



NEW YORK STATE SENATOR

Patrick M. Gallivan

## Gallivan Introduces "Scaffold Law" Reform Bill At Albany Press Conference

PATRICK M. GALLIVAN March 27, 2012

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*Joined By Supporters, Gallivan Seeks To Make New York Friendlier to Job Creation and Economic Growth*

“New York State is routinely hailed as one of the most adverse environments in the nation for creating jobs, retaining jobs, or attracting jobs. To change that, New York needs to examine its own regulations and red tape that deter private sector growth and investment –

beginning with the state's burdensome Scaffold Law," said Senator Patrick M. Gallivan (R-Elma). The Senator joined with groups from across the state today to announce his sponsorship of a bill, S.6816, to reform New York's antiquated and costly Scaffold Law. The law, which exists only in New York, holds property owners and contractors fully liable for workplace accidents, regardless of fault. The bill, which enjoys bipartisan support, seeks to address this issue.

"New York State is the only state in the nation that imposes total liability for all elevated workplace injuries on contractors, builders, and business owners, driving up insurance premiums on all construction projects. Reforming the Scaffold Law to allow for comparative negligence will level the playing field and reduce mandated costs for small businesses, farms, manufacturers, municipalities, and school districts – and ultimately – taxpayers." added Senator Gallivan.

The high cost of insurance in New York makes it very difficult for companies to grow and add jobs. "Since repealing its own Scaffold Law in 1995, Illinois has created close to 50,000 new construction jobs. I am proud to work with, and stand with, the group assembled here today to bring that level of economic growth to New York." said the Senator.

Senator Gallivan's reform bill, which is sponsored in the Assembly by Assemblyman Joseph D. Morelle (D-Irondequoit), would allow defendants to present evidence in their defense if an injured worker was intoxicated, violating safety standards or committing a criminal act. "Every other state has some kind of comparative negligence standard. In New York, the law assumes fault without looking at any evidence – that goes against the most basic principles of justice. The fact that we still have this law on the books is a key reason why our insurance rates are three, four, even ten times higher than most other states," said Tom Stebbins of the Lawsuit Reform Alliance of New York.

The law also drives up the cost of public projects, which is ultimately passed along to taxpayers. New York Conference of Mayors Executive Director Peter Baynes noted, “At a time when communities all across the state are facing some of their greatest fiscal challenges, any efforts to protect local governments from additional financial exposure by affording them their right to due process must be given the utmost consideration. Passage of this bill would go a long way toward fulfilling the promise to provide local governments with meaningful mandate relief,”

While many personal injury lawyers have touted the law as essential to worker safety, data from the Bureau of Labor Statistics reveals the opposite. In Illinois, workplace fatalities dropped by 30% in the six years following the repeal of their Scaffold Law. The proposed legislation does not limit a worker’s ability to sue for injuries or the amount they can recover, and does not restrict workers’ compensation benefits. “Reforming the law is plain common sense. Evidence shows us this will create jobs, stimulate the economy, and potentially improve safety.” said Stebbins.

Gallivan also noted that he intends to conduct a public hearing on the matter in the coming weeks.

### **Quotes from Coalition Members**

#### **Assemblyman Joseph Morelle, Chair Assembly Insurance Committee (D, Irondequoit):**

“This is an onerous and costly regulation that has long outlived its purpose. No other state has a law that places liability for a fall solely on the employer regardless of whether the worker was to some degree responsible, and it’s time we joined the rest of the nation in adopting a comparative liability standard. Too many obstacles to economic development remain in New York, and this is one that must be knocked down this year.”

#### **Mike Elmendorf, President/CEO Associated General Contractors of New York State:**

"Reforming New York's outdated and costly Scaffold Law is not only long overdue, but necessary to rebuild New York's infrastructure and economy. It is a fundamental issue of fairness: Only in New York are those who may not be responsible for an injury held liable anyway. Reforming the Scaffold Law by giving contractors and others their day in court--where actual liability can be determined--will reduce the cost of construction, create jobs and promote greater workplace safety. At the same time that New York struggles with staggering infrastructure needs we cannot afford, we continue to perpetuate a flawed law that unnecessarily drives up those costs. There is no excuse for New York to remain the only state in the nation with such an antiquated and indefensible law on the books. The time for reform is now," said Mike Elmendorf, President and CEO of the Associated General Contractors of New York State (AGC NYS).

