

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 4:00 P.M. on March 19, 2008 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Secretary Roger Werholtz, Department of Corrections
Senator Terry Bruce
Senator Pat Apple
Leslea Rockers, Citizen
Carolyn Ward, Kansas Ignition Interlock Association

The hearing on **SB 430 - aggravated criminal threat, penalty**, was opened.

Senator Terry Bruce appeared as the sponsor of the proposed bill. It would make aggravated criminal threat a severity level 5, person felony, no matter what the economic loss would be.

The hearing on **SB 430** was closed.

The hearing on **SB 536 - prohibiting adoption and enforcing residency restrictions on registered offenders**, was opened.

Secretary Roger Werholtz, Department of Corrections, explained that current legislation enacting a moratorium on cities and counties from enforcing residential restrictions for registered offenders is scheduled to sunset. This bill would make the moratorium permanent. (Attachment #1)

The hearing on **SB 536** was closed.

The hearing on **SB 545 - health insurance coverage information for children in divorce action**, was opened.

Senator Pat Apple appeared as a proponent of the bill. He commented that the bill would require that in divorce decrees parents sign releases forms so both parents can communicate with health insurance providers regarding their children. (Attachment #2)

Leslea Rockers, Citizen, is divorced and is the residential parent for their children. Her ex-husband carries the insurance policy on the children. She asked her ex-husband to sign a release of information so she could get health insurance information on her children. He didn't do so and she could get no information. The bill would not tie the hand of parents so can get access to their children insurance company. (Attachment #3)

Written testimony, in support of the bill, was provided by Office of Judicial Administration. (Attachment #4)

The hearing on **SB 545** was closed.

The hearing on **SB 582 - driving under the influence, ignition interlock and impoundment of vehicles**, was opened.

Carolyn Ward, Kansas Ignition Interlock Association, appeared as a proponent of the bill and requested an amendment to the bill that would require a ignition interlock be installed in lieu of a 330 day license restriction. (Attachment # 5)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 19, 2008 in Room 313-S of the Capitol.

The hearing on SB 582 was closed.

SB 379 - indemnification

The committee discussed the balloon that was provided at the meeting on March 18, 2008. (Attachment #6)

Representative Watkins moved the adoption of the balloon. Representative Yoder seconded the motion. The motion carried.

Representative Watkins provided the committee with a balloon amendment that addresses contracts for the sale of goods or services and any dealer or franchise agreement. He made the motion to adopt the balloon. (Attachment #7) Representative Yoder seconded the motion. Some committee members expressed that the adoption of this balloon would make it very broad and wondered if it would include personal services of an employee. The motion 9-7 carried.

The committee worked on definitions of:

1. “Dealership agreement means a written agreement or definite or indefinite duration between equipment manufacturer and a equipment service provider which provides for the rights and obligations of the parties with respect to the purchase or sale of such equipment or service.”
2. “Franchise agreement means any contract or franchise or any other terminology used to describe the contractual relationship between first or second stage manufactures, distributors and dealers, by which:” Then pick up sections (1) (2) in K.S.A. 8-2401.

Representative Watkins moved the above definitions. Representative Yoder seconded the motion. The motion carried.

Representative Watkins made the motion to strike “good & services” from the bill. Representative Yoder seconded the motion. The motion carried.

Representative Watkins made the motion to adopt a Choice of Law Provision so the laws of the State of Kansas shall apply. Representative Davis seconded the motion. The motion carried.

Representative Watkins made the motion to report **House Substitute for SB 379** favorably for passage. Representative Yoder seconded the motion. The motion carried.

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for March 24, 2008.

Testimony on SB 536
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 19, 2008

The Department of Corrections supports the continuation of K.S.A. 22-4913 which restricts cities and counties from adopting or enforcing residential restrictions for registered offenders. The Department, with the support of the City of Wichita, proposed that SB 536 be amended by the Senate to accommodate Wichita's licensing of "Correctional Placement Residences". The Senate adopted this amendment. The proposed amendment would permit city and county regulation of placement residences whose clientele include persons receiving voluntary treatment services for alcohol or drug abuse. Additionally, SB 536 defines the scope of the residents of a "Correctional Placement Residence" to include persons under court or correctional supervision. SB 536 passed the Senate by a vote of 36 to 3.

