



**KANSAS ASSOCIATION OF DEFENSE COUNSEL**  
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March 6, 2012

Senate Standing Committee on Judiciary  
Kansas State Capitol  
300 SW 10th Street  
Topeka, KS 66612

**RE: H.B. 2106, Trespasser Responsibility Legislation**

Dear Chairman Owens and Members of the Senate Judiciary Committee:

The Kansas Association of Defense Counsel (KADC) is a state-wide association whose member lawyers are actively engaged in defending civil lawsuits. The KADC supports H.B. 2106.

H.B. 2106 would legislatively fix in place current Kansas common law relating to the liability of a land possessor for injury to a trespasser. Under current common law principles, the general rule, with narrow exceptions, is that a land possessor owes no duty of care to a trespasser. H.B. 2106 is meant to preempt courts from adopting the radical approach endorsed by the American Law Institute's new *Restatement of the Law Third Torts: Liability for Physical and Emotional Harm*. This new "reformist" approach imposes upon land possessors a general duty of reasonable care to all land entrants, including unwanted trespassers. The only exception in this new Restatement is for a so-called "flagrant trespasser," which is not adequately defined nor part of any state's common law tradition.

The legislature should codify the current law to protect land possessors and prevent arguments that the court system should adopt the new Restatement provision as a matter of common law. The current common law makes common sense. Except for the exceptions listed in the bill, land possessors should not have to exercise care to protect persons whom the possessor does not want on the premises in the first place.

The KADC urges the Committee to pass H.B. 2106. Thank you for your attention to this matter.

Sincerely,

Dustin J. Denning