

Legislative Analysis



SNOWPLOW & DE-ICING SERVICES: VOID CERTAIN INDEMNITY CLAUSES

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House Bill 5230 reported Substitute H-2

Sponsor: Rep. Ken Yonker

Committee: Judiciary

Complete to 5-24-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would create a new act to make an indemnity contract relating to commercial snowplow and de-icing services void and unenforceable if the contract requires the service provider to indemnify, defend, or hold the service receiver harmless from liability for losses or damages that result from the negligence of the service receiver.

The bill would take effect 90 days after enactment and apply to a commercial snowplow and de-icing services contract entered into after September 30, 2015.

House Bill 5230 specifies that a provision, clause, covenant, or agreement that is contained in or affecting a commercial snowplow and de-icing services contract that purports to require a service provider to indemnify, defend, or hold harmless (or that has the effect of doing so) the service receiver from or against liability for loss or damage resulting from the negligence or omissions of the service receiver would be against the public policy of the state and would be void and unenforceable.

"Commercial snowplow and de-icing services contract" is defined to mean a contract, agreement, or understanding to which all of the following apply:

- The contract covers plowing, shoveling, or other removing of snow or other mixed precipitation from a surface; de-icing services; or a service incidental to any of those services including, but not limited to, driving or otherwise moving snowplow and de-icing equipment and materials.
- The contract is between a service receiver and a service provider.
- The contract requires snow or mixed precipitation removal to be performed on real property where business is conducted, including, but not limited to, a restaurant, bank, retail store, hotel, homeowner's association, condominium, and apartment complex.

The term "commercial snowplow and de-icing services contract" would not include:

- A contract between a resident of a single-family home and a service provider that requires snow removal to be performed on single-family residential property.
- A contract between an owner or operator of an airport facility and a service provider.

"Service receiver" would mean the service receiver and any agents, employees, servants, or independent contractors who are directly or indirectly responsible to the service receiver.

FISCAL IMPACT:

A fiscal analysis is in process. Note, however, that the bill applies to the enforceability to contracts between private parties.

BRIEF DISCUSSION OF THE ISSUES:

The bill, which only applies to commercial snowplowing contracts, would prevent commercial property owners from avoiding liability by having a third party administer a service contract for snowplowing services on their property. Reportedly, a third party administrator of the snowplowing contract controls the terms of the contract, such as when salt will be put down, how often the property will be plowed or how deep the snow or ice must be before the property is plowed or salted, and so on. However, many of these contracts contain a clause that puts full liability for negligence on the snowplow service provider rather than the property owner. Thus, a situation is created in which a snow and ice clearing service provider may be prevented by the terms of the contract from providing the type of service needed to create a safe surface on sidewalks, driveways, or parking lots, yet bears full liability for injuries caused by slips and falls or property damage.

The bill would address the issue by prohibiting the type of indemnification clauses that exempt property owners from negligence claims, and puts the liability on the shoulders of the snow and ice clearing providers. This reflects case law that it is the owner of the property that bears the responsibility to maintain the property in a safe condition. The bill does not protect a snowplow or de-icing service provider from being sued by a property owner for conduct that would constitute breach of contract or that was negligent.

POSITIONS:

Representatives of Troy Clogg Associates and the Accredited Snow Contractors Association (ASCA) testified in support of the bill. (3-22-16)

A representative of the Michigan Nursery and Landscape Association testified in support of the bill. (3-22-16)

Michigan Retailers Association indicated support for the bill. (3-22-16)

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Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.