K.S.A. 22-4913 was enacted in 2006 to provide a two year moratorium on cities and counties from enforcing residential restrictions for registered offenders. At that same time, the Legislature created the Sex Offender Policy Board under the auspices of the Kansas Criminal Justice Coordinating Council. The Sex Offender Policy Board was directed to study the issue of residential restrictions for sex offenders. The Board's membership consisted of Donald Jordan, Secretary of Social and Rehabilitation Services and former Commissioner of the Juvenile Justice Authority; Roger Werholtz, Secretary of the Department of Corrections; Gary Daniels, former Secretary of Social and Rehabilitation Services; Larry Welch, Director of the Kansas Bureau of Investigation; Hon. Tyler Locket, Retired Justice of the Supreme Court; Scott Jackson, Executive Director of Family Life Center, Inc.; and Sandra Barnett, Executive Director Kansas Coalition Against Sexual and Domestic Violence. Russell Jennings, joined the Board upon his appointment as the Commissioner of the Juvenile Justice Authority and Mr. Daniels resigned from the Board upon his retirement. Robert Blecha, Director of the Kansas Bureau of Investigation succeeded Mr. Welch on the Board.

The Board's 2007 report set out its findings and conclusions regarding residential restrictions and those recommendations were republished in its 2008 report. The Sex Offender Policy Board concluded:

- There was no evidence to support the efficacy of general residential restrictions. Residency restrictions should be determined based on individually identified risk factors.

- The moratorium on residential restrictions should be made permanent. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes.

SB 536 incorporates the recommendations of the Sex Offender Policy Board. The 2007 and 2008 Sex Offender Policy Board reports are at:

www.governor.ks.gov/grants/policies/docs/SOPBReport.pdf and
www.governor.ks.gov/grants/policies/docs/2008SOPBReport.pdf

In addition to the public meetings conducted by the Sex Offender Policy Board, a public meeting on residence restrictions was held with the Special Committee on Judiciary on November 15, 2006. The Board and the Special Committee on Judiciary had the privilege of hearing presentations from Dr. Jill Levenson of Lynn University (Florida), Dr. Jeffery Walker, University of Arkansas at Little Rock, Pamela Dettmann, of the Des Moines County (Iowa) Attorney's Office, Mary Richards of the Iowa Coalition Against Sexual Assault, Christopher Lobanov-Rostovsky of the Colorado Department of Public Safety/Division of Criminal Justice, Representative Nile Dillmore, Melissa Alley of Wichita, Kansas and Doug Vance of the Kansas Recreation and Parks Association.

Based upon the study conducted by the Sex Offender Policy Board, it is my recommendation that SB 536 be enacted. The Board found that there is no positive correlation between residency restrictions and preventing re-offending behavior. Of greater concern was the detrimental effect of residential restrictions upon public safety. The research and expertise presented to the Board indicated that residential restriction zones were detrimental to the treatment and supervision of sex offenders and to law enforcement efforts. The Board found that the,

“[r]esearch and best practices in the field of corrections, law enforcement, sex offender treatment and more particularly, victims' advocacy groups, equally discount residence restrictions as a useful means to manage, supervise and treat sex offenders.”

Further,

“[w]ith regard to enforcement, the overwhelming experience of states such as Iowa that have been vocal enough to share their experiences in attempting to enforce residence restrictions underscores the theory that normally compliant offenders will take desperate measures to either comply with or circumvent residence restrictions. This increases the time law enforcement must spend on locating offenders, decreases the time they are able to spend on protecting the majority of potential child sexual abuse victims and subverts the usefulness of offender registries.”

