

INTRO 7-3

ECLEG APRO3'12 AM10:03

**A RESOLUTION TO BE SUBMITTED BY  
LEGISLATORS LORIGO, MILLS, RATH, DIXON & HARDWICK**

Re: Encouraging Reform of New York's Scaffold Law

WHEREAS, New York State the only state in the nation maintains a strict liability standard for all elevated workplace injuries; and

WHEREAS, this standard disallows consideration of an employee using unsafe work practices, such as refusing to utilize safety devices or using drugs and alcohol while on the job, when determining damages for a workplace injury; and

WHEREAS, such a standard drives up insurance premiums, which are then passed along to consumers and taxpayers funding construction projects; and

WHEREAS, unaffordable costs are frequently cited as a reason to not engage in construction projects; and

WHEREAS, such a standard also creates less of an incentive for workers to engage in safe practices while at work.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature goes on record as supporting New York State Senate Bill 6816 and Assembly Bill 2835, which would amend the New York State Scaffold Law to allow for consideration of an employee's own negligent actions when awarding damages for workplace injuries; and be it further

RESOLVED, that copies of this resolution be forwarded to Governor Andrew Cuomo and the Western New York Delegation of the New York State Senate and Assembly.

Fiscal Impact: Positive for Erie County taxpayers

## S T A T E O F N E W Y O R K

6816

I N S E N A T E

March 26, 2012

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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 S 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  
24 CONSTRUCTION SAFETY AND HEALTH CERTIFIED BY THE UNITED STATES OCCUPA-  
25 TIONAL SAFETY AND HEALTH ADMINISTRATION OR THE DEPARTMENT OF LABOR.  
26 2. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO IMPOSE OR  
27 CREATE LIABILITY UNDER SUCH SECTIONS OF THE LABOR LAW REFERRED TO IN

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

LBD05792-01-1

S. 6816

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1 SUBDIVISION ONE OF THIS SECTION, WHERE A PERSON EMPLOYED OR OTHERWISE  
2 ENTITLED TO THE PROTECTION OF THE PROVISIONS OF SUCH SECTIONS HAS FAILED  
3 TO FOLLOW SAFETY INSTRUCTIONS OR SAFE WORK PRACTICES IN ACCORDANCE WITH  
4 TRAINING PROVIDED, OR FAILED TO UTILIZE PROVIDED SAFETY EQUIPMENT OR  
5 DEVICES, OR ENGAGED IN A CRIMINAL ACT OR WAS IMPAIRED BY THE USE OF  
6 DRUGS OR ALCOHOL, AND SUCH FAILURE, ACT OR IMPAIRMENT IS THE SOLE PROXI-  
7 MATE CAUSE OF AN INJURY TO SUCH PERSON.  
8 S 2. This act shall take effect immediately and shall apply to all  
9 causes of actions accruing on or after such date.

## S T A T E O F N E W Y O R K

2835

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. MORELLE, DESTITO, SCHIMMINGER, V. LOPEZ, MAGEE, CYMBROWITZ, GALEF, ROBINSON -- Multi-Sponsored by -- M. of A. HOOPER, LUPARDO, McENENY, TOWNS, WEISENBERG -- read once and referred to the Committee on Judiciary

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LBD05792-01-1

A. 2835

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