

2A:40A-1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:40A-1

(Construction contracts - hold harmless clause - corrects error)

LAWS OF: 1983

CHAPTER: 107

Bill No: A590

Sponsor(s): Karcher

Date Introduced: March 8, 1982

Committee: Assembly: Judiciary, Law, Public Safety and Defense

Senate: Judiciary

Amended during passage: Yes // Amendments during passage denoted by asterisks

Date of Passage: Assembly: July 8, 1982

Senate: Jan. 20, 1983

Date of Approval: March 14, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: /// No

Veto Message: /// No

Message on Signing: /// No

Following were printed:

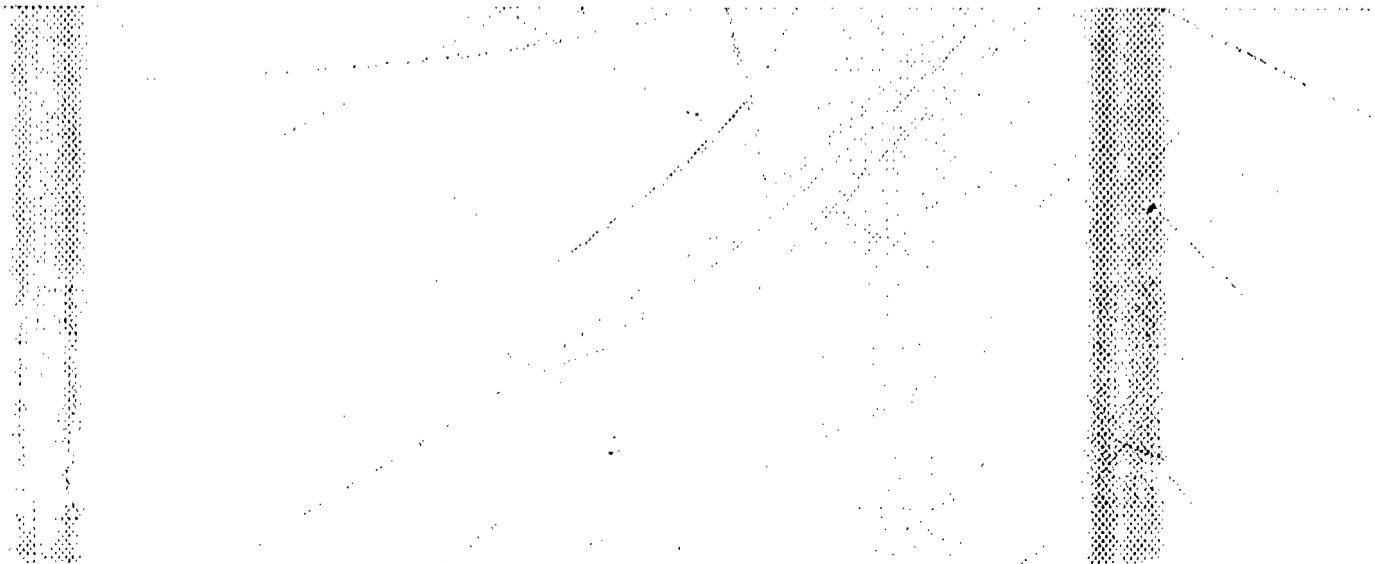
Reports: /// No

Hearings: /// No

See New Jersey Law Journal articles (attached)

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1983



CHAPTER 107 LAWS OF N. J. 1983  
APPROVED 3-14-83

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**ASSEMBLY, No. 590**

# STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1982

By Assemblyman KARCHER

(Without Reference)

AN ACT to amend "An act making void and unenforceable certain hold harmless agreements and supplementing subtitle 6 of Title 2A of the New Jersey Statutes" approved December 3, 1981 (P. L. 1981, c. 317).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 1 of P. L. 1981, c. 317 (C. 2A:40A-1) is amended to  
2 read as follows:

3 1. A covenant, promise, agreement or understanding in, or in  
4 connection with or collateral to a contract, agreement or purchase  
5 order, relative to the construction, alteration, repair, maintenance,  
6 servicing, or security of a building, structure, highway, railroad,  
7 appurtenance and appliance, including moving, demolition, excavat-  
8 ing, grading, clearing, site preparation or development of real  
9 property connected therewith, purporting to indemnify or hold  
10 harmless the promisee against liability for damages arising out of  
11 bodily injury to persons or damage to property *caused by or result-*  
12 *ing from* **[, or contributed to by,]** *the \*sole\* negligence of the*  
13 *promisee, his agents, or employees, \*[, or indemnitee,]* *is against*  
14 *public policy and is void and unenforceable; provided that this*  
15 *section shall not affect the validity of any insurance contract, work-*  
16 *men's compensation or agreement issued by an authorized insurer.*

1 \*2. Section 2 of P. L. 1981, c. 317 (C. 2A:40A-2) is amended  
2 to read as follows:

3 2. A covenant, promise, agreement or understanding in, or in  
4 connection with or collateral to a contract, agreement or purchase