The value of focusing law enforcement resources in an effective manner is illustrated by the joint effort of the Department's parole services and the Wichita Police Department and Sedgwick

County Sheriff's Department's Endangered and Missing Children Unit which provides forensic computer expertise in assisting parole officers in searching the computer hard drives of sex offenders. Arbitrarily imposed residency restrictions would be detrimental to such law enforcement efforts. Law enforcement resources would be diverted to merely locating those offenders who lost a stable residence or cease reporting, rather than being used to detect what those persons are actually doing. Most importantly, forcing relocation of released offenders from urban areas that have the resources to search computer information or where treatment programs are located to more rural areas where those resources are not available protects no one. Those relocated can easily travel back to the urban area.

Policies regarding the residence of released offenders should be based upon case management reflecting the individual characteristics of the offender, those persons co-habiting with the offender, stability of the residence, employment, and treatment as well as utilization of tailored supervision requirements and techniques. Policies that divert resources from the protection of the largest segment of sexually victimized children; the 80-90% who are victimized by people known to them do not serve public safety.

Finally, a prohibition on cities and counties regarding the adoption or enforcement of residential restrictions prevents localities from engaging in a competition of ever increasing residential barriers that do not serve public safety.

The Department urges favorable consideration of SB 536.

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Testimony in support of Senate Bill 545

Chairman O'Neal and members of the House Judiciary Committee,

Thank you for allowing me to appear before your committee in Support of Senate Bill 545. Senate Bill 545 is a simple bill that basically provides language to the court for divorce proceedings. SB 545 specifically deals with child health insurance coverage. The proposed change is found on page six of the bill is as follows:

" The court may order that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage."

Making health related decisions for our children is a primary responsibility of a parent. Having access to insurance information is critical to the decision making process. Unfortunately, many divorces are bitter and some parents use tactics of control and frustration through the divorce proceedings and after the divorce is final. One such tactic is to not sign a HIPAA release. This can cause the custodial parent to not have access to critical health insurance information where the health insurance is provided by the non custodial parent. The relief is to hire an attorney and go back to court causing unnecessary expense of time and money.

In working through this issue it became apparent that this should not be a mandate. An abusive parent should probably not be allowed to review the medical records of an abused child. The language is permissive in that the judge "may order".

Thank you for your consideration,

Pat Apple
Kansas Senate, District 12

House Judiciary
Date 3-19-08
Attachment # 2

TESTIMONY IN SUPPORT OF SENATE BILL 545

House Committee on Judiciary

March 19th, 2008

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to share my input on SB 545. My name is Leslea Rockers and I am a single parent with residential custody of my two kids ages 13 and 17.

My testimony today is regarding child health insurance coverage and documents that would allow for release of information so that both parents may communicate with the health insurance company of the children. My testimony applies to section 6 only.

In new section 6, the bill states that the court may order that each parent execute any and all documents, including releases, necessary so that both parents may obtain information and communicate with any insurance company regarding health insurance coverage provided for the children. This paragraph applies to both parents, not just the parent that owns or pays for the health insurance coverage.

I found as residential parent, but not the owner of the health insurance coverage for my children, that I could not communicate with or obtain information from the health insurance company. Last March I called the insurance company that provided coverage for my kids to request current identification cards and to inquire about specific coverage benefits. I was told by the customer service representative that I could not receive any information or even inquire about benefits provided thru the plan as I was not the owner of the coverage and that this was due to HIPAA regulations. I am the HIPAA Officer for my social services agency and have an understanding of the purpose it serves. I explained my residential parent status and explained that I was not requesting any medical information regarding my ex-husband but was asking for plan benefits for the children. I was given a fax number to send my divorce decree and was told that they would read the decree and return my call. I received a call in return stating that the divorce decree did not allow them to speak to me regarding the insurance benefits because my ex-husband had not signed a release of information. I then called the Kansas Insurance Department and asked a series of questions regarding this issue and was told that any health insurance agency can stipulate what they will and will not allow according to how they choose to establish HIPAA guidelines within their company.

