

BILL TEXT:

STATE OF NEW YORK

1181

2005-2006 Regular Sessions

IN ASSEMBLY

January 18, 2005

Introduced by M. of A. MORELLE, SCHIMMINGER, CYMBROWITZ -- Multi-Sponsored by -- M. of A. CHRISTENSEN, DESTITO, LAVELLE, MAGEE -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the use of scaffolding and other devices for use by employees; to amend the civil practice law and rules, in relation to making technical corrections thereto; and to repeal section 241-a of the labor law and subdivision 8 of section 1602 of the civil practice law and rules relating thereto

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

1 Section 1. Section 240 of the labor law, the section heading and
2 subdivision 2 as amended by chapter 683 of the laws of 1947 and subdivi-
3 sion 1 as amended by chapter 241 of the laws of 1981, is amended to read
4 as follows:

5 § 240. Scaffolding and other devices for use of employees. 1. All
6 contractors and owners and their agents, except owners of one and two-
7 family dwellings who contract for but do not direct or control the work,
8 in the erection, demolition, repairing, altering, painting, cleaning or
9 pointing of a building or structure shall furnish or erect, or cause to
10 be furnished or erected devices or equipment for the performance of such
11 labor, such as scaffolding, hoists, stays, ladders, slings, hangers,
12 blocks, pulleys, braces, irons, and ropes, [~~and other devices which~~]
13 where such devices or equipment are necessary to give reasonable and
14 adequate protection and safety to a person so employed. Where such
15 devices or equipment are furnished or erected, the devices or equipment
16 shall be so constructed, placed and operated as to [~~give proper~~] provide
17 reasonable and adequate protection and safety to a person so employed.

18 No liability pursuant to this subdivision for the failure to provide
19 protection to a person so employed shall be imposed on professional
20 engineers as provided for in article one hundred forty-five of the
21 education law, architects as provided for in article one hundred forty-

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

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1 seven of such law or landscape architects as provided for in article one
2 hundred forty-eight of such law who do not direct or control the work
3 for activities other than planning and design. This exception shall not
4 diminish or extinguish any liability of professional engineers or archi-
5 tects or landscape architects arising under the common law or any other
6 provision of law.

7 ~~2. [Scaffolding or staging more than twenty feet from the ground or~~
8 ~~floor, swung or suspended from an overhead support or erected with~~
9 ~~stationary supports, except scaffolding wholly within the interior of a~~
10 ~~building and covering the entire floor space of any room therein, shall~~
11 ~~have a safety rail of suitable material properly attached, belted,~~
12 ~~braced or otherwise secured, rising at least thirty four inches above~~
13 ~~the floor or main portions of such scaffolding or staging and extending~~
14 ~~along the entire length of the outside and the ends thereof, with only~~
15 ~~such openings as may be necessary for the delivery of materials. Such~~
16 ~~scaffolding or staging shall be so fastened as to prevent it from sway-~~
17 ~~ing from the building or structure.~~

18 ~~3. All scaffolding shall be so constructed as to bear four times the~~
19 ~~maximum weight required to be dependent therefrom or placed thereon when~~
20 ~~in use]~~ Compliance with applicable provisions of the federal Occupa-
21 tional Safety and Health Act and Part 23 of the New York Codes, Rules
22 and Regulations, as amended, shall be prima facie proof of compliance
23 with subdivision one of this section.

24 3. Nothing in this section shall be deemed to relieve a person injured
25 in the erection, demolition, repairing, altering, painting, cleaning or
26 pointing of a building or structure from the consequences of his or her
27 culpable conduct in accordance with section fourteen hundred eleven of
28 the civil practice law and rules.