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

**\*—Assembly committee amendments adopted June 28, 1982.**

5 order, whereby an architect, engineer, surveyor or his agents,  
6 servants, or employees shall be indemnified or held harmless for  
7 damages, claims, losses or expenses including attorneys' fees  
8 *caused by or resulting from the sole negligence of an architect,*  
9 *engineer, surveyor or his agents, servants, or employees and aris-*  
10 *ing either out of (1) the preparation or approval by an architect,*  
11 *engineer, surveyor or his agents, servants, employees or invitees,*  
12 *of maps, drawings, opinions, reports, surveys, change orders,*  
13 *designs or specifications, or (2) the giving of or the failure to give*  
14 *directions or instructions by the architect, engineer, surveyor or*  
15 *his agents, servants or employees provided such giving or failure*  
16 *to give is the cause of the damage, claim loss or expense, is against*  
17 *public policy and is void and unenforceable.\**

1 \***[2.]**\* \*3.\* This act shall take effect immediately.

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ASSEMBLY, No. 590

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen BOCCHINI, PATERO, DORIA and ROCCO

AN ACT concerning the requirements for the practice of barbering,  
and amending P. L. 1963, c. 156 and P. L. 1938, c. 197.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 4 of P. L. 1963, c. 156 (C. 45:4-31.1) is amended to  
2 read as follows:

3 4. *a.* A person who *does not qualify for a certificate of registra-*  
4 *tion under subsection b. of this section, and who* has practiced  
5 barbering in another state or country, upon payment of the re-  
6 quired fee, shall be granted permission to take an examination for  
7 a certificate of registration to practice barbering if he complies  
8 with each of the following:

9 (1) He is at least 18 years of age and of good moral character  
10 and temperate habits;

11 (2) He has successfully completed eight grades of grammar  
12 school and two grades of high school or their equivalents; and

13 (3) He presents to the board:

14 (a) A valid license or certificate of registration as a prac-  
15 ticing barber from another state or country which has sub-  
16 stantially the same requirements for licensing or registering  
17 barbers as required by this act, and

18 (b) Affidavits from at least two persons stating that from  
19 their personal knowledge the applicant has practiced as a  
20 barber in another state or country for a period of at least two  
21 years within the five-year period immediately prior to filing  
22 his application in this State.

23 If such an applicant fails to pass the examination, he may file a  
24 new application accompanied by the required fee and take another  
25 examination. In no event will he be permitted to practice barbering

**Matter printed in italics *thus* is new matter.**

26 until such time that he satisfactorily passes an examination and  
27 receives a certificate of registration as a registered barber.

28 *b. The board shall waive the examination of and issue a certificate*  
29 *of registration to any person who is at least 18 years of age and*  
30 *of good moral character and temperate habits, if at the time of his*  
31 *application he is a practicing barber in another state or country*  
32 *which has education and experience requirements for the practice*  
33 *of barbering which are substantially equivalent to the requirements*  
34 *of this State, as determined by the board, and if the same privilege*  
35 *is granted by the other state or country to practicing barbers of*  
36 *this State; provided however, the applicant shall comply with each*  
37 *of the following:*

38 *(1) Completion of an application in a form approved by the*  
39 *board, in which he certifies that he has knowledge of, and will*  
40 *obey, the laws governing the practice of barbering in this State,*  
41 *and the rules and regulations adopted by the board;*

42 *(2) Furnishing to the board a letter from the agency in the state*  
43 *or country that issued his license or certificate of registration to*  
44 *practice barbering, verifying that he is currently the holder, in good*  
45 *standing, of a license or certificate of registration for the practice*  
46 *of barbering; and,*

47 *(3) Payment of a fee to the board in the required amount.*

1 2. Section 18 of P. L. 1938, c. 197 (C. 45:4-44) is amended to read  
2 as follows:

3 18. The fee to be paid by an applicant for examination to de-  
4 termine his fitness to receive a certificate of registration to practice  
5 barbering is \$25.00, *the fee to be paid by an applicant who is not*  
6 *required to take an examination shall be such fee as shall be fixed by*  
7 *the board, and for the issuance of a certificate, \$8.00.*

8 The fee for the annual renewal of a certificate of registration to  
9 practice barbering is \$8.00.

9A The fee for the restoration of an expired certificate of registra-  
10 tion to practice barbering is \$15.00.

11 The fee for an apprentice certificate is \$10.00.

12 The fee for a license to operate a barber school or college in  
13 accordance with the provisions of this act shall be \$250.00 per  
14 annum and such license to be renewed on or before July 1 of each  
15 year, the renewal fee thereof to be \$250.00.

16 The fee to be paid for a license as a registered teacher in ap-  
17 proved barber schools and colleges shall be \$25.00 per annum, such  
18 license to be renewed on or before July 1 of each year, the renewal  
19 fee thereof to be \$25.00.

1 3. This act shall take effect on the thirtieth day following enact-  
2 ment.

## STATEMENT

This bill provides that a barber who has been issued a license or certificate of registration in another state or country under requirements that are substantially similar to those of this State will not be required to take an examination prior to the issuance of a New Jersey certificate of registration, if the other state or country accords the same privilege to practicing barbers of this State. This reciprocal provision will make it possible for practicing barbers of this State who wish to relocate to do so with a minimum of difficulty.

