

## Substitute for SENATE BILL No. 338

By Committee on Judiciary

2-8

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9 AN ACT concerning construction contracts; relating to indemnification  
10 provisions and additional insured parties; amending K.S.A. 2005 Supp.  
11 16-121 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 16-121 is hereby amended to read as  
15 follows: 16-121. (a) When used in this section:

16 (1) "Construction contract" means an agreement for the design, con-  
17 struction, alteration, renovation, repair or maintenance of a building,  
18 structure, highway, road, bridge, water line, sewer line, oil line, gas line,  
19 appurtenance or other improvement to real property, including any mov-  
20 ing, demolition or excavation, except that no deed, lease, easement, li-  
21 cense or other instrument granting an interest in or the right to possess  
22 property shall be deemed to be a construction contract even if the in-  
23 strument includes the right to design, construct, alter, renovate, repair or  
24 maintain improvements on such real property.

25 (2) "Damages" means personal injury damages, property damages or  
26 economic loss.

27 (3) "Indemnification provision" means a covenant, promise, agree-  
28 ment, *clause* or understanding in connection with, *contained in, or col-*  
29 *lateral to* a construction contract that requires the promisor to hold harm-  
30 less, indemnify or defend the promisee or others against liability for *loss*  
31 *or damages*.

32 (4) "*Indemnitee*" shall include an agent, employee or independent  
33 contractor who is directly responsible to the indemnitee.

34 (b) An indemnification provision in a construction contract or other  
35 agreement, including, but not limited to, a right of entry, entered into in  
36 connection with a construction contract, which requires the indemnitor  
37 to indemnify the indemnitee for the indemnitee's negligence *or inten-*  
38 *tional acts or omissions* is against public policy and is void and  
39 unenforceable.

40 (c) *A provision in a construction contract which requires a party to*  
41 *provide liability coverage to another party, as an additional insured, for*  
42 *such other party's own negligence or intentional acts or omissions is*  
43 *against public policy and is void and unenforceable.*

1     (d) This act shall not be construed to affect or impair the contractual  
2 obligation of a contractor or owner to provide railroad protective insur-  
3 ance or general liability insurance.

4     ~~(d)~~ (e) This section applies only to indemnification provisions entered  
5 into after the act takes effect.

6     Sec. 2. K.S.A. 2005 Supp. 16-121 is hereby repealed.

7     Sec. 3. This act shall take effect and be in force on and after January  
8 1, 2007, and its publication in the statute book.