On four different occasions beginning March 13, 2007 I asked my ex-husband to sign a release of information so that I could have access to current identification cards, benefit information, Explanation of Benefits and prescription formularies. Because he did not respond to the requests on each occasion, I went to my attorney during the last week of April 2007 to draft a letter to the legal department of the insurance provider explaining the situation and to ask that the issue of residential custody be considered. The insurance company sent two forms for the kids to sign and date allowing me access to their policy. We questioned this as both kids are minors. But, we provided the information they requested and attached both birth certificates as requested. A

House Judiciary

Date 3-19-08

Attachment # 3

representative from their legal department called to inform us that because the kids were minors the forms were invalid. At this time their legal department informed us that what we needed to have was a Medical Support Order filed through the court. This document follows the minor children and allows access to health insurance information to both parents regardless of which parent owns the policy.

This order was filed the third week of May. In June I decided to proceed with a vaccination for our daughter that is conducted in a series of three (3) separate vaccine shots. The vaccination was encouraged by our family doctor for her age and the success rate if given at this time in her life. I had no idea if insurance would cover the vaccination and decided as a parent to provide medical care for my child and deal with the cost as it became necessary. A hearing was set for August 21st regarding the Medical Support Order. On August 14th I was told by my ex-husband that he had decided not to include the kids in his group coverage. Due to costs, he felt it would be financially beneficial to him to purchase independent policies on each child. He purchased the plans on his own and I was told they would be in effect September 1st. I called the new insurance company to inquire about the policies and explained my situation. They stated that a release of information had not been signed but a temporary verbal "OK" had been given for them to speak to me. At this point in time he has not removed the verbal OK and I have had access to insurance information as I have requested it. The hearing for the Medical Support Order was continued until November 14th and it was not granted on that day.

I spoke to Senator Apple in March regarding changes to how health insurance is covered as a result of my struggle to access information on the children I have responsibility for. I was taking them to the doctor and the bills were sent to me as a result, but I was not allowed benefit information or the Explanation of Benefits to ensure proper billing had taken place. I had no idea that the struggle we discussed in March would still be an issue at this point.

My request to you is to eliminate this struggle for others who find themselves in situations of medical responsibility without adequate access to the information to handle medical issues appropriately and with current and accurate information. Parents will not use insurance if they don't have access to what it will and will not cover and physicians may deny service if health insurance information isn't available at the time the child goes to the office. Children will not be provided the health care they deserve and will suffer as a result. Parents will have no way of knowing if a referral is required, if the physician or hospital is accepted under the plan and they will have no way to ensure that improper billing isn't taking place if they do not have access to the Explanation of Benefits (EoBs). EoBs are also necessary documents for tax returns and claim disputes. The lack of cooperation by one parent ties the hands of the other in these instances. I decided to fight to gain information I needed in order to take care of my kids and my struggle continues; some parents won't choose to fight and others can't because of the financial costs associated with the court process.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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(785) 296-2256

House Judiciary Committee
Wednesday, March 19, 2008

Testimony in Support of
SB 545
As Amended by the Senate

Mark Gleeson
Office of Judicial Administration

I appreciate the opportunity to testify in support of SB 545 and specifically to the Senate amendments to K.S.A. 60-1610 Section 1 (a). Federal law requires states to review their Child Support Guidelines every four years. This review was completed during the summer 2007 and the Kansas Supreme Court issued Administrative Order No. 216 updating the Kansas Child Support Guidelines effective January 1, 2008. These changes found on page 2, beginning on line 8 and ending on line 17, makes K.S.A. 60-1610 Section 1 (a) consistent with the Kansas Supreme Court Order No. 216 updating the Kansas Child Support Guidelines.

One of the significant updates to the Child Support Guidelines changed the age categories in the child support schedules. Beginning with the original guidelines established in October 1987 and in every revision leading up to January 1, 2008, the age categories were 16 – 18 years of age, 7 – 15 years of age, and 0 – 6 years of age. New economic data from the U.S. Department of Agriculture clearly shows that spending on younger children has increased since the child support guidelines were established in 1987. As a result, the Child Support Guidelines Advisory Committee, working with Wichita State University Professor of Economics Dr. Jodi Messer-Pelkowski, recommended and the Supreme Court approved the following new age categories: 0 – 5, 6 – 11, and 12 – 18. Although these age groups closely match the typical age groups for preschool, elementary school, and junior/senior high school children, the rationale for choosing these age groups was based on economic data demonstrating natural breaks in spending patterns on children by parents and not on changes from one school age group to another.