29 § 2. Section 241 of the labor law, as added by chapter 1108 of the
30 laws of 1969, the opening paragraph as amended by chapter 670 of the
31 laws of 1980, subdivisions 6, 7 and 8 as amended and subdivision 10 as
32 added by chapter 520 of the laws of 1989, subdivision 9 as added by
33 chapter 241 of the laws of 1981, is amended to read as follows:

34 § 241. Construction, excavation and demolition work. 1. All contrac-
35 tors and owners and their agents, except owners of one and two-family
36 dwellings who contract for but do not direct or control the work, when
37 constructing or demolishing buildings or doing any excavating in
38 connection therewith, shall ~~[comply with the following requirements:~~

39 ~~1. If the floors are to be arched between the beams thereof, or if the~~
40 ~~floors or filling in between the floors are of fireproof material, the~~
41 ~~flooring or filling in shall be completed as the building progresses.~~

42 ~~2. If the floors are not to be filled in between the beams with brick~~
43 ~~or other fireproof material, the underflooring shall be laid on each~~
44 ~~story as the building progresses.~~

45 ~~3. If double floors are not to be used, the floor two stories imme-~~
46 ~~diately below the story where the work is being performed shall be kept~~
47 ~~planked over.~~

48 ~~4. If the floor beams are of iron or steel, the entire tier of iron or~~
49 ~~steel beams on which the structural iron or steel work is being erected~~
50 ~~shall be thoroughly planked over, except spaces reasonably required for~~
51 ~~proper construction of the iron or steel work, for raising or lowering~~
52 ~~of materials or for stairways and elevator shafts designated by the~~
53 ~~plans and specifications.~~

54 ~~5. If elevators, elevating machines or hod hoisting apparatus are used~~
55 ~~in the course of construction, for the purpose of lifting materials, the~~
56 ~~shafts or openings in each floor and at each landing level shall be~~

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~~1 inclosed or fenced in on all sides by a barrier of suitable height,
2 except on two sides which may be used for taking off and putting on
3 materials, and those sides shall be guarded by an adjustable barrier not
4 less than three nor more than four feet from the floor and not less than
5 two feet from the edges of such shafts or openings.~~

~~6 6. All areas in which construction, excavation or demolition work is
7 being performed shall be so constructed, shored, equipped, guarded,
8 arranged, operated and conducted]~~ construct, shore, equip, guard,
9 arrange, operate and conduct such work so as to provide reasonable and
10 adequate protection and safety to the persons employed therein or
11 lawfully frequenting such places. The commissioner may make rules to
12 carry into effect the provisions of this subdivision, and the owners and
13 contractors and their agents for such work, except owners of one and
14 two-family dwellings who contract for but do not direct or control the
15 work, shall comply therewith.

~~16 [7. The commissioner may make rules to provide for the protection of
17 workers in connection with the excavation work for the construction of
18 buildings, the work of constructing or demolishing buildings and struc-
19 tures, and the guarding of dangerous machinery used in connection there-
20 with, and the owners and contractors and their agents for such work,
21 except owners of one and two family dwellings who contract for but do
22 not direct or control the work, shall comply therewith.~~

~~23 8.]~~ 2. Compliance with applicable provisions of the federal Occupa-
24 tional Safety and Health Act and Part 23 of the New York Codes, Rules
25 and Regulations, as amended, shall be prima facie proof of compliance
26 with subdivision one of this section.

27 3. Nothing in this section shall be deemed to relieve a person injured
28 in the construction, demolition or excavation of a building or structure
29 from the consequences of his or her culpable conduct in accordance with
30 section fourteen hundred eleven of the civil practice law and rules.

31 4. The commissioner, as deemed necessary, shall promulgate rules
32 designed for the purpose of providing for the reasonable and adequate
33 protection and safety of persons passing by all areas, buildings or
34 structures in which construction, excavation or demolition work is being
35 performed, and the owners and contractors and their agents for such
36 work, except owners of one and two-family dwellings who contract for but
37 do not direct or control the work, shall comply therewith. The
38 provisions of this subdivision shall not apply to cities having a popu-
39 lation of one million or more.

