

2A:40A-1 to 2A:40A-4

LEGISLATIVE HISTORY CHECKLIST

NJSA 2A:40A-1 to 2A:40A-4 (Hold harmless agreements -- certain void and unenforceable)

LAWS 1981 CHAPTER 317

Bill No. A1349

Sponsor(s) Bornheimer

Date Introduced March 13, 1980

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly October 16, 1980

Senate May 4, 1981

Date of approval December 3, 1981

Following statements are attached if available:

| | | |
|-------------------------------|----------------|---------------|
| Sponsor statement | Yes | XX |
| Committee Statement: Assembly | Yes | No |
| Senate | Yes | XX |
| Fiscal Note | Yes | No |
| Veto Message | Yes | No |
| Message on signing | Yes | XX |

Following were printed:

| | | |
|----------|----------------|----|
| Reports | Yes | No |
| Hearings | Yes | No |

6/22/81

PP

Vertical stamp: REPRODUCED FROM THE LEGISLATIVE HISTORY OF THE STATE OF NEW JERSEY

CHAPTER 3/7 LAWS OF N. J. 1981
APPROVED 12-3-81

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1349

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1980

By Assemblyman BORNHEIMER

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT making void and unenforceable certain hold harmless agreements and supplementing subtitle 6 of Title 2A of the New Jersey Statutes.

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

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

1 2. A covenant, promise, agreement or understanding in, or in
2 connection with or collateral to a contract, agreement or purchase
3 order, whereby an architect, engineer, surveyor or his agents,
4 servants, or employees shall be indemnified or held harmless for
5 damages, claims, losses or expenses including attorneys' fees
6 arising either out of (1) the preparation or approval by an architect,
7 engineer, surveyor or his agents, servants, employees or invitees,
8 of maps, drawings, opinions, reports, surveys, change orders,
9 designs or specifications, or (2) the giving of or the failure to give
10 directions or instructions by the architect, engineer, surveyor or

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

11 his agents, servants or employees provided such giving or failure
12 to give is the cause of the damage, claim loss or expense, is against
13 public policy and is void and unenforceable.

1 3. This act shall not apply to a covenant, promise or agreement
2 made directly with a railroad relative to construction, alteration,
3 repair, maintenance or access upon, under or across the right of
4 way of an operating railroad. This act shall not apply to any
5 contract, agreement, understanding or purchase order to which
6 the State of New Jersey or any of its departments, agencies, or
7 authorities is a party.

1 4. This act shall take effect with respect to covenants, promises.
2 agreements or understandings which are subject hereof made or
3 executed from and after the effective date of this act.

1 5. This act shall take effect immediately.

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8 harmless the promisee against liability for damages arising out
9 of bodily injury to persons or damage to property caused by or
10 resulting from the sole negligence of the promisee, his agents, or
11 employees, or indemnitee, is against public policy and is void and
12 unenforceable; provided that this section shall not affect the
13 validity of any insurance contract, workmen's compensation or
14 agreement issued by an admitted insurer.

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STATEMENT

It is becoming increasingly common, particularly in the construction field, for hold harmless agreements to be included in contracts and printed on the back of purchase order forms. Such agreements may vary in the extent to which one party shifts liability to the other, but whatever the shift the casual manner in which the liability is tendered and assumed is particularly dangerous. Such agreements frequently impose liabilities, the assumption of which is not intended, and against which individuals may be unable to obtain insurance. This bill would make void and unenforceable certain hold harmless agreements which are included in the contracts and printed on purchase order forms where liability is shifted for the sole negligence of the promisee.

SENATE COMMITTEE
STATEMENT TO
ASSEMBLY, No. 1349
with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 1981

Assembly Bill No. 1349 would make certain hold harmless clauses in construction contracts (section 1) and in architectural, engineering and surveying contracts (section 2) void and unenforceable as against public policy. The provisions of Assembly Bill No. 1349 would not, however, be applicable to any contracts with the State of New Jersey or railroads. (section 3)

As passed by the Assembly, Assembly Bill No. 1349 would not permit a contractor by virtue of a hold harmless clause to shift responsibility to a subcontractor for damage which resulted from the sole negligence of contractor. However, a contractor could shift responsibility for damages where both parties were jointly negligent.

Thus, for example, if the damages amounted to \$10,000.00 and the contractor was solely negligent, he could not have shifted responsibility to a subcontractor. However, if the damages amounted to \$10,000.00 and under the theory of comparative negligence, the contractor was 90% and the subcontractor 10% negligent, Assembly Bill No. 1349 would not have prevented the contractor from inserting a hold harmless clause and shifting liability to the subcontractor.

To rectify this situation, the committee adopted amendments which would result in hold harmless clauses in construction contracts being void and unenforceable whether sole negligence or joint negligence were the basis for the shift in responsibility.

The amendments also substitute the word "authorized" for "admitted" before the word insurer in section 1 of the bill. This is so the provision of section 1 would be applicable to "surplus line insurance carriers" as well as to insurance companies actually admitted to do business in New Jersey.

SENATE COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 1349

STATE OF NEW JERSEY

ADOPTED MARCH 23, 1981

Amend page 1, section 1, lines 9-11, omit "caused by or resulting from the sole negligence of the promisee, his agents, or employees, or indemnitee,".

Amend page 1, section 1, line 14, omit "admitted", insert "authorized".

[SENATE REPRINT]

ASSEMBLY, No. 1349

with Senate committee amendments adopted March 23, 1981

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1980

By Assemblyman BORNHEIMER

Referred to Committee on Judiciary, Law, Public Safety
and Defense

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DECEMBER 3, 1981

- 1 -

S-3231, sponsored by Senator Raymond Zane (D-Gloucester), which amends the statute requiring approval by the Department of Environmental Protection before one may construct a dock, wharf, pier or other waterfront development to exempt the repair, replacement or renovation of permanent docks existing prior to January 1, 1981, provided that the repair, etc., does not increase the size of the structure and the structure is used solely for residential purposes or for the docking of pleasure vessels.

As originally passed, the bill also exempted the construction, repair, replacement or renovation of floating docks provided the structure does not exceed waterfront frontage and is used solely for pleasure vessels.

Governor Byrne conditionally vetoed the bill on November 12, saying that floating docks "should continue to be reviewed by the Department of Environmental Protection." The Legislature concurred with his recommendations.

A-923, sponsored by Assemblyman Martin Herman (D-Gloucester), which continues to permit prescription holders to possess a 10-day supply of a controlled dangerous substance in other than the original container.

However, upon the request of a law enforcement officer, the individual must produce the name and address of the prescribing practitioner and the dispensing pharmacist. Failure to produce this information is a disorderly persons offense.

A-1349, sponsored by Assemblyman James Bornheimer (D-Middlesex), which as a matter of public policy, voids "hold harmless" clauses in construction, architectural, engineering or surveying contracts by which one party shifts responsibility for damages resulting from its negligence to another. These clauses are standard in most competitive construction contracts.

Seventeen other states have adopted similar legislation.

S-1183, sponsored by Senator Wayne Dumont (R-Sussex), prohibiting municipalities from charging interest on deferred assessments granted to owners of farmland.

Under current law, a farm owner may defer charges or assessments for local improvements, such as sewers, which he does not immediately use. The deferral on assessments lasts until the farm owner subdivides or obtains a building permit on the land. This bill attempts to clarify a previously ambiguous situation.

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