



December 14, 2020

Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

**Re: Scaffold Law Reform for Post Pandemic Recovery**

Dear Governor Cuomo:

On behalf of the Association for a Better Long Island (“ABLI”) and Long Island Builders Institute (“LIBI”), we respectfully request that your Administration amend sections 240/241 of the Labor Law, commonly known as “scaffold law,” replacing the current standard of “absolute liability” with a standard of “comparative negligence.” Further, we respectfully request that the Administration include the urgent reform of this law within what will be an historic 2021-2022 Executive Budget.

In these unprecedented times, it is more important than ever that New York State makes a concerted effort to leverage every dollar to allow for the continued strengthening of our public infrastructure as well as encourage privately funded economic development projects within the current financial constraints caused by the COVID-19 pandemic. One of the most important and impactful ways in which the state can immediately assist its current capital plan projects is to reduce the significantly excessive cost of insurance by reforming the over 100-year-old sections 240/241 of the Labor Law.

While New York State is the only state in the country with this type of law, it is revealing to observe that New York State’s accident rate is significantly higher than a number of states which do not have such a law. The supporters of the law insist that any reform of the law will cause additional injuries to construction workers. If that is the case then New York should have a much lower rate of injuries today than other states which do not have such a law. Clearly, current statistics do not uphold this position.

With regard to construction fatalities, according to the Bureau of Labor Statistics, New York State is 35th with a rate of 10.5 deaths per 100,000 construction workers, far behind 34 other states including both New Jersey and California. With regard to injuries, New York State

is 10th per 100,000 construction workers, behind both Massachusetts and Connecticut and Ohio. Thus, since New York State is the only state with a scaffold law, and if the scaffold law was designed to protect our construction workers from both injuries and deaths, it would stand to reason that New York should have the lowest number of injuries and deaths compared to states which do not have such scaffold laws. The facts reveal the reality.

In addition, New York State has the highest insurance rates in the county with regard to both construction and contractor insurance. This is because almost all of the insurance companies which are admitted to engage in business in New York State do not sell such construction or contractor insurance. Therefore, with so few insurance companies selling such insurance, our state's insurance rates are 40% higher than comparable rates in New Jersey. Of all of the insurance companies which are admitted to practice in New York State, only one or two of such admitted companies sell construction liability insurance and there are no admitted companies which sell contractor liability insurance. Thus, non-admitted companies, which are not subject to regulation by the NYS Department of Financial Services, come into our state and sell such insurance, for without them there would be no insurance sold for these purposes. In addition, all of these insurance contracts contain multiple exclusions from insurance coverage, which often leads a construction company to be forced to purchase multiple policies so as to ensure they have the coverage necessary. Millions and millions of dollars are being wasted for both private and public projects, simply because admitted insurance companies in New York State realize that it is impossible to make the necessary rate of return and will not sell such insurance policies, even in a state where they are an admitted carrier. These companies are telling us that New York State and its laws and regulations prohibit them from selling such insurance and therefore all of our construction companies are left to a system which is not regulated by the agency in our state which is tasked with that responsibility. Kafka himself could not have created a more torturous scenario.

Accordingly, the ABLI and LIBI respectfully request that this is the historic opportunity to right a wrong, and by doing so, to help restart the economic engine that will be needed to recover from a pandemic recession that has caused enormous harm to the people of New York and to a state budget designed to improve their quality of life.  
Sincerely,



---

Kyle Strober, Executive Director  
*Association for a Better Long Island*



---

Mitch Pally, CEO  
*Long Island Builders Institute*

cc: Hon. Andrea Stewart-Cousins, Major Leader, NYS Senate  
Hon. Carl Heastie, House Speaker, NYS Assembly  
LI NYS Senate Delegation  
LI NYS Assembly Delegation