This bill also establishes a fee in an amount to be prescribed by the board of examiners for practicing barbers from other jurisdictions who are not required to take an examination under the provisions of this bill.

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 590**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 28, 1982

This bill amends a recently-enacted law, P. L. 1981, c. 317, which prohibits hold harmless clauses in construction contracts which indemnify the promisee for any damages regardless of the extent of his negligence. For example, an agreement between a property owner and a general contractor under the terms of which the general contractor agrees to hold the owner harmless from any and all liability as a result of the negligence or wrongdoing of the general contractor and/or the latter's subcontractors, is under the law against public policy and is void and unenforceable. It is the contention of Assembly Bill No. 590 that the present law as originally conceived was nothing more than prohibition to prevent indemnification against one's own negligence. However, as a result of Senate committee amendments to the original bill, certain conventional and proper hold-harmless clauses were prohibited.

The committee amendments prohibit indemnification clauses only where such clauses purport to indemnify for the sole negligence of the promisee. The proposed amendments would also effectively allow indemnification clauses where contributory negligence is involved.

An additional proposed amendment applies the same indemnification clause prohibitions to architects, engineers, surveyor or their agents.

By way of background, the reason for these amendments follows: It has been a well settled principle, determined by the courts of this State, that there is no essential public policy impediment to certain hold harmless agreements. The principle derives from recognition that, ordinarily, the responsibility for risk of injury is shifted by the primary parties to insurance carriers, and the parties should be left to determine how the insurance burdens shall be distributed. In effect, it is an allocation of costs which, in practice, finds its way into the contract price.

In addition, there are other considerations for permitting hold harmless or indemnification agreements in construction contracts. For example, an owner who hires a contractor to do construction on land may be liable for the entire amount of damages to an employee of the con-

tractor even though the owner might only be 1% negligent because of the workers compensation immunity from suit which clothes the contractor. Also, from a policy perspective, nonrecognition of hold harmless provisions in contracts would foster litigation and trials, with accompanying court delay.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 590**

**STATE OF NEW JERSEY**

DATED: DECEMBER 13, 1982

A hold harmless clause is basically the assumption, by contract, by one party, the indemnitor, of the liability of another party, the indemnitee, arising out of the contract. Recently enacted chapter 317 of the Laws of 1981 provides that all hold harmless or indemnification clauses in construction contracts are void and unenforceable as against public policy. Chapter 317 was enacted in response to a practice, common in the construction field, for hold harmless agreements to be included in contracts and purchase order forms. Approximately 27 states have enacted some form of restriction on the use of hold harmless clauses.

Assembly Bill No. 590 attempts to limit the effect of chapter 317 but prohibiting only such hold harmless clauses which purport to indemnify a person for damages which result from his sole negligence. Thus, a clause which requires a subcontractor to indemnify a contractor for any damage which results solely from the contractor's sole negligence would be unenforceable. Section 2 of Assembly Bill No. 590 would provide the same limitation for indemnification clauses in contracts involving architects, engineers and surveyors which were also prohibited by the enactment of chapter 317.

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ASSEMBLY, No. 590

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1982

By Assemblyman KARCHER

(Without Reference)

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2 read as follows:

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4 connection with or collateral to a contract, agreement or purchase  
5 order, relative to the construction, alteration, repair, maintenance,  
6 servicing, or security of a building, structure, highway, railroad,  
7 appurtenance and appliance, including moving, demolition, excavat-  
8 ing, grading, clearing, site preparation or development of real  
9 property connected therewith, purporting to indemnify or hold  
10 harmless the promisee against liability for damages arising out of  
11 bodily injury to persons or damage to property *caused by or result-*  
12 *ing from* **[** *or contributed to by,* **]** *the \*sole\* negligence of the*  
13 *promisee, his agents, or employees, \***[**or indemnitee,**]**\** is against  
14 public policy and is void and unenforceable; provided that this  
15 section shall not affect the validity of any insurance contract, work-  
16 men's compensation or agreement issued by an authorized insurer.

1 \*2. Section 2 of P. L. 1981, c. 317 (C. 2A:40A-2) is amended  
2 to read as follows:

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4 connection with or collateral to a contract, agreement or purchase

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5 order, whereby an architect, engineer, surveyor or his agents,  
6 servants, or employees shall be indemnified or held harmless for  
7 damages, claims, losses or expenses including attorneys' fees  
8 *caused by or resulting from the sole negligence of an architect,*  
9 *engineer, surveyor or his agents, servants, or employees and aris-*  
10 *ing either out of (1) the preparation or approval by an architect,*  
11 *engineer, surveyor or his agents, servants, employees or invitees,*  
12 *of maps, drawings, opinions, reports, surveys, change orders,*  
13 *designs or specifications, or (2) the giving of or the failure to give*  
14 *directions or instructions by the architect, engineer, surveyor or*  
15 *his agents, servants or employees provided such giving or failure*  
16 *to give is the cause of the damage, claim loss or expense, is against*  
17 *public policy and is void and unenforceable.\**

1    \***[2.]**\* \*3.\* This act shall take effect immediately.

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