SENATE, No. 665



STATE OF NEW JERSEY

218th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Co-Sponsored by:

Senators Cardinale and Diegnan

SYNOPSIS

Prohibits snowplow or de-icing service contract from indemnifying promisee against liability for loss or damage in certain instances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning snowplow or de-icing service contracts and supplementing Title 56 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. For the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill):

“Promisee” means a promisee and any agents, employees, servants, or independent contractors directly responsible to the promisee.

“Snowplow or de-icing service contract” means a contract, agreement, or understanding, except a contract, agreement or understanding to which the State, or any political subdivision or instrumentality thereof, is a party, covering: 1) plowing, shoveling, or otherwise removing snow or other frozen precipitation from a surface; 2) de-icing services; or 3) a service incidental to plowing, shoveling, or otherwise removing snow or other frozen precipitation, or de-icing services, including, but not limited to, driving or otherwise moving a snowplow or de-icing equipment and materials.

2. Notwithstanding any law, rule, or regulation to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a snowplow or de-icing service contract entered into on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence, intentional acts, or omissions of the promisee is against the public policy of this State and is void and unenforceable. This provision shall not apply to any contract in which the promisor has been given full authority to take all actions the promisor deems necessary to maintain the property of the promisee.

3. This act shall take effect immediately.

STATEMENT

This bill makes void and unenforceable any provision, clause, covenant, or agreement contained in, collateral to, or affecting a snowplow or de-icing service contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligent, intentional acts, or omissions of the promise. Under the bill, a snowplow or de-icing service contract does not include a contract to which the State, or any political subdivision or instrumentality thereof, is a party. The bill would also not apply to any contract in which the promisor has been given full authority to take all actions the promisor deems necessary to maintain the property of the promisee.

These contractual clauses are often referred to as indemnity clauses, which generally shift the responsibility to pay damages from one party to another party, often without regard to whom actually caused the loss. Many states have statutes, referred to as anti-indemnity statutes, to limit these contractual clauses in construction contracts. Currently in New Jersey, N.J.S.A.2A:40A-1, N.J.S.A.2A:40A-2, and N.J.S.A.39:14-2 limit indemnity clauses in certain construction contracts, contracts relating to architects, engineers, and surveyors, and motor carrier transportation contracts, respectively. This bill would similarly limit these types of contractual clauses in snowplow or de-icing service contracts.