

BILL TEXT:

STATE OF NEW YORK

8392

2005-2006 Regular Sessions

IN ASSEMBLY

May 19, 2005

Introduced by M. of A. SCHIMMINGER, MAGEE -- read once and referred to the Committee on Codes

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
21 devices or the failure to otherwise comply with safe work practices in
22 accordance with safety training programs provided to such person. Such
23 training programs shall include, but shall not be limited to, courses in

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

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1 construction safety and health certified by the United States Occupa-
 2 tional Safety and Health Administration or the department of labor.

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

12 3. The provisions of this section shall not apply to actions or
 13 proceedings wherein the personal injury, injury to property, or wrongful
 14 death is alleged or subsequently determined to have occurred, or arisen
 15 out of an occurrence, within a city having a population of one million
 16 or more inhabitants.

17 § 2. This act shall take effect immediately and shall apply to all
 18 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: A8392

SPONSOR: Schimminger (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 OF THE BILL: To establish a comparative negligence standard for claims under Labor Law Sections 240 and 241 with respect to a recalcitrant worker for occurrences outside of the City of New York.

SUMMARY OF SPECIFIC PROVISIONS: Section one of the bill amends the Civil Practice Law and Rules to a new Section 1414. Subdivision one applies to 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, the use of drugs or alcohol, failure of the employee to use safety devices furnished at the job site, failure to comply with safe work practices in accord with safety training program provided by the employer if such failure, act or impairment is a proximate cause of an injury to such person.

Subdivision two provides 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 criminal act or was impaired by the use of drugs or alcohol, and such fail-

ure, act or impairment is the sole proximate cause of an injury to such a person.

Subdivision three provides that this section shall not apply to any actions or proceedings wherein personal injury, injury to property or wrongful death have occurred or arisen out of an occurrence, within a city having a population of one million or more.

Section two of the bill provides for the effective date.

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 coverages at exorbitant rate increases. Many contractors are concerned that existing coverage, no matter how limited, will 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 Labor Law Sections 240 and 241. While employers have provided the training and safety devices to give workers a safe place to work, some courts in New York have 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 and reductions in available coverage, and threaten the viability of construction contractors and subcontractors, who cannot afford to pay exorbitant insurance rates for 240 coverage. This bill would make a worker responsible in limited situations for his or her own injury including failure to follow provided safety training or a specific failure to use supplied safety equipment. This bill protects worker safety while establishing a fair playing field for a builder facing a liability lawsuit. This legislation is limited to occurrences outside the City of New York as the less populated suburban and upstate areas to which this act would apply generally have less congested construction sites and smaller scale construction projects.

PRIOR LEGISLATIVE HISTORY: New legislation.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately and shall apply to all causes of actions accruing on or after such date.
