

# STATE OF NEW YORK

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152

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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Introduced by M. of A. D'URSO, ORTIZ -- read once and referred to the  
Committee on Governmental Operations

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 Assem-  
bly, do enact as follows:

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

4 (a) As used in this section, unless the context otherwise requires the  
5 term "employee" shall mean any person holding a position by election,  
6 appointment or employment in the service of the state, including clin-  
7 ical practice pursuant to subdivision fourteen of section two hundred  
8 six of the public health law, whether or not compensated, or a volunteer  
9 expressly authorized to participate in a state-sponsored volunteer  
10 program, but shall not include an independent contractor, except as  
11 provided in paragraph (aa) of this subdivision. The term employee shall  
12 include a former employee, his estate or judicially appointed personal  
13 representative and persons who assist the education department or the  
14 department of health as consultants or expert witnesses in the investi-  
15 gation or prosecution of alleged professional misconduct, licensure  
16 matters, restoration proceedings, or criminal prosecutions for unauthor-  
17 ized practice pursuant to title eight of the education law or title II-A  
18 of the public health law.

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

21 (aa) For the purposes of this section, the term "employee" shall  
22 include an independent contractor and its employees who install tempo-  
23 rary traffic controls at the scene of an accident, hazardous material  
24 spill or other unplanned traffic incident, while acting pursuant to a

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

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1 direct order by a police officer or other public official that is in  
2 charge of such traffic incident. Provided, however, the classification  
3 of such independent contractor and its employees as "employee" shall  
4 apply only with regard to entitlement to receive defense and indemnifi-  
5 cation from the state pursuant to this section; it shall have no effect  
6 on the liability of such independent contractor or its employees or the  
7 applicability of the civil practice law and rules, the general municipal  
8 law, the general obligations law or other laws or common law to actions  
9 or claims of any kind with regard to such independent contractor or its  
10 employees; neither shall it grant to any party not already so entitled  
11 the right to a notice of claim, not to a notice of an intention to make  
12 a claim, nor to venue in the court of claim.

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

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

22 § 4. This act shall take effect immediately.