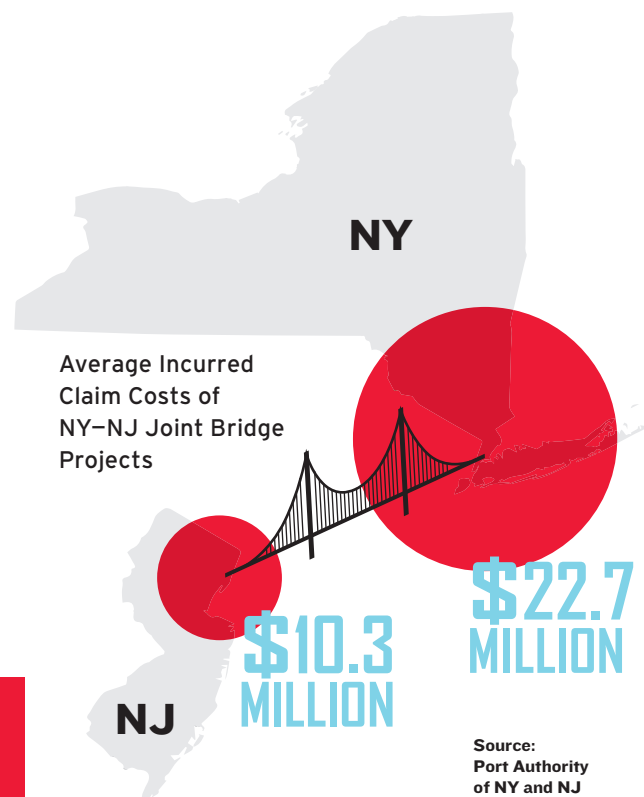


SCAFFOLD LAW REFORM

IN THEIR OWN WORDS...

Trial Attorneys State the Case for Scaffold Law Reform



“...workers injured in scaffold or ladder accidents do not need to establish that the contractor or owner was ‘at fault’ or even that they knew about the dangerous condition.”

—Godosky & Gentile, PC

“New York’s law regarding liability in construction accidents favors the victims in cases where an elevated fall caused injury.”

—Queller, Fisher, Washor, Fuchs & Kool, LLP

“...there is no defense to it, as there are in almost every other kind of tort lawsuit kind of situation. So comparative negligence, in other words, your fault, doesn’t come into play if you’re covered by the statute...if you live in Binghamton or you live in Syracuse, you could have a completely different outcome on the exact same facts.”

—The Stanley Law Offices, LLP

“...the contractor or property owner may be held liable for total compensatory damages paid to the injured construction worker, even if it is determined that the worker was greatly at fault for the fall and injury.”

—Mauer Law Firm, PLLC

“...the injured worker does not have to prove that the owner or contractor was at fault or negligent, and the owner or contractor cannot prove it was not negligent as a defense.”

—Leandros A. Vrionedes, PC

“This law often creates liability and a right of recovery where none would otherwise exist for the construction worker... under the statute, liability is assumed.”

—Mark E. Seitelman Law Offices, PC

The Issue

The only-in-New York “Scaffold Law” imposes absolute liability on property owners and general contractors in lawsuits for gravity related construction accidents, regardless of the contributing fault of the worker or co-worker. The law is the source of much litigation and uncertainty, leading to soaring insurance payouts and skyrocketing rates. In fact, the cost to insure one New York/New Jersey bridge project is more than doubled on the New York side. Personal injury trial lawyers often defend the law, stating that the statute is straight forward, that plaintiffs can only recover based on narrow sets of facts, and that justice is not skewed in the plaintiff’s favor. However, statements found in accident attorney advertising tell a different story.

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DON'T TAKE OUR WORD FOR IT

Editorial boards across the state are calling for Scaffold Law Reform

“Unions are right that construction work can be terribly dangerous. They’re wrong that the Scaffold Law, as written, is critical to hardhat safety. ...de Blasio—for the sake of his own agenda—cannot afford to shrug this one off. If he wants to be Bill the Builder, **the Scaffold Law is one monstrosity he must tear down.**”

—The New York Daily News,
“Tear Down This Law”

“Unless the injured worker can somehow be shown to be 100 percent at fault, the contractor or property owner is presumed by law to be liable and prohibited from contending otherwise. They are muzzled – denied the fundamental right to defend themselves. **It’s a shocking and intolerable deviation from any recognizable concept of justice.**”

—The Buffalo News,
“Out of Date Legislation is Expensive
Without Making Workers Any Safer”

“...this is about more than the soaring financial and social damage caused by the law. **This is about a fundamental flaw in our justice system. ...It’s both an economic necessity and a moral one.**”

—Crain’s New York,
“New York’s Stupidest Law”

“This law is wrong on so many levels. On the moral level, it’s wrong to punish people for something not their fault. On the business level, it makes everything New York builds more expensive. **If you think that affects only big companies, think again.**”

—New York Post,
“Going to the Scaffold”

“**The law is unnecessary, counterproductive, a drag on the economy, and needs to be scrapped or at least revised.**”

—Schenectady Daily Gazette,
“Time to Dismantle ‘Scaffold Law’”

“Reform advocates argue the change would drive down lawsuits and insurance costs. **As a result, currently struggling school districts could invest more tax dollars in educating children and less in paying for expensive liability insurance.** Give taxpayers their money’s worth.”