The second change strikes language in K.S.A. 60-1610 (a) pertaining to child support agreements approved by the court prior to July 1, 1988, and the termination of child support once a child turns 18 years of age or completes high school. The youngest child for whom this would apply will be 20 years old, eliminating the need for this provision. This language can be found on page 2, lines 9 through 14 of the bill.

I appreciate your support of this amended language and stand for questions.

House Judiciary
Date 3-19-08
Attachment # 4

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LEGISLATIVE TESTIMONY

TO: Chairman Mike O'Neil and Members of the House Judiciary Committee

DATE: March 19, 2008

SUBJECT: Support for SB 582 and Suggested Amendment

Mr. Chairman and Members of the Committee, my name is Carolyn Ward and I represent The Kansas Ignition Interlock Association.

The Association is supportive of this bill. However, we respectfully request consideration of an amendment to current law effectively modifying the consequences for first time DUI offenses. In lieu of the current 30 day license suspension followed by 330 days of license restriction, we are proposing that the 330 day restricted period be substituted with a requirement for the mandatory installation of an ignition interlock device. Currently such devices are required for second, third and fourth DUI offenses.

Even first-time offenses are indicators that a person has a serious problem with alcohol and are likely to become a repeat offender. First-time offenders have driven drunk an average of 87 times before they're finally arrested.

Driver's license suspension makes it increasingly difficult for recovering individuals to access jobs, education and other services that assist in successful recovery and reintegration. Research shows that currently available breath alcohol ignition interlock devices are one of the most effective ways to keep convicted drunk drivers from continuing to drive drunk. Unfortunately, they're significantly underused in almost every community. Interlocks are proven to be up to 90 percent effective while on the vehicle, but it's estimated that only one convicted drunk driver in eight gets the device each year—and most of those are repeat offenders.

I thank the committee for its time and attention and would stand for any questions.

House Judiciary
Date 3-19-08
Attachment # 5

SENATE BILL No. 379

By Committee on Ways and Means

3-12

Balloon Amendment - 03/18/08 - Rep. O'Neal

RS - SB379O'Neal.pdf (JThompson)

House Judiciary
Date 3-19-08
Attachment # 1

12 AN ACT concerning ~~construction~~ contracts; relating to indemnification
13 provisions and additional insured parties; amending K.S.A. ~~2006 Supp.~~
14 16-121 and repealing the existing section.
15

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

17 Section 1. K.S.A. ~~2006 Supp.~~ 16-121 is hereby amended to read as
18 follows: 16-121. (a) When used in this section:

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

"Construction contract" shall not include any design, construction, alteration, renovation, repair or maintenance of: (A) Dirt or gravel roads used to access oil and gas wells and associated facilities; or (B) oil flow lines or gas gathering lines used in association with the transportation of production from oil and gas wells from the wellhead to oil storage facilities or gas transmission lines.

28 (2) "Damages" means personal injury damages, property damages or
29 economic loss.

(4) "Motor carrier transportation contract" means . . .
(5) "Mutual indemnity obligation" means . . .

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

(7) "Unilateral indemnity obligation" means . . .

(6) 35 → (4) "~~Indemnitee~~" shall include an agent, employee or independent
36 contractor who is directly responsible to the ~~indemnitee~~. ←

Promisee

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

promisor

motor carrier transportation contract,

promisee

promisee's

43 (c) A provision in a construction contract which requires a party to

motor carrier transportation contract or

6-2

1 provide liability coverage to another party, as an additional insured, for
 2 such other party's own negligence or intentional acts or omissions is
 3 against public policy and is void and unenforceable, ~~except that the pro-~~
 4 ~~visions of this subsection shall not apply to a construction contract~~
 5 ~~between the owner of the property and the general contractor.~~

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

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

11 Sec. 2. K.S.A. 2006 Supp. 16-121 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force on and after January
 13 1, ~~2008~~ 2009, and its publication in the statute book.

