

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2106**

As Amended by House Committee of the Whole

Brief*

Sub. for HB 2106 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. The bill would provide, however, 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 involved in intermeddling with the condition or of coming within the area made dangerous by it; and

*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>

- 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

In the House Committee on Judiciary, 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.

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