STATE OF NEW YORK

1176--A

2017-2018 Regular Sessions

IN SENATE

January 6, 2017

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to the defense and indemnification of certain independent contractors

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 1 of section 17 of the public officers law, as amended by chapter 293 of the laws of 1992, is amended to read as follows:

(a) As used in this section, unless the context otherwise requires the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the state, including clinical practice pursuant to subdivision fourteen of section two hundred six of the public health law, whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor**, except as provided in paragraph (aa) of this subdivision**. The term employee shall include a former employee, his estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice pursuant to title eight of the education law or title II-A of the public health law.

§ 2. Subdivision 1 of section 17 of the public officers law is amended by adding a new paragraph (aa) to read as follows:

(aa) For the purposes of this section, the term "employee" shall include an independent contractor and its employees who install tempo-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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rary traffic controls at the scene of an accident, hazardous material spill or other unplanned traffic incident, while acting pursuant to a direct order by a police officer or other public official that is in charge of such traffic incident. Provided, however, the classification of such independent contractor and its employees as "employee" shall apply only with regard to entitlement to receive defense and indemnification from the state pursuant to this section; it shall have no effect on the liability of such independent contractor or its employees or the applicability of the civil practice law and rules, the general municipal law, the general obligations law or other laws or common law to actions or claims of any kind with regard to such independent contractor or its employees; neither shall it grant to any party not already so entitled the right to a notice of claim, not to a notice of an intention to make a claim, nor to venue in the court of claim.

§ 3. Subdivision 5 of section 17 of the public officers law, as added by chapter 466 of the laws of 1978, is amended to read as follows:

5. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law; and nothing herein shall confer upon any indemnitee any additional benefits or advantages with regard to any other party in litigation other than as specifically set forth herein.

§ 4. This act shall take effect immediately.