



May 17, 2016

Mr. Mario Cilento
 President
 New York State AFL-CIO

Mr. Ted Potrikus
 President and CEO
 Retail Council of NYS

Ms. Kathryn Wylde
 President and CEO
 Partnership for NYC

Ms. Heather Briccetti
 President and CEO
 Business Council of NYS

Mr. Dean Norton
 President
 NYS Farm Bureau

Mr. Robert Grey
 Chair
 NY Workers' Compensation Alliance

Mr. Gary LaBarbera
 President
 Building and Construction
 Trades Council of Greater New York

Dear Commission Members:

On April 14, 2016, Governor Andrew Cuomo, New York State Senate Majority Leader John Flanagan and New York State Assembly Speaker Carl Heastie jointly announced the creation of a "Temporary Commission To Review The State's Business Climate."

As the members appointed to this temporary commission, we are writing to thank you for agreeing to address this critically important task and to outline a set of fundamental reforms with broad and bipartisan support that, if enacted, will immediately

and demonstrably “decrease the cost of doing business in New York State, without compromising protections in place for working men and women.”

We, the undersigned, collectively represent tens of thousands of New York State employers from every region and industry in the State. After a budget process that included unprecedented anti-employer actions -- including a drastic increase to the minimum wage and the most expansive paid family leave mandate in the nation -- the employers and the communities we represent are deeply concerned about their ability to operate in a state that is consistently viewed among the worst in the nation to start or grow a business by every objective ranking while effectively competing in a global marketplace.

Further, while we are happy to participate and engage in dialogue with this Commission, many of our organizations are skeptical about the ability of this Commission to produce tangible and meaningful reforms that will reduce the cost of doing business in New York State. One need only look to the defunct or forgotten Health Care Cost Containment Commission and Mandate Relief Council as recent examples of failed efforts to address areas in state government that remain in obvious need of reform.

The measures we highlight must be a central part of any serious discussion about improving New York’s economic climate. They include reforming: the State’s workers’ compensation system; the cost of private health insurance; public construction mandates; the tax burden on small employers; medical malpractice liability; and New York’s notoriously outdated Scaffold Law.

We are happy to meet with the Commission during its period of deliberation should more information or dialogue be desired on these topics.

We expect that you will be presented with additional recommendations that are critical to various regions and industry sectors and we in no way intend to minimize the importance of such recommendations. But to truly make New York State a place where existing businesses can grow and new ones want to locate, the reforms outlined in the attached document must be considered priorities.

Respectfully,

Associated General Contractors of New York State
Buffalo Niagara Partnership
Business Council of Westchester
Capital Region Chamber of Commerce
Cheektowaga Chamber of Commerce
The Chamber of Southern Saratoga County
Citizen Voices of Oneonta
Commerce Chenango
Corning Area Chamber of Commerce
Dutchess County Regional Chamber of Commerce
Empire State Chapter of Associated Builders and Contractors
Empire State Restaurant & Tavern Association
Fulton Montgomery Regional Chamber of Commerce
Greater Binghamton Chamber of Commerce
Greater Oneida Chamber of Commerce
Greater Rochester Chamber of Commerce
Independent Oil & Gas Association of New York
I SKI NY
The Manufacturers Association of Central New York
NFIB of NY
New York Alliance for Environmental Concerns

New York Association of Convenience Stores
New York Construction Materials Association
New York State Builders Association
New York State Economic Development Council
New York State Hospitality & Tourism Association
New York State Motor Truck Association
New York State Vegetable Growers Association
North Country Chamber of Commerce
Northeast Agribusiness & Feed Alliance
Northeast Dairy Foods Association, Inc.
Notheast Dairy Producers Association, Inc.
Northeastern Retail Lumber Association
Orange County Chamber of Commerce
Putnam County Chamber of Commerce
Rockland Business Association
Rome Chamber of Commerce
Seneca County Chamber of Commerce
Unshackle Upstate
Victor Chamber of Commerce
Westchester County Association
Wyoming County Chamber of Commerce

Cc: Hon. Andrew M. Cuomo – Governor, New York State
New York State Senate
New York State Assembly

Workers Compensation Reform

Employers in New York pay among the highest workers' compensation costs in the nation. According to a 2014 study conducted by the State of Oregon's Department of Consumer and Business Services, New York employers, on average, pay \$2.75 in workers' compensation cost per \$100 of payroll. This is nearly 150% of the national median of \$1.85 per \$100 of payroll. (http://www.cbs.state.or.us/external/dir/wc_cost/map.html)

While the 2014 national median index rate (\$1.85 per \$100 of payroll) fell to an all-time low, New York's Workers' Compensation Insurance premium rose 24.2 percent between 2010 and 2014, the second most in the nation. This further underscores that the 2007 reforms did not achieve their intended or desired cost savings.