~~40 [9.]~~ 5. No liability for the non-compliance with any of the
41 provisions of this section shall be imposed on professional engineers as
42 provided for in article one hundred forty-five of the education law,
43 architects as provided for in article one hundred forty-seven of such
44 law or landscape architects as provided for in article one hundred
45 forty-eight of such law who do not direct or control the work for activ-
46 ities other than planning and design. This exception shall not diminish
47 or extinguish any liability of professional engineers, architects or
48 landscape architects arising under the common law or any other provision
49 of law.

~~50 [10.]~~ 6. Prior to advertising for bids or contracting for or commenc-
51 ing work on any demolition work on buildings covered under this section
52 except agricultural buildings as defined in regulations promulgated by
53 the commissioner and except buildings the construction of which was
54 begun on or after January first, nineteen hundred seventy-four, all
55 owners and their agents, except owners of one and two-family dwellings
56 who contract for but do not direct or control the work, shall conduct or

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1 cause to be conducted a survey to determine whether or not the building
 2 to be demolished contains asbestos or asbestos material as defined in
 3 section nine hundred one of this chapter. Such surveys shall be
 4 conducted in conformance with rules and regulations promulgated by the
 5 commissioner. Information derived from such survey shall be immediately
 6 transmitted to the commissioner and to the local governmental entity
 7 charged with issuing a permit for such demolition under applicable state
 8 or local laws or, if no such permit is required, to the town or city
 9 clerk. If such survey finds that a building to be demolished contains
 10 asbestos or asbestos material as defined by section nine hundred one of
 11 [~~the~~] **this** chapter, no bids shall be advertised nor contracts awarded
 12 nor demolition work commenced by any owner or agent prior to completion
 13 of an asbestos remediation contract performed by a licensed asbestos
 14 contractor as defined by section nine hundred one of this chapter.

15 § 3. Section 241-a of the labor law is REPEALED.

16 § 4. Subdivision 8 of section 1602 of the civil practice law and rules
 17 is REPEALED.

18 § 5. The opening paragraph of subdivision 3 of section 30 of the labor
 19 law, as added by chapter 162 of the laws of 1993, is amended to read as
 20 follows:

21 Except for variations concerning provisions, rules, codes, orders or
 22 any other matter affecting asbestos projects or safety and health stand-
 23 ards for public employees, including but not limited to projects covered
 24 by article thirty and section twenty-seven-a and subdivision [~~ten~~] **six**
 25 of section two hundred forty-one of this chapter;

26 § 6. Section 1603 of the civil practice law and rules, as amended by
 27 chapter 635 of the laws of 1996, is amended to read as follows:

28 § 1603. Burdens of proof. In any action or claim for damages for
 29 personal injury a party asserting that the limitations on liability set
 30 forth in this article do not apply shall allege and prove by a prepon-
 31 derance of the evidence that one or more of the exemptions set forth in
 32 subdivision one of section sixteen hundred one [~~or section sixteen~~
 33 ~~hundred two~~] applies. A party asserting limited liability pursuant to
 34 this article shall have the burden of proving by a preponderance of the
 35 evidence its equitable share of the total liability.

36 § 7. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
 MEMORANDUM IN SUPPORT OF LEGISLATION
 submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A1181

SPONSOR: Morelle (MS)

TITLE OF BILL: An act to amend the labor law, in relation to the use of scaffolding and other devices for use by employees; to amend the civil practice law and rules, in relation to making technical corrections thereto; and to repeal section 241-a of the labor law and subdivision 8 of section 1602 of the civil practice law and rules relating thereto

PURPOSE OR GENERAL IDEA OF BILL:

This bill would clarify the duties and obligations of contractors, owners, and employees regarding protection devices and equipment for

construction workers.

SUMMARY OF SPECIFIC PROVISIONS:

Subsection (1) of Section 240 of the Labor Law is amended to require certain contractors and owners and their agents (1) to provide construction workers devices and equipment of the type necessary to give reasonable protection to workers employed on the construction site; and (2) when such devices and equipment are provided, to construct, place, and operate such devices and equipment as to provide reasonable protection to those workers.