**Andrew Rudnick, President/CEO Buffalo Niagara Partnership:**

"New York State has long been one of the worst economic climates in the nation. High taxes and burdensome government regulations and mandates on businesses and local governments drive costs up, and jobs down. Over the last year and half, the state has begun to address this anti-business environment with initiatives like the 2% property tax cap, Recharge NY, balanced budgets, and most recently, pension reform. One of the next steps needs to be tackling unfair business regulations such as the 'Scaffold Law,' or Labor Law 240. Scaffold Law places absolute liability on contractors and property owners in gravity-related injuries. Senator Patrick Gallivan's legislation, which includes a comparative negligence standard, would reduce insurance costs for public and private construction projects, therefore reducing the cost of a project, and the cost of doing business in New York State. The Partnership looks forward to working with Senator Gallivan on making this legislation law and getting New York contractors back on equal footing with their counterparts in the other 49 states."

**Heather Briccetti, President/CEO Business Council of New York State:**

“Now is the time to address this antiquated barrier to investment and job creation. The current Scaffold Law does not provide a safer work place, but it does result in less work places, higher costs and higher taxes. New York has an innovative, dynamic and progressive economy that can grow if this archaic hindrance is addressed. This legislation offers a fair and reasonable solution, when an employee has made the worksite unsafe by committing a crime, using drugs or alcohol, or failed to properly use safety devices, while still providing protection for responsible workers. We thank those who support this legislation especially, Senator Gallivan and Assemblyman Morelle.”

**Louis Coletti, President Building Trades Employers’ Association:**

“Failure to reform the Scaffold Law will impede the economic growth in NYC by driving up the cost of construction.”

**Ross Pepe, President Construction Industry Council of Westchester and Hudson Valley:**

“New York State continues to be the only state in the nation placing the full burden of worker jobsite injuries on the employer regardless of circumstances beyond their control. The result is extraordinarily high insurance costs that limit economic growth and job expansion. This must change now.”

**Mike Misenhimer, Northeast Subcontractors Association:**

The financial burden for Scaffold Law claims may ultimately rest with the subcontractor-employer. Because it’s commonplace for subcontractors to have hold harmless (indemnification) provisions in their contracts with general contractors, when a Scaffold Law lawsuit is commenced against the general contractor, that contractor will, in turn, file a 3rd-party lawsuit against the subcontractor. The end result? The subcontractor who

employed the injured worker is hit with the payment of workers' compensation benefits, and then gets hit again through a 3rd-party lawsuit from the general contractor. So much for the "exclusive remedy" principal of workers' compensation.

**Matt Nelligan, Manager of Public Affairs New York Farm Bureau:**

"When you think of the negative impacts of the Scaffold Law, farmers might not immediately come to mind. But the reality is, that whether you are a dairy farmer looking to build a new barn or an apple orchard that allows the use of ladders for a u-pick operation, you know about the negative effects of the Scaffold Law because you feel it where it hurts: in your wallet. Farmers want to reinvest in their businesses and grow their operations, but the Scaffold Law keeps insurance costs high, which makes money for capital investment all the more scarce. The reform of the Scaffold Law will help to create a better business environment for agriculture and we commend Senator Gallivan and Assemblyman Morelle for leading this effort."

**Mike Durant, State Director National Federation of Independent Business:**

"The Scaffold Law is the standard-bearer of New York's dubious anti-business reputation," said Mike Durant, State Director for the National Federation of Independent Business. "It is nonsensical for New York to stand alone as the only state that employs a strict liability standard for employers. I applaud Senator Gallivan and Assemblyman Morelle for taking a stand for job creators and introducing legislation that takes a common sense approach. Reforming the notorious Scaffold Law will help create jobs and lower the high costs of doing business in this state."

**Peter Baynes, Executive Director New York Conference of Mayors:**

"The New York Conference of Mayors thanks Senator Gallivan and Assemblyman Morelle for their efforts to reform a law that has been a barrier to job creation, a drain on our

economy and a thorn in the side of taxpayers and local governments alike. At a time when communities all across the state are facing some of their greatest fiscal challenges, any efforts to protect local governments from additional financial exposure by affording them their right to due process must be given the utmost consideration. Passage of this bill would go a long way toward fulfilling the promise to provide local governments with meaningful mandate relief.”

**Brian Sampson, Executive Director Unshackle Upstate:**

“Unshackle Upstate applauds Senator Patrick Gallivan for introducing Scaffold Law reform legislation that includes a comparative negligence standard. Currently, New York is the only state in the nation with this onerous law, which holds contractors, employers and property owners absolutely liable for gravity-related injuries. Enacting this measure into law would decrease the insurance and overall costs for various public and private construction projects and ultimately, allow many of our roads and bridges to be built with greater expediency and ease the burden on taxpayers.”