Such high workers' compensations costs serve as a hidden tax on New York employers, deter existing businesses from growing and new ones from locating in New York. The below reforms would appreciably reduce the cost burdens associated with Workers' Compensation Insurance in New York.

- **Update "Schedule Loss of Use" Guidelines**

When an employee is injured and suffers the loss of use of a specific body part, they are placed in the state's scheduled loss of use protocols. While all agree that injured workers should be justly compensated, the Schedule Loss of Use protocols in New York reflect outdated medicine.

Evaluation guidelines should be updated to clarify application and reflect modern medical advancements. Further, scheduled loss of use awards should more accurately reflect actual lost time.

For example, the maximum compensation for the loss of use of one arm in New York 48% more than the national average. The maximum compensation for the loss of use of one leg in New York 52% more than the national average. (http://projects.propublica.org/graphics/workers-compensation-benefits-by-limb#New_York)

- **Expand the current Preferred Provider opt-out period from 30 to 90 days**

This change will benefit injured workers and their employers by reducing administrative costs for all stakeholders; improving continuity of medical treatment; providing expedited access to medical providers, specialists, testing, referrals and treatment; while reducing loss and restricted work days and limiting lengthy and expensive litigation.

- **Apply nationally-recognized standards for medical treatment and impairment guidelines**

New York State should move to immediately adopt national standards in the diagnosis, care and treatment of injured workers, including the American Medical Association Guidelines (AMA) and the American College of Occupational and Environmental Medicine (ACEOM) treatment protocols.

- **Provide Meaningful Timelines For Maximum Medical Improvement (MMI)**

MMI is the time it takes an injured worker to achieve optimal medical improvement for a given injury, thus triggering the awarding of a final capped-benefit, providing resolution for the worker, the employers and medical professionals. For decades, this process routinely took about 2 years, but since 2007, has ballooned to take closer to 6 years. This has inflated costs and created an environment of uncertainty for all stakeholders.

New York State should return to the standard of determining Maximum Medical Improvement within 6 -24 months of injury or start of treatment.

- **Employ Regional "Average Weekly Wage" Calculations**

When determining an injured worker's compensation benefits, New York State bases their award on the statewide "average weekly wage" for a given occupation; a method that ignores the stark variations in wages and salaries that exist across New York State.

This results in injured workers Upstate receiving a disproportionate amount of compensation in relation to their relatively low cost of living, driving up costs of workers' compensation insurance rates for Upstate employers.

The average weekly wage should be calculated based on regional labor and earnings statistics, not a statewide calculation that inflates costs.

Reform Wicks Law

Most public construction projects in New York (schools, roads and bridges, municipal buildings, etc.) are subject to separate bidding requirements for HVAC, plumbing and electric contracts. Enacted in 1912, this law was originally intended to promote competition for public contracts at a time when fewer contractors were able and allowed to bid on projects and contract cronyism was endemic to the public procurement process; 100 years later, this law no longer aligns with present day realities.

In 2008, Wicks Law was amended to exempt certain projects from its costly and arbitrary requirements. Projects costing less than \$500,000 Upstate, \$1.5 Million in Long Island and Westchester County, and \$3 million in New York City are not required to comply with the multiple contract mandate. These thresholds are far too low to for the vast majority of public construction projects and thus have produced little in the way of public savings or efficiencies.

The majority private developers and nearly every other state in the nation use a single contract method, with the authority to coordinate the project vested in a general contractor, who has the financial interest and professional acumen to ensure the project is completed in a cost effective and timely manner. Studies estimate that the Wicks Law adds anywhere from 8% to 30% to project expenses.