—Rochester Democrat and Chronicle,
“Change Scaffold Law and Reduce
Taxpayer Costs”

“New York claims to be open for business. But **until the Scaffold Law is scrapped, the welcome mat won’t be out.**”

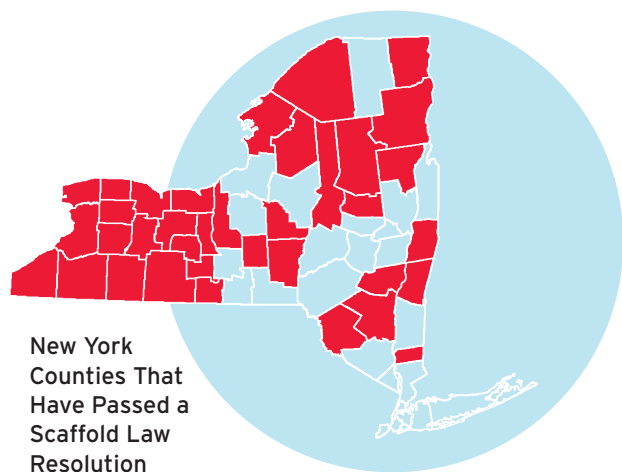
—Utica Observer-Dispatch,
“State’s Outdated ‘Scaffold Law’ Needs
to be Scrapped”

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QUICK FACTS ON SCAFFOLD LAW REFORM

What Is It? The Scaffold Law, (Labor Law 240/241) was first enacted in the late 19th century. It holds property owners, employers, and contractors **ABSOLUTELY LIABLE** for ‘gravity related’ injuries that happen on the job. That means there is virtually no defense from a lawsuit, even if the worker’s gross negligence contributed to the accident. Even parties that had no supervisory control over the work are held liable. New York is the only state that still keeps this law on the books.²



The Scaffold Law COSTS TAXPAYERS

The Scaffold Law costs taxpayers \$785 million annually.³

Local governments pay higher costs for capital projects, whether the work is done directly or through private contractors.

More than half of the top 30 highest settlements resulted from Scaffold Law claims, and of those, 25% were against public entities.⁴

The Scaffold Law is estimated to add \$200–\$400 million in additional costs to the construction of the new Tappan Zee Bridge.⁵

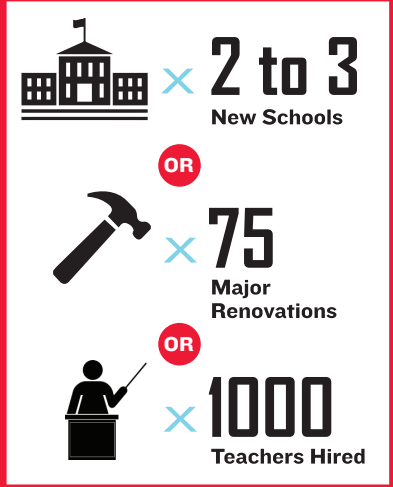
To date, 33 county legislatures in New York—more than half of the state—have passed resolutions calling on the state government to reform the Scaffold Law [see map].

“[The Scaffold Law] imposes liability even on contractors and owners who had nothing to do with the plaintiff’s accident”

—Court of Appeals Judge Robert Smith¹

**SCAFFOLD LAW
COST**

Annual Cost of
The Scaffold Law
on New York City
Schools



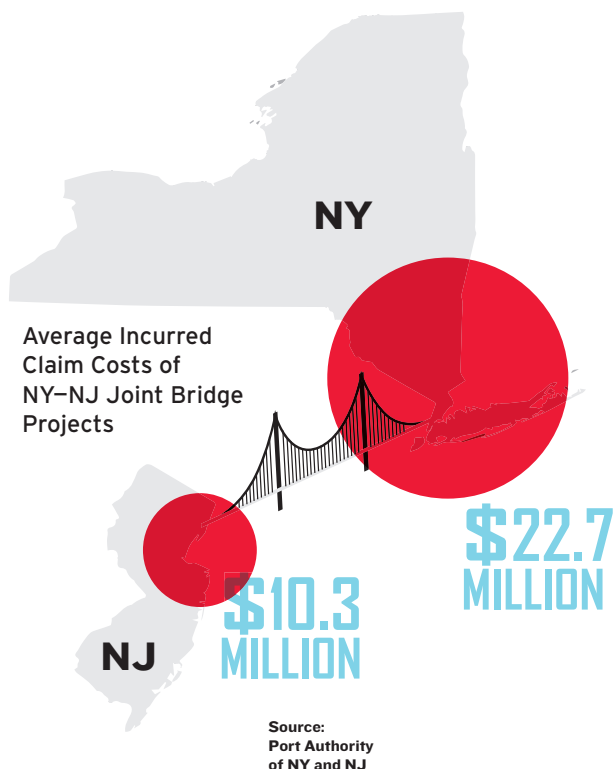
The Scaffold Law HURTS SCHOOLS

The New York School Boards Association estimates the Scaffold Law costs upstate schools \$200M 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 \$240M for 2014, nearly triple that of the previous year.⁶

The SCA’s increased insurance costs are equivalent to 8-10 new schools over a 3 year period.⁷ Currently, there is a shortage of nearly 50,000 pre-K seats in NYC.⁸

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 Scaffold Law INCREASES CONSTRUCTION COSTS

The number of Scaffold Law cases has increased 500% since 1990, even though the rate of injury has decreased.⁹

Liability costs on one joint NY-NJ bridge projects are more than double on the NY side [see graph].

