

BILL TEXT:

STATE OF NEW YORK

2946--A

2005-2006 Regular Sessions

IN ASSEMBLY

January 31, 2005

Introduced by M. of A. MORELLE, DESTITO, SCHIMMINGER, LOPEZ, MAGEE, CHRISTENSEN, POWELL, CYMBROWITZ, GALEF, ROBINSON, FIELDS -- Multi-Sponsored by -- M. of A. GORDON, KOON, McENENY, TONKO, TOWNS -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to the applicability of certain provisions with respect to persons injured in the use of scaffolding and other devices for use by employees

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 1414 to read as follows:
3 § 1414. Applicability to certain actions. 1. In any action or
4 proceeding to recover damages for personal injury, injury to property,
5 or wrongful death pursuant to section two hundred forty, subdivisions
6 one through five of section two hundred forty-one, or section two
7 hundred forty-one-a of the labor law, where safety equipment or devices
8 have been made available, and a person employed or otherwise entitled to
9 the protection of the provisions of such section has failed to follow
10 safety instruction or safe work practices in accordance with training
11 provided, or failed to utilize provided safety equipment or devices, or
12 engaged in a criminal act or was impaired by the use of drugs or alco-
13 hol, and such failure, act or impairment is a proximate cause of an
14 injury to such person, the conduct attributable to such person shall not
15 bar recovery, but the amount of damages otherwise recoverable shall be
16 determined in accordance with section fourteen hundred eleven of this
17 article to the extent that such conduct relates to the commission of a
18 criminal act, impairment caused by the use of drugs or alcohol, the
19 failure to use safety equipment or devices, the failure to comply with
20 instructions or training regarding the use of safety equipment or

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

LBD05932-04-5

A. 2946--A

2

1 devices or the failure to otherwise comply with safe work practices in
 2 accordance with safety training programs provided to such person. Such
 3 training programs shall include, but shall not be limited to, courses in
 4 construction safety and health certified by the United States Occupa-
 5 tional Safety and Health Administration or the department of labor.

6 2. Nothing contained in this section shall be deemed to impose or
 7 create liability under such sections of the labor law referred to in
 8 subdivision one of this section, where a person employed or otherwise
 9 entitled to the protection of the provisions of such sections has failed
 10 to follow safety instructions or safe work practices in accordance with
 11 training provided, or failed to utilize provided safety equipment or
 12 devices, or engaged in a criminal act or was impaired by the use of
 13 drugs or alcohol, and such failure, act or impairment is the sole prox-
 14 imate cause of an injury to such person.

15 § 2. This act shall take effect immediately and shall apply to all
 16 causes of actions accruing on or after such date.

SPONSORS MEMO:

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

BILL NUMBER: A2946A

SPONSOR: Morelle (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to the applicability of certain provisions with respect to persons injured in the use of scaffolding and other devices for use by employees

PURPOSE:

To establish a comparative negligence standard for claims under Labor Law sections 240 and 241 with respect to a recalcitrant worker.

SUMMARY OF PROVISIONS:

Amends the Civil Practice Law and Rules to add a new Section 1414. Section one applies a comparative negligence standard as provided for in CPLR 1411 with respect to actions for personal injury, property damage or wrongful death arising under Labor Law Sections 240 and 241 to the extent the conduct relates to the following: a criminal act, use of drugs or alcohol, failure of the employee to use safety devices furnished at the job site, failure to comply with employer instructions regarding the use of safety devices at the job site, or failure of the employee to comply with safe work practices in accord with safety training programs provided by the employer if such failure, act or impairment is a proximate cause of an injury to such person.

Section two states that nothing contained in this section shall be deemed to impose or create liability under such sections of the labor law where a person employed or otherwise entitled to the protection of the provisions of such sections has failed to follow safety instructions or safe work practices in accordance with training provided, or failed to utilize provided safety equipment or devices, or engaged in a crimi-

nal act or was impaired by the use of drugs or alcohol, and such failure, act or impairment is the sole proximate cause of an injury to such person.

JUSTIFICATION:

The construction industry is currently facing a liability insurance crisis. Contractors are receiving insurance cancellation notices and being forced to seek coverage from non-admitted carriers with exclusions from coverage's at exorbitant rate increases. Many contractors are concerned that existing coverage no matter how limited will also evaporate from the market. This insurance coverage crisis is especially difficult for smaller contractors. Many insurance carriers who have withdrawn from the market are citing the costs associated with absolute liability pursuant to the so called safe place to work law provided for in Labor Law Sections 240 and 241.

The predecessor of section 240 of the labor law was enacted in 1885 to encourage the protection of construction workers who worked at heights. Although amended since then, as noted by the New York Court of Appeals in *Blake v. Neighborhood Housing Services of New York City, Inc.*, "the original, core language, is still with us." Since that time, however, the world of construction safety has changed, most notably, with the enactment, and strict enforcement of the federal Occupational Safety and Health Act (OSHA) and the regulations implementing this law. Today, most construction employers work diligently to provide frequent training and safety equipment in order to ensure that their employees have a safe place to work.

While employers provided the training and safety devices to give workers a safe place to work, some courts in New York failed to recognize these efforts, refusing even to allow introduction of evidence of the safety training and equipment provided to employees in a 240 case. Abuse of the provisions of section 240 have led to skyrocketing insurance rates, reductions in available coverage and threaten the viability of construction contractors and subcontractors, particularly small contractors and subcontractors, who cannot afford to pay exorbitant insurance rates for 240 coverage.

In its recent decision in *Cahill v. Triborough Bridge and Tunnel Authority*, the Court of Appeals makes clear that employers who provide a safe place to work and appropriate training cannot be held strictly liable for worker injuries where the injury is solely caused by the failure of the employee to utilize safety equipment devices or to follow safety training. However, the Court did not address the issue of worker injuries where safety equipment and devices and training in safe work practices are provided, but where the injury is not solely caused by the failure to utilize such equipment or devices, or to follow such training, or where the injury is caused by the culpable conduct of the worker. It is the intention of this legislation to address this circumstance.

Construction employers in New York State spend millions of dollars every year to train and equip their workers and to provide a safe workplace. Employers who provide the required training and devices and equipment to protect their workers should not be required to pay exorbitant judgments for injuries to workers who fail to utilize the equipment or training provided, or who are hurt while committing a criminal act or are injured because they were impaired by alcohol or drugs. Conversely, employers who fail to adequately protect their workers should be strictly liable for injuries to their workers.

While worker safety must remain the primary goal of section 240, the civil practice law and rules should be amended to provide that in cases involving section 240, where an employee has failed to follow safety

RETRIEVE BILL

instructions, or failed to utilize provided safety equipment or devices, or otherwise committed culpable conduct, and such failure or culpable conduct is a proximate cause of an injury to the worker, an employer shall be entitled to a reduction in any damage award to the extent of the percentage of fault of the employee, in accordance with the provisions of section fourteen hundred eleven of the civil practice law and rules.

In making these amendments, it is not the purpose of this legislation to repeal section 240 and the other affected sections. It is the purpose of this legislation to encourage both employers and workers to take advantage of the many advancements in worker safety equipment, devices and training, and to place responsibility where it truly belongs: on the employer, if safety equipment or devices are not provided, or if training on safe work practices is not provided; and on the worker who fails to utilize the equipment or devices, or who fails to heed the training provided, or who is otherwise injured by his or her culpable conduct.

LEGISLATIVE HISTORY: A.7213/S.1710 of 2003-2004.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: Immediately.