Former subsections 2 and 3 of Section 240 are repealed. Two new provisions are added. As amended, subsection (2) states that if a contractor or owner complies with applicable state and federal health and safety regulations, their compliance shall be **PRIMA FACIE** proof of compliance with subsection 1. As amended, subsection 3 conforms section 240 with section 1411 of the Civil Practice Law and Rules.

Section 241 is amended to conform with Section 240 as amended. Subsections 1-5 and 7 are effectively repealed. Subsection 6 becomes subsection 1; subsections 2 and 3, as amended, conform with subsections 2 and 3 of section 240.

Section 241(a) is repealed.

Subdivision 8 of Section 1602 of the CPLR, as enacted by Chapter 682 of the Laws of 1986, is repealed.

JUSTIFICATION:

These amendments are necessary as a result of a Court of Appeals decision misinterpreting the clear legislative intent of Section 240. See

ZIMMER V. CHEMUNG COUNTY PERFORMING ARTS, 65 N.Y. 2D 513 (L985); BLAND V. MANOCERIAN, 66 N.Y. 2D 452 (1985).ct. Indeed, in the

ZIMMER decision, Chief Judge Wachtler, in a dissenting opinion, appealed for legislative reform of Section 240.

These decisions by the Court of Appeals have held that a contractor or owner is liable for virtually any injury suffered by construction workers on a job site, regardless of whether the contractor or owner had done everything they should have done to protect the worker from injury and regardless of whether or not the injury was caused by the worker's own negligence. These decisions have made contractors and owners insurers of workplace safety, and in essence have made them a second source of worker's compensation for workers who suffer injuries on the job site.

The theory of strict liability advanced by the Court of Appeals' decisions has resulted in a substantial increase in the number of civil suits filed against contractors and owners. These lawsuits can only exacerbate the liability insurance crisis faced by construction industry employers. Without legislative relief, construction firms employing thousands of workers will be unable to find affordable insurance and will be forced to shut their doors. As Chief Judge Wachtler observed in

ZIMMER, the ultimate victims of the current statute may be the very workers it was designed to protect:

"Because I read the statutory policy underlying Labor Law Section 240 as encouraging owners and contractors to provide safety devices where

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possible, and not to provide insurance coverage to their employees (who are already covered by workers' compensation) I respectfully dissent,

AND URGE THE LEGISLATURE TO AMEND THE STATUTE AND MAKE THIS INTENT MORE CLEAR (emphasis added). The imposition of insurers liability on owners and contractors will not further the goal of protecting workers because the absent devises cannot protect them. It will, however, hurt the building industry and perhaps cost those already adequately protected workers their jobs."

This bill is designed to remedy the obvious problems with the Court of Appeals interpretation of Section 240 noted by Chief Judge Wachtler. It would impose a negligence liability standard on contractors and owners, rather than the insurers' liability imposed by the Court of Appeals. It would also provide guidance to contractors and owners who must comply with a confusing array of federal, state, and local building codes and regulations by making compliance with the federal OSHA regulations

PRIMA FACIE evidence of compliance with Section 240. It would also promote workplace safety by making workers responsible for their own culpable acts.

Finally, it would be a significant step towards alleviating the serious liability insurance problems confronting both the construction industry and, ultimately, all those whose livelihoods depends upon a vigorous construction industry.

As additional justification, the Governor's Liability Commission in July 1986, reviewed the equity and implications of this law in regard to liability issues in general and urged the law be amended in a fashion similar to that proposal. Specifically, it recommended:

"Sections 240 and 241 of the Labor Law be amended to impose tort liability on owners and contractors for failure to provide construction site safety devices only in cases where they are adjudged to be negligent, and to diminish all verdicts by the amount of the employee's own culpable conduct, if any is found."

PRIOR LEGISLATIVE HISTORY:

2003-04, S.1937/A.136
 2001-02, S.203/A.571
 1999-00, S.2828/A.1598
 1997-98, S.3997/A.4842

EFFECTIVE DATE:

Immediately.