

## NEW SNOW REMOVAL ACT MAY ICE YOUR OPPORTUNITY TO BE INDEMNIFIED

Historically, snow removal contracts made a snow removal company liable when a person was injured slipping on ice even if a property owner's or property manager's negligent actions caused the injuries. The Act largely abolishes this system of shifting liability for a party's own negligence. On May 30, 2018, Colorado Governor John Hickenlooper signed into law the Snow Removal Services Liability Limitation Act governing liability for snow removal companies and making some terms in snow removal contracts void.<sup>1</sup> The new law goes into effect on August 8, 2018 and "applies to snow removal and ice control services contracts entered into or after" August 8, 2018.<sup>2</sup>

In short, the Act prohibits one party to a snow removal contract from requiring the other party to indemnify, hold harmless, or defend for the party's own negligence. It does not, however, seem to prohibit additional insured provisions.

The Act applies to most contracts or agreements for snow and ice removal. Notably, the Act exempts contracts involving:

- Public bodies;
- Public utility companies;
- Public roads;
- Deicing services at most airports;
- "An insurance policy, as surety bond, or workers' compensation."<sup>3</sup>

The Act applies to most types of property and most parties and also has an expansive definition of what constitutes "snow removal and ice control services." For instance, snow and ice removal includes the obvious actions, "plowing, shoveling or other removal of snow" and "deicing services."<sup>4</sup> Snow and ice removal also includes the not so obvious acts of "operating or otherwise moving snow removal equipment or materials."<sup>5</sup> The Colorado legislature also included an ambiguous catch-all provision that says the Act applies to "[a] service incidental" to plowing, shoveling and removal of snow and mixed precipitation or deicing.<sup>6</sup> Because the statute applies to most parties, properties, and snow and ice removal activities, persons or entities entering into agreements for snow and ice removal should be aware the new law likely affects their agreements.

The Act makes void, against public policy, common snow and ice removal contract provisions that require the other party to:

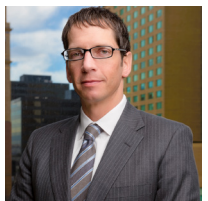
- Indemnify for damages the party causes;
- Hold harmless for any tort liability for damages the party causes; or
- Provide defense against tort liability for damages the party causes.

This means a snow removal contract provision requiring the other party to indemnify, hold harmless, or defend for the party's own negligence will no longer be enforceable. A party will be able to enforce such a provision if the contract is entered before August 8. But beware if you enter into a contract after August 8, and it contains one of the disallowed provisions - per the Act, the provision is against public policy and is void.

Liability-shifting provisions are not always impermissible. A snow removal contract can contain these provisions as long as the snow remover is not "prohibited by express contract terms or in writing, from mitigating a specific snow, ice, or other mixed precipitation event."<sup>7</sup> Thus, if a contract requires snow, ice, or mixed precipitation removal regardless of the amount or timing, then the liability-shifting provisions will be upheld. On the other hand, if a company's snow removal obligation is only triggered by a certain event, the provisions are not allowed. This language appears to be referring to the common provision in snow removal contracts that snow removal companies are only to remove snow if two inches or more has fallen.

Finally, and importantly, the Act does not apply to "an insurance policy, as surety bond," as noted above. Thus, although the courts have not interpreted this subsection, the best way to protect yourself in a snow removal contract is to require additional insured coverage from the other party.

If you have any questions about this update, please contact Steve Hamilton, [hamiltons@hallevans.com](mailto:hamiltons@hallevans.com) or Dan Rosenberg, [rosenbergd@hallevans.com](mailto:rosenbergd@hallevans.com).



<sup>1</sup> A link is provided here to the Act.

<sup>2</sup> See the Act at Section 2.

<sup>3</sup> C.R.S. § 13-21-129(4).

<sup>4</sup> C.R.S. § 13-21-129(2)(d)(I), (II).

<sup>5</sup> C.R.S. § 13-21-129(2)(d)(III).

<sup>6</sup> See *id.*

<sup>7</sup> C.R.S. § 13-21-129(3).