January 1, 2009

and additional insured provisions

: (1) The

- ;
- (2) an agreement under which an owner, a responsible party or a governmental entity agrees to indemnify a contractor directly or through another contractor with respect to strict liability under environmental laws;
 - (3) an indemnification agreement that is an integral part of an offer to compromise or a settlement of a disputed claim, if: (A) The settlement is based on consideration; (B) the dispute relates to an alleged event that is related to a construction contract and that occurred before the settlement is made; and (C) the indemnification relates only to claims that have arisen or may arise from the past event;
 - (4) the validity of any insurance contract, construction bond or other agreement lawfully issued by an insurer or bonding company;
 - (5) a separately negotiated provision or provisions whereby the parties mutually agree to a reasonable allocation of risk, if each such provision is: (A) Based on generally accepted industry loss experience; and (B) supported by adequate consideration; and
 - (6) an agreement that provides for indemnity if the parties agree in writing that the indemnity obligation will be supported by liability insurance coverage to be furnished by the promisor subject to the following limitations:
 - (A) With respect to a mutual indemnity obligation, the indemnity obligation is limited to the extent of the coverage and dollar limits of insurance or qualified self-insurance each party as promisor has agreed to obtain for the benefit of the other party as promisee.
 - (B) With respect to a unilateral indemnity obligation, the indemnity obligation must be at the promisee's expense.

(4) "Motor carrier transportation contract" means, with respect to a motor carrier as defined in K.S.A. 66-1,108, and amendments thereto, a contract, agreement or understanding covering:

(A) The transportation of property by a motor carrier;

(B) the entrance on property by the motor carrier for the purpose of loading, unloading or transporting property; or

(C) a service incidental to activity described in clause (A) or (B) including, but not limited to, storage of property.

"Motor carrier transportation contract" shall not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment.

(5) "Mutual indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which the parties agree to indemnify each other and each other's contractors and their employees against loss, liability, or damages arising in connection with bodily injury, death, and damage to property of the respective employees, contractors or their employees, and invitees of each party arising out of or resulting from the performance of the agreement.

(7) "Unilateral indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which one of the parties as promisor agrees to indemnify the other party as promisee with respect to claims for personal injury or death to the promisor's employees or agents or to the employees or agents of the promisor's contractors but in which the promisee does not make a reciprocal indemnity to the promisor.

SENATE BILL No. 379

By Committee on Ways and Means

3-12

12 AN ACT concerning ~~construction~~ contracts; relating to indemnification
13 provisions and additional insured parties; amending K.S.A. ~~2006 Supp.~~
14 16-121 and repealing the existing section.

15
16 Be it enacted by the Legislature of the State of Kansas:

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21 structure, highway, road, bridge, water line, sewer line, oil line, gas line,
22 appurtenance or other improvement to real property, including any mov-
23 ing, demolition or excavation, except that no deed, lease, easement, li-
24 cense or other instrument granting an interest in or the right to possess
25 property shall be deemed to be a construction contract even if the in-
26 strument includes the right to design, construct, alter, renovate, repair or
27 maintain improvements on such real property.

(2) "Contract" means any construction contract,
contract for the sale of goods or services and any
dealer or franchise agreement.

28 (2) "Damages" means personal injury damages, property damages or
29 economic loss.

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

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

Promisee

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

promisor

promisee

promisee's

43 (c) A provision in a ~~construction~~ contract which requires a party to

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Date 3-19-08
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7-2

1 *provide liability coverage to another party, as an additional insured, for*
2 *such other party's own negligence or intentional acts or omissions is*
3 *against public policy and is void and unenforceable, **except that the pro-***
4 ***visions of this subsection shall not apply to a construction contract***
5 ***between the owner of the property and the general contractor.***

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

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

and additional
insured provisions

January 1, 2009

11 Sec. 2. K.S.A. 2006 Supp. 16-121 is hereby repealed.

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13 1, ~~2008~~ **2009**, and its publication in the statute book.