Summary:

Labor Law §§240 and 241, commonly referred to as the “Scaffold Law” impose a standard of absolute liability upon contractors and property owners for all “gravity related” injuries. In its current form, the law does not provide for any consideration of the injured employee’s contributing fault. The proposed legislation would replace the absolute liability standard with the more fair comparative negligence standard as outlined in CPLR §1411.

Why we support this legislation:

The Scaffold Law costs taxpayers

- The Scaffold Law costs taxpayers $785 million annually.¹
- Local governments pay higher costs for capital projects—for example, liability costs on one joint NY-NJ bridge projects are more than double on the NY side. (see graph at right)
- More than half of the top 30 highest settlements resulted from Scaffold Law claims, and of those, 25% were against public entities.²
- The Scaffold Law is estimated to add $200 – $400 million in additional costs to the construction of the new Tappan Zee Bridge.³

The Scaffold Law hurts schools

- The New York State School Boards Association estimates the Scaffold Law costs schools $200 million annually.
- In 2013, the New York School Construction Authority (SCA) was nearly unable to get insurance for its $2 billion capital program, despite an excellent safety record. The new insurance costs are $240 million for 2014, nearly triple that of the previous year, and no guarantee of coverage after 2014.⁴
- The SCA’s increased insurance costs are equivalent to 8-10 new schools over a 3 year period.⁵ Currently, there is a shortage of nearly 50,000 pre-K seats in NYC.⁶
- Higher insurance costs for the SCA jeopardize the future of their Owner-Controlled Insurance Program, which provides insurance to over 800 M/WBE firms. Without this program, hundreds of M/WBEs may be put out of business.
- The highest Scaffold Law settlement in 2012, $15 million, was against a school district (Jamindar v. Uniondale Union Free School District.)⁷
The Scaffold Law drives up the cost of construction

- The number of Scaffold Law cases has increased 500% since 1990, even though the rate of injury has decreased.  
- New York’s general liability insurance costs, the highest in the nation for construction, are directly correlated to the Scaffold Law, and the number of carriers that write general liability policies in New York is declining.  
- The Scaffold Law costs the private sector an estimated $1.49 billion annually.  
- When the trial lawyers tried to reinstate the Scaffold Law in Illinois after it was repealed, labor unions refused to back the effort because they did not want to hurt the industry.

The Scaffold Law hurts workers

- The Scaffold Law is associated with estimated 670 additional construction injuries each year.  
- Reforming the Scaffold Law would create over 27,000 jobs in the construction industry.  
- Illinois repealed its Scaffold Law in 1995, and construction related fatalities decreased by 30%.

NEW YORK’S INSURANCE CRISIS

Scaffold Law lawsuits have driven insurance losses through the roof, resulting in higher premiums, more coverage exemptions, and fewer carriers in the market. These maps show NY costs versus other states.

Sources:

14. ibid.

The Lawsuit Reform Alliance of New York is a not-for-profit association of businesses, health care providers, membership organizations, and taxpayers dedicated to reform of the legal system in order to foster a better business climate, promote job growth and address the growing cost of lawsuit abuse.