2106 will conflict with established case law and inevitably create confusion with the public and in the courts.

Proponents of HB 2106 disagree with the latest edition of the *Restatement 3rd* and are concerned that judges will seek guidance from it. However, KsAJ believes the concern is unfounded and premature. Kansas case law and precedent carry greater weight with the courts. And there is no indication that courts are deviating from established Kansas case law or that they are turning to the *Restatement 3rd*.

HB 2106 is based on a model law and it is doubtful that it carefully replicates the nuances of Kansas' case law relating to trespass. Also, HB 2106 appears to go beyond trespass and apply to the duties a landowner owes to invitees and licensees. Greater harm will come in up-ending well-established case law and replacing it with a statute that is ambiguous.

KsAJ respectfully requests that the House Judiciary Committee take no action on HB 2106.