New York's general liability insurance costs, the highest in the nation for construction, are directly correlated to the Scaffold Law,¹⁰ and the number of carriers that write general liability policies in New York is declining.¹¹

The Scaffold Law costs the private sector an estimated \$1.49 billion annually.¹²

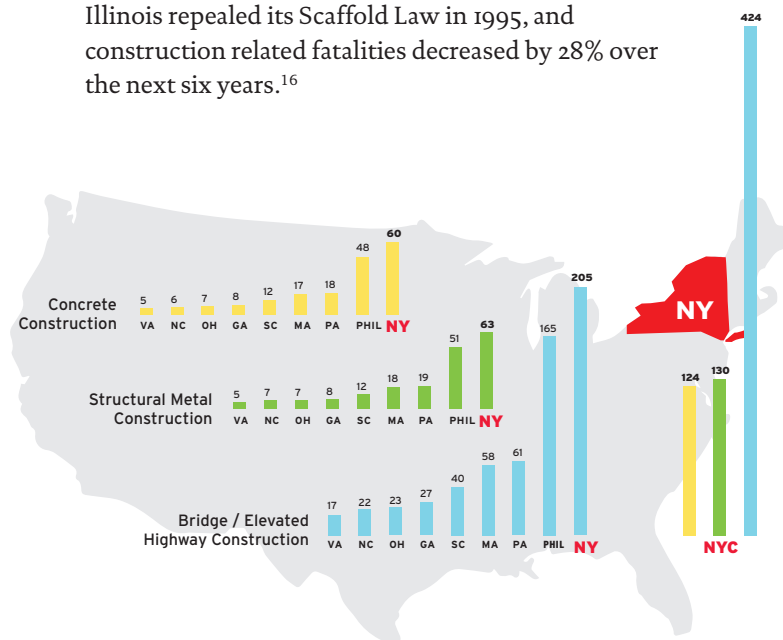
When the Trial Lawyers tried to reinstate the Scaffold Law in IL after it was repealed, labor unions refused to back the effort because they did not want to hurt the industry.¹³

The Scaffold Law HURTS WORKERS

The Scaffold Law is associated with an estimated 677 additional construction injuries each year.¹⁴

Reforming the Scaffold Law would create over 27,000 jobs in the construction industry.¹⁵

Illinois repealed its Scaffold Law in 1995, and construction related fatalities decreased by 28% over the next six years.¹⁶



ISO Contractors General Liability Loss Costs (Severe Heights Exposure)

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.

1. Judge Smith, Robert. Opinion in Dahar v. Holland Ladder & Manufacturing Company, No. 23, NYLJ 1202543033849, at *1 (Court of Appeals, Decided February 21, 2012)

2. Hattery, M, Geddes, R, and Kay, M. "The Costs of Labor Law 240 on New York's Economy and Public Infrastructure." Rockefeller Institute of Government. 2013.

3. *ibid.*

4. "Top New York Settlements 2012." ALM VerdictSearch.

5. Estimate by Willis of New York

6. Gieger, Dan. "School Construction Authority Hit With Huge Bill." Crain's New York.

7. Office of NYC Public Advocate Bill de Blasio. "The Pre-K Crunch: How NYC Parents Struggle to Find Pre-Kindergarten Slots." 2013.

8. Gieger, Dan. "School Construction Authority Hit With Huge Bill." Crain's New York.

9. Hattery, M, Geddes, R, and Kay, M. "The Costs of Labor Law 240 on New York's

Economy and Public Infrastructure." Rockefeller Institute of Government. 2013.

10. Geddes, Richard. "Memo: Labor Law 240 and Loss Costs." Cornell University. 2014.

11. Green, Meg. "Mass Withdrawal of Construction Liability Writers in NY Traced Back to Scaffold Law." AM Best. 03 October, 2012.

12. Hattery, M, Geddes, R, and Kay, M. "The Costs of Labor Law 240 on New York's Economy and Public Infrastructure." Rockefeller Institute of Government. 2013.

13. Roder, David. "Labor Leader: Scaffold Law More Important to Lawyers than Unions." Chicago Sun-Times. 20 December 2002.

14. Hattery, M, Geddes, R, and Kay, M. "The Costs of Labor Law 240 on New York's Economy and Public Infrastructure." Rockefeller Institute of Government. 2013.

15. *ibid.*

16. United States Department of Labor, Bureau of Labor Statistics.

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