We propose repealing Wicks Law's or at the very least expanding its exemptions thresholds to a uniform \$10 million across New York State.

Reduce The Cost of Private Health Care; Reform the HCRA Surcharge

For myriad reasons, New York State has among the highest health care costs of any state in the nation. One of the chief reasons in the number of taxes, surcharges and assessments the state imposes on employers and individuals who purchase health insurance. In 2015; the covered lives assessment (\$1.1 billion), the premium tax on commercial health insurance (\$353 million), the section 206 assessment (\$240 million) and the HCRA surcharge (\$2.9 billion), combined to cost purchasers of private health insurance \$4.6 billion.

We recommend addressing all of the health care tax burdens mentioned; in some cases these taxes are adding up to over 10% of a business's overall premium costs.

The "covered lives assessment" and "HCRA surcharge" are the two most expensive and no longer serve the original purpose of the taxes. In 1996 New York State implemented both of these taxes: the covered lives assessment was originally ear marked to fund graduate medical education. Likewise, the HCRA surcharge (which is a tax on all hospital discharges) was ear marked for hospital bad debt and charity care. When the HCRA surcharge was first established, the initial rate was 8.18 percent and equated to \$517 million in taxes. In 2015 the HCRA surcharge was 9.63% and cost New Yorkers \$2.9 billion in taxes on their health care. Today, neither of these taxes are ear marked for any particular purpose- they are deposited into the black hole of "HCRA revenue" and there is very little in the way of transparency or detail as to the amount of revenue raised or the specific use of these funds.

Combined, health care taxes on the privately insured rank as the largest business tax in New York State. The state has taken steps in recent years to reduce and reform some taxes (corporate franchise, income, manufacturing, property) but has done little to address the ever rising cost of accessible, quality health care in New York State. Such high tax burdens on health plans and insurers results in higher costs for employers, health care service providers and New York State residents.

Reduce Small Business Taxes

For any small employer which files business taxes via the personal income tax with an income at or below \$500,000 with a business income less than \$1.5 million:

- PIT exemption is increased from the current 5% to 15% for small business
- PIT exemption is increased from the current 5% to 20% for farm income

For those small businesses which file their taxes via the corporate tax with an income at or below \$500,000:

- Reduce tax rate from current 6.5% to 2.5%

Medical Liability Reform

The costs of our medical liability system in New York are enormous, both in terms of the direct costs of malpractice insurance carried by medical professionals and the expense of defensive medicine--procedures and tests ordered not so much out of medical necessity, but rather out of fear of being sued.

New York's liability system is so imbalanced that our state is the only in the nation to actually subsidize (at taxpayer expense) doctors' liability insurance just to keep them in the state--and still many are leaving. The result of this system is higher healthcare costs, higher health insurance premiums, fewer healthcare professionals and less access to care. Trial lawyer's win, while patients lose and the ranks of the uninsured continue to increase.

We support, among other measures, imposing safeguards against wholly frivolous suits and capping non-economic damages. These are commonsense measures that would make healthcare and health insurance more affordable for public and private employers and individuals alike, and do so at no cost to the state.

We seek reform similar to 2011 legislation (S.3187/A.4381) which instituted the following reforms:

- Adds a requirement of an affidavit of merit, signed by a physician, and providing a judge the mechanism to remove a malpractice claim based on dubious assertions.
- Establish statutory language for "noneconomic damages" and "actual economic damages" and cap of \$250,000 on noneconomic damages. Currently, 30 states have enacted reform which caps noneconomic awards, including California and Texas.
- Create a "Fair Share Liability" standard by linking a defendant's monetary liability to their equitable share in accordance with their respective culpability.

Scaffold Law Reform

New York is the only state in the nation that has an absolute liability standard for gravity related accidents. We strongly support the adoption of a comparative negligence standard to sensibly balance work safety while allowing businesses to have their day in court.

New York's general liability insurance costs are more than 300% higher than other states because of the Scaffold Law. The Scaffold Law also adds about \$10,000 to the cost of the average new home, exacerbating New York's affordable housing deficiency.

This common sense reform will also increase access to liability insurance for MWBE construction companies, reduce the costs of virtually every construction project and rein in costs of public capital construction projects – saving taxpayer dollars, creating jobs, and spurring development.